

Statements of Special Educational Needs (Education in England): A Guide for Parents



Cerebra
Positively Different

At Cerebra we believe that being a family is about discovering life together. That's no different for families of a child with a brain condition – except that there are more challenges to overcome along the way. We believe the best way to overcome them is by joining families on that journey – at every step. First we use what they tell us to inspire the world class research and innovation that Cerebra supports. Then we work with them to make the best use of the knowledge we develop. So that they can go on to discover a more included, fulfilled and enjoyable life. For every challenge there's an answer out there. Let's discover it together.

The information in this guide was originally written by Jo Honigmann, Camilla Parker, and Professor Luke Clements and has been reviewed by Derek Tilley.

We hope that you find this guide practical and useful. We would like to point out that Cerebra does not receive any funding from national or local government. So, as is the case for all of the guides that we produce to support parents, you can be sure that the advice and information it contains is truly independent.

This guide is part of a series of guides published by Cerebra that aim to give parents of children with disabilities and/or special educational needs information on how to get the help and support they need. This series of guides can be found on the Cerebra website: <http://w3.cerebra.org.uk/>

Our guides are provided free of charge but if you would like to make a donation to help cover the costs of research and updating, it would make a huge difference.

To donate by text send **CERE12** and then the amount to **70070**, or telephone our Fundraising Department on 01267 244221.

Introduction

A new system for children with special educational needs (SEN) was introduced in England from September 2014. From that date statements of special educational needs (SEN) were replaced in England (but not Wales) with a new document called an Education, Health and Care plan (EHCP). This means that SEN statements are no longer being issued and those children who have a SEN statement are gradually being transferred over to an EHCP. This process is not due to finish until 1 April 2018 which means that we are in a transition period where the old and new systems are running alongside each other.

Please note that this guide is only relevant to those children who still have a SEN statement and live in England. If you believe that your child has SEN or is being assessed for an EHCP or already has an EHCP please see [Cerebra's Education Health and Care \(EHC\) Plans \(Education in England: A Guide for Parents\)](#). If you live in Wales please see [Cerebra's Education in Wales: A Guide for Parents](#).

1. What does this all mean for children with SEN statements?

Essentially, the old SEN system continues to apply to all those children and young people who still have a SEN statement.

2. What does this mean for my local authority (LA)?

Your LA must comply with the relevant legislation set out in the Education Act 1996 and associated Government guidance on SEN statements. So it must:

- where necessary continue to maintain your child's SEN statement;
- review your child's SEN statement at least once a year;
- draw up a Transition Plan in Year 8 and review it at least once a year;

- continue to follow the 2001 SEN Code of Practice including arranging the provision set out in your child's SEN statement;
- make information, advice and support services available to you;
- make disagreement resolution arrangements available to you;
- invite you to provide evidence for the annual review of your child's statement and send you copies of the evidence provided by anyone else who is invited to the annual review meetings;
- invite you to the annual review meeting itself;
- provide you with a draft amended statement if it decides to amend your child's SEN statement;
- let you know whenever they make a decision that gives you the right to appeal to the Special Educational Needs and Disability Tribunal (the Tribunal).

3. Can I still ask for a re-assessment of my child's statement?

Yes. Although it is no longer possible to request an assessment for a new SEN statement you can ask for a reassessment of an existing statement. Your LA will have a maximum of 6 weeks to decide and let you know whether or not it will carry out the reassessment. If it does decide to carry out a reassessment it must follow the old system as set out in the Education Act 1996 and the guidance in the 2001 SEN Code of Practice. If it refuses you will have the right to appeal to the Tribunal as explained below, but be aware that it doesn't have to carry out a reassessment if it has already completed one in the previous 6 months.

If you do request a reassessment the LA may choose to move your child over to the new system at this point and begin an EHC assessment by organising a Transfer Review. However, under these circumstances it can only do so with your agreement. (Please see [Question 7](#) below for more information on transferring to the new system.)

4. Can I still appeal to the Tribunal?

Yes, you can in the following situations:

- when your LA refuses to change the name of the school named on your child's SEN statement, providing it has been in place for at least one year;
- when your LA refuses to reassess your child's SEN statement, provided an assessment has not taken place in the last six months;
- when your LA decides not to amend your child's SEN statement following a reassessment;
- when your LA decides not to amend your child's SEN statement following an annual review or other review; or
- when your LA decides to cease to maintain your child's SEN statement

5. Do I have to consider mediation if I appeal to the Tribunal?

No. Unlike appeals to the Tribunal under the new SEN system you don't have to consider mediation before registering an appeal related to a SEN statement.

6. When will my child's SEN statement be transferred to an EHCP?

The Government has set out when it expects different groups of children and young people to be transferred to an EHCP in Annex A of its guidance: [Transition to the new 0 to 25 special educational needs and disability system: departmental advice for local authorities and their partners \(2015\)](#). This information can also be found in a guide produced by IPSEA (Independent Parental Special Education Advice): [Briefing on Transition](#).

7. What is the transfer process and how long does it take?

The transfer process is clearly explained by IPSEA in their [What happens during an EHC needs assessment?](#) They have also created a useful [IPSEA Transition Timeline](#) explaining what should happen and when.

8. Where can I get help if I need advice or support?

- Your LA must have an Information Advice and Support Service (IASS) to provide accurate, neutral information and support to parents. You can find the contact details of your local IASS [here](#). Alternatively you will be able to find the details on your LA's Local Offer website. If you don't know which LA you live in you can find out on the [Government's website](#).
- In addition, the Department for Education has asked the Council for Disabled Children to arrange services with a number of independent voluntary, community and private organisations with local knowledge, experience and expertise to deliver an independent support service in each LA area. At the time of writing these services will be available until 31 March 2017 and can supply independent supporters to work directly with young people and the parents of children being assessed for an EHC plan. You can find your local independent support service [here](#).
- The Special Needs Jungle, a not-for-profit organisation, offers a free [EHCP Transfer Clinic](#) where you can browse questions asked by other parents or ask a specific question about any problems you may have when transferring from a statement to an EHCP.

Resources

Special Educational Needs Code of Practice (2001)

This is the Code of Practice that applies to children who still have a SEN statement and it will remain in force until 2018.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/273877/special_educational_needs_code_of_practice.pdf

Transition to the new 0 to 25 special educational needs and disability system: Departmental advice for local authorities and their partners (2015)

This document has been produced by the Department for Education. The advice it contains is non-statutory and has been produced to help LAs, their partners and families understand how the SEN system will operate in England during the transition period. It covers how legislation relating to children and young people with SEN in England will operate from 1 September 2015 to 31 March 2018; and how and when the new SEN and disability system will be made available to all children and young people in England by the end of that period.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/463320/Transition_Dept_advice_sept15.pdf

Special educational needs and disability code of practice: 0 to 25 years (2014)

Also produced by the Department of Education, this document sets out its vision of how the new SEN system should operate including how an EHCP assessment should be carried out when your child transfers from the old system.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398815/SEND_Code_of_Practice_January_2015.pdf

Further information and guidance

For information on other topics, please refer to the [Parent Guides](#) available on Cerebra's website.

Information about the authors

Jo Honigmann is Chief Executive of The London Centre for Children with Cerebral Palsy, having previously been a partner of Just Equality, which specialised in discrimination, disability and education law and policy. Having practised as a solicitor for several years, in both private practice and the not-for-profit sector, Jo has worked as a legal and policy consultant since 2008. Projects have included drafting Equality Act 2010 education guidance as part of a small consortium for the Equality and Human Rights Commission and for the NHS. During her career Jo has been responsible for a university's policy and provision for its disabled students. She has written, trained and presented on education and discrimination law and policy to a wide range of specialist audiences. Jo chaired the Law Society's Mental Health and Disability Committee from September 2008 to September 2010 and has been a member of the Committee since 2003. She has an MSc in Disability Management in Work and Rehabilitation.

Camilla Parker is a legal and policy consultant, specialising in the areas of mental health, disability and human rights. She has written, presented and trained extensively on issues relevant to these areas. Camilla was the main author of *The Legal Aspects of the Care and Treatment of Children and Young People with Mental Disorder: A Guide for Professionals*, (DH/National Institute for Mental Health in England, January 2009) and worked as a consultant for the Department of Health on the revision of the children and young people's chapter in the Mental Health Act 1983 Code of Practice (2015). She is a member of the Law Society's Mental Health and Disability Committee.

Luke Clements is the Cerebra Professor of Law at the University of Leeds and a solicitor. He is a leading expert on community care law. He has drafted and assisted in the parliamentary passage of a number of Private Members bills. He has provided training for many local authorities, national organisations and charitable bodies. His books include: *Community Care and the Law* (Legal Action Group 5th edition 2011 - jointly written with Pauline Thompson), *Disabled Children: A Legal Handbook* (Legal Action Group 2nd edition 2016 - jointly written with Stephen Broach and Janet Read) and *Carers and their Rights* (Carers UK 5th edition 2012).

Information about the reviewer

Derek Tilley is currently working as part of the Cerebra Research team and is the father of a young lady who happens to have Down's syndrome. As a result of his dealings with public services he has had a long interest in supporting parents with disabled children access their legal entitlements. Firstly, in the area of special educational needs with IPSEA and SNAP Cymru Parent Partnership Services before moving into the area of direct payments with Diverse Cymru. During this period Derek served as a third sector representative on the Cardiff Disabled Children's Strategy Development Group and the Cardiff Autism Strategy Development Group. He recently successfully completed an MSc in Social Science Research Methods at Cardiff University and is carrying out a PhD under the supervision of Professor Luke Clements of the University of Leeds exploring issues related to the reoccurring problems parents of disabled children have obtaining their rights from the education, health and social services.

Notes

Notes

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