



## Cumbria SEND Information, Advice and Support Service

Offering impartial information, advice and support to children and young people with special educational needs and or disabilities and their parents & carers.

# The Education, Health and Care Plan

Following on from our factsheet on the EHC needs assessment process, this factsheet provides further information on Education, Health and Care Plans (EHC plans) including:

- Deciding whether to issue an EHC Plan.
- Writing an EHC Plan.
- The contents of an EHC Plan
- The draft EHC Plan
- Requests for a particular school, college or other institution
- Finalising and maintaining the EHC Plan

### Deciding whether to issue and EHC Plan

Section 37 of the Children and Families Act states that a local authority must issue an EHC plan where, in the light of an EHC needs assessment, it is necessary for special educational provision to be made for a child or young person in accordance with an EHC plan.

Paragraph 9.54 and 9.55 of the Code of Practice sets out the factors which local authorities should consider when deciding whether to issue a plan. These include:

- the child or young person's SEN and the special educational provision made for the child or young person and whether:
- the information from the EHC needs assessment confirms the information available on the nature and extent of the child or young person's SEN prior to the EHC needs assessment, and whether
- the special educational provision made prior to the EHC needs assessment was well matched to the SEN of the child or young person

Where, despite appropriate assessment and provision, the child or young person is not progressing, or not progressing sufficiently well, the local authority should consider what further provision may be needed. The local authority should take into account:



- whether the special educational provision required to meet the child or young person's needs can reasonably be provided from within the resources normally available to mainstream early years providers, schools and post-16 institutions, or
- whether it may be necessary for the local authority to make special educational provision in accordance with an EHC plan.

Where a local authority decides it is necessary to issue an EHC plan, it must notify the child's parent or the young person and give the reasons for its decision. The local authority should ensure it allows enough time to prepare the draft plan and complete the remaining steps in the process within the 20-week overall time limit within which it must issue the finalised EHC plan.

### **Key requirements when writing an EHC Plan**

Paragraph 9.61 sets out the key requirements and principles which apply to local authorities and those contributing to the preparation of an EHC plan. These include:

- EHC plans should be clear, concise, understandable and accessible and written so they can be understood by professionals in any local authority
- EHC plans should be forward looking – for example, anticipating, planning and commissioning for important transition points in a child or young person's life, including planning and preparing for their transition to adult life.

**PLEASE SEE OUR FACTSHEET ON THE FORM AND CONTENT OF AN EHCP**

**FOR FURTHER INFORMATION AND SEE LINK BELOW FOR AN EHCP**

**EXEMPLAR:**

<https://councilfordisabledchildren.org.uk/sites/default/files/field/attachemnt/EHCP%20Exemplar%20Guide%202017.pdf>

Note:

Where the child or young person is in or beyond year 9, the EHC plan must also include (in sections F, G, H1 or H2 as appropriate) the provision required by the child or young person to assist in preparation for adulthood and independent living, for example, support for finding employment, housing or for participation in society.



TO April 20

## **The draft EHC Plan and requests for a particular school, college or other institution:**

Before issuing the final EHC plan, child's parents or the young person must be sent plans in draft and given 15 days to make representations including on particular school named.

When the local authority sends the draft EHC plan to the child's parent or the young person the following apply:

- The local authority must notify the child's parent or the young person that during this period they can request that a particular school or other institution, or type of school or other institution, be named in the plan. The draft plan must not contain the name of the school, maintained nursery school, post-16 institution or other institution or the type of school or other institution to be attended by the child or young person (see below).
- The local authority must advise the child's parent or the young person where they can find information about the schools and colleges that are available for the child or young person to attend, for example through the Local Offer.
- The local authority should also seek agreement of any Personal Budget specified in the draft plan.

Where particular school is requested, the local authority must consult with governing body and relevant local authority if out of area.

The child's parent or the young person has the right to request a particular school, college or other institution of the following type to be named in their EHC plan:

- maintained nursery school
- maintained school and any form of academy or free school (mainstream or special)
- non-maintained special school
- further education or sixth form college
- independent school or independent specialist colleges (where they have been approved for this purpose by the Secretary of State and published in a list available to all parents and young people).

Section 39 of the Children and Families Act 2014 provides that the local authority must name the requested school or other institution in the EHC plan names the school or other institution specified in the request, unless:

- a) the school is unsuitable for the age, ability, aptitude or SEN of the child or young person concerned, or
- b) the attendance of the child or young person at the requested school or other institution would be incompatible with—
  - a. the provision of efficient education for others, or
  - b. the efficient use of resources.

In determining whether attendance would be incompatible with the efficient use of

resources, the LA must consider the cost to the public purse generally when comparing the costs of the parents' requested school with the LA's own provision.

The Court of Appeal has confirmed in *Haining v Warrington Borough Council* [2014] EWCA Civ 398 that this includes the cost of non-educational expenditure, for example social care provision and transport, in relation to both potential placements.

Where a parent or young person does not make a request for a particular nursery, school or college, or does so and their request is not met, the local authority must specify **mainstream provision** in the EHC plan unless it would be:

- against the wishes of the parent or young person, or
- incompatible with the efficient education of others.

Mainstream education cannot be refused by a local authority on the grounds that it is not suitable.

Where the local authority considers a particular mainstream place to be incompatible with the efficient education of others it must demonstrate, in relation to maintained nursery schools, mainstream schools or mainstream post-16 institutions in its area taken as a whole, that there are no reasonable steps that it, or the school or college, could take to prevent that incompatibility.

### **Finalising and maintaining the EHC Plan**

Section 14 of the Special Educational Needs and Disability Regulations 2014 provides that the finalised EHC plan must be in the form of the draft plan, or in a form modified in the light of the representations made by the child's parent or young person.

When sending a copy of the finalised EHC plan to the child's parent or the young person, the local authority must notify them of:

- a) their right to appeal matters within the EHC plan;
- b) the time limits for doing so;
- c) the information concerning mediation
- d) the availability of:
  - disagreement resolution services; and
  - advice and information about matters relating to the special educational needs of children and young people.

Section 42 of the Children and Families Act provides that local authorities must secure the specified special educational provision in the EHC plan. If a local authority names an independent school or independent college in the plan as special educational provision it must also meet the costs of the fees, including any boarding and lodging where relevant. Chapter 9 of the SEND Code of Practice provides further information on EHC Plans.



TO April 20