



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

Transition process from a Statement of SEN through an EHC Assessment into an EHC Plan.

The practice of not carrying out an Education, Health, Care (EHC) needs assessment as part of the transition from a statement of SEN to an EHC Plan process is unlawful. At a recent conference (**Jordan's SEN Law and Practice Conference** – March 2016) which was led by 3 judges, 2 of which are SEND Tribunal judges and a QC who is a specialist in public law focusing on education, health and disability issues, the following points were discussed.

If a child or young person has a Statement of SEN and is due to have that Statement transferred into an Education, Health, Care (EHC) Plan an EHC Assessment must be carried out – to ensure that all evidence/information/reports are relevant, up to date and “sufficient”.

*“to transition from statement to an EHC Plan, an EHC needs assessment **must** be carried out except where the LA, the author and the parent/young person ALL agree that the existing evidence (assessment/reports that informed the original statement) is “sufficient”.*

The legal test for the LA securing an EHC needs assessment is if, after having regard to any views expressed and evidence submitted, the authority is of the opinion that:

- a) The child or young person has or may have special education needs, and
- b) It may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan

The very fact a child already has a statement of SEN ticks both these points. The Tribunal will not take into account the LA's reasons other than the legal test. It is **not** about LA policy e.g. progress (they are not 2 years behind).

David Wolfe QC made it clear that a LA could well be subject to a judicial review challenge for non-compliance e.g. above scenario, too rigid eligibility criteria

Of course, a child or YP may not, following an EHC needs assessment, require an EHC Plan but they should be having a needs assessment if (a) and (b) are the case. It is quite a low bar.

There is an emphasis in the SEND Code of Practice 0-25 years on ensuring all assessments have a person centred approach and there is effective co-ordination. Paragraph 9.22 states that the assessment and planning process should:

- focus on the child or young person as an individual
- enable children and young people and their parents to express their views, wishes and feelings
- enable children and young people and their parents to be part of the decision-making process
- be easy for children, young people and their parents or carers to understand, and use clear ordinary language and images rather than professional jargon
- highlight the child or young person's strengths and capabilities

- enable the child or young person, and those that know them best to say what they have done, what they are interested in and what outcomes they are seeking in the future
- tailor support to the needs of the individual
- organise assessments to minimise demands on families
- bring together relevant professionals to discuss and agree together the overall approach, and
- deliver an outcomes-focused and co-ordinated plan for the child or young person and their parent .

Support and encourage the involvement of children, young people and parents or carers by:

- providing them with access to the relevant information in accessible formats
- giving them time to prepare for discussions and meetings, and
- dedicating time in discussions and meetings to hear their views

In addition, the local authority **must not** seek any of the advice referred to above if such advice has previously been provided for any purpose and the person providing that advice, the local authority and the child's parent or the young person are all satisfied that it is sufficient for the purposes of an EHC needs assessment.

When securing an EHC needs assessment the local authority **must** also consider whether the child's parent or the young person requires any information, advice and support in order to enable them to take part effectively in the EHC needs assessment, and if it considers that such information, advice or support is necessary, it **must** provide it.

If a local authority decides, following an EHC needs assessment, not to issue an EHC plan, it **must** inform the child's parent or young person within a maximum of 16 weeks from the request for an EHC needs assessment.

Where the local authority decides to issue an EHC plan, the child's parent or young person **must** be provided with a draft plan and given 15 days to provide their views.

The entire process of EHC needs assessment and EHC plan development, from the point when an assessment is requested (or a child or young person is brought to the local authority's attention) until the final EHC plan is issued, **must take no more than 20 weeks**. Where there are exceptional circumstances, it may not be reasonable to expect local authorities and others partners to comply with the time limits above.

The Special Educational Needs and Disability Regulations 2014 set out specific exemptions. These include where:

- the local authority has requested advice from the head teacher or principal of a school or post-16 institution during a period beginning one week before any date on which that school or institution was closed for a continuous period of not less than 4 weeks from that date and ending one week before the date on which it re-opens;
- exceptional personal circumstances affect the child, the child's parent, or the young person during the time period; or
- the child, the child's parent, or the young person, are absent from the area of the authority for a continuous period of not less than 4 weeks during the time period referred to.

Chapter 9 of the SEND Code of Practice 0-25 years provides further information on the statutory assessment process.