

Disability Law Service

Offering free, confidential legal advice and
representation for disabled people

Special Educational Needs and your
Child:
An Introduction

Support for Disabled Children and Children with Special Educational Needs

Special Educational Needs and your Child: An Introduction

If your child has difficulties with learning then he or she may have special educational needs. You may feel that the help your child's school can normally provide is not enough for your child. It might be necessary to carry out a more detailed investigation of his/her difficulties to decide whether more or different help is needed. Your child may be entitled by law to a statutory assessment to properly identify his/her needs. This process leads to a Statement of Special Education Needs if one is required. This is an official document which sets out your child's needs and what the school and Local Education Authority (LEA) must do to help. An LEA has a **legal obligation** to ensure the educational provision set out in Part 3 of a Statement of Special Educational Needs is made.

There are **three** distinct stages in the process of getting your child the help that he or she requires. You may also need to take action to ensure the provision is actually put in place once you have obtained it for your child.

Stage 1: Getting your child's needs assessed

The first thing to do is to get your child's special educational needs assessed by the LEA. It may be useful to speak to the Special Educational Needs Co-ordinator (SENCO) at your child's school, to find out his/her views and to see if the school has identified your child as a child with special educational needs.

The role of the school

Your child's school must have a system of monitoring the progress of its pupils. The progress of your child may cause the teachers to suspect that he/she has special educational needs. The SENCO may decide that your child is making little or no progress and needs extra or different help from that which the school gives, through differentiated teaching. This is known as **School Action**. For young children this is known as **Early Years Action**. The SENCO and your child's teachers will decide on what action is necessary. Examples of support provided at School Action include:

- Different learning materials
- Special equipment
- Group or individual support such as an individualised behaviour management programme or one-to-one support
- Training for staff in order for them to help the child better.

At this stage, your child should also be provided with an **Individual Education Plan** which is a record of the strategies used to help your child progress.

An Individual Education Plan should include among other things:

- Three or four individual short-term targets that match your child's needs in communication, literacy, mathematics, and behaviour and social skills.
- The teaching strategies to be used.
- The help to be put in place.
- When that help is to be reviewed.

If your child needs more help than can be provided through School Action then this will trigger **School Action Plus** or, in the case of young children, **Early Years Action Plus** where the school must consult outside specialists to advise the teachers on what provision your child requires and his/her Individual Education Plan. This may also include the school accessing external provision to assist your child.

If your child is still not making progress after School Action Plus has been put in place, or you still have concerns, then this is when you and/or the school should consider asking the LEA for a statutory assessment of your child's needs.

However, there may be circumstances where it is clear from the outset that a child will not be able to have their needs met at School Action/School Action Plus and in such cases it would be appropriate to request a statutory assessment before going through the stages described above. This would generally be the case where it is clear that immediate specialist intervention is required.

If your child's school supports you then so much the better and you can both ask the LEA to assess your child. However, lack of support should not deter you from taking action to get the necessary help for your child. If the school will not ask the LEA to assess your child, you can do so yourself.

Your request should be made in writing. It is helpful if you are clear about why you want the assessment, and supply any information about any help your child has already received and any information which you have from the school and professionals who may have already been involved with helping your child.

The LEA has to reply to a request for an assessment within **six weeks**. The LEA must inform you in writing whether or not it intends to assess your child.

In order to obtain a statutory assessment the child in question must be in the following situation:

1. He must have special educational needs, which are defined as a learning difficulty or disability which calls for additional or different educational provision; **and**
2. Those special educational needs are of a nature which would *probably* call for the local educational authority to have to arrange the special educational provision.

The LEA should consider assessing your child when the evidence suggests that your child's learning difficulties have not responded to measures put in place by the school and therefore your child may need more help than the school can provide from its own resources.

If the LEA refuses to assess your child you have the right to appeal to the Special Educational Needs and Disability section of the First Tier Tribunal (SEND). If you wish to appeal then you must do so within **two months** of the date of the letter notifying you of the LEA's decision not to assess your child. The appeal process is discussed in more detail in a separate DLS factsheet entitled 'Special Educational Needs and your Child: What happens if things go wrong?'.

If your child already has a Statement but you feel that his/her needs have changed significantly you may be entitled to ask the LEA for a **reassessment** of his/her needs. The same time limits apply as for an assessment. A reassessment would then allow for the Statement to be updated if appropriate. You cannot ask for a reassessment if one has been made within the previous six months.

Stage 2: The Statutory Assessment

When the LEA undertakes a full statutory assessment, it will seek your views as a parent and you will have the opportunity to explain how you see your child's special educational needs and what you think should be done to meet these needs.

The LEA must also seek professional views from:

- An educational psychologist
- Your child's school
- Health services for example your child's GP.

It may also seek the views of the following

- Other health/educational professionals for example occupational/speech therapists.
- Social services. If your child has special needs you are entitled to services under the Children Act 1989, e.g. respite care from social services.
- Any other person that you wish the LEA to consult.

The LEA should also seek your child's views if possible, bearing in mind the age and/or special educational needs of your child.

The LEA must complete its assessment within ten weeks beginning from the date of its notice (decision) to assess. Once the LEA has completed its assessment it will write to notify you whether or not it intends to make a statement. Where an LEA decides not to write a Statement of Special Educational Needs it is likely, although not compulsory, that the LEA will write a **Note in Lieu**. It is important to realise that such a document does not give the same legal protections as a Statement.

You have the right to appeal against a decision of the LEA not to issue a statement or against the contents of the statement. Again there is a two month time limit to submit your appeal from the date you were notified of the LEA's decision.

Stage 3: Statement of Special Educational Needs

If the LEA decides from the results of your child's assessment that your child needs special provision at school beyond that which the school can make from within its own resources, then it will issue a Statement of Special Educational Needs. The LEA will first issue a draft/proposed statement. It should send you this within two weeks of notifying you that it will be making a statement. It will then, subject to limited exceptions, have to issue a final statement within eight

weeks of sending you the draft statement. The LEA will have a legal obligation to provide your child with the special educational provision as set out in Part 3 of the Statement. The Statement is divided into a number of parts.

Part 1 specifies your child's personal details such as name, address, date of birth, religion etc and also contact details for you as parent or carer.

Part 2 describes your child's special educational needs. It is important that this part of the statement accurately reflects all of your child's special educational needs because help will only be provided for your child's needs as they are written in the statement.

Part 3 sets out the provision that is required to meet your child's special educational needs as described in Part 2, i.e. the help that must be given to your child at school. This may include, for example, access to certain therapies, individual support from a Learning Support Assistant and a modified curriculum. Part 3 should be clear and specific, for example, quantifying the number of hours of Learning Support Assistance your child requires. This will place a more definite obligation on the LEA to provide help for your child.

Part 4 states which school, type of school or alternative educational provision your child should attend. See 'Choice of School', below. The suitability of the school allocated to your child in Part 4 of the statement will be assessed according to your child's needs and the special educational provision required as set out in Parts 2 and 3 of the Statement. It is therefore very important that Parts 2 and 3 are accurate. If Parts 2 and 3 do not accurately reflect your child's needs then you take the risk that your child may be allocated an unsuitable school.

Parts 5 and 6 relate to non-educational needs. LEAs may often include speech and language therapy and occupational therapy in this section but speech and language therapy and, in many cases, other therapies (including Occupational Therapy) should usually be included in Part 3. It is important that **all** your child's provision for educational needs is set out in Part 3 because no body has a legal obligation to carry out the provision required by Part 6. If you think provision

should be in part 3 of the statement then you have a right to appeal against the contents of part 3 as set out below.

The statement will also have a number of **appendices** attached to it which set out all the evidence, advice and information taken into account in making the statement. The LEA should include the following documents in the appendices

- Parental advice
- Educational advice
- Psychological advice
- Medical advice
- Social Services advice.

However, in many cases appendices will also include advice from others such as Speech and Language Therapists or Occupational Therapists.

Choice of School

When you receive a new proposed statement following an assessment/reassessment of your child's needs, you should also be sent a list of schools with a letter explaining your right to express a preference for a school.

If you are unsure about which school would be best for your child then it may be a good idea to visit the proposed schools and speak to the teachers. You may also wish to ask for a copy of the relevant prospectus and/or OFSTED report for the school as well as their SEN policy. For further details about the schools in your area please contact your parent partnership officer allocated to you by the LEA.

You will have **15 days** from receiving the proposed statement in which to express a preference for a particular school.

When the final statement is issued the type of school considered appropriate for your child will be set out in Part 4 of the statement. The name of the particular school should also be set out in part 4. If you disagree with the LEA's choice of school you have a right to appeal to the Tribunal against their decision. Equally, if the LEA only name a type of school you can appeal this decision as well.

Schools funded by the LEA

Schools funded by the LEA are known as 'maintained' schools.

Where you express a preference for a maintained school, the LEA is obliged under the Education Act 1996 Schedule 27 paragraph 3(3) to name this school in Part 4 of the Statement unless:

- a. the school is unsuitable to the child's age, ability or aptitude or to his special educational needs; **or**
- b. the attendance of the child at the school would be incompatible with the provision of efficient education for the children with whom they would be educated or the efficient use of resources.

Most children with statements are now taught in mainstream schools, i.e. schools which are not special schools. LEAs generally have a duty to educate your child in a mainstream school unless you request a special school environment.

Independent schools

The right to express a preference for a school does not apply to independent or non-maintained schools. If you would like your child to attend such a school you will usually have to show that any other school the LEA can offer does not meet the needs of your child. This is because an independent or non-maintained school placement will usually be more expensive than a maintained school placement. Of course, if you are prepared to fund the school fees yourself you

have the right to send your child to an independent school. However, it is generally accepted that if you decide to do this the LEA will not be obliged to fund any additional provision in your child's statement such as Speech and Language Therapy.

Residential Schools

You may want your child to attend a residential (boarding) school. If so, you will need to show educational reasons for this. You would usually have to show:

- i. that your child has severe or multiple special educational needs that require a consistent programme both during and after school hours that cannot be provided by parents with support from other agencies (known as a 'waking day curriculum'); **or**
- ii. that your child has severe or multiple special educational needs which cannot be met at any school within reasonable travelling distance.

The LEA **cannot** take into account non-educational reasons for a residential placement such as family difficulties. If you have a non-educational reason for wanting a residential placement then Social Services and/or your local health authority may be willing to share the funding of the school with the LEA.

Changing schools

It may be that your child already has an up-to-date statement but you would like your child to change schools.

You can ask the LEA for a change of school as long as:

- it is a maintained school.
- a formal request for a change of school has not been made in the last 12 months.
- a new statement has not been issued in the last 12 months.

- you have not appealed to the Tribunal within the last 12 months.
- the school you are requesting is the same type of school as that already named in your child's statement.

The LEA must agree to your request unless the school is unsuitable to your child's needs, or the attendance of your child at your preferred school would make the education of other children at that school suffer or it would be an inefficient use of resources.

The LEA must let you know its decision within eight weeks of receiving your request and if it refuses you can appeal its decision to SEND within two months of its decision letter. You should be aware that any decision about the suitability of the school will be assessed on the needs of your child, and the provision required to meet these needs, as currently set out in Parts 2 and 3 respectively of his/her statement. If you think that your child's needs have changed which is why he/she needs a different school you should consider asking for a reassessment of your child's needs.

Review Process

Once a Statement is issued and maintained, the LEA has an obligation to keep that statement under review. Formal reviews, known as Annual Reviews, should be carried out every year to assess your child's progress. The headteacher must arrange a review meeting with you, your child's teachers and appropriate specialists. Following this meeting the headteacher must submit a written report to the LEA which must comment on, amongst other things, your child's progress towards meeting the objectives specified in the statement and whether the statement continues to be appropriate.

The LEA must consider the recommendations in the Annual Review Report and record in writing its decision on the recommendations. The LEA is not however obliged to follow the recommendations resulting from the Annual Review.

Your child's Individual Education Plan should also be reviewed at least twice a year with your consultation.

Ceasing to maintain a statement

Your child's special educational needs may change over the course of their schooling and it may be that he/she does not require a Statement for all of his/her education. If the LEA considers that your child's special educational needs can now be met and provided for from the school's normal resources then the LEA may cease to maintain your child's statement. This decision will usually occur following an Annual Review or further assessment.

If you feel that your child still requires special educational provision which can only be provided if he/she has a statement then you have a right to appeal the LEA's decision to cease to maintain his/her statement. Whilst such an appeal is ongoing the LEA is obliged to maintain the Statement and therefore make the provision set out in the Statement.

The LEA's decision to cease to maintain a statement may often be confused with the statement 'lapsing'. Your child's statement will lapse when he/she ceases to be the responsibility of the LEA, for example, when he/she reaches the age of 19, or when he/she moves, with everyone's agreement, into further education as distinct from sixth form education at a school.

What happens if things go wrong?

If you do not agree with a decision of the LEA regarding your child with special educational needs then please ask for a copy of our factsheet entitled 'Special Educational Needs and your Child: What happens if things go wrong'.

Other organisations which offer advice/ representation on aspects of education law

Advisory Centre for Education (ACE)

1C Aberdeen Studios

22 Highbury Grove

London N5 2DQ

Advice line: **0800 800 5793**

Website: **www.ace-ed.org.uk**

Provides advice and support for parents on all aspects of education.

The Children's Legal Centre

University of Essex

Wivenhoe Park

Colchester

Essex CO4 3SQ

National Education Line via Community Legal Advice: **0845 345 4345**

E-mail: **clc@essex.ac.uk**

Community Legal Service

85 Gray's Inn Rd
London WC1X 8TX

Telephone: **0845 345 4 345**

Website: **www.justask.org.uk**

The CLS can give contact details of solicitors and other organisations which can advise and assist you, subject to eligibility, under the free Legal Help Scheme.

The Education Law Association

Executive Officer
33 College Road
Reading RG61QE

Tel/Fax: **01189 669866**

E-mail: **secretary@educationlawassociation.org.uk**

Provides details of experienced solicitors across the country that are willing to take on legal aid and privately funded cases.

IPSEA - Independent Panel for Special Education Advice

6 Carlow Mews
Woodbridge
Suffolk IP12 1EA

Tel: **0800 018 4016**

Website: **www.ipsea.org.uk**

Offers a helpline service offering advice on special educational needs and a SENDIST advice and representation service.

The Law Society

The Law Society's Hall
113 Chancery Lane
London WC2A 1PL

Telephone: **020 7242 1222** (general enquiries)

Advice Line: **0870 606 6575** (choosing and using solicitors)

Website: **www.lawsociety.org.uk**

Email: **info.services@lawsociety.org.uk**

Provides details of solicitors who can advise on all aspects of education law.

Levenes Solicitors

Education and Disability Department
Ashley House
235–239 High Road
Wood Green
London N22 8HF

Telephone: **0800 11 88 99**

E-mail: **info@levenes.co.uk**

Website: **www.levenes.co.uk**

A private firm of solicitors specialising in all areas of Education Law.

Local Government Ombudsman

Advice Line: **0845 602 1983**

Website: **www.lgo.org.uk**

Call the advice line or visit the website to find out who your LGO is and to obtain a copy of the booklet '**Complaint about the Council**' which includes the form you need to make a complaint.

National Autistic Society

393 City Road

London EC1V 1NG

Help line: **0870 600 8585**

Website: **www.nas.org.uk**

SCOPE

PO Box 833

Milton Keynes MK12 5NY

Advice line: **0808 800 3333**

Website: **www.scope.org.uk**

Email: **cphelpline@scope.org.uk**

Provide advice and assistance to parents of children with cerebral palsy.

Secretary of State for Education and Skills

If you wish to make a complaint to the Secretary of State for Education and Skills please write to:

Secretary of State for Education and Skills
Sanctuary Buildings
Great Smith Street
London SW1P 3BT

The Special Educational Needs and Disability (SEND)

SEN helpline: **01325 392 555**

Website: **www.sendist.gov.uk**

SEND is an independent tribunal which is now part of the Unified First Tier Tribunal. It hears and decides parents' appeals against the decisions of LEAs about children's special educational needs. You should contact it for a copy of its booklet entitled 'How to Appeal' which includes the form you need to make an appeal.

Legal Disclaimer

Although great care has been taken in the compilation and preparation of this work to ensure accuracy, DLS cannot accept responsibility for any errors or omissions. All information provided is for education / informative purposes and is not a substitute for professional advice. Any organisations, telephone numbers and links to external web-sites have been carefully selected but are provided without any endorsement of the content of those sites.

This factsheet was updated by:



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Website: **www.dls.org.uk**

Or write to us at: 39 – 45 Cavell Street, London E1 2BP

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