

Special Educational Needs

The Children's Legal Centre is a unique, independent national charity concerned with law and policy affecting children and young people.

What are special educational needs (SEN)?

S.312(1) Education Act 1996 defines a child as having Special Educational Needs ("SEN") if he or she 'has a learning difficulty which calls for special educational provision to be made for him [or her]'.

A child is considered to have a learning difficulty if s/he:

- Has greater difficulty in accessing education than the majority of children of his/her age; or
- Has a disability which either prevents or hinders him/her from making use of educational facilities of a kind generally provided for children of his/her age in school.

Some examples of SEN are:

- Emotional and Behavioral Difficulties (EBD);
- Autism including Asperger's Syndrome;
- Attention Deficit (Hyperactivity) Disorder ADHD/ADD;
- Specific Learning Difficulties, such as Dyslexia;
- Obsessive Compulsive Disorder (OCD);
- Communication difficulties;
- Medical needs, such as Epilepsy and Cerebral Palsy; and
- Mobility difficulties.



What can schools do to meet the needs of children with SEN?

Schools are required to have systems in place to help children with SEN. Each school will have a Special Educational Needs Co-ordinator (SENCO). A SENCO is a teacher within the school who is responsible for the school's SEN policy. They work to ensure that the school meets the needs of pupils with SEN. Schools are provided with additional money from the Local Authority to provide support for children with SEN, this is called their delegated budget.

There are 3 stages of support for meeting the needs of children with SEN:

- School action;
- School Action Plus; and
- Statement of Special Educational Needs.

This information is correct at the time of writing [March 2012] The law in this area is subject to change. The Coram Children's Legal Centre cannot be held responsible if changes to the law outdate this publication.

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If a child is identified as struggling with their school work it may be necessary for the school to place the child on **School Action**. The school should inform you that your child has SEN and that they are being provided with additional support. School Action is when the school's Special Educational Needs Co-ordinator (SENCO) works with the child's class teacher to decide on what action could be taken to help the child with their learning. This extra help might include the school providing special equipment or different learning materials or the introduction of group or individual support.

Children placed on School Action should have an Individual Education Plan (IEP). These should be drawn up by the SENCO in consultation with you (and your child if they are old enough and able to contribute) and should set out your child's difficulties and focused short-term targets for improvement. These must be reviewed at least twice a year but it is suggested that it should be at least termly. The progress of a child on School Action should be closely monitored.

If a child fails to progress whilst on School Action, their school should consider moving them onto **School Action Plus**. A good indicator of progress is whether the child is meeting the objectives in their IEP. School Action Plus is when the

school seeks help from specialists from outside of the school. Specialists may include Behaviour Support Services, Educational Psychologists, Child and Adolescent Psychologists, Speech and

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Language Therapists and/or Occupational Therapists. The school will not receive any additional funding from the Local Authority for supporting a pupil at School Action Plus. Any cost must be met from the school's budget for children with SEN.

If your child fails to make progress at School Action Plus, a request can be made to the Local Authority, by you or the school, that they carry out a **Statutory Assessment** on the

child's SEN with a view to producing a statement of Special Educational Needs. The Local Authority has to carry out such an assessment if it considers that your child has, or probably has, SEN requiring special educational provision to be made for him or her (special educational help).

The criteria for a statutory assessment and factors taken into account are set out in Chapter 7 of the SEN Code of practise. Only children whose needs cannot be met at School Action and School Action Plus will be the subject of a Statement of SEN. It is unusual for a child to be provided with a Statement before School Action Plus has failed to provide sufficient support for a child with SEN, although this does not prevent you from requesting a statutory assessment. There are some cases that will go straight to the statutory assessment stage but this is usually where a child has complex and extensive needs and it is clear that their needs cannot be met at a school level.

What is a Statutory Assessment?

A Statutory Assessment is a detailed assessment undertaken by the Local Authority to determine what a child's special educational needs are and the extra help that they need in order to make progress at school.

When completing a Statutory Assessment, the LA must seek advice from a number of different people and organisations including:

- Yourself
- Your child's school
- The child's doctor (health authority)
- An educational psychologist
- Social Services (if they are involved with your child)

The above list is the bare minimum for a statutory assessment. If a child has difficulties which require further assessment, such as speech and language needs or occupational therapy needs, a child's parent may request that the Authority seek advice from the relevant experts. The Authority may only refuse to seek advice from these experts if it is satisfied that this additional advice is not necessary.

The statutory assessment can take no longer than 10 weeks unless exceptional circumstances specified



Applying for a Statutory Assessment

A request for a statutory Assessment has to be made to the Local Authority. The request can be made by you or by the school or you can apply jointly. The request must be made in writing to the Local Authority SEN department. Below is an example letter to request a statutory assessment:

Dear Sir/Madam

RE: Your child's name and date of birth

I am the parent of the above-named child.

I wish to request that a statutory assessment of his/her special educational needs be carried out under s.329 Education ACT 1996.

[Set out why your child meets the criteria and why they require a statutory assessment]

Yours faithfully,

Your name and address

The Local Authority have 6 weeks to decide whether to assess or not assess.

If the Local Authority refuses to conduct a Statutory Assessment

You will have the right of appeal to the First Tier Tribunal (Special Educational Needs and Disability). Any appeal must be lodged within **two months** of the date the refusal is received. Further information about the Tribunal and Appeals is set out below.

If the Local Authority agrees to conduct a statutory Assessment

The assessment must be completed within 10 weeks of the date that the parents/carers are notified that an assessment will be conducted unless exceptional circumstances specified.

After the Assessment

Once the Statutory Assessment has been completed, the Local Authority will have to consider whether your child requires a statement of SEN. This decision must be given to you within two weeks of the assessment being completed. If, on the evidence gathered during the assessment, the Local Authority considers your child's needs can continue to be met at School Action or School Action Plus and therefore does not require a Statement, it will issue a Note in Lieu. This document sets out the nature of the child's needs and the provision that should be provided by the school to meet them. This will often be in the same form as a statement but it is for guidance only and is not legally binding.

If a Local Authority refuses to issue your child with a Statement of SEN and issues a 'Note in Lieu' then you will have a right of appeal to the First Tier Tribunal (Special Educational Needs and Disability). Any appeal must be lodged within **two months** of the date the refusal to make a Statement is received. Further information about the Tribunal and Appeals is set out below.

What is a Statement of Special Educational Needs?

A statement of Special Educational Needs is a legally binding and enforceable document that sets out provisions that must be provided by the school to meet a child's SEN. The Local Authority will provide additional funding to a child's school if they have a Statement in order to meet their needs.

A Statement is made up of 6 parts:

Part 1: Introduction

Part 1 contains details of the child e.g. name, age and address.

Part 2: The Special Educational Needs

Part 2 identifies the child's SEN. It must detail each and every need and describe the child's abilities, this is what the child can and cannot do.

Part 3: Provision

Part 3 sets out the special educational provision that the Local Authority will make to meet the child's SEN. It must include provisions to meet every need identified in Part 2. The provision should be as detailed as possible so that the parent is clear what should be in place for their child.

Part 4: Placement

Part 4 names the school and/or type of school that the child should attend.

**Part 5: None-Educational Needs**

Part 5 lists any non-educational needs the child may have e.g. toileting difficulties.

Part 6: None-Educational Provision

Part 6 specifies any non-educational provision that the Local Authority will make to meet the non-educational needs set out in part 5 of the Statement e.g. nursing.

Once the Statutory Assessment has been completed, the Local Authority will have to consider whether your child requires a statement of SEN

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If following the Statutory Assessment the Local Authority decides your child requires a Statement of SEN they must issue a **Proposed Statement** within 2 weeks of the assessment being completed. This will include advice reports from all parties who provided advice for the Statutory Assessment; a list of local schools, special schools and approved independent schools and a letter or form asking you which school you would like your child to attend/for comments regarding the Statement.

You should check through the Proposed Statement and check that the contents reflect the advice received for the statutory assessment and it contains all the support your child requires. The SEN Code of Practice states that:

- Part 2 of a statement should describe all the child's learning difficulties. (para 8:32)
- A statement should specify clearly the provision necessary to meet the needs of the child.
- It should detail appropriate provision to meet each identified need. (para 8:36)
- Provision should normally be quantified. (e.g. in terms of hours of provision, staffing arrangements) (para 8:37)

You will have 15 days to make comments about the Proposed Statement. The proposed Statement will not name a school in part 4 and therefore you should also tell the Local Authority of your preferred school.

In relation to placement, para 8:60 of the SEN Code of Practice states that you may express a preference for any maintained school, mainstream or special, you wish your child to attend, or make representations for a placement in any other school. The Local Authority must comply with your preference for a **maintained school** providing that the school:

- Is suitable for child's age, ability and aptitude and the SEN set out in part 2 of the statement;
- The child's attendance is not incompatible with the efficient education of the other children at the school; and
- The placement is an efficient use of the Local Authorities resources.

You can make representations for a placement at a non-maintained school such as independent schools. The Local Authority has to consider this preference and may name this placement if it is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure. Due to the increased costs of a placement in an Independent School, Local Authorities often refuse to name these placements.

The Local Authority must finalize the Statement within 8 weeks of the Proposed Statement being issued. The Final Statement will name the school in Part 4 that the Local Authority considers suitable for your child.

If the Local Authority issues a Final Statement of SEN and you are not happy with the contents of Parts 2, 3 or 4 of this Statement then you have a right of appeal to the First Tier Tribunal (Special Educational Needs and Disability). Any appeal must be lodged within 2 months of the of the date that the Final Statement is received.

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Review of Statement of SEN

Once your child has a statement of SEN, this Statement must be formally reviewed at least annually. The first Annual Review will be held approximately 1 year after the Statement is issued. The purpose of this review is to assess the suitability of the provision in the Statement and for any changes needed to be discussed. You, the school, the Local Authority and any other relevant parties should be invited to the meeting.

If you have concerns about the support your child is being provided with or with the contents of their Statement you should submit written representations to the Annual Review 2 weeks before the meeting. In year 9, the annual review will include a transition plan being drawn up and this must involve the Connexions Service. Each subsequent annual review will then in addition to reviewing his Statement of SEN, review the transition plan.

If during the period between Annual Reviews you have concerns about the contents of your child's Statement of SEN, their placement or there is a change of circumstances e.g. your child has been permanently excluded, you may request that an interim Annual Review is held. If the Local Authority refuse to conduct an Interim review you can make a complaint to the Authority themselves in the first instance and raise this to the Local Government Ombudsman if the Local Authority does not deal with your complaint satisfactorily.

If at your child's Annual Review meetings you request changes to their Statement, the Local Authority must consider these requests. If your request for changes to your child's Statement is refused then you will have a right of appeal against this decision to the First Tier Tribunal. Any appeal lodged within **2 Months** of the date that the decision is received.

If the Local Authority refuses to carry out a Statutory reassessment then you will have a right of appeal against the decision to the First Tier Tribunal

Statutory Reassessment

If whilst your child has a Statement of SEN, you have concerns about the suitability of the Statement, you could request a Statutory reassessment of your child's needs. Parents can request a reassessment of a child's SEN at any time as long as the most recent assessment was more than 6 months ago. The Local Authority may refuse to conduct a reassessment only if it believes that the child's SEN are accurately represented and fully catered for within his/her Statement.

This request would need to be made in writing to the Local Authority under **s.328 Education Act 1996**. The process is the same as for Statutory Assessment and the same timescales apply.

If the Local Authority refuses to carry out a Statutory reassessment then you will have a right of appeal against the decision to the First Tier Tribunal. There is a very strict deadline of two months in which to lodge an appeal from the date of the decision.

However, as there is now a right of appeal following the refusal to change a statement following an Annual review, this would be a better means of challenging the suitability of your child's Statement of SEN as it involves a much shorter process to ensure the correct amendments are made.



Change of School

If your child's Statement was issued more than 12 months ago and you have not made a request for a change of school in the last 12 months, then you can request that the Local Authority change the school your child attends. How this request should be made will depend on the school you wish your child to attend:

- If your request is for your child to attend the same type of school (i.e. mainstream school to another mainstream school) then you should make this request in writing to the Local Authority. If the Local Authority refuses to change your child's school, you will have the a right of appeal against this decision to the First Tier Tribunal. There is a very strict deadline of

two months in which to lodge an appeal from the date of the decision.

- If you are seeking a change of type of school (i.e. mainstream to special) and the Local Authority refuses of comply with your request, you do not have a right of appeal in these circumstances, you would be advised to make this request at an Annual Review meeting as you will then have a right of appeal against this decision if it is refused (see information about Annual Reviews above). Alternatively you could make a request for a statutory Reassessment (please see above).

Ceasing to Maintain

A child's statement of SEN will be maintained until it is not longer necessary. Following an Annual Review the Local Authority can decide not to maintain a Statement of SEN anymore. However, when a child reaches the end of compulsory school age (16) the Local Authority will usually make a decision as to whether to continue to maintain the child's statement. If the child is continuing their education in a school then the Local Authority should usually maintain their statement. However if they continue their education at a college the Local Authority will generally cease to maintain their statement. If the Local Authority decides to cease to maintain your child's statement of SEN then you will have a right of appeal against this decision to the First Tier Tribunal. There is a very strict deadline of two months in which to lodge an appeal from the date of the decision.

Appeal to the First Tier Tribunal (Special Educational Needs and Disability)

The First Tier Tribunal (Special Educational Needs and Disability) is an independent tribunal. It hears appeals lodged by parents about the content of Statements, refusals to carry out Statutory Assessment or reassessment or decision to cease maintaining a statement. The tribunal also has jurisdiction to hear claims of disability discrimination against schools and Local Authorities.

Any appeal to the tribunal must be lodged within 2 months of a parents receiving the Local Authorities decision against which they wish to appeal. Once the appeal is registered by the tribunal, the parent and the LA will be given case direction which they have to comply with. This will include a deadline by which all evidence has to be submitted to the tribunal. The hearing will usually be scheduled approximately 6 months after the appeal is lodged.

In order to be successful at an appeal, parents will need to prove their case. This will often need to be done by obtaining independent Expert reports e.g. Educational Psychologist or Speech and Language Therapists. If parents are eligible for legal aid then the costs of such a report may be paid for.

At the hearing a panel of three people will listen to the appeal and positions of the other side. The panel is made up of a lawyer, of at least 5 years experience in Educational law, and two other professionals who have experience of Special Education Law, and two other professionals who have experience of Special Educational Needs.

NB: there is no public funding for representation at Tribunal. The Independent Panel for Special Educational Advice (IPSEA) may be able to assist by providing a volunteer representative (www.ipsea.org.uk)

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When can I appeal to the First Tier Tribunal (Special Educational Need and Disability)?

- The decision not to carry out a statutory Assessment of their child's Special Educational Needs, following reassessment from either the parent or the child's school
- The decision not to make a Statement of SEN following a Statutory Assessment
- The way in which the child's SEN are described in their statement (in part 2 of their statement)
- The description of the Special Educational Provisional (help) needed by the child (in part 3 of the statement)
- The school of type of school named in part 4 of the statement or the failure to name any school
- The refusal to change the name of the school to another maintained school
- Refusal to reassess the child's Special Educational Needs (it has to have been longer than six months since the last assessment took place before parents can appeal on this ground)
- The decision to cease to maintain a Statement (i.e. cancelling a Statement)
- Refusal to amend the Statement following an annual review.

NB: no appeal can be made against the content of Part 5 and 6 as the Local Authority are not under a legal duty to make the provision set out in parts 5 and 6.

Key Documents

- Special Educational Needs Code of Practice (DfES 581/2001, November 2001)
- Education Act 1996
- "How to appeal" Booklet, First Tier Tribunal (Special Educational Needs and Disability)

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