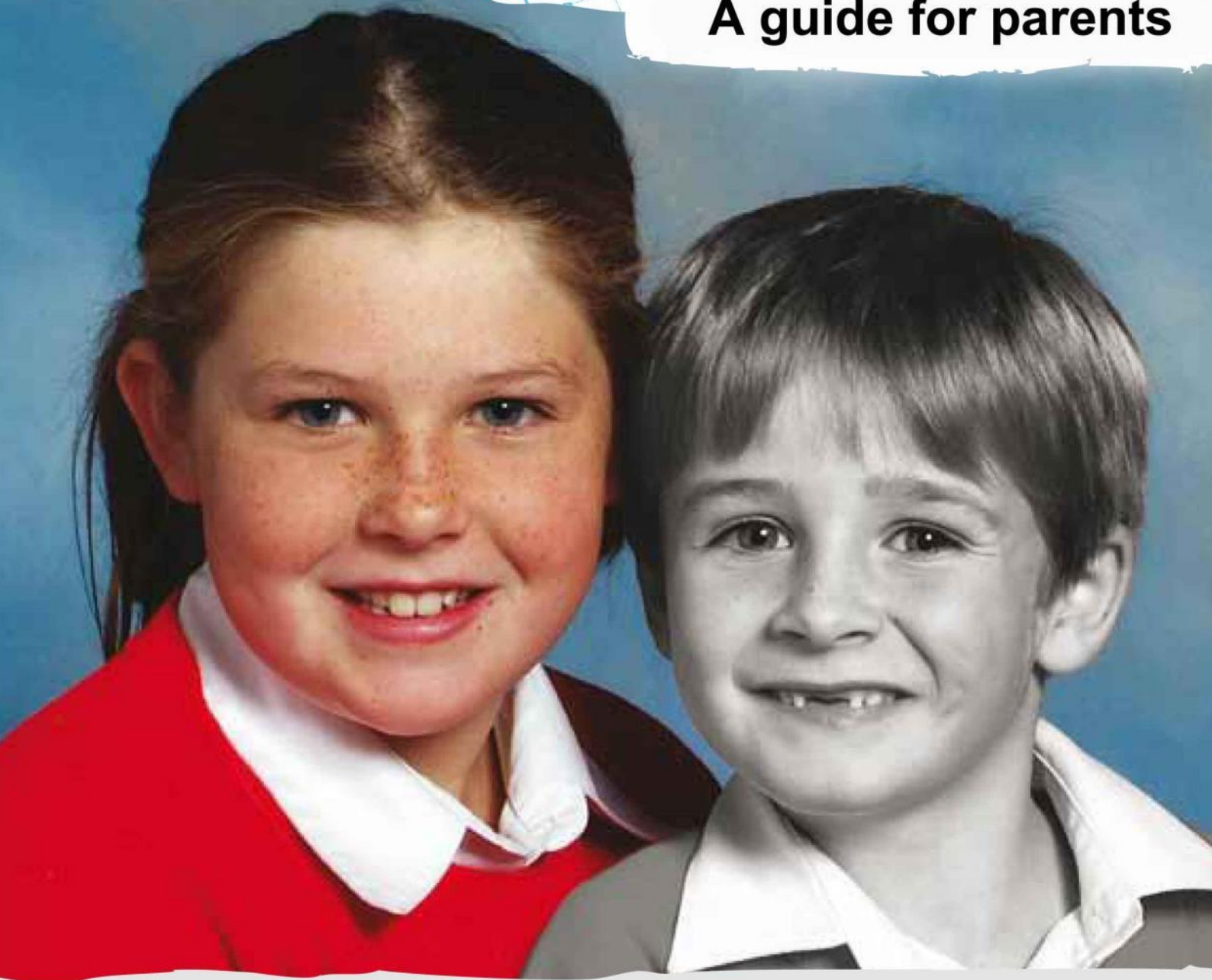


**RULED
OUT**



**Why are children with autism
missing out on education?**

A guide for parents



#ruledout



**Ambitious
about Autism**



Introduction

[Ruled Out](#) is a campaign launched by [Ambitious about Autism](#) which aims to stop children with autism missing out on their education, so that every child with autism can learn, thrive and achieve.

During our research for the campaign we heard from over 500 parents and carers of children with autism. One of the common themes raised was the difficulty in getting clear information about parents' and children's rights in relation to accessing education.

As a result, we have developed this guide to the law for parents of children with autism and other special educational needs (SEN). The guide sets out the legal duties around admissions, exclusions, disability discrimination, and a number of other areas relevant to children with autism missing out on education. It also signposts routes to more detailed legal advice and support.

We hope you find this guide useful. Please do let us know what you think, and if you have additional questions that this guide does not cover, by emailing info@ambitiousaboutautism.org.uk



This guide will cover the following topics:

- 1. The legal duty for local authorities to provide children with suitable full time education**
- 2. School admissions**
- 3. School exclusions**
- 4. Children out of school**
- 5. Disability discrimination**
- 6. Part-time timetables/flexi schooling**
- 7. Additional support available at school**
- 8. Statements of Special Educational Needs**
- 9. Top tips for working with schools and local authorities**
- 10. Where to go for further information**

Some of the content will change with the implementation of the Children and Families Bill, currently expected to come into force in September 2014. Once the Bill becomes law this guide will be updated, but until then this guide contains the current legal position in England.



1. The legal duty for local authorities to provide children with suitable full time education

Each local authority in England and Wales has a legal duty to provide children, of [compulsory school age](#), with suitable full time education. "Suitable" means suitable to the child's age, aptitude, ability and any special educational needs that he or she has.

Parents have a legal duty to ensure that their child receives education, either by regular school attendance or otherwise, such as electing home education.



2. School admissions

Applications for all children without statement must follow the process outlined below. This process must be followed for a first primary or secondary school place application or if a child is changing schools during the school year.

All schools in England have admissions criteria which dictate which applications are successful. All local authorities will have lists of schools in a given area, which usually include the admissions criteria and details of how to apply online. You can search online for schools at: <http://schoolsfinder.direct.gov.uk/schoolsfinder>. If a parent is not happy with their child's allocated school, the local authority will supply a list of schools in the area with spaces in the relevant academic year which can then be applied for. It is possible to apply for a place at a school that is full as you will be given a right of appeal.

The Department for Education issued the School Admissions Code 2012, which applies to all admissions to maintained schools in England, including Academies and Free Schools. The Code sets out regulations, guidelines and objectives for admission authorities, school adjudicators and Admission Appeals Panels. The Code can be found at: <http://webarchive.nationalarchives.gov.uk/20130401151715/https://www.education.gov.uk/publications/eOrderingDownload/DFE-00013-2012.pdf>).

The law in Wales is slightly different and this factsheet covers England only. To get more information if you live in Wales please visit [the Welsh Government website](#) and [Citizen Advice Bureau](#).

How do I apply?

All local authorities have to put details of how parents can apply for a school place on their website and during certain times in the year your local authority may have a helpline specially set up to deal with admissions queries. You will usually have to apply by completing the school admission form, either online or on paper.

You must apply by 15 January in the calendar year your child is due to start school for primary school applications and by 31 October in the calendar year before your child is due to transfer for secondary school applications.



For example:

- If your child is due to start primary school in September 2015 then you will have to have completed and submitted your application form by 15 January 2015
- If your child is due to start secondary school in September 2015 then you will have to have completed and submitted your application form by 31 October 2014.

When will I find out which school my child has been offered a place at?

If your child is going to start primary school, as of 2014 you will hear on 16 April of the calendar year in which they are due to start.

If your child is going to start secondary school, you will hear by 1 March of the calendar year in which they are due to start, but in 2014 it will be 3 March as the 1 March is a Saturday. This is called the national offer day.

What can I do if my child is not offered a place at the school of my choice?

The letter telling you which school place your child has been offered should also include information on why your other choices were refused and the deadline for you to lodge an appeal. You can appeal for each school you put on your application form where your child was not offered a place. Your appeal is made to an Independent Admissions Panel.

The Department for Education has issued the [School Admission Appeals Code 2012](#) that applies to all maintained schools, including Academies and Free Schools in England.

You may also ask for your child's name to be put onto a school's waiting list. Your child's position on the waiting list will take into account the school's admissions criteria.



3. School exclusions

There are two types of exclusions usually given for breaches of the school's behaviour policy:

- **fixed term** – this means that a child is not to be allowed into school for a certain number of days, but this does not have to be for a continuous period. A child can be excluded, on a fixed term basis, for a maximum of 45 school days per academic year. In exceptional cases, usually where further evidence has come to light, a fixed period exclusion may be extended or converted to a permanent exclusion.
- **permanent** – this means that a child is not allowed to return to the school, due to a serious breach of the school's behaviour policy and that allowing a child to remain in school, in the school's opinion, would harm the education or welfare of the child in question or others in the school.

What is an informal exclusion?

An informal exclusion occurs when a child is sent off the school premises for a short time but the exclusion is not recorded. This may happen over a lunch period or a child may be sent home to 'cool off'. This is unlawful even if a parent gives consent or agrees to collect a child. Any such exclusion should be counted as a half day fixed term exclusion and should be duly recorded.

What can I do if my child is informally excluded?

If your child is given an informal exclusion, you can complain to the governing body addressing your complaint to the chair of governors who should respond within a given period of time. It does not matter how long the informal exclusion has been for you still have a right to complain. In addition, as it is unlawful you can seek advice from a solicitor or legal advice giving charity.

In what circumstances can a school exclude my child?

Any decision made by a school, including a decision to exclude a child, must be made according to the principles of administrative law and must be:

- lawful (with respect to the law relating directly to exclusions and a school's wider legal duties, including the European Convention of Human Rights)
- rational
- reasonable



- fair and
- proportionate

The exclusion must be on disciplinary grounds, usually a breach of the school's behaviour policy.

All schools are required to have a written behaviour policy which must be supplied upon request. The Department for Education has issued [guidance for schools on their behaviour policies](#) and if you feel your child is at risk of exclusion or has been excluded you may find it useful to look through the guidance to see whether it is being followed.

A child's behaviour outside the school premises might be considered as grounds for exclusion. This is a matter for the Headteacher who must take into account the school's behaviour policy.

A decision to exclude a child permanently should only be taken:

- in response to a serious breach, or persistent breaches, of the school's behaviour policy and
- where allowing them to remain in school would seriously harm the education or welfare of themselves or others in the school.

Can a school exclude my child if they have a Statement of Special Educational Needs (Statement)?

Your child's school should engage proactively with you to support your child in every aspect of their school life. As far as possible, headteachers should avoid permanently excluding a child if they have a statement, although they may as a last resort.

Where a school has serious concerns about the behaviour of a child, who may be at risk of exclusion, they should, in partnership with other agencies including the local authority if necessary, consider what additional support that child might need. This should be done through assessments of a child's special educational needs.

If your child has a Statement, their school should consider requesting an early annual review or interim / emergency review to avoid the need to exclude.

It may be that a "managed move" to a different school might be in your child's best interest and would avoid a permanent exclusion. A "managed move" occurs when all relevant parties; existing Headteacher, parents, local authority/ies, Headteacher of the proposed new school, all agree that a child should move. This cannot happen



if any party is not in agreement and should not come about as a result of a threat of permanent exclusion. However, it may lead to a fresh start in a new school more suited to the needs of the child.

What if I think my child's exclusion is because of their disability?

If you consider that your child's exclusion was because of their disability, you may want to make a claim for disability discrimination. A disability is defined under the Equality Act 2010 as 'a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities.' Your child does not have to have a Statement to be considered disabled.

Further information on disability discrimination can be found in chapter 5.

Will my child continue to receive education if they have been excluded?

Yes. For a fixed term exclusion and for the first five school days of a permanent exclusion your child's school remains responsible for their education.

If your child is permanently excluded your local authority becomes responsible for providing them with education from the sixth school day of the exclusion.

What are my responsibilities during my child's exclusion?

For the first five days of an exclusion, fixed or permanent, you must not allow your child into a public place during school hours without reasonable justification (such as a medical appointment).

It is also your responsibility to make sure that your child completes any work sent home by the school and return it to be marked.



4. Children out of school

Most children receive their education through attending school full time. However, some children, including some with autism, are not able to do this. This might be for a variety of reasons, some of which are covered in the next chapters. If a child is unable to attend school full time, because of a medical condition, for example, then part time school and part time home tuition (provided by the local authority) may be more appropriate. The Government has issued guidance '[Ensuring a good education for children who cannot attend school because of health needs, January 2013](#)' which local authorities must have regard to when arranging suitable full or part time education for children who are unable to attend a mainstream or special school because of their health.

So if, for example, a child with autism has developed severe anxiety as a result perhaps of inadequate support at school, he or she may experience problems going to or staying in school. After a short period, it may be appropriate for the child to be gradually reintroduced into school on a reduced timetable, with support, and to receive the rest of their education through tutoring, either in their home or a local library for example. In this case it would be advisable for the parents/carers of the child to seek medical evidence supporting their absence from school, to prevent non-attendance proceedings being brought and to use as evidence when asking their local authority to provide out of school tuition.



5. Disability discrimination

A disability is defined under the Equality Act 2010 as 'a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities.' A child does not have to have a Statement to be considered disabled.

Disability discrimination may be:

- [discrimination arising from disability](#);
- failure to provide a [reasonable adjustment](#) for a disabled child (see below);
- [direct discrimination](#);
- [indirect discrimination](#);
- [harassment](#); or
- [victimisation](#)

What is a reasonable adjustment?

This duty has been extended under the Equality Act 2010 to cover the provision by a school of auxiliary aids and services. It does not require schools to make reasonable adjustments to avoid the disadvantage caused by physical features as this is covered by the planning duties, for example to build a slope for wheelchair users as an alternative to stairs into the building.

An example of a reasonable adjustment would be making documents available in large print for any pupils with visual impairments.

Schools must not discriminate against your child because of disability in relation to:

- **Admissions**

A school must not discriminate because of disability:



- in the arrangements it makes for deciding who will get a place in the school including any rules it applies when the school is 'oversubscribed' (more people apply than there are places);
 - in the terms on which pupils are offered a place at the school; and
 - by refusing to accept an application because of disability
- **The provision of education and access to any benefit, facility or service; for example attendance on school trips or**
 - **Exclusions**

This is the most common cause of disability discrimination claims. It includes permanent and fixed term exclusion, as well as lunchtime or 'informal' exclusions.

Making a claim for disability discrimination

Any claim for disability discrimination (covered in the box below) must be received by the Special Educational Needs and Disability Tribunal **within six months** of the alleged discrimination. If there is alleged continuous discrimination then the time limit is within six months of the last act of alleged discrimination.

Claim for disability discrimination	Where to lodge an appeal
Admission to a local authority or other state funded school (including Academies and Free Schools)	Independent Appeal Panel – the local authority or school should provide parents with the details
Admission to an independent school	Special Educational Needs and Disability Tribunal
Provision of education and access to a benefit, facility or service	Special Educational Needs and Disability Tribunal
Fixed term or permanent exclusion from a local authority or other state funded school (including Academies and Free Schools)	Special Educational Needs and Disability Tribunal and/or Independent Review Panel
Permanent exclusion from an independent school	Special Educational Needs and Disability Tribunal

More information about disability discrimination claims is available at <http://hmctsformfinder.justice.gov.uk/courtfinder/forms/send04-eng.pdf>.



Alternatively you can call **01325 392 760** or emailsendistqueries@hmcts.gsi.gov.uk. Please note that the Tribunal staff are not able to provide you with legal advice on your appeal, only administration assistance with your appeal.

Information for your child about the Tribunal is available at http://www.justice.gov.uk/downloads/tribunals/special-educational-needs-and-disability/InformationforChildrenandYoungpeople_2212.pdf.

If you are considering bringing a claim for disability discrimination and would like further advice on the process or merits of your case then you should seek independent legal advice or advice from parent partnership services.

If you wish to make a claim for disability discrimination you can seek advice and guidance from the Equality and Human Rights Commission [website](#). Alternatively you can visit the [Equality Advisory and Support Service \(EASS\)](#) website or speak to one of their advisors on the phone: 0808 800 0082/ Textphone: 0808 800 0084. Their opening hours are:

09:00 to 20:00 Monday to Friday
10:00 to 14:00 Saturday
Closed on Sundays and Bank Holidays

The Equality and Human Rights Commission has prepared [technical guidance for schools](#) on the Equality Act 2010.



6. Part-time timetables/flexi schooling

Although all children have a legal right to receive suitable full time education, some children, as a result of their additional needs, are only able to receive education on a reduced basis, for example part time. This must not be used either as a way to punish bad behaviour or because a school cannot cope with a child's additional needs.

Children can receive education part-time at home and part-time at school if both the school and parents agree with this. It is important to remember that parents who elect to home educate will do so at their own expense. If a child is not able to attend school on a full time basis, because of their additional needs, then the local authority must arrange and fund any out of school tuition.



7. Additional support available at school

There are currently two levels of support available in school for children with additional needs and no statement of special educational needs (statement).

They are:

1. **School Action**
2. **School Action Plus**

If a child is in a pre-school early years setting, the equivalent support is Early Years Action and Early Years Action Plus.

1. **School Action**

School Action is support provided by a child's school to help children who may need additional support in school. It is funded from a delegated budget which the local authority provides to the school. The triggers for a child to be put onto School Action include:

- makes little or no progress even when teaching approaches are targeted particularly in a child's identified area of weakness
- shows signs of difficulty in developing literacy or mathematics skills which result in poor attainment in some curriculum areas
- presents persistent emotional or behavioural difficulties which are not improved by the behaviour management techniques usually employed in the school
- has sensory or physical problems, and continues to make little or no progress despite the provision of specialist equipment
- has communication and/or interaction difficulties, and continues to make little or no progress despite the provision of a differentiated curriculum

If you consider that your child fits some of the above then you should speak to the school's Head teacher or Special Educational Needs Co-ordinator (SENCO) about your concerns and ask that they consider placing your child onto School Action. If the school agrees that your child requires additional support, they should collect information about your child from you, their teacher(s) and anyone else involved in your child's care. They will then decide what additional support your child needs and should prepare an Individual Education Plan (IEP).



2. School Action Plus

A child may go straight onto School Action Plus, a higher level of support, or as a result of the strategies used at School Action being insufficient to meet your child's additional needs.

Provision at School Action Plus involves the input of external specialists, for example specialist advisory teachers who can provide general advice to a child's school, specific support to a child and input into their Individual Education Plan (IEP).

The triggers for School Action Plus could be that, despite receiving an individualised programme and/or concentrated support under School Action, a child:

- continues to make little or no progress in specific areas over a long period
- continues working at National Curriculum levels substantially below that expected of children of a similar age
- continues to have difficulty in developing literacy and mathematics skills
- has emotional or behavioural difficulties which substantially and regularly interfere with their own learning or that of the class group, despite having an individualised behaviour management programme
- has sensory or physical needs, and requires additional specialist equipment or regular advice or visits by a specialist service
- has ongoing communication or interaction difficulties that impede the development of social relationships and cause substantial barriers to learning.

The SEN Code of Practice gives the following examples of additional help that may be provided at School Action Plus level:

- different teaching methods
- equipment and materials
- advice for teachers
- specialist teaching for your child
- changes to the way the school is organised or managed

Individual Education Plans (IEP)

The SEN Code of Practice states that strategies employed to enable the child to progress should be recorded within an IEP. The IEP should only record that which is



additional to or different from the differentiated curriculum plan, which is in place as part of provision for all children.

The IEP should include information about:

- short-term targets set for or by the child, ideally three or four
- teaching strategies to be used
- provision to be put in place
- when the plan is to be reviewed
- success and/or exit criteria
- outcomes (to be recorded when IEP is reviewed)

IEPs can also be used for children who have Statements.

IEPs should be reviewed at least twice a year (three times for under-5's). This review will check on the child's progress and whether the help needs to continue, any changes required or whether the help needs to stop. The SENCO should invite you and your child to attend IEP review meetings.

Having an IEP and review meetings are not a legal requirement, so some schools do not carry them out. They are, however, strong recommendations in the SEN Code of Practice and are good practice.

SOS SEN has [further information on IEPs and examples of two good practice IEPs.](#)



8. Statements of Special Educational Needs

A statement is a legal document that sets out what needs a child has and the provision, including appropriate school place, to meet those needs. It is completed at the end of a statutory assessment if a local authority considers that the additional support a child requires at school cannot be provided from within their school's own resources.

Statements are split into six parts:

Part 1 – Personal details

A child's name and address and date of birth. The child's home language and religion. The names and address (es) of the child's parents.

Part 2 – Special Educational Needs

This part should detail all of a child's special educational needs, taken from the reports gathered during the statutory assessment process. This section must be written in sufficient detail so that all those working with a child have a good understanding of their needs and it should also include their current level of functioning.

Part 3 – Special Educational Provision

This part is split into three sections:

1. Objectives to meet a child's special educational needs detailed in Part 2
2. Special educational provision to meet the objectives

This provision must be detailed, specified and quantified to meet a child's needs. It must identify provision required, such as direct or indirect speech and language therapy by a therapist with certain qualifications or expertise.

The Education (Special Educational Needs) (England) (Consolidation) Regulations 2001

say that a Statement must specify:

- (a) any appropriate facilities and equipment, staffing arrangements and curriculum
- (b) any appropriate modifications to the application of the National Curriculum



- (c) any appropriate exclusions from the application of the National Curriculum, in detail, and the provision which it is proposed to substitute for any such exclusions in order to maintain a balanced and broadly based curriculum; and*
- (d) where residential accommodation is appropriate*

Important: Any direct or indirect therapy (such as Speech and Language or Occupational Therapy) should be included in Part 3 as educational provision, rather than in Part 6, non-educational provision. This is because Parts 5 and 6 are not legally enforceable or subject to an appeal to the Tribunal in the way that Parts 2 and 3 are. If therapy is put in Part 6 and not provided then you have no legal challenge, unlike if it is listed in Part 3.

3. Monitoring arrangements, detailing how the short term targets will be set in the IEP, who will be involved in setting the targets or helping the child or to progress towards them with that and who will be invited/required to attend the annual review.

Part 4 – Placement

When the proposed Statement is issued this section is left blank to allow parents to provide a preference for a maintained school or representations in favour of an independent or non-maintained school.

The final Statement will name the placement the local authority considers suitable to meet the child's needs, for example, mainstream, special or residential. Usually it will name a school but not necessarily as it is lawful for them to simply name a type of school.

It can also include if education is being provided, otherwise than at school, for example home education.

Part 5 – Non-educational Needs e.g. asthma

Part 6 – Non-educational Provision e.g. asthma monitoring by the NHS

Parents can appeal to the Special Educational Needs Tribunal if they disagree with the contents of Parts 2, 3 and 4 and further information on this is available on our website.



9. Top tips for working with schools and local authorities

It is important to work with your child's local authority and school, whenever possible. We know that relationships can become strained but it is best to work collaboratively, where possible. It is advisable to be flexible (within reason) with the school as this is likely to be in the best interests of your child, even if that is not exactly what should happen. Therefore, we have prepared the following tips for working with them:

- It is best to start dealings in a friendly and polite manner. Some professionals may not have the same level of knowledge as you about autism and/or your child's individual needs, so explain as clearly as you can any concerns you have and what you would like the local authority/school to do.
- If your child is having a problem at school then do notify the school as soon as possible, but remember to allow them a reasonable time to look into the issue and respond. If they do not respond within a reasonable time then do chase them.
- It can be helpful to keep a diary of events. In your diary also mark the dates on which you are told the school or local authority will do something by, so that you can make sure all timescales are adhered to.
- Ask for copies of any relevant school policies, such as their behavioural policy if you are told that your child is at risk of exclusion. Also obtain a copy of the [SEN Code of Practice](#) that can be found online.
- Take somebody with you to any important meetings. This does not have to be a legal advocate but could be a friend/relative who will be able to support you. This person can also take any notes to make sure that you have an accurate record of what was said and agreed.
- Ask for minutes to be taken at meetings and the draft circulated for everybody to agree.
- Equip yourself with some basic knowledge of the legal position, as not all professionals know the law and you will then be in a better position to question things and seek further advice if you are not happy or consider a decision may be unlawful. You can find information on a range of topics on our website, as well as links to other places to get further information/advice.



- Whenever possible communicate by email. This will mean you have a paper trail and can keep track of what is going to happen and many parents find this much less stressful than numerous telephone calls. Also if you are not able to resolve things with the school or local authority directly and need to go through the complaints procedures and/or seek independent legal advice, it will be very helpful for your representative/solicitor to have this information.

If you have tried these tips and still need further information/advice then please see the following section.



10. Where to go for further information

Parents/carers in England and Wales who would like further information or specific advice on their circumstances may wish to contact the following places:

1. You could initially contact your local Parent Partnership service. You can find details of your local service [online](#) or by telephone 0207 843 6058.

Parent Partnership Services offer advice and support to parents and carers of children and young people with special educational needs. They are statutory services which means there has to be one in every local authority. They are free, impartial and confidential services. They may not be able to assist with representation at any meetings or hearings.

2. If your Parent Partnership service are not able to assist and you are looking for free legally based advice then you may want to contact the following charities:
 - [Ipsea](#) - a national charity providing free legally based advice to families who have children with special educational needs. All their advice is given by trained volunteers.
 - [SOS SEN](#) - offer a free, friendly, independent and confidential telephone helpline for parents and others looking for information and advice on Special Educational Needs (SEN). They offer monthly [walk in advice centres](#) in Hampton Hill, Thornton Hill, Aldershot and Waterloo.
 - [Network81](#) – a national network of parents working towards properly resourced inclusive education for all children with special needs. They have a range of services, including a national helpline (0845 077 4055) offering advice and support.
3. If your complaint is about your local authority then you should ask for a copy of their complaint procedure and follow it through. At the end of your complaint if you remain dissatisfied then you may be able to take your complaint on to the [Local Government Ombudsman](#) (LGO). Any complaint made to the LGO must be made within 12 months of the issue you are complaining about. The LGO website has information about what they can and cannot investigate and they run a helpline to deal with any queries.
4. If you are on a low income or receive certain benefits they you may be eligible for legal aid (public funding through the Legal Aid Agency). You can use the [Government website](#) to get an indication of whether or not you will be eligible.



5. To access the service, if you are eligible you will have to call 0845 345 4345. Legal Aid remains available for special educational needs and discrimination cases, but is no longer available for other education cases such as school exclusions.
6. If one of these charities are not able to assist you may want to seek independent legal advice from a solicitor who specialises in special
7. Below are details of firms of solicitors who we are aware do or have in the past specialised in special educational needs law, we do not recommend or endorse any firm in particular and you will need to check any fees payable yourself in advance:
 - [Douglas Silas Solicitors](#) - 020 8349 7700
 - [John Ford Solicitors](#) - 020 8800 6464
 - [Maxwell Gillott](#) - 01524 596 080
 - [Moore Blatch Resolve LLP](#) - 020 8744 0766
 - [SEN Legal](#) - 01284 723 952
 - [Sinclairs Law](#) - 020 8891 4488



Ambitious about Autism

Ambitious about Autism is the national charity for children and young people with autism. The charity provides services, raises awareness and understanding, and campaigns to make the ordinary possible for children and young people with autism.

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