

THE CHILDREN AND FAMILIES ACT 2014 – WHAT HAPPENS NOW?

The provisions relating to special educational needs in the Children and Families Act 2014 came into force on 1 September. To recap, the main changes from the previous system are as follows:-

- Statements and Learning Difficulty Assessments (for young people in further education) will be replaced by Education Health and Care Plans (EHCPs);
- EHCPs must now include detailed descriptions of health and care needs as well as education needs, and must also detail and specify any education, care and health provision required in connection with their educational difficulties. However, only education provision can be appealed to the tribunal, and only education and health provision can be enforced through the courts if necessary.
- EHCPs are intended to be more holistic documents and there is considerable emphasis on paying attention to the views and wishes of children and their parents.
- Health authorities have a right to veto health provision in the EHCP.
- School Action and School Action Plus have been abolished. Instead children with SEN who do not need EHCPs will simply be on SEN Support.
- EHCPs can stay in place until young people reach the age of 25, if they are required for educational reasons.
- Once young people are passed school leaving age, ie 30 June on the year in which they reach the age of 16, the right to make decisions about SEN provisions passes to them and they have the sole right of appeal,. However they can authorise representatives, including their parents, to act for them.
- The time limit for assessment and producing an EHCP is now 20 weeks rather than 26 weeks as before.
- The annual review process is improved slightly, and in particular LAs will be required to produce a decision following the annual review within four weeks of the meeting.

- It will be possible to apply for direct payments for the support in EHCPs. These cannot be used to fund a placement in an independent school, and where support is to be supplied in school it is dependent on the school consenting.
- Children and young people may be placed in special needs academies without an EHCP being in place.
- Before starting any tribunal appeal, it is necessary to contact a Mediation Advisor and to file a certificate from them that advice about mediation has been given and that either the prospective appellant does not wish to mediate, or that mediation has taken place but agreement has not been reached. Mediation can include health and care provision as well as education.
- All local authorities must produce a Local Offer setting out what provision is available for children and young people with SEN and disabilities in their area. This includes information as to how to request assessment, and a very wide range of information including information about facilities outside the LA area. The LA must make agreement with other bodies such as local health providers to ensure that facilities are available. However, the Local Offer cannot be enforced by any individual.

Transition

It is recognised that it would be impossible to convert statements and LDAs into EHCPs immediately, and the Department for Education has issued guidance on how the process of transition is to be managed. At the date of preparing this article, the final version of the proposed Transition Regulations has not been published and it is not clear whether the DfE intends to do so. However the guidance is as follows:

1. All children with statements must be transferred to the new system by **1 April 2018**.
2. All young people in further education and training with Learning Difficulty Assessments should be transferred to EHCPs by **1 September 2016**. Young people in further education or training who receive support as a result of an LDA can request an EHC needs assessment at any point during the transition period. Local authorities in any event have a duty in 2015/16 to consider whether an EHC needs assessment is required for young people who are likely to continue to receive further education or training before 31 August 2016.
3. LAs should by 1 September have published local transition plans setting out details about when and how children and young people with statements will be

transferred to the new system, and information for young people in further education and training. Generally transition plans should involve transfers to EHCPs at points in children's education at which a significant review of the statement would otherwise have taken place, especially on transfers to the next phase of education and at the year 9 review.

4. Where young people are due to move to post-16 institutions or apprenticeships in September 2015, they must be transferred to EHCPs prior to the transfer.
5. In 2014/15 LAs should prioritise transfer for all children moving between phases including where the child remains at the same school; children in year 9; those transferring from mainstream to special schools and vice versa; children leaving custody; those moving between one LA and another; those receiving direct payments under a previous pilot scheme; and those issued with non-statutory EHCP plans before 1 September.

In the latter connection, it should be noted that any EHCP plans issued prior to 1 September have no legal status whatsoever and LAs are required in such cases to start new EHC needs assessments at or shortly after 1 September 2015. These can obviously be completed very quickly if they were carried out correctly previously.

Tribunal Appeals

Where an appeal right has arisen before 1st September and the appeal has not been lodged or completed, the following applies:-

1. For appeals against the refusal to assess, any new assessment will be under the new Act and will, if appropriate, lead to an EHCP being issued.
2. For appeals against refusal to issue a statement, if the appeal succeeds a statement under the Education Act 1996 will be ordered unless both the LA and parents/young person agree to an EHCP being issued.
3. Appeals against the contents of statements will be under the 1996 Act and the new document will be an amended statement.
4. Any appeal against a refusal to amend the statement following the review will if successful lead to an amended statement under the 1996 Act.
5. Any appeal against the cessation of a statement will if it is successful lead to the statement being continued and possibly amended as appropriate.

In relation to 3, 4 and 5 the statements will need to be amended subsequently to become EHCPs after assessment under the LA's transition timetable.

It will therefore be the case that for 3½ years there will be two systems running alongside each other and the Education Act 1996 and the current Code of Practice will remain valid in relation to statements all are converted into EHCPs.

For a sample of the proposed EHCP to be used in Richmond and Kingston, see

http://www.richmond.gov.uk/education_health_and_care_plan_draft_final.pdf

Parents will be gratified to note from page 8 that the LA would be interested in the views of their milkman. The Local Offer should also be available via the respective websites but has not been finalised at the time of writing.

There remain large areas of uncertainty and we can only wait and see how the new system settles down and whether it offers the improvements promised.

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