SOS! SEN | The independent helpline for Special Educational Needs

INFORMATION SHEET

STATUTORY ASSESSMENT

If a child's needs are not being met at School Action Plus, it may be necessary to consider asking for statutory assessment with a view to securing a Statement of Special Educational Needs.

The legal criterion for statutory assessment is that the local authority should believe that the child in question probably has SEN, and that the authority needs to determine that child's special educational provision by making a statement. The *SEN Code of Practice* prescribes that, in deciding whether to assess, the question is whether there is convincing evidence that, despite the school, with the help of external specialists, taking relevant and purposeful action to meet the child's learning difficulties, those difficulties remain or have not been remedied sufficiently. The statutory assessment process can be used for children in independent schools, and children being educated at home, as well as children in maintained schools.

Who can request statutory assessment?

A request for statutory assessment may be made by the child's school or by the parent. Schools should consult the parents before requesting an assessment, and should submit evidence including the views of the parents and the child, copies of individual education plans or similar documents, any advices received from health and social services, evidence of the involvement and views of professionals outside the school who have been involved, and evidence of any progress made.

Once a local authority has received a request for assessment, it has six weeks to decide whether to comply. That period can be extended in some circumstances, notably over the period of the school summer holidays. Local authorities have no choice but to consider the request, but of course that does not necessarily mean they have to agree to it. In particular, they may refuse a request if it is made within six months of a previous assessment.

Schools sometimes tend to be reluctant to make requests for statutory assessment because they are aware of the pressures on the local educational psychology or special needs services. They will also sometimes discourage parents from making requests on similar grounds. We regularly hear of parents who have been told that it is pointless asking for statutory assessment because of a shortage of educational psychologists' time; however, if statutory assessment is agreed it must by law be carried out within ten weeks, and this is therefore irrelevant.

Currently one or two councils are telling parents that they are not doing assessments until the Children and Families Bill has come into force, which is currently likely to be in

or around September 2014. However, this is not a valid reason for refusing to begin an assessment, and there is nothing in the Bill suggesting this.

It is obviously extremely helpful to have the school's co-operation when requesting assessment, but the mere fact that the school is reluctant should not put parents off if they are reasonably sure that the evidence available supports their concerns. For this purpose, it is useful to look at individual education plans (IEPs) prepared at the preceding stages of the special needs process; if these demonstrate that schools are regularly setting the same targets and that they are not being achieved, it would suggest that adequate progress is not being made. The results of standard testing, particularly testing of reading and spelling ages, are obviously very relevant. If, for example, a child's reading age has not advanced by at least 6 months over a period of a year or more, again that is useful evidence.

How to request statutory assessment

There is no particular format for a parent's request for statutory assessment. It must be in writing, addressed to the local authority's Education Department or equivalent, and should demonstrate at least the basic reasons why the parent considers that statutory assessment is appropriate. It is helpful if the letter can include a brief history showing what problems have been noticed when, what help the child has been receiving already, and what the result of that has been. If independent evidence is available, such as educational psychologists' reports or doctor's letters, copies should be supplied. Some local authorities tend automatically to dismiss such reports, but they are required by law to consider all evidence available.

What happens when a local authority receives a request for statutory assessment

Before deciding whether to make an assessment, the local authority is required to write to the parents to give notice that it is considering the request, and setting out the procedures and timetable to be followed if it decides to proceed with assessment. Parents must also be told of their right to submit evidence and to make representations.

The local authority must inform the child's head teacher when parents have made a request for assessment, and must always notify the educational psychology service, social services department, the health authority, and any other agencies which might later be asked for advice. However, this does not necessarily mean that an educational psychology assessment will be commissioned by the local authority at this stage.

The decision to assess

In making its decision whether or not to assess, the local authority is required to examine a wide range of evidence, including the school's assessment of the child's needs and the input of other professionals such as educational psychologists and specialist support teachers, and the action the school has taken to meet those needs. The local authority will in particular look at information as to the child's academic attainment and rate of progress. Attention should be paid, for example, to significant discrepancies between the child's attainment and that of their peers, or between different core subjects. Evidence should also be sought about other factors which might impact on learning, such as clumsiness, language delay, significant difficulties in visual perception or working

memory, impaired social interaction, or emotional or behavioural difficulties. The local authority will also want to look at what has been done at School Action Plus to support the child, and whether in practice the school has done everything it can within its own SEN resources to support the child. It may be that the authority is able to identify immediate remedies which will mean that statutory assessment is not necessary, for example referral to external agencies.

There may be other factors which suggest a child's needs are not being met at School Action Plus even if they appear to be making adequate progress in academic terms. For example, if a child's behavioural difficulties are such that he is at risk of permanent exclusion, consideration should be given to whether this is caused by SEN; or if the child is unable to cope in school and is regularly school refusing. Some children with behavioural problems are regularly the subject of informal exclusions: not only is this illegal, but it is a clear indication that the school is not able to meet the child's needs without further support.

If the child is making progress but the reality is that that is only because the school has voluntarily been putting in high levels of help well beyond what is normally available in maintained schools, that is a factor which should be taken into account and which may indicate that assessment is necessary.

Some authorities refuse statutory assessment simply because they have not received adequate evidence from the school as required under the *SEN Code of Practice*. That is not a lawful reason for refusing assessment; it is obviously up to the authority to make sure that it does obtain the necessary evidence and it should take proactive steps to do so. Equally, problems sometimes arise where the authority decides that the school could be doing more to support the child within the resources already available to them, but in practice the school is not doing so.

Whether statutory assessment is refused for these reasons, or for other reasons with which the parent does not agree, the local authority is required in its written notification of the refusal of statutory assessment to give parents notice of the appropriate remedy, which is an appeal to the Special Educational Needs and Disability Tribunal. It must also give contact details to enable parents to find out about the appeal process.

Parents should hold local authorities to the time limits for statutory assessment, simply because the whole statementing process is a long one, potentially taking six months or more. Obviously, time is precious for any child with learning difficulties. If the time limits are not complied with, whether at this stage or any later stage in the process, the remedy is by way of an application for judicial review in the High Court; such an application can be made in the child's name, which carries the advantage that it will normally be funded by legal aid. However, in practice, local authorities do tend to comply with time limits on receipt of a solicitors' letter giving formal notification of a proposed application for judicial review.

What happens during statutory assessment?

If the local authority agrees to statutory assessment, it must carry out the assessment within ten weeks of its decision, although that time limit can be extended by four weeks for the school summer holidays, and may also be extended in other circumstances, such as where the child is not available for assessment by professionals, or there are

unavoidable delays in obtaining reports from professionals outside the education authority, particularly within the health authority.

The information to be obtained by the authority for the purposes of assessment will vary, but will normally include an educational psychologist's report. The parents must be asked to give their own views, and can be asked to detail any other evidence which they feel should be obtained. It may be necessary to obtain further evidence from the school if this has not already been provided in detail at the earlier stages. Depending on the nature of the child's difficulties, it may be appropriate for the local authority to arrange assessments by, for example, a speech and language therapist, an occupational therapist, a psychiatrist, and optometrist. If there has been involvement already, for example by specialist hospital departments, they should be contacted to provide reports.

If the parent has obtained independent reports, it usually makes sense to give copies to the local authority. It may also be well worth the parents' while to consider specifically commissioning an independent report, particularly if the school is not supporting the request for assessment. When instructing an expert, it is worth looking ahead and finding out whether the professional has experience of giving evidence in the Tribunal, in case an appeal becomes necessary at a later stage.

Local authorities tend to have defined criteria or policies governing decisions as to statutory assessment and statementing. Parents are entitled to be supplied with copies of such criteria. They obviously vary to an extent between authorities, but classically in relation to literacy problems they tend to require that the child should be at least four years behind in chronological age in terms of reading, reading comprehension, spelling and/or writing. However, these criteria are not set in stone, and the authority is required to take into account all relevant factors affecting the child's learning. For example, it is regrettably sometimes the case that a child's difficulties lead to frustration, impacting on self-confidence and behaviour, and, if these are in effect adding an extra layer of difficulty in terms of the child's learning, this must be taken into account. Therefore if, for example, a child's reading age is three years behind but he has additional language problems or behavioural difficulties that are affecting his access to education, it may well be appropriate to consider a statement. Parents should not assume that the provision of evidence should be left entirely to the school, not least some of the effects of learning difficulties, such as frustration and stress, may only be exhibited only at home; therefore parents should where appropriate supply information as to the effects of the child's difficulties which they are seeing at home, including physical effects such as sleeplessness, bed wetting, loss of appetite, and the like. It is always helpful if this can be backed up by medical evidence.

Unless there is a good reason for delay in the assessment process, parents should normally aim to hold local authorities strictly to the relevant time limits. The ten-week time limit is a statutory one and a local authority that fails to meet this limit without good reason should be warned of the possibility of judicial review action to enforce the time limit.

What happens after statutory assessment?

At the end of the ten-week process, the authority must issue a decision as to whether it is going to issue a statement of special educational needs or not. If it decides that in practice the child's needs can still be supported within school using the resources

normally available, it may nevertheless use the evidence which has been gathered together to produce what is known as a "note in lieu". This is a document which is in the same format as a statement, summarising the child's difficulties and the provision which should be made to meet those difficulties. The fundamental difference between this and a statement is that provision for SEN set out in the statement is enforceable in law. However obviously a note in lieu can in many circumstances be a useful document in guiding schools as to what they should be doing to help children.

Local authorities are increasingly formulating new policies which operate on the basis that they are reducing statements by devolving further funds to enable schools to meet children's needs. Whilst the provision of funding for SEN is always welcome, it should be noted that such policies cannot override the authority's statutory duty, and the mere fact that the authority or school argues that the child will receive no better provision with a statement than he would without is not an adequate reason in law for refusing a statement. From the child's point of view, the practical difference is that, should he need, say, 10 hours per week individual support, if that is specified in a Statement then that is what he must receive, and it can be enforced through the judicial review process if necessary. If it is not in the statement, there is no practical way of enforcing provision. Given that policies of this nature have also resulted in some schools in practice receiving reduced SEN funding there is a danger that children with what are perceived as less serious needs (e.g. dyslexia or Asperger's Syndrome) are losing out. If a child needs a statement, then in law he must be provided with one; the fact that a local authority has instituted a blanket policy to reduce statementing is not a good enough reason for refusing one.

If the authority decides against issuing a statement, it must give the parents notice of their right to appeal to the SENDIS Tribunal, and the time limits (two months) applicable for this purpose.

If the authority decides to issue a statement, it should provide a draft within two weeks of the letter notifying the parents of the decision to issue, and it should finalise the draft within eight weeks of that date.

More detailed information about the process can be obtained from the ***SEN Code of Practice***. You can download a pdf here:
http://media.education.gov.uk/assets/files/pdf/s/special%20educational%20needs%20code%20of%20practice.pdf