

# Securing an EHC Plan that works

Eleanor Wright  
Chief Executive, SOS SEN

# Why have an EHC Plan?

- Meant to provide in one document a clear, accessible holistic summary of **all** the child's education-related education, health and care needs and the provision required to support them.
- Money!
  - There is no such thing as an unfunded EHC Plan
- Enforceability of education and health needs provision

# How do you enforce entitlement to provision?

- Complaints system/Local Government ombudsman
  - Slow, but worth using anyway to register the problem
- Judicial review
  - See Information sheet on JR -  
[http://www.sossen.org.uk/information\\_sheets.php](http://www.sossen.org.uk/information_sheets.php)

# Keep your LA to time limits

- LA has 6 weeks from receipt of request from parents or school to decide whether to assess
- LA must inform parents/YP within 16 weeks of receipt of request if it is **not** going to issue EHCP
- If it is, the EHCP must be finalised within 20 weeks of receipt of request
- Don't get sucked into endless negotiations over EHCP

# Challenge poor decisions

Some LAs seem to refuse requests for assessment routinely. The test under S.36(8) Children and Families Act 2014 is:

(a) the child or young person has or may have special educational needs, **and**

(b) it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan

- which is a low barrier

Therefore be ready to appeal against refusal to assess:  
85%+ success rate, easy process, no hearing.

# Assessment myths

- School has to show that it has been spending £6000 a year
- Only available for “very severe” needs
- Only possible for a child who needs a special school place
- School must arrange educational psychology reports/other assessment
- Only available if child has social and health needs as well as learning difficulties
- 2/3/4+ cycles of Assess/Plan/Do/Review
- Only available if child likely to need to be in a special school

**These are all untrue!**

# Push for a full assessment

## Article 6 SEND Regulations 2014:

- **Unless** parents, LAs and authors of existing advice agree that it is suitable for assessment purposes, the LA must obtain advice from:
  - Child's parent or YP
  - School
  - Medical advice
  - Educational psychologist
  - Social care
  - Any other person LA thinks appropriate
  - Re preparation for adulthood for Y9 upwards
  - Any person parent/YP reasonably request
  - VI/HI expert if necessary

# Criteria for issuing an EHC Plan

Consider whether, despite appropriate provision the child/YP is not progressing or not progressing sufficiently well, taking into account:

- Whether the special educational provision required to meet the child or young person's needs **can reasonably be provided from within the resources normally available to mainstream early years providers, schools and post-16 institutions**, and
- Whether it may be necessary for the LA to make special educational provision in accordance with an EHC plan.

# Check the draft EHC Plan

- Check your LA's template on the Local Offer website
- If the LA agrees to issue an EHC Plan it must send you a draft for consultation by around week 15 and offer you a meeting. You must be allowed at least 15 days to comment on this.
- Check the draft very carefully. See paragraph **9.69 CoP** for full details of what should be included in each section. Take a copy to any meetings about the Plan that you attend.

## Section B – Education needs

- **All** of the child or young person's identified special educational needs must be specified. Does this fully describe your child?
- May include needs for health and social care provision that are treated as special educational provision because they educate or train the child or young person, e.g. speech and language/occupational therapy, provision for anxiety etc

# Section B (2)

- Needs should be set out under headings
  - Cognition and learning;
  - Communication;
  - Physical, medical, motor and sensory;
  - Social, Emotional and Mental Health;
  - Self-help and independence/Preparation for adulthood (for older children)
- LAs often list as Strengths and Difficulties/Needs. Check that strengths are genuinely strengths.

## **Sections C, D, G and H – health and social care needs and provision**

- Health and social care needs and provision must be **specified**.
- Health provision requires consent of Clinical Commissioning Group. It can be enforced against them.
- Section H is not enforceable. If your child has social care needs, request care assessment under s17 Children Act 1989 or, for over 18s, Care Act 2014

# Section E - Outcomes

Definition in CoP para. 9.66:

- the benefit or difference made to an individual as a result of an intervention.
- Should be SMART.
- Should cover a range of timescales.
- Should be purposeful, e.g. “X will improve his writing so that he is able to write full sentences”

# Section F - Provision

- **Must** be specific and detailed and should normally be quantified, e.g. re type, hours and frequency of support and level of expertise. Challenge vague terminology, e.g. “may benefit from”, “access to”, “regular”, “up to”, “contacts”.
- **Must** be specified for **each** and **every need** specified in Section B.
- Health and social care provision which support education must appear here (e.g. SALT, OT).
- In some cases flexibility will be required to meet the child’s changing needs but only in the child’s interests, not the LA’s or school’s.
- If there is a dispute about schools, ideally you need provision in F which your school can meet and LA one cannot.

## Section F (2)

- References to programmes should set out who is to set them up, deliver them, training and supervision arrangements etc.
- Support should not be phrased in terms allowing it to be changed without parents having a right of appeal, e.g. “Physiotherapy may be reviewed after 6 months and may be reduced or withdrawn”. This is illegal.
- Provision should **never** be defined solely in terms of funding arrangements. Funding is not parents’ or carers’ concern.
- Plan should not state that provision will be supplied by, e.g. NHS or parents. It remains the LA’s responsibility.

# Section I - Placement

- Must name the school/college etc. and type.
- If necessary, LA can name only a type of school, but must make interim arrangements for education
- Parental preference should be met unless school cannot meet needs, or placement is incompatible with efficient use of public funds or efficient education of other children
- Parental preference for mainstream must be met unless it is incompatible with efficient education of other children **and** there are no reasonable steps that can be taken to overcome the incompatibility

# Appeal rights

- Rights to appeal against:
  - Refusal to assess or reassess
  - Refusal to issue EHCP
  - Contents of EHCP
  - Refusal to amend after annual review
  - Decision to cease to maintain EHCP
- Time limit: Two months from decision letter or 30 days from mediation certificate, whichever is later
- See SOS SEN booklet on Appeals

# We can help

- Helpline: (During Term Time) - ☎0300 302 3731  
Weekdays 9:30 – 17:00 and Tuesdays 20.00-22.00
- Free Drop in advice centres at Waterloo, Aldershot, Thornton Heath, Kent, Manchester, Bristol, Oxford, High Wycombe, Worcester Park and Hampton Court
- Booklets on assessment, EHCPs, appeals and exclusion
- Workshops
- 1:1 advice sessions
- Help with meetings, EHCP checks, drafting letters and appeals
- <https://www.sossen.org.uk>  
<https://www.facebook.com/SOSSpecialEducationalNeeds>