

TRANSITION TO EHC PLANS

The Children and Families Act 2014 has now been in force for a year, and so far it has been a bumpy ride. Since a large number of children will be transitioning from statements to EHC Plans over the next year, this seems a good opportunity to look in more detail into how the process is supposed to work.

The Act provides that instead of Statements of Special Educational Needs, children who require help over and above what is normally available in mainstream schools should have Education, Health and Care Plans. Likewise Learning Difficulty Assessments which are applicable to young people in further education colleges will become EHCPs. Although the Act came into force in September 2014 it was recognised that it would be impractical to transfer all current statements and LDAs to ECHPs immediately and therefore arrangements were made for a staged transition process. The legal provision underpinning this is **The Children and Families Act 2014 (Transitional and Saving Provisions) (No. 2) Orders 2014 and 2015**, and further guidance was given by the Department for Education (DfE) via “Departmental advice for local authorities and their partners”, **Transition to the new 0 to 25 special educational needs and disability system** (at the time of writing, Third Edition: September 2015)

Statutory deadlines

These are:-

- 1st April 2018: Final deadline for transition from statements to EHCPs.
- 1st September 2016: Final deadline for transition from Learning Disability Assessments to EHCPs.
- 31st May 2015: Date by which ECHPs for young people transferring to post 16 institutions should have been issued. Although this date is past, at the time of writing this many local authorities (LAs) have still not complied.
- 15th February: Annual deadline for transfers for children moving into new phases of education.
- 31st March: Annual deadline from 2016 onwards for young people moving into post 16 provision.

Apart from those dates, the DfE has not prescribed precisely how LAs should manage the process, but it has issued guidance which advises that they should prioritise children moving

into new phases of education (e.g. nursery to infant, infant to junior, primary to secondary) and also children moving from mainstream to special schools and vice versa; additionally they should prioritise children in Year 9. In practice most LAs are following that guidance although, due to the large amount of work involved in adjusting to the new legislation, they did not necessarily carry out transfers for children moving to secondary school in September 2015. LAs should by now have contacted the parents of all children with statements to let them know when they could expect to be transferred, and also put the relevant information on their websites.

It should be noted that this means that if, for instance, a statement needs to be amended because it is out of date but the child is not yet due to transfer to an EHCP, this will usually mean that the statement remains in place appropriately amended; parents cannot require LAs to transfer ahead of the due date. One major exception to this rule, however, is that if a young person over 16 requests a transfer then, provided he still needs the relevant provision, the LA cannot refuse or delay. In our experience, however, a number of LAs are in fact refusing and in that event they need to be reminded of their statutory responsibilities and the fact that they do not have a choice.

Transition process

At the start of the process, LAs must write to parents and young people giving at least two weeks' notice. Where the EHC transfer process is taking place at a change of phase or in Year 9 – which will cover the vast majority of cases – LAs **must** carry out a reassessment before drafting the new EHCP. In any event all children with statements must have been reassessed by April 2018. To reassess the LA must gather information as to the child or young person's (CYP) SEN from the parents or young people, educational placements, plus advice from an educational psychologist, medical and social care advice, and any other relevant experts. There is, however, an important exception to this, namely that it is not necessary to seek new advice if **all** concerned – i.e. the LA, parents or young people, and the authors of the original reports – agree that those reports are sufficient for assessment purposes. Advice should normally be gathered within 10 weeks of the start of the process. The DfE has been very firm in its advice to LAs that EHCPs should **not** be cut-and-paste statements.

Once the advice is available and has been considered, the LA should draft an EHCP and send it to the parents or young people: it should not name the proposed school or college at this stage as parents and young people have the right to express a preference in this regard. Parents and young people then have 15 days to consider the draft to make representations about it, tell the LA what educational placement they want to be named, and ask for a meeting with the LA. It is generally recognised that it is desirable for the transfer process to tie in with the annual review process so that the annual review meeting can be used for discussion of the proposed EHCP, and LAs have a duty to have particular regard to the views, wishes and feelings of the child or young person and their parents, and to ensure that they can participate as fully as possible in the process. On receipt of details of the preference as to a placement the LA then has 15 days in which to consult the placement concerned and

any other placement they think may be suitable. The entire process should be completed within 20 weeks from the date when the LA sent its formal transfer notification out. There are some exceptions to the deadlines, for example if the child is not available for assessments, and there is a four week extension if the process is delayed by reason of the school summer holidays.

This means that, for children transferring to secondary schools or other different phases in their education in September 2016, all LAs should by now have begun the transfer process and should be carrying out assessments if they are to meet the February 2016 deadline – unless it has specifically been agreed by parents, LA and experts that previous reports are still valid. Therefore, parents of children due to transfer who have not received notice that the process has begun should contact their LAs **now** to pressurise them about this.

What does an EHC Plan look like?

There is no prescribed format, but the SEN Code of Practice sets out between pages 164 and 169 details of the sections a Plan must contain and what should be included in them. These are:-

A: The views, wishes and aspirations of the CYP and their parents. LAs are tending to ask parents and YP to complete this section themselves, and it is a useful opportunity to paint a full picture of the child, his strengths and difficulties, and other relevant information.

B: The CYP's SEN. All the child's identified SEN must be specified, including health and care provision which educates or trains the CYP such as speech and language therapy.

C: The CYP's health needs which relate to their SEN.

D: The CYP's social care needs which relate to their SEN.

E: The outcomes sought for the CYP. This is an important section as the LA has a duty to have regard to the need to support the CYP in achieving the best possible educational and other outcomes, and therefore educational and other provision must be aimed at helping with this in addition to ensuring that all the needs identified in B, C and D are met.

F: The special educational provision required by the CYP. This **must** be detailed and specific and **must** be specified for each and every need specified in section B. The use of vague terms such as "would benefit from", "regular", "contacts with" and the like should always be challenged. Health and social care provision which educates the child should be included in this section, although they can additionally be referred to in G and H.

G: Any health provision required by the learning difficulties or disabilities which result in the CYP having SEN. Again, this should be detailed and specific.

H1: Any social care provision which must be made for CYP under 18 resulting from section 2 of the Chronically Sick and Disabled Persons Act 1970: examples are given on page 168 of the Code of Practice.

H2: Any other social care provision required by the learning difficulties or disabilities.

I: Placement.

J: Personal Budget, including arrangements for direct payments. Note that this should not contain other details of how provision in the EHCP is to be funded, but many LAs are in fact placing such information here. In itself that is not unlawful, but it is important that all concerned should recognise that the overall duty of LAs is to provide everything in section F irrespective of cost.

K: List of advice and information gathered during the EHC assessment process.

Most LAs seem to be using a tabular format, particularly for parts E to H, in which they attempt to relate all educational, medical and social care provision to specific outcomes. This can be quite confusing, and it would be much clearer if they related provision to the child's area of needs as required by law.

How is it working so far?

At SOS!SEN we have been surprised and dismayed at just how badly LAs are dealing with this process and indeed with EHCPs generally. The main problems seem to be as follows:

- **Failure to carry out reassessments:** many LAs are simply ignoring this requirement and indeed it is not clear whether all are aware that it is even necessary – at a large meeting for parents held in Surrey, representatives of the Education Department freely admitted that they were not reassessing. At another, a representative of Achieving for Children, which runs education services for Richmond and Kingston LA claimed that they did not need to reassess if their experts told them that the previous reports were adequate, and again seemed wholly unaware that they could only rely on that exception if the parents or young people concerned agreed. At a Tribunal Users' Group meeting, a representative of Kent stated that their officers were being given the same erroneous advice.
- **Unlawful refusal of EHCPs for young people transferring to further education**
We are aware of at least two LAs, Derbyshire and Ealing, who have been following the practice of ceasing to maintain statements for 16 year olds leaving school and refusing to transfer statements to EHCPs: the excuse given is that FE college students did not have statements previously and the college's support arrangements will be sufficient. It is certainly the case that statements were not available to FE college previously, but what such authorities omit to mention is the fact that LDAs were available instead. Colleges are no better funded for SEN than schools, and no LA can sensibly assert that a child who needed the support available via a statement in July – which by definition is support over and above what is normally available in the mainstream – and can magically cope without such support in September in an unfamiliar environment with, typically, hundreds of students
- **Failure to advise parents and young people of their rights and how the process should work.** LA Local Offer websites which purport to give fully information for parents regularly fail to mention either relevant time limits or the reassessment requirements;

suggest that provision in EHC Plans is driven by outcomes rather than the requirement to meet needs; and place onerous requirements on the EHC assessment process. Most state that this can only begin once parents fill in the LA form which sometimes demands large amounts of information which may not be readily to hand: they fail to state that as a matter of law the LA is required to consider the need to assess immediately on receipt of a letter requesting it and are not entitled to impose their own conditions in this regard.

- **Failure to meet deadlines.** The DfE reported in July on responses to a survey of LAs and Parent Carer Forums. Only 36% of LAs were very confident that they would meet the 20 week deadline for issuing EHC plans, with 25% being not very or not at all confident; significantly, some 52% of PCFs were unconfident. 49% were extremely or very confident that all Year One priority transfers would be completed by April 2018, but 19% were not very confident or not at all confident. Only 14% of PCFs were confident that their authority would transfer all learning difficulty assessments by the final August 2015 deadline, and only 20% were confident that all transfers would have been completed even by August 2018. Despite this, the DfE claims that “genuine progress is being made in delivering the SEND reforms.” It has been suggested that 90% of LAs failed to meet the 31st May 2015 deadline for transfers for young people transferring in September 2015 to post 16 provision, although official statistics are not available.
- What seriously concerns us about these delays is that if phase transfer deadlines are not met this means that the new placements to which children and young people are transferring will not have adequate time to prepare, and, most seriously that there will be insufficient time for appeals against new EHCPs to be dealt with by the tribunal before the start of the new school year. This means that children may start the year without a school or college place, or with a decision to be made about whether to start attending a placement which parents or young people may consider is wholly unsuitable only to have to move in the event of a successful appeal. We are aware of young people who have started college with wholly inadequate support in their EHCPs, which may seriously jeopardise the chances of the students concerned at a vital phase in their education.
- **Poor EHC Plans.** The failure to standardise formats means that these are often confusing, outcomes are badly written, and many LAs are wholly failing to comply with the Code of Practice’s very clear requirements for detailed education, health and care provision.

All in all, there is more need than ever of the support provided by SOS SEN.