

# **Refusal to assess pack: Advice for parents and young people appealing to the Special Educational Needs and Disability Tribunal**

## **Contents**

1	How to use this pack	2
	Key to abbreviations and terms	2
2	The practicalities	3
2.1	What is the Tribunal?	3
2.2	What powers and duties does the Tribunal have?	3
2.3	Your right of appeal	4
2.4	Filling out the Appeal form	5
2.5	Giving your reasons for your appeal	5
2.6	What to send in with your form	6
2.7	Evidence	6
2.8	Witnesses	7
2.9	Legal help and representation	8
2.10	Preparing yourself for the hearing	8
2.11	What happens at the hearing	9
2.12	Action checklist	10
2.13	Timetable of the appeal process	11
3	Making your case	12
3.1	The law and your case	12
3.2	What if the school/institution could do more?	13
3.3	What the LA may reply	14
3.4	Your Reasons for Appeal	15
3.5	Evidence about difficulties	16
3.6	Evidence about what cannot be provided without an EHC plan	18
3.7	Witnesses	19
4	The legislation	21
4.1	Identification and assessment of children and young people with special educational needs	21
4.2	What are special educational needs and provision?	23
4.3	Schools' and LAs' obligations to publish SEN information	25
5	Further help	33

# 1 How to use this pack

This pack has been written to help you take an appeal to the Special Educational Needs and Disability Tribunal against a local authority's refusal to assess your child or, if you are a young person, yourself. This pack relates to the law in England, the Children and Families Act 2014 (C&FA 2014)

Unfortunately IPSEA is not able to offer free representation to everyone who uses our services but we hope this pack will help you put together an effective case and benefit from our many years of supporting parents at Tribunal.

Many parents successfully represent themselves at the Tribunal. Its website, <http://www.justice.gov.uk/tribunals/send/appeals>, provides useful information on the procedures and how to submit your case.

There is no set way of using this pack – but it is probably useful to begin with section 2 The practicalities, which includes a checklist and timetable to help you remember what you must do and when.

Because this pack focuses on one kind of appeal only – against a decision not to conduct a statutory EHC needs assessment – we have been able to provide detailed advice on making your case and this forms section 3 of the pack. You will see we refer to and explain the law throughout but the actual law – quotations from the C&FA 2014 and the SEN and Disability Regulations 2014 – is left to the end so as not to overwhelm you at the start! You might want to look at this to see precisely what the law says local authorities (LAs) must do and what your rights are as a parent/young person, but you don't need to do this to use this pack.

If you are over 19 and have been refused an EHC needs assessment, please ring IPSEA's Tribunal helpline 0845 602 9579.

If you are unclear or unsure about anything, remember that IPSEA's telephone advisers should be able to help: Tribunal helpline 0845 602 9579.

Finally, we want to wish you well with your appeal and hope that our pack enables you to put the best possible case.

## Key to abbreviations and terms

The Code	The Special Educational Needs and Disability Code of Practice 2014
EP	educational psychologist
LA:	local authority
LSA	learning support assistant
SEN	special educational needs
SENCO	special educational needs co-ordinator (the teacher responsible for overseeing provision for children with SEN)
SEND	Special Educational Needs and Disability Tribunal
TA	teaching assistant

## 2 The practicalities

### 2.1 What is the Tribunal?

The Special Educational Needs and Disability Tribunal is an independent national tribunal which hears parents' and young people's appeals against LA decisions about the special educational needs of children and young people. It also hears claims of disability discrimination against schools.

It produces a free booklet, *How to Appeal*, and a DVD, *Right to be Heard*. The booklet includes the appeal form, which can also be downloaded separately from <http://www.justice.gov.uk/forms/hmcts/send>.

Booklet and DVD are available via the Tribunal helpline 01325 289350 or from the postal address or website below:

HMCTS - Special Educational Needs & Disability Tribunal  
1st Floor  
Darlington Magistrates Court  
Parkgate  
DL1 1RU  
[www.justice.gov.uk/tribunals/send](http://www.justice.gov.uk/tribunals/send)  
SENDISTQUERIES@tribunals.gsi.gov.uk

### 2.2 What powers and duties does the Tribunal have?

There are limits to what the Tribunal can decide. If you win your appeal it can order your LA to make an EHC needs assessment. It cannot order the LA to draw up an Education, Health and Care Plan (EHC Plan) at the same time and it cannot order a school to make provision (extra help for you or your child) if it concludes that an EHC needs assessment is not needed.

The Tribunal is governed by the law, both the Act of Parliament and its associated regulations, and has to follow the interpretation of that law by higher courts in judgments about previous SEN disputes. The Tribunal must 'have regard' to the SEN and Disability Code of Practice<sup>a</sup> (the Code) which advises schools and LAs on identifying and making provision for children with SEN. The Tribunal is not bound to follow the Code to the letter but it generally accepts the Code's guidance in coming to its decisions.

The Tribunal looks at the evidence put before it and decides whether the LA decision followed the law and the Code. It will also make a decision based on what is right for the child at the date of the hearing.

The beginning of Chapter 9 of the Code is useful to read to understand how LAs make decisions about whether to assess.

---

<sup>a</sup> Statutory guidance which tells LAs and others how to carry out their SEN duties: *Special educational needs and disability code of practice: 0 to 25 years*, Ref. DFE-00205-2013. Download from: <https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

## 2.3 Your right of appeal

The letter from your LA turning down a request for an EHC needs assessment must arrive within six weeks of that request and must tell you about:

- (a) your right to appeal that decision;
- (b) the time limits for doing so;
- (c) information about mediation;
- (d) the availability of—
  - (i) disagreement resolution services; and
  - (ii) information and advice about matters relating to the special educational needs of children and young people.

Your LA must also tell you when it refuses a request for assessment from a school or institution, or if the LA itself has otherwise become aware that a child or young person may have SEN and has then decided not to conduct an EHC needs assessment. In both these cases it must make the decision within six weeks of the request or of becoming aware and inform you of it and that you have a right of appeal to the Tribunal.

This is an appeal under section 51(2)(a) against a decision made under section 36 of the C&FA 2014. (See section 4 The legislation.)

**Note:** you have no right of appeal if the LA has carried out an EHC needs assessment in the past six months.

To be able to appeal, you must be a parent or a young person over the age of 16. In education law 'parent' means you are either a birth parent, have acquired parental responsibility or have care of the child (e.g., a foster parent or grandparent with whom the child lives).

### ***Appeal deadlines and mediation***

To check your deadline for sending your appeal to the Tribunal, first, look at the date on the letter from the LA – **make a note of the date two months after this**. This is the deadline by which you must register your appeal with the Tribunal.

**However, this deadline may be changed if you enter into mediation with your LA.**

The law says you have to consider whether to enter mediation before you can register your appeal so at the very least you must ring the number the LA gives you (there should be alternatives if you cannot use a phone), talk to a mediation adviser, and get a certificate from them saying you have done so. You do not have to engage in mediation to register your appeal, only consider it, and if you have had a lot of discussions already with your LA you may feel it would be of little use and you want to save time, get your certificate, and appeal right away. If you have never had a proper talk with the LA about why they have refused assessment, mediation may help. You might also consider it to give yourself more time to appeal as if you enter mediation, your deadline for registering an appeal changes: your deadline then becomes one month from the date a certificate is issued after the mediation session, and that session must be arranged within 30 days of the LA being informed that you

want to mediate. You may well want to talk to IPSEA about things to be aware of before going into a mediation session.

In the letter refusing assessment, your LA must provide you with the following information on your rights of appeal:

- (a) your right to appeal that decision;
- (b) the time limits for doing so;
- (c) information about mediation;
- (d) the availability of—
  - (i) disagreement resolution services; and
  - (ii) information and advice about matters relating to the special educational needs of children and young people.

The Tribunal may well waive the two-month deadline if all this information is not provided and you would be allowed to appeal late.

Mark any deadlines on your calendar and in your diary. (If the two months/one month ends in August you have until the first working day in September to get the form to the Tribunal.) If you have missed your deadline ring IPSEA for advice on 0845 602 9579 and/or the Tribunal on 0870 241 2555 (England); 01597 829 800 (Wales).

## 2.4 Filling out the Appeal form

In the boxes, fill in:

- Your child's name and date of birth, or yours if you are a young person
- Your name and address
- Details of anyone else who has parental responsibility (if you have difficulties with this talk to IPSEA)
- The name of your LA and the date you were informed in writing that they would not carry out an EHC needs assessment
- Any special requirements to make the process accessible to you: say here if, for instance, you need documents translated, wheelchair access, a reader or a signer, or cannot manage negotiations over the phone.
- In the appropriate section of the form, say that you have asked the LA for an EHC needs assessment but it has refused
- The reasons for your appeal: it is often easier to put these on a separate sheet and write 'See separate sheet headed Reasons for Appeal' in the box on the form.

## 2.5 Giving your reasons for your appeal

This is where you set out why you think the LA must assess your child, or you as a young person. Try to put in everything you need to say, your full case, at this point (Section 3.4 Your Reasons for Appeal will help you with this). You must send in enough information for the LA to be able to respond.

## **DO**

- Keep it short and to the point.
- Separate your points into paragraphs.
- Number your paragraphs or organise them under headings.
- Refer to any evidence that backs up your points. (You can send more evidence later and should say so, if for instance you will be getting a speech therapy report because the LA has not obtained one.)
- Refer to the legal issues.

## **DON'T**

Get bogged down on history. If there is a long history of difficulties between you and the LA let the evidence (e.g. letters between you and the LA) speak for itself.

## **2.6 What to send in with your form**

With the completed and signed form send the Tribunal the following:

- A copy of the letter the LA sent you that told you of its decision
- Your mediation certificate
- Your evidence for your child needing assessment
- A document listing all your items of evidence

**Don't send original documents, send photocopies, and keep a copy of everything you send, including the form.**

## **2.7 Evidence**

It is important to obtain any written evidence as soon as you can. It is best to send in all your written evidence with your Appeal form because this means you have the main substance of the case set out with supporting evidence right from the start and you may discover more about the LA's arguments if it is able to respond fully. If you have a good case and evidence, the LA may give in rather than fight the appeal. If you are having difficulty getting information from the LA, you can write to the Tribunal well before the hearing explaining what the document is and ask the Tribunal for a 'direction' to make the LA release the document: contact the Tribunal and ask for a 'Request for Directions' form, or download it from

[http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court\\_forms\\_id=3044](http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=3044)

Unless the LA has a good reason for not providing the document the Tribunal will order the LA to release it.

If you think you need to send in evidence later in the process, tell the Tribunal what you expect to obtain and when and submit it by the deadline you are given.

## 2.8 Witnesses

Witnesses are people who can speak to the Tribunal panel at the hearing. They should be people who know your child or you as a young person and can talk about the kind and amount of help needed, and may be able to state what help the early years provider, school or post-16 institution can and should provide. They are in addition to you as the parent(s)/young person, an observer/supporter if you need one (who is not allowed to take part), your representative if you have one, and any signer or translator or other special assistant.

The How to Appeal booklet states that you should ask for no more than three witnesses. However, the law does not limit the number and you can ask for more if it is necessary, but you must say why they are needed.

Before you decide if someone should be a witness check their views on every important issue in your appeal. They may be asked questions by the LA or the Tribunal members on any aspect of the case, and if they disagree with part of your case, this will not help you. A witness does not have to be on anyone's side, of course, and generally will have more credibility if they are seen to give their professional opinion without taking sides.

Some LA employees and teachers may be reluctant to attend the Tribunal as your witness. Others may be prevented by practicalities such as not being able to get cover. If this is the case, you should seek a witness summons from the Tribunal. Write well in advance of the hearing (it should be at least 10 working days) to the Tribunal requesting that it issues a 'summons'. You need to give the name and address of the witness (this can be their workplace address). You also need to say why you consider their evidence is important and that you believe they might not attend voluntarily.

Before you do this, discuss with your potential witness the possibility of their being summoned to prepare them and to reassure them that any risk of criticism for attending a Tribunal at a parent's request can be avoided in this way. You may want to tell them that a former Tribunal President said to witnesses:

*You may have been summonsed because your employer has asked you not to attend because of a potential conflict of interest. In the Tribunal's opinion, your duty to provide the panel with helpful and objective evidence takes precedence over your obligations to your employer, and you should not be penalised for helping the tribunal.*

You should offer travel expenses to your summoned witness. The Tribunal will reimburse you if you pay these to a witness in these circumstances. All witnesses can claim travel expenses and a fixed amount for loss of earnings from the Tribunal. Witnesses will normally stay for the whole hearing.

When the Tribunal lets you know the deadline for written evidence, it also sends you a form to complete giving the name of anyone who is coming to the hearing. You will need to give the name of your representative if you have one and the names of any witnesses.

## 2.9 Legal help and representation

Under the legal help scheme, a parent or young person on a low income may be able to get limited free legal help from a solicitor. For a parent or young person preparing for the Tribunal, this could cover a second expert opinion and preparing a written case, but not providing a representative. There is a legal aid checker at <http://legal-aid-checker.justice.gov.uk/>.

You can bring a solicitor or barrister to represent you at Tribunal but you will not get public funding for this. A survey by a children's disability charity found that parents were on average paying over £5,000 for legal representation at the Tribunal.

A few organisations like IPSEA provide free representation but high demand means this is not available to all those who would like it.

Nearly half of parents represent themselves at the hearing. The Tribunal's annual report 2006/07 shows that 23 per cent had legal representation while 29 per cent were represented by another representative. Ten per cent of local authorities use legal representation. You will be heartened to know that a majority of parents – 62% – won their appeal against refusal to assess in 2006/07, and in IPSEA's experience many LAs give in before the hearing. Tribunal chairs say that parents are often good advocates for their child and their evidence can be crucial in deciding a case in their favour.

## 2.10 Preparing yourself for the hearing

At least two weeks before the hearing, you will receive a numbered 'bundle' (the collection of documents in the case) of copies of the documents sent in by you and the LA. Check that nothing is missing and make a note of where your key documents are in the bundle. Make those easy to find during the hearing. Make a note of what they are about and of the page numbers, mark them with coloured stickers and mark any key paragraphs with a highlighter pen.

Read through your Reasons for Appeal and the LA's response. Work out the following:

- 1 What are the main points you want to make?** Your Reasons for Appeal should include these.
- 2 What are the main issues between you and the LA?** Check through the LA points carefully. Which witness will cover each issue? You will not be able to control what the witnesses say but if you list the topics on which they are likely to be most helpful, you should make sure that nothing important is missed. For example,

*Mrs Jones, educational psychologist:*

- Amir's difficulties with handwriting and physical education
- the amount and kind of help he needs.

*Mrs Smith, SENCO:*

- the help the school has provided for Amir so far

- what help the school can provide in the near future
  - the school's special needs budget.
- 3 What evidence do you plan to give?** The Tribunal will ask you questions but you should make sure you provide information about any recent developments which brings your evidence up to date and how your child's learning difficulties are revealed at home, including their emotional state.
  - 4 What questions (if any) you will need to ask LA witnesses?** Remember the LA witnesses may not agree entirely with the authority's position. You could draw them out or highlight discrepancies in the LA's case by asking questions.
  - 5 Are there any particular points in the documents that you want to be sure the Tribunal has noted?** Consider how you will draw these out – perhaps as part of a question to a witness or in your own evidence or summing up.

## 2.11 What happens at the hearing

Hearings normally last around three hours. They are usually held in private. A tribunal panel is made up of two or three people who will hear your appeal. The chair is a legally qualified Tribunal judge and the other member(s) will have knowledge and experience of special educational needs.

Your child can go to the hearing and give evidence. However, it is often advisable to arrange for a friend or relative to come to look after your child outside the hearing so that they do not have to stay for the whole hearing.

The judge will suggest that different parts of the case are dealt with one at a time so you will not have to make a single statement about the whole of the case. This will give everyone the chance to look at the points as they come up, without getting muddled. Witnesses will be able to give evidence on each point. Both you and the LA will be able to ask them questions. You will have the chance to add anything you feel is important but has not been mentioned. Make a list beforehand of what you would like the Tribunal to consider and tick the matters off as they are discussed. At the end you can bring up any which were left out.

At the end you and the LA can summarise your cases. Make use of this opportunity to end the hearing with your main points. You will probably also want to comment briefly on what was said by witnesses and the main points made in the LA's summing up. For example, you might want to draw out a point made to support your case or say why you disagree with another point. You cannot bring up new issues in the summary, however.

Finally, keep your summing up brief and to the point but remind the panel of how important the decision will be to your child and family.

## 2.12 Action checklist

- 1 Get hold of the booklet How to Appeal from the Tribunal.
- 2 Work out the last date to send in your appeal and make a note of this. (See section 2.13 Timetable of the appeal process below.)
- 3 Complete the Appeal form including your Reasons for Appeal. Make sure you sign the form and your reasons if they are separate.
- 4 Make copies of the LA's decision letter, your Appeal form, your mediation certificate and any evidence you are sending to the Tribunal. Make another set of copies for your adviser if you intend to seek advice.
- 5 Write to the LA and school if you need further information. (You can use the model letters in the next section, Making your case.)
- 6 Arrange for any independent reports on you or your child. (See section 3.5 Evidence about difficulties.)
- 7 Get hold of a copy of the Code (See section 5 Further help.)
- 8 Send the Appeal form, Reasons for Appeal and any other documents to the Tribunal office within the deadline.
- 9 Make notes of the deadlines for the LA to respond, for your sending in further information and details of witnesses, and the date of the hearing sent you by the Tribunal.
- 10 Decide who to ask as witnesses and ask the Tribunal to issue a summons if needed. (See the timetable below for the latest date you can do this.)
- 11 Gather any remaining evidence and submit as soon as possible, at the latest at least four weeks before the date of the hearing.
- 12 Prepare for the hearing.

## 2.13 Timetable of the appeal process

- LA sends decision letter to you. Your appeal must reach the Tribunal within **two months** of the date on the letter, or **one month** from the date you obtain a mediation certificate, whichever is the later.
- After you send in your appeal, the Tribunal replies within **10 working days<sup>a</sup>** registering your appeal.
- In this response, the Tribunal tells you about important dates. It gives you a deadline to send further information and details of your witnesses. It tells you the hearing date and asks if this is not possible for you.
- At the same time, the Tribunal writes to the LA, sending them a copy of your appeal documents.
- The LA submits its response to the Tribunal **within 30 days of receiving your appeal documents from the Tribunal**. The LA must state whether it opposes your appeal and why. The LA must send you a copy of its response at the same time: tell the Tribunal if you do not get it within the 30 days.
- If you need to request that the Tribunal summon a witness do this as soon as possible and at the latest at least **15 working days** before the hearing. The summons will be sent to you and you should ensure that it gets to the witness at least **14 days** before the hearing unless the Tribunal has agreed a shorter time: hand the summons to the witness or send it by Recorded Delivery.
- Ensure that any evidence you didn't send in with your appeal form gets to the Tribunal by any deadline it gives you, and send a copy to the LA at the same time.
- At least **10 working days** before the hearing, the Tribunal will send you and the LA the 'bundle', a page-numbered set of the documents the Tribunal has received in the case.
- The date and venue for the hearing will be confirmed **not less than ten working days** before the date unless a shorter period has been agreed.

### *After the hearing*

- Generally you will receive the decision and reasons in writing **within ten working days** of the hearing.
- If the Tribunal decides in your favour, the LA has **four weeks** to begin the EHC needs assessment.
- If you feel there has been an error or have some other serious reason for thinking the decision is wrong, you have **28 days** to apply for a Tribunal review. If necessary contact IPSEA for advice.

---

<sup>a</sup> Working days do not include Saturdays, Sundays, bank holidays, any day between 25 December to 1 January, or any day in August

## 3 Making your case

The LA has turned down your request for an EHC needs assessment. How do you begin challenging this? The previous section gave you a guide to the type of evidence you will need, but what exactly are you trying to prove?

### 3.1 The law and your case

The C&FA 2014 says that an LA must identify and make an EHC needs assessment of those children and young people in their area who have or may have special educational needs and who may need an EHC plan.

Although plans are called 'Education, Health and Care plans' they cannot be triggered by health and care needs, only educational ones.

**This means you will need to convince the Tribunal that an EHC plan may be necessary to provide the right educational help for your child or you yourself as a young person.**

Generally there are three ways of establishing this. You can argue that:

- 1 a full assessment is the only way to find out what the difficulties are and what help is needed;
- 2 the school/institution may not be able to supply all the educational help needed unless it receives extra help from the LA;
- 3 the school/institution has provided all the help that could be expected but the child or young person has not made enough progress.

**Now you need to plan your case around the points which fit your case.**

There are at least two different approaches to take:

- A Where point 1 (above) applies, you need to make the case that advice from a number of different professionals is needed to fully understand your child's difficulties (or yours if you are a young person). In other words, professionals do not yet understand enough about the difficulties and only a full investigation can help everyone understand the nature and severity of the difficulties and decide what help is needed. Often this is not enough on its own to persuade the Tribunal. You may also have to show that they may need an EHC plan if their needs are to be met (see B).
- B For points 2 and 3, you need to make the case that the needs may not be met without an EHC plan. You do not have to prove that an EHC plan is necessary, only that it may be necessary. The law says that where an LA needs to secure the provision needed by a child with a learning difficulty, then the LA must draw up and maintain an EHC plan. (See sections 4.1 Identification and assessment of children and young people with special educational needs and 4.2 What are special educational needs and provision?).

In many cases both approaches will apply. Whichever you decide fits your case best, keep going back to the points as you plan your case to make sure that you are focusing on what you have to demonstrate to the Tribunal.

### **3.2 What if the school/institution could do more?**

An appeal against a refusal to assess is easiest if the early years provider, school or post-16 institution backs you but this is not essential. The problem comes if you believe that lack of progress is because of the failure of the early years provider, school or post-16 institution to provide help that is well within its resources.

If the Tribunal finds that the early years provider, school or post-16 institution could make all the necessary special educational provision, you are likely to lose your appeal and will have wasted your time and effort. If this applies to you, you could consider withdrawing your appeal and seeking advice on how to make the early years provider, school or post-16 institution fulfil its duties (contact our advice line on 0800 0184016). You can always request another assessment if it is still necessary after the school has provided further help.

There are some cases, however, where the Tribunal can decide it is necessary for the LA to issue an EHC plan just because the early years provider, school or post-16 institution won't or can't make provision. This can occur in a variety of situations. Often it is where the school or other setting has a different understanding of the difficulties to yours and refuses to increase the help. But it could be the result of in-setting factors such as staffing problems, where inspectors have found the setting is failing to provide a proper education, or where the special educational needs budget has been spent on something else.

Sometimes the early years provider, school or post-16 institution will say that it has done all it can but the LA says it hasn't. This leaves you or your child in a difficult position. You may be unsure who is right but if you are dealing with a school you could begin by asking what it actually gets as funding for SEN and how that is used. Maintained schools, including maintained nursery schools and academies, must publish a great deal of information in their SEN Information Reports, but that information does not go into details of funding and you need to find those out (see section 3.6 Evidence about what cannot be provided without an EHC plan below).

You can start by asking the LA what help it normally expects local schools to provide for children with your child's learning difficulty.

The LA has to explain, on its web site as part of its 'Local Offer' what help it expects local and out-of-area early years providers, schools, alternative education providers and post-16 institutions to provide for children with SEN. It also has to explain its criteria for assessment. (See section 4.3 Schools' and LAs' obligations to publish SEN information for the legal requirements of local offers.) If it has failed to do provide this information or has done it in an unhelpful way, you may have to press the LA for information.

You can write to ask for the information using model letter 1 below. If the LA delays in replying, do not miss your deadline for appealing. You can always withdraw your appeal if the information you receive makes you think again about your case.

**Model letter 1**

*(You should send this letter to the address on the letter refusing your request for assessment )*

Dear Head of SEN

I am considering whether to appeal against the authority's decision to refuse an EHC needs assessment of my child (*give name, school and date of birth*). I would like you to provide me with the following information:

- Details of the help you expect local schools to provide for children with my child's special educational needs/disability. (*Describe their special educational needs and/or disability briefly here.*)
- The amount of money you delegate to my child's school for children with SEN but without EHC plans.
- Details of the criteria you use to decide when to make an EHC needs assessment of children with my child's special educational needs/disability.

I should be grateful if you could reply promptly.

Yours faithfully

(your name)

### 3.3 What the LA may reply

The LA is likely to say that it delegates (passes on) most of the money for special educational needs to its schools so the school can decide the help your child should get. Remember that although LAs across the country delegate much of the SEN budget to schools, they cannot delegate their legal duties to children and young people with special educational needs.

The LA may say you as a young person or your child does not fit its criteria for making an EHC needs assessment. The Tribunal is not bound by the authority's criteria, however, and, while it will take into account the way the authority or a college organises its SEN support, it will want to be sure that the school/college fully understands the special educational needs in this individual case and can make all the provision needed. If it is not convinced it can, then it may order an assessment. Remember that you only have to show that you or your child 'may' need special educational provision to be provided in accordance with an EHC plan, not that this is probably or definitely the case.

Some authorities may say they never issue EHC plans for children and young people in mainstream schools or for children and young people with a particular disability, or for anyone who does not fall into the bottom 2 per cent of abilities. These are blanket policies and are unlawful and the Tribunal will know this. The Code also makes this clear at paragraph 9.16:

“Local authorities **must not** apply a ‘blanket’ policy to particular groups of children or certain types of need, as this would prevent the consideration of a child’s or young person’s needs individually and on their merits.”

You can complain to the Secretary of State (the Government minister for education) if your LA continues to use this ‘reason’ after you have pointed out what is wrong with it.

If after considering all these points you decide that your school/college should be providing more, then seek further advice about what to do. If you decide that the LA must assess what help your child should get, then you will need to proceed with an appeal against their decision to refuse your request for a statutory assessment.

### 3.4 Your Reasons for Appeal

When you lodge your appeal with the Tribunal you will be asked to give your reasons. Although you can provide evidence at a later stage, this is the time to give your arguments.

Go back to points 1–3 listed on page 12. Now set out your reasons to go with your appeal form, using the points that fit your case, giving at least a little detail about why you believe this.

For example:

#### Example 1

A full assessment is the only way to identify my child’s difficulties and find out what my child needs. Jack has been excluded from school twice in the past term. Although he receives a lot of extra help for his behaviour, Jack doesn’t seem to understand what he has done wrong. I believe difficulty with understanding school work may be a factor but nobody seems sure about why Jack has difficulty learning or why he behaves as he does.

#### Example 2

The school could not normally give all the educational help my child needs unless it receives extra help from the local authority. The nursery school has had to provide much more help for Riath than they would normally provide at for children with special needs without EHC plans. The staff at the nursery believe Riath will need an EHC plan to manage mainstream school.

#### Example 3(a)

The school has given my child all the help that could be expected but she has not made enough progress. Leila has received a high

level of help for over a year and her progress is very slow. The other children are leaving her further and further behind.

#### Example 3(b)

The school has been able to give my child all the help that could be expected and she has made progress, but only with a great deal of extra help. Now she is coming up to the year she's 16, the college she wants to go to cannot do all the things she needs without getting extra help.

Now you need to plan how you can back up your point of view with evidence. The Tribunal will decide your appeal on the evidence that you and the LA put before it so it is vital that you produce the best possible evidence.

### 3.5 Evidence about difficulties

Begin by looking at the evidence the LA used to make its decision. This is likely to include documentation from the early years provider, school or post-16 institution, such as school/college reports; the records of any assessments done by the early years provider, school or post-16 institution, what they then did and what effect that had; any advice from the LA's educational psychologist or other professionals who may have been involved. If the decision seems at odds with the evidence you may need to look no further than the documentation and reports of the LA's own professionals.

If the evidence supports the LA's decision you will have to look elsewhere for evidence to back up your case. Reports from professionals such as educational psychologists can be extremely important to your case but they can also be very expensive.

If you are eligible for Legal Help (formerly known as Legal Aid) because you are on benefits or on a very low income, it may be possible for a solicitor to arrange free reports from professionals. (See section 2.9 Legal help and representation.)

Other sources of written evidence may be available from:

- Teachers: ask them to be precise and to quantify exactly what is needed for your child.
- Health service, e.g. speech therapist, paediatrician, clinical psychologist or occupational therapist may write a report. Get your GP to refer you.
- Others involved with you or your child, e.g. social workers, youth workers, careers advisers.
- Information from voluntary groups relating to the learning difficulty/disability concerned.
- References to relevant research and findings.
- Extracts from books, magazines etc.
- School reports, including results of national tests and assessments.

- The school/college's own assessments and review reports.
- Home-school diaries.
- Your own evidence: for example, has a younger brother or sister overtaken your child? Is he or she anxious about going to school? Do you get bed-wetting, particularly in term time?
- Evidence from your child or the young person, written via a third party when necessary or where appropriate by their attendance as a witness.
- Your or your child's school/college work if this demonstrates a point you want to make, such as the limited progress they have made, or a particular difficulty which is in dispute.
- If there has been little progress over a period of time, it sometimes makes it clearer if you can show this visually by a chart or graph – perhaps using the school's record of the National Curriculum level reached by your child over a period of time. You may also be able to show uneven achievement between one particular subject or skill and another.
- Information from the school/college record. You have a legal right to a copy of this. Put your request in writing to the chair of the governing body at the school or the equivalent for a college. (See **model letter 2** below.) You may be charged for photocopying. The record includes school/college reports, attendance record and details of any exclusions. If behaviour is a difficulty, the disciplinary record may help you show whether this is getting worse, whether for instance the school and your child needs more help to manage it and whether there is a pattern.

The Code says that LAs should look for evidence of a child's progress when deciding whether to make an EHC needs assessment. The suggestions listed above may help you to demonstrate that your child's progress is slow or uneven, or that they have complex needs involving more than one difficulty. The Code says your child's attainment is a factor, but this must be considered in the context of their peers' attainment, their progress over time and what is expected of your child's performance. If you can show, for example, that their performance in some areas is much lower than other areas or below what their general intelligence indicates is possible, then this should be a factor in deciding whether to assess.

**Model letter 2**

Dear Chair of the Governing Body (*your school will provide the name and address or send it c/o the school*)

(*Give your child's name and Year Group here*)

I am writing to ask for a copy of my child's school record which I believe will be helpful for my appeal to the Special Educational Needs and Disability Tribunal against the local authority's refusal to assess my child's special educational needs.

I understand I am entitled to these within 15 school days under the Pupil Information Regulations and that you may charge the cost of photocopying.  
Thank you for your attention to this.

Yours faithfully,

*(Your name)*

### **3.6 Evidence about what cannot be provided without an EHC plan**

In some cases it will be enough to provide evidence of problems in learning or to show educators' or trainers' difficulty in understanding the problems and the help they need.

However, in most appeals against a refusal to assess, you will need the early years provider, school or post-16 institution to provide evidence of what help they have provided and be able to show why this may not be enough in the future. The Code mentions three potential triggers for assessment where resources are critical:

- Lack of progress: the Code at paragraph 9.16 says: "In considering whether an EHC needs assessment is necessary, the local authority should consider whether there is evidence that despite the early years provider, school or post-16 institution having taken relevant and purposeful action to identify, assess and meet the special educational needs of the child or young person, the child or young person has not made expected progress."
- Progress but only with unsustainable support:: if the school or other setting has provided a lot of support which has ensured progress, but will not be able to continue doing so without an EHC plan, the Code rightly says this is also a trigger for assessment (paragraph 9.14).
- Transfer to a college or other post-16 provider which may not have the SEN resources a school has.

As well as the help provided by the school/institution, you will need to know what outside help the early years provider, school or post-16 institution can call in, for example the LA's educational psychologist, their behaviour support team, health service speech therapists, and specialist teachers.

You will also need details about their special needs budget and the number of children and young people it covers. The LA may tell you that schools should have up to £10,000 available for each child or young person with SEN (this is made up of the cost of the place plus £6000 for SEN). However, this amount is a notional one, not based on an assessment of current pupils' needs and the real cost of providing for them. The actual amount of money available depends on what the school is already committed to spending, so you need to find out how much money it actually gets and how they plan to spend it to see what they can and cannot do. Colleges are funded differently.

You may not be able to find all this information easily.

Ask someone from the early years provider, school or post-16 institution to tell you about it and, if possible, to come as a witness. You could point out to them that in this kind of appeal you are likely to be unsuccessful without this information. It may help to put your request in writing using model letter 3.

### **Model letter 3**

Dear Head teacher/Principal (or Special Educational Needs Co-ordinator)

As you may know, the local authority has refused my request for an EHC needs assessment of my child (*give name and year group*).

I am appealing against that decision and need information about the school's special educational needs provision to put my case.

Could you tell me:

1. The SEN budget for the current academic year.
2. The number of children/young people this covers.
3. The number of children/young people with SEN but without EHC plans and the number with EHC plans.

Could you also describe the typical help which is given for children/young people with my child's difficulties and whether this is the maximum available?

I very much appreciate the time and trouble you will take to provide this information which I need in writing. I have been advised that the Tribunal will find it hard to decide the case without full details of school provision.

*(You could also ask here if someone from the school/institution would act as a witness though it might be better to do this in person once you know the views of different members of staff.)*

Yours sincerely

*(give name*

It may also be helpful to use **model letter 1** (above, p. 14) to ask the LA for details of how much funding it delegates to schools and what help it expects schools to make. (See section 3.2 What if the school/institution could do more? above.) If there appears to be a mismatch between what the school is saying it can do and the LA expects it to do, this may help your case.

## **3.7 Witnesses**

The best evidence about your child's learning difficulties and the help they need is likely to be from someone who is a professional in the relevant field and has recent direct knowledge of your child.

The best way of presenting evidence from a professional is to have their written report in the bundle of evidence and for them to be at the hearing as a witness. This gives the Tribunal an opportunity to consider their evidence beforehand, and then to ask any follow up questions. The witness can also respond to points against your appeal raised by the LA or their witnesses. If

you are paying for an independent report, ask if the fee includes the professional's attendance at the Tribunal.

In appeals against refusal to assess, it is always best to have someone from the school/institution as a witness and not to rely on written evidence alone. You will need someone who has knowledge of how special educational needs help is organised in the early years provider, school or post-16 institution you are dealing with. In particular, it is helpful if whoever supplies the information about resources – the SEN budget, staffing, facilities etc – can be a witness. This will usually be the head teacher/principal or the special educational needs co-ordinator (SENCO). It will be useful if they can work out the cost of the special help required as a proportion of their whole special needs budget, with a description of what the budget is spent on.

You can seek a summons for them to attend as a witness if they are uncomfortable in being seen to back you against the LA. (See section 2.8 Witnesses.) However, remember that there is no point in calling an unwilling witness whose evidence is unlikely to support your case.

## 4 The legislation

This includes key sections of the C&FA 2014 that relate to the LA's responsibilities to carry out EHC needs assessments (sections 22, 36 and 37) and a parent's and young person's right to appeal against refusal to assess (section 51).

### 4.1 Identification and assessment of children and young people with special educational needs

#### **22 Identifying children and young people with special educational needs and disabilities**

A local authority in England must exercise its functions with a view to securing that it identifies—

- (a) all the children and young people in its area who have or may have special educational needs, and
- (b) all the children and young people in its area who have a disability.

#### **36 Assessment of education, health and care needs**

(1) A request for a local authority in England to secure an EHC needs assessment for a child or young person may be made to the authority by the child's parent, the young person or a person acting on behalf of a school or post-16 institution.

(2) An "EHC needs assessment" is an assessment of the educational, health care and social care needs of a child or young person.

(3) When a request is made to a local authority under subsection (1), or a local authority otherwise becomes responsible for a child or young person, the authority must determine whether it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.

(4) In making a determination under subsection (3), the local authority must consult the child's parent or the young person.

(5) Where the local authority determines that it is not necessary for special educational provision to be made for the child or young person in accordance with an EHC plan it must notify the child's parent or the young person—

- (a) of the reasons for that determination, and
  - (b) that accordingly it has decided not to secure an EHC needs assessment for the child or young person.
- (6) Subsection (7) applies where—
- (a) no EHC plan is maintained for the child or young person,
  - (b) the child or young person has not been assessed under this section or section 71 during the previous six months, and

- (c) the local authority determines that it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.
- (7) The authority must notify the child's parent or the young person—
  - (a) that it is considering securing an EHC needs assessment for the child or young person, and
  - (b) that the parent or young person has the right to—
    - (i) express views to the authority (orally or in writing), and
    - (ii) submit evidence to the authority.
- (8) The local authority must secure an EHC needs assessment for the child or young person if, after having regard to any views expressed and evidence submitted under subsection (7), the authority is of the opinion that—
  - (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.
- (9) After an EHC needs assessment has been carried out, the local authority must notify the child's parent or the young person of—
  - (a) the outcome of the assessment,
  - (b) whether it proposes to secure that an EHC plan is prepared for the child or young person, and
  - (c) the reasons for that decision.
- (10) In making a determination or forming an opinion for the purposes of this section in relation to a young person aged over 18, a local authority must consider whether he or she requires additional time, in comparison to the majority of others of the same age who do not have special educational needs, to complete his or her education or training.
- (11) Regulations may make provision about EHC needs assessments, in particular—
  - (a) about requests under subsection (1);
  - (b) imposing time limits in relation to consultation under subsection (4);
  - (c) about giving notice;
  - (d) about expressing views and submitting evidence under subsection (7);
  - (e) about how assessments are to be conducted;
  - (f) about advice to be obtained in connection with an assessment;
  - (g) about combining an EHC needs assessment with other assessments;
  - (h) about the use for the purposes of an EHC needs assessment of information obtained as a result of other assessments;
  - (i) about the use of information obtained as a result of an EHC needs assessment, including the use of that information for the purposes of other assessments;
  - (j) about the provision of information, advice and support in connection with an EHC needs assessment.

### **37 Education, health and care plans**

- (1) Where, in the light of an EHC needs assessment, it is necessary for special educational provision to be made for a child or young person in accordance with an EHC plan—
  - (a) the local authority must secure that an EHC plan is prepared for the child or young person, and
  - (b) once an EHC plan has been prepared, it must maintain the plan.
- (2) For the purposes of this Part, an EHC plan is a plan specifying—
  - (a) the child's or young person's special educational needs;
  - (b) the outcomes sought for him or her;
  - (c) the special educational provision required by him or her;
  - (d) any health care provision reasonably required by the learning difficulties and disabilities which result in him or her having special educational needs;
  - (e) in the case of a child or a young person aged under 18, any social care provision which must be made for him or her by the local authority as a result of section 2 of the Chronically Sick and Disabled Persons Act 1970 (as it applies by virtue of section 28A of that Act);
  - (f) any social care provision reasonably required by the learning difficulties and disabilities which result in the child or young person having special educational needs, to the extent that the provision is not already specified in the plan under paragraph (e).
- (3) An EHC plan may also specify other health care and social care provision reasonably required by the child or young person.
- (4) Regulations may make provision about the preparation, content, maintenance, amendment and disclosure of EHC plans.
- (5) Regulations under subsection (4) about amendments of EHC plans must include provision applying section 33 (mainstream education for children and young people with EHC plans) to a case where an EHC plan is to be amended under those regulations.

### **51 Appeals**

- (1) A child's parent or a young person may appeal to the First-tier Tribunal against the matters set out in subsection (2), subject to section 55 (mediation).
- (2) The matters are—
  - (a) a decision of a local authority not to secure an EHC needs assessment for the child or young person;

...

## **4.2 What are special educational needs and provision?**

The C&FA 2014 says that LAs must identify and secure an EHC needs assessment of those children and young people in their area who may have special educational needs and who may need an EHC plan.

Section 37 of the Act (above) says that an LA must secure an EHC plan when 'it is necessary for special educational provision to be made for a child or young person in accordance with an EHC plan'.

The legal definitions of special educational needs and provision are provided below. Note that when children or young people need health provision for their education or training, the need is a special educational need and the provision counts as special educational provision. Speech therapy will nearly always be special educational provision, not health provision, and occupational and physiotherapy may well also fall into this definition.

The issue of when it is necessary for the LA to secure special educational provision via an EHC plan is dealt with in section 3 Making your case.

## **20 When a child or young person has special educational needs**

- (1) A child or young person has special educational needs if he or she has a learning difficulty or disability which calls for special educational provision to be made for him or her.
- (2) A child of compulsory school age or a young person has a learning difficulty or disability if he or she—
  - (a) has a significantly greater difficulty in learning than the majority of others of the same age, or
  - (b) has a disability which prevents or hinders him or her from making use of facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions.
- (3) A child under compulsory school age has a learning difficulty or disability if he or she is likely to be within subsection (2) when of compulsory school age (or would be likely, if no special educational provision were made).
- (4) A child or young person does not have a learning difficulty or disability solely because the language (or form of language) in which he or she is or will be taught is different from a language (or form of language) which is or has been spoken at home.
- (5) This section applies for the purposes of this Part.

## **21 Special educational provision, health care provision and social care provision**

- (1) "Special educational provision", for a child aged two or more or a young person, means educational or training provision that is additional to, or different from, that made generally for others of the same age in—
  - (a) mainstream schools in England,
  - (b) maintained nursery schools in England,
  - (c) mainstream post-16 institutions in England, or
  - (d) places in England at which relevant early years education is provided.
- (2) "Special educational provision", for a child aged under two, means educational provision of any kind.

- (3) “Health care provision” means the provision of health care services as part of the comprehensive health service in England continued under section 1(1) of the National Health Service Act 2006.
- (4) “Social care provision” means the provision made by a local authority in the exercise of its social services functions.
- (5) Health care provision or social care provision which educates or trains a child or young person is to be treated as special educational provision (instead of health care provision or social care provision).
- (6) This section applies for the purposes of this Part.

## 4.3 Schools’ and LAs’ obligations to publish SEN information

### *Schools*

#### Section 69 of the C&FA 2014

##### **69 SEN information report**

- (1) This section imposes a duty on—
  - (a) the governing bodies of maintained schools and maintained nursery schools in England, and
  - (b) the proprietors of Academy schools.
- (2) A governing body or proprietor must prepare a report containing SEN information.
- (3) “SEN information” is—
  - (a) such information as may be prescribed about the implementation of the governing body’s or proprietor’s policy for pupils at the school with special educational needs;
  - (b) information as to—
    - (i) the arrangements for the admission of disabled persons as pupils at the school;
    - (ii) the steps taken to prevent disabled pupils from being treated less favourably than other pupils;
    - (iii) the facilities provided to assist access to the school by disabled pupils;
    - (iv) the plan prepared by the governing body or proprietor under paragraph 3 of Schedule 10 to the Equality Act 2010 (accessibility plan).
- (4) In this section—

“disabled person” means a person who is a disabled person for the purposes of the Equality Act 2010;

“disabled pupil” includes a disabled person who may be admitted to a school as a pupil.

Regulation 51 and Schedule 1 of the Special Educational Needs and Disability Regulations 2014:

**Prescribed information that must be included in SEN information report**

**51.** For the purpose of section 69(3)(a) of the Act the SEN information which the governing body or proprietor of every maintained school, maintained nursery school and Academy school (other than a special school that is established in a hospital) must include in a report containing SEN information is set out in Schedule 1.

**SCHEDULE 1 Regulation 51**  
**Information to be included in the SEN information report**

- 1.** The kinds of special educational needs for which provision is made at the school.
- 2.** Information, in relation to mainstream schools and maintained nursery schools, about the school's policies for the identification and assessment of pupils with special educational needs.
- 3.** Information about the school's policies for making provision for pupils with special educational needs whether or not pupils have EHC Plans, including—
  - (a) how the school evaluates the effectiveness of its provision for such pupils;
  - (b) the school's arrangements for assessing and reviewing the progress of pupils with special educational needs;
  - (c) the school's approach to teaching pupils with special educational needs;
  - (d) how the school adapts the curriculum and learning environment for pupils with special educational needs;
  - (e) additional support for learning that is available to pupils with special educational needs;
  - (f) how the school enables pupils with special educational needs to engage in the activities of the school (including physical activities) together with children who do not have special educational needs; and
  - (g) support that is available for improving the emotional, mental and social development of pupils with special educational needs.
- 4.** In relation to mainstream schools and maintained nursery schools, the name and contact details of the SEN co-ordinator.
- 5.** Information about the expertise and training of staff in relation to children and young people with special educational needs and about how specialist expertise will be secured.
- 6.** Information about how equipment and facilities to support children and young people with special educational needs will be secured.

7. The arrangements for consulting parents of children with special educational needs about, and involving such parents in, the education of their child.
8. The arrangements for consulting young people with special educational needs about, and involving them in, their education.
9. Any arrangements made by the governing body or the proprietor relating to the treatment of complaints from parents of pupils with special educational needs concerning the provision made at the school.
10. How the governing body involves other bodies, including health and social services bodies, local authority support services and voluntary organisations, in meeting the needs of pupils with special educational needs and in supporting the families of such pupils
11. The contact details of support services for the parents of pupils with special educational needs, including those for arrangements made in accordance with section 32.
12. The school's arrangements for supporting pupils with special educational needs in a transfer between phases of education or in preparation for adulthood and independent living.
13. Information on where the local authority's local offer is published.

### ***Local authorities***

#### **Section 31 of the C&FA 2014:**

##### **30 Local offer**

- (1) A local authority in England must publish information about—
  - (a) the provision within subsection (2) it expects to be available in its area at the time of publication for children and young people who have special educational needs or a disability, and
  - (b) the provision within subsection (2) it expects to be available outside its area at that time for—
    - (i) children and young people for whom it is responsible, and
    - (ii) children and young people in its area who have a disability.
- (2) The provision for children and young people referred to in subsection (1) is—
  - (a) education, health and care provision;
  - (b) other educational provision;
  - (c) other training provision;
  - (d) arrangements for travel to and from schools and post-16 institutions and places at which relevant early years education is provided;
  - (e) provision to assist in preparing children and young people for adulthood and independent living.
- (3) For the purposes of subsection (2)(e), provision to assist in preparation for adulthood and independent living includes provision relating to—
  - (a) finding employment;
  - (b) obtaining accommodation;

- (c) participation in society.
- (4) Information required to be published by an authority under this section is to be known as its “local offer”.
- (5) A local authority must keep its local offer under review and may from time to time revise it.
- (6) A local authority must from time to time publish—
  - (a) comments about its local offer it has received from or on behalf of—
    - (i) children and young people with special educational needs, and the parents of children with special educational needs, and
    - (ii) children and young people who have a disability, and the parents of children who have a disability, and
  - (b) the authority’s response to those comments (including details of any action the authority intends to take).
- (7) Comments published under subsection (6)(a) must be published in a form that does not enable the person making them to be identified.
- (8) Regulations may make provision about—
  - (a) the information to be included in an authority’s local offer;
  - (b) how an authority’s local offer is to be published;
  - (c) who is to be consulted by an authority in preparing and reviewing its local offer;
  - (d) how an authority is to involve—
    - (i) children and young people with special educational needs, and the parents of children with special educational needs, and
    - (ii) children and young people who have a disability, and the parents of children who have a disability,in the preparation and review of its local offer;
  - (e) the publication of comments on the local offer, and the local authority’s response, under subsection (6) (including circumstances in which comments are not required to be published).
- (9) The regulations may in particular require an authority’s local offer to include—
  - (a) information about how to obtain an EHC needs assessment;
  - (b) information about other sources of information, advice and support for—
    - (i) children and young people with special educational needs and those who care for them, and
    - (ii) children and young people who have a disability and those who care for them;
  - (c) information about gaining access to provision additional to, or different from, the provision mentioned in subsection (2);
  - (d) information about how to make a complaint about provision mentioned in subsection (2).

Regulation 53 and Schedule 2 of the Special Educational Needs and Disability Regulations 2014:

**Information to be included in the local offer**

**53.** A local authority must include the information in Schedule 2 when it publishes its local offer.

**SCHEDULE 2 Regulation 53**

**Information to be published by a local authority in its local offer**

**1.** The special educational provision and training provision which the local authority expects to be available in its area for children and young people in its area who have special educational needs or a disability by—

- (a) providers of relevant early years education;
- (b) maintained schools, including provision made available in any separate unit;
- (c) Academies, including provision made available in any separate unit;
- (d) non-maintained special schools;
- (e) post-16 institutions;
- (f) institutions approved under section 41 of the Act;
- (g) pupil referral units; and
- (h) persons commissioned by the local authority to support children and young people with special educational needs or a disability.

**2.** The special educational provision and training provision the local authority expects to be made outside its area by persons specified in subparagraphs (a) to (g) of paragraph 1 for children and young people in its area with special educational needs or a disability.

**3.** The information in paragraphs 1 and 2 must include information about—

- (a) the special educational provision and training provision provided for children and young people with special educational needs or a disability by mainstream schools and mainstream post-16 institutions including any support provided in relation to learning or the curriculum;
- (b) the special educational provision and training provision provided by special schools and special post-16 institutions, and those approved under section 41 of the Act;
- (c) the special educational provision and training provision secured by the local authority in mainstream schools, mainstream post-16 institutions, pupil referral units and alternative provision Academies for children and young people with special educational needs or a disability; and
- (d) the arrangements the local authority has for funding children and young people with special educational needs including any agreements about how any of the persons specified in paragraph 1 will use any budget that has been delegated to that person by the local authority.

**4.** The arrangements the persons specified in paragraphs 1 and 2 have for—

- (a) identifying the particular special educational needs of children and young people;

(b) consulting with parents of children with special educational needs or a disability and with young people with special educational needs or a disability;

(c) securing the services, provision and equipment required by children and young people with special educational needs or a disability; and

(d) supporting children and young people with special educational needs or a disability in a transfer between phases of education and transfers from one post-16 institution to another, and in preparation for adulthood and independent living.

**5.** Information, in relation to the persons specified in paragraphs 1 and 2, about

(a) their approach to teaching of children and young people with special educational needs;

(b) how they adapt the curriculum and the learning environment for children and young people with special educational needs or a disability;

(c) the additional learning support available to children and young people with special educational needs;

(d) how the progress towards any of the outcomes identified for children and young people with special educational needs will be assessed and reviewed, including information about how those children, their parents and young people will take part in any assessment and review;

(e) how the effectiveness of special educational provision and training provision will be assessed and evaluated, including information about how children, their parents and young people will take part in any assessment and evaluation;

(f) how facilities that are available can be accessed by children and young people with special educational needs or a disability;

(g) what activities (including physical activities) are available for children and young people with special educational needs or a disability in addition to the curriculum;

(h) what support is available for children and young people with special educational needs or a disability;

(i) how expertise in supporting children and young people with special educational needs or a disability is secured for teaching staff and others working with those children and young people;

(j) how the emotional, mental and social development of children and young people with special educational needs or a disability will be supported and improved.

**6.** Where further information about the bodies specified in paragraphs 1 and 2, including the information required by section 69 of the Act, can be obtained.

**7.** Where the strategy prepared by the local authority under paragraph 1 of Schedule 10 to the Equality Act 2010<sup>a</sup> can be obtained.

---

(a) 2010 c.15

- 8.** Special educational provision and training provision the local authority expects to be made in relation to young people with special educational needs or a disability who have entered into an apprenticeship agreement within the meaning of section 32(1) of the Apprenticeships, Skills, Children and Learning Act 2009.
- 9.** Special educational provision and training provision the local authority expects to be made by providers of training in its area, and outside its area for young people in its area with special educational needs or a disability.
- 10.** Provision available in the local authority's area to assist children and young people with special educational needs or a disability in preparation for adulthood and independent living.
- 11.** Information about support available to young people with special educational needs or a disability receiving higher education, including any disabled student's allowance available under chapter 3 of Part 5 of the Education (Student Support) Regulations 2011<sup>a</sup>.
- 12.** Health care provision for children and young people with special educational needs or a disability that is additional to or different from that which is available to all children and young people in the area, including—
  - (a) services for relevant early years providers, schools and post-16 institutions to assist them in supporting children and young people with medical conditions, and
  - (b) arrangements for making those services which are available to all children and young people in the area accessible to children and young people with special educational needs or a disability.
- 13.** Social care provision for children and young people with special educational needs or a disability and their families including—
  - (a) services provided in accordance with section 17 of the Children Act 1989;
  - (b) the arrangements for supporting young people when moving from receiving services for children to receiving services for adults;
  - (c) support for young people in planning and obtaining support to assist with independent living;
  - (d) information and advice services made available in accordance with section 4 of the Care Act 2014<sup>b</sup>.
- 14.** Transport arrangements for children and young people with special educational needs or a disability to get to and from school or post-16 institution, or other institution in which they are receiving special educational provision or training provision including—
  - (a) arrangements for specialist transport;
  - (b) arrangements for free or subsidised transport;

---

(b) SI 2011/1986, as amended by the Education (Student Fees, Awards and Support) (Amendment) Regulations 2012[SI 2012/1628] and Education (Student Support and European University Institute) (Amendment) Regulations 2013[SI 2013/1728]

(a) 2014 c.23

(c) support available in relation to the cost of transport, whether from the local authority or otherwise.

**15.** Sources of information, advice and support in the local authority's area for children and young people with special educational needs or a disability and their families including information—

(a) provided in accordance with section 32 of the Act;

(b) about forums for parents and carers of children and young people with special educational needs or a disability;

(c) about support groups for children and young people with special educational needs or a disability and their families;

(d) about childcare for children with special educational needs or a disability;

(e) about leisure activities for children and young people with special educational needs or a disability and their families;

(f) about persons who can provide further support, information and advice for children and young people with special educational needs or a disability and their families.

**16.** The procedure for making a complaint about provision mentioned in section 30(2) of the Act.

**17.** The procedure for making a complaint about any provision or service set out in the local offer.

**18.** Information about any criteria that must be satisfied before any provision or service set out in the local offer can be provided.

**19.** Information about how to request an EHC needs assessment, and the availability of personal budgets.

**20.** Information on where the list of institutions approved under section 41 of the Act is published.

**21.** Arrangements for notifying parents and young people of their right to appeal a decision of the local authority to the Tribunal.

**22.** Arrangements for mediation made in accordance with section 53 or 54 of the Act.

**23.** Arrangements for the resolution of disagreements made in accordance with section 57 of the Act.

## 5 Further help

### ***Independent Panel of Special Education Advice (IPSEA)***

Help and advice on all aspects of the law on special educational needs

#### **IPSEA**

6 Carlow Mews  
Woodbridge  
Suffolk  
IP12 1EA

#### **Helplines**

Before LA writes refusing to assess:  
**0800 0184016**  
After LA writes refusing to assess:  
**0845 602 9579**

### ***Education Law Association***

for help and advice from a legal educational professional

Phone or fax 0118 9669866

Email [secretary@educationlawassociation.org.uk](mailto:secretary@educationlawassociation.org.uk)

### ***Legal help and representation***

Under the legal help scheme, a parent or young person on a low income may be able to get limited free legal help from a solicitor. For a parent or young person preparing for the Tribunal, this could cover a second expert opinion and preparing a written case, but not providing a representative. There is a legal aid checker at <http://legal-aid-checker.justice.gov.uk/>.

### ***Useful information***

Statutory guidance: the code of practice which tells LAs how to carry out their duties with regard to SEN: *Special educational needs and disability code of practice: 0 to 25 years*, Ref. DFE-00205-2013.

Download from:

<https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>