

EHCPs & SEND Provision

What is an Education, Health and Social Care Plan (“EHCP”)?

An EHCP is a legally-binding document which sets out all of the education, health and social care needs of a child or young person and the support required to meet those needs. It therefore extends beyond simply naming a school and provides the opportunity to pull together and co-ordinate all the provision required to meet identified needs.

How does a Local Authority determine whether an EHCP is necessary?

In order to secure agreement by a Local Authority to issue an EHCP, it must be demonstrated that it is necessary for ‘special educational provision’ to be made.

What does Special Educational Provision (“SEP”) mean?

Provision that is additional to or different from provision made generally for others of the same age in mainstream school institutions. For a child under 2, SEP means educational provision of any kind.

What is the Local Offer?

A publication which must be publicly accessible. It is usually available on a Local Authority’s website. It should contain information about the education, health and social care provision a Local Authority actually expects to be available for those with SEN, who are disabled, and for those without an EHCP.

Education, Health and Care (“EHC”) needs assessment

The first stage in the process of obtaining an EHCP is an “EHC needs assessment” which may, but not always, lead to the preparation of an EHCP.

When can an EHC needs assessment be requested?

By a child’s parent, young person, or any social care, education, or health body who wishes to bring a child or young person aged 0-25 to a Local Authority’s attention.

Can a Local Authority refuse to complete an EHC needs assessment?

Yes. A Local Authority must have regard to the following factors to determine if an assessment is required:

- Academic attainment and rates of progress.
- Nature, extent and context of the child or young person’s SEN.
- Evidence of action already being taken by the placement.
- Evidence that where progress has been made, it is only as a result of additional intervention and support above that usually provided.

- Evidence of physical, emotional, social development and health needs.

The EHC needs assessment decision is a two stage process.

The first stage is a “screening decision” to decide whether or not SEP may be necessary. The second stage is to determine whether or not to conduct an EHC needs assessment.

A Local Authority is permitted to develop its own specific criteria. It is therefore essential to check your Local Authority’s criteria.

Screening and assessment decisions must be communicated within 6 weeks of receipt of an EHC needs request.

The Assessment Process

When a Local Authority undertakes an EHC needs assessment, it must have regard to key principles and seek information or advice on the EHC needs of the child or young person, what provision may be required to meet identified needs, and the outcomes to be achieved.

A quality assessment should reference information from:

- The child’s parent or young person.
- Head teacher of the school or college.
- Medical advice and information from a healthcare professional.
- Psychological advice and information from an educational psychologist.
- Social care advice and information.
- Any other person the Local Authority believes to be appropriate, or reasonably requested by the child’s parent or young person.

How long should the EHC needs assessment process take?

No longer than 20 weeks unless there are ‘exceptional circumstances’. For example, ‘exceptional circumstances’ may occur when information on needs is requested but the educational institution is closed for at least 4 weeks. This may delay the submission of the information required to complete the assessment.

Potential Outcomes?

An EHC needs assessment may result in:

- a) A decision not to issue an EHCP: The young person and/or parents must be advised of this outcome within 16 weeks of the date when the request for an EHC needs assessment was lodged.

- b) A decision to issue an EHCP: A draft EHCP must be provided to the young person and/or parents to obtain their views within 15 calendar days of the decision.

What factors can a Local Authority consider when deciding whether to issue an EHCP?

- The child or young person’s SEN and the SEP made.
- Whether the information obtained from the EHC needs assessment confirms the view of the nature and extent of SEN held prior to the assessment.
- Whether the SEP made prior to the assessment was well-matched to the SEN needs.

Where, despite appropriate assessment and provision, the child or young person is not progressing, or progressing sufficiently well, the Local Authority should consider what further provision is required. The following factors must be taken into account:

- Whether the SEP required to meet need can reasonably be provided from within the resources normally available; or

- Whether it may be necessary for the Local Authority to make SEP in accordance with an EHCP.

What principles must Local Authorities, Schools, and Health Bodies have regard to in any decision making?

- The views, wishes and feelings of the child or young person, and the parents.
- The importance of the child or young person, and the child’s parents, participating as fully as possible in decisions, and being provided with the information and support necessary to enable participation in those decisions.
- The need to support the child or young person, and the child’s parents, in order to facilitate the child or young person’s development and to help them achieve the best possible educational and other outcomes, preparing them effectively for adulthood.
- All assessments should adopt a person-centred and co-ordinated approach.

Contents of an EHCP

EHCPs should be clear, concise, understandable, accessible, forward-looking, and outcomes focused.

Format of an EHCP

EHCPs must include the following sections:

Section	Content
A	The views, interests and aspirations of the child, parents and/or the young person.
B	The child or young person’s SEN.
C	The child or young person’s healthcare needs which relate to their SEN.
D	The child or young person’s social care needs which relate to their SEN or disability.
E	The outcomes sought for him or her.
F	The SEP required by the child or young person.
G	Any health care provision reasonably required by the learning difficulties or disability of the child or young person which result in SEN.
H1	Any social care provision which must be made for the child or young person as a result of Section 2 CSDPA 1970.
H2	Any other social care provision reasonably required by the learning difficulties or disability which result in SEN.
I	The name of the school, maintained nursery school, post 16 institution or other institution to be attended or the type.
J	Where any SEP is to be secured by a direct payment, the SEN and outcomes to be met by the direct payments.
K	Copies of all advice and information obtained as part of the EHC needs assessment.

Annual Reviews

An EHCP must be reviewed every 12 months starting from the date the plan was first made.

If the child is under 5, a Local Authority should consider a review every 3-6 months.

When can a person’s EHC needs be re-assessed?

If the Local Authority has not completed an assessment within the 6 months prior to the date of a request and it is agreed a re-assessment is ‘necessary’.

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Can a refusal to issue an EHCP, the contents of an EHCP, or refusal to re-assess be challenged?

Yes. By way of an educational complaint or appeal to the Special Educational Needs and Disability Tribunal, referred to as the First Tier Tribunal. Any appeal must be lodged within 2 months of the date of the decision complained of.

An appeal can be lodged with regard to SEN, provision and the proposed placement (i.e. Sections B, F and I).

If the appeal is part of the National Trial, the Tribunal can make non-binding recommendations in relation to the health and social care aspects of an EHCP.

A mediation certificate must be obtained prior to appeal.

How can Lester Aldridge assist?

At Lester Aldridge we have experience of supporting clients through the process of securing SEND provision. Our aim is to ensure that a child or young person receives the EHC provision required to meet need. We can provide:

- An initial, free consultation to discuss eligibility for an EHC needs assessment, EHCP, and the best approach to ensure the EHCP is used to coordinate the provision required to meet education, health and social care needs.
- Support to request an EHC needs assessment.
- Representation and advocacy at assessments to ensure that needs and preferences are clearly articulated to assessors.
- On-going support and advice to review and negotiate amendments to the draft EHCP with a Local Authority.
- Representation at Annual Reviews to ensure an EHCP is amended to reflect changes in need.
- Advice and representation in respect of any challenges.