

SEND Fact Sheets 2023



**A guide to local authority
duties and processes**

SEND – Information and Processes

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Before contacting the Local Authority...

The Local Authority is aware that parents and carers make contact with members and MP's as a source of support in relation to their concerns or queries in relation to the special educational needs (SEN) of their child. This is especially challenging due to the impact on many children's development during the pandemic and the increasing numbers of children identified as having SEN needs.

In order to support our children and families it would help everyone involved if the following could be considered in order to respond to queries in a timely way, at times when the matter is already in the complaints process, mediation or Tribunal the appropriate action is being taken.

- ✓ Check the nature of the concern and if this is a matter for the LA or other agencies.
- ✓ If in relation to health provision, please raise your concern with NHS Patient Advice and Liaison Service for the relevant commissioner or health care trust
- ✓ Check who the family have already made contact with
- ✓ Ask for any records of correspondence to check if the nature of the concern has already been responded to including direct correspondence from the team/or to a complaint
- ✓ Check if the matter is in mediation
- ✓ Check if the matter is in tribunal
- ✓ Check if the matter is within the timeframes set out in the code with a 5-day window following decision making points to allow for confirmation between the service and parents
- ✓ Obtain clarity on the outcome being sought and outline this in your communication with us
- ✓ Provide parents with information about:
 - The Local Offer: [SEND Local Offer | Glosfamilies Directory](#)
 - SENDIASS: [SENDIASS Gloucestershire | Special Education & Disability](#)
 - Parent Carer Forum: [Glos Parent Carer Forum](#)
 - Gloucestershire Carers Hub: <https://peopleplus.co.uk/gloucestershire-carers-hub>

We understand that the SEN system is complex and can be difficult to navigate. At times we will make decisions that aren't what parents are hoping for and they seek a different outcome. When we do make decisions, we make them on the basis that we have considered and applied the relevant legislation with information available to us.

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In the following pages we have outlined the processes and routes for special educational support which we hope will be helpful to you in understanding the mechanisms for assessment and provision locally. We have also included some examples that we hope will clearly demonstrate the range of support available to those with SEN.

We appreciate parents may not always like the decisions and when making representations to yourselves they are seeking a changed outcome or raising matters that would benefit from wider systems view. Your representations are appreciated to enable us to understand parent and young people's experiences. Where we haven't got it right to learn from this and address this.

Where matters are in relation to preference, or resource we recognise that we are not always able to meet parental wishes. Where this is the case parents have access to mediation and tribunal, during this time we will continued to work with parents to seek a resolution without getting to this point, however at times we do have to come to a position where we are unable to reach agreement. We recognise parents and young people as our customers may not feel supported by this position but we do have to make decisions that provide equal access to all children across Gloucestershire and use our resource efficiently and effectively.

Parents have access to a range of systems of support to seek a differing outcome and redress, this is always communicated with parents in our correspondence to enable transparency and partnership working.

We know we don't always get everything right or are as timely as we would like to be, when this occurs, we make every effort within the resource we have to put the matter right. We learn from all feedback to our services and strive to make service improvements.

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What are special educational needs?

Special educational needs (“SEN”) can affect a child or young person’s ability to learn. For example, someone’s SEN might affect their:

- reading and writing, for example because they have dyslexia
- ability to understand things
- behaviour or ability to socialise, for example experience difficulties making friends
- concentration levels, for example because they have ADHD
- physical ability to do things such as writing.
- There are two questions to ask when thinking about whether a child or young person has SEN.

1. Do they have a learning difficulty or disability?

A child or young person has a learning difficulty or disability if:

- they have significantly greater difficulty in learning than the majority of others of the same age, or
- they have a disability which makes it difficult for them to use the facilities normally provided for others of the same age in mainstream schools or post-16 institutions.
- Someone has a disability if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out day-to-day activities.

2. Does that learning difficulty or disability call for special educational provision to be made?

Special educational provision is any educational or training provision that is additional to, or different from, that made generally for other children or young people of the same age. This is a wide definition, and could cover a wide range of things, for example:

- having materials provided in a larger font
- needing one-to-one support
- communicating through sign language
- needing small class sizes

If the answer to **both** of these questions is yes, then the child or young person has SEN.

Children and young people with SEN are entitled to extra support with learning at nursery, school or college.

Some children or young people may need additional support which is not special educational provision; for example, they might need certain treatments or medicines

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administered at school because of a medical condition they have. In order to be classed as having SEN, they must require support with **education or training** which is different from that given to other children or young people of the same age.

Some children may miss some school as a result of a short-term issue, such as a shorter-term illness. As a result of this missed learning, they may require additional support / catch up sessions to be put in place for a short period of time. Whilst this additional support would be considered different from or additional to what all children were receiving, it does not mean that a child in these circumstances would be considered as having special educational needs.

Example A

Child who has medical needs that are not special educational needs

Belle has epilepsy and can on occasion have seizures. These seizures mainly occur at home, first thing in the morning but on occasion can require emergency PRN medication to be administered to help her recover from a seizure.

In this example Belle may require a My Plan to ensure that people are aware that she has specific medical needs that require monitoring. Attached to this My Plan may be an epilepsy support plan, including an emergency medication protocol to ensure that her medical needs are managed.

Provision for Belle may include some additional checks to ensure that she is safe on school site and that staff ensure she is attending lessons where she should be and that she has not had a seizure on the way to a lesson. Additional provision could include access to a safe place for her to sleep if she has had a seizure on school site.

Whilst this provision is additional to what all students may receive, she would not be classed as having SEN.

Equality Act:

Schools are required to make adjustments under the Equality Act 2010 as set out below. Parents can be advised of this position and supported to make contact directly with the school, if the matter isn't resolved to a parent's satisfaction, the school complaints procedure can be followed.

“All schools have legal duties under the Equality Act 2010 towards individual disabled children and young people.” Education providers must make reasonable adjustments to prevent disabled students being put at a substantial disadvantage compared with their peers. These changes can include providing extra support and aids (like specialist teachers or equipment). This duty is anticipatory – it requires thought to be given in advance to what disabled children and young people might require and what adjustments might need to be made to prevent that disadvantage.

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The Special Educational Needs Code of Practice specifies that potential areas of difficulty should be identified and addressed at the outset. 'Lessons should be planned to address potential areas of difficulty and to remove barriers to pupil achievement. In many cases, such planning will mean that pupils with SEN and disabilities will be able to study the full national curriculum.'

Example B

Child has a physical disability and this impacts on learning

Jacob has cerebral palsy and this affects his movement around his classroom. At times he requires the use of a wheelchair to support his movement around busier environments.

Alongside his diagnosis of cerebral palsy, Jacob has also been assessed as having some additional learning difficulties; he is currently working at a level around 18 months below that of his peers.

In this example Jacob may require some environmental adaptations that support him to be able to access his classroom more positively. This could include ensuring the classroom remains free of 'clutter' and there are greater spaces between furniture to support John to move around the classroom safely. Jacob may require wheelchair access from the playground to the classroom. These classroom / environment adjustments could be considered reasonable adjustments under the Equality Act (2010) and are not necessarily indicating that John should be considered as having SEN.

As Jacob as additional learning needs, he does require the support of specific literacy and numeracy interventions that targets gaps in his knowledge and areas where Jacob has been assessed as having difficulties, such as his working memory. These interventions are specifically addressing specific areas of learning needs and are considered special educational provision.

The combination of these two areas of need mean that it is appropriate for Jacob to be considered having SEN.

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How should the local authority help?

The Local Offer

An LA must publish a Local Offer containing information about all the services and support it expects to be available for children and young people with SEN and/or disabilities for whom they are responsible. This must include not only what services are available in the geographical area but also all services outside the LA's area which their children and young people are accessing. This will include independent schools or colleges, therapy services and care placements.

The Local Offer should not be just a directory of services or series of links. It must say clearly what the LA expects to be available in terms of:

- what schools, colleges and other settings will provide from the funding they receive for SEN
- what schools, colleges and other settings in its area will provide from the funding they receive to support those with a disability
- educational, health and care provision
- training provision
- transport arrangements between home and school, college or early years' settings
- support for preparing for adulthood and independent living

The Local Offer is not legally binding. There is no guarantee that a service mentioned in the Local Offer will be available. However, the Local Offer can be useful for working out whether the LA has resources which can support a child or young person, or if it will be necessary to look to neighbouring local authorities or the private sector for support.

An LA must consult children, parents and young people in developing the Local Offer and in periodically reviewing it. They must make sure there is a way for public comments to be made and published about the Local Offer and they must then take them into account.

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Independent advice

An LA must commission an Independent Advice Service. SENDIASS Gloucestershire provides information, advice and support on matters relating to children and young people with special educational needs and disabilities (SEND). The service is offered to parents and carers of children and young people aged between 0 and 25 years old.

SENDIASS provides free, confidential, impartial advice and helps parents play an active and informed role in their child's education. SENDIASS has a team of advisers who can:

- Provide information and advice
- Help you to prepare for meetings, appeals and tribunals
- Help to explain reports written by professionals
- Provide a range of written literature
- Signpost to other sources of help

Parent Carer Forum

Every Local Area is strongly encouraged to have a parent carer forum, this is funded by a DfE Grant. Gloucestershire has the Gloucestershire Parent Carer Forum which is a community interest company. The LA and the ICS are strategic partners with the forum, with the shared responsibility to work with the forum as a strategic partner to ensure parent voice is heard and responded to.

Carers Support- Gloucestershire Carers Hub

Gloucestershire LA and the ICS recognise the importance and carers, in the case of young people with SEND the role of parent carer.

We make available access to a range of parent carer support through our carers hub, they can offer a range of support and advice to parent carers and ensure their voice also informs strategic planning.

What the Local Authority must do Local authorities ("LAs") have legal duties to identify and assess the special educational needs ("SEN") of children and young people for whom they are responsible. LAs become responsible for a child or young person in their area when they become aware that the child or young person has or may have SEN.

Under the Children and Families Act 2014, the LA must always think about how the child or young person can be supported to facilitate their development and to help them achieve the "best possible educational and other outcomes".

If a child is educated in an early year setting, a school or post-16 institutions, then that setting has duties to support the child, in particular, through SEN Support. See further information on our fact sheet about how nursery, school or college can help.

If a child or young person needs, or may need, more support than their school or other setting can give them, this is resource over and above the notional SEN funding

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schools are required to make available to a child. When this is the case, the LA must carry out an Education, Health and Care needs assessment. This assessment may lead to an Education, Health and Care plan (“EHC plan”) being produced for them. An EHC plan will set out the additional support the child or young person needs and the school or other institution they will go to.

What a school should already have in place and notional funding?

The SEND Code of Practice says:

Schools should use some of their budget to buy resources and make provision for children who need additional help. This can take many forms. For example, children with SEN might need:

- changes to the curriculum
- special equipment or teaching materials
- the use of additional information technology
- small group work
- support in the classroom
- a base to work in or have quiet time.

Where does funding for SEN come from?

All mainstream schools receive money for special educational needs support and resources. Schools can decide how to spend this money. This is called “delegated” funding because it is given (delegated) to schools by local authorities or the Education Funding Agency from money they receive from central government. The SEN part of the school’s income is sometimes called the “notional” SEN budget because it is not based on the school’s actual numbers of pupils with special needs, but on a formula.

All schools must publish a SEN information report. This is information on the school in respect of the way that they support children with additional needs. The SEN information report must include information about how the school approaches the graduated pathway and the school’s policies for making provision for children with SEN. This information must also include how the school monitors the effectiveness of its provision, how the school adapts the curriculum and learning environment for children with SEN, how the school enables children to participate fully in the school community and key information on staff in the school who support with SEN, including training and expertise.

The SEN information report must be reviewed annually to ensure that the information include is up to date.

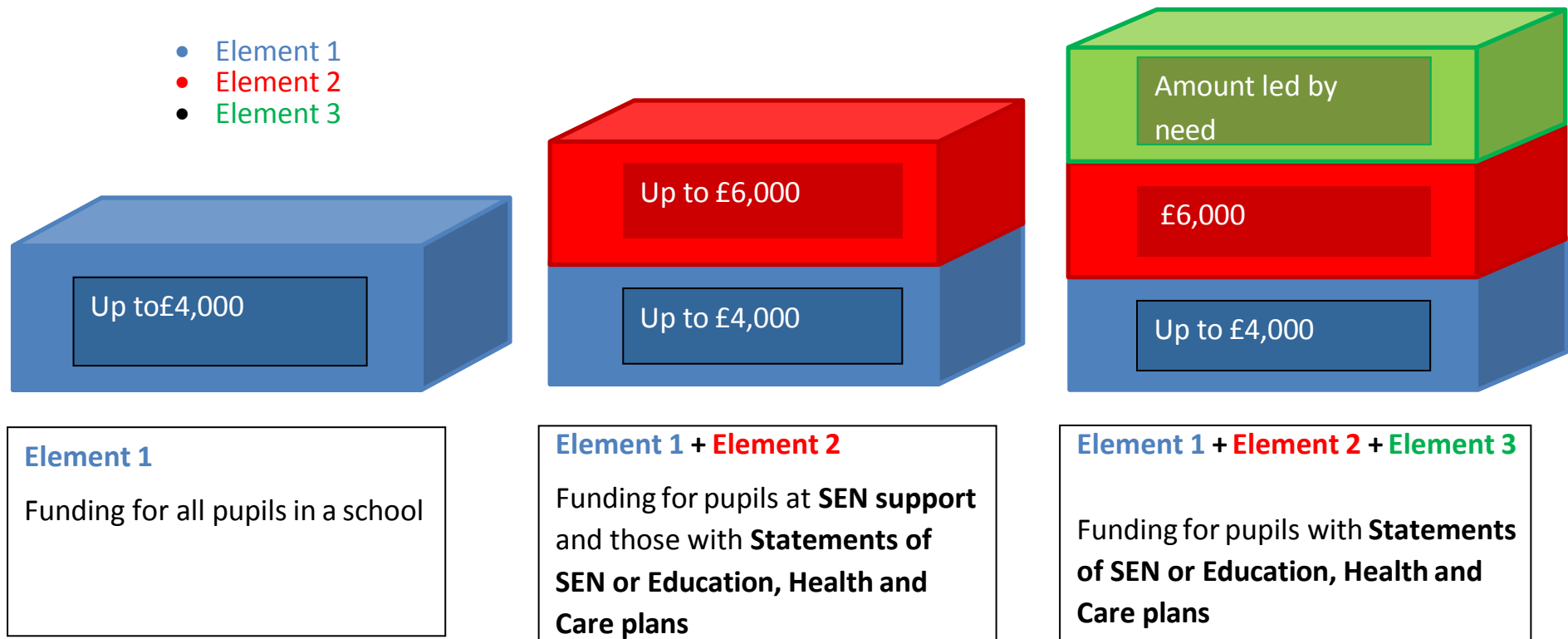
Funding for SEN provision is from three sources (“elements”):
See diagram 1, SEN funding for a description of these elements.

SEN Funding: Diagram 1

Mainstream Schools (academies and LA maintained schools)

Funding is given to mainstream schools under three headings:

- Element 1
- Element 2
- Element 3



Element 1 – Basic per pupil entitlement - core funding

This is the basic funding which schools receive for every child. This is called the Age Weighted Pupil Unit (AWPU) and it is part of schools' delegated funding (which is based on a national funding formulae). This is the amount of money that is allocated to schools for every pupil on roll. This varies according to age, so primary schools get a different rate to secondary schools.

How much element 1 funding do schools get?

Nationally the average element 1 funding is £4,000 per pupil. This varies between local authorities as the grant that each authority receives is not allocated at a standard rate. The national schools block funding formulae states LAs must specify a primary AWPU of at least £2,000 and key stage 3 and 4, secondary AWPU values of at least £3,000.

What is element 1 used for?

This funding is used to run the school and to provide support for all pupils (including those with special educational needs - SEN) so that they can achieve good quality learning outcomes.

Element 2: the school's 'notional SEN budget' – sometimes referred to as additional support funding

Schools have an amount identified within their overall budget, called the notional SEN budget. This additional funding is used to meet the needs of pupils with SEN. It is referred to as 'notional' because it is a suggested amount and is not ring-fenced.

In the funding formulae, LAs specify what percentage of funding allocated through each funding factor contributes to the notional SEN budget. In Gloucestershire the notional SEN budget consists of 2.5 of the basic per pupil entitlement factor + 100% of the prior attainment factor.

How much element 2 funding is used by schools to meet the needs of each pupil?

Pupils with SEN have very varied needs therefore the amount of funding needed to meet these needs will be different for each pupil.

The government suggests that a school should spend **up to** £6,000 on provision for a pupil with SEN but the majority pupils at **SEN support** can have their needs met for much less than this.

What is element 2 used for?

This funding is used for SEN provision that is 'additional to and different from' the provision made for all pupils. This is often referred to as targeted provision or targeted support.

A school must use its 'best endeavours' (do all it possibly can) to meet the needs of pupils at **SEN support** using element 1 and 2 funding. School provision must be based on an 'assess, plan, do, review' cycle implemented in partnership with the pupil and their family. Sometimes the provision may target a pupil but often shared provision is more preferable and meets the pupil's needs best. For example, group work is very important when developing language and social skills. More information about the provision that schools are expected to make for pupils at SEN support can be found in the SEND Code of Practice 0-25 p 99 – 107:

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

Element 3: Top-up funding

Schools can receive top-up funding for pupils with a Statement of SEN or an Education Health and Care Plan when the provision described is above what is covered by Element 2.

Top-up funding is allocated by the Local Authority from national funding called the 'high needs block'. The amount schools receive is updated each term to reflect which pupils are attending which school.

How much element 3 funding do schools get?

This funding is awarded on an individual basis and the amount depends on the pupil's level of need. An EHC plan describes a pupil's needs, agreed outcomes and required provision and the top-up funding is directly linked to these.

What is element 3 used for?

This funding provides the additional individual support needed for the pupil to achieve the outcomes in their EHC plan.

What is the Graduated Pathway?

The Graduated Pathway is Gloucestershire's response to ensuring Early Help is available to all children, young people and their families with additional needs, whether these are educational, social or emotional needs or a disability.

Before undertaking any aspect of the Graduated Pathway there needs to be **informed consent** from the family or the young person if they are able to fully understand the reasons for consent.

The Graduated Pathway is based on a simple Assess, Plan, Do, Review cycle and has the following graduated responses which can be used in any order depending on what would best meet the needs of the child or young person:

My Profile – A My Profile can be completed with any child even if there are no concerns about the child's wellbeing or development. The My Profile helps a child or young person to share personal information which can help professionals working with them to understand what motivates them, their preferences, their goals and their self-image. It can also help professionals to understand what form of communication is most meaningful to the child or young person.

My Plan – A My Plan is used when it is clear what the presenting needs are and who or what can help. It is a holistic child or family-centered plan and can be used as a single or multi-agency plan. The My Plan allows professionals working with children and families to quickly and simply draw together an action plan to co-ordinate the appropriate help and support for the child and/or family at the earliest opportunity.

My Assessment and My Plan + - this should be considered where needs are unclear, and the impact is unknown; where there is already a significant impact which is likely to escalate; and where it is unclear what or who may help. My Assessment focusses on listening to the child/young person and their family in order to understand what is happening for them and what they need to help them make positive changes. My Assessment draws together information from a range of professionals into one document so that a detailed analysis can be made, and an action plan can be developed.

The My Plan + - is the Plan developed from the My Assessment. The '+' indicates to other professionals that an assessment has been completed to ensure there is not duplication of work and that the family do not have to tell their story repeatedly. The My Assessment and My Plan + must be completed together with the family so that they can be empowered to make changes for themselves.

An Education, Health and Care Plan (EHC Plan) – an EHC Plan is a statutory plan that has replaced a Statement of SEN. An EHC Plan may be needed when a child or young person's educational needs cannot be met within existing additional resource already delegated to the school. The LA assesses this need based on the evidence provided. A request for an EHC plan should never be the first step in addressing a child or young person's SEN.

Early Help- Early Help can provide a range of support to a child and family. This includes working with the child, family, school, relevant professionals to understand what life is like for the child and family. This information will be gathered into a My Plan plus which everyone will be involved in developing. This may include a range of support to meet the child and families needs.

Single Assessment – If a referral is made to Social Care, they may undertake an Assessment of Need involving, the child, family, school and relevant professionals to help them make a decision about what happens next. This looks at the developmental needs of a child/young person, the family's strengths in managing the difficulties they may be experiencing, any support they may already have in place and what is needed to support the child and family. This information will be gathered into an assessment and if needed a plan, which may include a range of support to meet the child and families needs.

Local Authority process for EHCP Assessment request

The school or early years setting can often give a child help through SEN support. This means that the school makes additional or different provision from that provided to most other pupils to meet their needs. Sometimes other professionals will give advice or support to help a child learn. Key professionals who work with schools to support meet the needs of children with SEN includes the Educational Psychology Service, the Advisory Teaching Service, the Education and Inclusion team and a range of NHS therapy services including speech and language therapy and occupational therapy. On the next page is an example of how the identification of needs and support can work in practice.

Example:

Zoe is in Year 4 and is working around 18 months below the level expected for a child of her age. She has recently begun to display low level disruptive behaviours in the classroom.

There is an expectation that the school will already be supporting Zoe with additional provision, the intended outcomes of this should be included in a My Plan.

Due to the newly emerging disruptive behaviours of Zoe it may be at this point that the school engage the support of services such as an educational psychologist.

The educational psychologist will be able to support the school to understand how to most effectively support Zoe to make good progress and improve her emotional regulation in the classroom. Educational psychologists benefit from accessing the latest research and interventions with regards to supporting children and this knowledge and expertise is invaluable in helping build capacity and knowledge within the school.

Through the support of the educational psychologist, evidence-based interventions can be recommended and further support may be identified. For example, Zoe has speech and language needs that has made it increasingly difficult to access the language of the classroom. This would lead to a speech and language therapy referral and more key professional support Zoe to overcome her underlying difficulties.

As a result of this input, Zoe can access the language of the classroom more confidently and this would reduce the likelihood that she disengages from learning or becomes disruptive in the classroom. As Zoe is now more engaged and is thriving with the interventions suggested by the educational psychologist. The next review shows that Zoe is no longer displaying disruptive behaviours and has made good progress, beginning to close the gap between where she is working and the expectations for a child of her age.

Some children need more help than the school can provide. If a child does not make progress despite everything the school has tried, an EHC needs assessment may be the next step.

Where the school has followed the graduated pathway and an EHC needs assessment has been requested, the law states that if a child has or may have special needs and may need provision to be made via an EHC plan, the local authority must conduct an EHC needs assessment.

This means that the parent or carer does not have to prove that an EHC plan is definitely necessary to obtain an assessment, you just have to show it may be necessary.

If a parent or carer believes their child needs more help than the school can provide, they can ask for an assessment. In most cases, the school will have been working closely with parents to support their child with SEN over an extended period of time. In these cases, if it is agreed that an EHC needs assessment is potentially needed, the school are often best placed to request this assessment. In some cases, a parent may feel that they need to initiate the request for an EHC needs assessment. This is a right parents have and we would always encourage the parents to speak with the school first to ensure that all necessary steps have been taken prior to the request.

What happens when the local authority gets a request for an EHC needs assessment?

As soon as the local authority receives a request for an EHC needs assessment they must tell the parent or carers about it.

Deciding whether to conduct an EHC needs assessment

Once the local authority identifies that a child has SEN or receives a request for an assessment, they have up to six weeks to decide whether to carry one out. During that time, they will ask parents and others – such as a child’s school or other setting – for information to help them make that decision.

If the local authority decides not to carry out an assessment, they need to let the family know their decision within six weeks of receiving a request for an assessment. The local authority is expected to help find other ways that the child can be supported in their school or other setting. Often this can be recommendations to other services that can support this child or ways the school can offer Quality First teaching and use their resource effectively.

We encourage schools to work with parents to submit a request together so we get all the information in one place to make a well-informed decision.

Conducting an EHC needs assessment

Local authorities need to make sure that the family and child are fully involved in the EHC needs assessment. They need to provide impartial information, advice and support this is available through Gloucestershire SENDIASS.

The assessment includes talking to the family and child to hear what support they feel the child needs. The assessment also includes seeking information and views from people who work with the child, such as class teachers, medical professionals, educational psychologists and therapists.

The SEND regulations state that a parent can ask the Local Authority to gain information and advice from anyone they *reasonably* consider appropriate. At times the Local Authority will receive requests for information and advice from services such as the speech and language therapy service who have previously not had any involvement with the child. This situation can be extremely difficult to manage as often these services are unable to meet the request for information due to their capacity to respond in a short timeframe.

When information and advice is not obtained from these services that can lead to frustration from parents who feel that the Local Authority have not met their statutory requirements and that the assessment has been undermined as a result. Examples such as this are why the Local Authority encourage schools and parents to ensure that all key specialist professionals are engaged before requesting an EHC needs assessment. This allows sufficient time for specialist professionals to complete relevant assessments,

suggest appropriate interventions to support a child's needs and allow time for those interventions to have a positive impact.

Deciding whether an EHC plan is needed

After the local authority has made its assessment, having involved the parent and child fully in the process, it will then decide whether or not an EHC plan is necessary. If it is decided that an EHC plan is not needed, they must tell the parent/carers within 16 weeks of the date they received the initial request for an assessment.

Preparing an EHC plan

If the local authority decides to proceed with an EHC plan, they should work closely with the family and the child to make sure the plan takes full account of their views, wishes and feelings. Once the plan has been written, a draft will be sent to the parent/carers which must not contain the name of the school or other setting your child will attend. The parent/carers will be given 15 days to comment on the draft and can ask for a meeting to discuss it if they want one.

At that point the parent/carer will also be able to request a specific school, or other setting, the want their child to attend. This could be a mainstream school or special school. The local authority has 20 weeks from the request for the EHC needs assessment to issue the final plan.

Once an EHC plan has been finalised, the local authority has to ensure that the special educational support in section F of the plan is provided, and the health service has to ensure the health support in section G is provided. This should help to enable the child to meet the outcomes that have been jointly identified and agreed.

Annual reviews of an EHC plan.

The local authority has to review the child's EHC plan at least every 12 months. That review has to include working with the parent/carer and child and a meeting which the parent/carer and young person must be invited to. Under the SEND Regulations, the school has two weeks following the annual review to send everyone involved a copy of the review meeting report. Within four weeks of the review meeting, the Local Authority must notify the parents of its decision whether to amend the plan, maintain it in its existing format or cease to maintain it. A recent High Court ruling has stated that where a Local Authority intends to amend the EHC plan, a copy of the amendment notice, indicating the proposed changes, should be issued within this four-week timeframe. The Local Authority has a maximum of eight weeks to finalise an EHC plan following the issuing of an amendment notice.

At times, where a child or young person has made extremely good progress, and their stated outcomes have been achieved, the Local Authority may make the decision to cease to maintain their EHC plan. For some children / young people, they may have had an EHC plan for a long period of time and it can be a cause for concern for parents if the EHC plan is ceased.

The Local Authority recognise the importance of celebrating the success of a child or young person in overcoming the challenges they have previously faced to the point where they no longer require the support of an EHC plan. It is important at times such as these to recognise that this does not mean that the child or young person does not have any ongoing needs at all. It would be appropriate at such a time for the child or young person to continue to receive support, but at the level of SEN Support. A child or young person should not go from having the high level of support offered through an EHC plan to having no support at all, this does not demonstrate a good implementation of the graduated approach. The child or young person should instead be supported by an appropriate plan (My Plan / My Plan+) and should continue to receive support in line with their ongoing difficulties.

It is important for the child or young person that their success is celebrated and recognised in the fact that an EHC plan is not required. Whilst concerns from parents should be acknowledged, concerns regarding ceasing an EHC plan should not be a barrier to it occurring. It is important that schools work with parents to understand any concerns they may have and coproduce alternative support plans so that parents can understand how their child will continue to receive ongoing support, commensurate with their child's needs.

Choosing a school/college with an EHC plan

Parents or young people have a legal right to request that a particular school or college is named in an education, health and care (“**EHC**”) plan (or to express a preference for an independent school, college or other institution). IPSEA have a number of resources and templates to support parents www.ipsea.org.uk

Parents who have children with EHC plans are not required to complete general preference forms. The LA cannot impose this requirement on these parents or young people but there might be a risk in not following this process; if the LA refuses to name the parent/carer choice of school, they may name a school that you would be particularly unhappy with. Where a child has an EHC plan and the parent does not indicate a particular preference for a school, the Local Authority will consult with the school(s) it deems is most appropriate to meet the child’s identified special educational needs. It is important to remember, however, that even if you do list several preferences the LA can **only** refuse to name parental first preference if one of the legal reasons for refusal applies.

Requesting a nursery, school or college

A parent or young person will be able to request a particular school or college when they receive a draft EHC plan or an Amendment Notice amending an EHC plan. This might be when they are getting an EHC plan for the first time; if the EHC plan is being amended after an annual review; or if the EHC plan is being amended at any other time (for example, if the child or young person has to move schools and the EHC plan needs to be amended to reflect that).

The parent or young person has a right to request any of the following types of school or college:

- A maintained school or nursery (mainstream or special)
- An Academy (mainstream or special)
- An institution in the Further Education sector
- A non-maintained special school
- A section 41 school.

These are listed in section 38(3) of the Children and Families Act (“**CAFA**”) 2014.

The only reason the local authority can refuse the request is if:

- The setting is unsuitable for the age, ability, aptitude or special educational needs (“**SEN**”) of the child or young person; or
- The attendance of the child or young person would be incompatible with the provision of efficient education for others; or
- The attendance of the child or young person would be incompatible with the efficient use of resources.

This is set out in section 39(4) CAFA 2014.

The Local Authority will attempt, as far as possible, to facilitate a parent's preferred school setting, however accommodating the preferred setting this is not always possible. There are a range of reasons why this may not be possible, including the needs of the other children in the school or the ability of the school to provide certain identified provisions. It is understood that parents have often identified good reasons for their preferred setting, however at times a closer school is able to offer a suitable placement.

At times such as these we will continue to work with parents to reach a positive outcome. It could be that a solution includes agreeing to name the parent's preferred setting but ensuring that they take responsibility for getting their child to and from school. On some occasions it is not possible to name the parent's preferred setting, however the team continue to work with parents to support them to understand the reason for the Local Authority's decision and what support could be offered to overcome any continued concerns. The Local Authority recognises the important right of a parent to state a school preference and is committed to support local schools to develop SEN provision in their school so that all children can receive the support they need within their local school.

The right to a mainstream education

If the parents or young person wants a mainstream school or college named in the EHC plan, there is another part of the law they can rely on as well. Section 33 CAFA 2014 says that a child or young person with an EHC plan **must** be educated in a mainstream setting unless:

1. it is against the wishes of the child's parent or the young person; or
2. it is incompatible with the provision of efficient education for others **and** the LA *shows* that there are no reasonable steps that it could take to prevent the incompatibility.

Even if the LA successfully argued that a mainstream school was unsuitable for the ability, aptitude or SEN of the child or young person (one of the lawful reasons for refusing a school, detailed above under 'Requesting a nursery, school or college'), if they wanted to name a special school against the parent or young person's wishes they would **also** have to show that it was incompatible with the provision of efficient education for others.

Note, however, that this is a right to *mainstream education* but not necessarily a right to a particular mainstream school. Should the Local Authority name a school that is not parental preference it will ensure parents are informed of the reason for our decision and routes available for them to raise their concerns.

What happens after a parent requests a particular school?

An LA, before naming a school, must consult:

- (a) the governing body, proprietor or principal of any school or other institution the authority is considering having named in the plan, and
- (b) if that school or other institution is maintained by another LA, that LA.

(Section 39(6) CAFA 2014.)

The LA should give them 15 days to respond. If they fail to respond, the LA does not have to wait to make a decision about naming a school/college. The LA still needs to stick to the statutory deadlines for issuing a final plan. The LA should issue the draft EHC plan (or amendment notice) well before the deadline to make sure it can comply with its consultation duties.

The final decision rests with the LA where the child or young person lives. Even if the school or college, and/or the LA where the school or college is located (if different), objects, the home LA can still choose to name the school or college in the plan.

Example

Jake attended a local secondary school where his behaviour had led him to be at risk of permanent exclusion. Jake spent some time in an alternative school and his behaviour improved and he was motivated to learn. The parent requested that the alternative school was named in Jake's plan however this school refused the request for a placement stating that they were unsuitable to meet Jake's long-term needs.

In this case, the Local Authority worked with the school to understand the concerns that prevented them responding positively to the request for a placement. These concerns included the ability of the school to offer Jake a long-term positive placement and the school were also aware that should Jake be taken on the roll of the school, should the placement not be successful, this could lead to a permanent exclusion.

Having considered the school's concerns it was acknowledged that there was no guarantee that Jake's positive response to the school would last long term. There was however no evidence to suggest the contrary and the school had already demonstrated the ability to put in place the SEN provision Jake required. As a result of this, having considered all the information available, it was determined that there was no legal reason not to agree to the parent's request and the school was named in Jake's EHC plan. Jake remained at the school successfully for the next two years, at which he completed Year 11 and left to attend a local college.

Asking for an independent school or college

Parents or young people have a **right** to request the settings listed above, set out in section 38(3) CAFA 2014.

However, this does not mean that they cannot **ask for and argue for** a place at an independent setting which is not on the above list.

Where parents are making representations for an independent setting, the LA must have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents, so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure (section 9 Education Act 1996). If a young person is requesting an independent school or college,

the LA should consider this as part of their duty to consider the young person's views, wishes and feelings (section 19 CAFA 2014).

The difference is this: when a parent or young person requests a section 38(3) school or college, the LA must comply with the request unless the limited exceptions outlined above apply. If the LA refuses to name the parent or young person's choice, the onus is on the LA to prove why it is not possible.

However, when a parent or young person asks for an independent setting as part of their 'representations' on the draft EHC plan, the onus is on them to prove that none of the schools the LA is offering can meet the child or young person's needs, **or** that the cost of the placement will not constitute unreasonable public expenditure.

Public expenditure includes all the costs to the public purse of the placement not just those incurred by the LA education budget. This can include social care costs, health costs and any other costs incurred by any public body.

If the parent or young person cannot show this, the LA is under no obligation to look at independent provision. It does not matter that the independent setting proposed is an excellent school and/or better suited to the child or young person's needs than the school the LA has in mind. LAs are not bound to offer a child or young person with SEN 'the best' provision to meet their needs – only what is necessary to meet their needs.

In practice, the most important point to prove is **not** that the independent setting is better than the LA's proposed school or college, but that the school or college offered by the LA cannot meet the child or young person's needs.

Where a parent or young person is requesting an independent setting, they will generally need evidence from a professional as to why the independent setting is the only school or college which can meet the child or young person's needs.

Additionally, there must be an offer of a place from the independent setting. Unlike the section 38(3) schools listed above, an LA cannot order an independent school to accept a child or young person.

The courts have considered situations in which an independent setting should be named in an EHC plan and given examples of when a setting would be considered an unreasonable public expenditure.

What happens once a school or college is named in an EHC plan?

If one of the type of nurseries, schools or colleges listed in section 38(3) CAFA 2014 is named in section I of an EHC plan then they must admit the child or young person (section 43 CAFA 2014).

If an independent school is named in section I, then the LA must pay any fees payable in respect of education or training provided for the child or young person at that school, institution or place in accordance with the EHC plan (section 63 CAFA 2014).

The LA could simply name a type of school or college (rather than a particular school/college). This is lawful, but it means that there is no school/college with the duty to admit the child or young person.

If the family receive an EHC plan which does not specify a particular school/college, then they can appeal to the SEND Tribunal and seek to have a particular school/college named in the EHC plan.

If the parent/carer disagree with the choice of school named in the plan by the authority, then they could challenge the decision at appeal as well.

Appeals process

Parents and carers with a child with SEN can apply through the usual admissions process for phase transfer or in year admissions if they want a school place, this includes whilst an EHCP assessment is taking place. This is for a child with SEN not an EHCP (once it has been awarded)

If parents have any questions about the school named in their child's Education, Health & Care Plan (EHCP), please follow this link to find information, as this comes under a different process: [Special Educational Needs and Disability \(SEND\)](#)

For queries about school admission appeals: school.appeals@gloucestershire.gov.uk

Ceasing plans

A local authority may cease to maintain an EHC plan for a child or young person only if the authority determines that it is no longer necessary for the plan to be maintained.

SEND Code of Practice:

Where a local authority is considering ceasing to maintain a child or young person's EHCP it must:

- inform the child's parent or the young person that it is considering this
- consult the child's parent or the young person
- consult the school or other institution that is named in the EHCP

The LA may issue a **notice to cease to maintain an EHCP at any time**.

The SEN Regulations provide for a two-stage process:

1. when a local authority is considering ceasing to maintain an EHCP **it must inform the child's parent or the young person and consult them as well as the head teacher or principal** and;
2. having carried out that consultation, if the LA decides to cease to maintain the EHC plan it must then **notify the child's parent or young person**, the institution named and the responsible commissioning body

This means that you should receive two separate letters from the LA.

In both cases, therefore, the question will be the '**necessity**' of the EHCP and whether it is still required by the child or young person

Procedure for determining whether to cease to maintain EHCP

Where a local authority is considering ceasing to maintain a child or young person's EHC plan it must:

- inform the child's parent or the young person that it is considering ceasing to maintain the child or young person's EHC plan; and
- consult the child's parent or the young person.
- consult the head teacher, principal or equivalent person at the educational institution that is named in the EHC plan.

Where, following that consultation the local authority determines to cease to maintain the child or young person's EHC plan, it must notify the child's parent or the young person, the institution named in the child or young person's EHC plan and the responsible commissioning body of that decision.

When notifying the child's parent or the young person of its decision to cease to maintain the EHC plan, it must also notify them of:

- their right to appeal that decision.
- the time limits for doing so.
- the information concerning mediation, set out in regulation 32; and
- the availability of—disagreement resolution services.
- and advice and information about matters relating to the special educational needs of children and young people.

Making a complaint

Every young person's needs are unique, as such there are many different ways of supporting a child or young person with SEND. This means that it can sometimes lead to complaints when the anticipated or requested outcome is unable to be met or the LA isn't acting in the interests of its customers. The local authority recognises that, at times, the outcomes experienced for children is not in keeping with what the parent may have wanted or expected.

This can occur for a number of reasons and the Local Authority recognise the importance of maintaining effective communication with parents in order to work together to resolve any issues that may have occurred. At times resolution can sadly not be reached and in such circumstances, the LA has robust complaints process to ensure that it complies with its legal duties. There are a number of ways in which parents and carers can challenge the outcome of a decision. The LAs Corporate Complaints process stages include:

Informal local resolution

Where possible, we will arrange for the relevant team manager to contact the complainant to see if they can resolve the concerns informally. If they are not satisfied with the response they have received, the feedback will then be investigated as a Stage 1 complaint.

Stage 1 complaint

We aim to acknowledge complaints within 2 working days, which does not include the day feedback was received. The acknowledgement should let the complainant know who will be investigating their concerns, provide relevant contact details, and give a timeframe as to when a response can be expected. The issue(s) will then be looked at and a response should be sent directly, by the service under complaint, within 20 working days.

If the complainant is not satisfied with the response or a response has not been sent within 20 working days, they can ask that their complaint be progressed to Stage 2 (though this request will not necessarily be granted).

Stage 2 review

Once a request for a Stage 2 investigation has been received, the Complaints Manager will consider the request and aim to send their decision within 10 working days. They may well ask, internally, for the views of the investigating officer, and the investigating officer's line manager, as to how to proceed.

Stage 2

If a request to progress a complaint to Stage 2 is accepted, a senior manager who has not previously been involved with the complaint will be asked to reinvestigate the matter. This is typically the line manager of the Stage 1 investigating officer, and the afforded timeframe for response is 25 working days. If the complainant is still not satisfied after the senior manager's response, they have the right to have their complaint considered by the Local Government & Social Care Ombudsman.

Please note: On occasion, it may be concluded that a parents' dissatisfaction with the Stage 1 complaint does not require revisiting under a stage 2 complaint but in fact represents a different complaint and therefore is appropriately dealt with by a separate Stage 1 complaint response.

Local Government & Social Care Ombudsman (LG&SCO)

The LG&SCO considers complaints about councils and some other organisations providing local public services. The service is free, independent and impartial.

See full details of Gloucestershire County Councils complaints procedure and further guidance here: <https://www.gloucestershire.gov.uk/council-and-democracy/complaints-and-feedback/complaints-about-childrens-young-peoples-services>