

Applying for an EHCP with Law

What you need to know when applying for an EHCP Needs Assessment

When you apply for an EHC needs assessment it is helpful to know the law which the LA must operate within. You can quote the relevant law in your EHC needs application.

The law says that if a local authority is requested to carry out an EHC needs assessment by a parent, young person, school or college, they must consider:

- whether the child or young person has or may have special educational needs and
- whether they may need special educational provisions to be made through an EHC plan.

This test is set out in the law (section 36(8) of the Children and Families Act 2014). These are the things that you **MUST** show in your EHC needs assessment for it to be successful.

Child and Family Act 2014, Section 36:

When must the LA carry out an EHC needs assessment?

(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—

the child or young person has or may have special educational needs, and

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

The first part (showing that your child has SEN) is straightforward, any child requiring provision that is different to or additional from what the other children in their class are getting has SEN as defined in Section 20 of the Child and Family Act 2014 below.

Child and Family Act 2014, Section 20:

When is a child or young person considered to have 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.

For the second part, you need to show that your child requires additional support that goes beyond what a school, college, or nursery can typically deliver from their own budgets or staffing.

The SEN and Disability Code of Practice, which is statutory guidance issued by the government, contains further detail on what LAs should consider.

At paragraph 9.14 the Code states that “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”.

The Local Offer have produced SEN Support Guidance for schools which details what you can reasonably expect a mainstream school to provide to support children and young people with SEN. You can [view here](#).

Please note that although the bar to gain an assessment for an EHCP is relatively low, once the assessments are completed the LA can refuse to issue the EHCP should they deem the support identified not warrant an EHCP being issued to provide the school more funding. We refer to case law which was created by BC v Birmingham CC in 2018.

In this case, the judge ruled, “The funding for the preponderance of pupils with SEN at a mainstream school is intended to come, as before from the school’s annual delegated budget...and its notional SEN budget of £6,000. The school is expected to exhaust the £6000 before asking for a top-up funding from the LA.”

This means that before a request for an EHC needs assessment is accepted the LA will expect your child’s current school to submit evidence that they have spent around £6,000 in supporting your child at school and this has not allowed them to meet all of your child’s needs. This equates to around 12 hours of SEN support a week, however, the money can be spent in a variety of ways to meet your child’s needs.

It is clear from this ruling that SEN support needs to be put in place first before an EHCP is considered. A child’s SEN support should be detailed in an individual support plan. Schools use a variety of formats for this, one example is an Individual Education Plan (IEP). The SEN support plan should then be reviewed regularly to check that the provision in place is adequate to meet the needs of the child.

When deciding if a child needs an EHCP, the LA should pay particular attention to:

- evidence of the child or young person’s academic attainment (or developmental milestones in younger children) and rate of progress;
- information about the nature, extent and context of the child or young person’s SEN;
- evidence of the action already taken by the school or other setting;
- evidence that where progress has been made, it has only been as the result of much additional intervention and support over and above that which is usually provided;
- evidence of the child or young person’s physical, emotional and social development and health needs, drawing on relevant evidence from clinicians and other health professionals and what has been done to meet these by other agencies.

Some types of evidence you might like to include to show that although the school/college or early years setting is putting in support for your child, they require an EHCP:

- Your child/young person's views
- Progress reports
- IEP/support plan/pupil passport/provision map
- Home/school diaries
- Assessment/specialist reports
- Exclusion letters/reports
- Letters/emails from setting/local authority/health/specialist
- Examples of school or homework
- You can request a copy of your child's school record from the school

For more information on how to apply for an EHC Needs Assessment, you can view I.P.S.E.A's guidance [here](#).

To start an application for an EHCP [click here](#).

During the EHC needs application process you will be asked three questions:

- What historical information about the child or young person's special educational needs is relevant to this request? This might include when you first noticed that your child might have SEN.
- If there other people in the family who have SEN.
- Whether they met their early milestones such as talking and walking for example.

What historical information about the child or young person's health needs is relevant to this request?

- Include any medical conditions which impacts of the child's attendance or performance at school. This could be migraines or asthma for example or conditions like autism or ADHD.
- You may also wish to tell the Local Authority if your child has been off school for an extended period of time previously due to ill health due to an accident or illness which might mean there are gaps in their learning.

What historical information about the child or young person's social care needs is relevant to this request?

- In this section you can let the Local Authority know if your child is in foster care, on a child protection plan or was adopted.

After you have submitted your request, you will receive an acknowledgement by email.

Any questions please just let us know.

Disclaimer: Richmond and Kingston SENDIASS has made all reasonable efforts to ensure that the information contained in this factsheet is accurate and up-to-date at the time of publication. It does not constitute legal advice and Richmond and Kingston SENDIASS cannot accept any responsibility for loss or damage suffered as a consequence of any reliance on it.

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