

A parent's guide to the **Special Educational Needs** reforms

The Children and Families Act 2014 came into force on 1 September 2014, making substantial changes to several areas, from family justice to shared parental leave. Part 3 of the act makes changes to support for children and young people in England with special educational needs (SEN).

What are special educational needs?

There is a legal definition for SEN but, in essence, a child is likely to have SEN if they find it harder to learn or access education than the majority of their peers and if they continue to struggle despite extra targeted support. So, a child may have SEN if they have, for example, dyslexia, dyspraxia, autism or a physical disability. The definition of SEN has not changed under the new reforms.

How are children with SEN supported in school?

Prior to September 2014, there were three

tiers of support for children or young people with SEN: School Action, School Action Plus and Statement of SEN. The new SEN regime replaces school based support with either Additional SEN Support or an Education Health and Care Plan (EHCP). The home local authority will contribute to the preparation of the EHCP, whereas Additional SEN Support is solely the responsibility of the child's school. Under Additional SEN Support the school will carry out cycles of assessing the child's educational difficulties, planning, delivering and reviewing additional support. Under Additional SEN Support each child is entitled to receive up to £6000 per annum of funding from their school. If, despite the additional support, the child is still failing to make sufficient progress, or if more needs to be understood about their learning difficulties, then this would be the trigger for the school or parents to ask the local authority to carry out an EHC needs assessment. Under the old system this was called a statutory assessment. If the local authority agrees to the assessment, it will commission reports from the

child's school, an educational psychologist, medical practitioner, social services and other relevant therapists or experts, such as a speech and language therapist and Teacher of the Deaf. Parents will also be asked to submit their views. The whole process will take 20 weeks and if the reports point to the need for additional support, an Education, Health and Care Plan (EHCP) will be issued. Under the old system, the local authority would have issued a Statement of SEN.

The Statement or EHCP is a legally binding document that outlines the child's educational difficulties, the support that they require at school, health and social care needs and support required, and will name a school that the local authority considers can meet the needs of the child. The school can be maintained or independent, mainstream or special, and day or residential. The school that is named will depend on the requirements of the child, the availability and suitability of other nearby schools and the cost of the placement. The local authority has to fund the support set out in the education section of the Statement or EHCP and the school placement, including school fees, if an independent school is named. If the local authority refuses to carry out the assessment or if parents do not agree with the contents of final EHCP, they will have the right to appeal to the Special Educational Needs and Disability Tribunal.

What HAS changed?

There are subtle differences between the 'old' and new system, the most significant of which are:

- A change of culture where the wishes and views of parents, children and young people are to be given greater importance.
- The replacement of the Statement of SEN with an EHCP which goes from birth to 25 years provided the young person is in some form of further education (not higher education) or on an apprenticeship. Statements only went from two to a maximum of 19 years.
- The introduction of a new principle that SEN support should encourage 'best possible and other outcomes' and that families are central to decision making. Under the 'old' system, children were only entitled



to adequate support. 'Other outcomes' signifies a more holistic approach.

- Parents able to request a Personal Budget in the EHCP. This is the cost of any support outlined in the EHCP. Parents can request direct payments in lieu of the support.
- Parental rights now automatically transfer to the young person when they are over compulsory school age (the end of the academic year in which they turn 16). From this point, there is a requirement for local authorities and the Tribunal to communicate directly with the young person unless they lack capacity to make those decisions.

What HAS NOT changed?

When the Children and Families Act 2014 was being drafted there was a strong lobby to have all disagreements about education, health and social care provision dealt with by one body. This did not happen at the time but has led to the SEND (First Tier Tribunal) (Pilot) Regulations which, at the time of writing, has been delayed to take effect from May 2015.

The Regulations will allow the Tribunal to test hearings where they can make recommendations in respect of health and social care in addition to education. The Regulations will only apply to families living in the twelve participating local authorities. Ealing is one of four London local authorities taking part.

Conclusion

The local authority has until 1 April 2018 to change all existing Statements to EHCPs. Considering that 2.8% of pupils in schools in England had a Statement of SEN in 2014, equating to 232,190 pupils (Department for Education, SEN in England: January 2014), and that each of these has to transition to an EHCP over the next three years, it is clear that local authorities have a mammoth task. The reforms have been in place now for over several months. Already there are a number of emerging concerns, some of which have been brought about by insufficient information in the legislation and accompanying guidance, poor interpretation of the law and local

authorities struggling with the workload. A welcome move is the SEND (First Tier Tribunal) (Pilot) Regulations. It remains to be seen how effective the recommendations will be and whether the pilot scheme will become permanent so that parents will have one body that can rule on all their child's special educational needs.

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Laxmi Patel is an Associate Solicitor and Head of Education at Boyes Turner. The Education team specialises exclusively in SEN, working closely with parents to ensure that children with learning disabilities get the best possible support they need in the school they choose. Check the website for up-to-date news on the SEN changes and downloadable factsheets:

www.senexpertsolicitors.co.uk

If you would like to discuss your child's SEN confidentially, please phone or email Laxmi on 0800 884 0723 or: advice@senexpertsolicitors.co.uk

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