

Decision making Panels for SEND

Understanding The Children and Families Act 2014 and the SEND Code of Practice 2015





Aims

To assist teams in interpreting and applying the legal requirements of the Children and Families Act 2014 to some of the key decision points.

To consider their roles and responsibilities and understand Suffolk panel and procedures in light of the legal requirements and to ensure joined up working with education, health and social care colleagues

Plan for today



Background



Decision to assess and **Initiation**Panel



The **EHC needs assessment** panel



EHCP panel



Issuing, resourcing, naming



The **annual review** process



AOB

SEN law the key legal references



1.<u>The</u>
<u>Children and</u>
<u>Families Act</u> **2014**, Part 3
(CFA 2014)

3.The Special Educational Needs and

Disability

Code of

Practice 2015 (SEND CoP

2015)

2.The Special Educational Needs and Disability Regulations 2014 (SEND

Regs 2014)



In legislation, the term "Local Authority" (LA) sometimes refers to the part of a LA that carries out its education functions, and at other times to the part of the LA that carries out its social care functions.



Typically, the education department or education service deals with duties under the CFA 2014.





Typically, the social care department deals with duties under the Chronically Sick and Disabled Persons Act 1970, Children Act 1989 and Care Act 2014.



However, it's important to understand that, in law, the LA is a single entity –no distinction is made between different departments/teams

Section 19 principles - LA must have regard to

a)The views, wishes and feelings of the child and his or her parent, or the young person (YP). b)The importance of the child and his or her parent, or the YP, participating as fully as possible in decisions.

c)The importance of the child and his or her parent, or the YP, being provided with the information and support necessary to enable participation in those **decisions**.

d)The need to support the child and his or her parent, or the YP, in order to facilitate the development of the child or YP and to help him or her achieve the best possible educational and other outcomes.

Decisions the LA needs to take



Suffolk Panels



1. Decision to assess



2. Decision to issue an EHC plan



3. Decision about **format and content of an EHC plan**



4. Decision about **naming an education provider**



5. Decisions following the **annual review** process



6. **AOB**

Plans for Suffolk Panels

- <u>County EHCNA panel</u> responsible for taking decisions about whether to carry out and Education, Health and Care needs assessment (EHCNA) also known as a statutory assessment is initiated;
- <u>Area based EHCP panel</u> responsible for taking decisions about whether to issue a new EHCP, and take decisions about the content of the plan and resourcing of both new and existing EHCPs.
- County independent placement panel
- <u>County Complex Case Forum</u>, and will be responsible for considering requests for high bands of top-up funding and requests for placements in independent or nonmaintained special schools (INMSSs) and independent specialist post-16 institutions (SPIs).

Principles

We will ensure that our Panel processes and decisions are child/ young person centred to empower children, young people, and their families to: have the opportunity for early identification of needs and support:

- have greater choice and control over the support they receive;
- participate in the decision making;
- be appropriate phases;
 appropriate phases;
- prepare for adulthood, including independent living and employment.



Session 1 Decision to assess

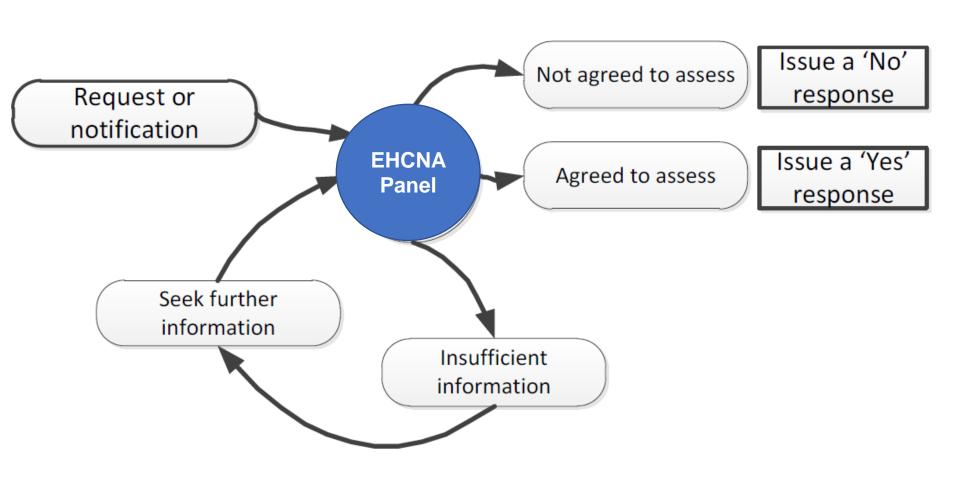


The LA must make a decision following either:

- 1) a request for an EHC needs assessment made by:
- a child's parent
- a YP, or
- a person acting on behalf of a school or post-16 institution.

Or

 2) the LA becoming responsible (e.g. because a child or YP has been brought to the LA's attention by, amongst others, a health or social care professional).



LA makes a decision

- LA makes a decision
- LA must decide within six weeks.
- Section 36(8) -LA must assess where:

(a)the child or YP has or may have **special educational needs**, **and**

(b)it may be necessary for **special educational provision** to be made for the child or YP in accordance with an EHC plan.

(s.36(8) CFA 2014 -see also 36(10) for those over 18)

If the answer to both of these questions is yes, the LA must carry out an EHC needs assessment.

The LA is responsible for making the decision - however, other parties must co-operate.

NB: LA decision makers applying a stricter test is not lawful.



A child or YP has special educational needs if he or she has a **learning difficulty** or a disability which calls for special educational provision to be made for him or her.

s.20(1) CFA 2014

9.1 The majority of children and young people with SEN or disabilities will have their needs met within local mainstream early years settings, schools or colleges (as set out in the information on identification and support in Chapters 5, 6 and 7).

Considering a request for an EHC needs assessment

 Some children and young people may require an EHC needs assessment in order for the local authority to decide whether it is necessary for it to make provision in accordance with an EHC plan.

'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.'

To inform the LA's decision, the council will need to take into account a wide range of evidence, and will pay particular attention to:

- (a) evidence of the child or young person's **academic attainment (or developmental milestones** in younger children) and rate of progress;
- (b) information about the **nature**, **extent and context** of the child or young person's SEN and disabilities;
- (c) evidence and impact of action already taken by the early years setting, school or post-16 institution to meet the child or young person's SEN;
- (d) evidence that where progress has been made, it has only been as the result of much additional intervention and support at a sustained level over and above that which is usually provided;
- (e) Where a child or young people aged 18 and under, who has been **remanded or sentenced by the Courts** to relevant youth accommodation in England, and does not have an EHC plan, the appropriate person or the person in charge of the relevant youth accommodation can request an assessment of the detained person's post-detention EHC needs from the local authority. The local authority **must** consider whether an assessment of their post-detention EHC needs is necessary.

Additional considerations

Are there significant problems in the child or young person's home or family circumstances or their school/setting attendance record which can contribute towards **under-attainment** but may not be indicators of special educational needs?

- Does the evidence point to under-attainment rather than special educational needs and are there alternative and more appropriate ways to support the child or young person's access to learning?
- Educational settings must have regard to the **Equalities Act 2010** and in particular, their responsibility to make **reasonable adjustments** to enable access for disabled children and young people to the curriculum, the physical environment and information within the setting **without recourse for the need for an EHC Plan**.
- Children and young people must not be regarded as having a learning difficulty solely because the language or form of language of their home is different from the language in which they will be taught.

Role of panel members

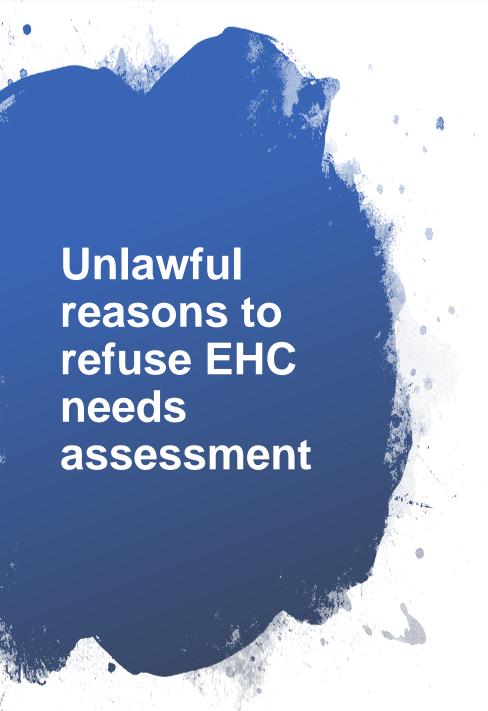
To ensure effective, informed, and timely decision-making through Panel discussions, it will be the responsibility of all Panel members to –

- read papers in advance of panel meetings;
- take collective responsibility for helping to reach decisions and for the decisions taken through panel discussions;
- offer advice on requests for assessments, completed assessments, provision and outcomes in line with their specific, specialist areas of expertise;
- offer impartial advice on individual cases, without promoting the interests of any individual service;
- offer advice about the SEND legislative framework to ensure decision-making is robust and compliant with the legislation and the Code of Practice; and
- declare any personal or professional knowledge of individual cases, including any potential conflicts of interest.

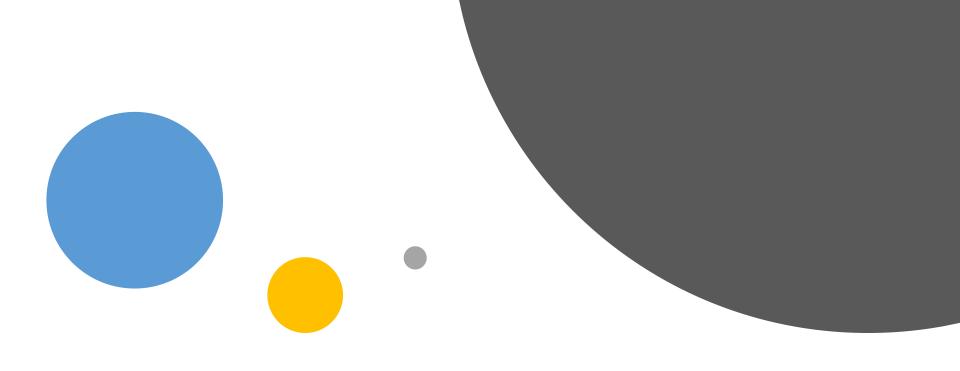
All papers should be available 3 working days prior to panel

Confidentiality and data protection

 Panel members and observers must treat all information relating to the cases that they are considering as confidential. They must ensure that regulations relating to data protection are upheld.



- The school/college hasn't spent £6,000 on SEN provision.
- No report from an educational psychologist.
- Need at least 3 terms worth of 'assess, plan, do review' from the school or similar from the college.
- All the professionals involved agree an EHC plan is not needed.



Session 2 Decision to issue an EHC plan

Legal test for issuing an EHC plan



Where, in the light of an EHC needs assessment, it is necessary for special educational provision to be made for a child or YP in accordance with an EHC plan:



(a) the LA must secure that an EHC plan is prepared for the child or YP, and



(b) once an EHC plan has been prepared, it must maintain the plan.



Session 3 Decision about format and content of an EHC plan

A Good Education Health and Care (EHC) plan

- Meets the requirements of the CFA 2014, SEND Regs 2014 and the SEND CoP 2015.
- Describes positively what child or YP can do.
- Clear, concise, understandable and accessible.
- Is co-produced.
- Sets good, relevant outcomes.
- Tells the child or YP's story well / coherently.
- Identifies each and every need.
- Includes provision to meet each and every need.

Some common issues

- Missing out complete sections.
- Using the letters required by the SEND CoP 2015, but content of the sections not matching that required by the Code.
- Putting several sections together (often E, F, G, H1, H2) and not labelling the different elements, or not labelling them clearly enough.
- Lack of specificity and/or quantification in provision sections (F, G, H1 and/or H2).
- Using an additional section on Resources/Funding as a substitute for specified and quantified provision in Section F.
- Overly lengthy and/or not easy to understand

Describing needs: education, health and social care (Sections B, C and D)

- Plans should identify all needs with reference to current levels of functioning and achievement.
- Needs must be recorded as needs, not as provision.
- Needs should be identified rather than conditions.
- Should be evidence of what the child or YP can do.
- May specify non-SEN health needs and non-SEN social care needs.

Describing provision: education, health and social care (Sections F, G, H1 and

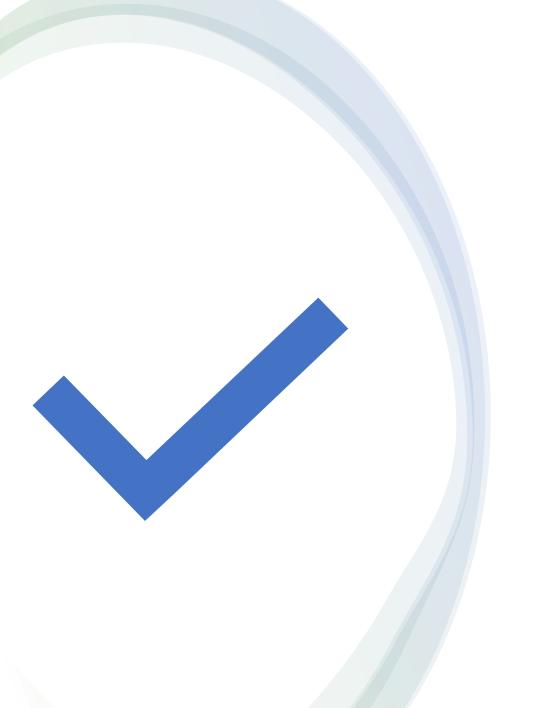
All needs must have corresponding provision. Provision must be:

- -specific -say exactly what the provision is.
- -quantified -how much of it, who will deliver it.
- -linked to outcomes (E).
- Can be helpful to show the outcomes and provision in one table –but must be labelled clearly.
- Consider s.21(5) CFA 2014 -does it educate or train?
- May specify other health care provision which is not linked to their learning difficulties or disabilities, but which should be coordinated with other services in the plan, e.g. routine dental check ups.
- Other social care provision not linked to learning difficulties or disabilities could be included.

Issuing the draft EHC plan

The draft EHC plan must be issued **giving before** the final plan is issued.

- Section I of draft plan must be left blank.
- Rights of parent / YP on receipt of draft EHC plan:
- To request a school or other institution s.38(2)(b)(ii) CFA 2014
- To make representations –s.38(2)(b)(i) CFA 2014
- To request a meeting to take place with a LA officer (Reg 13(1)(a)((ii) SEND Regs 2014)



Session 4 Decision about naming an education provider

Right to request a school or other institution

Upon receipt of a draft EHC plan, a parent or YP has a right to request that any of the following types of school or other institution are named in Section I of the plan:

- a maintained nursery
- a maintained school, academy or free school (mainstream or special)
- a non-maintained special school
- an FE or sixth form college, or
- an institution approved under s.41 CFA 2014.

s.38(3) CFA 2014

LA duty to consult

- Under s.39(2) CFA 2014, the LA must consult the governing body of the school or other institution requested by the parent or YP if it is one of the types of school or institution listed in s.38(3) CFA 2014.
- If the school or other institution is maintained by another LA, that LA must also be consulted (s.39(2)(c) CFA 2014).
- The school or other institution should respond within 15 calendar days(paragraph 9.83 SEND CoP 2015).
- LA must proceed to make a decision(even in the absence of a response from the school or other institution within 15 calendar days) and issue the final EHC plan within 20 weeks of receiving the request to carry out an EHC needs assessment or of the LA becoming responsible.

LA conditional duty to name

If the placement requested by the parent or YP is one of the types of school or institution listed in s.38(3) CFA 2014, the LA **must** name it in the EHC plan unless it is:

1.unsuitable to the child's age, ability, aptitude or SEN, or

2. incompatible with the provision of efficient education of others, **or** efficient use of resources

s.39(4) CFA 2014

Unlawful reasons for refusing to name parent's/YP's choice of placement

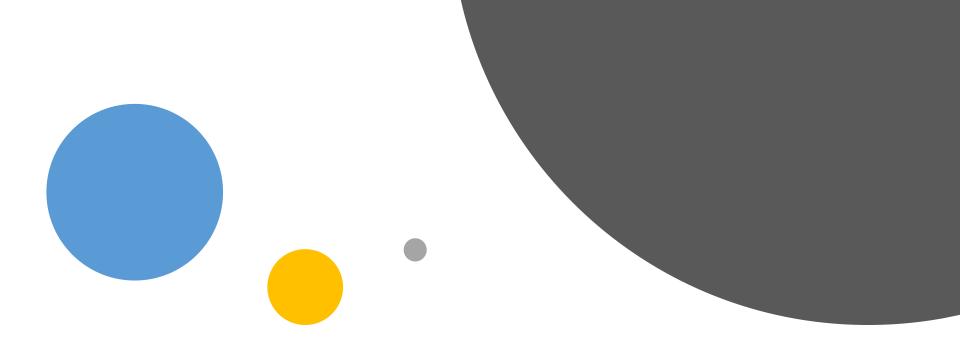
- School is in another LA.
- · School is full.
- There is a nearer suitable school.
- School is 'too academic'.
- Child doesn't fit the profile of the other pupils.
- Child is doing fine where they are.
- Child's needs could be better met in a special school.

Issuing the final EHC plan

The LA must issue a finalised EHC plan within 20 weeks of:

- receiving the request to carry out an EHC needs assessment, or
- becoming responsible for the child Reg 13(2) SEND Regs 2014
- Must name school and type of school type where name not yet known.

The final EHC plan can differ from the draft **only** as a result of any representations made by the child's parent or the YP, and **decisions** made about the school or other institution to be named in the EHC plan.



Session 6 The annual review process

What is the annual review?

- The review of an EHC plan which the LA must undertake **every 12 months** as a minimum
- Common misconception -the annual review is the meeting
- The annual review is, in fact, a process which involves a number of steps, **including** a meeting

Its **purpose** is to monitor progress towards achieving outcomes and consider:

- whether changes to an EHC plan are required, including:
- any changes to provision,
- any changes to outcomes, and
- any changes to placement, or
- whether the plan should cease to be maintained.

The annual review process

- Step 1 –Well in advance of meeting, obtain information and advice
- Step 2 –At least two weeks before date of meeting, send invites to meeting
- Step 3 –Hold meeting
- Step 4 –Send out annual review report
- Step 5 –LA notifies parent/YP of decision

Whole process must be completed within 12 months of plan being issued or the last annual review



The person arranging the meeting must obtain written advice from:

- the child's parent or the YP
- the headteacher or the principal
- •the LA SEN officer
- •a health care professional identified by the responsible commissioning body, and
- an officer of LA from the part of the LA exercising the social services function.

All of above must be invited to attend the meeting

Reg 20(2),(4) SEND Regs 2014



- At least two weeks' notice of the date of the meeting must be given
- The advice obtained under step 1 must be circulated to all concerned at least two weeks in advance of the review meeting

Reg 20(3),(4) SEND Regs 2014



The meeting takes place

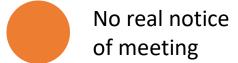
 It is the duty of the LA to ensure a meeting takes place as part of the annual review process

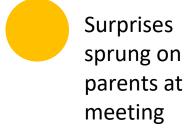
Step 4

WITHIN TWO WEEKS OF THE MEETING, THE HEADTEACHER (OR THE LA IF THE CHILD / YP DOES NOT ATTEND AN INSTITUTION) MUST PREPARE AND SEND OUT A REPORT RECOMMENDING ANY CHANGES TO THE PLAN, AND REFERRING TO ANY DIFFERENCE BETWEEN THOSE RECOMMENDATIONS AND RECOMMENDATIONS OF OTHERS ATTENDING THE MEETING

THE REPORT MUST
INCLUDE ALL THE
ADVICE AND
INFORMATION
OBTAINED UNDER STEP 1

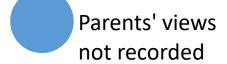
Some common problems reported by parents





The annual review report goes to the LA but the LA then either does nothing or does not inform the parent / YP of its **decision**

Reports are not prepared and distributed or not in enough time for proper consideration and comment before the meeting



Step 5 – the decision point

The LA **must then decide** whether it proposes to:

- (a) continue to maintain the EHC plan in its current form
- (b) amend it, or
- (c) cease to maintain it

and must notify the child's parent or the YP and the person referred to in Reg 20(2)(b) SEND Regs 2014 within 4 weeks of the review meeting

Reg 20(10) SEND Regs 2014





Aims

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