



Education Rights Series

Factsheet 5

Education health and care plans

Date: September 2016

This factsheet relates to children and young people in England only, who have an Education, Health and Care Plan. For young people age 16 and over please read in conjunction with Factsheet 1 - Young People over 16 with SEND.

This factsheet explains how an Education, Health and Care Plan (EHCP) works and will help you make sure your child's plan is right. It will be useful if you are at the draft plan stage or if your child's EHCP is being reviewed. If you are at an earlier stage, see our factsheet on EHC needs assessments.

This guide contains the following sections:

- The draft EHCP and how to respond 1
- The format of the EHCP 3
- Checking the plan 4
- Naming a school or college 11
- The final EHCP 13
- Further information and support 14

Please note that any examples are for illustration only – children's needs will vary.

The draft EHCP

Writing the plan

The local authority (LA) is legally responsible for writing the EHCP. Families should be however be closely involved in the assessment and planning process. Before you are sent a formal draft copy for consultation, there may already have been discussion about the content of the plan, the provision you would like to see and the outcomes you and your child are aiming for. Many LAs are using the term 'co-production' for this collaboration process.

In particular you and your child will have the main responsibility for writing section A, covering the family's and the child's views, interests and aspirations.

For more detailed information on assessments see factsheet 4 on **EHC needs assessments**.

Responding to the draft plan

Once you have the draft plan, you will need to reply to your local authority within strict timescales, so make a note of when the letter was sent. Keep the envelope with the postmark. You now have the right to:

- ask for changes to be made to the draft EHCP
- ask for a meeting with someone from the LA to discuss the EHCP – LAs don't always inform parents of this right
- tell the LA which school you would like your child to go to – see below on **Naming a school** page 11
- agree a personal budget with the LA if you want one

You must do these things within 15 days. Your LA may agree to an extension if you have particular special circumstances.

You don't have to have a meeting with an LA officer, but it can be helpful to discuss any changes to the plan in person. This may give you a feel for how flexible the LA is likely to be.

You should now carefully check the draft EHCP so you can tell the LA about any changes you want made. See below on **Checking the plan**. Page 4

When you know the changes you want made, fill in the form you have been sent by the LA and send it back. If you are having a meeting it may be helpful to send your comments in advance to give the LA time to consider.

The LA must send you a final EHCP within 20 weeks of the request for assessment or the notification of the transfer from a statement of special educational needs.

If the LA doesn't agree to the changes you want, see below on **The final plan**. Page 13

Seek advice

Education, Health and Care Plans can be complicated documents. If you are confused or need further help with understanding the EHCP once you have read this guide, do seek outside advice. The following may be able to help.

- DSA helpline
- Local IAS (Information Advice and Support) service
- Local Independent Supporters

See **Further information** on page 14 for full details and other useful organisations

Format of an EHCP

There is no standard national format for Education, Health and Care Plans. Each local authority can have its own template. The plan must however contain the following sections, which must be clearly identified by letter.

	A	Views, interests and aspirations of the child and their parents or the young person
Needs	B	The child or young person's special educational needs
	C	The child or young person's health care needs which relate to their special educational needs
	D	The child or young person's social care needs which relate to their special educational needs or a disability
	E	The outcomes sought for the child or young person
Provision	F	The special educational provision required by the child or the young person <i>LA legally responsible for securing provision</i>
	G	Any health provision reasonably required by the learning difficulties or disabilities which result in the child or young person having SEN <i>Relevant health commissioning body legally responsible.</i>
	H	Social care provision - split into H1- any social care provision which must be made for the child or young person as a result of section 2 of the Chronically Sick and Disabled Persons Act 1970 <i>LA legally responsible</i> H2 - any other social care provision reasonably required by the learning difficulties or disabilities which result in the child or young person having special educational needs <i>LA legally responsible for adult care provision in H2</i>
	I	Placement (this must be left blank in the draft)
	J	Personal Budget (including arrangements for direct payments)
	K	Advice and information - reports

Some local authorities may have separate sections as above; others may have outcomes and provision to help achieve each outcome set out in a table. In this case the provision must still be labelled with the initials above, as that will determine who is legally responsible. You should be able to find the EHCP template on your local authority's 'local offer' site.

For more information on what should be in each section, see below under **Checking the plan** page 4.

For government statutory guidance on the content of an EHCP see the SEND Code of Practice paragraph 9.69ff – link under **Further information** page 14.

Checking the plan section by section

You should check the draft EHCP very carefully. It is your child's legal guarantee of additional help, so it is important to get it right. It is also vital that the plan gives an accurate picture to school staff of your child and the help they need. Before you start it's a good idea to make a separate copy of the EHCP that you can write on.

Section K - the reports

Start with the reports, because they are the evidence on which the EHCP itself is based. These should all be attached to the EHCP as section K. This should include:

- copies of reports from all the professionals who were involved at the assessment stage e.g. school, medical, educational psychologist – see factsheet 4 EHC needs assessment for what is legally required
- copies of any reports that you sent in yourself – that could be something like an independent therapist's report

Check that all the reports are there and if anything is missing, contact the LA immediately.

You may then find it helpful to go through the reports highlighting in one colour all the difficulties and strengths that have been identified and in another any recommendations for teaching methods, staffing, equipment or environment. This will help with checking the content of the EHCP.

Section A – views and aspirations

This section may be called something like 'All about me' and have sections like 'Our family's journey'. It should have been written in close collaboration with you and your child / young person. Section A should give an accessible overview of your child to someone who does not know them well, including likes and dislikes, how they communicate, what helps and what doesn't. A good way of doing this can be as a 'one-page profile' written from the child's point of view. See under **Further information** on page 14 to find out more.

Section A should also include the child's or young person's aspirations for the future as well as those of the family. Aspirations are long term goals and desires and might, even for a fairly young child, include things like getting a job or living independently or being in a relationship. Aspirations should not be confused with SMART outcomes (section E) and limits should not be set on your or your child's aspirations.

If section A is written in the first person, using 'I' rather than 'he' or 'she', it should be made clear whether these are your child's own words or have been written on their behalf.

Check whether this section reflects accurately what you and your child want to say. Would it help a new teacher, teaching assistant or support worker to understand what makes your child tick?

It is important however to remember that part A does not constitute legally binding provision and cannot be appealed to Tribunal. The local authority is not accountable for the fulfilling of your aspirations. If most of the detail of your child's plan is in part A – **beware**.

Check the needs

You should check that **every need** identified in the reports is covered in sections B, C and D and that they are in the correct sections. Remember that health needs that affect your child's learning and require special educational provision should be in the section for educational needs. Examples might be speech and language difficulties and hearing or visual impairment.

Section B – special educational needs

This is equivalent to the old part 2 of the statement of special educational needs. It describes the difficulties your child has in learning and may be subdivided into further categories such as:

- Communication and interaction
- Cognition and learning
- Social, emotional and mental health
- Sensory and physical

Check section B against the highlighted list of needs from the reports. All special educational needs that are identified in the reports must be specified in section B.

The description of needs will be individual to the child but it is worth checking it against the typical learning profile for a child with Down's syndrome e.g.

- Speech and language impairment
- Relative strength in visual processing
- Difficulties with working memory and concentration
- Sensory impairment (hearing / visual)

For more information on the learning profile see the education pages of the DSA website <http://www.downs-syndrome.org.uk/for-families-and-carers/education/>

Examples of needs

- Jeremy has a short attention span. He can only attend to an adult directed activity for approximately 30 seconds.
- Lily has difficulty with transitions between activities, especially coming back into class after break
- Conor communicates by Makaton signs and gesture.
- Matthew has a moderate hearing loss and wears hearing aids
- Polly is interested in other children and watches them but does not yet engage in reciprocal play

Section C – health needs

This section must include all health needs that are related to the child's or young person's special educational needs. This means that any health needs that arise from the fact that your child has Down's syndrome should be listed here. These could be things like:

- a heart condition
- thyroid disorder
- impaired immune system
- bowel problems and continence issues

Other health needs that are not related to the child's SEN may also be included

Section D - social care needs

This section must include any social care needs that relate to the child's special educational needs or disability. So, as with health, this will be anything related to the fact that the child or young person has Down's syndrome.

Section D might include things like:

- difficulties accessing social and leisure activities outside the home
- being unable to safely make unaccompanied trips on foot or to use public transport – more likely for teenagers
- pressure on the family caused by the demands of caring - more likely for families of children with additional complex needs besides Down's syndrome.

If your child or young adult has already had a social care assessment then any needs flagged up by that assessment should be included here. Many families feel they don't have social care needs when their child is younger, but do then look for support for a teenager wanting more independence

It is particularly important to ensure that social care needs are properly recorded for young people approaching adulthood.

Section E - Outcomes

This section should include the education, health and care outcomes that will enable the child or young person to progress in learning. Outcomes are the difference made by the provision and are often laid out in the form of a table with provision.

Examples of outcomes

- Manuel will have achieved level P6 in reading by the end of Key Stage 1
- By the end of year 11 Alice will have a basic understanding of money and be able to make small purchases of single items independently.
- By the end of year 7 George will be able to manage the routines of his secondary school with minimal support
- Zoe will have gained a level 1 qualification in a chosen vocational area by the end of her college course

Outcomes are different from both the longer term aspirations in section A and short-term targets set by the school. Outcomes should be set over varying timescales. The focus is often over a medium term of two to three years, perhaps looking ahead to the end of a key stage.

Outcomes should be SMART i.e. specific, measurable, achievable, realistic and time bound. Section E should also include steps towards the outcomes and arrangements for review, monitoring and setting short term targets.

Outcomes should not just be adult led but also include things that are important to the child. Outcomes can relate to education, health or social care and for young people in year 9 and above should include outcomes to prepare for adulthood.

Check the provision

Section F - Special educational provision

This is equivalent to the old part 3 of the statement of special educational needs. It contains the educational help that your child must have to meet the needs in section B and support the achievement of the outcomes in section E. The provision must be detailed and specific and should normally be quantified. This section should also specify "appropriate facilities and equipment, staffing arrangements and curriculum".

Health and social care provision that educates or trains a child must be included in this section. So, for example, speech and language therapy that helps a child to understand language and to communicate with others, would be classed as educational provision.

The local authority is legally responsible for arranging the provision in section F. You can appeal to the Tribunal over the contents of section F

Need – Outcome – Provision – How it fits together

- Need – James has difficulty producing speech sounds, which leads to frustration at not being understood.
- Outcome – By the end of year 6 James will improve clarity of speech so that he can be understood by his classmates
- Provision – 6 sessions of speech and language therapy per term with a focus on speech sound production

There are some important principles to bear in mind when checking the content of section F.

Every need in section B must be matched with provision in section F.

If you are confused about the difference between need and provision it may help to look on the need as the diagnosis and the provision as the treatment. For example:

Need – Mary has poor verbal memory

Provision - School staff will supplement spoken language with visual cues. Mary will be provided with a visual timetable to help her navigate the school day.

Need - John has no sense of danger and has a tendency to run off

Provision - A designated member of staff will be responsible for supervising John at break times and lunch times. John will require a safe secure environment

Go through all the needs you have identified in section B and check there is provision to match in section F. Go back to the reports. Professionals may have made recommendations about staffing or teaching methods. These should be detailed in section F. It is not sufficient to say that the school should have regard to the advice in the appendices.

Provision should be specific and quantified

Section F should give details of how much help your child needs, who will give it, how often it will happen and for how long. This is the case no matter who pays for the provision. The Code of Practice explains this as being ‘in terms of the type, hours and frequency of support and level of expertise’.

Example: specific v. non-specific

Non-specific - Marie will receive speech and language therapy as needed. The local SALT service will determine the frequency of visits

Specific - Jack will receive a speech and language therapy programme drawn up by a qualified speech and language therapist and delivered in school for at least 15 minutes daily by a trained member of staff. In addition Jack will receive 4 x 45 minute sessions a term of direct therapy from the speech and language therapist.

You should also beware of words and phrases which sound good but have no substance. Phrases such as 'would benefit from', 'opportunities for', 'access to' are vague and unenforceable. For instance 'James will have access to unstructured play opportunities' does not tell you about the activities, situation or the support James might need. It could be interpreted to mean sending James out onto a busy playground on the same basis as any other child.

Such phrases should be changed to something more precise. Also beware of 'regular'. 'Regular' speech and language therapy for instance could be once a year only.

Section G - Health provision

This section should contain what is 'reasonably required' to meet the health needs in section C. As for education, this provision should be detailed and specific and should normally be quantified.

For children and young people with Down's syndrome this section should include health provision that is reasonably required by the fact that they have DS. This will vary according to the particular child but would at the least include monitoring by a paediatrician or annual health checks for teenagers and young adults. It could also include a health care plan for use in school. Therapies that are not deemed educational would be included here.

If your child has a number of different medical professionals involved, it is important for that to be recorded here.

Resources can be taken into account when including provision in this section, hence the 'reasonably'. Section G must be agreed by the relevant commissioning body, generally the local clinical commissioning group (CCG). Once the provision in part G has been agreed the CCG is legally responsible for arranging it.

Section H - Social care provision

Section H contains the help required to meet the social care needs in section D. Unlike education provision, social care provision in EHCPs is not directly enforceable under the Children and Families Act but comes under other legislation. This is the reason for having two separate subsections.

In brief (slightly simplified)

H1

- any disability related social care provision that is not residential respite. That can include support at home or in the community including help paid for by a direct payment *Enforceable under the Chronically Sick and Disabled Persons Act 1970*

H2

- residential respite
- non- disability related social care help
- adult social care provision (over 18s) – *Enforceable under the Care Act 2014*

It is particularly important to get the social care provision right for young people leaving school and going to college, where the hours may be shorter than in school. Young people of this age may also want to develop independence from their family.

The DSA helpline can advise further on social care matters.

Section I - name of school or post 16 institution

Section I will contain the type and name of the school, for example

A mainstream primary school - **Freshfields School**

A special secondary school for pupils with severe learning difficulties - **Seaview School**

This section **must** be left blank in the draft plan, as you have the right to express a preference for a school or college. See below on your rights to choose a school.

Section J - personal budget information

While an EHCP is being written, you have the right to request a personal budget and the amount should be set out in the draft plan. The personal budget can be for education, health or social care or a mixture of these. The amount of the personal budget must be enough to secure the provision.

You can ask for all or part of this to be made by direct payments but there are some restrictions on the use of direct payments. The main ones are:

- Direct payments cannot be used to part fund a school place, for instance in an independent school.
- The headteacher must give permission for you to use direct payments for staffing in school. That might be for example by using a PA who already supports a young person out of school

- Direct payments can be refused if the local authority already has a contract for the service you want to buy and your child's share cannot be separated from the whole. An example of this might be speech and language therapy.

Most local authorities are introducing personal budgets gradually. Each LA must publish a personal budget statement as part of the local offer, saying what provision can be the subject of a personal budget. Do check your LA's 'local offer' site to find out more.

For more information on personal budgets see under **Further information**

Section K - reports

Here should be included all the information and advice that was used to draw up the plan.

When carrying out the EHC needs assessment the LA must seek information and advice from

- Child's school or early years setting
- Parents and child or young person
- Educational Psychologist
- Health professionals
- Social care
- Anyone the parent reasonably requests

Naming a school or college

Section I of an Education, Health and Care Plan names the school or college where the child will be educated. There are a number of occasions when your local authority will ask you to express a preference for a school. The most usual are:

- When your child gets an EHCP for the first time. In this case you will be sent a draft plan with the name of the school left blank. This is the case even if your child is already in school with a statement and is transferring to an EHCP.
- When your child moves from one phase of education to another e.g. from primary to secondary school. In this case the LA must issue a final amended EHCP with the new school by 15th February. The deadline for school leavers moving to college is 31st March.

Which is the right school for my child?

There's no one size fits all answer to this question. The majority of children with Down's syndrome are educated in mainstream primary schools and a growing proportion in mainstream secondary. If there are older siblings in the family, your starting point will probably be the school they already go to. Some things to bear in mind might be:

- size of the school and suitability of the environment
- experience of children with SEN generally and Down's syndrome in particular
- involvement of class teachers with children with SEN

Most important is an inclusive attitude and willingness to learn and to get to know your child as an individual.

Some parents of children with DS and more complex needs prefer them to go to a special school. For a special school you may want to think about:

- What is the specialism of school?
- What sort of peer group would your child have?
- Are there good role models for behaviour?
- Are therapies and medical support available at the school?

Do I have a right to the school I want?

You have a right to express a preference for the school you want. For certain categories of school or college the LA **must** name it as long as it is:

- suitable for your child's age, ability, aptitude and any special educational needs they may have – *can this school meet your child's needs?*
- not incompatible with
 - the efficient use of resources i.e. *too expensive*
 - the efficient education of other children – *educating your child at the school would be very disruptive. The school should look at ways of overcoming these barriers.*

You do not have to show that this school is the best school for your child, merely that it is 'good enough'.

The types of school or college that come under this section are:

- Maintained school, Academy or Free School
- Non-maintained special school – run not for profit and have certain requirements placed on governing body
- Sixth form college or FE college
- Independent school or specialist college on the section 41 list. These are institutions that have an agreement with the Secretary of State to admit any pupil where the LA names that school or college. You can find the list here.
<https://www.gov.uk/government/publications/section-41-secretary-of-state-approved-list> Be aware that in many cases it may be difficult to get one of these schools named on the grounds of inefficient use of resources.

You also have a general right to mainstream education. If the mainstream school you want is not suitable the LA must look at other mainstream schools in the area.

- LA **must** specify a mainstream school unless it is
 - against the wishes of the parent
 - incompatible with the efficient education of other children
- LA cannot refuse mainstream education outright on the grounds of 'unsuitability'

- LA must show that no reasonable steps to prevent incompatibility (Code of practice 9.89ff)

The final plan

Within 20 weeks of your initial request or the LA notifying you that it will carry out a transfer review, the LA must send you a copy of the final plan with the named school. They cannot at this point make changes to the plan apart from the ones that you have requested. Please note that signing the plan does **not** deprive you of your right to mediation or appeal.

Not happy with the final plan?

If everything has worked well and you and your child have been fully included in the process, you should end up with an EHCP that everyone is happy with. That isn't however always the case, particularly where there are pressures on LA budgets.

If you disagree with the content of the plan or the name of the school or college, there are various rights to mediation and appeal. The LA must write and tell you about these when they send you the final plan. There are timescales attached to these so make sure you note the date you received the final plan.

Mediation and appeal rights in brief

Mediation

- Aims to reach agreement between the parties – can't impose a solution
- Trained mediator must be independent of the LA / health body
- Right to mediation on the
 - Health sections of the plan
 - Social care content of the plan
 - Education sections (you can also appeal to Tribunal on these)

Tribunal appeal

- Appeal to the First-Tier Tribunal (Special Educational Needs and Disability)
- Decision is legally binding
- Right to appeal on educational content of the EHCP
 - Section B – special educational needs
 - Section F – special educational provision
 - Section I – name of school or college
- Can't appeal on
 - Health and social care (sections C,D, G, H)
 - Section A (views and aspirations)
 - Section E – outcomes
- Must obtain mediation advice first unless appeal is only over the name of the school/college – contact mediation adviser within 2 months of date of final EHCP

A further factsheet is planned on handling disagreements relating to EHCPs and special education provision in schools.

Further information and support

From the DSA

Helpline – 0333 1212 300 (Mon – Fri 10 – 4) or email helpline@downs-syndrome.org.uk

Education Rights Series

www.downs-syndrome.org.uk/for-families-and-carers/education/sen-and-the-law/education-rights-series/

General education pages including specific pages for early years and primary education

www.downs-syndrome.org.uk/for-families-and-carers/education/

In your area

Local Offer for Special Educational Needs and Disability. This will tell you what services and support you can expect to be available locally for children and young people with special educational needs or disabilities (SEND) - search for 'your LA name local offer'

Information Advice and Support Services (formerly Parent Partnership)

www.iasnetwork.org.uk/

Independent Support

www.councilfordisabledchildren.org.uk/independentsupport

Information from gov.uk

SEND Code of Practice and links to other guides

www.gov.uk/government/publications/send-code-of-practice-0-to-25

Other guidance relating to SEND

www.gov.uk/topic/schools-colleges-childrens-services/special-educational-needs-disabilities

Appeals

www.gov.uk/special-educational-needs-disability-tribunal/overview

From other organisations

IPSEA has a general SEN and Tribunal helpline as well as a wealth of useful information

www.ipsea.org.uk

Contact a Family has a specialist SEN helpline

www.cafamily.org.uk

Special Needs Jungle – articles on SEN, largely from a parental perspective

www.specialneedsjungle.com

EHCP information

CDC guide to EHCPs

www.councilfordisabledchildren.org.uk/resources/a-step-by-step-guide-to-ehc-plans

IPSEA's Checklist for EHCPs

www.ipsea.org.uk/what-you-need-to-know/ehc-plans

Template letters from Independent Support

www.councilfordisabledchildren.org.uk/resources/independent-support-draft-letters

Template letters from IPSEA

www.ipsea.org.uk/what-you-need-to-know/model-letters