

SEND Q&A Series

EHCPs

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FOR MORE INFORMATION
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Our exceptionally experienced education law solicitor, [Qaisar Sheikh](#) continues his SEND Q&A series, focusing on Education Health and Care plans

IS AN EDUCATION, HEALTH AND CARE (EHC) PLAN A LEGAL DOCUMENT?

Yes, an EHC plan is a legal document that can only be issued after a child or young person has gone through the process of an Education, Health and Care needs assessment. For more information on EHC needs assessments please see our previous SEND Series - <https://wslaw.co.uk/blog/send-qa-series-ehc-needs-assessments>.

An EHC plan sets out a child or young person's special educational needs, the support they need (special educational provisions) and a set of achievable outcomes. It should also set out the type of setting the child requires and, in most cases, specify the placement. Some children may require education outside of a formal educational setting, but I will discuss this in a separate SEND Q&A series.

Once an EHC plan is issued, it places a mandatory duty on the local authority to ensure the special educational provisions set out within it are implemented (section 42 of the Children and Families Act 2014). The recent case of *HXN, R (On the Application Of) v London Borough of Redbridge* [2024] EWHC 443 (Admin), has reconfirmed that if a school has made efforts to put in place the special educational provision specified in an EHC plan but been unable to do so, it is the responsibility of the local authority to make sure the provision is put in place. The case of *L, R (On the Application Of) v Hampshire County Council* [2024] EWHC 1928 emphasised that speed must be of the essence "given the critical impact of lack of educational provision on a child's wellbeing and future". If a local authority fails to ensure the special educational provisions set out within it are implemented, they can be challenged by way of Judicial Review.

IN WHAT CIRCUMSTANCES SHOULD AN EHC PLAN TO BE ISSUED FOR A CHILD WITH SEN?

The test for an EHC plan is set out in section 37 Children and Families Act 2014. This states that "where, in the light of an EHC needs assessment, it is necessary for special educational provision to be made for a child or young person in accordance with an EHC plan—

1. the local authority must secure that an EHC plan is prepared for the child or young person, and
2. once an EHC plan has been prepared, it must maintain the plan.

This test is also set out at Paragraph 9.55 SEN Code of Practice 2015. To better understand the term necessary in this context, we must turn to judicial interpretation. Case-law has defined necessary as somewhere in between indispensable and useful. Reported cases have suggested the following guidelines:

1. If the support the child requires can be reasonably provided within the resources normally available, then the test for an EHC plan might not be met (*NC and DH v Leicestershire CC (SEN)* [2012] UKUT 85 (AAC).
2. The cost of SEN provisions will be a relevant factor. The case of *CB v Birmingham CC* [2018] UKUT 13 (AAC), confirms that a school is expected to exhaust "its notional SEN budget of £6,000" before asking for a top up funding from the local authority. I say, based on this, if the costs of support to meet a child's SEN exceeds £6,000, there is a good argument to say that this has now gone beyond what can then be reasonably provided within the resources available to the school. The Judge in this case helpfully highlighted that "the provision the local authority expects to make available as published in its local offer is 'a relevant consideration in working out what will, on balance, be available from a school's internal resources'".

3. An additional reason for an EHC plan might be to provide a reasonable degree of certainty, that the required educational provision the child requires will in fact be delivered - SC & MS v Worcestershire County Council [2016] UKUT 0267 (AAC).
4. It is not necessary that the child or young person will be aided to gain qualifications through an EHC plan. The question to ask is, will they gain some benefit from special educational provisions (i.e. in later life, such as more independence) – Buckinghamshire County Council v SJ [2016] UKUT 254 (AAC) and Hillingdon LBC v WW [2016] UKUT 253 (AAC).

Whether the test for whether an EHC plan should be issued is met, depends on the facts of each case.



WHAT IS THE BENEFIT OF AN EHC PLAN?

Speaking from my experience in supporting a vast number of children and young people to secure EHC plans, there are multiple benefits for them, and even indirect benefits to their school, parents or carers. Some examples would be:

- It is a legal document which places a mandatory duty on the LA issuing the plan to ensure the special educational provisions set out within it are implemented.
- Although a school has some limited means to challenge being named in an EHC plan, once named, they must admit the child (Section 43 Children and Families Act 2014).
- Not only does an EHC plan help school staff to better understand a child's needs and more effectively put together the support required, but there is also much greater scope for schools to apply for additional funding to ensure they have sufficient resources. Our upcoming SEND Q&A Series on funding will explore this further.
- The support that can be provided through an EHC plan can be far greater as compared to school-based support alone. This could include additional tailored therapeutical programmes (i.e. from a speech and language therapist or occupational therapist), whether this is delivered directly (by the therapist on a one-to-one basis) or indirectly (trained and experienced staff).



- The SEN support is not only more structured and consistently delivered, but the Annual Review process also allows for a child or young person's progress to be tracked, and adjustments made to ensure the EHC Plan is up to date in terms of needs, the required support and outcomes. Following each Annual Review a parent is given a right to appeal to the First Tier Tribunal if they disagree with changes made or lack of.
- Allows for a child or young person to attend a specialist setting (day or residential) or receive Education Otherwise than at School provided for and funded by the LA.
- An EHC plan is a useful tool for bringing together education, health and care needs into a single plan.
- It can give peace of mind to parents and carers, actively involving them in the development and review of the document.

There are many other benefits that could be listed. It should be noted that an EHC plan will have less value for a child with SEN if it is poorly constructed and local authorities do not comply with certain legal requirements. I will pick this up in a different SEND Series – watch this space!

THE LOCAL AUTHORITY CARRIED OUT AN EHC NEEDS ASSESSMENT BUT REFUSED TO ISSUE AN EHC PLAN. CAN THIS DECISION BE APPEALED?

Yes. To appeal, you must first obtain a mediation certificate, even if you do not wish to take part in mediation with the local authority. A certificate must be requested within 2 months from the date of the decision letter. The decision letter from the local authority will tell you how to contact a mediation service. It is very important to note that an appeal must be submitted to the First Tier Tribunal (Special Needs and Disability) within 2 months from the date of the decision letter or 1 month from the date of the mediation certificate, whichever comes later.

To speak with one of our expert special educational needs solicitors about securing an EHC plan for your child, please do not hesitate to contact us on sendsupport@wslaw.co.uk or scan the QR code below.



This briefing note is not intended to be an exhaustive statement of the law and should not be relied on as legal advice to be applied to any particular set of circumstances. Instead, it is intended to act as a brief introductory view of some of the legal considerations relevant to the subject in question.