

## SEND Myths

### **1. Myth: “All young people who have an Education, Health and Care plan in school will have a plan until they are 25.”–**

Fact - An EHC plan can continue as long as the YP stays in some kind of education or training (this doesn't cover higher education), and it is still necessary for the local authority to arrange the extra support they need in order to achieve the educational outcomes set out in their EHC plan.

### **2. Myth: “The requirement for social care needs to be identified and met is not applicable if the child/YP is not currently known to social services.” –**

Fact - The EHC needs assessment must include advice on the child/young person's social care needs (although this may not need to be via an assessment under section 17 of the Children Act, it could be via Early Support or other non-statutory assessment processes).

### **3. Myth: “A young person over 19 can only keep their EHC plan if they are working towards an educational qualification.” –**

Fact – Case law, Buckinghamshire vs SJ made it clear that not attaining qualifications or only making limited progress does not mean that SEN provision is not needed or of benefit.

### **4. Myth: “If the parents' preferred school is named in an EHC plan, the LA does not have to provide transport to the school.” –**

Fact – If the child is eligible for school transport, then the LA must provide it (Education Act 1996). When there is disagreement over the cost of placement LAs and parents can make a deal whereby the LA names the parents' choice of school if the parent agrees to provide transport.

### **5. Myth: “Under the new law, LAs no longer have to specify provision in section F, we just enter the amount of funds allocated.” –**

Fact: if anything, the new law is clearer that provision in section F must be detailed and specific and should normally be quantified.

### **6. Myth: “A child will only be eligible for an EHCP Assessment if they have an EP Report/been through 2 cycles of plan/do/review at SEN support/are 2 years behind/have spent £6000.” –**

Fact – The legal test for statutory assessment under the Children and Families Act 2014 is whether the child/YP has or may have SEN and it may be necessary for

special educational provision to be made for the child or young person in an EHCP. All LAs will have criteria for making decisions on assessment, but these must not impose a higher threshold than the legal test. The LA can reasonably expect the education provider to be able to evidence that they have taken 'relevant and purposeful action' (although a lack of this will not necessarily be enough to prove that an EHCP is not necessary), the LA cannot insist on an EP or any other report as part of any eligibility criteria.

**7. Myth: “All provision supplied by the NHS should be in section G as it is health provision.” –**

Fact: provision supplied by health providers which educates or trains the child/YP should be in section F. This is particularly applicable to speech and language therapy since communication is clearly essential to education, but it can apply to other types of health provision.

**8. Myth: “You can’t ask for a school placement outside your LA area.” –**

Fact: Yes, you certainly can, and the LA must comply with your preference unless the suggested placement is incompatible with the efficient use of public funds or the efficient education of other pupils.

**9. Myth: “Maintained mainstream schools can refuse to admit your child if they choose.” –**

Fact: No, they can't, unless admission of your child would be incompatible with the efficient education of other children AND there are no reasonable steps that can be taken to overcome that incompatibility.

**10. Myth: “It’s quicker/gets taken more seriously if parents submit the request for an EHC needs assessment.” –**

Fact: Timescales and thresholds are no different, no matter who submits the request. If a parent submits a request, they will often approach the school first for evidence regarding SEN and levels of support being provided such as provision maps.

**11. Myth: The only/quickest way to see an Educational Psychologist is through an EHC needs assessment.” –**

Fact – EP services operate in different ways, but generally they have a service level agreement directly with schools or with the LA or are an in-house service, available to maintained schools. While statutory process (EHC needs assessments) would take priority (as the LA are benchmarked on timescales), it would be up to schools to arrange with the EP service the number of hours they require and the priority of children to be seen (outside of the EHC NA process).

## **12. Myth: “It’s only the school who can make a request for an Education, Health and Care needs assessment?”**

Fact – The following people have a specific right to ask a local authority to conduct an education, health and care needs assessment for a child or young person aged between 0 and 25: the child’s parent, a young person over the age of 16 but under the age of 25, and a person acting on behalf of a school or post-16 institution (this should ideally be with the knowledge and agreement of the parent or young person where possible).

In addition, anyone else can bring a child or young person who has (or may have) SEN to the attention of the local authority, particularly where they think an EHC needs assessment may be necessary. This could include, for example, foster carers, health and social care professionals, early years practitioners, youth offending teams or probation services, those responsible for education in custody, school or college staff or a family friend. Bringing a child or young person to the attention of the local authority will be undertaken on an individual basis where there are specific concerns. This should be done with the knowledge and, where possible, agreement of the child’s parent or the young person.

## **13. Myth: “If school submit the Education, Health and Care needs assessment request, then if there’s any appealable decisions, its school who appeal to the Local Authority or the Special Educational Needs and Disability Tribunal.”**

Fact – No matter who submits the request for EHC needs assessment, or what the appealable decision is, it’s the parent, legal guardian or young person who have the right of appeal. They can be supported in this by school, local IAS services etc but legally the appeal right is with them.

## **14. Myth: “Annual reviews only happen every 12 months.”**

Fact – Education, Health and Care Plans **must** be reviewed by the local authority as a minimum every 12 months.

Local authorities should consider reviewing an EHC plan for a child under five at least every three to six months to ensure that the provision continues to be appropriate.

Parents, legal guardians and young people can ask for an early or emergency annual review for several reasons such as the child or young person’s education, health or social care needs have changed and are no longer accurately described in the EHC plan, that the education, health or social care provision in the EHC plan is no longer meeting the child or young person’s needs or if the child or young person has been excluded from school or is considered to be a risk of exclusion.

\*An EHC plan **must** be reviewed and amended in sufficient time prior to a child or young person moving between key phases of education, to allow for planning for and, where necessary, commissioning of support and provision at the new institution.

These are called phased transfer reviews and the dates they need to be completed by are the same every year.

## **15. Myth: “An EHC plan means you can request a place at any school you want.”**

Fact - The child’s parent or the young person has the right to request a particular school, college or other institution of the following type to be named in their EHC plan:

- maintained nursery school
- maintained school and any form of academy or free school (mainstream or special)
- non-maintained special school
- further education or sixth form college
- independent school or independent specialist colleges (where they have been approved for this purpose by the Secretary of State and published in a list available to all parents and young people)

If a child’s parent or a young person makes a request for a particular nursery, school or post-16 institution in these groups the local authority **must** comply with that preference and name the school or college in the EHC plan unless:

- it would be unsuitable for the age, ability, aptitude or SEN of the child or young person, or
- the attendance of the child or young person there would be incompatible with the efficient education of others, or the efficient use of resources

The local authority **must** consult the governing body, principal or proprietor of the school or college concerned and consider their comments very carefully before deciding whether to name it in the child or young person’s EHC plan, sending the school or college a copy of the draft plan. If another local authority maintains the school, they too **must** be consulted.

## **16. Myth: “A child has a diagnosis, so they need an EHC plan”**

Fact – An EHC plan is not dependent on diagnosis so securing an EHC Needs assessment or an EHC plan is also not guaranteed due to diagnosis. Children with a range of diagnosis can have their needs met through SEN support and the duty of settings to use their best endeavours to meet special educational needs.

An EHC plan is for those children and young people who require special educational provision that cannot reasonably be provided from within the resources normally available to mainstream nurseries, schools and post-16 settings, and is not dependent on a diagnosis.

## **17. Myth: “A child cannot get any support without an EHC Plan”**

Fact – Yes, they can. All schools provide quality first teaching, this means work can be differentiated and scaffolded for children and resources and interventions can be utilised.

There is a graduated response to meet the special educational needs of children and young people in settings, information about which is available on your LA’s SEND Local Offer, and on the setting’s individual website under SEN Information Report. Schools can use a notional budget of up to £6000 to provide SEN support.