

Special educational needs reform – England: Frequently Asked Questions

This document was last updated on: **10 September 2014.**

“All children and young people are entitled to an education that enables them to make progress so that they:

- *achieve their best*
- *become confident individuals living fulfilling lives, and*
- *make a successful transition into adulthood, whether into employment, further or higher education or training.”*

Special Educational Needs and Disability Code of Practice 2014¹

Introduction

Are you a parent of a deaf child looking for more information about changes to education laws in England for children with special educational needs (SEN) and disabilities? Are you wondering how these changes might impact on your deaf child?

We’ve produced this note to try and answer some of the questions you might have. It’s a broad summary of our understanding of the main changes. Overleaf, you’ll find a contents page so you can quickly identify the topic you’d like to find out more about.

We’ll keep this note updated so please keep checking back for the latest information. You can find the latest version of this document, along with other related NDCS resources, at: www.ndcs.org.uk/sen.

Reforms are also taking place in Wales and Northern Ireland though the changes there are moving to a different timescale. Please contact the National Deaf Children’s Society Freephone Helpline (0808 800 8880 or helpline@ndcs.org.uk) if you would like more information about proposals in these nations.

If you have any specific questions that are not answered in this document, please get in touch with the National Deaf Children’s Society [Freephone](tel:08088008880) Helpline (0808 800 8880 or helpline@ndcs.org.uk).

¹ <https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

NDCS uses the word ‘deaf’ to refer to all levels of hearing loss

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1. Summary

1.1 What's changing?

Some of the key changes include:

- Replacing the statement of SEN with an Education, Health and Care Plan.
- Allowing young people with SEN up to the age of 19 to have an Education, Health and Care Plan and, in some cases, up to 25.
- Giving some parents and young people the option of a Personal Budget to purchase some elements of the SEN support needed.
- Requiring local authorities to set out a 'Local Offer' of what support they expect to be available for children and young people with SEN and disabilities.
- Changing the SEN Code of Practice. This is guidance which sets out the government's expectations on what local authorities, schools and other bodies should be doing to support children with SEN and disabilities.
- New and explicit requirements around the involvement of children, young people and parents in decisions about provision for children and young people with SEN and disabilities.
- Requiring education, social care and health services to work together to support children with SEN and disabilities through the 'joint commissioning' of services.

In this FAQ, we provide more information about these changes.

The changes start to come into force **from** the 1st September 2014.

Statements will be replaced by Education, Health and Care Plans over the next 3 ½ years. For some families, the 'old' SEN framework will be in place whilst for other families, the 'new' SEN framework will be in force. In addition, some people feel that local authorities, schools and other bodies have not had very long to prepare for these changes.

This means that there is a risk of confusion and uncertainty in some areas. However, whichever framework applies, it is important to remember that your rights under both frameworks are broadly similar. **The Government have been clear that the changeover to the new system should not lead to a reduction in support.**

If you have any concerns or would like further information or support, please contact the National Deaf Children's Society Freephone Helpline (0808 800 8880 or helpline@ndcs.org.uk).

For further information on statements and existing SEN law, see our factsheet *A Guide to Statutory Assessments and Statements of Special Educational Needs for Deaf Children (England and Wales)*. For a copy, contact the National Deaf Children's Society Freephone Helpline (0808 800 8880 or helpline@ndcs.org.uk) or visit our website.

1.2 What do I need to do?

If your child currently has a statement of special educational needs or a learning difficulty assessment (if over 16), then your local authority should be in touch at some

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point about how this will be changed to an Education, Health and Care Plan. Local authorities are expected to move children and young people over in stages over the next 3 ½ years – so changes may not happen immediately. Local authorities are also expected to publish a ‘transition’ plan in September 2014 explaining their general approach to moving children and young people over to Plans. Sections 4 and 5 of this FAQ provides more information about how we expect the transition to work.

It’s the responsibility of local authorities and schools to make these changes happen and they should be in touch with you if there is anything you need to do. They should also be letting local parents know more generally about what’s changing. In the meantime, you may find it useful to be aware of what’s changing and how it might impact on your child, so that you can be ready and so that your family can make the most of these changes.

2. Special Educational Needs and Disability (SEND) Code of Practice

2.1 Will the definition of SEN change?

There will be no significant changes to the definition of SEN. It will continue to be largely defined as those who:

- Have a greater difficulty in learning than the majority of other children
- Have a disability which prevents or hinders them from making use of the educational facilities generally provided in the area.

The definition applies to pre-school children also.

The main change is around terminology for young people over 16. Currently, they are described as having ‘learning difficulties and disabilities’ and subject to a different framework. However, under the new proposals, they will be regarded as having special educational needs in the same way they would if they were under 16.

2.2 What will happen to the SEND Code of Practice?

The SEN and Disabilities Code of Practice sets out the current framework for how children with SEN will be supported – the new version takes effect from the 1st September 2014. It can be found online at: www.gov.uk/government/publications/send-code-of-practice-0-to-25.

In Annex A, we set out a summary of what the new SEND Code of Practice says and where to find key information. The Department for Education have also published a parent guide to the SEND Code of Practice which is available online at: [/www.gov.uk/government/publications/send-guide-for-parents-and-carers](http://www.gov.uk/government/publications/send-guide-for-parents-and-carers).

2.3 What will happen to the current categories of School Action and School Action Plus? *(updated)*

These categories will be abolished and replaced with a single category called SEN support. Children and young people should be transferred to this new category by September 2015. The new category will now also be applied to Further Education colleges. The new SEND Code of Practice outlines a 'graduated approach' for SEN support.

Under this approach, all early years and education providers must continue to use their 'best endeavours' to meet the special educational needs of deaf children and ensure that they have the support they need. They are expected to follow a process being called 'assess, plan, do, review'. The need for high quality teaching is emphasised.

The new Code is clear that, where a child is deaf, external specialists, including Teachers of the Deaf, should be involved.

Schools are required to keep records of individual children's progress which explains how they are monitoring and evaluating any SEN support provided. However, it is left to schools to decide how they will do this. There is no specific requirement to use 'individual education plans'.

Regardless of these changes, education settings are still required to follow the Equality Act 2010 in meeting the needs of deaf children. This includes taking steps to proactively consider the needs of deaf children and young people and making reasonable adjustments to ensure that they are not disadvantaged in their education. Education settings should not wait until a deaf or disabled child is falling behind before additional support is provided.

For further information on the Equality Act, see our factsheet *The Equality Act and Your Deaf Child's Education in England, Scotland and Wales*. For a copy, contact the National Deaf Children's Society Freephone Helpline (0808 800 8880 or helpline@ndcs.org.uk) or visit our website.

3. Education, Health and Care Plans

3.1 What is an Education, Health and Care Plan?

Education, Health and Care Plans will replace the statement of SEN. It will also replace the learning difficulties assessment (which applies in some post 16 settings). Once the new laws come into force, the Plan will be a legal document, setting out the support that a child needs, in the same kind of way that a statement is.

Currently, beyond the age of 16, children or young people can only have a statement if they are educated in a school. Under the new proposals, children or young people up to the age of 19 can have a Plan, providing they remain in education or training (including apprenticeships). In some cases, this can be extended up to 25.

Young people who are going to university or become employed will **not** be eligible for a Plan.

3.2 Who will get an Education, Health and Care Plan?

The Department for Education have said that any child or young person that currently has a statement will have a Plan. Any young person between the ages of 16 and 19 who currently have a learning difficulty assessment may also have a Plan. The Department for Education have been very clear that no child or young person should not have their statement or learning difficulty assessment replaced by a Plan simply because the system is changing.

Department officials have stated that the 'trigger' for the new Plan will be education. This means that if a young person has a health or social care need, they will not get a Plan unless these needs impact on their education.

3.3 How will the assessment work?

Section 9 of the new SEND Code of Practice sets out how the Department thinks that assessments should be carried out. Some of the key points made include:

- The views of children, young people and their families must be sought and they must be involved during the assessment process.
- Disruption to the family should be minimised. This includes avoiding multiple assessments and appointments. There should also be a 'tell us once' approach so that families do not have to repeat the same information to different professionals.
- Families should be provided with impartial information, advice and support. In the case of young people over the age of 16, a separate service of impartial information, advice and support should be available to them. Young people should also be provided with an 'advocate' by the local authority to make sure their views are heard and acknowledged.
- The assessment process should be carried out in a 'timely' manner and it should not normally take longer than 20 weeks to issue a Plan.

The new SEND Code of Practice is clear that, where a child is deaf, advice from a Teacher of the Deaf must be sought to inform an assessment for an Education, Health and Care Plan.

The National Deaf Children's Society has been working with the National Sensory Impairment Partnership (NatSIP) to produce guidance for professionals on what we think should be included in an assessment for a Plan. This guidance is available on the National Deaf Children's Society website at:

www.ndcs.org.uk/professional_support/news/better_plans.html

3.4 What will an Education, Health and Care Plan look like?

Section 9 of the new SEND Code of Practice sets out how the Department expects local authorities to go about writing an Education, Health and Care Plan. Some of the key points made include:

- Plans should be focused on the outcomes an individual child is expected to achieve. Any targets must be specific and set out what support is needed to achieve those outcomes.
- Plans should be clear, concise and positive. They should also be free from jargon.
- It should reflect the views of the child or young person.

Although the Department do not intend to put forward a set template or format for the new Plans, the Plans must include separate sections on:

- The views, interests and aspirations of the child or young person and family (section A)
- What the special educational need is (section B)
- Any health needs relating to their SEN (section C)
- Any social care needs relating to their SEN or disability (section D)
- The outcomes sought for that individual child or young person (section E)
- What support is needed for the child or young person's SEN (section F)
- What support is needed from health or social care services (sections G and H)
- The name and type of school or other placement (section I)
- Personal Budgets (see later for more information on Personal Budgets) (section J)
- Advice and information gathered during the assessment (section K)

The new Code (after paragraph 9.69 on page 164) includes more information about what should go in each of these sections.

The Plan can also include wider information about a child's social care needs. If a child or young person has received a social care assessment under what is known as the Chronically Sick and Disabled Persons Act, then any support identified as needed under this assessment must be included in a Plan. Other social care assessments can also feed into the Plan, providing that it relates to the child's special educational need. Steps should be taken to ensure sensitive information, including about particularly vulnerable children, is not disclosed more widely than it needs to be.

The National Deaf Children's Society has worked with NatSIP to produce a model exemplar Education, Health and Care Plan for a deaf child. This is available on the National Deaf Children's Society website at:

www.ndcs.org.uk/professional_support/news/better_plans.html.

3.5 Who will prepare the Education, Health and Care Plans?

Local authorities are encouraged to adopt a 'key working' approach whereby the family has a single point of contact. A key worker's role is usually to support the family by liaising with the different professionals involved in any assessments of the child and to co-ordinate everything. This role could be taken by a Teacher of the Deaf.

The new SEND Code of Practice also indicates that families may, in addition, receive support from an 'independent supporter' from the voluntary or private sector. Independent workers are intended to help families through the process and would be someone who does not work for the local authority. The nature of the support provided is likely to vary from family to family. The Department has funded the Council for

Disabled Children to ensure families have access to Independent Supporters² across England.

3.6 How will an Education, Health and Care Plan be enforced? **(updated)**

Existing statutory rights will remain and in many respects, you will be able to challenge a Plan at a SEN and Disability Tribunal in the same way that you might challenge a statement. You will also be able to challenge a local authority decision not to replace a statement or learning difficulty assessment with a Plan. Annual reviews will continue as they do now.

One key change is that parents will be required to **consider** mediation if they would like to challenge a local authority at a SEN and Disability Tribunal. Once a parent has decided whether or not to undergo mediation, they can take a case to Tribunal but this can only happen after a 'certificate' has been issued by a mediation adviser to confirm that mediation was considered. Mediation can consider the health and social care aspects of a Plan, as well as education.

The mediation or any discussions on it must be conducted with someone 'independent' from the local authority. The Department have been clear that any disputes must still be resolved within the same timescales, even where mediation takes place.

Mediation is not necessary if the appeal to Tribunal is about disability discrimination or about a dispute over whether a child should go to a particular school or placement.

Another key change is that, if you move, then the Education, Health and Care Plan can be 'transferred' and the local authority in your new area will be required to provide the same support as in your previous home area. However, if your statement requires your child to be placed in a certain school, this can be reviewed, particularly if you now live some distance from the school.

Another key change is that, if your child is over 16, it is expected that they will take a leading role in challenging any decisions around their Education, Health and Care Plan (see 3.8 in this FAQ).

3.7 Will an Education, Health and Care Plan provide legal entitlements to speech and language therapy?

Currently, speech and language therapy can be treated as educational provision even though it is often provided by health services. Judges have agreed that speech and language therapy is vital for children with SEN. This is legally set out in 'case law'.

The Department for Education have stated that this will continue to be the case. Where a health or social care service has the purpose of education or training a child or young person, it must be regarded as special educational provision, even if it is not provided by an education service. This should mean that local authorities must legally ensure this is provided if it is set out in an Education, Health and Care Plan.

² Some more information about Independent Supporters is available on the Council for Disabled Children website at: www.councilfordisabledchildren.org.uk/what-we-do/independent-support

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More widely, there are no new direct powers against health services under the current proposals. However, the Department has set out a number of ways in which it expects health and education services to work together and 'jointly commission' the services that children with SEN need.

3.8 What will happen to an Education, Health and Care Plan when my child turns 16? *(updated)*

Under the new system, your child will become responsible for their Plan and local authorities are expected to engage directly with your child, unless they believe that your child does not have the 'mental capacity' to make informed decisions. The new Code recognises that many young people will still wish to involve their parents in any decisions on their Plan. The Code also stresses that young people must receive the information, advice and support they need to participate in decisions about their Plan.

Annex 1 of the SEND Code of Practice has more information about how decisions on mental capacity should be made.

4. Turning a statement into an Education, Health and Care Plan

4.1 My child has a statement. Will they get an Education, Health and Care Plan?

Most likely, yes. The Department for Education has said that all children who are eligible for a statement should also be eligible for an Education, Health and Care Plan. The only cases where existing children and young people might not change over to a Plan is if:

- a) Their needs have significantly changed.
- b) Your child is no longer in education or training before the planned changeover.

No 'new' statements can be issued after the 1st September 2014 (unless your child was already being assessed for one immediately before that date). And all statements must be changed over to an Education, Health and Care Plan by April 2018.

4.2 My child has a statement. When will this change over to an Education, Health and Care Plan? *(updated)*

Local authorities will have some flexibility for how they move children over to the new system. However, the Government has made it clear that they expect children and young people to move over at key 'transition' points.

In the below table, we summarise our understanding of when a statement **should** or **must** be converted to an Education, Health and Care Plan for children and young people at different points in their education.

Groups of children / young people	Latest academic year for transfer to new SEN system			
	2014/15	2015/16	2016/17	2017/2018 (By 1 April 2018)
Moving from early years setting to a school	Should	Must	Must	Must
Moving from infant to junior school	Should	Must	Must	Must
Moving from primary to middle school	Should	Must	Must	Must
Moving from primary to secondary school	Should	Must	Must	Must
Moving from middle to secondary school	Should	Must	Must	Must
Other children with statements of SEN in year 6	Should	Should	Should	Must
Children in year 9	Should	Must	Must	Must
Moving from school to post-16 institution or an apprenticeship	Must	Must	Must	Must
Other children in year 11	Should	Should	Should	Must
Moving from mainstream to special school	Should	Must	Must	Must
Moving between local authorities	Should	Should	Should	Must
Had an Education, Health and Care Plan before 1 st September	Must			

Local authorities are expected to publish 'transition plans' which set out how they will move over children and young people with statements to Education, Health and Care Plans over the next 3 ½ years. These should be available on your local authority website in September 2014.

The Department for Education have published guidance on how the changeover should happen at:

<https://www.gov.uk/government/publications/send-managing-changes-to-legislation-from-september-2014>

4.3 How will the changeover happen? *(updated)*

Local authorities should carry out a transfer review for each child / young person being moved. This will take the place of an annual review. The young person and parent must be invited to this transfer review.

This will involve an assessment of your child's needs under the new framework. Local authorities are expected to avoid asking for information that they already have. The

transfer review will conclude when you have been issued with a final Education, Health and Care Plan to replace the statement. The local authority must issue an Education, Health and Care Plan within 14 weeks from when you were first notified about the transition review.

During this period, your rights to appeal (if you are not happy with the Plan) remain and are similar to those that are in place already in relation to statements. If the local authority decides not to issue an Education, Health and Care Plan, they must notify you within 10 weeks from when you were first notified about the transition review.

4.4 My child was being assessed for a statement just before the 1st September. Will they now get an Education, Health and Care Plan?

This depends on the local authority. The local authority can now treat this as an assessment for an Education, Health and Care Plan, with your agreement. However, they do not have to and, particularly if the assessment process is at a late stage, they may still issue a statement instead.

4.5 I don't want to wait. Can my child get an Education, Health and Care Plan sooner?

You can ask the local authority to carry out a transfer review. Your local authority may agree to move your child to an Education, Health and Care Plan sooner. However, they do not have to. The Government has said that it's for local authorities to decide when the changeover happens and parents or young people do not have any legal rights to make this happen sooner.

If your child's needs have changed, then you still have the right to request a re-assessment of their needs. Hopefully, the local authority will agree to carry out a transfer review. However, again they do not have to. Instead, they can choose to carry out a re-assessment with reference to the 'old' SEN laws around statements.

Even if the local authority does not agree to changeover your child to an Education, Health and Care Plan, they will still have to follow the 'old' SEN framework. Existing rights and protections will remain in place until your child moves to the new system.

4.6 What happens if my child already had an Education, Health and Care Plan before the 1st September 2014?

Many of these existing 'pilot' Education, Health and Care Plans were made before the Government had made a final decision on what they should look like. The Government has therefore said that existing Plans should be checked to make sure that they meet the new laws and requirements. This should happen relatively soon after September 2014 and before August 2015.

5. Turning a learning difficulty assessment into an Education, Health and Care Plan

5.1 My young person has a learning difficulty assessment. How will the changeover happen? *(updated)*

In section 4, we set out how the changeover from statements to Education, Health and Care Plans will work. Much of the same also applies to the changeover from learning difficulty assessments to Plans. The main difference is that the changeover period is shorter. All Learning Difficulty Assessments (LDAs) should be transferred by 1st September 2016.

As set out in the table below, young people will have the right to request an Education, Health and Care Plan. If the young person is intending to stay in education or training beyond August 2016, the local authority **must** issue a Plan on request from the young person. If not, the young person can still request a Plan but the local authority does not have to issue a Plan.

Groups of young people	Latest academic year for transfer to new SEN system	
	2014/15	2015/16
Young people with a learning difficulty assessment and intend to stay in education or training beyond August 2016	Must (if requested)	Must (if requested)
Young people with a learning difficulty assessment and do not intend to stay in education or training beyond August 2016	Should (if requested)	Should (if requested)

Local authorities are expected to inform young people of their right to request a transition to an Education, Health and Care Plan and the possible benefits in doing so.

5.2 Can a parent request a learning difficulty assessment be converted to an Education, Health and Care Plan on behalf of the young person? *(new)*

Yes. But the local authority must seek the agreement of the young person before proceeding. The only exception is if it can be argued that the young person does not have the 'mental capacity' to make a decision. Annex 1 of the SEN and Disability Code of Practice has more information about how decisions on mental capacity should be made.

6. Personal Budgets

6.1 What is a Personal Budget?

A Personal Budget is an amount of money that has been identified by the local authority to deliver SEN provision where the parents or young person is to be involved in making sure that provision is provided. There are four different ways in which a Personal Budget can be managed:

- 1) 'Direct payments' whereby parents and young people are given funding directly to spend.
- 2) 'Notional arrangements' whereby the local authority, school or college holds the funding and commissions the support needed on behalf of the parent or young person.
- 3) Third party arrangements whereby the funding is held by a third party who handles the funding on behalf of the parent.
- 4) A combination of the above.

6.2 Who can have a Personal Budget?

Under current proposals, only where an Education, Health and Care Plan is in place will a parent or young people be able to have a Personal Budget. A Personal Budget can be requested by a parent or a young person over 16 once the local authority has agreed it will issue an Education, Health and Care Plan or during the annual review process.

Local authorities must consider requests for Personal Budgets. However, there are exceptions that mean they do not always have to provide Personal Budgets. For example:

- Local authorities do not have to provide Personal Budgets if they are concerned it will negatively impact on other people or will be poor value for money. It is possible, for example, that some local authorities will argue that allowing Personal Budgets may reduce the funding they have available to support other families.
- Local authorities are required to judge if a young person or family is 'capable' of managing Personal Budgets.
- Young people or families who have been required by the law to undergo treatment for drug or alcohol abuse will not be allowed to have a Personal Budget.
- Where a child or young person is in custody, a Personal Budget is not permitted.

6.3 Will I have to have a Personal Budget?

No – it will be entirely optional. Local authorities must provide families with information to understand what a Personal Budget will involve and how it can be used. This should be set out in the 'Local Offer' for each area. Section 7 of this FAQ has more information about what the Local Offer is.

6.4 What will I be able to buy with a Personal Budget?

This will be set out in the Education, Health and Care Plan – a Personal Budget can **only** be used for provision that has been set out in the Plan.

Separately, where provision is being purchased for use within a school or a college, the Department has stated that their consent must first be sought. The Department have also stated that Personal Budgets cannot be used to purchase a place at a particular school.

The new Code states that local authorities should, through their Local Offer, have a clear policy in place setting out what services currently “lend themselves” to the use of Personal Budgets.

6.5 How much money will I be able to get through my Personal Budget?

The new SEND Code of Practice states that local authorities must ensure that families who choose the option of direct payments actually have enough money to purchase what has been agreed. Beyond this, the amount of money that a family will get will depend on the individual case and what has been set out in the Education, Health and Care Plan.

Local authorities can give **indicative** figures when a Personal Budget is being considered but the total amount of money should only be finalised when the Plan is being agreed.

6.6 Can my child have a Personal Budget?

If your child is over 16, in theory, yes, he/she could have a Personal Budget. As set out earlier in 6.2, not everyone will be allowed to have a Personal Budget.

We understand that a young person will need the consent of their college if they wish to use direct payments in this context.

6.7 Will I receive any help in spending a Personal Budget?

Local authorities must provide information about organisations that can provide you with advice and assistance on Personal Budgets. This should be included in their Local Offer.

Parents or young people will have to sign an agreement with the local authority over the use of direct payments. It will be important to be aware that the local authority can ask the parent or young person to pay back any money that has been unspent if, for example, it feels that the direct payment has not been spent as intended or if it suspects fraud has taken place.

Until March 2015 there is support available from the I-Sign project to families with deaf children and young people interested in the use of Personal Budgets to access sign

language provision. More information about the I-Sign project is available at www.ndcs.org.uk/isign.

NDCS is producing a separate factsheet on Personal Budgets. This will be published shortly and will be available on the NDCS website at www.ndcs.org.uk/sen or available to order from the NDCS Freephone Helpline.

7. Local Offer

7.1 What is the Local Offer?

Local authorities will be required to publish a 'Local Offer'. A Local Offer is intended to provide information about provision it expects to be available to children with SEN and disabilities in their area.

The Department has also said that local authorities must keep their local provision under review. It is hoped that local authorities will use the Local Offer to identify where there are gaps in provision and listen to families about what needs to change.

7.2 What will the Local Offer include?

Section 4 of the new SEND Code of Practice states that the Local Offer must include information on:

- Special educational provision available within the area, including resource provisions and special schools.
- Specialist provision outside of your area where this is being used by local children with SEN.
- Information about how parents and young people can request an assessment for an Education Health and Care Plan
- Details of teaching approaches, how the curriculum will be adapted, arrangements for assessment and monitoring, how effectiveness will be measured, extra-curricular activities and so on.
- Arrangements for identifying SEN.
- Opportunities for apprenticeships and training.
- Health care provision. This includes speech and language therapy and mental health services.
- Social care provision.
- Childcare provision, including provision suitable for disabled children and those with SEN
- Transport.
- Where families can get information and advice about SEN and disability from other sources, including forums and support groups.
- How to make a complaint.
- Any eligibility criteria for any provision set out in Local Offer.

The Local Offer should also signpost to information provided by schools on their arrangements for pupils with SEN.

7.3 How can I get involved in shaping the Local Offer?

Local authorities are required to consult with both parents and young people with SEN and disabilities when setting up their Local Offer. Local authorities have to consider whether local provision meets the needs of families and whether they need to take steps to improve their 'offer'.

It is likely that many local authorities will initially turn to parent carer forums to do this. Parent carer forums are groups of parents of children with SEN and disabilities who work with local service providers to make sure the needs of children with SEN and disabilities are met. The National Network of Parent Carer Forums has more information about these forums: www.nnpccf.org.uk/.

The National Deaf Children's Society encourages parents to get involved in any local consultations on this to ensure that the Local Offer reflects the needs of deaf children and their families. Even if you are not a member of the parent carer forum, you should still be given the opportunity to get involved in shaping the Local Offer. Look for information on your local authority website about the Local Offer and contact them to ask how you can get involved.

The National Deaf Children's Society has produced advice to local authorities on issues to consider in making their Local Offer relevant to deaf children, young people and their families. This can be downloaded from: www.ndcs.org.uk/professional_support/news/develop_local_offer.html. This may be useful in helping you to think about the kind of questions you can ask the local authority to make sure the Local Offer will meet the needs of families in your area.

The Department have also said that local authorities will be required to publish comments made by parents and young people about its Local Offer. Any comments must be published anonymously. This may give parents the opportunity to tell the local authority and other parents if they think something is missing from the Local Offer or is not being provided. Every year, the local authority must respond to comments and set out what action it plans to take in response.

7.4 Is the Local Offer enforceable?

No. Although, local authorities will be required to draft a Local Offer, they do not have to ensure that everything within the Local Offer is actually provided. If a parent or young person was unhappy about any aspect of the Local Offer, they would be able to complain. However, there is no direct legal requirement on the local authority to provide what's in the Local Offer.

7.5 Where can I find the Local Offer for my area?

Local Offers should be available on your local authority website, once they have been published. Initial Local Offers must be published by September 2014. It is expected that Local Offers will be developed and improved over time.

NDCS is producing a separate factsheet on the Local Offer. This will be published shortly and will be available on the NDCS website at www.ndcs.org.uk/sen or available to order from the NDCS Freephone Helpline.

8. Choosing a school or college

8.1 What's changing?

As is currently the case with statements, the application and admissions process will differ, depending on whether or not your child has an Education, Health and Care Plan. Children without a Plan will follow the usual applications / admissions route, about which your local authority should provide information.

All schools are bound by the Equality Act 2010 and will therefore have to make reasonable adjustments to ensure that all children's special educational needs are met, even if your child does not have a Plan.

For children who have a Plan, under current proposals, parents will have a right to name any state funded school (including academies and free schools) or Further Education college in the new Plan.

Parents will also have a right to name certain non-maintained or independent special schools or specialist colleges in their Plan. The Department for Education will develop a list of independent special schools that can be named. Parents will **not** have a right to name an independent school that does not cater specifically for children with SEN.

If your local authority agrees to a placement that is further away than a more local school, it is important to be aware that the local authority may not have to meet your travel costs.

In previous years, it has been unclear how the SEN Code of Practice applies to academies, which are independent, state-funded schools. Under the current changes, all academies will have to follow all laws on SEN in the same way as other maintained schools.

8.2 What happens if my preference is not met?

It appears that the process will be largely similar to what happens now. As now, local authorities will have to agree to a placement unless they feel it would be an inefficient use of their resources or if it would have a negative impact on other pupils at that school. If you disagree with the local authority, you will be able to make a request for the case to be considered by a SEN and Disability Tribunal.

9. If things go wrong...

9.1 I have a general complaint about special education provision. What can I do?

The local authority, education provider or health provider must work with you to try and resolve the disagreement. The local authority must also ensure that parents and young people have access to an independent disagreement resolution service. The Local Offer should provide details of this service and how you can make use of it if there is anything you're not happy about.

Whether or not you use a disagreement resolution service is completely optional.

9.2 My child has a statement and I'm not happy about what's in it. What can I do?

Existing rights of appeal remain as they are now.

For further information on statements and existing SEN law, see our factsheet *A Guide to Statutory Assessments and Statements of Special Educational Needs for Deaf Children (England and Wales)*. For a copy, contact the National Deaf Children's Society Freephone Helpline (0808 800 8880 or helpline@ndcs.org.uk) or visit our website.

9.3 My child has an Education, Health and Care Plan (or is being assessed for one) and I'm not happy about the section on education

Your rights of appeal remain similar to what's currently in place for those with statements. The main change is that you will be required to consider mediation before progressing your complaint to a Special Educational Needs and Disability Tribunal.

Mediation is optional. However, you will need to let a mediation advisor know that you do not wish to undergo mediation before you can progress your complaint.

Mediation is not necessary if the appeal to Tribunal is about disability discrimination or about a dispute over whether a child should go to a particular school or placement.

9.4 My child has an Education, Health and Care Plan (or is being assessed for one) and I'm not happy about the sections on health or social care

If the health or social care needs relates to your child's SEN, then you can still complain against the local authority, as set out earlier in 9.3. This is because the local authority is still responsible for special educational provision.

However, if your complaint is about wider health or social care provision, then you need to pursue the complaint separately. These complaints cannot be taken to a Tribunal.

You can still ask for support from a disagreement resolution service or mediation with the health or social care provider to try and resolve the complaint.

9.5 My complaint is about something else. What should I do?

Section 11 (page 232 onwards) of the new SEND Code of Practice has more information about the different ways you can make a complaint, depending on what the complaint is about.

If you would like further information or support, please contact the National Deaf Children's Society Freephone Helpline (0808 800 8880 or helpline@ndcs.org.uk).

10. The National Deaf Children's Society's work on SEN reform

10.1. What is the National Deaf Children's Society doing?

We've been working hard over the past few years to influence the Government's proposals. We're now focusing on making sure that deaf children benefit from these changes. This includes working with local authorities to make sure that they have considered the needs of deaf children.

10.2 Will the National Deaf Children's Society be publishing new information resources for parents and professionals? *(updated)*

Yes, we'll be checking and updating all of our resources over summer and autumn 2014. As well as this FAQ, we have produced a summary guide to SEN reform for parents. We are also producing new factsheets on the Local Offer and Personal Budgets. All of our resources relating to SEN will be available from the NDCS website at www.ndcs.org.uk/sen. In the meantime, we will continue to update parents on what the changes might mean for them in this FAQ document.

Separately, the National Deaf Children's Society is also part of the I-Sign consortium which is publishing information to families about the Local Offer and Personal Budgets in relation to the provision of sign language support for families and young people. More information about the I-Sign project is available at www.ndcs.org.uk/isign.

If you have any specific questions that are not answered in this document, please contact the National Deaf Children's Society Freephone Helpline (0808 800 8880 or helpline@ndcs.org.uk).

More information about SEN reform *(updated)*

NDCS has more information on SEN reform at www.ndcs.org.uk/sen.

You can also visit the Government's webpages on SEN policy at:
www.gov.uk/government/policies/increasing-options-and-improving-provision-for-children-with-special-educational-needs-sen

You can read the Children and Families Act 2014 in full at:
www.legislation.gov.uk/ukpga/2014/6/contents/enacted

Special Educational Needs and Disability Code of Practice (2014):
www.gov.uk/government/publications/send-code-of-practice-0-to-25

A parent / carer guide to the above Code of Practice:
www.gov.uk/government/publications/send-guide-for-parents-and-carers

Information from the Department for Education for young people about SEN reform:
www.gov.uk/government/publications/sen-and-disability-support-changes-information-for-young-people

The 'old' Special Education Needs Code of Practice (2001):
www.gov.uk/government/publications/special-educational-needs-sen-code-of-practice

Guidance to local authorities on transition to the new 0 to 25 SEND system from 1 September 2014:
<https://www.gov.uk/government/publications/send-managing-changes-to-legislation-from-september-2014>

More information about deafness

For more information take a look at our website: www.ndcs.org.uk

For information and practical support on issues related to your child's deafness, contact the National Deaf Children's Society Freephone Helpline on 0808 800 8880, email us at helpline@ndcs.org.uk or contact us via Live Chat at www.ndcs.org.uk/livechat

If you prefer to speak a language other than English, tell us the language of your choice and your phone number (in English). We will call you back with an interpreter within a few minutes.

This information can be requested in large print, in Braille and on audio CD.

September 2014

Annex A: The new Code of Practice at a glance - where to find the key paragraphs

Topic	Details	Where to find in new Code
SEN Support	<ul style="list-style-type: none"> School Action and School Action Plus are now merged. Schools should follow an “assess, plan, do, review” cycle, involving external professionals where necessary. 	5.38 6.44
Individual Education Plans (IEP)	<ul style="list-style-type: none"> No requirement to produce an IEP, but <i>“Schools should particularly record details of additional or different provision....A local authority that is considering or carrying out a statutory assessment of the pupil’s needs, will wish to review such information.”</i> 	6.73
Requesting a statutory assessment	<ul style="list-style-type: none"> An assessment can be requested by parents (or their advocate), young person aged 16+ (or their advocate), early years practitioners, schools, post-16 institutions and many others, including foster carers and health and social care professionals. Evidence will need to be gathered about the nature and extent of the child’s SEN, evidence of the action already being taken to meet the SEN, evidence that where progress has been made, it is only as a result of much additional effort and support at a sustained level over and above that which is usually provided. Local authorities must inform parents of their decision (whether or not to assess) within six weeks of the request and must give reasons for the decision. 	9.8 9.14 9.17
Education Health and Care Plans	<ul style="list-style-type: none"> Local authorities must give parents and young person 15 days to consider draft and give views and ask for a particular school/other institution to be named. Plans should be clear, concise, understandable and accessible to parents, child / young person and providers/practitioners. Must be evidence-based and focus on how best to achieve outcomes. No set format, but must include the following lettered sections in any order: a) views, interests and aspirations of the child / young person and their parents; b) description of SEN; c) child / young person’s health needs related to SEN; d) child / young person’s social care needs related to SEN; e) outcomes sought for child / young person, including outcomes for adult life; f) special educational provision required; g) any health provision reasonably required by the learning difficulty or disability (LDD) which result in the child / young person having SEN; h1) any social care provision which must be made for a child / young person under 18 resulting from section 2 of the Chronically Sick and Disabled Persons Act 1970; h2) any other social care provision reasonably required by the LDD which result in the child / young person having SEN. Includes adult social care provision being made to meet eligible needs under care Act 2014; i) name and type of school; j) details of Personal Budget if parents/young person have opted for this; k) advice and information gathered during assessment (appendices). 	9.41 9.61 9.62-9.69
Naming an education provider	<ul style="list-style-type: none"> Children must be educated in accordance with their parents’ wishes so long as this is compatible with the efficient education of others and does not entail unreasonable expenditure. 	9.78-9.94

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Personal Budgets	<ul style="list-style-type: none"> Parents or young people over 16 can request a Personal Budget (funding to buy services or support set out in the EHCP based on clear agreed outcomes) when Plan is written or at annual review. 	9.95 - 9.124
Reviewing an EHCP	<ul style="list-style-type: none"> First review must be within 12 months of the date of issue of the plan. For children under 5, local authorities should consider reviewing a plan at least every 3 to 6 months. This would complement the duty to review at least annually and such reviews may be streamlined, depending on the needs of the child. Parents/young person, school or other institution, local authority SEN officer, health representative and local authority social care representative must be invited and given at least 2 weeks' notice. School must seek advice and information prior to the meeting from all parties invited, and send it to all invited at least 2 weeks before the meeting. School must send report of meeting to all invited within 2 weeks of the meeting. Within 4 weeks of the review meeting, the local authority must decide whether it will keep the Plan as it is, amend it or cease to maintain it and notify the parents/young person and school or other institution. From Year 9 onwards, review must consider what provision is required to assist in preparing for adulthood and independent living. 	9.166 9.178 9.176 9.176 9.176 9.176 9.184
Amending a plan	<ul style="list-style-type: none"> If local authority proposes to amend a Plan, it must send the parent or young person a copy of the existing (non-amended) plan and an accompanying notice with details of the proposed amendments and copies of evidence to support them, and must give parents/young person 15 days to comment. 	9.193- 9.198
Ceasing a plan	<ul style="list-style-type: none"> Local authorities may cease to maintain a plan when any of the following apply: the local authority is no longer responsible for the child or young person (e.g. child has moved to another local authority); it decides that special educational provision is no longer needed; a young person aged 16+ starts paid employment (including employment with training but not apprenticeships); the young person goes into Higher Education; the young person aged 18+ leaves education and no longer wishes to engage in further learning; or they wish to continue in learning but the local authority believes maintaining a plan is not appropriate Local authorities must not simply cease to maintain plans once a young person is 18 or over. 	9.194 9.199- 9.204
Transport	<ul style="list-style-type: none"> Current principles will still apply: if parents' or child / young person's preferred place is further away than nearest available place to meet needs, local authority is not obliged to provide transport to place further away. Could either name nearer school or name further one and ask parents to pay all or part of transport costs. 	9.214
Resolving disputes	<ul style="list-style-type: none"> Local authorities must make independent disagreement resolution services available, but use of the service is voluntary. Disagreement resolution can help resolve, or prevent from escalating, non-Tribunal matters (e.g. failure to make provision as set out in a Plan). This is different from mediation which applies specifically to parents or young person who are considering appealing to the Tribunal (only some types of appeal) Mediation services must also be independent of the local authority. Mediation aims to enable appeals to be disposed of more quickly and amicably. Parents and young person must contact a mediation adviser before 	11.6 11.5- 11.13 11.15 11.5

	<p>registering an appeal about education / health / care needs assessments or the SEN element of an Education, Health and Care Plan.</p> <ul style="list-style-type: none"> • If parents want to go to mediation, Local authorities must attend. • Mediation can also be used for health and social care elements of a plan. No tribunal for these elements 	<p>11.26</p> <p>11.31-11.37</p>
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Glossary *(new)*

Annual review the review of an EHC plan which the local authority must carry out at least every 12 months.

Disability the legal definition is when a person has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day to day activities. Long-term means lasting, or likely to last, at least 12 months.

Education Health and Care Plan (EHC plan) an EHC plan sets out a child's/young person's education, health and social care needs, the desired outcomes which parents, professionals and, wherever possible, the child or young person have identified, and the support which is to be provided to help the child or young person achieve the desired outcomes. It is drawn up by the local authority after an EHC needs assessment has determined that an EHC plan is necessary.

EHC needs assessment an assessment of a child's/young person's education, health and care needs, carried out by the local authority in consultation with relevant professionals such as Teachers of the Deaf, educational psychologists and speech and language therapists. Local authorities must consult the child/young person and parents throughout the process.

Individual Education Plan (IEP) a document used in schools to record targets, and strategies and resources to help the child/young person meet the targets. It is not a legal requirement to produce an IEP, but schools should ensure that they have accurate evidence of the SEN support that has been provided and the impact the support has had.

Local Offer Local authorities have to set out in their Local Offer information about provision they expect to be available across education, health and social care for children and young people in their area who have SEN or are disabled, including those who do not have EHC plans.

Outcomes EHC plans must specify the outcomes sought for the child or young person. These are outcomes which will enable children and young people to progress in their learning and be well prepared for adulthood.

Personal Budget an amount of money identified by the local authority to deliver provision set out in an EHC plan, where the parent or young person is involved in securing that provision.

School Action/School Action Plus the terms used in the 2001 SEN Code of Practice for the stages of support for SEN provided from within a school's own resources. These stages have been replaced in the new legislation with one term: SEN support.

Special Educational Needs (SEN) a child or young person has SEN if their learning difficulty or disability calls for special educational provision, that is provision which is different from or additional to the provision normally made for other pupils of the same

age. You may also see the acronym SEND used – this is intended to include both children with special educational needs and who have a disability.

Special Educational Needs and Disabilities (SEND) Code of Practice is guidance on how children with special educational needs and disabilities should be supported. By law, it must be followed by local authorities, schools and a wide range of other bodies unless there are good reasons why not. The guidance has legal effect through the Children and Families Act 2014 (part three).

SEN support under the new legislation all support provided from within the resources of the school/nursery/college (i.e. without an EHC plan) is called SEN support. Examples of this could include inclusion in a language group, advice from a speech and language therapist or Teacher of the Deaf, a buddying scheme or a home/school diary. This term replaces School Action and School Action Plus which were used in the 2001 legislation. If a child or young person doesn't make adequate progress over time in spite of SEN support, the next stage is to request an EHC needs assessment.

Statement a legal document which sets out a child or young person's special educational needs and the provision required to meet those needs. Statements are being phased out and replaced by EHC plans.

Statutory assessment an assessment of a child's/young person's special educational needs carried out by the local authority in consultation with relevant professionals such as Teachers of the Deaf, educational psychologists and speech and language therapists. This is called an 'EHC needs assessment' under the new legislation.

Tribunal an independent body which considers appeals by parents (or young people aged 16 or over) against local authority decisions on EHC needs assessments and EHC plans. The Tribunal also hears claims of disability discrimination. Its full title is First-tier Tribunal (Special Educational Needs and Disability).