



# Education inside penal detention for children in England:

## An overview

### Key points

- Educational provision in prisons and secure training centres is woefully inadequate for children in both quantity and quality.
- Planning for education for children on release from custody is inadequate.
- Over two thirds of children in custody have special educational needs which can include learning difficulties, speech, language and communication difficulties, and social, emotional and mental health problems. These needs are often mislabelled, unrecognised and unmet.
- Many children in custody who need Education, Health and Care plans do not have them.
- Education, Health and Care plans for children in custody are often poor-quality and the support specified in them is often not provided.
- For children with special educational needs, the emphasis is on their post-detention needs and not the support they need while in custody.
- Law and practice around education in custody for children, including those with special educational needs, is not equivalent to that in the community.
- Legal protections and frameworks should be strengthened to ensure that children have the same educational entitlements and provision in custody and in the community.
- At present, the rights of children with special educational needs in custody are watered down. Young people in custody and their parents can only bring appeals related to special educational needs in a limited set of circumstances and very rarely bring cases to the First-tier Tribunal (Special Educational Needs and Disability).
- The protections that do exist for children in custody are not being adhered to.
- More should be done to ensure that children in custody receive their educational entitlements within the existing framework and laws: this guide outlines the steps which practitioners need to take to achieve this.
- As a minimum professionals working with children in and at risk of prison need to be aware of the rights in this guide, take active steps to ensure they are realised and support children to challenge failures to respect and protect their rights to education.

## Educational needs and experiences of children in prison

Children in trouble with the law often have special educational needs that are mislabelled, unrecognised and unmet (see box on the definitions of children and young people in this briefing).

In 2019/20, practitioners expressed concerns about the speech, language and communication needs of 71 per cent of children sentenced to custody (Ministry of Justice, 2021). This is high compared to children in the community: sixteen per cent of school students have identified special educational needs (Department for Education, 2021a). See box for a summary of special educational needs and Education, Health and Care plans.

Every child in custody has an assessment prepared by their youth offending team worker which requires consideration of special educational needs and their learning, education and employment. Despite their high levels of speech, language and communication needs, in 2014 less than a third of children in custody had a Statement of Special Educational Needs or an Education, Health and Care plan – the document that replaced Statements of Special Educational Needs (Ministry of Justice and Department for Education, 2016). While children who are sentenced to custody are likely to have been identified as having behavioural, social and emotional difficulties in school, their speech, language and communication needs are often not formally recognised.

Children have a right to education in custody just as they do in the community, but it is limited in comparison to what is available in the community. Children can be placed in different types of penal detention (see box). While children in secure children's homes tend to get education every day, children in prisons and secure training centres have a statutory right to a minimum amount of education each week. However, the Howard League is aware from its direct legal work with children in prison that resourcing issues mean that children regularly did not receive their educational entitlements even before the Covid-19 pandemic when educational provision stopped completely for a period (Howard League, 2020).

Education classes in custody are typically small, with no more than around eight children in any class. Children in prisons and secure training centres who cannot attend ordinary classes are often put on, what is sometimes known as, "outreach" timetables where they can have lessons on either a one to one or smaller group basis. Children may be placed on outreach education for a range of reasons, including because they cannot be safely accommodated in a group or because of their distinct learning needs. Unfortunately, the Howard League's experience from its direct legal work with children is that they often get less education as a result, with their time determined by how many children need time with the worker rather than being needs led.

Research shows that children from Black Caribbean and mixed white and Black Caribbean backgrounds are substantially overrepresented among children with identified social, emotional and mental health needs, the category which replaced behavioural, social and emotional difficulties (Strand and Lindorff, 2018). Discrimination affecting the educational support of children in the community is often replicated and compounded in prison. More than half of the children in prison are from ethnic minority backgrounds and one third of children in prison are Black (Ministry of Justice, 2021).

The quality of education that children experience in custody is often poor, especially in prisons and secure training centres. The national curriculum is not followed and children rarely get to complete formal qualifications to a high level.

Children are generally transferred to the adult prison estate soon after they turn 18 without any regard to their educational needs or where they are with their studies. Although beyond the scope of this briefing, there is a stark contrast between the rights of young people with special educational needs in the community, which continue until the age of 25, compared with the rights of young people in custody, which end when they transfer to a prison, primarily for those aged 18 and over. There is no obvious explanation or justification for this differential treatment between young adults in custody and in the community with special educational needs.

## Children and young people: a word on language

Any person under the age of 18 in England is legally a child (see the Children Act 1989, s.105). This accords with the growing recognition all those under the age of 18 must be treated in such a way that their best interests should be a primary consideration, as required by Article 3 of the UN Convention on the Rights of the Child.

There is a growing consensus that children do not magically become adults on their 18<sup>th</sup> birthday and instead continue to mature until at least their mid-twenties and that for those caught up in the criminal justice system, this must be taken into account. Resources on young adults and the criminal justice system are available on the Transition to Adulthood Alliance's website, <https://t2a.org.uk>.

According to section 83(2) of the Children and Families Act 2014, a 'young person' is a person over compulsory school age and under 25. Compulsory school age ends on the last Friday of June in the academic year in which they become 16. Broadly speaking therefore, the Children and Families Act 2014 and accompanying Code of Practice refer to children as anyone under 16 and people aged 16 to 24 as young people.

The educational entitlements for children set out in the Children and Families Act 2014 apply to anyone aged 18 and under in relevant youth detention accommodation (s.70(5)). Youth detention accommodation is defined by s562(1A) (b) (ii) of the Education Act and has the effect of including an 18-year-old who is placed in an establishment that is wholly or mainly for those under the age of 18 but not one who is placed in a penal institution wholly or mainly for adults aged 18 and over.

In this briefing, the term children will be used to refer to anyone under the age of 18 unless the context concerns specific provisions that are available to young people aged 16 to 24 as a result of the legal framework.

This briefing deals mainly with the rights of children aged under 18 in detention.

## Special educational needs and Education, Health and Care plans

A child or young person has special educational needs if they have a learning difficulty or a disability that makes it harder for them to learn and for which they need extra support (Children and Families Act 2014, s.20). For example, someone's special educational needs or disability might affect their:

- ability to read and write
- ability to understand things
- behaviour
- their ability to make friends
- concentration levels
- physical ability to do things.

The law requires local authorities to put in place additional support for children and young people with special educational needs in the community and those placed in penal detention designed for children. For the majority of children and young people in the community, additional support will be provided from within the existing resources of their school, college or other setting under what's called 'SEN support'. However, more than 430,000 children and young people in England require the additional support of an Education, Health and Care plan (Department for Education, 2021b).

An Education, Health and Care plan is a legally binding document produced by a local authority following an in-depth assessment of a child or young person's needs (an education, health and care needs assessment). It sets out the child or young person's special educational needs, the extra support (special educational provision) they require to meet those needs and the mainstream or specialist school, college or other setting they should attend. If a child or young person also has health and/or social care needs, their Education, Health and Care plan must specify these needs and the support required to meet them.

## The Youth Custodial Estate: places where young people are held

There are currently three types of custodial establishment where children are placed:

- **Secure Children's Homes** accommodate both children placed by their local authority on a welfare order and young or especially vulnerable children who are placed by the Youth Custody Service after being remanded or sentenced to custody. Secure Children's Homes are small, local authority run units which offer intensive education, therapeutic and behavioural provision tailored to children's needs, and which have a high ratio of staff to children. There are 14 Secure Children's Homes in England and Wales. As of June 2021, 14 per cent of children in custody were in a Secure Children's Home (76 children) (Ministry of Justice, 2021).
- **Secure Training Centres** accommodate children aged 12–17, including 15–17-year-olds who are judged to be too vulnerable for placement in a Young Offender Institution. They are larger than Secure Children's Homes but smaller than Young Offender Institutions. Only one Secure Training Centre remains open in England and Wales, following the closure of Medway in March 2020 and the closure of Rainsbrook in July 2021. As of June 2021, 11 per cent of children in custody were in a Secure Training Centre (60 children) (Ministry of Justice, 2021). However, this was before the movement of 33 children from Rainsbrook to other custodial establishments (Justice Committee, 2021).
- **Young Offender Institutions** are penal institutions for boys aged 15–17 who are not judged to be especially vulnerable. They are much larger than other custodial establishments for children and have a low ratio of staff to children. There are five under-18 Young Offender Institutions in England and Wales. As of June 2021, 75 per cent of children in custody were in a Young Offender Institution (418 children) (Ministry of Justice, 2021).
- There is a proposal to create **secure schools**, with the first one to be on the site of the former secure training centre in Medway (Home Office, 2021).

## The right to education in custody

The right to education is a human right that the United Kingdom has acknowledged in both international and domestic law.

The Universal Declaration of Human Rights, adopted in 1948, proclaims in Article 26: 'everyone has the right to education' and Article 2 of Protocol 1 to the European Convention on Human Rights guarantees an individual right to education. The UK has also specifically acknowledged the right of children to education as provided for by Article 28 of the United Nations Convention on the Rights of the Child, which expressly includes the right to education for children in detention.

Domestic law concerning children in custody has a long history of placing a special focus on education. Section 44 of the Children Act 1933, which remains in force today, states that "Every court in dealing with a child or young person who is brought before it, either as...an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training."

However, specific statutory provisions for children's general education in custody depend on the type of institution they are in.

### *Education in secure children's homes*

In secure children's homes in England, the education standard is that "children make measurable progress towards achieving their educational potential and are helped to do so" (Children's Homes (England) Regulation 8(1)). Staff must "raise any need for further assessment or specialist provision in relation to a child with the child's education or training provider and the child's placing authority" (Children's Homes (England) Regulation 8(2)(a)(vii)) and "help each child to attend education or training in accordance with the expectations in the child's relevant plans" (Children's Homes (England) Regulation 8(2)(a)(x)). The Secure Children's Home must ensure "that each child has access to appropriate equipment, facilities and resources to support the child's learning" (Children's Homes (England) Regulation 8(2)(b)).



Secure schools will be dually established as 16 to 19 academies and secure children's homes and will have to comply with the Children's Home Regulations (Home Office, 2021).

### *Education in secure children's homes*

Children must be occupied in education and training (Secure Training Centre Rules 27(1)), and education or training courses must be provided for at least 25 hours a week (Secure Training Centre Rules 28(2)). In the case of children of compulsory school age, "the curriculum shall be appropriate to his age, ability and aptitude and to any special educational needs he may have, and shall as far as possible reflect the requirements of the National Curriculum within the meaning of the Education Act 1996" (Secure Training Centre Rules 28(4)).

### *Education in young offender institutions*

The Young Offender Institution rules state that the "aim of a young offender institution shall be to help offenders to prepare for their return to the outside community" (Young Offender Institution Rule 3(1)) and that the "aim mentioned in paragraph (1) shall be achieved, in particular, by—(a) providing a programme of activities, including education..." (Young Offender Institution Rule 3(2)).

All children in young offender institutions must be occupied in education, training, work and physical education, based on their identified needs. Fifteen hours of education a week must be provided for all children of compulsory school age (Young Offender Institution Rule 38(2)), and young offender institutions have been commissioned to provide 30 hours of education a week since 2015 (Youth Justice Board, 2016).

With the exception of a period when these rules were relaxed to enable prisons and secure children's homes to provide education so far as was reasonably practicable due to the pandemic, these minimum requirements are non-negotiable. In the case of AB, which concerned a child aged 15 who received no education for many weeks on end in Feltham prison, the High Court ruled that this failure was unlawful because it was not in accordance with the law. In giving judgment, Mr Justice Ouseley said: "It has not been possible to provide [education] because not enough thought, effort and resources have been put into it. I understand how doing so removes resources

from elsewhere for someone who may not be thought deserving of so much attention. But that is not what the Rule permits, and there are obvious reasons why those who are troublesome in the way AB is and for the reasons he is, cannot be left merely to drift in their education, as if they were responsible adults making adult choices. He is in his GCSE year and has special educational needs" (R(AB) v Secretary of State for Justice [2017] EWHC 1694 (Admin), paragraph 31).

### **Additional rights of children with special educational needs in custody**

There is a legal framework in place for supporting children and young people in penal detention with special educational needs, although it is not as extensive as the rights in the community for this group.

The legal framework is set out in the Children and Families Act 2014 and The Special Educational Needs and Disabilities (Detained Persons) Regulations 2015, and expanded on in chapter 10 of the [Special Educational Needs and Disabilities Code of Practice 2015](#).

By law, the following (amongst others) must have regard to the Code:

- local authorities
- youth offending teams
- Governors or Managers (and the staff they delegate responsibilities to) of secure training centres, secure children's homes and young offender institutions for under 18s (Children and Families Act 2014, ss.77(1), 77(4), 77(5)).

The law also requires them to co-operate with each other (Children and Families Act 2014, s.70(2)).

### *Children and young people in penal detention without Education, Health and Care plans*

All secure penal settings are required to undertake an educational assessment of each child who is placed there, including an assessment of literacy, numeracy and, where necessary, a screening to identify whether further assessments to identify special educational needs are required (SEND Code of Practice 2015: 10.76). This assessment also relies

on information from the local authority provided by the youth offending team.

The results of assessments should, in theory, enable the education provider where the child or young person is detained to develop an individual learning plan. Education providers should put special educational provision in place as soon as possible and review its effectiveness in meeting the child or young person's special educational needs.

Education providers should have suitably qualified staff to support this and make referrals for other specialist support as appropriate (SEND Code of Practice 2015: 10.74–10.77).

### *Assessment of post-detention education, health and social care needs*

Anyone who is detained in the youth secure estate can be referred for a statutory assessment of their **post-detention** educational, health and social care needs (this is known as an education, health and care needs assessment) under s.71 of the Children and Families Act 2014. There is no statutory provision for an assessment of their "in-detention" needs. An education, health and care needs assessment is a prerequisite to an Education, Health and Care plan being issued.

### *Requesting an education, health and care needs assessment*

An education, health and care needs assessment can only be requested by the "appropriate person". This is the:

- parent if the child concerned is no longer of compulsory school age (in special educational needs law the definition of a parent is broad and includes any person who "has care" of a child, not just birth parents or those with parental responsibility (Education Act 1996, s.576))
- young person themselves if they are aged 16 (and no longer of compulsory school age) to 18 and detained in the youth secure estate, or
- person in charge of the establishment where the child or young person is detained (i.e. the Governor, Director or Manager) and there is no prohibition on a child asking

such a person to make the referral (Children and Families Act 2014, s.71(2)).

A request for an education, health and care needs assessment must be made in writing to the child or young person's "home" local authority (Children and Families Act 2014, s.70(6); Education Act 1996, s.562J). This means the local authority where the child or young person normally lived before going into custody or, if they are a looked after child, the local authority looking after them. A template letter for requesting an education, health and care needs assessment is available [here](#).

Even if a request is not made, the local authority must also consider whether to carry out an education, health and care needs assessment if a detained child or young person is brought or comes to its attention as someone who has or may have special educational needs (Children and Families Act 2014, s.71(4)). This means the duty would be triggered if any professional working with a detained child or young person, such as an advocate or youth offending team worker, brings them to the local authority's attention. In accordance with section 104 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, all children on remand are legally "looked after" by their home local authority and the local authority is therefore under a duty to consider completing an education, health and care needs assessment for every child on remand who appears to have special educational needs. The Howard League is aware that this does not happen at present despite the well known high levels of speech, language and communication needs among children remanded to custody. Similarly, all children who are sentenced to custody should have had a pre-sentence report as required by section 30 of the Sentencing Act 2000 which will mean that a youth offending team worker will have considered their educational needs.

The fact that a child is not entitled to have an education, health and care needs assessment and plan to cover their needs while in detention is a factor that judges and magistrates should bear in mind when deciding whether to remand or sentence children to custody in light of the requirements of s44 of the Children Act 1933 to ensure proper provision is made for education.

## *Deciding whether to assess*

The local authority has a maximum of six weeks from the date it receives a request (or from the date the child or young person was brought or came to its attention) to decide whether or not to carry out an education, health and care needs assessment (The Special Educational Needs and Disability (Detained Persons) Regulations 2015, Regulation 5(1)). There are very limited exceptions to this time limit (The Special Educational Needs and Disability (Detained Persons) Regulations 2015, Regulation 5(4)).

Before making a decision, the local authority must invite the child's parent or the young person and the person in charge of the secure accommodation in which the child or young person is detained to share their views on the child's needs and whether they may need an Education, Health and Care plan (Children and Families Act 2014, s.71, The Special Educational Needs and Disability (Detained Persons) Regulations 2015, Regulation 3)).

The local authority must also notify a range of professionals that it is considering whether to conduct an education, health and care needs assessment, including the home clinical commissioning group with responsibility for commissioning the detained person's health services before their detention, the home authority's social care team with responsibility for children and young people with special educational needs, the youth offending team, and the educational facility where the child or young person is registered or whoever is responsible for educational provision for the child or young person if they are not registered anywhere (The Special Educational Needs and Disability (Detained Persons) Regulations 2015, Regulation 4(2)).

After taking account of any views expressed and evidence submitted the local authority must carry out an education, health and care needs assessment if it thinks that the detained child or young person has, or may have, special educational needs, and they may need special educational provision to be made through an Education, Health and Care plan on their release from detention (Children and Families Act 2014, s.71(9)).

The local authority must notify the parent or young person and the person in charge of the youth accommodation of its decision as to whether it will do the assessment as well as all those it

was required to notify that it was considering whether to conduct the assessment (The Special Educational Needs and Disability (Detained Persons) Regulations 2015, Regulation 5(1)).

If the local authority decides not to conduct an education, health and care needs assessment, it must inform the child's parent or the young person of this decision in writing. The parent or young person will have a right of appeal against the decision to the First-tier Tribunal (Special Educational Needs and Disability).

It is the parent who has the right of appeal if the child concerned is not yet a young person or the young person themselves if they are aged 16 (and no longer of compulsory school age) to 18 (and detained in youth accommodation). This is the case even if the request was made by the person in charge of the youth accommodation where the child or young person is detained. If the right of appeal is the young person's, they can be supported to exercise this right by an advocate, including a parent, another family member or a professional. Limited legal aid is available for appeals. More information is available on IPSEA's website at <https://www.ipsea.org.uk/where-can-i-get-help-with-making-an-appeal>.

## **What happens in an education, health and care needs assessment?**

The local authority must gather information and advice on a child or young person's **post-detention** education, health and social care needs, the provision required to meet those needs, and the outcomes expected to be achieved by the child or young person as a result of the provision put in place to support them. The advice should be clear and specific (Department for Education and Department of Health, 2015: 9.51). This advice must comprise:

- information from the child's parent or the young person themselves if they are aged 16 (and over compulsory school age) to 18
- educational advice from either the educational setting the child or young person attended immediately before entering custody or, if this is not available, someone with experience of teaching, or knowledge of provision for, children and young people with special educational needs

- where advice from a person with relevant teaching experience or knowledge is not available, and the child or young person did not attend an educational setting immediately before entering detention, a person who was responsible for their educational provision any time prior to detention must provide the advice
- medical advice and information from a health care professional
- psychological advice and information from an educational psychologist
- advice and information in relation to social care
- advice and information from the person in charge of the youth accommodation where the child or young person is detained (i.e. Governor, Director or Manager)
- the youth offending team
- any other person the local authority thinks appropriate
- where the child or young person would be in or beyond year 9, advice and information in relation to provision to assist them in preparation for adulthood and independent living, and
- **any** person the child's parent or young person reasonably requests that the local authority seek advice from (e.g. a speech and language, occupational or physio therapist, or someone from mental health services). This kind of request is likely to be considered reasonable if a professional has said the advice might be needed or the child or young person is already on a waiting list for it.

The local authority is legally required to obtain **all** of this information as a minimum (The Special Educational Needs and Disability (Detained Persons) Regulations 2015, Regulation 6(1)). Anyone who is asked for information and advice should respond within six weeks (Children and Families Act 2014, s.28; Department for Education and Department of Health, 2015: 9.52). There are very limited exceptions to this time limit

(The Special Educational Needs and Disability (Detained Persons) Regulations 2015, Regulation 8(2)). Long waiting lists or staffing shortages are not within the list of exceptions. If a local authority is genuinely unable to obtain one of the necessary pieces of advice during the time frame, it would be expected to obtain an independent report in its place.

A local authority doesn't have to obtain *new* information and advice where that type of advice has previously been provided **and** the person who provided it, the local authority and the child's parent or the young person are **all** satisfied that it is sufficient (The Special Educational Needs and Disability (Detained Persons) Regulations 2015, Regulation 6(4)). Previous advice can only be sufficient for an education, health and care needs assessment if it is relatively up-to-date and accurately reflects the child or young person's current needs.

Copies of evidence submitted by the parent or the young person must be supplied to the other people from whom information and advice is being sought (The Special Educational Needs and Disability (Detained Persons) Regulations 2015, Regulation 6(3)(a)). If the person in charge of the youth accommodation in which the child or young person is detained requested the education, health and care needs assessment and they consent, the local authority may also provide copies of the evidence they submitted to the people from whom information and advice is sought in the education, health and care needs assessment (The Special Educational Needs and Disability (Detained Persons) Regulations 2015, Regulation 6(3)(b)).

As well as the duties relating to evidence, the local authority must:

- consult with the child and the child's parent or the young person and take into account their views, wishes and feelings
- engage the child and the child's parent or the young person, ensuring that they are able to participate in decisions
- have regard to the need to support the child or young person to facilitate their development, and help them to achieve their best educational and other outcomes



- minimise disruption for the child, the child's parent or the young person and their family, and
- consider whether the child's parent or the young person requires any information, advice and support in order for them to participate effectively in the education, health and care needs assessment and, if so, this must be provided (The Special Educational Needs and Disability (Detained Persons) Regulations 2015, Regulation 7).
- NHS England
- the youth offending team
- the head teacher / principal of the school, further education college or pupil referral unit at which the child or young person is registered or whoever is responsible for educational provision for the child or young person if they are not registered anywhere (The Special Educational Needs and Disability (Detained Persons) Regulations 2015, Regulation 10(2)).

## **Deciding whether to issue an Education, Health and Care plan on release**

The local authority must decide, on the basis of the evidence from the education, health and care needs assessment, whether it is **necessary** for the child or young person to have an Education, Health and Care plan on release from detention (The Special Educational Needs and Disability (Detained Persons) Regulations 2015, Regulation 7). This test is satisfied if, on release, the child or young person would not receive the support needed to meet their special educational needs without an Education, Health and Care plan.

The local authority must inform the child's parent or the young person and the person in charge of the youth accommodation whether it has decided to issue an Education, Health and Care plan and the reasons for this decision (Children and Families Act 2014, s.71(10)).

If the local authority decides not to issue an Education, Health and Care plan, it must confirm this in writing within a maximum of 16 weeks of the date the request for an education, health and care needs assessment was made (or from the date the child or young person was brought or came to the local authority's attention) (The Special Educational Needs and Disability (Detained Persons) Regulations 2015, Regulation 10(1)). There are very limited exceptions to this time limit (The Special Educational Needs and Disability (Detained Persons) Regulations 2015, Regulation 10(4)). The local authority must also notify:

- the clinical commissioning group responsible for commissioning the child or young person's health services before their detention

The parent or young person will have a right of appeal against a local authority's decision not to issue an Education, Health and Care plan.

## **Preparing an Education, Health and Care plan**

If the local authority decides to issue an Education, Health and Care plan, it will first send out a [draft Education, Health and Care plan](#) to the parent or young person. When it does this, the local authority must tell the parent or young person that they have at least 15 days to:

- make comments – 'representations' – about the content of the draft Education, Health and Care plan
- request a meeting with the local authority to discuss the draft
- request that a particular school or other institution is named in the final Education, Health and Care plan (The Special Educational Needs and Disability (Detained Persons) Regulations 2015, Regulation 13(1)).

An Education, Health and Care plan must set out the child or young person's special educational needs, the extra support (special educational provision) they require and the mainstream or specialist school, further education college or other setting they should attend on release from custody. If a child or young person also has health needs related to their special educational needs and/or social care needs, their Education, Health and Care plan must specify these needs and the support required to meet them. Education, Health and Care plans must also set out the outcomes

it's hoped the child or young person will achieve as a result of the special educational provision made for them. Education, Health and Care plans do not have a fixed format. Each local authority can develop its own 'style' – but legally they must contain a number of separate sections.

[IPSEA's Education, Health and Care plan checklist](#) can be used to check if an Education, Health and Care plan complies with the law. References in the Education, Health and Care plan checklist to the Special Educational Needs and Disability Regulations 2014 should be read as referring to The Special Educational Needs and Disability (Detained Persons) Regulations 2015.

If a parent or young person requests that a particular school, further education college or other institution is named in the final Education, Health and Care plan, the local authority **must** consult with that placement about whether it should be named (unless the request is for a wholly independent school). For more information on rights to request a particular school or other institution, see [IPSEA's webpage](#). The same provisions apply to naming a setting in an Education, Health and Care plan for a child or young person in custody as for children and young people in the community (Children and Families Act 2014, s.72(2)).

Within a maximum of 20 weeks of the date the request for an education, health and care needs assessment was made (or from the date the child or young person was brought or came to the local authority's attention) the local authority must send a final Education, Health and Care plan to:

- the parent or young person
- the person in charge of the youth accommodation
- the youth offending team
- the governing body or equivalent of the school or other education setting named in the plan
- the clinical commissioning group responsible for commissioning the child or young person's health services before their detention, and
- NHS England (The Special Educational Needs and Disability (Detained Persons) Regulations 2015, Regulation 13(2)).

There are very limited exceptions to the 20 week time limit (The Special Educational Needs and Disability (Detained Persons) Regulations 2015, Regulation 13(3)). In order to meet this deadline the local authority needs to send out the draft Education, Health and Care plan a maximum of 14 weeks from the date the assessment was requested (or from the date the child or young person was brought or came to its attention).

The child's parent or the young person will have a right of appeal to the Special Educational Needs and Disability Tribunal if the local authority decides to name a different actual or type of school, further education college or other institution to that requested by the child's parent or the young person in the final Education, Health and Care plan, or if the local authority names no educational placement at all (Children and Families Act 2014, s.73).

### **Detained children and young people with Education, Health and Care plans**

When a detained child or young person has an Education, Health and Care plan the local authority must keep it in place and arrange "appropriate special educational" provision while they are detained in the youth secure estate (Children and Families Act 2014, ss.74(2) and 74(4)).

A local authority that is responsible for keeping an Education, Health and Care plan for a detained child or young person must send a copy of it to the person in charge of the secure setting, the youth offending team and NHS England within five working days of either the date on which the local authority first kept the plan or became aware of the child or young person's detention if this is later (The Special Educational Needs and Disability (Detained Persons) Regulations 2015, Regulation 17(1); SEND Code of Practice 2015: 10.115).

If the Education, Health and Care plan specifies health care provision, NHS England must arrange "appropriate health care provision" while the child or young person is detained in youth accommodation (Children and Families Act 2014, s.74(5)). It is also possible that social care needs in a child or young person's Education, Health and Care plan will remain while they are detained and local authorities should arrange appropriate social care provision as necessary (SEND Code of Practice 2015: 10.67).

For a child or young person for whom a local authority was maintaining an Education, Health and Care plan immediately before their detention, the plan **does not cease** when the child or young person enters custody (Children and Families Act 2014, s.74(1)(a)).

For a child or young person who has been issued with an Education, Health and Care plan while in custody, although the plan will set out their needs on release, they are entitled to receive appropriate special educational and health care provision while they are detained in youth accommodation (Children and Families Act 2014, s.74(1)(b)).

Appropriate special educational and health care provision means the provision set out in the Education, Health and Care plan, unless the local authority or NHS England decides it would not be practicable for it to be provided, in which case, as close as possible provision must be arranged (Children and Families Act 2014, s.74(6)).

It may be possible to arrange the special educational provision described in the Education, Health and Care plan even if it is not already available within the youth accommodation where the child or young person is detained (Children and Families Act 2014, s.75). If it's not practicable to arrange it, the local authority should work with the person in charge of the youth accommodation in which the child or young person is detained, the education provider and the child's parent or young person to decide how to arrange special educational provision as close as possible to what is set out in the Education, Health and Care plan (SEND Code of Practice 2015: 10.124). If the provision in the plan is no longer appropriate, provision which reasonably appears appropriate must be arranged.

Provision will no longer be appropriate when it does not meet the detained child or young person's needs. Before deciding that special educational provision is no longer appropriate, the local authority should seek professional advice and work with the custodial case manager, the youth offending team, the person in charge of the youth accommodation in which the child or young person is detained, the education provider and the child's parent or young person to review the detained child or young person's needs, taking into account the information in the Education, Health and Care plan, the literacy and numeracy assessment and any other assessment of the

detained person's needs (SEND Code of Practice 2015: 10.125).

Education, Health and Care plans are not updated while a child or young person is in custody so if provision in an Education, Health and Care plan is no longer appropriate, the plan will need changing after the child or young person is released from detention.

Education, Health and Care plans for children and young people in the community must be reviewed at least annually. However, this does not apply to children and young people in detention. If a detained child or young person is in custody within a year of the last annual review of their Education, Health and Care plan, the local authority should conduct a monitoring meeting and continue to do so, as a minimum, every 12 months. The monitoring meeting should consider the special educational and health provision arranged for the detained child or young person and the appropriateness of the provision in the Education, Health and Care plan in light of their progress or changed circumstances (SEND Code of Practice 2015: 10.133).

On release, the local authority must make sure the child or young person receives the special educational provision described in their Education, Health and Care plan and formally review the plan (Children and Families Act 2014, s.48(2)). The law sets out how they must do this and the process for making changes to Education, Health and Care plans. There is more information about the annual review process on [IPSEA's website](#).

*Appeals to the First-tier Tribunal (Special Educational Needs and Disability) (SEND Tribunal) by children in custody*

When a local authority makes a decision that is appealable to the SEND Tribunal, it must write to the parent or young person to inform them of the decision that has been made and the right of appeal, including the time limits and information about mediation – including the contact details for the mediation provider.

The SEND Tribunal's role is to resolve disputes between parents or young people and local authorities where they are unable to agree on the support that a child or young person with special educational needs requires. The SEND Tribunal hears appeals about:

- a local authority's refusal to carry out an assessment or reassessment of a child or young person's needs
- a local authority's refusal to issue or amend an Education, Health and Care plan
- the content of Education, Health and Care plans, including disputes about the placement to be attended
- a local authority's decision to take away (cease to maintain) an Education, Health and Care plan.

However, the appeal rights of parents of children with special educational needs in detention and young people themselves are less extensive than those that relate to children and young people in the community. In relation to detained children and young people, the SEND Tribunal only has the power to order a local authority to carry out an education, health and care needs assessment, issue an Education, Health and Care plan, and amend the placement (or type of placement) named in an Education, Health and Care plan (The Special Educational Needs and Disability (Detained Persons) Regulations 2015, Regulation 28(2)).

For children and young people in the community there is a right of appeal against the broader content of Education, Health and Care plans (the description of the child or young person's special educational needs in section B and the special educational provision to meet their needs in Section F). There is no right to appeal against these elements of an Education, Health and Care plan for children and young people in detention. However, the appeal forms include space to explain why a parent or young person disagrees with the content of sections B and F of an Education, Health and Care plan. The parent or young person should set this out if necessary because (i) a child or young person's special educational needs and the special educational provision required to meet those needs inform the educational setting which they should attend and (ii) the Tribunal does have the power to make changes ("correct any deficiencies") to the content of sections B and F of an Education, Health and Care plan with the agreement of the local authority and the parent or young person (The Special Educational Needs and Disability (Detained Persons) Regulations 2015, Regulation 28(1)).

Before making an appeal to the SEND Tribunal, a parent or young person must consider mediation (Children and Families Act 2014, s.55). This does not mean that mediation is compulsory, but it must be considered unless the appeal is only about placement in which case mediation does not have to be considered.

In order to make an appeal, an appeal form has to be completed and emailed or posted to the SEND Tribunal. The forms vary according to the type of appeal – they are available on the SEND [Tribunal's website](#). There is detailed information about the deadline and process for appealing to the SEND Tribunal on the [IPSEA website](#). It is free to make an appeal to the SEND Tribunal and [assistance under the legal aid scheme](#) is available to people who are financially eligible.

Local authorities must comply with orders made by the SEND Tribunal.

In relation to children and young people with special educational needs in the community, the SEND Tribunal also has the power to make non-binding recommendations about their health and social care needs and the support they require to meet these needs. However, the SEND Tribunal does not have these powers in relation to children and young people with special educational needs in detention.

## **Rights and reality: next steps**

The Howard League's direct work with children and young people in custody suggests that the rights and entitlements of this group are rarely adhered to. Despite the high levels of educational need among children in custody, it is rare to see children with up to date Education, Health and Care plans either when they arrive in custody or in preparation for release. It is virtually unheard of for parents, young people or secure establishments to request such assessments or, if they do, to challenge decisions not to complete them or the outcome of such assessments.

If a local authority fails to comply with the legal obligations set out in this briefing, it might be appropriate to make an application to the High Court for judicial review. Legal advice should be obtained promptly if it might be necessary to apply for judicial review as there are strict timescales and various pre-action steps that have to be followed before a claim can be issued. Assistance under the legal aid scheme is available to people who are financially eligible.



More should be done to ensure that children in custody receive their educational entitlements within the existing framework and laws; professionals supporting children need to routinely support them to access the rights outlined in this briefing. Where those rights are not respected, children and young people should be supported to bring legal challenges.

## Further advice and support

### *Howard League for Penal Reform*

The Howard League is a national charity working for less crime, safer communities and fewer people in prison. We campaign, research and take legal action on a wide range of issues. We work with parliament, the media, criminal justice professionals, stakeholders and members of the public, influencing debate and forcing through meaningful change. Our specialist legal team provides free and confidential legal advice and representation to children and young adults aged 21 and under in custody on a wide range of issues.

### *IPSEA*

Independent Provider of Special Education Advice (known as IPSEA) is the leading organisation providing free legally-based independent information, advice and casework support to help get the right education for children and young people with special educational needs and/or disabilities (SEND). We deliver our services across England, providing free one-off telephone advice and ongoing casework support to parents, carers and young people appealing to the SEND Tribunal. IPSEA's legal team can be contacted for advice on the rights of children and young people with special educational needs in penal detention via [detention@ipsea.org.uk](mailto:detention@ipsea.org.uk).

### *Special Educational Needs and Disability Information, Advice and Support Services*

All local authorities are legally required to have an Information, Advice and Support Service (IASS) to provide free and impartial information, advice and support to parents and carers of children and young people with special educational needs and disabilities and young people themselves. A directory of IAS services is available [here](#).

## Cases

*R(AB) v Secretary of State for Justice* [2017] EWHC 1694 (Admin)

## Legislation

Children Act 1933

Children Act 1989

Children and Families Act 2014

Education Act 1996

Legal Aid, Sentencing and Punishment of Offenders Act 2012

The Children's Homes (England) Regulations 2015

The Secure Training Centre Rules 1998

The Special Educational Needs and Disability (Detained Persons) Regulations 2015

The Young Offender Institution Rules 2000

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