

Special educational needs

Statutory entitlements in the community and the penal custodial estate for under 18s

Children and young people in the community	Children and young people detained in penal custody
<p>Children and young people with special educational needs (SEN) but without Education, Health and Care (EHC) plans</p> <p>Mainstream schools and other settings must use their “best endeavours” to provide the special educational provision required to meet the needs of individual children and young people with SEN. Those without EHC plans should get extra support from within the school or setting’s existing resources. This is called SEN Support.</p> <p>Children and Families Act 2014, s.66; SEND Code of Practice, paragraphs 6.44-6.56 and 7.13-7.24</p>	<p>Children and young people with special educational needs (SEN) but without Education, Health and Care (EHC) plans</p> <p>Local authorities must take such steps as they consider appropriate to promote the person’s fulfilment of their learning potential.</p> <p>Special educational provision (equivalent to SEN Support) should be put in place as soon as possible.</p> <p>Places of penal detention are not listed as one of the placements where the “best endeavours” duty applies under section 66 of the Children and Families Act 2014.</p> <p>Education Act 1996, s.562B, SEND Code of Practice paragraphs 10.74 and 10.77, Schedule 2A of the Care Planning, Placement and Case Review (England) Regulations 2010 and the Children Act 1989 guidance and regulations Volume 2: care planning, placement and case review, paragraph 8.31</p>
<p>Right to assessment of current and future special educational needs</p> <p>The focus is on the present and future.</p> <p>The right to an EHC needs assessment applies when the child or young person has or may have SEN that may require special educational provision to be made through an EHC plan.</p> <p>Children and Families Act 2014, s.36(2) and s.36(8)</p>	<p>Right to assessment of future special educational needs</p> <p>The focus is on the future and special educational needs post-detention only.</p> <p>The right to an assessment applies when the detained child or young person has or may have SEN that may require special educational provision to be made through an EHC plan on their release from detention in the future.</p> <p>Children and Families Act 2014, s.70(5) and s.71(9)</p>

<p>Issuing an EHC plan</p> <p>An EHC plan must be issued if it is necessary for the child or young person to have an EHC plan in order to receive the support they have been assessed as needing.</p> <p>Children and Families Act 2014, s.37(1)</p>	<p>Issuing an EHC plan</p> <p>An EHC plan must be issued if it is necessary for the child or young person to have an EHC plan in order to receive the support they have been assessed as needing when they are released from detention.</p> <p>Children and Families Act 2014, s.72(1)</p>
<p>Duty to ensure additional support is provided to meet needs in EHC plans</p> <p>The local authority and the relevant health body (usually the local integrated care board (ICB)) have an absolute duty to secure the special educational provision and health care provision as specified in a child or young person's EHC plan. This must be put in place as soon as an EHC plan is finalised.</p> <p>Children and Families Act 2014, s.42</p>	<p>Duty to ensure additional support is provided to meet children's needs</p> <p>The local authority and NHS England have a duty to arrange appropriate special educational provision and health care provision respectively to meet a child or young person's needs whether or not the child or young person has an EHC plan. This should be put in place as soon as possible.</p> <p>Children and Families Act 2014, s.74 and SEND Code of Practice paragraph 10.77</p>
<p>Reviewing an EHC plan</p> <p>The local authority must review a child or young person's EHC plan every 12 months to check that:</p> <ul style="list-style-type: none"> • their needs are still appropriately reflected in their EHC plan • the educational and health care provision set out in their EHC plan remains appropriate • the placement/setting named in the EHC plan remains appropriate • they have made progress towards meeting the outcomes specified in their EHC plan. <p>The local authority must make a decision to conclude the annual review process (about whether to leave the EHC plan as it is, amend it or take it away (cease to maintain it)).</p> <p>The decision made (or the issuing of the amended EHC plan) triggers a right of appeal.</p> <p>Children and Families Act 2014, s.44(1) and The Special Educational Needs and Disability Regulations 2014, regulations 20 and 21</p>	<p>Reviewing an EHC plan</p> <p>EHC plans remain in place while a child or young person is in custody but there is no requirement for the local authority to review the plan every 12 months while they are detained.</p> <p>It is recommended that the local authority carries out a monitoring meeting every 12 months to consider the:</p> <ul style="list-style-type: none"> • special educational and health provision actually in place for the detained child or young person • appropriateness of the provision specified in the EHC plan in light of the detained child or young person's progress or changed circumstances. <p>There is no statutory requirement for the local authority to make a formal decision at or after this meeting – for example, a decision to amend the EHC plan if the provision specified is no longer appropriate. This means no right of appeal is triggered.</p> <p>The local authority must review the plan as soon as reasonably practicable after release.</p> <p>Children and Families Act 2014, s.48(2) and SEND Code of Practice, paragraphs 10.66 and 10.133</p>

Right of appeal to the Special Educational Needs and Disability Tribunal

The child's parent or the young person themselves (if they are no longer of compulsory school age) has a right of appeal against:

- A local authority's refusal to carry out an education, health and care needs assessment (or reassessment)
- A local authority's decision not to issue an EHC plan
- The content of an EHC plan – needs (section B), provision (section F) and placement/setting (section I)
- A local authority's decision not to amend an EHC plan following an annual review
- A local authority's decision to cease to maintain an EHC plan.

Children and Families Act 2014, s.51

Right of appeal to the Special Educational Needs and Disability Tribunal

The child's parent or the young person themselves (if they are no longer of compulsory school age) has a right of appeal against:

- A local authority's refusal to carry out an education, health and care needs assessment
- A local authority's decision not to issue an EHC plan
- The proposed placement/setting or type of placement/setting, or the lack of a named placement/setting in an EHC plan.

Children and Families Act 2014, s.73

Right to request recommendations from the Tribunal about health and social care

The Tribunal has the power to make non-binding recommendations about a child or young person's health and social care needs and the support they require to meet those needs.

The Special Educational Needs and Disability (First-tier Tribunal Recommendations Power) Regulations 2017

Right to request recommendations from the Tribunal about health and social care

There is no express statutory right for parents and young people in detention to seek non-binding recommendations from the Tribunal about health and social care needs and provision. The Tribunal has no power to make such recommendations.