

# FASD AND EDUCATIONAL HEALTH CARE PLANS (EHCPs)



## WHAT is this Factsheet about?

FASD may affect a child's ability to learn and function in a classroom setting. An Educational Health Care Plan (EHCP) may support those children.

This factsheet explains:

- what an EHCP is;
- when an EHCP might help;
- how to get an EHCP;
- what to do if you are refused an EHCP; and
- where to go for further information and support.

## KEY POINTS:

- An EHCP is a legal document.
- An EHCP is used when the mainstream educational setting cannot provide all the support needed.
- It describes the additional support arrangements, the child's special educational needs and the goals.
- Early intervention and educational support for children with FASD can make a significant difference to a child's education and general life chances.

## UNDERSTAND your rights

### What is an EHCP?

Schools have a general duty to support children with special educational needs and disabilities (**SEND**) (see factsheet – **FASD** and **SEND**)

Every school must have a Special Educational Needs Co-ordinator (SENCo) who is responsible for assessing, planning and monitoring the progress of children with SEND. Often children with FASD need more help than the school or college can provide and those children may benefit from an EHCP.

### How do I get an EHCP?

The first step is to apply in writing to your Local Authority (**LA**) asking for an EHC needs assessment (**Needs Assessment**). This is an assessment of the educational, health care and social care needs of the child or young person. Your LA's website should set out how to ask for a Needs Assessment.

### Who can apply for a Needs Assessment?

A parent or anyone acting on behalf of a school or college can apply for a Needs Assessment. Young persons between 16 and 25 can make the request themselves.

You can apply at any time. Your LA cannot insist that you speak with the relevant school or other services before making a request. You do not need the support of the school or college.

You do not need a report from an educational psychologist. You do not have to show that the school has tried everything it can.

### What should I write in my request for a Needs Assessment?

There is no particular form or format to make a valid request for a Needs Assessment. Your LA cannot legally reject a request because a prescribed method has not been used.

[Click here](#) for a helpful template letter and more information on Needs Assessments.

### Must the LA carry out a Needs Assessment?

If a request is made to a LA to carry out a Needs Assessment, it **must** consider:

- a) whether the child or young person **has or may have** special educational (**SEN**) needs; **and**
- b) whether they **may** need special educational assistance made through the EHCP.

If a) and b) are both satisfied, under [section 36\(8\) of the Children and Families Act 2014](#) the LA is **required by law** to carry out a Needs Assessment.

The LA must **always** apply this test. It cannot decide to issue EHCPs only for children who meet their own criteria. It can not consider any other criteria.

### What is SEN?

A child with a *learning difficulty* ([s20\(2\)\(a\)](#)) or a *disability* ([s20\(2\)\(b\)](#)) who needs special educational provision will have SEN (see factsheet – **FASD – DISABILITY OR LEARNING DIFFICULTY?**)

You do not have to prove or know for sure that your child has SEN, the LA must legally carry out a Needs Assessment if a child '**may have**' SEN and '**may**' need assistance so there only needs to be a suspicion or concern.

## UNDERSTAND your rights

### Legal Timelines

Once the LA decides that a Needs assessment **must** be carried out, it **must** send a finalised EHCP within **20 weeks** ((reg 13(2)) of receiving a request for a Needs Assessment.

The LA must follow the legal timeline set out in regulation 13 Special Educational Needs and Disability Regulations 2014.

**Stage 1: Weeks 1-6:** The LA has up to week 6 to decide whether to carry out a EHC Needs Assessment.

**Stage 2: Weeks 7-16:** If the LA decides an EHCP may be necessary they must seek advice and information set down by regulation 6.

**Stage 3: Week 16 to 20:** The LA must send a draft EHCP and collect final comments regulation 13(1)(a).

**Stage 4: Week 20:** The final EHCP must be issued by the LA.

### The LA has decided an EHCP is not necessary

If the LA decides an EHCP unnecessary, it must explain why and include the appeal process in a decision letter.

It is important to note at this stage that a “no” to an EHCP is not unusual and not a final answer. You should explore the appeal process where possible.

In the UK, schools are required to make ‘reasonable adjustments’ if a child or young person has a disability under the Equality Act 2010, even if there is no EHCP in place.

### Make sure the EHCP is legally compliant so you can rely on it

An EHCP is a legal document. EHCPs are required by law to contain certain sections, if it doesn’t, it could make it difficult to enforce so insist on this. EHCPs are most often unenforceable (you can not rely on them) because they are too vague and not specific enough so you may want to seek help (see next page) to ensure the EHCP is specific enough and quantifiable.

You can see a very helpful example of an EHCP here setting out tips on how to make it enforceable. A summary of the 13 sections in the EHCP can be found at the back of this Factsheet.

Some LAs issue a non legal document often called

something like a “Resource Plan” or “Person Centred Plan” which set out the child or young person’s SEN and the support. These have no legal force, and you have a right to appeal and treat it as a refusal.

### I have a draft or final EHCP – now what?

The child or young person is legally entitled to the special educational provision set out in the EHCP. If a school, college or other institution is named in an EHCP, it **must** admit the child or young person and follow the educational provision in the EHCP.

If you have received your draft EHCP, you can use IPSEA’s model letter to make a request for a particular school. Under 39(4) CAFA 2014 there are only 3 reasons a LA can refuse a parent or young person’s preference. A LA cannot insist on a particular school solely because it is cheaper than your own preference. If you request a particular type of school or college and your LA is refusing to consult with them, or if they have rejected your request for a reason other than one of the 3 reasons, you can use IPSEA’s model letter to complain.

If they have already finalised your EHCP and named a different school, you can appeal to the First-tier Tribunal (Special Educational Needs and Disability) (the **SEND Tribunal**).

### When the EHCP is not working

The first step is to talk to the school’s SENCo. You may be able to agree practical steps to help your child. If that does not work contact the Headteacher and/or the governor responsible for SEN.

If you are having difficulties getting the support you need because your EHCP is not specific enough, you should consider asking for it to be amended at an annual review.

If you disagree with a decision made by the LA relating to your child’s special educational needs, you can seek advice from the Independent SEND disagreement resolution and mediation service.

You can make a complaint against your LA if you are still unhappy.

If the complaint against the LA does not work, you can complain to the Local Government and Social Care Ombudsman (“LGSCO”). This is an independent body and allows you to challenge a LA’s decision without having to go to court.

If the above does not work, you can take legal action – see next page ‘How can I challenge my rights?’

## MYTHBUSTERS

### But my child does not have a diagnosis

Your child does not need to have a particular diagnosis (or any diagnosis at all) to have a Needs Assessment.

### I'm not sure what help my child needs, so I don't know what to ask for

You do not need to know exactly what help would be required, you just need to ask for an assessment if you feel there is or may be a need. The LA will assess needs.

### The school says that there are children with greater needs than my child so they will not help with an EHCP

The needs of other children are totally irrelevant.

### School says my child does not need an EHCP as what they are doing is working, but I disagree

You can write to the Headteacher and/or school governor responsible for SEN explaining how your child is not meeting the goals set for them in the SEN process. If the school still does not support you, you can still apply to the LA for a Needs Assessment

### My child is 16 and I am told it is too late to apply for an EHC needs assessment

Young persons aged 16 to 25, can make the request themselves, or with support if needed. There is more information from IPSEA about how the law applies to young people [here](#).

### I have lodged an appeal at the Tribunal but the LA has not conducted the assessment properly and obtained all the legally required advice and information

You should ask the LA to go back to the relevant professional(s) and ask them to provide the missing information. If they won't, you can ask the Tribunal to order them to do so, using the [Request for Change form](#) on the Tribunal's website.

### I have been told my child doesn't need an EHCP

You merely have to show that it "may" be necessary. This means that you can simply 'suspect' a need. Schools often say that they need to try everything before applying for an EHCP but this is not correct. You can ask for a Needs Assessment even without the schools' support.

## HOW can I challenge my rights?

- If you have tried all the suggestions in the section '[When the EHCP is not working](#)' and you feel that the LA made a decision that was unlawful, unfair or unreasonable, you may be able to ask a court to review that decision – this is known as [judicial review](#).
- If the complaint is about the content of the EHCP you can appeal to the [First Tier Tribunal for Special Educational Needs and Disability \(SEND\)](#). **IMPORTANT:** you must appeal to the Tribunal within **two** months from the date of the LA's decision, or **one** month from obtaining a mediation certificate, whichever is later.
- If you disagree with the First Tier Tribunal decision, you may appeal to the [Upper Tribunal \(Administrative Appeals Chamber\)](#).

Written by Velma Eyre with thanks to the support of the legal Pro bono team at Clyde and Co LLP. This fact sheet is for information only and is not intended to constitute legal advice.

## KEY RESOURCES:

### [GUIDANCE AND EXAMPLE LETTERS:](#)

- [YouTube video providing an explanation of Education Health Plans](#)
- [Example EHCP - Good practice guide](#)
- [Example EHC Plans - Council for Disabled Children](#)
- See further FASD Factsheets "FASD and SEND" and 'FASD - DISABILITY OR LEARNING DIFFICULTY'

### [HELPFUL ORGANISATIONS:](#)

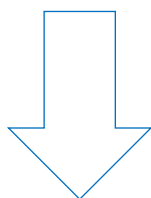
- <https://www.ipsea.org.uk/>
- <https://www.gov.uk/children-with-special-educational-needs/extra-SEN-help>
- <https://www.specialneedsjungle.com/>

### [KEY LEGISLATION:](#)

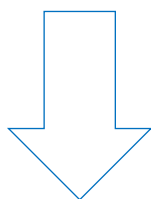
- [Special Educational Needs and Disability \(SEND\) Regulations 2014](#)
- [Children's and Families Act 2014](#)
- [SEND code of practice: 0 to 25 years](#)

## EHC Needs Assessment and the 20 week statutory timeline

### Stage 1: Weeks 1-6



### Stage 2: Weeks 7-16



### Stage 3: Weeks 16-20

### First-Tier SEND Tribunal

#### Stage 1: Weeks 1-6

An assessment request with any existing evidence relating to special educational needs is received by your LA's EHC Planning Team.

The LA has up to week 6 to decide whether to undertake the EHC Needs Assessment. In order to decide whether to do so, during the first 6 weeks of the application the LA will look at all the information included within the original request for the EHC Needs Assessment, as well as any extra information that has been requested by them.

#### Stage 2: Weeks 7-16

Your LA's EHC Planning Team will seek further advice from professionals. Parents, other family members, and your child will provide information on their views.

Using all the information a working draft document is written and shared at a meeting with parents and the child, with the draft plan produced afterwards and sent to those involved. Parents, carers and young people have 15 days to comment on the Draft EHC Plan.

At Week 16 they will tell you if they have decided to go ahead with agreeing the EHC plan or that the EHC plan is not necessary.

#### Stage 3: Weeks 16-20

At this stage the parents and child will identify their preferred nursery, education or skills setting. The EHC Plan Coordinator will then consult with the setting or settings about arrangements. Personal Budgets are discussed if appropriate.

Final comments are received and the final plan is issued. Support will begin to be provided in order to help the child or young person meets their goals.

#### Appealing the decision

*If there are any disagreements about the EHC Plan after this 20 week process, parents and carers can seek advice from the independent SEND disagreement resolution and mediation service, then proceed to the SEND Tribunal if these cannot be resolved.*

## EHC Plan: the 13 Sections

Here we illustrate the various sections of the EHC plan and how this plan factors in the Special Educational Needs that your child or young person has arising from FASD, as well as any advice from professionals about provisions that should be made to assist with these needs.

- **Section A:** The views, interests and aspirations (wishes) of your child.  
The wishes of your child or young person are outlined in the first section.
- **Section B:** Special Educational Needs (SEN).  
The specific Special Educational Needs that your child or young person has as a result of FASD are detailed here.
- **Section C:** Health needs related to SEN.  
The health needs of your child arising from FASD are detailed here.
- **Section D:** Social care needs related to SEN.  
The social care needs of your child arising from FASD are detailed here.
- **Section E:** Outcomes (goals) - How the extra help will support and benefit your child in the short, medium and long term.  
This section provides the rationale behind providing your child with extra help through the EHC plan and the benefits this will provide in helping with any special educational needs stemming from FASD.
- **Section F:** Special educational provision (support in school for teaching or training).  
The specific special education provisions to assist your child learn are provided here.
- **Section G:** Health provision.  
Any provisions to assist your child with health-related issues arising from FASD are detailed here.
- **Section H:** Social care provision.  
Any specific social care provisions that need to be made to assist your child are detailed here.

- **Section I:** Placement - The type of school or setting and the name of school or setting.

This provides recommendations and details of the type of school or setting that your child or young person would benefit most from attending in order to assist them with their learning.

- **Section J:** Personal budget arrangements.

This provides details of the financial arrangements put into place in order to support your child.

- **Section K:** Advice and information - A list of the information gathered during the EHC Needs Assessment.

Finally, the information gathered during the EHC Needs Assessment, including advice from healthcare, educational and other professionals, is detailed at the end of the form.