

Appeals • Reviews • Amendments • Changing school • Leaving school

Together with the proposed statement, the LA must send parents details of all age-appropriate local maintained schools and a list of independent schools approved by the Secretary of State.

The Code says that every effort should be made to ensure that, as far as possible, the child's views are reflected in the proposed statement and that the child understands the reasons for the proposals.

Parents can visit any school which they are thinking of naming as the school of their choice. Parents should remember to make use of the Independent Parental Supporter at this and other stages. Parents should also remember that schools have a legal duty to take reasonable steps to ensure that disabled children are not put at a disadvantage compared with other children (the 'reasonable adjustments' duty). For more detailed information on this duty see CSIE's publication *Your child's right to mainstream education – a guide for parents*.

The LA should normally make the final statement within eight weeks of making the proposed statement.

Final statement arrives

The LA confirms or amends the proposed statement and issues the final statement to parents. The final statement includes the name of the school given by the parents – unless the LA considers that the school is inappropriate for the child's age, ability, aptitude or the special educational needs that she or he is considered to have, or other children's education is adversely affected, or the LA's resources are not being used efficiently. No school will be named if parents have made acceptable alternative educational arrangements for their child.

The LA must also tell parents of their right of appeal to the Tribunal if they disagree with the statement and/or the school named in it and the availability, without jeopardising this right, of local parent partnership and dispute resolution services.

either
Parents agree with the final statement and the LA and school begin to introduce the provision required by the statement.

or
Parents disagree with the final statement and discuss matters with the named officer. If unable to reach agreement, parents can make use of local parent partnership and dispute resolution services and/or decide to appeal to the Tribunal.

The final statement must contain:

- the child's family details;
- the LA's description of the special educational needs the child is considered to have;
- the special educational provision to be made, quantified in terms of hours and staffing arrangements, and the objectives to be achieved;
- the type of school the LA considers appropriate;
- the name of a particular school, unless parents have made suitable alternative arrangements;
- the arrangements for monitoring progress;
- all non-educational provision that is considered necessary (though this is not legally binding in the same way that educational provision is).

Short-term educational targets should be set by a child's school within two months of the child arriving at the school. (These targets would not be part of the statement.)

The final statement, including reports, may not be disclosed without parents' consent, except in specific circumstances.

Appealing

If parents are not satisfied that a school has taken proper account of the Code of Practice in the early stages of assessing a child and making special educational provision (School Action and School Action Plus), they should first take the matter up with the school and then, if still unhappy, with the LA (in the case of an LA-maintained school). If they remain dissatisfied, they can make a formal complaint to the Secretary of State under Section 497 of the 1996 Education Act.

Parents can appeal to the independent First Tier Tribunal (Special Educational Needs and Disability) against the statement when it is first issued, when it is amended and if the LA refuses to amend it after a reassessment. Appeals can be against:

- the description of their child's learning difficulties;
- the provision to be made;
- the type and name of the school listed by their LA;
- the statement not naming the school.

Parents can also appeal to the Tribunal if the LA:

- refuses to carry out an assessment;
- refuses to make a statement;
- decides to stop maintaining a statement;
- refuses to re-assess a child following a parent's request if an assessment has not been made for six months;
- refuses to change the name of the school in an existing statement if a request to do so has not been made for 12 months.

Parents must apply to the Tribunal within two months of receiving notice of the LA's decision relating to the above points.

When hearing an appeal, the Tribunal asks: has the LA taken proper account of the Code and reached the right decision in the particular circumstances set out in the Acts? The Tribunal can support the LA, tell it to think again, or order it to carry out parents' wishes within specified time limits.

If the Tribunal turns down the appeal, there is no further right of appeal to the Secretary of State. Instead, parents can ask the Tribunal to review its decision if there was a problem with how it was made or they can appeal to the Administrative Appeals Chamber of the Upper Tribunal on a point of law.

Tribunal Procedure (First Tier Tribunal) (Health, Education and Social Care Chambers) Rules 2008 state that the child who is the subject of an appeal has a right to attend the hearing and may be permitted to give evidence and address the hearing. The LA should ascertain the views of the child on the issues raised by the appeal, or give reasons why it has not done so.

The LA should tell parents about organisations which can help with appeals, and any relevant free services.

Reviewing the statement

The LA must review a child's statement at least every 12 months (the annual review). This requires a report from the school and a review meeting, organised by the headteacher, involving parents, teachers, someone from the LA and, where relevant, health and social services professionals and the careers service. Parents must be invited to the meeting and have advance copies of all reports made on their child and be invited to make contributions and comments on the reports.

A review meeting scrutinising the statement for its suitability for the child sets new targets for a child and sends a report to the LA, which decides whether to propose changes to the statement.

The review of the statement in Year 9 differs from previous reviews in its extension to matters of post-16 provision as well as ongoing schooling. It must be attended by a representative from the Connexions Service (the service which provides support for all 13-19 year olds in making the transition to work and adult life). The social services department should also be invited to send a representative. The meeting should result in a transition plan (see page 11) for the child which outlines the first steps necessary in planning for the child's transition to post-16 provision. The transition plan must be updated at each subsequent annual review.

There is no legal requirement for a child to attend annual reviews, but the Code stresses the importance of involving children and young people in all the decision-making processes that occur in their education, including the setting of learning targets, IEPs, the choice of schools, assessments and all review processes. This is particularly important in establishing transition arrangements from Year 9 onwards.

Amending the statement

The annual review may result in the LA proposing changes to the statement and even a change of school. The LA tells parents by letter of proposed changes, though at this stage the school should not be specified. Parents have 15 days in which to tell the LA what they think of the changes. Parents can request a meeting and can name their preferred maintained school. LAs must send information to the schools being considered. They must inform parents of the availability of parent partnership and dispute resolution services and, whether or not they use these, of their right to appeal to the Tribunal. The LA must make its final decision within eight weeks of proposing the changes.

Change of school

At any time, parents can request a change of school named in the statement to a preferred LA maintained school. The LA is under a duty to agree provided that the request is made more than 12 months after:

- a similar request;
- the issue of a final copy of the statement;
- the issue of an amended statement; or
- the end of an appeal to the Tribunal over the provision specified in the statement;

and provided that:

- the needs that the child is considered to have can be properly met;

- other children's education is not adversely affected;
- and resources are used efficiently.

If the LA does refuse, parents can appeal to the Tribunal. If the LA decides not to comply, it must inform the parent in writing of:

- that decision;
- parents' right to appeal.

All young people are legally entitled to free, full-time education up to the age of 19. The LA remains responsible for maintaining the statements of young people considered to require special educational provision who stay on at school after the age of 16 until the end of the academic year in which their 19th birthday falls.

However, the statement of a young person who leaves school between 16 and 19 may lapse. In its place – but without the legal force of a statement – the transition plan should set out agreed arrangements for making the special provision seen as necessary for a young person in further or higher education, or in social services provision.

It is the responsibility of the Connexions Service, working with the LA and with the agreement of the young person and parents, to ensure that where a statement of special educational needs has been issued, a copy of the statement, together with the most recent annual review and the transition plan, is passed to the social services department, the college to be attended and, when necessary, the Learning and Skills Council (LSC).

The Connexions Service also has a responsibility, under the Learning and Skills Act 2000 amended by the Education and Skills Act 2008, to ensure that all young people who may have difficulty in transferring to further education or training post-16, including young people seen as requiring special educational provision and who do not have statements, have a needs and provision assessment.

Under the Learning and Skills Act, the LSC must 'have regard to' the post-16 educational needs which disabled students and students experiencing difficulties in learning are considered to have. This mainly entails making sure that there are sufficient further education opportunities for such students. It may extend to funding places in a specialist college if suitable provision cannot be made by her or his local college.

The LSC is responsible for all post-16 education and training and academic and vocational courses (except higher education). From April 2010 this responsibility will transfer to LAs. Other types of college course, and school provision up to the age of 19, are already the LA's responsibility. These options should be considered in drawing up a young person's transition plan.

If parents would like their child to remain at school after the age of 16 but the LA considers that a placement at a further education college is more appropriate, the LA must write to the parents informing them of their intention to cease to maintain the statement, of the availability of dispute resolution services and, whether or not they use these, their right to appeal to the Tribunal.

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Where to find out more

Your local authority's children and young people's services should be your first source of advice and help.

Organisations

The following national organisations can also provide information and advice, or pass you on to someone who can.

Centre for Studies on Inclusive Education (CSIE)
New Redland Building, Coldharbour Lane, Frenchay, Bristol BS16 1QU; phone 0117 328 4007; www.csie.org.uk
Publishes large number of free and inexpensive leaflets and reports on inclusive education to help parents and professionals; organises conferences and supports parents' groups, students, schools and LAs. Also publishes the 'Index for Inclusion', written by Tony Booth and Mel Ainscow, which helps ordinary schools break down barriers to learning and participation for all pupils.

Department for Children, Schools and Families (DCSF) Sanctuary Buildings, Great Smith Street, London SW1P 3BT; phone 0870 000 2288; email info@dcsf.gsi.gov.uk; www.teachemet.gov.uk/wholeschool/sen

Department of Health Richmond House, 79 Whitehall, London SW1A 2NS; phone 020 7210 4850; email dhmail@dh.gsi.gov.uk; www.dh.gov.uk

Equality and Human Rights Commission 3 More London, Riverside, Tooley Street, London SE1 2RG; phone 0845 604 6610; email info@equalityhumanrights.com; www.equalityhumanrights.com

National Assembly for Wales Cathays Park, Cardiff CF10 3NQ; phone 0845 010 3300; email webmaster@wales.gsi.gov.uk; www.wales.gov.uk

Learning and Skills Council Cheylesmore House, Quinton Road, Coventry CV1 2WT; phone 0870 900 6800; email info@lsc.gov.uk; www.lsc.gov.uk

Connexions National Unit Contact through the DCSF (see above); young people can ring 080 800 13219 or via www.connexions-direct.com.

Skill National Bureau for Students with Disabilities Unit 3, Floor 3, Radisson Court, 219 Long Lane, London SE1 4PR; phone 0800 328 5050; email info@skill.org.uk

Publications
The following publications are available free by phoning the DCSF publications centre on 0845 6022260 or emailing dcsf@prolog.uk.com. You can also access them at <http://publications.teachemet.gov.uk>

Parents for Inclusion
336 Brixton Road, London SW9 7AA; phone helpline 0800 652 3145; email info@parentsforinclusion.org; www.parentsforinclusion.org
Support group run by parents for parents, offering free advice and support about special educational provision and inclusion.

Other sources of information
The following organisations and government departments answer queries and issue publications concerning the law on special educational provision.

Department of Health Richmond House, 79 Whitehall, London SW1A 2NS; phone 020 7210 4850; email dhmail@dh.gsi.gov.uk; www.dh.gov.uk

Equality and Human Rights Commission 3 More London, Riverside, Tooley Street, London SE1 2RG; phone 0845 604 6610; email info@equalityhumanrights.com; www.equalityhumanrights.com

National Assembly for Wales Cathays Park, Cardiff CF10 3NQ; phone 0845 010 3300; email webmaster@wales.gsi.gov.uk; www.wales.gov.uk

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Assessments & statements

CSIE Summary, updated October 2009

the right to education in mainstream schools

CSIE summary of Part 4 of the Education Act 1996 as amended by Part 1 of the Special Educational Needs and Disability Act 2001

In May 2001, legislation was passed which introduced significant amendments to the law in England governing the education of disabled children and those experiencing difficulties in learning. This legislation, which still forms a core part of the statutory framework for inclusion, strengthened the right to mainstream education by removing two of the conditions for mainstream inclusion for pupils for whom statements of special educational needs have been made, where parents have not asked for a particular school. In this context, and in light of concerns about the statementing process,¹ many mainstream schools have been developing more inclusive provision for all children and, by now, a number of local authorities are no longer relying on statements for making this provision available. Where this is not happening, it may be necessary to engage in the separate, lengthy and complex process of assessment and obtaining a statement.

This CSIE summary covers the assessment and statementing procedures relating to pupils seen as requiring special educational provision as set out in Part 4 of the 1996 Education Act amended by the Special Educational Needs and Disability Act 2001.

¹ Audit Commission (2002), *Statutory Assessment and Statements of SEN: in need of review?*



