



IPSEA

Independent Parental Special Education Advice

Hunters Court, Debden Road, Saffron Walden, Essex CB11 4AA

How can an EHC needs assessment be requested for someone over 16?

Where it's evident that a young person needs a very high level of support, they (or a parent on their behalf and with their agreement) can make a request for an Education, Health and Care (EHC) needs assessment, the process that leads to an EHC Plan being issued.

The Children and Families Act 2014 (the Act) states (at s.83(2)) that:

“‘young person’ means a person over compulsory school age but under 25.”

This means that all those rights granted to “young persons” under the Act can be exercised at any point prior to their 25th birthday (e.g. a young person without an EHC Plan could request an EHC needs assessment on the day before their 25th birthday).

The request itself does not need to be made in a particular form, and whilst local authorities often produce various forms which they say must be filled in before an assessment can be considered, this is not actually the case. The simplest way to make a request for an EHC needs assessment is simply to write to the local authority. We have a very useful resource online about requesting an EHC needs assessment and there is also a model letter you can use to make the request for the assessment here:

<https://www.ipsea.org.uk/what-you-need-to-know/ehc-needs-assessments/asking-for-an-ehc-needs-assessment>

There is an overriding statutory duty on the local authority to ensure that a young person is supported to participate in the EHC needs assessment process and to have regard to their views, wishes and feelings. This duty is set out in s.19 of the Act. The young person can indicate if he or she wants someone to be copied to all correspondence and/or deal with paperwork on his or her behalf. They can also request that someone accompanies him or her to any meetings if that is what makes participation possible.

There are no ‘*eligibility criteria*’ for a young person to qualify for an EHC needs assessment set out in law or guidance. Some local authorities do appear to set out the conditions that would need to be met for a child to be considered for an assessment, but these will be ‘internal’ to those local authorities and are not reflected in law or guidance. If a request for an EHC needs

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assessment is made, the local authority must consider it on the evidence, not on the basis of whether any pre-set conditions are met.

Paragraph 9.14 of the SEN and Disability Code of Practice 0-25 says,

‘[...] To inform their decision the local authority will need to take into account a wide range of evidence, and should pay particular attention to:

- evidence of the child or young person’s academic attainment (or developmental milestones in younger children) and rate of progress
- information about the nature, extent and context of the child or young person’s SEN
- evidence of the action already being taken by the early years provider, school or post-16 institution to meet the child or young person’s SEN
- evidence that where progress has been made, it has only been as the result of much additional intervention and support over and above that which is usually provided

It is important to remember the legal test the local authority must apply is (s.36(8) of the Act):

“The local authority must secure an EHC needs assessment for the child or young person if, after having regard to any views expressed and evidence submitted under subsection (7), the authority is of the opinion that—

(a) the child or young person has or may have special educational needs, and

(b) it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.”

The test is simply whether the young person may have SEN and that it may be necessary for the special educational provision to be made for the young person in accordance with an EHC Plan.

You will see that this is a very low threshold. As was held in *Cambridgeshire CC v F-LJ* [2016] UKUT 224 (AAC) *“the issue at the initial stage is a provisional and predictive one”*.

Once a request is made there is maximum deadline for completing the process of 20 weeks. The local authority must consider the request and let the young person have a decision as to whether an assessment is going to be carried out within 6 weeks of the date of request. If they agree to carry out an EHC needs assessment but then decide not to issue an EHC plan they must let the young person know within 16 weeks of the date of request. If they decide to carry out an EHC needs assessment and issue an EHC plan, they must issue the final EHC plan within 20 weeks of the date of request.

You can find the SEN and Disability Code of Practice 0-25 here:

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398815/SEND_Code_of_Practice_January_2015.pdf

It might also be helpful to read through Chapter 8 of the SEN and Disability Code of Practice 2015 (in particular from p.135) which deals with the kind of support young people with SEND are supposed to receive to prepare for adulthood. In addition, Chapters 8 and 9 have some useful information about what an EHC Plan might provide for those aged 19-25.

In particular paragraphs 8.39 and 8.40 refer to 5 day packages of support that go across all of a young person's needs.

Paragraph 8.49, states:

“Local authorities should be ambitious for children and young people with SEN, raising their aspirations and promoting high expectations about what they can achieve in school, college and beyond. Local authorities should ensure children and young people have access to the right support and opportunities that will prepare them successfully for adulthood by helping them achieve the agreed outcomes in their EHC plan. This will enable many more young people with SEN to complete their formal education.”

Paragraph 9.156 deals specifically with requests for an EHC needs assessment for a young person aged 19-25:

“Where such a request is made, or the young person is otherwise brought to the attention of the local authority as being someone who may have SEN, the local authority must follow the guidance earlier in this chapter for carrying out EHC needs assessments. In addition, when making decisions about whether a plan needs to be made for a 19- to 25-year-old, local authorities must consider whether the young person requires additional time, in comparison to the majority of others of the same age who do not have SEN, to complete his or her education or training.”

The EHC needs assessment follows a certain format and we won't go into detail here beyond directing you to our online resources:

<https://www.ipsea.org.uk/what-you-need-to-know/ehc-needs-assessments/what-happens-during-an-ehc-needs-assessment>

We only provide information through this service, rather than offer direct advice. So if you need this, or you wish to discuss the situation with someone, you should use our advice line:

<https://www.ipsea.org.uk/contact/advice-and-support/advice-line>

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