

my child in school



Getting the Statement Right

a practical guide to
parents' legal rights



Contents

Understanding Special Educational Needs	1
What are special educational needs?	1
The SEN Code of Practice	2
What is a statement?	2
Checking the proposed statement	3
Getting advice	4
Part 2 – your child’s difficulties	4
Part 3 – the help your child must have	4
Parts 5 and 6 – non-educational help	7
Stating your views	7
Naming a school in part 4	8
General right to mainstream education	8
Meeting your preference	8
Independent schools	9
Academies	9
Negotiating with the LA	10
Meeting with the LA Named Officer	10
Meeting with professionals	11
Mediation	11
Final statement and appeals	12
Final statement	12
Appealing to SEND	12
Further help	13

If there is anything in this booklet you don't understand or if you would like more information, please call our free advice line on 0808 800 5793.

Important notes

- **The information in this booklet is based on the laws of England.**
- **This booklet covers statutory assessment for children over 2 years old.**

Definitions and abbreviations

Code The Special Educational Needs Code of Practice (see page 2).

IPS Independent Parental Supporter. A trained volunteer working with Parent Partnership to support parents.

LA The Local Authority deals with the administration of a local council. The education department may be part of the LA's children's services authority or trust.

IPS Independent Parental Supporter. A trained volunteer working with Parent Partnership to support parents.

Named Officer The LA officer responsible for a statement

PPS Parent Partnership Service. An impartial service in each LA supporting parents and carers of children with SEN.

SEN special educational needs.

SENCO special educational needs co-ordinator. The teacher in each school with responsibility for SEN.

“My child is getting a statement – what do I need to do?”

All parents want the best for their children but some children will need a lot of extra help to do well at school. Some children may need more help than can be routinely provided by schools and this must be set out on a statement of special educational needs.

Before a statement is written, the local authority (LA) will ask your child's teachers, a doctor, social services and an educational psychologist to examine your child and write reports. You will be asked for your views too.

If the LA decides to write a statement you have the right to make comments and to ask for the school you want. This booklet will help you do that.

Understanding Special Educational Needs

What are special educational needs?

Children with special educational needs are children with a learning difficulty that means that they need extra help at school.

Children with learning difficulties either:

- find it much harder to learn than most other children of the same age or
- have a disability which makes it harder for them to use the same educational facilities (buildings, equipment etc) as other children in their area.

A learning difficulty could result from a physical or mental impairment, a medical condition, emotional and behavioural problems, communication difficulties or problems with learning to read or write.

Most children with special educational needs go to ordinary mainstream school. A mainstream school is a school which provides for all children including those with SEN and disabilities. A special school only provides education for pupils with SEN, generally those with the most severe or complex needs.

The SEN Code of Practice

The Special Educational Needs Code of Practice is Government guidance on special educational needs. The law says that schools and local authorities (LA) must “have regard” to the Code – this means they must not ignore it. Important principles for a child with special educational needs in the Code are that:

- the child should have their needs met;
- the child will normally have their needs met in a mainstream school;
- the child should have full access to a broad, balanced and relevant curriculum, including the National Curriculum or, for younger children, the foundation stage curriculum;
- children’s views should be taken into account;
- parents of children with SEN should be treated as partners.

Chapter 8 of the Code describes how LAs must write statements.

The SEN Toolkit has more detailed practical advice on implementing the Code. Section 7 of the Toolkit deals with writing statements.

You can get a free copy of the Code and the SEN Toolkit. See Further help on page 13 for details.

What is a statement?

Most children with special educational needs are given extra help by the school through either School Action or School Action Plus. School Action Plus involves more specialist help, often from people outside the school such as an educational psychologist or a speech and language therapist. The ACE booklets *Getting Extra Help* and *Early Years Extra Help* cover this in more detail.

If your child has severe or complex needs, they may need the extra help that comes through having a statement of SEN. The LA may write a statement following a statutory assessment of special educational needs. This stage is covered by the ACE booklet *Asking for a Statutory Assessment*.

A statement of special educational needs describes all your child’s difficulties and the special educational help they must be given. Your LA has a legal duty to ensure your child gets the help described in the statement.



The statement comes in six parts:

1. your child's personal details
2. a description of their educational needs
3. a description of the educational help they must receive
4. the school or type of school your child will attend
5. a description of your child's non-educational needs
6. a description of the non-educational help they should receive.

The law and guidance on statements applies to local authorities (LAs) and maintained schools as well as pre-schools, nurseries and playgroups, which have government funding.

Checking the proposed statement

The LA must send you a proposed statement no later than 12 weeks after the statutory assessment began. It will come with:

- advice reports from everyone who helped with the assessment;
- a list of local schools, special schools and approved independent schools;
- a letter or form asking you which school you would like your child to attend. There may also be a form for you to put your comments on the statement.

ACE advises

You must be organised and act quickly, as you only have limited time in which to comment. If someone is helping you, give them a copy of the statement and reports immediately. Make an extra copy for yourself too so that you can write points on a spare copy and keep one copy clean. You may also find it helpful to use different coloured highlighters to mark your child's difficulties and the help they must have.

You will need to check the proposed statement very carefully. Is it clear about all your child's difficulties and the exact help they need? For example, would a new teacher get a clear picture of your child by reading it?

Getting advice

Your local Parent Partnership Service or an expert voluntary organisation (see Further help on page 13) will have experience of checking statements to make sure they follow the law and the SEN Code. If your child has a diagnosed disability, a national organisation or local support group for your child's condition may be able to help.

What the Code says

- Part 2 of a statement should describe **all** the child's learning difficulties (para 8:32)
- A statement should specify clearly the provision necessary to meet the needs of the child. It should detail appropriate provision to meet each identified need. (para 8:36)
- Provision should normally be quantified (e.g. in terms of hours of provision, staffing arrangements) (para 8:37)

Part 2 – your child's difficulties (Special educational needs)

All the advice reports on your child will be attached as appendices to the proposed statement. Check that all the reports listed are there and go through them carefully.

Highlight each difficulty or 'need' described in them.

Now turn to part 2 of the statement and check that it lists all these difficulties. Tick them off one by one. If anything is missing, make a note.

Make a note of any disagreements in the professional advice and any gaps between what the reports say and what is in part 2. Also list anything which is unclear or you don't understand.

Is the statement clear about which difficulties are most serious or does it look as though they are all of equal importance? You could make a list of the difficulties in order of importance.

Part 3 – the help your child must have (Special educational provision)

Now go to part 3 – often referred to as provision. This is where the help your child will get is described. It also includes objectives – the long-term aims of the extra help – and the monitoring arrangements – how the help and your child's progress will be checked.

Are the objectives right?

Do they cover each of your child's needs? Are they clear and practical? Make a note of any gaps or anything you disagree with. Write down what aims you have for your child.

Does the help match the needs?

Look at all the difficulties listed in part 2. There must be help to match every difficulty listed in part 2. Do they match? Make a note of any gaps.

Go back to your reports and highlight with a different coloured felt tip any help they recommend. Now check that the help is in part 3. Make a note of any gaps. If anything is unclear, underline it and make a note.

Is there enough help?

Reports from different professionals may disagree about the help needed or they may leave out the help altogether. If there are gaps or disagreements, make a note. If you disagree with any of the views on your child's needs or help, also make a note.

Is the help described in detail?

Sometimes statements can be vague or hard to understand. If the statement is vague, it will be hard later on to check whether your child is getting the right help.

Be clear about the help

To be clear about what your child's help will amount to on a typical day at school, ask yourself the following:

- What type of help my child will get? e.g. equipment, learning support, teaching programme, speech therapy.
- Who will give the help?
- Do they need particular qualifications or experience?
- How many hours of extra help are there?
- How often will the help happen?
- Is help for playtimes and lunchtimes included where necessary?
- Will your child get help for self-care if needed e.g. feeding or changing?
- What teaching strategies will staff use?
- Will teaching be one to one or in small groups?
- If teaching is in groups, how big will they be?

Make a note of any gaps, anything that is unclear or anything you do not agree with or understand.

Beware of weasel words

Alarm bells should ring if your child's statement uses words such as:

- access to...
- regular help...
- help as required...
- where necessary...
- periodic...
- opportunities for...

It's very important that the statement says how much help your child will get and how often. Words like those above leave it up to someone else to decide, so your child may not get the help they need.

Are you clear about monitoring?

- Who will check your child's progress?
- How often will they check?
- How will you be involved?

All statements have to be reviewed at least once a year, but it is possible for more frequent reviews to be written into the statement, for instance if a child is very young or has rapidly changing needs. For more information on annual reviews see the ACE booklet *Understanding Annual Reviews*.

ACE advises

Individual education plans (IEPs) are a good way of checking children's short-term progress with parents. If you think this would be useful, make sure IEPs are written into the monitoring arrangements part of the statement with details about how often they will be reviewed (termly is normal) with you and teachers.

When things change...

Now think about what will happen when there are changes at school.

- What will happen if the usual teacher is away? Who will tell supply teachers about your child's needs?
- What will happen if the learning support assistant is away? Will there be someone to stand in? How would this affect your child? What do you want the school to do in these situations?

- What will happen on educational trips or outings? Does the statement include the extra help your child may need?
- If your child's condition or disability means they have days when they have more problems than others, does the statement include extra help for the 'bad' days?

The statement should plan for events like these which may not happen everyday but which are a normal part of school life. Make a list of help you would like to go in the statement to cover them.

Parts 5 and 6 – non-educational help

Parts 5 and 6 of the statement describe needs and help which are not educational. These might be details of a medical condition, medical treatment or therapies.

It is important to realise that the LA's legal duty to arrange special educational help for your child only applies to the help in part 3. There is no duty on the LA to provide any help which is written in part 6.

It is important to check whether the difficulties in part 5 should be in part 2 and whether the help in part 6 should appear in part 3.

The most common case of this is speech and language therapy. Some LAs put it in part 6 and expect the health authority to provide it. However, the courts have said it can be educational help depending on the needs of the individual child. In this case it should be in part 3. If it appears in both parts 3 and 6 the LA will still have to make sure your child receives it.

Other therapies may appear in part 6, for example help for any medical needs. If you think there is an educational need which means the therapy should be in part 3, ask for parts 2 and 3 to reflect this. Generally help is educational if a child needs it to access the curriculum.

If your child's statement mentions transport it will be in part 6. However, the Code says that transport should only be recorded in exceptional cases where a child has particular transport needs. This might be something like specialist seating.

Stating your views

Now take a look at your list of points. Make sure you have clearly listed any changes you want made to the statement and any questions you may have.

You are given 15 days from receiving the proposed statement to say which school you would like for your child, make any points about the statement and ask for a meeting with the Named Officer or any of the professionals who wrote advice about your child. See the section below on Negotiating with the LA.

Naming a school in part 4

The proposed statement must come with a list of local schools, including special schools and approved independent schools. part 4 of the statement will be blank at this stage to allow you to say which school you would like for your child. You can express a preference for any state maintained school. This can be a school in your own LA area or in another area. If your child is already in school you may want them to stay in the same school. You can also ask for a different mainstream school or a special school.

Maintained schools

Maintained schools are state funded mainstream and special schools which include community schools, foundation schools and voluntary aided schools. They do not include academies, city technology colleges, non-maintained special schools or independent schools which are not covered by most special educational law and guidance.

General right to mainstream education

Most children with SEN go to mainstream schools. Your LA must agree if you ask for mainstream schooling as long as your child's attendance will not seriously affect the education of other children. LAs and schools are expected to take reasonable steps to try to avoid this before refusing your request for mainstream schooling. This does not mean you have an absolute right to any mainstream school. If a particular school is not suitable for your child, the LA may offer you a different mainstream school.

Your right to mainstream education does not stop you from asking for a place at a special school if that is what you would like.

Meeting your preference

The LA must agree to the particular maintained, mainstream or special school you want unless it can show one of the following:

- the school is unsuitable for your child's age, ability and aptitude and the special educational needs set out in part 2 of the statement
- your child's attendance would not be a good use of resources (eg money, staff, facilities, transport)
- your child's attendance would seriously affect the education of other children at the school.

If a school is named in part 4 of the statement it must admit your child even if it says it is full.

Which school?

Deciding which school would be right for your child can be difficult. The Parent Partnership Service may be able to help you and an independent parental supporter (IPS) may visit schools with you (see page 13).

Phone schools to arrange visits and ask to see their special educational needs co-ordinator.

Ask the school for a copy of:

- the school prospectus
- the SEN policy
- the accessibility plan (this says how the school adapts its building, curriculum etc to help disabled pupils access education)
- the most recent Ofsted inspection report.

Think about your child's difficulties and interests. How do they affect what you will look for in a school? Write down any questions you would like to ask the school about your child's needs and extra help.

If the school is a special school or a special unit in a mainstream school, you could ask if your child will be able to spend time in mainstream classes or take part in activities such as school trips and after school clubs.

Other questions to ask when you visit:

- Do staff have skills to help my child?
- What experience do they have?
- Can my child access the building?
- Are the building and school grounds safe for my child?
- How does the school change the curriculum for children with SEN?
- How big are the classes?
- How many children with SEN are in the school?
- How many were excluded last year?
- How does the school find out the views of pupils with SEN?
- How does it provide information for pupils?
- How does it keep in touch with parents of children with SEN and report their progress?

Independent schools

If the school you would like for your child is an independent school or a non-maintained special school (often run by charities), then you have the right to ask the LA to consider this. The LA does not have to agree, however, and it may suggest a maintained school, which it thinks suitable. The LA does not have to name the best school for your child but it does have to name a school which can meet your child's needs. Also, an LA cannot name an independent school if the school does not agree to take the child.

Academies

Academies are state-funded independent schools. They are expected to comply with some SEN law and the Code as a condition of the grant they receive from central government. If you want your child to go to an academy the LA does not have to agree in the same way as for a maintained school. However it is part of the funding agreement for most academies that will they admit a child if the LA wants to name the academy. The academy could only refuse if it would seriously affect the education of other children and there are no reasonable steps to avoid this.

Negotiating with the LA

Meeting with the LA Named Officer

The Named Officer must meet with you if you want to ask about the statement. You can ask your Independent Parental Supporter (IPS), someone from a parent support group or a friend to go with you. They could take notes of what is agreed. Take your marked up statement and reports and the list of points you made when you checked them. Decide which are most important before the meeting. You could provide the Named Officer with your list beforehand.

At the meeting

Begin with the points which you think will be easily agreed. Tick each point off as you go. Be clear about which points are most important and those you are prepared to give way on.

Point out any gaps, anything you do not understand or anything you believe needs adding, improving or changing. If you know what you would like the statement to say, you could suggest the wording you would like. Try to use the advice in the reports attached to the statement to back up what you are asking for.

Make a note of anything decided. If you do not agree on some points, it may be worth coming back to them at the end. If your most serious points are not agreed, you may need to ask for another meeting or ask for mediation (See below for information on mediation).

You could discuss your possible school choice at the meeting. The Named Officer should be able to answer questions you have about schools.

At the end of the meeting check the points you think have been agreed. You can ask for further meetings. At the end of the final meeting you have a further 15 days to send in your views on anything in the statement.

ACE advises

If you ask for more than one meeting, the LA no longer has to meet the legal time limits for the proposed statement stage. It might be worth the delay because getting the statement right at this stage may affect your child's long-term future. But if you fear further delays, ask the LA to finalise the statement, which triggers your right of appeal. You can continue negotiating with the LA after you have registered an appeal. See page 12 for information on appeals.

Meeting with professionals

If you want to discuss the advice in the reports at the back of the statement, you can ask to see any of the people who gave the advice. You could ask them to come to the meeting with the Named Officer to limit the number of meetings and avoid delay.

Take your list of questions. You may wish to:

- ask for further information e.g. evidence for some advice
- ask about something which is not clear
- ask the person to give more advice e.g. about the type or amount of help which is needed.

Mediation

All LAs must provide disagreement resolution services. This is commonly known as mediation. Mediation involves an independent person sitting down with you and a representative of the LA and helping you to come to an agreement. If you disagree with the LA on the final wording of parts 2 and 3 of the statement or if you disagree about the school the LA wants to name in part 4, you may want to ask for mediation. Even if you decide to go for mediation, you can go on to appeal afterwards, if you disagree with the final statement.

To find out about the local mediation service contact Parent Partnership in your LA.

Final statement and appeals

The final statement

Eight weeks after you receive the proposed statement the LA must send you a final statement and the extra help begins. Remember: the deadline may be later if you have had more than one meeting.

The local authority must make sure that the help described in a statement is given. If this does not happen you can complain to the LA. If the help is still not given, you can complain to either the Local Government Ombudsman, or the courts.

A statement must be reviewed at least once a year by law. This means that teachers (and sometimes other professionals) meet with you to discuss your child's progress and whether the help written on the statement is right.

Appealing to SEND

If you are not happy with the final statement you can appeal to the First-tier Tribunal for SEN and Disability (SEND). For contact details see Further help on page 13.

You can appeal against:

- the description of your child's difficulties in part 2
- the special educational help set out in part 3
- the school named in part 4.

You can also appeal if no school is named on the final statement. You have two months from the date the final statement was sent to you to make your appeal. The Tribunal can order the LA to change part 2 or 3 of the statement or to name a particular school in part 4. A guide for parents on how to appeal is available from SEND.

Be aware that the final statement is a legal document. Your child will normally be expected to attend the school named in part 4 even if you are appealing to SEND for a different school.

Further help

From ACE

ACE freephone advice line **0808 800 5793**

Information and free advice booklets can be downloaded from www.ace-ed.org.uk or by contacting ACE (see back page).

From the Department for Children, Schools and Families

Free publications available to order from **0845 60 222 60**

or to download from www.teachernet.gov.uk

Special Educational Needs – a guide for parents and carers

www.teachernet.gov.uk/wholeschool/sen/parentcarers/

Special Educational Needs Code of Practice

www.teachernet.gov.uk/wholeschool/sen/sencodeintro/

SEN Toolkit www.teachernet.gov.uk/wholeschool/sen/sentoolkit/

From Parent Partnership

Parent Partnership is an impartial service funded by the LA to support parents of children with SEN. You can find details of your local service via the National Parent Partnership Network.

Website: www.parentpartnership.org.uk

Telephone: 020 7843 6058

From SEND – First Tier Tribunal (SEN and Disability)

SEN helpline: 0870 241 2555

How to appeal an SEN decision – a guide for parents: www.sendist.gov.uk/Parents

Useful websites and advice lines

IPSEA (Independent Panel for Special Education Advice)

IPSEA provides general advice relating to SEN and specific advice for tribunal appeals.

Website: www.ipsea.org.uk

General advice: 0800 018 4016

Tribunal advice: 0845 602 9579

Contact a Family – for families with disabled children

Contact a Family has details of support organisations for a wide variety of specific conditions including rare disorders.

Website: www.cafamily.org.uk

Helpline: 0808 808 3555



advisory centre
for education

ACE is a charity and depends on grants and donations to operate our advice service. If you have found our advice helpful and would like to make a donation please visit www.ace-ed.org.uk
Thank you.

Whilst ACE has made all reasonable efforts to ensure that the information contained in this booklet is accurate and up-to-date at the time of publication, it does not constitute legal advice and should not be relied upon as a substitute for legal advice. ACE cannot accept any responsibility for any loss or damage suffered as a consequence of any reliance placed upon it.

© Advisory Centre for Education (ACE) Ltd. 2009

ACE, 1C Aberdeen Studios, 22 Highbury Grove, London N5 2DQ
Telephone: 020 7704 3370 (Admin only). Fax: 020 7354 9069
Registered Charity: 313142. Registered Company: 663126

Designed by Grasshopper Design Company
Printed by Wyndeham Gait, Castle Press, Victoria Street, Grimsby