



**National Star**  
Realising the aspirations  
of people with disabilities



ESSENTIAL SEND MANAGERS PROGRAMME

# SEND KNOWLEDGE MODULE – MAXIMISING POTENTIAL

**National Star have been commissioned by the Education and Training Foundation to produce this guide.**

Authors: Davina Jones and Dr. Fern Faux.

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# Section 1

The SEND Landscape, recent SEND reforms in Further Education.

The Special Educational Needs and Disabilities (SEND) landscape in England has been experiencing significant change over the last 15 years. First came a set of persistent problems, followed by a wide-ranging set of reforms. The Children and Families Act 2014 (CAFA) sits at the heart of these reforms and was billed as the most significant and wide reaching educational reform in a generation for young people with SEND.

The recent history of the SEND reforms includes the following key landmarks:

- 2009, Lamb Inquiry, Special Educational Needs and Parental Confidence<sup>(1)</sup>
- 2010, OFSTED, A statement is not enough<sup>(2)</sup>
- 2011, Department for Education, Support and Aspiration: A new approach to special education needs and disabilities<sup>(3)</sup>
- 2014, Children and Families Act (2014), Part 3<sup>(4)</sup>
- 2015, Special educational needs and disabilities code of practice (0 to 25 years)<sup>(5)</sup>

### What was the momentum to change?

The previous system for SEN was covered in the Education Act 1996, covered by a statutory code of practice, Special Educational Needs and Disability Act (SENDA). This statutory code set out three levels of intervention for young people in a school setting, School Action, School Action Plus and a Statement. Under this legislation a young person's Statement stopped if they chose to leave school when they reached 16. If the young person chose to stay on in a school setting the local authority could maintain their Statement until they were 19, or the end of the school year in which s/he completed their course.

If the young person left school for further education their special educational need was assessed under a different process, the Learning Difficulty Assessment (LDA), sometimes referred to as s139a. The Learning and Skills Act (2000) placed a duty on Local Authorities to complete an LDA for children with statements in their last years of school if they were planning to go into further education.

Local Authorities were also able to prepare an LDA if a young person appeared to have a special educational need which was not previously identified. LDA's did not have the same statutory rights and protections for young people compared to a Statement, and then, more recently, an Education, Health and Care Plan (EHC plan).

The concerns about the previous system

2009,  
Lamb Inquiry



2010, OFSTED  
A statement is not enough



2011, Green Paper,  
Support and Aspiration



2014, Children and  
Families Act (2014)



2015, SEND Code  
SEND Code of Practice  
(0 - 25 years)



were multiple and significant. They included concerns around quality, accessibility and parental confidence in the process as a whole. The Government sought to reassure parents and calm providers by setting out a range of options they were considering. As a well-established policy problem, the proposed changes represented a genuine attempt to transform a system which was widely recognised not to be working. These ambitions formed the basis of the Green Paper 'Support and Aspiration', with the Government looking at how to:

- give parents a choice of educational settings that can meet their child's needs
- transform funding for children with SEN and disabilities and their families, making the system more transparent and cost effective whilst maintaining a high quality of service
- prevent the unnecessary closure of special schools and involve parents in any decisions about the future of special schools
- support young people with SEN and disabilities to help them succeed after education
- improve diagnosis and assessment to identify children with additional needs earlier
- to remove conflict from the funding of special educational provision

The Green Paper informed the drafting of the Children and Families Bill. Subsequent consultation saw the draft bill become the Children and Families Act 2014, of which Section 3 directly relates to special educational needs and disabilities.

The impact on the post 16 sector was varied. Participation age in schools was raised to the age of 18 (in 2015) coupled with the expectation that General Further Education (GFE) colleges would upskill their workforce and widen the local offer for young people with disabilities who were more complex, shifting the range of young people with disabilities accessing mainstream further education.

### The current SEND system (phased in since September 2014)

#### Sources of Law

<b>Statute</b>	Children and Families Act 2014, also other relevant law such as the Equality Act 2010 and the Mental Capacity Act 2005
<b>Regulation</b>	SEN and Disability Regulations 2014 and SEN (Personal Budgets) Regulations 2014
<b>Case Law</b>	which will continue to clarify the law
<b>Guidance</b>	The special education needs and disability Code of Practice 2015

provision for identifying children and young people with SEND, assessing their needs and making provision for them. The key changes which have relevance for further education included:

- the definition of special educational needs (SEN) is extended to include young people up to the age of 25; the definition includes 'learning difficulties' and 'disabilities'
- FE colleges and specialist post-16 institutions (SPI) will be required to 'have regard' to the 0-25 SEND Code of Practice
- Education, Health and Care plans, (EHC) plans, replaced statements and LDAs with the option of Personal Budgets for families and young people who want one
- FE colleges and SPIs, along with others, will be under a duty to admit students if the institution is named in an EHC plan
- **New statutory rights for young people in further education**, including the right to request a particular institution is named in their EHC plan and the right to appeal to the first-tier tribunal (SEN and Disability). Young people, aged 16 plus, where they have mental capacity to make decisions, are recognised as the primary decision makers rather than their parents/carers.
- a stronger focus on **preparing for adulthood** including better planning for transition into paid employment and independent living and between children's and adult's services.
- FE colleges and SPIs, along with others, will be under a duty to co-operate with the local authority to identify and meet the needs of young people with SEN and disabilities.
- FE colleges will be required to use their 'best endeavours' to meet the needs of students with SEN and disabilities.

## The Framework and how it applies to post-16 providers

The statutory duties on post-16 providers are derived from a range of legislation, but primarily the Children and Families Act 2014 and the Equality Act 2010. For colleges and providers of post-16 provision, a really important area to consider is the distinction between a child and young person, as the Children and Families Act 2014 gives significant new rights directly to young people once they reach the end of compulsory school age. The SEND Code of Practice states that when a young person reaches the end of compulsory school age, local authorities and other agencies should normally engage directly with the young person rather than their parent, ensuring that as part of the planning

process they identify the relevant people who should be involved and how to involve them. Chapter 8 of the Code of Practice sets out in detail how some decision-making rights transfer from parents to young people at this stage. Most young people will continue to want, or need, their parents and other family members to remain involved in discussions and decisions about their future.

Under section 80 of the Children and Families Act and Regulations 64 and 65 of the SEN and Disability Regulations, the parent of a young person who lacks capacity (or their formal representative, if one has been appointed by the court) will be able to make decisions for that young person.

This gives parents a much greater level of control over certain decisions for young people than is set out under the Mental Capacity Act. Under the Mental Capacity Act 2005; where a young person lacks capacity, decisions are made in their 'best interests' which requires that parents are consulted and involved in decision making but do not have legal authority to make decisions on their behalf unless formally appointed as deputy.

Together with the emphasis of person centred planning colleges and other post-16 providers have a range of 'duties' with which they must comply. These are outlined in the SEND Code of Practice, section 7.3

FE colleges, sixth form colleges, 16-19 academies and independent specialist colleges approved under Section 41 of the Children and Families Act 2014 (the Act) have the following specific statutory duties:

- **The duty to co-operate with the local authority on arrangements for children and young people with SEN.** This is a reciprocal duty. It means that, in carrying out their functions under this part of the Act, a local authority must co-operate with the named bodies who, in turn, must co-operate with the local authority.
- **The duty to admit a young person if the institution is named in an Education Health and Care (EHC) plan.** Young people have the right to request that an institution is named in their EHC plan, and local authorities have a duty to name that institution in the EHC plan

unless, following consultation with the institution, the local authority determines that it is unsuitable for the young person's age, ability, aptitude or SEN, or that to place the young person there would be incompatible with the efficient use of resources or the efficient education of others.

- **The duty to have regard to this Code of Practice.**
- **The duty to use their best endeavours to secure the special educational provision that the young person needs.** This duty applies to further education colleges, sixth form colleges and 16-19 academies. Its purpose is to ensure that providers give the right support to their students with SEN. It does not apply to independent specialist colleges or special schools, as their principal purpose is to

provide for young people with SEN. They **must** fulfil this duty for students with SEN whether or not the students have EHC plans. This duty applies in respect of students with SEN up to age 25 in further education, including those aged between 14 and 16 recruited directly by colleges. The duty encompasses students on a wide variety of study programmes

(including some on short programmes) and at every level from entry level upwards. It does not apply to any students on higher education courses, who can access the Disabled Students Allowance (DSA). Much of this section will also be relevant for independent specialist colleges.

## Supporting Themes from the SEND Code of Practice

Colleges are expected to have an inclusive approach to learning and teaching, with high quality teaching that is differentiated for individuals. This approach should be embedded across all subjects areas and at all levels. This will raise standards for all learners, including those with SEN and disabilities.

Linking to the Preparing for Adulthood agenda all colleges should be ambitious for young people with SEN and disabilities, ensuring stretch and progression. The focus of individual study programmes should be to support young people to progress, and reach positive destinations in adult life.

## Equality Act 2010

As outlined in the Special Educational needs and disability code of practice: 0 to 25 years, s. 1.33

The Equality Act 2010 and Part 3 of the Children and Families Act 2014 interact in a number of important ways. They share a common focus on removing barriers to learning. In the Children and Families Act 2014 duties for planning, commissioning and reviewing provision, the Local Offer and the duties requiring different agencies to work together apply to all children and young people with SEN or disabilities. In carrying out the duties in the Children and Families Act 2014, local authorities and others with responsibilities under that Act, are covered by the Equality Act.

**The focus of individual study programmes should be to support young people to progress, and reach positive destinations in adult life.**

The Equality Act 2010 has particular relevance for the admission policies and procedures in FE. All FE colleges manage their own admissions policies and are prohibited from discriminating against disabled young people in respect of admissions. s. 1.28 *'Students will need to meet the entry requirements for courses as set out by the college, but should not be refused access to opportunities based on whether or not they have SEN.'*

Colleges' duties include making reasonable adjustment to prevent young people with disabilities being placed at a substantial disadvantage. As well as the more readily anticipated physical barriers to access, an emphasis should be placed on both inclusive curriculum design and practice with the aim of removing barriers to learning.

### Definition of SEND

The SEND Code of Practice (0 to 25 years) provides the following definition:

xiii. A child or young person has SEN if they have a learning difficulty or disability which calls for special educational provision to be made for him or her.

xiv. A child of compulsory school age or a young person has a learning difficulty or disability if he or she:

- has a significantly greater difficulty in learning than the majority of others of the same age, or

- has a disability which prevents or hinders him or her from making use of facilities of a kind generally provided for others of the same age in mainstream schools or mainstream **post-16 institutions**

xv. For children aged two or more, special educational provision is educational or training provision that is additional to or different from that made generally for other children or young people of the same age by mainstream schools, maintained nursery schools, **mainstream post-16 institutions** or by relevant early years providers. For a child under two years of age, special educational provision means educational provision of any kind.

xvi. A child under compulsory school age has special educational needs if he or she is likely to fall within the definition in paragraph xiv. above when they reach compulsory school age or would do so if special educational provision was not made for them (Section 20 Children and Families Act 2014).

xvii. **Post-16 institutions** often use the term learning difficulties and disabilities (LDD). The term SEN is used in this Code across the 0-25 age range but includes LDD.

## Definition of disability

### SEND Code of Practice

**xviii.** Many children and young people who have SEN may have a disability under the **Equality Act 2010** – that is ‘...a physical or mental impairment which has a long-term and substantial adverse effect on their ability to carry out normal day-to-day activities’. This definition provides a relatively low threshold and includes more children than many realise: ‘long-term’ is defined as ‘a year or more’ and ‘substantial’ is defined as ‘more than minor or trivial’. This definition includes sensory impairments such as those affecting sight or hearing, and long-term health conditions such as asthma, diabetes, epilepsy, and cancer. Children and young people with such conditions do not necessarily have SEN, but there is a significant overlap between disabled children and young people and those with SEN. Where a disabled child or young person requires special educational provision they will also be covered by the SEN definition.

**xix.** The Equality Act 2010 sets out the legal obligations that schools, early years providers, post-16 institutions, local authorities and others have towards disabled children and young people:

- They **must not** directly or indirectly discriminate against, harass or victimise disabled children and young people
- They **must not** discriminate for a reason arising in consequence of a child or young person’s disability

- They **must** make reasonable adjustments, including the provision of auxiliary aids and services, to ensure that disabled children and young people are not at a substantial disadvantage compared with their peers. This duty is anticipatory – it requires thought to be given in advance to what disabled children and young people might require and what adjustments might need to be made to prevent that disadvantage

- Public bodies, including **further education** institutions, local authorities, maintained schools, maintained nursery schools, academies and free schools are covered by the public sector equality duty and, when carrying out their functions, **must** have regard to the need to eliminate discrimination, promote equality of opportunity and foster good relations between disabled and non-disabled children and young people. Public bodies also have specific duties under the public sector equality duty and **must** publish information to demonstrate their compliance with this general duty and **must** prepare and publish objectives to achieve the core aims of the general duty. Objectives **must** be specific and measurable. The general duty also applies to bodies that are not public bodies but that carry out public functions. Such bodies include providers of relevant early years education, non-maintained special schools, independent specialist providers and others making provision that is funded from the public purse.

## Types of Support

The definition of SEND becomes significant as it links to the type of support children and young people receive. The system undergoes significant change at this point as all children and young people aged 0 to 25 years are now placed in two broad levels of support. These

are SEN Support and Education, and Health and Care plans. The needs covered by both SEN Support and EHC plans are very broad. The characteristics of each group naturally overlap but schools data provides a fairly accurate reflection of the needs seen in the FE sector:

Figure B: Percentage of pupils with each primary type of need who are identified as SEN (either on SEN support or with a statement or EHC plan) in state funded primary, secondary and special schools England, January 2017



Source: Schools census, January 2017

**SEN Support** replaced School Action and School Action Plus. Although all support package should be bespoke to the individual, broadly speaking these are the types of support a young person might receive via SEN Support:

- a personalised individual learning programme
- extra help in the classroom from a teacher or teaching assistant
- smaller group size
- support to take part in learning activities
- help communicating with peers / others
- support with some personal care

requirements, for example, getting lunch

**Education, Health and Care plans (EHC plans)** are for young people who require additional or specialist support over and above what is available through SEN Support. EHC plans replaced the previous system of statements and LDA's. They are put in place when a young person's needs are more intensive or require a specialist level of support that is not routinely available in a college setting. The aim of an EHC plan is to provide more substantial help and support for young people through a unified approach across education, health care and social care needs.

The factors that a Local Authority must take into account when deciding whether an

EHC needs assessment is required are set out in paragraph 9.14 to 9.15 of the SEND Code of Practice. Paragraph 9.15 recognises the difference between a school and further education setting.

9.15 A young person who was well supported through the Local Offer while at school may move to a further education (FE) college where the same range or level of support is not available. An EHC plan may then be needed to ensure that support is provided and co-ordinated effectively in the new environment. It

may also be the case that young people acquire SEN through illness or accident, or have an existing condition that requires increasing support as they get older.

## Funding available to meet the identified needs of SEND learners

Funding for SEN Support, sometimes known as Additional Learning Needs, is allocated to each FE institution through a notional budget. This is for learners whose needs can be met within £6000. The funding comes from the Disadvantage Funding directly through ESFA.

## Disadvantage funding

Disadvantage funding is made up of 2 blocks.

Disadvantage Block 1 provides funds to support students from areas of economic deprivation based on the index of multiple deprivation (IMD). The latest version of the IMD index, is used for this.

**Disadvantage block 2 provides funds to support students with additional needs including moderate learning difficulties**

**and disabilities. It is based on low prior attainment in maths and English.**

The latest version of the IMD index, is used for this.

Disadvantage funding is not ring fenced. This means institutions are free to use this element of the funding to choose the best way to attract, retain and support disadvantaged students and those with learning difficulties and disabilities.



## High needs funding system

The high needs funding system is available to provide young people with SEND with the most appropriate support package to take part in education in a range of settings. The vast majority of learners who access high needs funding will have an Education, Health and Care plan.

The high needs funding system has two main components, which are:

### Core funding

This is allocated to institutions in a number of ways, including:

- mainstream school and academy budgets, derived from the DSG schools block and the local funding formulae
- **funding allocated to post-16 providers, including mainstream schools and FE colleges, through the 16 to 19 national funding formula (sometimes called element 1), plus an amount per high needs place of**

### £6,000 (sometimes called element 2)

- place funding of £10,000 per place for special schools and academies, and special units within mainstream schools and academies, which is drawn from the high needs block The core funding is paid either by local authorities (for maintained schools and PRUs) or by EFA

### Top-up funding

This is allocated by local authorities to institutions from their high needs budgets and is sometimes known as element 3. Top-up funding is paid from the high needs budget of the local authority in which the pupil or student is resident or to which they belong. If the cost of providing for a pupil with high needs is more than allocated through the core or place funding, the local authority will allocate the institution this additional top-up funding to enable a pupil or student with high needs to participate in education and learning.

Figure B: Number and percentage of children and young people with statements or EHC plans by age group

Year: January 2017 Coverage: England

Age group	Statements	EHC Plans	Total
Under 5 years of age	281 (0.3%)	11,346 (6.5%)	11,629 (4%)
Aged 5-10	43,477 (38.8%)	53,902 (30.8%)	97,379 (33.9%)
Aged 11-15	54,442 (48.6%)	58,098 (33.2%)	112,540 (39.2%)
Aged 16-19	13,857 (12.4%)	44,177 (25.2%)	58,034 (20.2%)
Aged 20-25		7,708 (4.4%)	7,706 (2.7%)
<b>Total</b>	<b>112,057</b>	<b>175,233</b>	<b>287,290</b>

Source: SEN2 2017

## Impact of the reforms so far

The reforms enjoyed a great deal of support and were based upon the belief that the new system would provide greater equality for learners with SEND, improved provision and outcomes for learners. What has been agreed upon is that the implementation of the reforms has not delivered the aspiration of the Children and Families Act (2014) and has had a range of unintended consequences. The recent call for evidence by the SEND Education Select Committee has highlighted the key areas which have not seen significant progress:

- equal and fair access to high quality provision to meet the needs of young people
- a less adversarial and bureaucratic system and a more transparent system which is easier for young people, parents and providers to navigate
- greater personalisation for young people. Choice and control for young people with an increase in decision making.
- effective collaboration, including joint commissioning, between education, health and social care

Conversely the DfE view, based largely on local authority survey and adviser evidence indicates that:

- all local authorities have a Local Offer in place
- the vast majority of schools have published SEND information reports
- all local authorities have established an EHC assessment pathway
- all local authorities are issuing EHC plans
- the transfer of Statements to EHC plans is progressing and must be complete by April 2018
- health services are increasing levels of engagement with the reforms (e.g. in relation to involvement in in EHC assessment and aspects of joint commissioning).

A number of the early local area SEND inspection reports corroborate these findings and confirm positive progress with the implementation of the reforms. However an equal number of local area SEND inspections indicate that the reforms are not providing better outcomes for young people with SEND

and the system is just as adversarial as it was pre-reforms. What has become clear through popular debate is the policy described in the CAFA is the right policy to follow, the issues have arisen through implementation of the SEND reforms.

## Special educational needs and disability code of practice: 0 to 25 years (SEND Code of Practice)

### An introduction to the code

The Code is a guidance document relating to Part 3 of the Children and Families Act (2014). It related solely to children and young people with SEND. In the context of the Code a young person is someone who is over the school participation age but under 25. The Code of Practice was new for post-16 settings, the

previous code only covered schools.

### The Local Offer

Local Authorities have a duty to publish the local offer setting out the education, health and social care provision that is available both in their area, and outside of their area, for young people with SEND. Local Authorities must engage young people in the development and the review of the Local Offer. The Code of Practice states that young people should have opportunities to be engaged independently of their parents.

Colleges and post-16 providers have a role to play in supporting young people to engage in their local communities and influence the Local Offer. Where this works well it shows the positive impact that partnership working can have on the range of provision available for young people.

Local Offer good practice case study, Leeds<sup>(6)</sup>

A working group called the Post 16 High Needs Students Steering Group worked together to agree the offer of support. This group is coordinated by a Leeds City Council officer and includes:

- representatives of post 16 education providers
- partners from education and from health and social care services (adult's and children's services)
- the Council's Voice, Influence and Change team

The group carried out a 'Learner Voice Participation' survey with students in

years 9 to 14 with SEN and/or disabilities. 500 surveys were given out across all mainstream secondary and special schools in Leeds. 121's were completed and returned. Comments in the surveys influenced the final offer.

The group also decided that all post 16 education providers who access funding from Leeds City Council should be asked to publish simple details of their individual offer of support for children with SEN and disabilities on their own websites and/or printed information.

The Local Offer must include (section 4.30 Code of Practice), amongst other information, the following:

- post-16 education and training provision
- apprenticeship, traineeships and supported internships
- information about provision to assist in preparing children and young people for adulthood
- arrangements for travel to and from post-16 institutions

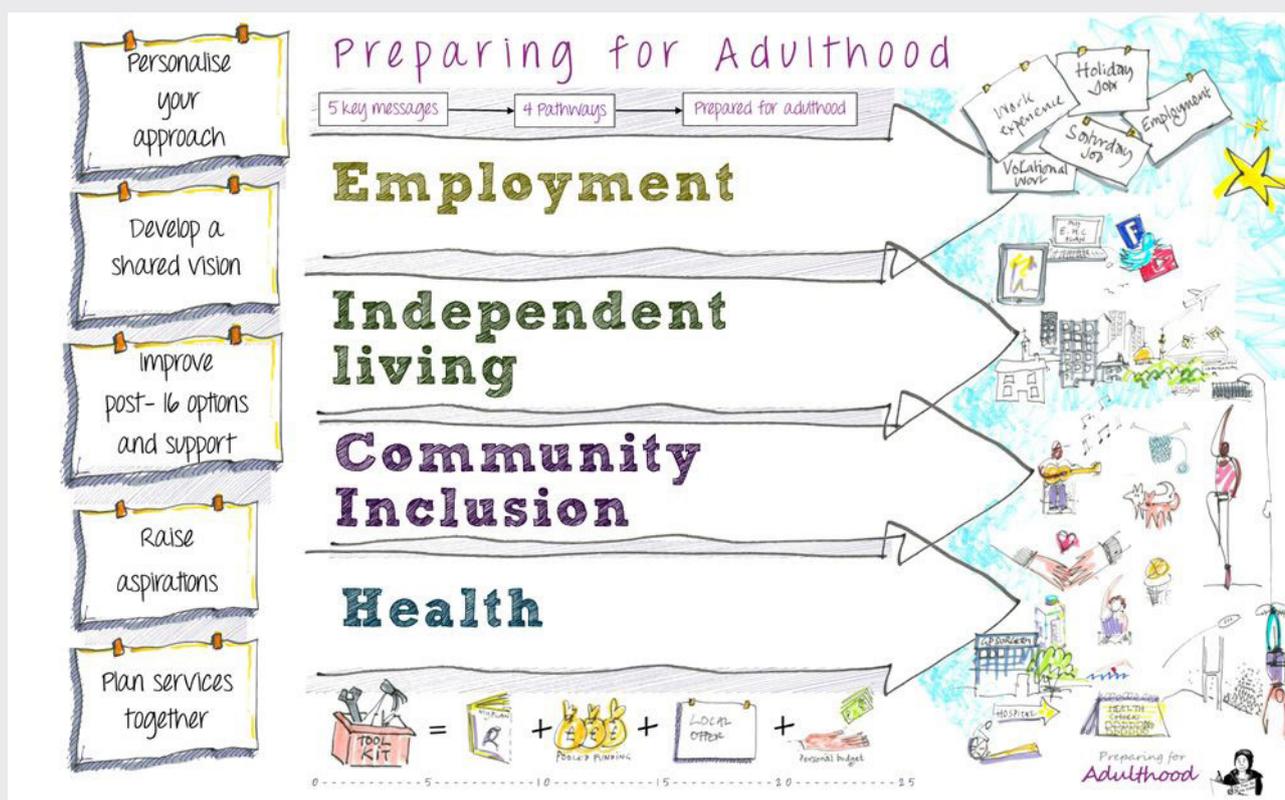
### Preparation for Adulthood (Employment, independent living, friendships & communities, health and wellbeing)

The code of practice devotes a whole chapter to 'Preparing for adulthood from the earliest years'. Its aim is to set out how professionals across education, health, social care and local authorities should support young people with SEND to prepare for adult life. The emphasis of the Code of Practice is highly

focused on transition, both transition into post-16 education and transition from post-16-education into adult life. The emphasis is on:

- planning the transition into post-16 education
- post-16 institutions designing study programmes that create pathways to employment (and other pathways)
- transition for young people aged 19-25
- transition to adult health services
- transition to adult social care
- leaving education and training and progressing into employment

The Department for Education (DfE) fund NDTI (National Development Team for Inclusion) to deliver the *Preparing for Adulthood (PfA)* programme as part of the delivery support for the SEND reforms. NDTI has a responsibility to ensure best practice is shared on a regional and national basis to support further development.



As part of sharing best practice the PfA team have developed guidance<sup>(7)</sup> on outcomes that enable young people to achieve a positive transition to adult life. Examples include:

Pathway	Post-16 In schools and post-16 providers 16-19 year olds	Post 19 19-25 year olds
Employment	<ul style="list-style-type: none"> <li>• Build on strengths and interests highlighted in personal / vocational profile</li> <li>• Apprenticeships</li> <li>• Supported internships</li> <li>• Traineeships</li> <li>• Further work on academic and vocational qualifications</li> <li>• A-levels and planning for university including sharing EHC plan with disabled students allowance study needs assessor</li> <li>• CV writing</li> <li>• Skills in applying for jobs or higher education</li> <li>• Interviewing</li> <li>• Understanding support from the LA, e.g. do they have a supported employment service?</li> </ul>	<ul style="list-style-type: none"> <li>• Consolidate or finish learning</li> <li>• Taking part in adult education / community learning</li> <li>• Completing outcomes in EHC plan</li> <li>• Voluntary work</li> <li>• Knowing how to access support from Job Centre post-education</li> <li>• Paid work or higher education</li> <li>• Understanding benefits</li> </ul>

Pathway	Post-16 In schools and post-16 providers 16-19 year olds	Post 19 19-25 year olds
Independent Living	<ul style="list-style-type: none"> <li>• Managing bills (e.g. mobile phone)</li> <li>• Managing potential income including Personal Independence Payments</li> <li>• Residential and local learning options</li> <li>• Mental capacity - decision making</li> <li>• Understanding consent and best interest</li> <li>• Life skills</li> <li>• Managing your time</li> <li>• Transition to adult care</li> <li>• Being safe in your home</li> <li>• Understanding different types of living arrangements - what arrangements are positive and possible for each YP</li> <li>• Actively planning for future living arrangements with family, LA etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Arranging potential independent / supported living options</li> <li>• Planning other living arrangements</li> <li>• Understanding correspondence / bills</li> <li>• Continuing to develop independent living skills as part of a study programme</li> </ul>

National Star's experience is that the outcomes are personalised for each individual learner, and depend upon the experiences they have had at school and the outcomes on which the young person chooses to work towards for their future. The divide between the type of outcomes pre

and post-19 is rarely seen in practice.

A key part of the SEND Code of Practice (0-25) is the introduction of Education, Health and Care plans. These are covered in Section 2.

# Section 2

Support Plans.

“EHC plans are a key focus of the new SEND system, ensuring, through a single plan, a more joined-up approach, bringing together services delivered by nurseries, schools, further education colleges, local health bodies and social services to meet the needs of all children and young people with SEND.”

The reforms in the 0 – 25 SEND legislation aim to tackle inequalities in the education system by ensuring that everyone has the opportunity to succeed in the future.

*“EHC plans are a key focus of the new SEND system, ensuring, through a single plan, a more joined-up approach, bringing together services delivered by nurseries, schools, further education colleges, local health bodies and social services to meet the needs of all children and young people with SEND.”*

(<https://www.gov.uk/government/news/new-measures-to-support-children-with-send>)

The aim of EHC plans is for them to be a single underpinning tool that bring together education, health, and care in a holistic way. The plan follows a learner throughout their education, being revised annually, or as necessary following review. Due to the educational focus of the plans they almost

always extend from age 4 to 18 years, however due to the 0- 25 years nature of the reforms there is flexibility at either end of the age range where children/young people need earlier or continuing support.

The introduction of EHC plans also saw the introduction of SEN Support to replace School Action and School Action Plus in schools. The term SEN Support is now increasingly being used interchangeably with Additional Learning Support (ALS) in college settings. Different plans provide different information; broadly speaking, a SEN Support Plan document should identify the special educational need, monitor progress towards desired outcomes, and track the resources utilised within an educational setting. An EHC plan is a legal document that describes a child or young person’s special educational, health and social care needs. It explains the extra help that will be given to meet those needs, and how that help will support the child or young person to achieve what they want in their life.

## SEND Code of Practice 0- 25 years

s. 9.5 EHC plans should be forward-looking documents that help raise aspirations and outline the provision required to meet assessed needs to support the child or young person in achieving their ambitions. EHC plans should specify how services will

be delivered as part of a whole package and explain how best to achieve the outcomes sought across education, health and social care for the child or young person.

### Transition into a post-16 setting

In supporting a young person to transition to post-16 provision, either through a SEND transition framework, or through provision of an EHC plan, it is the learner who is at the heart of the process. The support provided leading up to transition should have, ideally, enabled the young person with SEND to become familiar with different post-16 environments. This should inform them of the different learning pathways that are available to them so that they, alongside their parents/carers, can make informed decisions about next steps. In the longer term, this will include transition into adulthood and, where appropriate, employment.

Should a young person arrive at college without an EHC plan but it is deemed that considerable extra support is needed for the college to meet their needs, it would be necessary to provide evidence of this to the local authority through the request for an EHC plan. Instances where this might occur include where the learner's needs are unknown because of, for example, having been home schooled, or because of the recent acquisition of a disability, or following a move from alternative provision with small group sizes into a larger FE environment, or where

more support is needed because of work or community focussed activities, or to access employment.

**1** The **first step** in the process is to apply for an EHCP. This must be done with the knowledge, agreement and involvement of the parent or young person involved. The application can be done by either the college, the parents/carers, or the young person concerned (if aged between 16 and 25). Initially, the application should be made in writing to the local authority. Where possible, it is helpful to include copies of supporting evidence, such as reports from health professionals, or reports relevant to educational achievements.

**2** Following receipt of a request for an EHCP, the **second step** in the process is for the local authority to decide whether or not to carry out an assessment. The decision must be both made and notified within six weeks. The assessment will consider whether there is evidence of special educational needs. At this point, special educational needs don't have to be proved, so even where there is no known diagnosis, consideration will be given where there is a belief that the young person may have SEN, and has not made expected progress. If the LA decide to carry out an assessment, the process moves to

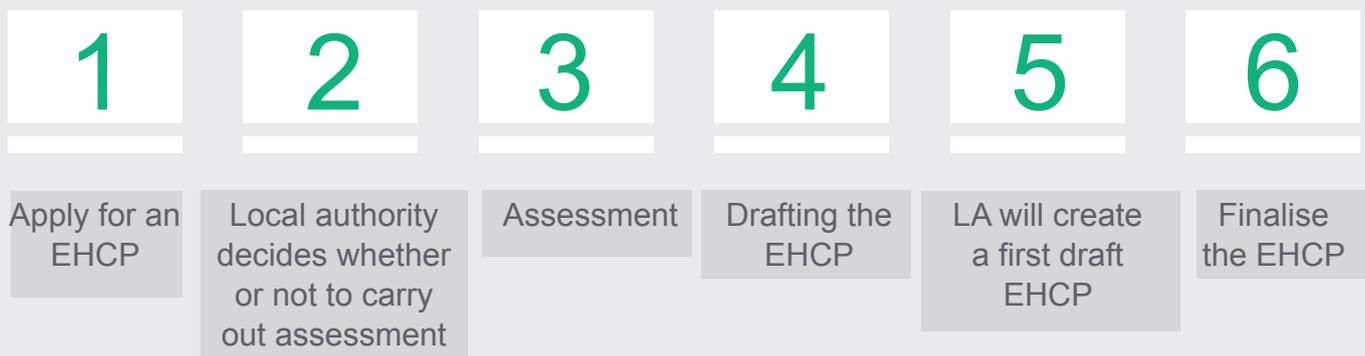
the third step. If the LA decides not to carry out an assessment the young person, or their parents/carers can appeal to the Special Educational Needs and Disability Tribunal. Providers cannot appeal.

The **third step** in the process is the assessment itself. The LA will have gathered the required information and a caseworker may have been allocated from the LA as the main point of contact. In addition to information provided by the applicant, information may be sought from the college, health care professionals, educational psychologist, social services, or relevant others. There is a 6-week deadline for replying to the LA from the point of contact. Having obtained all relevant information, the LA will hold a meeting to decide whether they need to provide an EHCP. If they find that an EHCP is not necessary, the applicant, or their parents/carers must be informed within sixteen weeks of the original request for assessment. Information will also be provided on the right to appeal to the Special Educational Needs and Disability Tribunal if there is disagreement with the LA's decision. If the LA does decide an EHCP is necessary, the next stage in the process is to draft the plan.

Drafting the EHCP is the **fourth step** in the process and this will be done at a second meeting, involving the young person

concerned, and should reflect person centred practices (see section 4 for further information). Following the meeting, the LA will create a first draft EHCP – this is the **fifth step** in the process. This will be sent to the young person and their parents/carers for comments so if, for example, they have a preferred place of education they need to highlight it at this point. The young person or parents/carers need to return the document to the LA within fifteen days. If the young person, or parents/carers are unhappy with any of the content relating to education, and the LA will not change it, this should be taken to the Special Educational Needs and Disability Tribunal. The Tribunal cannot decide on the health or social care parts, only education.

The **sixth step** in the process is to finalise the EHCP. The LA will send out the final plan as soon as possible, ideally this will be no longer than 20 weeks after first applying for assessment. Having an EHCP in place makes it possible for decisions to be made with regard to both educational placement and resource allocation, as well as contributing to continuity of provision. EHCPs are reviewed annually.



## Applying for an EHC plan to meet the needs of a young person moving in to a FE Setting - Gloucestershire College

Staff across Gloucestershire College contact the Learning Support Team about learners who they feel require additional support, or the provision of an EHCP, to support their learning needs. These referrals are directed to the SEND Service Manager (SSM). The SSM receives a wide range of referrals. Most of the young people have support needs that the college can meet through SEN Support. When this is not the case the SSM works with the Local Authority (often the Lead Caseworker) to ascertain whether or not an EHCP is required.

Once consideration of a case has been agreed, it is likely that a meeting of the 'Team around the Child' will be arranged so that the learner, their family, carers, involved professionals, and the Local Authority, can discuss requirements. If the case is to proceed, it will then go to Local Authority Panel, where a final decision will be made. If successful, an EHCP will be drawn up; if unsuccessful, Gloucestershire College will liaise with the Local Authority

to negotiate a level of funding to support the learner effectively.

For the Local Authority to consider the case, supporting evidence is required:

- observational reports from academic and/or support staff that clearly explain how the additional needs of the learner are negatively impacting on their ability to learn. At Gloucestershire College, these are often recorded and shared on learner monitoring software (ProMonitor).
- any evidence of previous support and / or medical diagnoses – this is usually discussed in an SSM meeting, with the learner and the family / carers.
- an agreement on (i) whether or not additional support is required, beyond what would be considered reasonable adjustments in the classroom, and (ii) what support will be required in order to impact positively on their learning.
- the SSM will arrange for a report from an Educational Psychologist. The report will be based on observing the learner for one day, and holding discussions with both academic and support staff.

## Essential components of an EHC plan, how to use each section of the plan

All EHC plans must include: the young person's interests, aspirations, and understanding of the situation; their special educational needs; any health needs related to their SEN; their social care needs; hoped for outcomes (i.e. aspirations to be achieved by the end of the process and how their education will support that); what special educational

provision is required; what provision health or social care services should make; the name and description of their educational placement; ways in which the personal budget (if there is one) will support specific outcomes and be managed; the advice and information that was gathered when the EHC needs were being assessed. Paragraph 9.66 of the SEND Code of Practice states that '*an outcome can be defined as the benefit or difference made to an individual as the result of an intervention.*' Typically the plan will be written in 11 sections:

Label	Section	Relevance of information for providers
A	The young person's views and aspirations, together with the family's views (often referred to as "All About Me")	To provide for access requirements. To enable relevant, personalised curriculum design for working towards life beyond college. To design work based experience (where appropriate) in accord with the young person's preferences.
B	The young person's special educational needs ("the Needs")	To gain an holistic picture of the young person, taking into account where their learning might be impacted by health or social care needs.
C	The young person's health needs that relate to their education	To ascertain where the provision of therapies might be required, or to assist in developing programmes for managing behaviour, for example.
D	The young person's care needs that relate to their education	To make staff aware of social care needs pertinent to the young person, such as vulnerability, family problems, and required routines.
E	The young person's desired outcomes ("the Outcomes")	To specify the steps to be taken to lead to the specified outcomes. This will include target setting, monitoring, review, and transition arrangements.

Label	Section	Relevance of information for providers
F	The young person's special educational provision ("the Provision")	To ensure timetabling accommodates the specified provision, clarifying ways in which such provision will contribute to the achievement of outcomes.
G	Health provision	To act in consideration of ways in which outcomes must be designed not only to include any health requirements, but to also contribute to achieving any specified health outcomes.
H	Social Care provision (including a Personal Budget if one has been agreed)	To design programmes encompassing leisure, recreational and community based activities to develop life skills such as money-handling, and social skills.
I	The education or training placement which the LA decides is most appropriate	To ensure you are the named organisation and provider in this section. See statutory duties.
J	The name of the LA officer who will sign-off the Plan and the date on which it is finalised	If the young person has a direct payment, it may be helpful to link in with the provider helping the individual to achieve social care outcomes, to see if skills could be transferred for employability or community based outcomes.
K	A list of the reports which have been obtained through the assessment	To ensure all reports and underpinning information (e.g. diagnoses etc.) are valid and that the identification of special needs is up to date and remains relevant.

## What good looks like, co-production of outcomes

Co-production is one of the core principles underpinning the Code of Practice, this includes: participating in decision making; supporting young people and parents to

participate in decisions about support, and involving young people and parents in the planning, commissioning and reviewing of services. One of the key areas for further education colleges is to think about young people's rights to make their own decisions, guidance includes<sup>(8)</sup>:

After compulsory school age (the end of the academic year in which they turn 16) the right to make requests and decisions under the Children and Families Act 2014 applies to young people directly, rather than to their parents.

Parents, or other family members, can continue to support young people in making decisions, or act on their behalf, provided that the young person is happy for them to do so, and it is likely that parents will remain closely involved in the great majority of cases. This is particularly important for young people under 18 and colleges would

normally involve parents or family members where they have concerns about a young person's behaviour or welfare.

They should also continue to involve parents or family members in discussions about the young person's studies where that is their usual policy. The fact that the Children and Families Act 2014 gives rights directly to young people from the end of compulsory school age does not necessitate any change to a college's safeguarding or welfare policy.

Through following the Code of Practice, and the new rights it confers on young people, colleges and post-16 providers can find themselves in the position of mediating between a young person and their parents/carers. Where the young person is judged to have mental capacity, providers will be required to prioritise their choices and support the development of self-advocacy for learners. Where a young person is judged to not have capacity under the mental capacity act providers will be required to bring together the team of relevant / important people for the young person to make any decision that

will impact upon the young person's provision or support.

### Co-production of good outcomes

A multi-agency approach allows for an holistic view of the young person and joint commissioning means that there is sufficient information and support provided to match provision to need and enable the best possible outcomes for the young person. EHC plans should describe and define the ways in which agencies will work together to provide joint provision. Both the young person and the

family should be involved in, and informed throughout, the whole process.

'Good' outcomes will be achieved by having the young person and their family at the heart of the process, prioritising their wishes, needs and aspirations. This is centrally important and it is worth noting that aspirations and outcomes are not subject to appeal to the SEND Tribunal, although the Tribunal Judge may order the outcomes to be altered as a result of appeal against other sections of the Plan.

Colleges have an additional role to play in helping young people and their families understand the type of support plan they have, what they are entitled to, and how what's going on at college fits with it. In a small number of cases colleges will also be required to support young people and their families to challenge the EHC Plan content if something is felt to be inappropriate (e.g. outcomes), and how to apply for an assessment, leading to a plan/ amendment, if necessary.

Colleges and providers often work with other jointly commissioned services. There should be clear structures in place for the ways in which professionals will work together; this should result in shared responsibilities and a consistent approach. Typical partners include, family support teams, CAMHS, health, and social care, as well as educationalists.

### Annual Reviews

The annual review is a statutory process of looking at both the needs and the provision stated in an EHC plan and deciding whether any changes are required. Although responsibility for annual review lies with the LA, in practice this is often delegated to

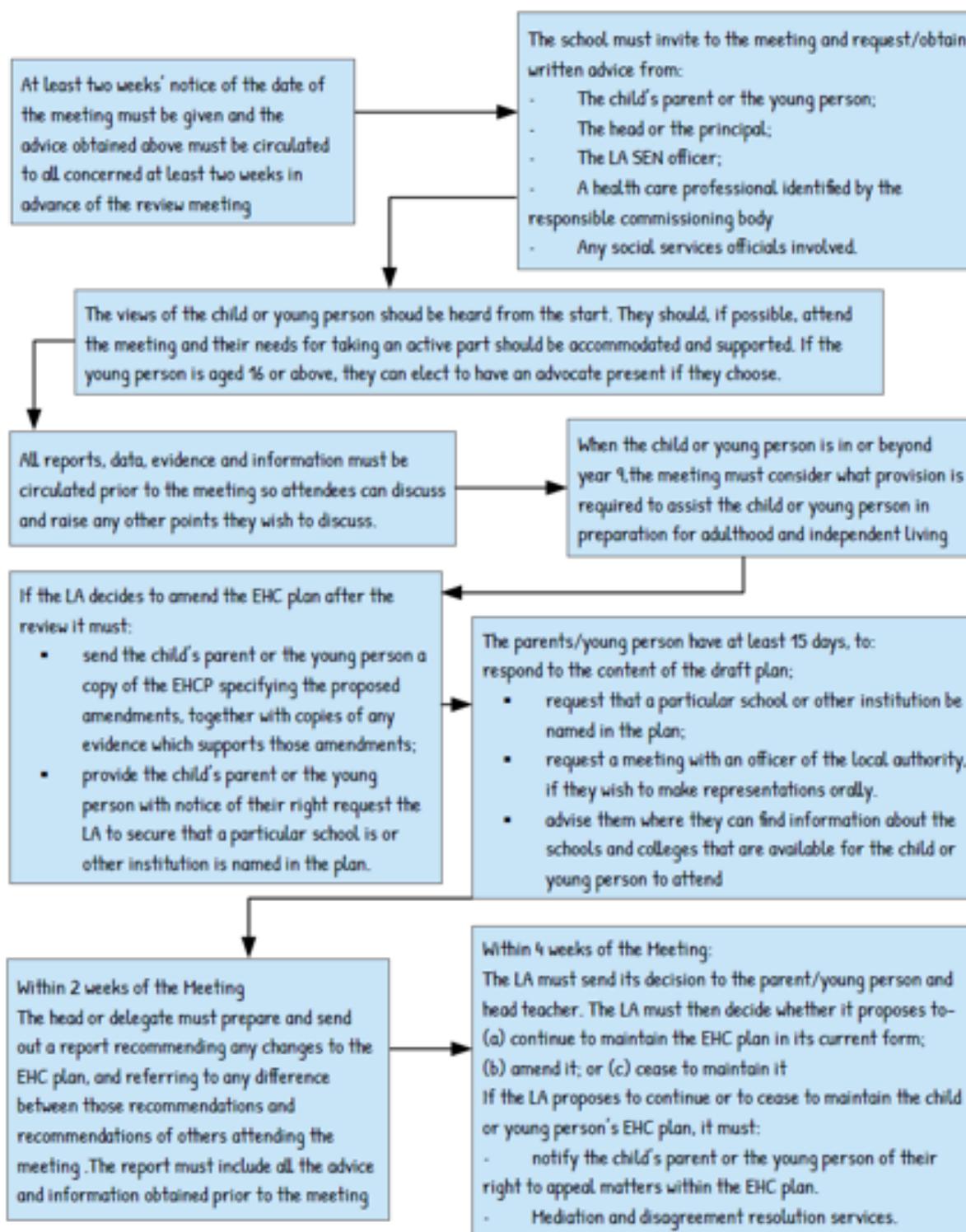
the provider (see flow chart below which, although designed by the Special Needs Jungle for schools, is also wholly applicable to FE providers). Because of the statutory requirements for a review, they must be timely. Everyone concerned should be provided with sufficient time for preparation and gathering of evidence, and both roles and expectations should be transparent. The main purpose of the review is to check progress against specified outcomes and it is essential that the learner voice is heard throughout these proceedings.

The following elements are requirements of an Annual Review:

- The LA must consult with the young person and parents / carers (and with the school or institution being attended if there is one) about the EHC plan, and take account of their views, wishes and feelings.
- An annual review meeting must take place to discuss the EHC plan.
- Information must be gathered from young people, parents / carers and from professionals about the EHC plan and then circulated two weeks before the meeting.
- After the meeting a report of what happened must be prepared and circulated to everyone who attended or submitted information to be discussed.
- After the meeting the LA reviews the EHC plan.
- The LA must notify the young person and/or parent/carer of their decision within four weeks of the meeting.

**SPECIAL  
NEEDS  
JUNGLE**
**AN ANNUAL REVIEW FOR AN EDUCATION, HEALTH & CARE PLAN**

It is the duty of the LA to review EHC plans but in schools and colleges, the head teacher or SENCo will conduct the meeting. The LA may or may not send a case officer. The main purpose of the review is to assess the child or young person's progress towards achieving the outcomes specified in the EHC plan.



Please note the flow chart above is written for a school context. The process for a post-16 provider will be the same, however some of the roles carrying out the activities will be different.

# Section 3

Personalising Programmes for  
SEND Learners.

Personalised learning is made up of ideas relating to the way people learn, and the skills needed for lifelong learning. In practical terms, this means focusing in a structured way on an individual's learning in order to enhance progress, achievement and participation.

Personalised learning aims will provide a

tailored programme for every learner. Initial assessment, to understand learners' needs, and ongoing review, are key to ensuring bespoke programme personalisation which will provide relevant and challenging opportunities that support the learner as they progress in their learning and development. The learner should be at the centre of any decision making and be able to influence curriculum design through learner voice activities.

The concept of personalised learning has

### **Leicester College's person-centred approach to meeting the needs of learners with profound and multiple learning difficulties.**

Leicester College has a wide range of provision for learners with learning difficulties and/ or disabilities from aged 16 including those working at the earliest stages of Entry 1, through to Entry 3. There are around 35 learners with profound and multiple learning difficulties. To make the curriculum more relevant to its learners, they replaced accreditation with a person-centred approach.

With no qualification to define the curriculum content, a range of people were involved in deciding what and how each learner should be learning. The learner's targets are the driver for their programme, and the curriculum is the vehicle for delivering them. The college uses the five stage RARPA (Recognising and Recording Progress and Achievement) process.

After the initial assessment period of about 6 or 8 weeks, a person-centred review is carried out, attended by the learner, their family and key people involved in their

support, to focus on what is important to and what is important for the young person. A learner's personal targets for their learning are set and agreed at this first review. Consideration is given to four key aims: to enable the learner to be an active citizen; to develop social relationships; to communicate with others; and to self-determine. The targets are captured within an electronic Individual Learning Plan (ILP) which learners use to monitor their progress, using video and photos, and to celebrate their achievements.

Learners are achieving targets that are meaningful to them and are leaving college with the right network in place to provide future support. Parents are positive about what is being achieved. Leicester College is confident that their use of a person-centred approach means that they are well-placed to work with the SEND reforms. The necessity for agencies to work together to develop Education, Health and Care plans will support the college's partnership approach and help them meet the challenges of transition from college.

been highly influential over the last 15 years. Despite the philosophy of personalised learning coming from a range of different backgrounds, all proponents agree on the five key elements that make up personalised learning:

- learning how to learn
- assessment for learning
- a portfolio of effective teaching and learning strategies
- curriculum choice
- mentoring and support.

A key proposer of personalised learning, John West-Burnham, explored how the five components could be put into practice in terms of an approach to leadership and management in an education setting.

**Achievement:** maximising the achievement of every individual, however it might be framed.

**Aspiration:** developing a culture of high expectations and aspirations, focusing on young people's entitlement to success.

**Inclusion:** personalisation applies equally to all learners, ensuring optimum provision that is geared to individuals' needs and talents.

**Relational:** maximising the quality of learning relationships between learners and all those involved in supporting them, including parents and peers.

**Accountability:** clarifying personal and professional responsibilities and placing high significance on performance for all those involved in the learning process.

### Achievement

If accessibility and inclusivity are to be achieved for SEND learners, the programme design must take into account both the ways in which learners are able to access the curriculum and their preferred methods of communication e.g. voice/AAC devices etc. This means that information gathered when students are assessed, must be shared across the organisation with all those involved in supporting the learner.

### Aspiration

Programmes for all learners must be aspirational and, to meet this, tutors will need to adapt their practice to meet students' unique needs. Whilst the acquisition of qualifications will be appropriate for some learners, undertaking non-qualification activities will be important for others. What is essential is that learners should have their learning sufficiently stretched, and that they are provided with opportunities to undertake

learning in a range of environments that are linked to their goals and aspirations. Activities focussing on the preparation for adulthood themes (employment, independent living, good health and participating in society) can provide an holistic starting point from which to build a personalised programme.

As a specialist provider, National Star offers highly personalised programmes for young people with disabilities, some of which are multiple and complex. The level of personalisation is the same for all learners, however the complexity of the final programmes can vary according to individual need.

### **Inclusion (through Person Centred Planning)**

From one page profiles through to support planning, the quality of an organisation's person centred planning will have an impact upon the quality of the teaching and learning and the inclusivity of the curriculum. The philosophy of Person Centred Planning came from a range of academic and practical sources in the early years of the 21st century. Michael Kendrick was influential and proposed a 'touchstone' of person centeredness that should be considered to reflect upon whether the 'goal' does or does not uphold each point.

#### **Kendrick (2000), touchstones of person centeredness**

- A commitment to know and (deeply) seek to understand the individual being served.
- A conscious resolve to (personally) be of genuine service
- Openness to be guided by the person
- A willingness to struggle for difficult goals that are, nonetheless, very relevant for an individual
- A willingness to stand by values that enhance the humanity and dignity of the person being served
- A conscious cultivation of an acute

sense of integrity, loyalty and fidelity to those being served

- The recognition that obtaining quality services for people means a continuous struggle against and with vested interests
- Flexibility, creativity and openness to trying what might be possible; including innovation, experimentation and unconventional solutions
- Internalisation of a sense of humanity as to the actual value of the service being rendered. Know that you can always improve on what you have done.
- To look for the good in people and help to realise it.

An accurate picture of a learner's needs is essential to providing for them appropriately, and the more complex their needs, the greater the number of services that may be involved.

On a practical level, supporting staff, and staff teams, to challenge themselves against the 'touchstones' above provides a good basis for evaluating both individual programmes and the curriculum.

Useful resources, the majority of which are free, can be found at Helen Sanderson Associates<sup>1</sup>.

### **Relational: Integration of Multi-disciplinary Teams**

Personalised programmes, and changes in policy and legislation, aim to achieve a single assessment of learners, rather than multiple assessments undertaken by different agencies. This is underpinned by the Children and Families Act 2014 (Part 3), the 0-25 SEND Code of Practice (2015) and the Care Act 2014.

An accurate picture of a learner's needs is essential to providing for them appropriately, and the more complex their needs, the greater the number of services that may be involved. Multi-disciplinary working can be central

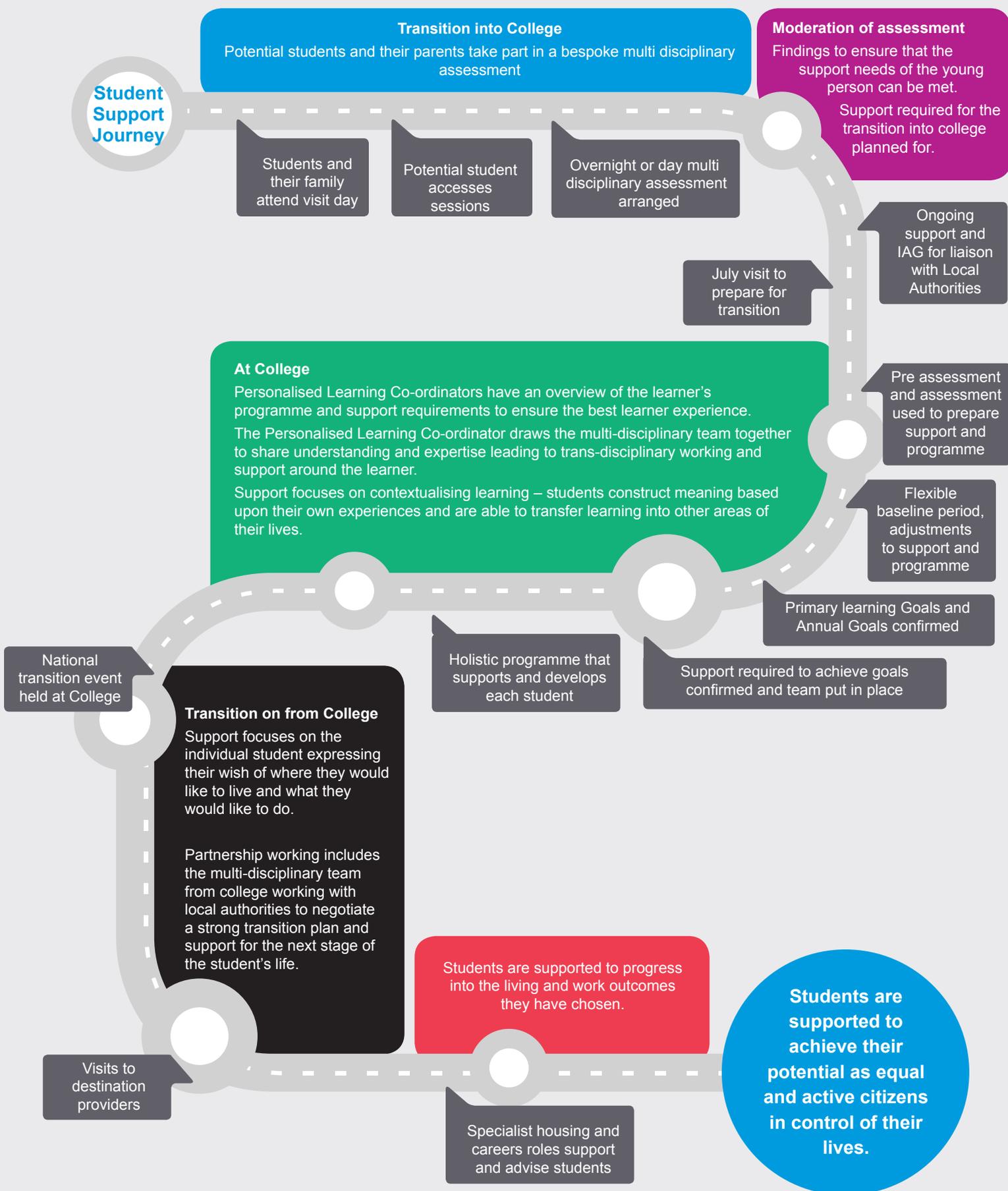
to ensuring effective support, and building resilience, for SEND learners. Whilst there are different systems for providing this support, central to them all is that they will regularly meet to discuss both the progress and needs of the learners for whom they are responsible.

Members of a multi-disciplinary team may be drawn from a wide range of services/ professions but will generally include participants from education, health, and social care. Taking an holistic view of the learner means that differing provisions are closely aligned, and tailored to suit the individual. This unified approach to the learner's needs results in improved outcomes not only for the learner, but also for the professional participants, who are more able to effectively forward plan, and gain a better understanding of each team member's goals.

Personalising both the offer and the curriculum for young people with SEND needs to be enabled by support services. How support is integrated is key to the successful delivery of integrated multi-disciplinary programmes. See example opposite from National Star.

<sup>1</sup> [www.helensandersonassociates.co.uk](http://www.helensandersonassociates.co.uk)

# Support for Students at National Star



## Recognising and Recording Progress and Achievement (RARPA)

Whilst colleges are free to design programmes to meet their individual students' needs, such programmes must enable students to build on their existing skills, and support progression towards their intended outcomes. Also, where qualifications are not undertaken,

it is particularly important that progress and achievement are recognised and recorded so that achievements are underpinned by a body of evidence, and so that processes are quality assured. Recognising and Recording Progress and Achievement (RARPA) is the process by which the progress and achievement of learners on non-accredited learning programmes is measured. There are a wide range of readily accessible resources available on RARPA.

*“Quality assuring the RARPA process gives inspectors, commissioners, and providers themselves the confidence that their non-qualification provision is of high quality and is helping learners achieve ambitious outcomes.”* (<https://send.excellencegateway.org.uk/quality-assuring-rarpa-process>).

Guidance for quality assuring the RARPA process is provided in the 'Guidance' document found here: <https://api.excellencegateway.org.uk/resource/eg:6813> and other examples of good RARPA are found here: <https://send.excellencegateway.org.uk/quality-assuring-rarpa-process>

## Accountability: Peer Observations

National Star uses peer observations as a key component of both staff development and programme/curriculum development. Involvement in the programme is part of everyone's professional responsibility and it places a high importance on performance for all those involved in the learning process.

Peer observations are not the same as formally observed sessions. Formal observations make judgements about key strengths and areas for improvement, paramount to achieve weightings that lead to an overall grade. This gives a clear benchmark and support plan to the individual, which can be used for professional development and to facilitate monitoring through support and development, and appraisals. The remit for peer observations does not include observations or reviews that are triggered by poor performance. Separate processes exist in these circumstances.

Peer observation is a collaborative and non-judgemental process, where each person takes his or her turn in observing, and subsequently facilitates a dialogue about an identified area of practice for review. Peer observation has mutual benefits:

- the person observing has opportunity to totally focus and reflect on another's practice, the methodologies they use, and their ideas. Subsequently, this may also enhance their own practice
- the person being observed is able to receive informal feedback and have a

facilitated dialogue about their practice on a peer to peer practitioner level, without a grading discussion. This opportunity can be used to trial new strategies towards improvement prior to formal grading

- peer working can also build confidence, greater collegiality, enable exploration of new ideas and facilitate risk-taking to procure new learning and improve interactions with students
- analysis of the process reflects that most people intend to change/adjust their practice as a consequence of engaging in peer observations

Using the lens of the five components of personalised learning, it is essential that the underlying philosophy considers the ways in which people learn, what it is relevant for them to learn, what they themselves wish to learn, and how such learning will be of use to them in their lives beyond college. The learner must be first and foremost at the heart of their learning, with their voice not only heard, but also influencing that which is undertaken.

To achieve this, learning must be personalised, planned, structured, monitored, assessed, reviewed, amended where necessary, and then recorded. Use of effective teaching and learning strategies, together with mentoring and support, where learners, their families, and a range of professionals work together, within a culture of high expectations and aspirations is required to develop a programme, and outcomes, which can best serve the learner's needs.

# Section 4

Resolving Disagreements and  
Tribunals.

This section will consider the main ways in which the legal duties that arise from the CAFA 2014, Equality Act 2010 and the Special Educational Needs Regulations 2014 are enforced. It focuses on the rights of young people and/or their parents to either resolve a disagreement or repeal a decision where they think a local authority has acted unlawfully.

Briefly, the Code of Practice sets out three main routes for resolving disagreement, they are:

- disagreement resolution
- mediation
- tribunal

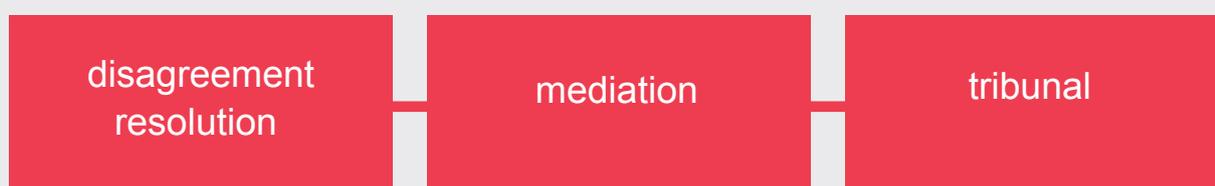
Local Authorities must make an independent disagreement resolution service available to young people and parents. It is intended to resolve (or prevent escalation of) four types of disagreement:

- disagreement between young people and/or parents and local authorities including the governing bodies of further education institutions about how these authorities or bodies are carrying out

their education, health and care duties for young people with SEND. This includes governing bodies using their best endeavours to meet young people's SEND need.

- disagreements between young people and / or parents and post-16 institutions about the special education provision made for a young person, whether they have an EHC plan or not.
- disagreements between young people and / or parents and Clinical Commissioning Group's or local authorities on health, social care or education provision during the EHC plan assessment, review or reassessment process.
- disagreements between local authorities and health commissioning bodies during EHC plan assessment, review or reassessment. These disagreements **do not** involve young people and / or their parents.

The disagreement resolution processes are voluntary and designed to resolve disagreements about the performance of duties, SEND provision, disagreements over health and social care provision and disagreements between health commissioners and local authorities.



## Mediation

Mediation arrangements are separate from disagreement resolution and are specifically linked to decisions about EHC needs assessments and plans. They can take place in the following circumstances:

- following a decision by a local authority not to carry out an EHC needs assessment
- if the local authority decides not to draw up an EHC plan following an EHC assessment
- after the young person and / or parents receive a final EHC plan or an amended plan

- following a decision by a local authority not to amend an EHC plan
- following a decision by a local authority to cease to maintain an EHC plan

Local authorities must provide young people and their parents with information about mediation. Parents/carers and young people who wish to make an appeal to a Tribunal can only do so after they have contacted an independent mediation advisor and discussed whether mediation might be a suitable way of resolving the disagreement. Young people and/or their parents are not obliged to undergo mediation; whatever decisions are made regarding mediation should not subsequently influence the outcomes if the case continues to Tribunal.



### Graphic showing stats re. use of mediation

There were 2,497 mediation cases held during the 2017 calendar year. Of these mediation cases, 630 (25.2%) were followed by appeals to the tribunal during the 2017 calendar year. This is similar to the 2016 calendar year where 25.3% of mediation cases were followed by appeals.



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## Tribunals

### The role of the tribunal

The role of the tribunal is to hear appeals against decisions made by Local Authorities in England in relation to children and young people's EHC needs assessments and plans. Young people and/or their parents have the right to appeal decisions made by the local authorities if they believe the local authority has acted unlawfully. **The First-tier Tribunal (Special Educational Needs and Disabilities) (the 'SEND tribunal')** is responsible for handling appeals from a young person or their parent/carer against a local authority decision regarding special educational needs, including a refusal to<sup>2</sup>:

- assess a child's educational, health and care (EHC) needs
- make a statement of their special educational needs
- reassess their special educational needs
- create an EHC plan
- change what's in a child's special educational needs statement or EHC plan

- maintain the statement or EHC plan

There are also rights of appeal about the contents of an EHC plan when first issued or reviewed/amended in a final form, specifically against:

- Section B: detailing the child or young person's special educational needs;
- Section F: setting out the special educational provision specified in the EHC plan;
- Section I: naming the school or other setting in the EHC plan (and/or the type of school or setting), or if no school or other setting is named.

Tribunals are chaired by a judge (either a barrister or solicitor), who has had training in SEN and disability law. There will also be two other panel members, at least one of whom must have extensive experience of SEN/disabilities. Prior to the tribunal hearing, the panel will have read and reviewed the case together and identified key issues. Hearings should not be overly formal and although the appellant (person bringing the appeal) may be represented by anybody, there is no requirement for representation, and this will not negatively affect any outcomes.

<sup>2</sup> <https://www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability>

Young people over the age of 16 can bring their own case to the tribunal, and support is available through IPSEA (<https://www.ipsea.org.uk>), amongst others. A Tribunal is actively involved in seeking out the issues at hand, and obtaining relevant evidence, which will include questioning witnesses. However, it is

anticipated that all parties will work together to arrive at a resolution.

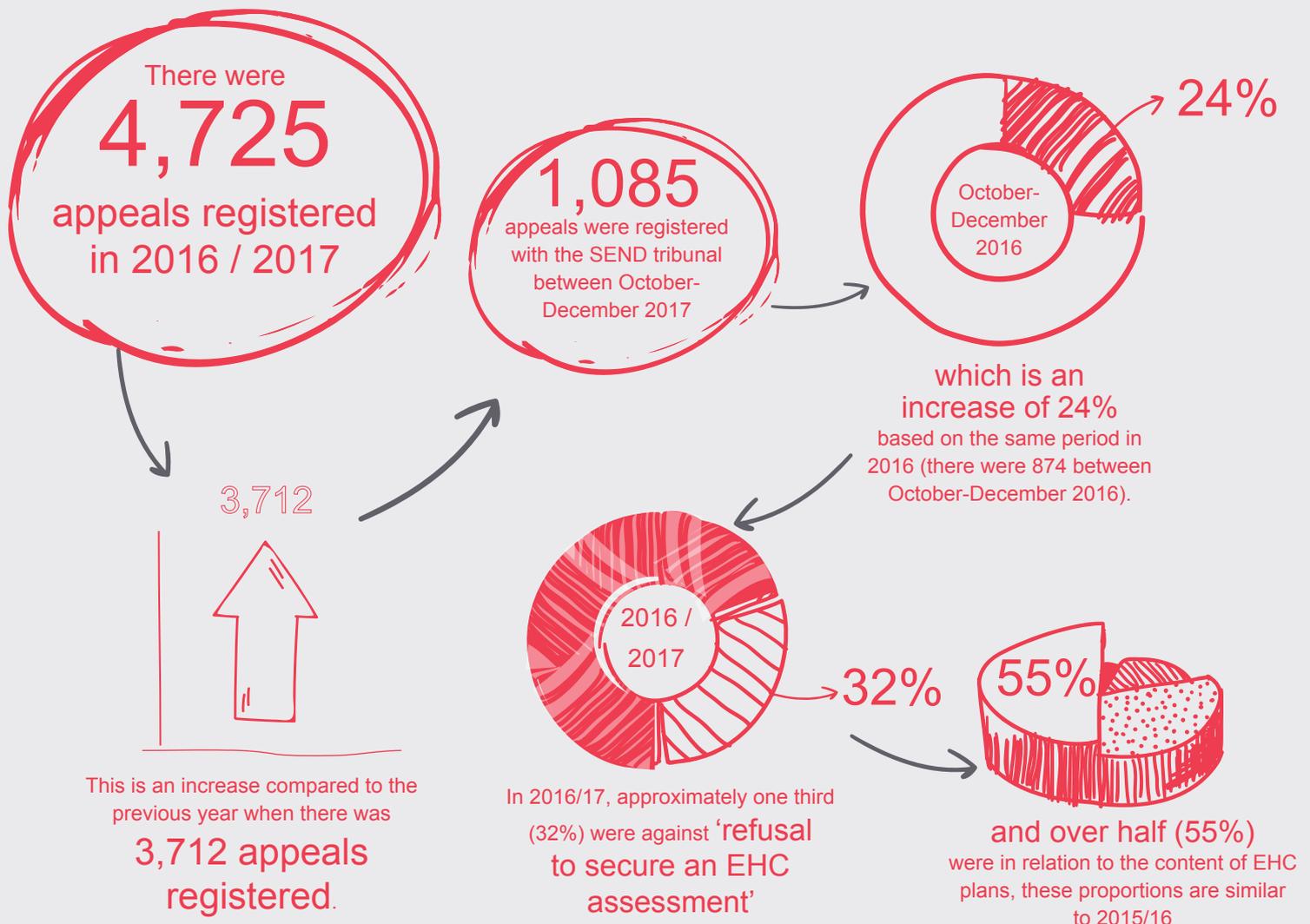
If a young person or their parents/carers don't agree with the findings of the tribunal they can appeal to the Upper Tribunal. Permission must be sought from the first tier tribunal to take the appeal forward to the Upper Tribunal.

### Graphic about Tribunal

There were 4,725 appeals registered in 2016/17. This is an increase compared to the previous year when there was 3,712 appeals registered. 1,085 appeals were registered with the SEND tribunal between October-December 2017, which is an increase of 24% based on the same period in 2016 (there were

874 between October-December 2016).

In 2016/17, approximately one third (32%) were against 'refusal to secure an EHC assessment', and over half (55%) were in relation to the content of EHC plans, these proportions are similar to 2015/16.



## Recent changes to the powers of the First-tier Tribunal SEND

### Single Route of

### Redress – Pilot

Piloted in 17 Local Authorities between June 2015 and August 2016

The powers were extended to be able to make non-binding recommendations on health and social care aspects of EHC plans.

Findings from the pilot (DfE 2018):

- Some evidence that extended powers resolved health and social care issues presented to Tribunal – some improvements in joint working.
- Small number of cases – insufficient evidence to judge whether the system was less stressful for families
- Insufficient evidence to judge the impact of the pilot

with regard to health and social care responsiveness to recommendations, or any wider implications for health and social care sectors.

### National Trial

Since 3rd April 2018 the Department of Education have run a 2 year national trial of extended powers for the first tier SEND tribunal. **Their jurisdiction will be extended to include powers to make non – binding recommendations about health and social care issues in all appeals** except refusal to secure and EHC needs assessment or re-assessment.

The policy aims of the national trial are to:

- create a more holistic, person-centred view of the child or young person's needs at the Tribunal

## Relevant Case Law for post-16 provision established through tribunal

Case law refers to law that comes from decisions made by judges in previous cases. It provides a common contextual background for legal concepts and how they are applied in certain cases. Since the introduction of the CAFA 2014, a significant amount of case law has been generated as young people, parents/ carers and local authorities try to navigate a new system. The emerging case law helps post-16 providers understand certain aspects of the law through clarification or demonstrates common areas in which the law is not being applied (or misapplied) by local authorities. Some examples include:

### Refusal to issue an EHC plan.

LAs cannot refuse to issue an EHC plan based on the grounds of a lack of progress made by the young person, nor on the acquisition of qualifications. A solid plan for pursuing education beyond post compulsory school age is not required for an EHC plan to be issued. Further, the provision of an EHC plan may be required to ensure that the young person can access requisite provision, such as therapies, which are to be treated as part of special educational provision.

*Obtaining qualifications is not an essential element of education (i.e. the fact that a child/ young person will not obtain qualifications does not mean that they do not need, or are not entitled to, education). Per **Buckinghamshire CC v SJ [2016] UKUT 254 (AAC), [2016] ELR 350**, the First Tier Tribunal was entitled to direct the LA to issue an EHC plan following assessment in circumstances where SJ (who was 20 years old) functioned at a pre-school level and it was accepted “further achievements would be small”, because those achievements would be valuable in SJ’s adult life. (The NODDY Guide [Matrix Law])*

The guidance from this case law is important as it provided clarity in this area, and specifically rejected any suggestion that ‘education’ can only encompass activity which leads to the acquisition of qualifications. This effectively confirms that the wide definitions of ‘education’ and ‘educational provision’ which have long been accepted for those of school age also apply to young people. The Code of Practice clearly defines the requirements for young people to be effectively prepared for adulthood, this can include independent living skills, communication skills and health and wellbeing skills.

The guidance from this case law is important as it provided clarity in this area, and specifically rejected any suggestion that ‘education’ can only encompass activity which leads to the acquisition of qualifications.

## Refusal to assess needs for higher education (example from Council for Disabled Children Case Law Update 19)

The Upper Tribunal clarified the exclusion of 'higher education' from the scope of the Children and Families Act 2014, emphasising that this only applies to higher education courses, not other courses which may be offered by or with higher education institutions. **Royal Borough of Kensington and Chelsea v GG (SEN) [2017] UKUT 0141 (AAC).**

This appeal considered whether a local authority was entitled to refuse to carry out a needs assessment for a young person who was pursuing Open University modules delivered by an independent institution. The Upper Tribunal reiterated that the provision of higher education is 'not a concern of Part 3 of CAFA 2014'. This follows from the exclusion of references to 'higher education' from the definition of 'education' in section 83(4). If a young person is simply seeking higher education, a local authority must refuse to carry out an EHC needs assessment. The Upper Tribunal held that 'An assessment would be pointless because it could not lead to an EHC plan that would deliver what the young person wants'. However a course provided by, or under an arrangement with, an institution within the higher education sector

is not necessarily a form of higher education. What matters is whether the course is of a type mentioned in Schedule 6 to the Education Reform Act 1998. If it is not, then the course would fall within the scope of the CAFA 2014 even though it is provided by a higher education institution.

The guidance from this case law is important as it entitles young people with SEND to support under certain conditions. It is clear that some courses offered by, or with the involvement of an institution within the higher education sector, will still fall within the scope of the CAFA 2014 if the course itself is not within the definition of higher education.

## Guide to the Tribunal Process

If a young person or their parents/carers want to initiate the tribunal process they will need to contact their local authority. The local authority has to provide information about groups who can provide advice and/or mediation services, for example, local voluntary organisations, a parents' or young person's support group, or National Advice Organisations. It is the choice of the young person or their parents/carers as to whether they take up the offered mediation. The role of the post-16 provider will be to signpost the young person and their parents/carers back to the local authority and Local Offer.

## The Appeal Timetable:

This is usually a 20-week process which is as follows:

- Week -2: The appeal is lodged;
- Week 0: The appeal is registered;
- Week 6: The LA must respond to the appeal;
- Week 16: All further evidence must be submitted;
- Week 20: The Tribunal hearing will take place;
- Week 20+2: The Tribunal decision is issued..

Once the young person and parents/carers have reached the stage of appeal the role of the college / provider is in response to the evidence they are asked to provide by either the young person and their parents/carers or the local authority. Typically, colleges and providers may find that they are:

- being asked by the young person or parents/carers to provide evidence as to why the organisation (college/post-16 provider) is the best place to meet the needs identified in the EHC plan. This is often the case with specialist providers.

- being asked by either the local authority or young person or parents/carers as to why the organisation has said that it cannot meet the needs of the young person in the EHC plan
- being asked by the local authority to provide an alternative offer to the one being presented by the young person or their parents. An example would include a LA asking a general further education college to provide information on an alternative offer to a Specialist Post-16 institution.

The type of evidence required will be directed by the party that asks for it, normally a solicitor or the local authority. Typically, colleges are asked to provide two statutory documents, the first is a Statement of Purpose - the information used for the Local Offer is sufficient. Secondly, a 'Provision of Place' letter is required. This has to state that the college will hold a place until a specified date, or a place will be available from a specified date. These are usually requested when it becomes apparent that the case will not be resolved before the intended start date of the educational programme.



## Being an expert witness

Being an expert witness is a formal process usually initiated by written communication from a legal representative asking either an individual or a representative from an organisation to be an expert witness. The letter should :

- explain why the party is seeking the expert opinion, and the wider context of the case (including any ethnic, cultural, religious or linguistic issues)
- define the specific questions requiring answers – these should be clear, focused and direct questions within the individuals/organisations defined area of expertise
- list any documentation provided
- identify the relevant professional and non-professional people involved with the appeal or claim
- identify any other expert instructed
- tell you of individual's rights to talk to other professionals, provided they make an accurate record of the discussion

Further guidance as to how gather, present and share evidence as an expert witness is available at <https://www.gov.uk/guidance/send-tribunal>.

Managing an individual's or organisation's contribution to a tribunal in a college setting requires time to be set aside for communication with the young person and their parents/carers, as well as the time to prepare any evidence requested. Timeframes can become short and may require the attendance of key members of staff from across the organisation at the tribunal. The organisation should expect visits from experts, local authorities and parents.

## References

## References

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## Useful resources

Resource	Description	Link
The Equality Act 2010: the impact on disabled people	The Equality Act included some major changes to disability discrimination law, compared with the pre-2010 position under the Disability Discrimination Act 1995.	<a href="http://www.assistancedogs.org.uk/wp-content/uploads/2016/04/House-of-Lords-Select-Committee-Report.pdf">http://www.assistancedogs.org.uk/wp-content/uploads/2016/04/House-of-Lords-Select-Committee-Report.pdf</a>
Children and Families Act 2014	An Act to make provision about children, families, and people with special educational needs or disabilities.	<a href="http://www.legislation.gov.uk/ukpga/2014/6/contents/enacted">http://www.legislation.gov.uk/ukpga/2014/6/contents/enacted</a>
Special educational needs and disability code of practice: 0 to 25 years	Statutory guidance for organisations which work with and support children and young people who have special educational needs or disabilities	<a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/398815/SEND_Code_of_Practice_January_2015.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/398815/SEND_Code_of_Practice_January_2015.pdf</a>

## Useful resources

Resource	Description	Link
Video guidance – what happens at tribunal hearings	The Local Offer describes how decisions are made locally, and also explains how to appeal against those decisions. This link opens a video which provides guidance on what happens at hearings.	<a href="https://www.youtube.com/playlist?list=PLORVvk_">https://www.youtube.com/playlist?list=PLORVvk_</a>
Withdrawing funding from an EHC plan	Although there is a legal obligation to provide the special educational provision in the EHCP (s.42 Children & Families Act 2014) it can be amended, or ceased, under certain circumstances e.g. if the young person gains employment	<a href="https://www.ipsea.org.uk/news/withdrawing-funding-from-an-ehc-plan">https://www.ipsea.org.uk/news/withdrawing-funding-from-an-ehc-plan</a>
Case studies: specifying a preferred school or institution.	London Borough of Hillingdon v SS and others (SEN) [2017] UKUT 250 (AAC):	
Statements of Special Educational Needs, Education, Health and Care Plans and a bit more “The Noddy Guide”	This version covers both the Education Act 1996 (EA1996) (and its regulations (Regs20011) and Code of Practice (COP1996)) relating to Statements of Special Educational Needs (Statements) as well as the Children and Families Act 2014 (CFA2014) (and its regulations (Regs20142) and Code of Practice (COP2015)) relating to Education and Health Care Plans (EHCPs);	<a href="https://www.matrixlaw.co.uk/wp-content/uploads/2016/03/SEN-Noddy-Guide-March-2017.pdf">https://www.matrixlaw.co.uk/wp-content/uploads/2016/03/SEN-Noddy-Guide-March-2017.pdf</a>
Administrative Appeals	Courts and Tribunals Judiciary	<a href="https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/tribunals/tribunal-decisions/osccs-decisions/">https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/tribunals/tribunal-decisions/osccs-decisions/</a>

Resource	Description	Link
SEND Tribunal Procedure	This briefing explains the practice & procedure of appealing against a decision by a LA about a young person with SEN to the	
Special Educational Needs and Disability Tribunal	<a href="http://volunteers.ipsea.org.uk/AssetLibrary/E%20LEARNING/E%20LEARNING%20text/SEND%20Procedure%20and%20Timeline.pdf">http://volunteers.ipsea.org.uk/AssetLibrary/E%20LEARNING/E%20LEARNING%20text/SEND%20Procedure%20and%20Timeline.pdf</a>	



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National Star is a working name of National Star Foundation which is registered in England and Wales, company number 522846, charity number 220239. Registered office Ullenwood Manor, Ullenwood, Cheltenham, Gloucestershire, GL53 9QU.

EDUCATION & TRAINING FOUNDATION: Company registration number (England and Wales): 08540597. Charity number: 1153859