



# Asking for a statutory assessment

A practical guide to parents' legal rights



# What does it mean?

This page fills you in on some of the most common legal words and jargon used in education.

## In this guide we use:

- **must** where the law says this has to happen.
- **should** when the Government expects something to happen, for example in codes of practice).

In this booklet we use 'school' to include pre-schools, nurseries and playgroups which have government funding. It covers statutory assessment for children over two in England and Wales.

Children in school study the **National Curriculum** which is split into Key Stages for each area of learning. The Foundation stage covers the curriculum for younger children and is divided into Early Learning Goals (called Desirable Learning Outcomes in Wales).

Children with **learning difficulties** either:

- find it significantly 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 etc. Children with learning difficulties generally need extra help at school and so are said to have **special educational needs** (often shortened to SEN).

Schools must tell parents when children are getting help for their special educational needs.

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.

A **statement of special educational needs** describes a child's difficulties and the special educational help they must be given by law. Local education authorities may write statements for children with the greatest learning difficulties after a statutory assessment. This is where experts decide the nature of a child's difficulties and the extra help needed. If your child is under two the local education authority must make a statutory assessment of your child if you ask them to.

An **Individual Education Plan** (IEP) helps parents and school check the progress of a child with SEN over short periods of time.

The **local education authority** (LEA) is the local council's department for schools. It may be part of a children's services authority which includes social care, health and youth justice.

The **Parent Partnership Service** (PPS) must do its best to provide parents of children with SEN with an **Independent Parental Supporter** if they want one. Ask your LEA how to contact the PPS.

A **SENCO** or special educational needs co-ordinator is the teacher with responsibility for SEN.

An **Educational Psychologist** (EP) uses special tests to assess children with SEN.

# My child needs a lot of extra help

All parents want the best for their children but some children will need a lot of extra help to do well at school. Those children who need more help than the school generally gives may need a statutory assessment to find out what their difficulties are and what help they need to learn better. In this booklet we help you through the procedures of a statutory assessment.

## Step 1: Get a copy of the Code of Practice

The *Special Educational Needs Code of Practice* is a Government handbook on special educational needs. The law says that schools and local education authorities (LEAs) must “have regard” to the Code – this means they must not ignore it. See page 12 for how to get a copy. 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 an ordinary school
- the child should have full access to a broad, balanced and relevant education, 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

## Step 2: Understanding how extra help is given

Children progress at different rates and learn in different ways. For example some children understand and remember well if they talk about something or read about it; others learn best by doing. Schools should aim to give all pupils the chance to do as well as possible. If a child is making slow progress, the school should give some help through *differentiation*. This means teachers using different materials, methods or approaches that suit the child’s way of learning.

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The Code recommends that children with special educational needs, but less serious difficulties, should be given extra help by the school through either **School Action** or **School Action Plus**. More specialist help is given at School Action Plus. In a pre-school, these levels of help are called **Early Years Action** or **Early Years Action Plus**. ACE booklets cover this. (*See page 12*)

If your child needs more help than they can get at Action Plus they may need the extra help that comes through having a statement of SEN. A statement describes all your child's difficulties and the help they must get to meet them.

Not all children will receive help through Action Plus before a statement is needed. It may be clear from birth or at an early stage in your child's life that they will need a lot more help than most children. Or your child may suddenly need a lot of extra help after an accident, major upset or illness.

If the LEA thinks your child may need a lot of support to learn or make use of school facilities they must carry out a statutory assessment. This means they will find out about your child's learning difficulties and work out what help is needed. If the LEA then thinks it necessary, it will write a statement.

### **Step 3: How does the LEA decide?**

The LEA will need to know about your child before it can decide whether to go ahead. It will help them make the right decision if you tell them about:

- any help your child is already getting. Your child's individual education plan (IEP) should give details. (*See Step 4*)
- how your child's is getting on (SATs results etc) Your child's school record and IEPs should include this information. (*See Step 5*)

### **Step 4: Check what help your child is getting**

Is your child getting extra help at school or pre-school?

No! ..... Go to Step 6

Yes! .....Read on

Not Sure! Send the letter on the next page to the SEN Co-ordinator.

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## To the Senco

Dear *(give their name)*

I am concerned about my child's progress at school and am worried that she/he needs special help. Please could you tell me if the school is giving any help through the school's usual differentiation, School Action or School Action Plus. If my child is on School Action or School Action Plus please include a copy of his/her individual education plan and the date of the next review.

Thank you,

Yours sincerely,  
(parent)

To get some idea of the type of help that is available through Action and Action Plus, contact the Parent Partnership Service run by your LEA. They should say what help is normally given to children in your area who are at school or pre-school. This information should also be on the LEA website. See also ACE booklets *Getting Extra Help* and *Early Years Extra Help*.

*Check if the school is providing as much as possible on Action Plus.*

### Step 5: How is my child getting on?

Next find out if your child is making progress at school. Write to the Chair of the school's governing body asking for a copy of your child's school record. This includes their school reports, individual education plans and any other information kept on file about your child. You must be given it within 15 school days of your letter. You can be charged for photocopying.

Look at the records and mark anything which shows your child is having problems learning, for example:

- not reaching targets in their individual education plan
- test and/or assessment results which are lower than those of other children of the same age
- test and/or assessment results for one subject which are much lower than for other subjects
- school reports which say your child is not making good progress
- exclusion reports, reports of incidents involving your child, or teachers' comments, for example about concentration, which show your child has behaviour difficulties which are affecting their learning.

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## Step 6: Asking for more help

If the information shows that your child is not learning despite extra help, you will need to ask for more help. It may be a good idea to ask for a meeting with the SENCO. Take along the evidence. If you still have questions list these in a letter asking for a meeting.

**If your child is not on School Action Plus but you feel they need a lot of extra help:**

- ask the school to put your child on School Action Plus. Check your child's progress over a few months before deciding further action.

**If your child is on School Action Plus but you feel their progress is not good enough:**

- ask the school to give your child more help on School Action Plus *and at the same time*
- ask the school to ask the LEA for a statutory assessment of your child *and/or*
- ask the LEA for a statutory assessment and tell the school you are doing this.

## Step 7: Asking for a statutory assessment

Generally the LEA only knows to carry out a statutory assessment if someone such as a health visitor tells them about your child, or if you or your child's school ask them to do an assessment. **Even if the school does not agree, you have a right to ask for a statutory assessment of your child.**

### ACE advises

It is especially important that you write to ask for an assessment if, for example, the health authority or social services has told the LEA about your child. You only have the right of appeal if you or the school ask for the assessment. Schools are busy places and delays can happen, so it's also a good idea if you write even if the school is also asking for an assessment.

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To ask for a statutory assessment, write the following letter:

## To the Director of Education

Send the letter to your local education authority – generally the one in the area where your child ordinarily lives. Send a copy of your letter to the school.

Dear Sir/Madam.

I am writing to ask you to assess the special educational needs of my daughter/son (give child's name and date of birth) under Section 323 of the Education Act 1996.

I am making this request as is my right under Section 329 of the Act.

I think my child may need more help than the school can provide at Action Plus. (Say which school your child attends. If your child has been receiving help, say what this is and why you think it is not enough.)

I have written my views on my child's difficulties in the enclosed report. (You can send a report now or later - see Step 9).

The following people are involved with my child and I would like you to get advice from them. (List the people involved with your child.)

I am also sending you copies of other reports which may help you make your decision. (Send copies of any reports you may have from a teacher, educational psychologist, doctor etc.)

Yours sincerely  
(Name) Parent

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## Step 8: The LEA looks into your child's case

The LEA must look into your child's case to decide whether a statutory assessment is necessary when you or your child's school write to ask for this. They have 6 weeks from receiving your letter to make up their mind. The LEA does not have to consider your request if your child has had a statutory assessment within the last 6 months.

**If the school or some other body asked the LEA for the statutory assessment, the LEA will write to you saying they are considering this.**

**The LEA will:**

- tell you about the procedures for statutory assessment and statements
- explain the timing of each stage of the assessment
- give you the name of an LEA officer who can give further information
- tell you of your right to explain why you want, or do not want, your child to be assessed (giving you at least 29 days in which to do this)
- ask you whether you want them to ask anyone else about your child
- give you information about the local parent partnership service.

**Before deciding whether to assess, the LEA will look at whether your child:**

- has not made progress even though the school, with the support of experts, has already given your child suitable help *and /or*
- needs the sort of help which can only come through a statement because the school cannot be expected to provide it from their own funds.

**The LEA will:**

- look at evidence from the school about help they have given and your child's progress. Sometimes progress is made only because a child has had much greater help than usually provided through School Action Plus
- check that the school has adapted the curriculum to suit your child's learning needs
- ask the school, other professionals and yourself about your child's learning difficulties.

**You can:**

- write your own report (*see Step 9*)
- ask the LEA to approach other professionals about your child.

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## Step 9: Preparing your report

ACE advises that you write a full report. You can send it when you send your request or when the LEA asks for your views. It is best to get your report in at an early stage to help the LEA make the right decision about whether or not to assess.

Use the checklist on the next page as a guide to writing your report. The LEA may send you a form with similar questions in it. You do not have to answer any question you are not happy with.

*Once you have been through the checklist check if your points:*

- explain in detail your child's difficulties.
- leave too much to the imagination.
- give a clear picture of your child's day to day life and difficulties. Think of different ways to show what you mean. For example, describe a typical day, provide a diary of what happens or include some of their work.

*Think about the following questions and add more details if necessary:*

Do you feel that your child's difficulties give 'significant' cause for concern or are 'severe and complex'? Often this means a child has much greater difficulties than others of the same age and/or a child has considerable difficulties in more than one area.

- Do you feel that your child's needs have not been met, even though the school and experts have tried? Why do you feel this?
- Do you feel that your child may need the sort of help which normally only comes through a statement? Why do you feel this?

Do not worry if you cannot answer any or all of these questions. End the report by signing and dating it. Make a copy and send it to the LEA with any reports that you feel are useful. Keep to the time limits given.

## Step 10: Do you have independent reports?

If you believe your child's learning difficulties are not properly understood and that the LEA will take a lot of convincing that a statutory assessment is necessary, it may be useful to ask any professionals who know your child if they will back up your case with a report. An LEA must consider any evidence you want to give, including a private report.

## Parents' Checklist

What to include in your advice

### Your child's early years

Say when you first noticed any problems – big or small. Did you tell anyone? What help or advice did you get?

### Your child now

Health – eating, sleeping, illnesses, tiredness, depression, panic attacks

Physical skills – walking, hopping, climbing, drawing, using scissors

Communication – hearing, gestures, eye contact, speech: describing things, talking to people, using the telephone, taking messages

Personal skills – dressing, washing, dealing with pocket money, time-keeping, remembering sports kit/books etc for school

Behaviour – showing feelings such as affection, anxiety, aggression, frustration; other aspects which affect school life: poor concentration, silly behaviour, not following instructions

### Your child at home

Watching TV, reading, hobbies

Outside activities – clubs, sports

Relationships – parents, brothers and sisters, other adults, friendships

Behaviour at home – sharing, listening, helping, moods, caring, tantrums

Homework – difficulty with remembering what to do or getting it finished in the set time

### Your child at school

What is your child good at? What does your child enjoy?

Friendships, relationships with teachers

Problem areas: lessons, playtime, changing class, school transfer

Help which has worked or not worked for your child

Are your child's difficulties getting worse?

What help do you think your child needs?

### Your child's view

What does your child say about their difficulties? When do they most enjoy learning?

Your child's views are important. They can give first-hand reports of the difficulties they have and how the help they get at school works for them. Their behaviour usually shows what they feel about something.

Does any particular incident or piece of work illustrate your child's difficulties or lack of progress?

**Check as many of the points in your report as possible with your child and add their comments.**

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## Step 11: The LEA replies

Within 6 weeks of receiving your request, the LEA must write and tell you if they are going to assess your child.

If the LEA feels that your child's needs are not great enough for an assessment and that their school can meet your child's needs, they will write to say they will not assess, give their reasons and explain what help they think your child needs. Seek advice if this happens. (*See page 12*)

So long as you or the school (and in most cases the pre-school) asked for the statutory assessment, you can appeal. The LEA must tell you the time limits for an appeal to the Special Educational Needs and Disability Tribunal. If the Tribunal agrees with you, they can order the LEA to assess your child.

## Step 12: The LEA decides to assess

### Who assesses my child?

The LEA will ask you, your child's school, an educational psychologist, the health authority, social services and sometimes others for advice.

The LEA uses the advice they give to decide whether to write a statement. Your advice will probably cover the same areas as the checklist (*Step 9*).

### Where will the assessment happen?

If your child is at school, it is likely that they will be assessed there by the educational psychologist. In a very small number of cases a child may be placed in a special school during the assessment. This could be a hospital special school. Some professionals may want to examine your child and you have a right to be present. You have a legal duty to make sure your child attends for an examination.

### How long will it take?

The LEA has 10 weeks to carry out the assessment. They will ask for advice to be provided in 6 weeks but if this is delayed they may not be able to keep to the timetable. At the end of the 10 weeks, the LEA has to decide whether or not to issue a statement. They have two weeks to either:

- send you a letter saying they will not make a statement, giving their reasons and telling you of your right to appeal or
- send you a proposed statement with copies of the advice they have received. ACE's booklet *Getting the Statement Right* will help you check this.

## Further help

### **From ACE**

Early Years Extra Help

Getting Extra Help

Getting the Statement Right

Understanding Annual Reviews

Disability Discrimination

Children with SEN: Sources of Help

ACE Special Education Handbook

**ACE advice line: 0808 8005793 [www.ace-ed.org.uk](http://www.ace-ed.org.uk)**

### **From the Department for Education and Skills**

Special Educational Needs – a guide for parents and carers and

SEN Code of Practice free from 0845 602 2260

### **From the National Assembly for Wales**

SEN Code of Practice free from 029 2082 6078

### **From the SEN and Disability Tribunal**

SEN: How to appeal

SEN helpline: 01325 392 555

SEN helpline (Wales): 0159 782 9800

### **Useful websites and advice lines**

SEN Independent Panel of Special Education Advice:

0800 018 4016 [www.ipsea.org.uk](http://www.ipsea.org.uk)

Parents Online: [www.parents.org.uk](http://www.parents.org.uk)

Contact a Family: 0808 808 3555 [www.cafamily.org.uk](http://www.cafamily.org.uk)

ACE is a charity and depends on grants and donations to run our advice service. If you have found our advice helpful, please consider sending ACE a donation, however small, to the address below.



Published by the Advisory Centre for Education,  
1C Aberdeen Studios, 22 Highbury Grove, London N5 2DQ

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Designed by Sally Doust. Illustration by Linda Scott

Printed by Wyndeham Gait Ltd., Castle Press, Grimsby.