

EDUCATION, HEALTH AND CARE PLANS (EHCPs)

**TOURETTE SYNDROME (TS) IS A NEUROLOGICAL
CONDITION AND NOT A LEARNING DISABILITY.**

It does not, in itself, affect IQ. However, it can come with difficulties in accessing the curriculum and it is important that schools recognise what these difficulties may be. In some cases, it may be that a child/YP needs an EHCP which can be an invaluable tool in ensuring your child/YP gets the help and support they need. EHCPs are a common topic that come up within the Tourette's community and we hope this factsheet will provide information on this process.

1. WHAT IS AN EHCP?

An Education Health and Care Plan (EHCP/EHC Plan) is a legally binding document that details a specific child/young person's education, health and care needs. The former impacts on them accessing education compared to pupils without additional needs. The EHC plan will explain the provision needed to meet the educational needs and, amongst other details, who is to provide the support, how often and for how long, and if any equipment is needed.

2. WHO NEEDS AN EHCP?

EHC Plans are for those children and young people aged 0–25 (or until they leave education) with special educational needs who require support beyond that which a maintained mainstream educational setting can provide at SEN support. A child who has educational needs may also have additional health and social care needs, and those can be included in the plan. You cannot have a freestanding EHCP for health or social care reasons alone.

3. WHO CAN APPLY FOR AN EHCP?

It is important to know that an application cannot be made for an EHCP; the application is for an EHC Needs Assessment (EHCNA). This is the first step in the EHCP process. The request goes to the child or young person's local authority and can be submitted by the parents, the young person (if aged between 16–25) or the school. If the latter, then make sure you are happy with the request and supporting evidence submitted. From the date of receiving the request the LA must decide within six weeks as to whether they will complete an EHCNA.

4. WHAT IF THE LA REFUSE TO ASSESS?

If the LA refuses, the child's parent(s)/the young person have an initial two months in which to appeal to the Special Educational Needs and Disability (SEND) Tribunal, also known as the First-tier Tribunal (Health, Education and Social Care). They must first obtain a mediation certificate. Sometimes mediation (before lodging an appeal) can result in the LA changing its mind.

5. WHY ARE SOME EHC NEEDS ASSESSMENTS REJECTED?

The LA may decide not to carry out an EHC Needs Assessment for several reasons, e.g.:

- A lack of diagnosis on the special educational needs of the individual
- No report from an educational psychologist

- The child is not deemed to be far enough behind their fellow students
- The LA enforce their policy provision matrix, e.g. attainment not below the 2nd percentile and therefore not bad enough for an EHCP. Such a blanket policy is likely to be illegal.

To carry out an EHC Needs Assessment, the LA must be satisfied that the child or young person may have special educational needs and may need support through an EHCP.

Should a LA refused to assess, and their reasons do not follow what the legal test says, then mediation/appeal are appropriate options. The Tribunal will decide the facts of the case including looking at the child's individual needs and decide based on the law. The Tribunal can overrule LA policy.

6. WHAT HAPPENS ONCE THEY AGREE TO ACCESS?

If the LA agrees to assess, they then have 10 weeks to gather advice and information from the relevant and required professionals about the child or young person's education, health and care needs – see this [SEN factsheet](#) on [senexpertsolicitors.co.uk](#) for further information. The experts must set out what level of provisions are required to meet those needs. Once this information and advice is received then the LA must confirm if the level of need and provision requires an EHCP or not.

7. HOW LONG WILL IT TAKE?

At the end of this 10-week period, the LA must either issue a draft EHC plan (in which case the parents will have 15 days to comment on and request any revisions) or inform the parent(s) or the young person of its decision not to issue a plan. If the latter, it will provide them with an initial two month right of appeal to the Tribunal. Again, a mediation certificate must first be obtained. Appeals currently take between approximately 3–12 months to reach a final hearing.

8. WILL AN APPROPRIATE SCHOOL BE OFFERED?

Only once a final EHC plan is written, either a name and type of educational provider, or just a type, will be named in Section I of the plan. This needs to be either an identified setting or type of setting that the LA feels can meet the child or young person's needs. This must

follow the LA consulting with potential settings, including parental/young person preference provided this is not a solely independent school. If it is, then the LA must consider the request to consult with this setting.

9. CAN THE EHCP TIMELINE BE EXTENDED TO ALLOW TIME TO CONSIDER SCHOOL OPTIONS?

You can ask for extra time to look at potential schools, but the whole EHCP process (from the date of requesting an EHC Needs Assessment to a final EHCP being issued) must take no longer than 20 weeks. This is excluding any appeals, i.e. refusal to assess/refusal to issue an EHCP/ the content of the final EHCP. Aim to plan school visits in suitable time to reduce the risk of delays. The EHCP is also not legally binding on the LA until it is finalised.

10. IF A SCHOOL IS NAMED ON AN EHCP THAT SAYS THEY CANNOT MEET NEEDS, WHAT CAN I DO TO CHALLENGE THIS?

The article [Schools and EHCPs – Can any School be named in Section I, and does the School have to agree?](#) by Special Educational Needs Solicitors, Boyes Turner ([senexpertsolicitors.co.uk](#)) addresses this point. The LA can still name one of the following types of placements:

- Local authority-maintained nursery school
- Local authority-maintained school/academy/free school (mainstream or special)
- Non-maintained special school
- Further education/sixth form college
- Independent school/independent specialist college which is approved by the Secretary of State under Section 41 of the Children and Families Act 2014

In Section I, even if that placement says they cannot meet needs. This decision would need to be challenged through the SEND Tribunal – click [here](#) for further information ([senexpertsolicitors.co.uk](#))

11. WHAT HAPPENS IF THERE IS AN EHCP IN PLACE, BUT THE CHILD OR YOUNG PERSON IS OUT OF SCHOOL?

These articles by Boyes Turner, [Pupils with SEND – Out of school; what are their options?](#) and Snap Care, [A Look at the Evolution of Education Otherwise Than at School \(EOTAS\)](#) address this point.

12. WHAT DO I NEED TO KNOW ABOUT FUNDING AND EHCPs?

These articles by Boyes Turner, [Special Educational Needs \(SEN\) funding – What do I need to know?](#) and [Funding Bands and Education, Health and Care Plans](#) address this.

13. WHAT HAPPENS IF A CHILD OR YOUNG PERSON IS PERFORMING WELL ACADEMICALLY BUT HAS NEEDS IN OTHER AREAS – CAN THEY STILL GET AN EHCP?

When looking at SEND, this covers four broad areas of needs:

- Cognition and Learning
- Communication and Interaction
- Social, Emotional and Mental Health
- Sensory and Physical

So, in short, they absolutely can get an EHCP even if they are making expected progress academically.

If a child or young person is masking/suppressing at school, then it is important to gather evidence to show how their needs present at home.

14. WHAT SUPPORT DOES A SCHOOL NEED TO PROVIDE IF THERE IS NO EHCP IN PLACE?

Maintained mainstream schools must use their best endeavours to provide SEN support. There needs to be a whole school approach and an identified Special Educational Needs Co-ordinator (SENCo). There needs to be an Assess/Plan/Do/Review approach. [Chapter 6 of the SEN Code of Practice](#) has useful guidance on this (publishing.service.gov.uk) – see from page 91.

15. WHAT IF THE CHILD'S NEEDS CHANGE? HOW WILL THE EHCP BE MONITORED?

An EHCP Annual review takes place once a year as a minimum. Following this, the local authority may take one of three actions:

- Leave the EHCP unchanged and continue as before – right of appeal provided
- Cease the EHCP – right of appeal provided
- Make alterations to the plan

The review involves all three parties: the parents, the school/college, and the local authority. The reviews are usually done annually at the school or college and give an opportunity for the parents to raise any issues and concerns. It also looks at whether the support remains suitable for the needs of the student. The school review report must be served on the LA within two weeks of the Annual Review. The LA have four weeks from the Annual Review to issue its formal decision about the EHCP. If the LA propose to amend the Plan, then it must include these proposed amendments with its decision. 15 days must be allowed for the parent/young person to respond to this, and the final EHCP must be issued no later than 12 weeks from the Annual Review date. A right of appeal will be given once the final EHCP is issued.

This factsheet was made in collaboration with Lucy Toghill, Education Manager for Tourettes Action and Lydia Dunford, Associate Solicitor in Boyes Turner's Education team. For further information please contact:

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SIGNPOSTING

You can find more information on [GOV.UK](https://www.gov.uk).

**The Special Educational Needs and Disabilities
Information Advice and Support Services (SENDIASS)**

offer information, advice and support for parents and carers of children and young people with special educational needs and disabilities (SEND). Under the Children & Families Act (2014) it is a legal requirement that all Local Authorities have a SEND IAS Service and KIDS provide a number of these services across the country.

Click here to find [your local SENDIASS team](#).

SEND Guide – DoE guide for parents: This guide, from the Department for Education, describes how the new system that supports children and young people with SEN or disabilities, and parents, is intended to work.

Read more on Special Educational Needs Solicitors, [Boyes Turner Education Team's website](#).