



Department  
for Education

12 September 2013

Dear pathfinders

I am writing in response to queries we have received from some pathfinders about the legal basis for offering Education Health and Care (EHC) assessments and plans to families, rather than statutory statements of SEN. I am also aware that IPSEA has contacted some pathfinders regarding their offer of an EHC plan to families who do not already have a statement.

I know that there has been a lot of activity in recent months as pathfinders have prepared to scale up their new approaches from September, and we very much appreciate your hard work. With less than a year to go until national implementation of the SEND reforms, it's vital that pathfinders continue to lead the way and provide learning for all areas to draw upon.

Since the pathfinder programme began, we have always maintained a very clear understanding of the law as it relates to the SEND pathfinder work. Pathfinders are developing new systems which will benefit the lives of children, young people and their families, and at the same time DfE and pathfinders themselves have been clear that legal protections for families must be maintained.

Now that pathfinders are offering the option of an EHC assessment and plan to larger numbers of families, you will want to reassure yourselves that, when you are proposing to make an assessment, parents are aware that they can choose whether to proceed with new EHC assessment processes, or whether they would prefer to continue with the existing system.

Until the new legislation comes into effect (expected in September 2014) EHC plans do not have a statutory basis and cannot be appealed to the Tribunal. However, we hope that by putting families at the centre of the new EHC assessment and planning process, any issues or concerns that they may have will be addressed at an early stage, which, of course, is one of the central ideals behind the reforms.

As EHC plans are currently not statutory, there is not a direct duty on local authorities to secure the special educational provision within them in the same way as for statements. However, so that parents and young people have the same assurance and certainty as with statements, we would expect pathfinder authorities to treat EHC plans as if such a duty existed and to make that clear to parents and young people.

In the event that any disagreements about the EHC plan cannot be resolved locally, and for those cases where a statement would otherwise have been maintained, pathfinders can offer to convert the plan into a Statement of SEN based upon, and attaching, the advice collected during the EHC assessment. In other words, we would not expect families to restart the whole process. They would then be able to take the case forward following the existing legislation.

DfE is in dialogue with IPSEA and we will work with pathfinders and IPSEA where issues with particular pathfinder families arise to support resolution.

I hope this provides you with clarity and re-assurance to maintain your momentum in rolling out new approaches. If you have any queries, please contact your Mott MacDonald adviser in the first instance.

Best wishes

A handwritten signature in black ink, appearing to read 'SDK', with a stylized flourish at the end.

Stephen Kingdom  
Deputy Director, SEN and Disability Division  
Department for Education