

## IMPORTANT

- The information we provide on our rights4children website is for general guidance. It is not legal advice.
- If you need legal advice, please contact an independent advocate or a solicitor.
- Article 39 tries its best to make sure information is accurate and up-to-date. However, we cannot guarantee this. We'd appreciate you letting us know if you notice any errors or out-of-date information: [info@article39.org.uk](mailto:info@article39.org.uk)

## Having special educational needs

- ➔ Education that's designed for everyone doesn't always work for everyone.
- ➔ If you have special educational needs, you should get help with your education that's just right for you.



Many children have special educational needs. For every 100 children, there are 14 with special educational needs.<sup>1</sup>

Having special educational needs doesn't mean there is anything wrong with the person. You could say every child has special educational needs because:

- ➔ Everyone is an individual and therefore special, and
- ➔ Everyone has educational needs.

Our law first started to protect the education rights of children and young people with special educational needs or a disability nearly 50 years ago.

It's important to have the law behind you, because this gives you the best chance of getting the help that everyone has agreed you need.

By everyone, we mean those involved in agreeing your Education, Care and Health Plan. That's you, your parents or carers and your local council.

## Your rights – general

All children and young people (except those living in immigration detention centres) have the right to help if you have special educational needs.

It is your council's job to look at what special educational needs you have, and to agree a plan. The council must listen to you and your parents.<sup>2</sup>

The United Nations Convention on the Rights of Persons with Disabilities gives disabled children and young people the right to inclusive education, which means being included and treated with equal respect.

### *Your council*

The law says local councils must look into the educational needs of children and young people who may need help.

You, your parents (or others looking after you) and your school have the right to ask for your educational needs to be looked into.<sup>3</sup> This is called an assessment.

Once an assessment has been done, an official plan might be made.

### *Your Education, Health and Care Plan*

If the council finds that you do have special educational needs, it must agree a plan with you and your parents. This is called your Education, Health and Care Plan (EHC Plan for short).

The law says your EHC Plan should include certain information. This is:

- ⊕ What your special educational needs are.
- ⊕ The results and changes that you and others want. This could be about your learning, friendships, hobbies or anything else connected to your education. If something is important to you, please say. This is YOUR Plan.
- ⊕ What will be done to make sure your special educational needs are met.
- ⊕ Any health care you need.
- ⊕ Any help from social workers or others in social care you need.<sup>4</sup>

Your EHC Plan must say which school or place you will get your education. Most of the time this will be the school or other place you or your parents want.

But the law says a school or other place cannot be made to have you as their student if this wouldn't fit your age, ability and things you are good at, or if it would affect other children and young people's education.<sup>5</sup> (We don't like this last bit).

You and your parents (or others looking after you) have the right to see a draft version of your Plan. This is so you can say if something is not right and should be changed.<sup>6</sup>

Once your Plan has been agreed, the council is under a legal duty to make sure the promises in the Plan about your education are put into practice.<sup>7</sup> Excellent!

If you are disabled, your school or college will have to make fair changes to how things work to make sure you get your right to an education.

The law says when your council is working on your special educational needs, these are very important:

- ⊕ your views, wishes and feelings.
- ⊕ you being involved as much as possible about decisions about you
- ⊕ you getting information so that you can be involved in decisions
- ⊕ you getting support so you can have the best education as possible.<sup>8</sup>

## Your rights – extra

This section gives you information about your extra rights in different places.

Words in “quotation marks” come from laws and legal rules. Laws and legal rules must be followed by the people who look after you.

### Children’s home

The law says your council must push your educational achievement.<sup>9</sup> We’re right behind that – just because you live in a children’s home doesn’t mean you shouldn’t have an excellent education.

Your social worker should put a lot of time and effort into making sure your special educational needs are met.<sup>10</sup>

The person who runs your children’s home must make sure staff work with other services, so your needs are met. This includes schools and others involved with your education. If your needs are not being met, your children’s home must challenge and stand up for your rights.<sup>11</sup>

### Hospital or other health place

The NHS Trust that is responsible for the ward or unit you are staying in must do its work with your welfare in mind.<sup>12</sup> Your educational needs are part of this.<sup>13</sup>

Local councils have a legal duty to make sure children and young people who are ill get their right to education.<sup>14</sup> This applies if you have special educational needs too.

If you already have an Education, Health and Care (EHC) Plan, and you go into

hospital for mental health reasons, the hospital should tell the council when you first become a patient.<sup>15</sup> This is so you can continue getting good help.

It may be necessary to look again at your EHC Plan, to make sure it fits your needs right now.

The important thing to remember is that you do not lose your education rights just because you are in hospital. This is true whether you are in hospital for mental health or physical health reasons.

## Immigration detention

You have the right to be in accommodation that suits your needs as a child.<sup>16</sup> This includes your education.

We are sorry to say that the rights children have relating to special educational needs do not apply to you if you live in immigration detention.<sup>17</sup> We think this is very wrong.

## Prison

The governor of your **young offender institution** must carry out his or her work with your welfare in mind.<sup>18</sup> Your education is part of this.

The council where your prison is based must do its best to make sure your special educational needs are looked after.<sup>19</sup>

If you are in a **secure training centre**, the law says the person in charge (the director) must promote and protect your welfare.<sup>20</sup> This includes your education.

The council where your secure training centre is based must do its best to make sure your special educational needs are looked after.<sup>21</sup>

## School

You're living in a school, so you should be surrounded by teachers and others who know how to make sure you get a great education!

The law says schools where children live must protect and look after your welfare.<sup>22</sup> This includes your education. Your council has a duty make sure your special educational needs are understood and met.

## Secure children's home

The person who runs your secure children's home must make sure staff work with other services, so your needs are met. This includes schools and others involved with your education. If your needs are not being met, your children's home must challenge and stand up for your rights.<sup>23</sup>

- 1 Department for Education and National Statistics (July 2017) Special educational needs in England: January 2017.
- 2 Regulation 7 The Special Educational Needs and Disability Regulations 2014.
- 3 Section 36, Children and Families Act 2014.
- 4 Section 37, Children and Families Act 2014.
- 5 Regulation 39, Children and Families Act 2014.
- 6 Section 38, Children and Families Act 2014.
- 7 Section 42, Children and Families Act 2014.
- 8 Section 19, Children and Families Act 2014.
- 9 Section 22(3A) Children Act 1989.
- 10 See Department for Education and Department of Health (2015) 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.
- 11 Regulation 5 The Children's Homes (England) Regulations 2015.
- 12 Section 11 Children Act 2004.
- 13 See the welfare checklist in Section 1(3) Children Act 1989.
- 14 Section 19, Education Act 1996.
- 15 Department for Health (2015) Mental Health Act 1983: Code of Practice, para 19.118.
- 16 Rule 11(2) The Detention Centre Rules 2001.
- 17 Section 562 Education Act 1996 excludes detained children from the statutory right to education. There have been legislative improvements for children in 'youth detention' custody through criminal justice route) but not children in immigration detention.
- 18 Section 11 Children Act 2004.
- 19 Section 562C of Education Act 1996 [inserted by Section 50, Apprenticeships, Skills, Children and Learning Act 2009].
- 20 Rule 45A(2)(b)(i) The Secure Training Centre Rules 1998.
- 21 Section 562C of Education Act 1996 [inserted by Section 50, Apprenticeships, Skills, Children and Learning Act 2009].
- 22 Section 87(1) Children Act 1989.
- 23 Regulation 5 The Children's Homes (England) Regulations 2015.