



Local Authority duties in meeting the educational needs of looked after children with SEND

Introduction

The Children Act 1989 places a **legal duty** on Local authorities to safeguard and promote the welfare of looked after children. This duty extends to promoting the child's educational achievement and this information page will set out the specific duties placed on Local Authorities in relation to the education of a looked after child who has or may have Special Education Needs and or Disabilities (SEND).

The [Children and Social Work Act 2017](#) further expanded the **duties** of the local authority to promote the education of children who previously had looked after status but no longer do so.

A **'looked after child'** is a child who is (a) in the care of a local authority, or (b) being provided with accommodation by a local authority in the exercise of their social services functions (see the definition in Section 22(1) of the Children Act 1989).

A **'previously looked after child'** is a child who was adopted under the Adoption Act 1976 and a child who was adopted under the Adoption and Children Act 2002

A **care leaver** is a young person aged 16-25 years old who has been 'looked after' at some point since they were 14 years old, and were in care on or after their 16th birthday.

NB: For the purpose of this document, children and young people are referred to as "looked after children", to correspond with legislation. However Local Authorities often refer to "children in care" or "children looked after" and these terms may be used interchangeably.

Local Authority Commissioning Arrangements

Local partners across education, health and social care should **work together** to establish what targeted commissioning is needed to address the needs of children with an Education, Health and Care Plan (EHCP) in order to meet the outcomes specified in the plans. This includes any education, health and social care provision required for looked after children.

Where a child or young person has been assessed as having social care needs in relation to their special educational needs (SEN) or disabilities, social care teams should make sure that for looked after children and care leavers the arrangements for assessing and meeting their needs across education, health and social care are co-ordinated effectively within the process of care and pathway planning, in order to avoid duplication and delay. This should particularly include liaising with the Virtual School Head (VSH) for looked after children.



Care Planning requirements in relation to education

Each looked-after child or young person will have a care plan, which sets out the needs of the child or young person, the planned outcomes and the way in which services should respond to these needs.

The personal education plan (PEP)

A PEP is part of the young person's care plan used to record how a young person is doing in their education. A PEP is a statutory requirement to ensure that a record is maintained regarding the child's educational progress and should set out what needs to happen in order for the child to reach their potential. The Local Authority **must** make sure that the PEP fully reflects the educational needs of the child, remains relevant to the child's age, ability and aptitude, and is implemented effectively.

Where a looked after child is on the SEND register PEP's should be aligned with the EHCP, if one applies, or with any other school support documents.

The content of a PEP

The statutory guidance on [promoting the education of looked after children](#) requires that a range of educational and developmental needs are covered in a PEP.

During the process of putting a PEP in place for looked after children, the local authority should ensure that any undiagnosed special needs are addressed as soon as possible if they are identified through this process.

Review of the PEP

A PEP **must** be reviewed regularly as part of the looked after child (LAC) review. The review process enables information to be shared by others including the child's parents, carers, school and other professionals in order to have a comprehensive view of the child's situation.

Where a looked after child also has a SEN support plan or EHCP, the PEP should be reviewed in conjunction with these plans and co-ordinated by the designated teacher and the SENDCO (where these roles are not fulfilled by the same person).

Virtual School Head (VSH)

The Children and Families Act 2014 included a provision which requires Local Authorities to appoint at least one person who is tasked with promoting



the educational achievement of all the children looked after by the local authority they work for, including children placed out of authority. This officer, often known as a **Virtual School Head (VSH)**, will lead a virtual school team which tracks the progress of children looked after by the authority as if they attended a single school. Special Educational Needs and Disabilities departments should work closely with the VSH as well as social workers to ensure that local authorities have effective and joined-up processes for meeting the SEN of looked after children

The **role of the VSH** is largely to have oversight of the effective education of all looked after children in the local area. This includes -

- managing arrangements for allocating pupil premium and EYPP funding,
- maintaining up to date records,
- ensuring that everyone working with a looked after child knows their role and responsibilities and
- making sure that the PEP is up to date, effective and high quality.

For a more comprehensive breakdown of the responsibilities of the VSH in relation to looked after and previously looked after children please refer to [Promoting the education of looked-after children and previously looked-after children \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

In relation to previously looked-after children, the duties of the VSH are not as comprehensive as they are for looked-after children given that they are no longer the child's "corporate parent". However, the VSH must ensure that suitable advice and information is provided in order to promote the child's educational achievement.

The Independent Reviewing Officer (IRO)

The [IRO's primary focus](#) is to quality assure the care planning and review process for each child and to ensure that his/her current wishes and feelings are given full consideration. The IRO is required to offer a safeguard to prevent any 'drift' in care planning for looked after children and the delivery of services to them.



Educational Requirements

School Admissions

Looked after children are regarded as one of the most vulnerable groups of children in society.

All schools must have **oversubscription** criteria for each 'relevant age group' and the highest priority must be given, to looked after children and all previously looked after children, including those children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted. This is contained in section 1.7 of the [school admissions code](#).

The Virtual School Head (VSH) **must** ensure that

- the admission authorities are aware that looked after children are 'excepted pupils' from the infant class size limit
- the local authority, as a corporate parent, should not delay where a looked after child is without an education placement that is appropriate to their assessed needs.

The social worker involved with the looked after child should consult with the VSH on an appropriate education placement for the looked after child.

Looked after children should only be admitted to Ofsted Good or Outstanding schools when seeking a new provision.

Under Section 3 of the Children and Families Act all children whose Education, Health and Care (EHC) plan names the school **must** be admitted.

Publishing Information

The governing bodies of maintained schools and maintained nursery schools and the proprietors of academy schools **must** publish information on their websites about the implementation of their policy for pupils with SEN. This should include arrangements for supporting children and young people who are looked after by the local authority and have SEN. Please see here for further information on [What maintained schools must publish online - GOV.UK \(www.gov.uk\)](#)

And here for further information about [What academies, free schools and colleges should publish online - GOV.UK \(www.gov.uk\)](#)

Designated Teacher

All schools **must** have a [designated teacher for looked after children and previously looked-after children](#) who **must** comply with the regulations on qualifications and experience as set out in The Designated Teacher (Looked-After Pupils etc) (England) Regulations 2009. The Designated Teacher should be a qualified Teacher. They have the responsibility to promote the educational achievement of



looked-after children and previously looked-after pupils who are registered pupils at the school.

Where that role is carried out by a person other than the SEN Co-ordinator (SENCO), Designated Teachers should work closely with the SENCO to ensure that the implications of a child being both looked after and having SEN are fully understood by relevant school staff.

In respect of looked-after children who have or may have SEND, the designated teacher should ensure that:

- the special educational needs and disability (SEND) code of practice 0 to 25 years, as it relates to looked-after children, is followed;
- children's PEPs work in harmony with their EHC plan to, coherently and comprehensively, set out how their needs are being met. Professionals should consider how the EHC plan adds to information about how education, health and care needs will be met without duplicating information already in a child's care plan or PEP. Equally, the child's care plan, including PEP, should feed into the care assessment section of the EHC plan.
- Ensure that, with the help of the VSH, they have the skills to identify signs of potential SEN issues, and know how to access further assessment and support where necessary, making full use of the SENCO and local authority support team where applicable

Exclusions

Local authorities and schools must have regard to the statutory guidance on [exclusions from maintained schools, academies and pupil referral units](#).

Looked after children and those who have Special Educational Needs have disproportionately high rates of exclusion.

If a school or setting has concerns that a looked after child is at **risk of exclusion**, they should consider whether there are any unassessed special educational needs and whether the provision of additional support would help. If the child has an EHCP the school should consider holding an annual review and gathering the views of all of those involved with the child's care to review the current provision and consider additional support or if an alternative educational placement is required. Schools should liaise with the VSH and ensure they are invited to meetings if a looked after child is at risk of fixed term exclusion.

The head teacher should, as far as possible, avoid permanently excluding a looked after child or a child or young person with an EHCP and they should consult with the VSH where a risk is present to make suitable plans. Schools should proactively cooperate with the child's carers, social worker and local authority that looks after the child.



EHC assessments and Plans

Where an assessment for an EHC plan has been triggered, the authority that carries out the assessment must be carried out by the authority where the child lives (i.e. is ordinarily resident), which may not be the same as the authority that looks after the child.

Local authorities should be particularly aware of the need to **avoid any delays** for looked after children and carry out the EHC needs assessment in the shortest possible timescale.

When **gathering EHC assessment advice** the local authority should consider seeking advice from

- the Virtual School Head in the authority that looks after the child,
- the child's Designated Teacher and
- the Designated Doctor or Nurse for looked after children.
- It should also consider information set out in the Care Plan.

SEN professionals **must** work closely with other relevant professionals involved in the child's life as a consequence of his/her being looked after. These include the social worker, Designated Doctor or Nurse, Independent Reviewing Officer (IRO), VSH and Designated Teacher in school. When referencing information contained within the Care Plan only information relevant to meeting the child's SEN should be included in the EHC plan.

It is a legal requirement to involve the child, their carers and their parents in the planning process.

The VSH has certain duties and responsibilities towards looked after children with an Education, Health and Care Plan (EHCP). They **must** ensure that:

- the SEN code of practice, as it relates to looked after children, is adhered to; and
- the child's EHCP works in harmony with the child's care plan.

It is the looked after child's social worker (in close consultation with the VSH in the authority that looks after the child) that will ultimately make any educational decision on the child's behalf. However, the day-to-day responsibility for taking these decisions should be delegated to the carer who will advocate for the looked after child and make appeals to the First-tier Tribunal (SEN and Disability) as necessary.



Care Leavers and supporting looked after children in their transition

The [Children \(Leaving Care\) Act 2000](#)'s main purpose is to help young people who have been looked after move from care into living independently in as stable a fashion as possible. It amends the Children's Act (c1.4) to place a duty on LA's to *assess and meet* the needs of **eligible** and **relevant** children and young people and to *assist former relevant* children, in particular in respect of their employment, education and training.

Looked after children who have reached the age of 16 or 17 and are preparing to leave care are referred to in the Children Act 1989 as '**eligible children**'.

Looked after children who are 16 or 17 but have already left care are referred to as '**relevant children**'. (please refer to the legislation for exceptions).

'**Former relevant children**' are described as those, who before reaching the age of 18 were either eligible or relevant children.

Local Authorities have a duty to ensure that:

- the child's PEP is maintained and all eligible children have a personal advisor and a pathway plan. The PEP should form a part of the initiation and review of the **pathway plan**.
- care leavers are supported to find further education college (FE) and higher education (HE) establishments that meet the needs of the looked after child or care leaver.
- every **eligible** child is aware of and receives the 16-19 Bursary Fund.

The **Pathway Plan** plots transition from care to adulthood for care leavers up to the age of 25 if they are in or are returning to education and/or training.



Relevant legislation

[Academies Act 2010](#)

[Children Act 1989 \(legislation.gov.uk\)](#)

The Children Act 1989 Guidance and Regulations [Volume 2](#) (Care Planning Placement and Case Review) and [Volume 3](#) (Planning Transition to Adulthood for Care Leavers): Guidance setting out the responsibilities of local authorities towards looked after children and care leavers

[Children \(Leaving Care\) Act 2000](#)

[Children and Families Act 2014](#)

[Children and Social Work Act 2017](#)

[Designated teacher for looked-after and previously looked-after children -statutory guidance](#)

[Special educational needs and disabilities Code of Practice](#)

[Promoting the education of looked-after children and previously looked-after children - Statutory guidance](#)

[School Admissions Code 2021](#)