



# **Haringey Virtual School**

**HARINGEY COUNCIL POLICY FOR LOOKED-AFTER  
CHILDREN WITH SPECIAL EDUCATION NEEDS AND  
DISABILITIES**

**2020 - 2021**

## Introduction and background

*'Looked after children are almost four times more likely to have a special educational need (SEN) than all children and are almost nine times more likely to have an education, health and care (EHC) plan than all children. It is important to consider this difference across the cohorts when viewing the outcomes data in this publication. In 2019, 55.9% of looked after children had a special educational need, compared to 46.0% of children in need and 14.9% of all children.'*

(SOURCE: Statistical release: Outcomes for children looked after by local authorities in England, 31 March 2019)  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/875529/CLA\\_Outcomes\\_Main\\_Text\\_2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875529/CLA_Outcomes_Main_Text_2019.pdf)

In 2020, 27% of looked-after children (LAC) nationally had an Education, Health and Care Plan (EHCP), indicating a level of special educational need (SEN) which is almost nine times more than their peers. In 2020, 55.9% of looked after children had a special educational need, compared to 46.0% of children in need and 14.9% of all children. In line with the national picture for looked-after children, the largest presenting need for this group of children is Social, Emotional and Mental Health (SEMH) Difficulties, and this is in contrast with the profile of children who are not looked-after where the largest presenting need is autism.

It is important that all children with SEN receive the educational provision which meets their needs. For looked-after children, many of whom will have had difficult and unstable home and school lives before coming into care, it is imperative that their needs are quickly and efficiently assessed and provided for so that the effect of any instability on their education is reduced to a minimum. Decision making for looked-after children with SEN can be complex. This is often the result of the large number of professional agencies involved in a child's life and the interplay between these services.

A significant number of looked-after children can be placed to live with foster carers or in a children's home a long way from where they would normally live and often this will be outside the area of the local authority which looks after them. While for many looked-after children this will mean no changes to their educational placement, for a significant number, being taken into care will mean that they can no longer go to the same school.

For those children who are placed 'out-of-authority', there can be an increased level of confusion as to the responsibilities that local authorities have, if the child needs to be assessed for an EHCP or if a child has an EHCP but requires a new school or educational placement.

The purpose of this policy is to explain how Haringey's responsibilities for meeting the special educational needs of looked-after children placed in and out-of-authority operate. It does not create any new obligations, but decisions made in relation to individual children should operate in the best interests of the child, and comply with relevant legislation relating to SEN and looked-after children's education including:

- *Children and Social Work Act 2017*
- *The Statutory Duty on Local Authorities for Promoting the Education of Looked-after Children February 2018*
- *Children and Families Act 2014*
- *Guidance on Looked-after Children with SEN placed out of authority 2009*
- *Education Act 1996*
- *The Education Regulations 1996 (The "Belongings Regulations")*

## Background

The term 'looked-after child' is defined in law under the Children Act 1989. A child is looked after by a local authority if he or she is in their care or is provided with accommodation for more than 24 hours by the authority.

Looked-after children fall into four main groups:

- Children who are accommodated under voluntary agreement with their parents (section 20);
- Children who are the subject of a care order (section 31) or interim care order (section 38);
- Children who are the subject of emergency orders for their protection (section 44 and 46);
- Children who are compulsorily accommodated. This includes children remanded to the local authority or subject to a criminal justice supervision order with a residence requirement (section 21).

## Responsibility for Special Educational Provision

The most effective support for looked-after children with additional or special needs comes from within their own school. Schools with an understanding of the impact of trauma and attachment difficulties are widely regarded as the most effective in meeting the needs of looked-after children (NICE 2016). All schools have a duty to adapt the curriculum to the needs of individual children. This is known as differentiation. If your child learns more slowly or in a different way from other children, the school can set different work or try different teaching strategies. If you are concerned about a child's progress it is important to talk to the school at an early stage. Most children will progress well through the school's usual differentiation.

Some children will need more help or different help from this in order to make good enough progress at school. These children are considered to have special educational needs. They will receive SEN support. Special educational needs can cover quite a wide range including physical or sensory impairments, learning disabilities, communication difficulties or emotional or social difficulties. The child's class teacher will involve the Special Needs Co-ordinator (SENCO) in school who will be responsible for planning and monitoring support but day-to-day teaching will be carried out by individual class or subject teachers. The exact help will depend on the circumstances of the child but may include individual or small group work, social skills groups, different learning materials or special equipment. For children with SEN, but without an EHCP, it is the school in the main that will make provision for the child's SEN.

Request for new assessments of SEN should be made when there is agreement, supported by evidence among the professional network, that it is appropriate. The evidence should be reflected in the child's Personal Education Plan. When a decision is made that a looked-after child should be assessed to see whether an EHCP is required, the authority which carries out that assessment is determined by section 321(3) of the Education Act 1996.

This states that a local authority is responsible for a child if he or she is in their area. The term 'in their area' is not defined in the legislation. This phrase is usually used to mean 'ordinarily resident in their area'. This means that an SEN assessment must be carried out by the authority where the child is ordinarily resident. Where a looked-after child is in a settled placement with foster parents or in a children's home, then the authority where the foster parents are resident, or where the home is situated, will be the authority responsible for carrying out the SEN assessment and for making and maintaining any EHCP.

However, given the complexity of looked-after children's lives, it is possible for local authorities to make 'ad hoc' arrangements in individual exceptional cases. The local authority where the child is ordinarily resident could delegate the responsibility for assessing a child or making and maintaining an EHCP to the placing authority where, for example, there are practical reasons for doing this or in cases where this would be in the child's best interests. Clearly both authorities must be in agreement before such arrangements can go ahead. In cases where children

move placement in quick succession or have a long term plan to move to a permanent placement it can be in the best interests of the child for the care authority to 'hold' the EHCP even though the child is living out of authority.

For children who are living in Haringey, the request for an EHCP will be made to Haringey SEN Team in the usual way although their looked-after status should be flagged up. For children resident out of authority, advice needs to be sought from the local SEN Service as to the procedure for requesting an assessment of SEN. Being an out of authority looked-after child should make no difference to the assessment process. However, professionals need to be aware local authorities' processes and procedures differ when making a request for assessment. The intended duration of an EHC needs assessment is 20 weeks from the point of referral.

Where a child is subject to section 20 arrangements consent from the child's birth parents must be sought before proceeding. Young people over the age of 16 years need to also give consent if they are deemed to have 'mental capacity'. The social worker should lead on ensuring consent is given.

### **Haringey looked-after children with SEN resident in borough**

Within Haringey's Special Educational Needs service there is a dedicated case worker, who oversees the plans of Haringey's looked-after children who are resident in Haringey. Where a child with a plan becomes looked-after, the placements team will notify SEN so that they can be tracked and monitored to ensure they are in suitable full-time education. The child's social worker should ensure this information has been passed on in a timely way to avoid any delay in securing suitable education.

### **Haringey looked-after children with SEN resident in other authorities**

For a variety of reasons, many of Haringey's looked-after children are placed outside the authority. These decisions will usually be taken and reviewed in the statutory LAC review, which should be co-ordinated with the annual review process to avoid duplication.

When an out of authority placement is made for a child who already has an EHC plan, the responsibility for maintaining the plan will transfer to the authority where the child will be living. As an educational placement should be secured at the same time as the care placement, both the school and the receiving authority should be aware that this will be happening. Local authorities should always discuss moves of looked-after children with receiving authorities before a final decision on placement is made as it is a requirement that suitable education is in place for all children looked-after by the authority. All involved professionals must do everything possible to minimise disruption to a looked-after child's education. In Haringey, where a move is planned, the social worker takes the lead on contacting Haringey SEN service who will formally notify the SEN Service of the receiving authority to ensure there is suitable full-time education available **prior** to the move taking place. The Virtual School can offer advice and guidance on this process. In an emergency, where there is no time to plan the move, the SEN team in the receiving authority must be contacted immediately by Haringey SEN service following notification by the social worker following the move. Once the new authority has been notified, the social worker will need to track this process to ensure education is in place as swiftly as possible. Where there is delay, Haringey SEN service and/or the Virtual School should be contacted.

The statutory guidance requires the local authority that looks after the child to secure a suitable new education placement within 20 school days. For pupils with an EHCP, schools have 15 days to respond to consultation for a place. The transfer of the EHCP is provided for by Regulation 23 of The Education (Special Educational Needs)

(England) (Consolidation) Regulations 2001 and the new authority should treat such a transfer in the same way as any other.

Where provision is not available immediately or whilst schools are being consulted, individual tuition should be arranged by the receiving authority's SEN team. This will be funded by Haringey SEN team who retain financial responsibility. The social worker should lead on ensuring this process is followed in a timely way.

The receiving authority must continue to maintain the existing plan and can consider bringing forward arrangements for a review of the plan. The maintenance of the plan remains the responsibility of the receiving authority until circumstances may change so that they are no longer responsible. More details can be found in Chapter 8 (8:113 onwards) of the SEN Code of Practice.

While the placing authority no longer maintains the EHCP, in the case of looked-after children, they will still have financial responsibility for the special educational provision set out in the plan because the child continues to 'belong' to them as determined by regulation 7 of The Education (Areas to which Pupils and Students Belong) Regulations 1996 (the 'Belonging Regulations'). The receiving authority will be able to recoup the cost of the provision identified in the EHCP through the normal recoupment process.

It should be noted that, although the placing authority continues to have a financial and corporate parenting responsibility for the child, the local authority which maintains the EHCP as a result of their being 'ordinarily resident', is ultimately responsible for determining education provision for the child. Therefore, although the placing authority can advise, challenge and support the process, their ongoing financial responsibility does not confer the right to determine education provision.

The placing authority will still be under a duty to promote the educational achievement of the child for as long as the child continues to be looked-after by them, and should therefore continue to advocate for that child in the same way as any good parent would. The placing authority (involving the foster carer as appropriate) would need to consider any proposed changes to the plan that might be proposed by the receiving authority and respond as a parent would if the child was not looked-after. This includes, where necessary, appealing decisions made to the First-tier Tribunal.

## **52-week residential and care placements**

When making an assessment of a child's SEN (or re-assessing the needs of a child with an existing EHCP) it may be that the most appropriate provision would be for the child to be placed in a 52-week residential care and education placement. This is especially the case where the assessed needs are severe and/or complex. In Haringey these are always out of borough. In such cases for the purposes of ordinary residence the child continues to be considered as living in the placing authority and therefore they would continue to have the duty to maintain any EHCP.

## **Transport Issues**

In general, local authorities are obliged to pay for transport where the child is an eligible child; namely that the EHCP names the nearest suitable qualifying school and the school is beyond walking distance. As outlined previously, the placing authority must pay the providing authority all costs of the EHCP including the costs of home/school transport where the EHCP specifies that the local authority will pay for it.

Where the EHCP does not cover transport or where the placing authority, as corporate parent, expresses a preference for a school further away and beyond reasonable walking distance, then the placing authority ('as parent') will still be financially responsible for the transport.

### **SEN Support – Short Term Contingency Funding**

Requests for additional funding for children with EHCPs and in an education provision should come via the Annual Review process, and should be made to the local authority responsible for maintaining the EHCP who will then liaise with Haringey SEN for agreement.

Short term contingency funding is available for SEN support interventions which cost over and above the £6000 which is provided from the schools block notional SEN Budget. The amount is usually a maximum of £6,000 per annum pro rata. This can be for children and young people without an EHCP for whom the provider is requesting High Needs Block top up interim or contingency funding.

It is important to note that requests for this funding must be made to the local authority where the child lives or is ordinarily resident. In Haringey, any funding will be agreed on a termly basis, and continued funding will be subject to review by the SEN Service. The maximum period for a contingency funding allocation is a year.

When a school submits a request for contingency funding, the decision about whether to agree the request is based on provision of information that clearly indicates how the school has used the £6000 notional SEN budget to provide SEN support. It needs to be made clear that, as a result of exceptional circumstances and/or a lack of progress for the child, the school is seeking to provide an enhanced local offer of provision for a time-limited period.

The school's information should demonstrate an 'Assess, Plan, Do, Review' approach to SEN support, with a clear focus on the achievement of outcomes for the child. There will need to be evidence of parent/carer involvement in decision-making.

Requests submitted to the SEN Service will be considered at the Special Educational Needs Panel held weekly. Membership of the Panel includes a Virtual School representative for discussion on complex cases of LAC. On the basis of the evidence and panel advice, the responsible local authority officer will either agree or reject the request. Contingency funding is time limited and will be allocated for between one-three terms.

### **Provision not meeting need**

For some children, their identified provision may over time not be able to meet their needs. It is not considered good practice (as outlined in the SEN Code of Practice) to permanently exclude a pupil with SEN. Where this case arises, the school would be expected to call an emergency annual review, inviting the SEN case officer/manager from the area where the child is resident (which maintains the EHCP) and representation from the placing authority. If it is agreed that the child can no longer attend the school, an alternative provision should be identified by the SEN team where the child is resident, seeking agreement from the placing authority, particularly where there may be additional funding required. In the interim whilst an alternative is sought, the child will stay on roll and it is the responsibility of the school to source short term interim provision. In the case of a child requiring a different provision from the type identified/named on the plan, it is the responsibility of the school to ensure the plan is updated by the SEN team in the authority which maintains it to reflect the change in need, to inform the search.

## **The Virtual School**

The Virtual School Head is a statutory role within the local authority and as such has lead responsibility in ensuring looked-after children's education is promoted within the local authority. In Haringey, the Virtual School is a small multi-disciplinary team with teachers, an attendance and inclusion officer and part-time educational psychologist. Given its role in monitoring the attainment and progress of all looked-after children and its remit to raise their educational outcomes, the Virtual School is in the best position to advise on educational matters relating to individual looked-after children.

In practice this means the Virtual School is the lead service in ensuring that all looked-after children:

- are placed in high quality education provision which meet their needs
- have a robust and effective Personal Education Plan that is used as tool for driving up education outcomes
- who are out of school are placed in an appropriate education setting as quickly as possible
- have access to support and interventions which enables them to succeed

Specifically, in relation to looked-after children with SEN, the Virtual School staff can provide input, advice and guidance on:

- requests for statutory assessment
- ensuring that Annual Reviews are completed
- ensuring the transfer of SEN papers between local authorities SEN services is done without delay, following a child's move
- assessing the appropriateness of education provision and providing appropriate information so that SEN Services can make informed decisions and consultations.
- advice and consultation where children are facing difficulties in school

## **Local Authority SEN Services**

As with all children with an EHCP, Haringey SEN service has a statutory duty to maintain the EHCPs of children where they are ordinarily resident in the local authority. Specifically, for looked-after children the local authority SEN Service should:

- Ensure all children with EHCPs have an allocated SEN caseworker. In complex cases, such as where children are placed in 52 weeks' residential provision it is advisable that there is one person assigned to the role of SEN case worker for all children in this situation.
- Work jointly with the Virtual School to monitor and scrutinise the quality of education provision for looked-after children.
- Ensure looked-after children with EHCPs have timely transfer reviews.
- Work without delay in securing appropriate education when a child is not in school or requires a change of provision.
- Work in partnership with other services, including the Virtual School.
- Respond to requests for funding for provision from other authorities, where children are resident, in a timely way to avoid drift and delay in placing children.

## **Social Worker**

The child's allocated social worker is responsible for the child's care plan. Care plans have a critical influence and impact on a child's education. The statutory duty on local authorities to 'Promote the Education of Looked-after Children' (2014) makes clear that, when formulating a child's care plan and making decisions about a child, the social worker must take into account the likely impact on the child's education and must consult the Virtual School Head, where appropriate.

Social Workers also have a responsibility for initiating and co-ordinating assessments by other agencies, which may be required for an assessment of SEN or transfer review. Social Workers are responsible for ensuring the child and birth parents' wishes and feeling are gathered and made known during the SEN process.

### **Commissioning**

Placement commissioning teams are responsible for sourcing and commissioning children's social care placements. Acting on advice from social workers, and other relevant services they play a key role in brokering placements with the SEN Service (and where relevant Health teams) for children who require residential placements. In Haringey, some of this decision-making is made locally, in the Complex Care Panel, which is held monthly, involving social care, SEN and Health. The Commissioning team needs to ensure that all placements for looked-after children are made in accordance with the principles stated above and only after all relevant services have been fully consulted.

This policy has been formally signed off by the Virtual School Head and Head of SEND in September 2020 and will be subject to annual review and revision.