

Walsall High Needs Funding Operational Guide for Children and young people who move between local authorities

2023/24



Walsall Council



Introduction

Under (section 24(1) of the Children and Families Act 2014) local authorities are responsible for conducting the EHC Plan needs assessment and, where necessary, issuing EHC plans and securing the provision specified for children and young people in their area.

Local authorities should fund any special educational provision for children and young people with EHC plans from the high needs block of the DSG, which is allocated on a formulaic basis, including factors relating to the characteristics of the children and young people resident in their area. Therefore, responsibility for SEN and high needs funding is normally based on where the child or young person lives.

Under the Children and Families Act 2014, local authorities are responsible for children and young people with SEN who are wholly or mainly resident in their area. These duties are based on where the child or young person lives and not on where they are educated. Where a child or young person is educated outside the local authority area where they usually live, it is the local authority where the child normally lives that is responsible for conducting the EHC needs assessment and issuing an EHC Plan, where necessary, and for securing and funding that provision.

Residential Placements

Some children and young people may require residential educational placements (particularly those with the most complex needs). In such cases, it is the view that the child or young person continues to be considered as living in the local authority area that placed them in the residential provision (since a residential school or college placement, even for 52 weeks of the year, is educational provision and not a place where a child or young person lives. That is, the child or young person will remain resident at their family home), and, therefore, they would continue to have the duty to maintain and fund any EHC plan.

Moving between local authorities

Where a child or young person moves from the area of one local authority into the area of another (for example, changes where they usually live), the new local authority becomes responsible for meeting the statutory SEN duties (as detailed in the SEND Code of Practice, section 9.157 to 9.162). This may happen where a child's family moves, or if a young person decides to remain living where they have been educated. If the child or young person already has an EHC plan, the old local authority is required to transfer the EHC plan to the new local authority on the day of the move, or within 15 working days of becoming aware of the move. The new local authority then becomes completely responsible for maintaining the plan and funding the specified educational provision. The new local authority must review the EHC plan within 12 months of the plan being made or being reviewed by the old authority, or within 3 months of the plan being transferred (whichever is later). The new local authority may conduct a new EHC needs assessment, regardless of when the previous EHC needs assessment took place, since local variations may mean that arrangements in the original EHC plan are no longer appropriate.

Children in Care

Children in care are those who have been taken into care or who are being provided with accommodation by a local authority in its statutory role under the Children Act 1989.

More than half of looked after children have some form of SEN, and it is likely that a significant proportion of them will have an EHC plan. A significant proportion of children in care live with foster parents or in a children's home and attend schools in a different local authority to the local authority that looks after them. The Care Planning, Placement and Case Review Regulations 2010 distinguish between the responsible authority (the local authority that looks after the child) and the area authority (the local authority in which the child is placed). Local authorities placing children in care in another local authority need to be aware of that respective local authority's SEND local offer if the children have SEND. Where an EHC plan assessment has been started, it must be carried out by the local authority where the child lives (is wholly or mainly resident), which may not be the same as the local authority that looks after the child, as set out in section 10.8 of the SEND Code of Practice. If a disagreement arises, the local authority that looks after the child will act as the corporate parent in any disagreement resolution.

When a local authority places a child in care with an EHC plan in another local authority's area (for example, with foster parents), the local authority where the looked after child lives (is wholly or mainly resident) becomes responsible for maintaining their EHC plan (including paying any top-up funding), in the same way as any child or young person who moves from one local authority's area to another.

The intention behind this is that the local authority where the child lives knows their local schools and educational provision better, so they are better able to assess whether the child needs special educational provision on top of what is ordinarily available.

The Inter-authority Recoupment (England) Regulations 2013 permit the local authority where a looked after child with an EHC plan lives to recoup the cost of primary or secondary education, which includes additional SEND educational provision (for example, the costs of top-up funding), from the local authority responsible for looking after the child. Recoupment of education costs will not normally be appropriate, however, as from 2018 the high needs funding formula and associated arrangements have been designed to ensure that local authorities' allocations of funding for SEND are based on the characteristics of the children and young people living in their area, including any looked after children. In addition, there are adjustments to reflect the costs relating to the movement of pupils and students living in one local authority area who receive their education in another local authority area.

Inter-authority recoupment may remain appropriate in some circumstances, however, following mutual understanding and agreement on how the costs of educating looked after children are funded through the local authorities' respective funding allocations. For example, recoupment may be appropriate for cross border pupils (Wales). In the case of emergency or temporary placements by the local authority responsible for the looked after child/children, it may be reasonable for the placing local authority to pick up the costs (via recoupment) until a more permanent placement is made and/or the transfer of the EHC plan is arranged. Although such costs may be met directly in these circumstances, inter-authority recoupment may be appropriate in the short term, for example, where a temporary placement decision of the local authority responsible for the looked after child/children has an unreasonable short-term financial consequence for another local authority because they have not had time to plan for the expenditure from their high needs budget. It should be noted that the recoupment regulations do not provide for recoupment of costs of FE provision, so costs of additional SEND provision for young people in FE settings cannot be recouped in this way.

The Education (Areas to which Pupils and Students Belong) Regulations 1996 (the 'Belonging' Regulations), are used to determine which local authority a person belongs to for the purposes of recoupment only. Regulation 1(4) makes clear that the 'Belonging Regulations' do not apply for the purpose of determining which authority's area a child is in for the purposes of section 24 of the Children and Families Act 2014. They should not be used to determine which local authority is responsible for conducting an EHC needs assessment and maintaining, securing, and funding the provision in an EHC plan, since this must be determined under the Children and Families Act 2014.



Independent Schools

Independent schools, including independent special schools and independent AP, sit outside the high needs place funding system. Where a local authority has commissioned a place in an independent school, the local authority is responsible for all the funding for that child or young person with SEND and the local authority must provide the equivalent of both place and top-up funding from their high needs budget.

Post 19 Provision for care leavers

For a young person aged 19 to 25, the local authority where they live is responsible for conducting any EHC needs assessment, issuing an EHC plan where necessary, and for securing and funding that provision.

Children cease to be in care when they are over the age of 18 (some children will cease to be in care at 16 or 17 and others will continue to be looked after until their eighteenth birthday). The Inter-authority Recoupment (England) Regulations 2013 apply only to children in care (up to their eighteenth birthday), and so do not apply to those aged 19 or over. Once they leave care, the recoupment regulations no longer apply. This should not matter as the local authority where the young person lives will have been funded through the high needs funding formula to meet the costs, in the same way as for any other young person who lives in their area.

Some care leavers will remain living with their former foster parents past their eighteenth birthday in staying put arrangements, but they are no in care. The local authority which cares for the child remains responsible for meeting their leaving care duties regardless of where the young person may now be living in England or Wales (section 23A(4) of the Children Act 1989).

This includes providing the young person with support for the expenses associated with living near where they are seeking work, working, or receiving education or training.

Decisions on adult social care placements may change the local authority responsible for making SEN provision. Where a young adult is accommodated under the Care Act 2014 in a residential adult social care placement (as opposed to residential education) made on a long-term basis (for example, with the intention that it is to be permanent for the foreseeable future), it is likely to be considered to be a change in the adult's residence. Therefore, if a young person aged 19 to 25 has been accommodated under the Care Act 2014, in a permanent residential care placement in a different local authority area, it is likely they will have moved into the area of the new local authority, unless there are factors indicating otherwise. Therefore, for the purposes of the Children and Families Act 2014, the new local authority would be responsible for securing and maintaining any EHC plan.

This operational guide has been taken from:

<https://www.gov.uk/government/publications/high-needs-funding-arrangements-2023-to-2024/high-needs-funding-2023-to-2024-operational-guide>



