

Navigating your way through your legal rights in the Education System and finding the support your child is entitled to after meningitis can be a daunting process. This fact sheet looks at the type of support your child could receive and the legal rights in England, covering from 0-25 years.

Who qualifies for help?

- A child who has a significantly greater difficulty in learning than the majority of children of the same age.
- A child who has a disability which either prevents or hinders them from making use of the educational facilities that are provided for children of the same age.
- A child who is under the age of five and would be in one of these categories above when they are over that age if especial education provision is not put in place for them.

Who has a legal duty of care?

Schools have a legal duty to ensure they meet the needs of children that they teach. This includes direct legal responsibilities such as making reasonable adjustments for disabled children.

Local Authorities are also under a legal duty to ensure that children in their area receive a suitable education. Under this duty they must ensure, for example that, those children with a long-term health condition can access education in alternative settings where necessary. In carrying out all of their functions under the Children and Families Act 2014 local authorities must consider:

- The views, wishes and feelings of the child, young person or parent
- The child, young person or parent's full participation in decisions
- The child, young person or parent being provided with the necessary information and support to participate
- The need to support the child or young person to achieve the best educational or other outcomes

The NHS has a duty under Section 3 of the NHS Act 2006 to arrange health care provision to meet an individual's reasonable health needs. This generally means that both the NHS and the local authority pay towards the costs of meeting the child's care needs. One of these bodies will take the lead in managing the care package.

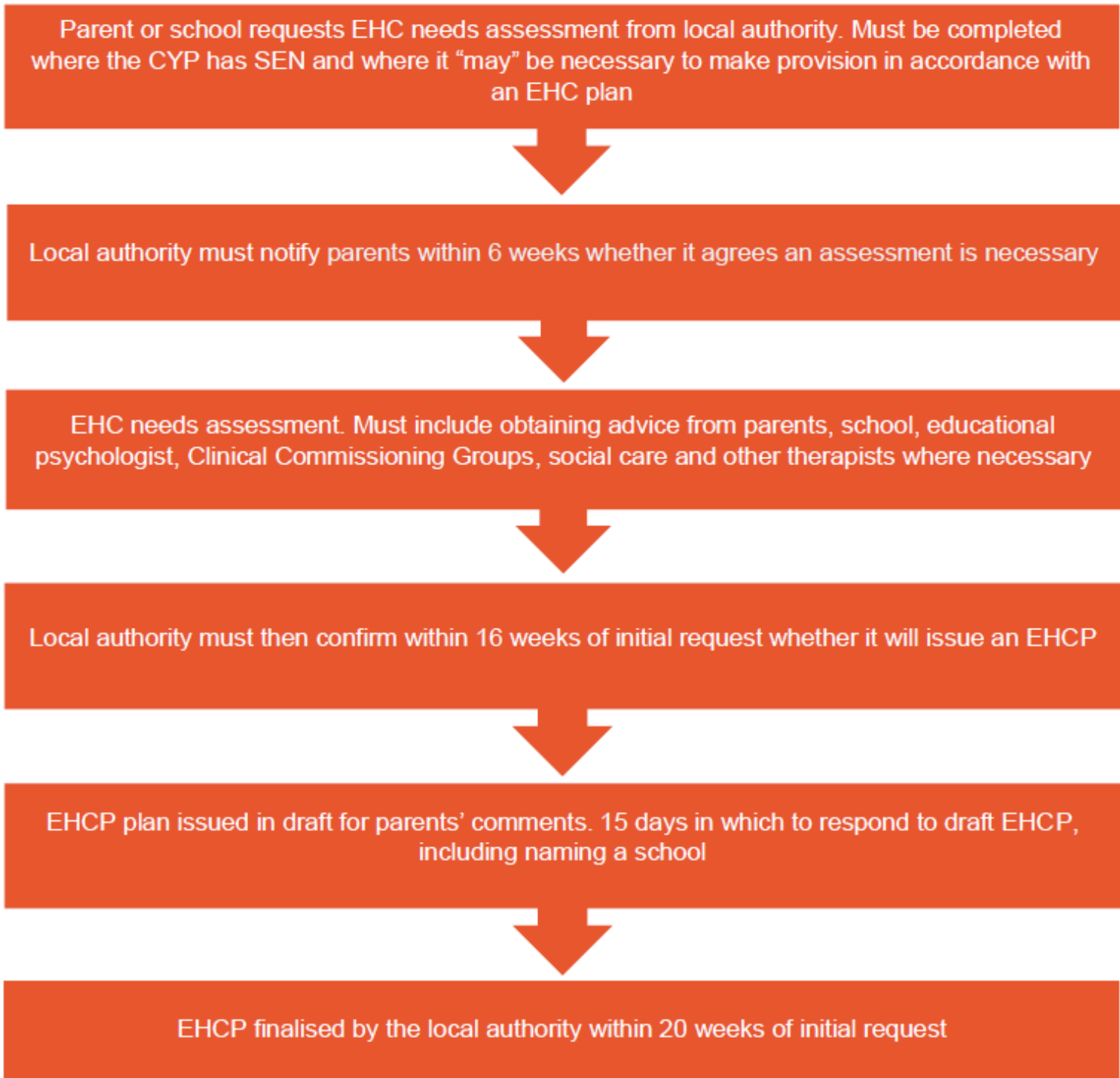
Education, Health and Care Plan (EHCP)

For children with a learning difficulty which calls for additional provision to be made available to them than would otherwise normally be available in school, Education, Health and Care Plans are often put in place. EHCP's enable children up to the age of 25, who are in education, to receive a complete package of support if they require it. This could include speech and language therapy, physiotherapy, and occupational therapy.

A parent is able to request an Education Health and Care needs assessment by directly writing to the local authority. Details of how to make this request should be available on the local authority's website.

How to ask for help

An EHC Assessment may be requested by a parent, young person, school or their post-16 institution. Anyone can bring a child to the attention of the local authority if they think an assessment is necessary. The local authority must assess if the child or young person (CYP) has or may have Special Education Needs (SEN). It may also be necessary for provision to be made for the child in accordance with an EHCP. There is no duty to assess disabled children if they have no SEN.



Appealing decisions

If a local authority refuses to carry out an assessment, or refuses to issue an EHCP, these decisions carry a right of appeal. Parents can go to the First Tier Tribunal for SEN within 2 months of the decision being made, or within 1 month of the date of their mediation certificate. The First Tier Tribunal for SEN is part of the HM Courts & Tribunals Service that is responsible for the administration of criminal, civil and family courts and tribunals in England and Wales. Parents are required to contact a mediation advisor before lodging an appeal, although there is no requirement to actually mediate.

In addition to legal provisions around EHCP's, schools must also ensure they do not discriminate against children with disabilities. Claims for discrimination can also be brought to the First Tier Tribunal.

Annual Reviews

Annual reviews should take place every year, and if a parent is unhappy with the contents of an EHCP, or if the local authority refuses to amend an EHCP following an annual review, a right of appeal also arises.

- Within 2 weeks the school or local authority must prepare a written report with recommendations.
- Within 4 weeks the local authority must decide if it is going to continue, amend or cease to maintain the EHCP and inform the child's parents, young person and head of any institution.
- If the local authority decides to amend the EHCP: it must write to the child's parents or to the young person, informing of them of the changes and allow them 15 days to raise any objections. If the plan is amended following this feedback, the local authority must send the finalised version to parents or young person within 8 weeks of the initial draft plan being sent.

Access to education post-16

'Young person' - A person over compulsory school age and under 25.

Young people in England must remain in school until the last day of the school year in which they turn 16 (usually the end of school year 11). They are then required to continue in education or training until at least their 18th birthday. This could be through full-time education (such as school, college or home education) work-based learning (such as an apprenticeship or traineeship) or part-time education or training (if they are employed, self-employed or volunteering for more than 20 hours a week).

Young people who have an Education, Health and Care Plan (EHCP), might remain in education or training, free of charge, until they are 25 if it's agreed that it would be beneficial for them to do so and necessary in order to meet their identified SEN. Whilst there is no automatic right to have an EHCP until the age of 25, this is often justified where somebody has complex needs and requires ongoing or additional support, for example help with adjusting to life as an adult and learning necessary life skills.

The options for students with an EHCP after the age of 16 must be discussed at their annual review meeting in Year 9. Local authorities must also ensure that the EHCP review every year thereafter includes a focus on preparing for adulthood. Preparing for adulthood covers support to prepare for higher education and/or employment, support to prepare for independent living, support in maintaining good health in adult life and support in participating in society.