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# Education Act 1996

## 1996 CHAPTER 56

### PART IV

#### SPECIAL EDUCATIONAL NEEDS

### CHAPTER I

#### CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

##### *Identification and assessment of children with special educational needs*

#### **321 General duty of local education authority towards children for whom they are responsible.**

- (1) A local education authority shall exercise their powers with a view to securing that, of the children for whom they are responsible, they identify those to whom subsection (2) below applies.
- (2) This subsection applies to a child if—
  - (a) he has special educational needs, and
  - (b) it is necessary for the authority to determine the special educational provision which any learning difficulty he may have calls for.
- (3) For the purposes of this Part a local education authority are responsible for a child if he is in their area and—
  - (a) he is a registered pupil at a [<sup>F1</sup>maintained school],
  - [<sup>F2</sup>(b) education is provided for him at a school which is not a maintained school but is so provided at the expense of the authority,]
  - (c) he does not come within paragraph (a) or (b) above but is a registered pupil at a school and has been brought to the authority's attention as having (or probably having) special educational needs, or

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- (d) he is not a registered pupil at a school but is not under the age of two or over compulsory school age and has been brought to their attention as having (or probably having) special educational needs.

#### Textual Amendments

- F1** Words in s. 321(3)(a) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 76(a)** (with ss. 138(9), 144(6)); S.I. 1999/2323, **art. 2(1)**, Sch. 1
- F2** S. 321(3)(b) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 76(b)** (with ss. 138(9), 144(6)); S.I. 1999/2323, **art. 2(1)**, **Sch. 1**

### 322 Duty of Health Authority or local authority to help local education authority.

- (1) Where it appears to a local education authority that any Health Authority or local authority could, by taking any specified action, help in the exercise of any of their functions under this Part, they may request the help of the authority, specifying the action in question.
- (2) An authority whose help is so requested shall comply with the request unless—
  - (a) they consider that the help requested is not necessary for the purpose of the exercise by the local education authority of those functions, or
  - (b) subsection (3) applies.
- (3) This subsection applies—
  - (a) in the case of a Health Authority, if that authority consider that, having regard to the resources available to them for the purpose of the exercise of their functions under the <sup>M1</sup>National Health Service Act 1977, it is not reasonable for them to comply with the request, or
  - (b) in the case of a local authority, if that authority consider that the request is not compatible with their own statutory or other duties and obligations or unduly prejudices the discharge of any of their functions.
- (4) Regulations may provide that, where an authority are under a duty by virtue of subsection (2) to comply with a request to help a local education authority in the making of an assessment under section 323 or a statement under section 324 of this Act, they must, subject to prescribed exceptions, comply with the request within the prescribed period.
- (5) In this section “local authority” means a county council, a county borough council, a district council (other than one for an area for which there is a county council), a London borough council or the Common Council of the City of London.

#### Marginal Citations

- M1** 1977 c. 49.

### 323 Assessment of educational needs.

- (1) Where a local education authority are of the opinion that a child for whom they are responsible falls, or probably falls, within subsection (2), they shall serve a notice on the child’s parent informing him—

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- (a) that they propose to make an assessment of the child's educational needs,
  - (b) of the procedure to be followed in making the assessment,
  - (c) of the name of the officer of the authority from whom further information may be obtained, and
  - (d) of the parent's right to make representations, and submit written evidence, to the authority within such period (which must not be less than 29 days beginning with the date on which the notice is served) as may be specified in the notice.
- (2) A child falls within this subsection if—
- (a) he has special educational needs, and
  - (b) it is necessary for the authority to determine the special educational provision which any learning difficulty he may have calls for.
- (3) Where—
- (a) a local education authority have served a notice under subsection (1) and the period specified in the notice in accordance with subsection (1)(d) has expired, and
  - (b) the authority remain of the opinion, after taking into account any representations made and any evidence submitted to them in response to the notice, that the child falls, or probably falls, within subsection (2),
- they shall make an assessment of his educational needs.
- (4) Where a local education authority decide to make an assessment under this section, they shall give notice in writing to the child's parent of that decision and of their reasons for making it.
- (5) Schedule 26 has effect in relation to the making of assessments under this section.
- (6) Where, at any time after serving a notice under subsection (1), a local education authority decide not to assess the educational needs of the child concerned they shall give notice in writing to the child's parent of their decision.

### **324 Statement of special educational needs.**

- (1) If, in the light of an assessment under section 323 of any child's educational needs and of any representations made by the child's parent in pursuance of Schedule 27, it is necessary for the local education authority to determine the special educational provision which any learning difficulty he may have calls for, the authority shall make and maintain a statement of his special educational needs.
- (2) The statement shall be in such form and contain such information as may be prescribed.
- (3) In particular, the statement shall—
  - (a) give details of the authority's assessment of the child's special educational needs, and
  - (b) specify the special educational provision to be made for the purpose of meeting those needs, including the particulars required by subsection (4).
- (4) The statement shall—
  - (a) specify the type of school or other institution which the local education authority consider would be appropriate for the child,

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- (b) if they are not required under Schedule 27 to specify the name of any school in the statement, specify the name of any school or institution (whether in the United Kingdom or elsewhere) which they consider would be appropriate for the child and should be specified in the statement, and
- (c) specify any provision for the child for which they make arrangements under section 319 and which they consider should be specified in the statement.
- (5) Where a local education authority maintain a statement under this section, then—
- (a) unless the child’s parent has made suitable arrangements, the authority—
- (i) shall arrange that the special educational provision specified in the statement is made for the child, and
- (ii) may arrange that any non-educational provision specified in the statement is made for him in such manner as they consider appropriate, and
- (b) if the name of a [F3maintained school] is specified in the statement, the governing body of the school shall admit the child to the school.
- [F4(5A) Subsection (5)(b) has effect regardless of any duty imposed on the governing body of a school by section 1(6) of the School Standards and Framework Act 1998.]
- (6) Subsection (5)(b) does not affect any power to exclude from a school a pupil who is already a registered pupil there.
- (7) Schedule 27 has effect in relation to the making and maintenance of statements under this section.

#### Textual Amendments

- F3** Words in s. 324(5)(b) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 77(a)** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**
- F4** S. 324(5A) inserted (1.10.1998) by 1998 c. 31, ss. 140(1), 145(3), **Sch. 30 para. 77(b)** (with ss. 138(9), 144(6))

#### Modifications etc. (not altering text)

- C1** S. 324(5)(b)(5A) applied (with modifications) (1.9.1999) by S.I. 1999/2800, reg. 7, **Sch. paras. 1, 2-8**  
S. 324(5)(b)(5A) applied (with modifications) (18.10.1999) by S.I. 1999/2666, reg. 8, **Sch. paras. 1(a), 2-8**

### 325 Appeal against decision not to make statement.

- (1) If, after making an assessment under section 323 of the educational needs of any child for whom no statement is maintained under section 324, the local education authority do not propose to make such a statement, they shall give notice in writing of their decision, and of the effect of subsection (2) below, to the child’s parent.
- (2) In such a case, the child’s parent may appeal to the Tribunal against the decision.
- (3) On an appeal under this section, the Tribunal may—
- (a) dismiss the appeal,
- (b) order the local education authority to make and maintain such a statement, or
- (c) remit the case to the authority for them to reconsider whether, having regard to any observations made by the Tribunal, it is necessary for the authority to

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determine the special educational provision which any learning difficulty the child may have calls for.

### **326 Appeal against contents of statement.**

- (1) The parent of a child for whom a local education authority maintain a statement under section 324 may—
  - (a) when the statement is first made,
  - (b) where the description in the statement of the authority's assessment of the child's special educational needs, or the special educational provision specified in the statement, is amended, or
  - (c) where, after conducting an assessment of the educational needs of the child under section 323, the local education authority determine not to amend the statement,appeal to the Tribunal against the description in the statement of the authority's assessment of the child's special educational needs, the special educational provision specified in the statement or, if no school is named in the statement, that fact.
- (2) Subsection (1)(b) does not apply where the amendment is made in pursuance of—
  - (a) paragraph 8 (change of named school) or 11(3)(b) (amendment ordered by Tribunal) of Schedule 27, or
  - (b) directions under section 442 (revocation of school attendance order);and subsection (1)(c) does not apply to a determination made following the service of notice under paragraph 10 (amendment by LEA) of Schedule 27 of a proposal to amend the statement.
- (3) On an appeal under this section, the Tribunal may—
  - (a) dismiss the appeal,
  - (b) order the authority to amend the statement, so far as it describes the authority's assessment of the child's special educational needs or specifies the special educational provision, and make such other consequential amendments to the statement as the Tribunal think fit, or
  - (c) order the authority to cease to maintain the statement.
- (4) On an appeal under this section the Tribunal shall not order the local education authority to specify the name of any school in the statement (either in substitution for an existing name or in a case where no school is named) unless—
  - (a) the parent has expressed a preference for the school in pursuance of arrangements under paragraph 3 (choice of school) of Schedule 27, or
  - (b) in the proceedings the parent, the local education authority, or both have proposed the school.
- (5) Before determining any appeal under this section the Tribunal may, with the agreement of the parties, correct any deficiency in the statement.

VALID FROM 11/05/2001

#### **[<sup>F5</sup>326A Unopposed appeals**

- (1) This section applies if—

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- (a) the parent of a child has appealed to the Tribunal under section 325, 328, 329 or 329A or paragraph 8(3) of Schedule 27 against a decision of a local education authority, and
  - (b) the authority notifies the Tribunal that they have determined that they will not, or will no longer, oppose the appeal.
- (2) The appeal is to be treated as having been determined in favour of the appellant.
- (3) If an appeal is treated as determined in favour of the appellant as a result of subsection (2), the Tribunal is not required to make any order.
- (4) Before the end of the prescribed period, the authority must—
- (a) in the case of an appeal under section 325, make a statement under section 324 of the child's educational needs,
  - (b) in the case of an appeal under section 328, 329 or 329A, make an assessment of the child's educational needs,
  - (c) in the case of an appeal under paragraph 8(3) of Schedule 27 against a determination of the authority not to comply with the parent's request, comply with the request.
- (5) An authority required by subsection (4)(a) to make a statement under section 324 must maintain the statement under that section.
- (6) Regulations under this section, so far as they relate to Wales, require the agreement of the National Assembly for Wales.]

#### Textual Amendments

- F5** S. 326A inserted (11.5.2001 for certain purposes, 1.1.2002 otherwise for E. and 1.4.2002 otherwise for W.) by 2001 c. 10, ss. 5, 43(4)(b) (with s. 43(13)); S.I. 2001/2217, art. 5, **Sch. Pt. II** (as amended by S.I. 2001/2614, art. 4); S.I. 2001/3992, art. 5, **Sch. Pt. II**

### 327 Access for local education authority to certain schools.

- (1) This section applies where—
- (a) a local education authority maintain a statement for a child under section 324, and
  - [<sup>F6</sup>(b) in pursuance of the statement education is provided for the child at a school maintained by another local education authority.]
- (2) Any person authorised by the local education authority shall be entitled to have access at any reasonable time to the premises of any such school for the purpose of monitoring the special educational provision made in pursuance of the statement for the child at the school.

#### Textual Amendments

- F6** S. 327(1)(b) substituted (1.9.1999) for s. 327(1)(b)(i)-(iii) by 1998 c. 31, s. 140(1), **Sch. 30 para.78** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**

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### **328 Reviews of educational needs.**

- (1) Regulations may prescribe the frequency with which assessments under section 323 are to be repeated in respect of children for whom statements are maintained under section 324.
- (2) Where—
  - (a) the parent of a child for whom a statement is maintained under section 324 asks the local education authority to arrange for an assessment to be made in respect of the child under section 323,
  - (b) no such assessment has been made within the period of six months ending with the date on which the request is made, and
  - (c) it is necessary for the authority to make a further assessment under section 323, the authority shall comply with the request.
- (3) If in any case where subsection (2)(a) and (b) applies the authority determine not to comply with the request—
  - (a) they shall give notice of that fact and of the effect of paragraph (b) below to the child's parent, and
  - (b) the parent may appeal to the Tribunal against the determination.
- (4) On an appeal under subsection (3) the Tribunal may—
  - (a) dismiss the appeal, or
  - (b) order the authority to arrange for an assessment to be made in respect of the child under section 323.
- (5) A statement under section 324 shall be reviewed by the local education authority—
  - (a) on the making of an assessment in respect of the child concerned under section 323, and
  - (b) in any event, within the period of 12 months beginning with the making of the statement or, as the case may be, with the previous review.
- (6) Regulations may make provision—
  - (a) as to the manner in which reviews of such statements are to be conducted,
  - (b) as to the participation in such reviews of such persons as may be prescribed, and
  - (c) in connection with such other matters relating to such reviews as the Secretary of State considers appropriate.

### **329 Assessment of educational needs at request of child's parent.**

- (1) Where—
  - (a) the parent of a child for whom a local education authority are responsible but for whom no statement is maintained under section 324 asks the authority to arrange for an assessment to be made in respect of the child under section 323,
  - (b) no such assessment has been made within the period of six months ending with the date on which the request is made, and
  - (c) it is necessary for the authority to make an assessment under that section, the authority shall comply with the request.
- (2) If in any case where subsection (1)(a) and (b) applies the authority determine not to comply with the request—

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- (a) they shall give notice of that fact and of the effect of paragraph (b) below to the child's parent, and
- (b) the parent may appeal to the Tribunal against the determination.
- (3) On an appeal under subsection (2) the Tribunal may—
- (a) dismiss the appeal, or
- (b) order the authority to arrange for an assessment to be made in respect of the child under section 323.

VALID FROM 15/06/2001

### **[<sup>F7</sup>329A Review or assessment of educational needs at request of responsible body**

- (1) This section applies if—
- (a) a child is a registered pupil at a relevant school (whether or not he is a child in respect of whom a statement is maintained under section 324),
- (b) the responsible body asks the local education authority to arrange for an assessment to be made in respect of him under section 323, and
- (c) no such assessment has been made within the period of six months ending with the date on which the request is made.
- (2) If it is necessary for the authority to make an assessment or further assessment under section 323, they must comply with the request.
- (3) Before deciding whether to comply with the request, the authority must serve on the child's parent a notice informing him—
- (a) that they are considering whether to make an assessment of the child's educational needs,
- (b) of the procedure to be followed in making the assessment,
- (c) of the name of their officer from whom further information may be obtained, and
- (d) of the parent's right to make representations, and submit written evidence, to them before the end of the period specified in the notice ("the specified period").
- (4) The specified period must not be less than 29 days beginning with the date on which the notice is served.
- (5) The authority may not decide whether to comply with the request until the specified period has expired.
- (6) The authority must take into account any representations made, and any evidence submitted, to them in response to the notice.
- (7) If, as a result of this section, a local education authority decide to make an assessment under section 323, they must give written notice to the child's parent and to the responsible body which made the request, of the decision and of their reasons for making it.
- (8) If, after serving a notice under subsection (3), the authority decide not to assess the educational needs of the child—



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- (a) they must give written notice of the decision and of their reasons for making it to his parent and to the responsible body which made the request, and
  - (b) the parent may appeal to the Tribunal against the decision.
- (9) A notice given under subsection (8)(a) to the child’s parent must—
- (a) inform the parent of his right to appeal, and
  - (b) contain such other information (if any) as may be prescribed.
- (10) On an appeal under subsection (8) the Tribunal may—
- (a) dismiss it, or
  - (b) order the authority to arrange for an assessment to be made in respect of the child under section 323.
- (11) This section applies to a child for whom relevant nursery education is provided as it applies to a child who is a registered pupil at a relevant school.
- (12) “Relevant school” means—
- (a) a maintained school,
  - (b) a maintained nursery school,
  - (c) a pupil referral unit,
  - (d) an independent school,
  - (e) a school approved under section 342.
- (13) “The responsible body” means—
- (a) in relation to a maintained nursery school or a pupil referral unit, the head teacher,
  - (b) in relation to any other relevant school, the proprietor or head teacher, and
  - (c) in relation to a provider of relevant nursery education, the person or body of persons responsible for the management of the provision of that nursery education.
- (14) “Relevant nursery education” has the same meaning as in section 123 of the School Standards and Framework Act 1998, except that it does not include nursery education provided by a local education authority at a maintained nursery school.
- (15) “Prescribed”, in relation to Wales, means prescribed in regulations made by the National Assembly for Wales.]

#### Textual Amendments

- F7** S. 329A inserted (15.6.2001 for certain purposes and 1.1.2002 otherwise for E., 21.1.2002 for certain purposes and 1.4.2002 otherwise for W.) by 2001 c. 10, s. 8 (with s. 43(13)); S.I. 2001/2217, arts. 4, 5, Sch. Pts. I, II (as amended by S.I. 2001/2614, art. 4); S.I. 2002/74, arts. 4, 5, Sch. Pts. I, II

#### Modifications etc. (not altering text)

- C2** S. 329A modified (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 36(9)(b), 162 (with s. 159)

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**331 Assessment of educational needs of children under two.**

- (1) Where a local education authority are of the opinion that a child in their area who is under the age of two falls, or probably falls, within subsection (2)—
  - (a) they may, with the consent of his parent, make an assessment of the child's educational needs, and
  - (b) they shall make such an assessment if requested to do so by his parent.
- (2) A child falls within this subsection if—
  - (a) he has special educational needs, and
  - (b) it is necessary for the authority to determine the special educational provision which any learning difficulty he may have calls for.
- (3) An assessment under this section shall be made in such manner as the authority consider appropriate.
- (4) After making an assessment under this section, the authority—
  - (a) may make a statement of the child's special educational needs, and
  - (b) may maintain that statement,
 in such manner as they consider appropriate.

**332 Duty of Health Authority or National Health Service trust to notify parent etc.**

- (1) This section applies where a Health Authority or a National Health Service trust, in the course of exercising any of their functions in relation to a child who is under [<sup>F8</sup>compulsory school age], form the opinion that he has (or probably has) special educational needs.
- (2) The Authority or trust—
  - (a) shall inform the child's parent of their opinion and of their duty under paragraph (b), and
  - (b) after giving the parent an opportunity to discuss that opinion with an officer of the Authority or trust, shall bring it to the attention of the appropriate local education authority.
- (3) If the Authority or trust are of the opinion that a particular voluntary organisation is likely to be able to give the parent advice or assistance in connection with any special educational needs that the child may have, they shall inform the parent accordingly.

**Textual Amendments**

**F8** Words in s. 332(1) substituted (1.8.1998) by 1997 c. 44, s. 57(1), **Sch. 7 para.24**; S.I. 1998/386, art. 2, **Sch. 1 Pt.III**

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