



# Education Act 1993

## 1993 CHAPTER 35

### PART III

#### CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

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

#### **165 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 of this Act, a local education authority are responsible for a child if he is in their area and—
  - (a) he is a registered pupil at a maintained, grant-maintained or grant-maintained special school,
  - (b) education is provided for him at a school which is not a maintained, grant-maintained or grant-maintained special school at the expense of the authority or the funding 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
  - (d) he is not a registered pupil at a school, is not under the age of two years or over compulsory school age and has been brought to their attention as having (or probably having) special educational needs.

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**166 Duty of District Health Authority or local authority to help local education authority**

- (1) Where it appears to a local education authority that any District Health Authority or local authority could, by taking any specified action, help in the exercise of any of their functions under this Part of this Act, 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) below applies.
- (3) This subsection applies—
  - (a) in the case of a District 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 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) above to comply with a request to help a local education authority in the making of an assessment under section 167 of this Act or a statement under section 168 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 metropolitan district council, a London borough council or the Common Council of the City of London.

**167 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) below, they shall serve a notice on the child’s parent informing him—
  - (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 shall not be less than twenty-nine 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—

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- (a) a local education authority have served a notice under subsection (1) above and the period specified in the notice in accordance with subsection (1)(d) above 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) above,
- 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 9 to this Act (which makes provision in relation to the making of assessments under this section) shall have effect.
  - (6) Where, at any time after serving a notice under subsection (1) above, 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.

## **168 Statement of special educational needs**

- (1) If, in the light of an assessment under section 167 of this Act of any child's educational needs and of any representations made by the child's parent in pursuance of Schedule 10 to this Act, 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) below.
- (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,
  - (b) if they are not required under Schedule 10 to this Act 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 163 of this Act and which they consider should be specified in the statement.
- (5) Where a local education authority maintain a statement under this section—
  - (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

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- (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 maintained, grant-maintained or grant-maintained special school is specified in the statement, the governing body of the school shall admit the child to the school.
- (6) Subsection (5)(b) above does not affect any power to exclude from a school a pupil who is already a registered pupil there.
- (7) Schedule 10 to this Act (which makes provision in relation to the making and maintenance of statements under this section) shall have effect.

### **169 Appeal against decision not to make statement**

- (1) If, after making an assessment under section 167 of this Act of the educational needs of any child for whom no statement is maintained under section 168 of this Act, 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 determine the special educational provision which any learning difficulty the child may have calls for.

### **170 Appeal against contents of statement**

- (1) The parent of a child for whom a local education authority maintain a statement under section 168 of this Act 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 167 of this Act, 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) above does not apply where the amendment is made in pursuance of paragraph 8 or 11(3)(b) of Schedule 10 to this Act or directions under section 197 of this Act; and subsection (1)(c) above does not apply to a determination made following the service of notice under paragraph 10 of Schedule 10 to this Act 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 of Schedule 10 to this Act, 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.

#### **171 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 168 of this Act, and
  - (b) in pursuance of the statement education is provided for the child at—
    - (i) a school maintained by another local education authority,
    - (ii) a grant-maintained school, or
    - (iii) a grant-maintained special school.
- (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.

#### **172 Reviews of educational needs**

- (1) Regulations may prescribe the frequency with which assessments under section 167 of this Act are to be repeated in respect of children for whom statements are maintained under section 168 of this Act.
- (2) Where—
  - (a) the parent of a child for whom a statement is maintained under section 168 of this Act asks the local education authority to arrange for an assessment to be made in respect of the child under section 167 of this Act,
  - (b) such an assessment has not 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 that section, the authority shall comply with the request.
- (3) If in any case where subsection (2)(a) and (b) above 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.

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- (4) On an appeal under subsection (3) above 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 167 of this Act.
- (5) A statement under section 168 of this Act shall be reviewed by the local education authority—
  - (a) on the making of an assessment in respect of the child concerned under section 167 of this Act, and
  - (b) in any event, within the period of twelve 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.

### **173 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 168 of this Act asks the authority to arrange for an assessment to be made in respect of the child under section 167 of this Act,
  - (b) such an assessment has not 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) above 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.
- (3) On an appeal under subsection (2) above 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 167 of this Act.

### **174 Assessment of educational needs at request of governing body of grant-maintained school**

- (1) Where in the case of a child for whom a local education authority are responsible but for whom no statement is maintained under section 168 of this Act—
  - (a) a grant-maintained school is specified in a direction in respect of the child under section 13 of this Act,

- (b) the governing body of the school ask the authority to arrange for an assessment to be made in respect of the child under section 167 of this Act, and
- (c) such an assessment has not been made within the period of six months ending with the date on which the request is made,

the local education authority shall serve a notice under subsection (2) below on the child's parent.

- (2) The notice shall inform the child's parent—
  - (a) that the local education authority 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 shall not be less than twenty-nine days beginning with the date on which the notice is served) as may be specified in the notice.
- (3) Where—
  - (a) a local education authority have served a notice under subsection (2) above and the period specified in the notice in accordance with subsection (2)(d) above has expired, and
  - (b) the authority are 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 (4) below,they shall make an assessment of his educational needs under section 167 of this Act.
- (4) A child falls within this subsection if—
  - (a) he has special educational needs, and
  - (b) it is necessary to determine the special educational provision which any learning difficulty he may have calls for.
- (5) Where a local education authority decide in pursuance of this section to make an assessment under that section, they shall give notice in writing to the child's parent, and to the governing body of the grant-maintained school, of that decision and of their reasons for making it.
- (6) Where, at any time after serving a notice under subsection (2) above, 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 and to the governing body of the grant-maintained school of their decision.

## **175 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 years falls, or probably falls, within subsection (2) below—
  - (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 at the request of his parent.
- (2) A child falls within this subsection if—
  - (a) he has special educational needs, and

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- (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.

**176 Duty of District Health Authority or National Health Service trust to notify parent etc**

- (1) This section applies where a District 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 the age of five years, form the opinion that he has (or probably has) special educational needs.
- (2) The health authority or trust shall—
  - (a) inform the child’s parent of their opinion and of their duty under this section, and
  - (b) after giving the parent an opportunity to discuss that opinion with an officer of the health authority or trust, bring it to the attention of the appropriate local education authority.
- (3) If the health 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.