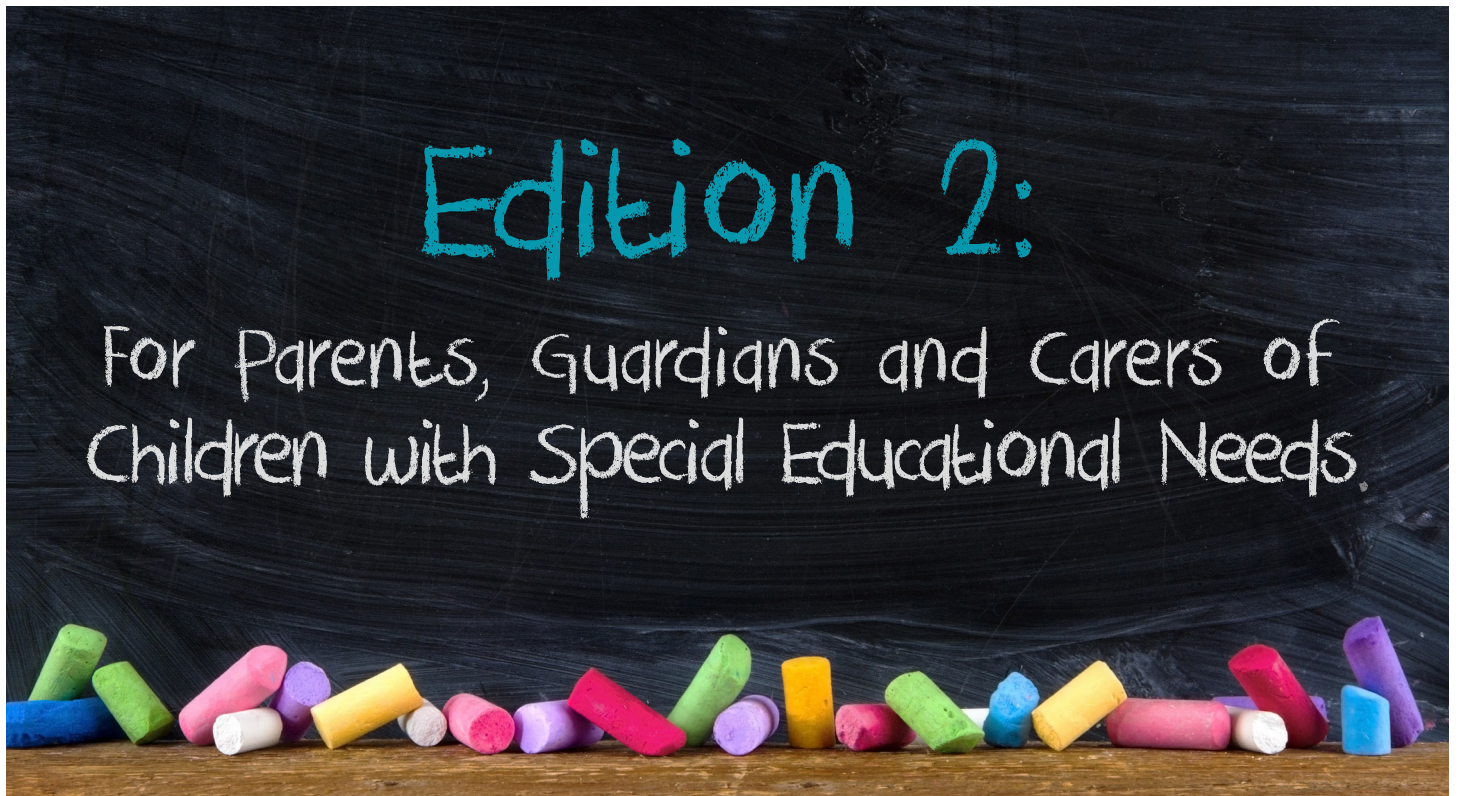


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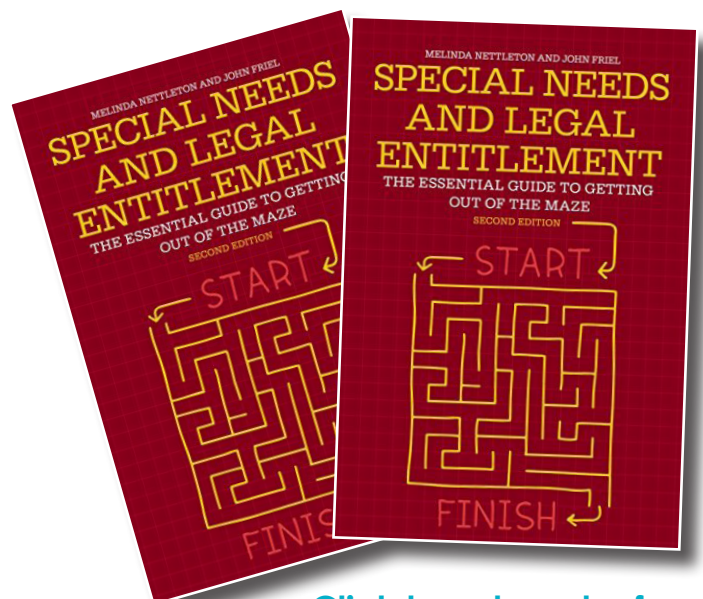
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Statements of Special Educational Needs – Transfer Deadline Day is fast approaching.

By James Brown - Trainee Solicitor, SEN Legal.

For all children who currently have a Statement of Special Educational Needs, your Local Authority are required to have completed the transfer review process to an EHC Plan by 31st March 2018. This is a statutory deadline and your Local Authority must comply with it.

It comes as no surprise to us that the Department for Education have recently issued their concerns about Local Authorities meeting this deadline. Therefore, it is important that you are aware of the timescales that your Local Authority are required to comply with, so you can avoid any unnecessary delay.

To transfer your child's Statement in line with the 31st March 2018 deadline, the transfer process needs to commence by 10th November 2017. This is because the transfer process must be completed within 20 weeks.

The Local Authority are required to provide you with notice of when the transfer process will start (at the latest this is required to be 2 weeks before the date of the transfer process commencing).

The transfer process will take the form of what is known as an 'EHC Needs Assessment' – formerly known as a Statutory Assessment. As part of the assessment your Local Authority are required, as a minimum, to gather advice from you as parents, schools, medical advice, psychological advice, social care and any other advice they deem appropriate. As part of the transfer process the Local Authority are also required to invite parents to a meeting with a Local Authority Officer to discuss the educational, health care and social care needs of your child.

Your Local Authority have two options following the EHC Needs Assessment:

1. Decide not to issue an EHC Plan and cease to maintain the Statement for your child; or
2. Decide to issue an EHC Plan for your child.

It is unlikely as the legal test has not changed, but if your Local Authority decides not to issue an EHC Plan for your child they must provide you with this decision within 14 weeks from the date the transfer process began. If this does happen please do get in touch as you have a right to Appeal against this decision to the SEND Tribunal.

If your Local Authority decides to issue an EHC Plan for your child they must provide you with a finalised EHC Plan within 18 weeks from the date the transfer process began. You should receive a draft of the EHC Plan 3 weeks before this 18-week deadline, in order for you to have a chance to provide comments before it is finalised. If your Local Authority exceeds these deadlines (and we encounter many instances of this happening) a simple 'pre-action' letter which we can put together for you, can force them to comply.

Once you are in receipt of your child's EHC Plan it is important that you read this carefully. Often Local Authorities have used the transfer process to reduce a child's provision from their previous statement and/or name a cheaper alternative placement within Section I. Such reductions of provision without evidence to support the decision, are unlawful.

If you are not happy with the contents of your child's EHC Plan following the transfer process, you have the Right to Appeal the contents of it to the SEND Tribunal. If you are not sure whether you should Appeal, we are happy to help.

Need advice or more information?

Call our friendly team on **01284 723952** to speak with one of our specialist Solicitors.

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6-7 October 2017

Business Design Centre, London

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Disability Living Allowance & Personal Independence Payments.

By Karen McAtamney -
Specialist Solicitor, SEN Legal.



Disability Living Allowance and Personal Independence Payment are welfare benefits paid by the Department for Work and Pensions (they are not paid by Local Authority Social Services Departments and can be claimed at the same time as being in receipt of Direct Payments from Social Services) to people who have care and/or mobility needs. They are not dependent on income or savings, are not subject to income tax and are intended to meet the additional costs of being disabled. **PIP is a new benefit, which has been deliberately designed so that a proportion of existing DLA claimants won't be eligible for it.**

DLA is paid to children under 16, PIP is paid to those over 16, with a transfer process in place to move existing DLA claimants to PIP over time. Entitlement is determined by looking at the individual's performance in respect of set activities and matching that performance to a particular descriptor which then maps to a number of points with minimum numbers of points being needed for each level of the benefits. PIP comes at "standard" and "enhanced" rates for both care and mobility. DLA has three levels for care (lower, middle, highest) and two for mobility. Entitlement to DLA/PIP acts as a 'passport' to other entitlements and can serve as useful proof of disability in many circumstances, so it is very often worth claiming, even where family income is good.

Where a claim for DLA/PIP (or indeed other state benefits) is declined a right of appeal lies to the First-tier Tribunal: Social Entitlement Chamber following (in most cases) Mandatory Reconsideration by the Department for Work and Pensions. The Tribunal has to decide cases on the basis of the evidence and you will need to prove your case (following the general rule that if you assert something in litigation you have to prove it); to do so will require familiarity with the legislation and the case law. Increasing numbers of claims are being rejected initially, but are successful on appeal.

DLA and PIP - Understanding what you'll get

Care Component	Weekly Rate	Level of help needed
Lowest	£22	Help for some of the day or with preparing cooked meals
Middle	£55.65	Frequent help or constant supervision during the day, supervision at night or someone to help you while on dialysis
High	£83.10	Help or supervision throughout both day and night, or you're terminally ill

Mobility Component	Weekly Rate	Level of help needed
Lower	£22	Guidance or supervision outdoors
Higher	£58	You have any other, more severe, walking difficulty

Daily living part:

The weekly rate for the daily living part of PIP is either £55.65 or £83.10.

Mobility part:

The weekly rate for the mobility part of PIP is either £22 or £58.



HACS
Hillingdon Autistic Care & Support

Upcoming workshops for parents, carers and professionals

**12th
October**

'Exclusions'

10am - 1pm

**19th
October**

**'Transferring
to an EHCP'**

10am - 1pm

**16th
November**

**'Obtaining an
EHCP'**

10am - 1pm

**25th
November**

**'Secondary and
post-16 transfer'**

10am - 1pm

Speaker: Melinda Nettleton, Principal Solicitor at SEN Legal

All sessions will be held at HACS Resource Centre, Dudley Place, Hayes UB3 1PB.
For more information or to book, contact catherine@hacs.org.uk


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Home to school transport remains an issue for parents. This may be because it is an unnecessarily complex area of law.

Generally, if a child falls under one of the categories of “eligible child”, then the responsible LA must make necessary suitable travel arrangements, free of charge, to enable that child to get to and from school.

By Angela Tyrrell,
Chartered Legal Executive, SEN Legal.

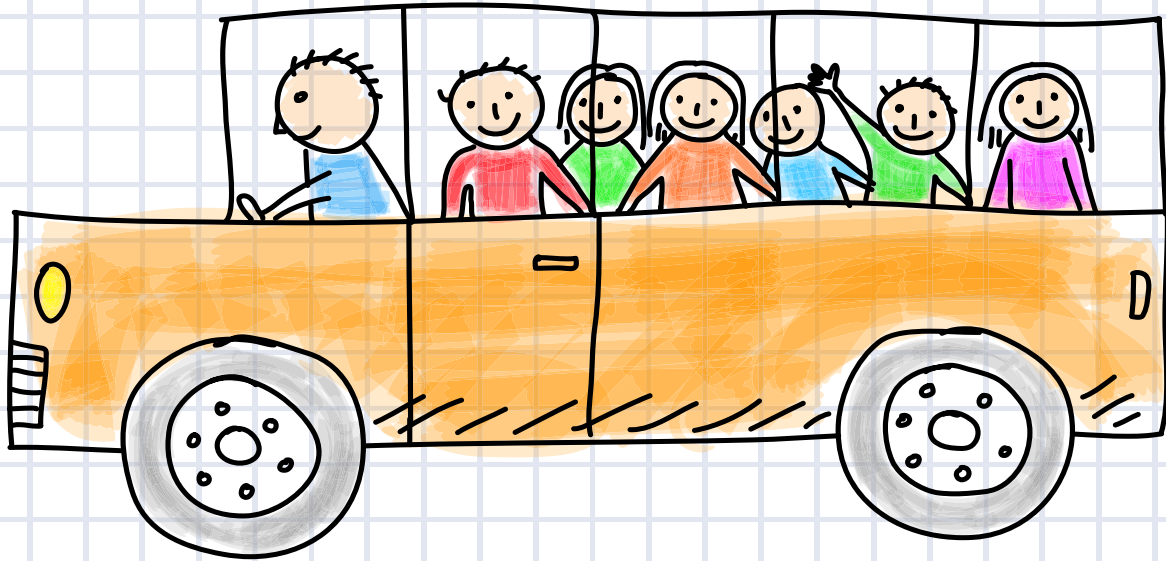
A child of compulsory school age (ie. under 16) who has special educational needs, a disability or mobility problems will be an “eligible” child.

For this category of “eligible” child, the responsible LA must provide suitable free transport from home to school, if that child cannot reasonably be expected to walk to and from their school and there are no suitable arrangements to register them at a school nearer to their home. Transport must be “non-stressful”.

The position is different for young people with SEN aged 16 to 19 who are in education or training. For these young people, the LA has to provide a Transport Policy statement specifying the arrangements necessary to facilitate their attendance at their place or learning.

The Policy statement must provide financial assistance for reasonable travelling expenses and the arrangements must not be less favourable than the arrangements made for young people of the same age attending schools. (continued next page)

[Read DFE's statutory guidance here.](#)



It is a matter for the LA to decide what is necessary, but in reaching a decision, the LA must exercise their judgment judiciously and in good faith, otherwise they risk Judicial Review proceedings.

The position is also different for young adult learners with SEN aged between 19 to 25. The LA's duty is to make such arrangements for the provision of transport, free of charge, as they consider necessary to facilitate their attendance at qualifying institutions. The LA must take into account the age of the adult, the nature of the route or alternative routes that the young adult could reasonably be expected to take. Again, it is a matter for the LA to decide what is necessary.

If the LA consider transport is necessary, it should be provided free of charge. If not considered necessary, the LA has a residual discretion to pay some or all of the reasonable transport costs, if no other arrangement has been made.

If a child or young person has an EHC Plan, the question then arises should the provision of transport be contained within the EHC Plan?

Case law has established that the requirement for home to school transport is not a special educational need (ie. Section B), nor is it special educational provision (ie. Section F). The First-tier Tribunal does not have jurisdiction over transport decisions, however, it may be a relevant issue in an Appeal concerning placement (ie. Section I of an EHC Plan) where transport costs are relevant to the overall costs of a particular school placement. Once a school has been specified in an EHC Plan, the LA must pay/provide the transport. The EHCP does not have to state so explicitly. The LA would only not be obliged to pay if there was a written agreement in Section I to the contrary that parents would fund transport costs.

Of course, all LA's have their own policies on transport, but local policies cannot override or ignore what the law says. For anyone adversely affected by an LA's decision about transport, they must follow the LA's complaints and appeals procedure. The DFE has published statutory guidance for LA's entitled "Home to School Travel and Transport Guidance 2014" ([link to this document on page above](#)) which requires the LA publish the appeals process on their website. There is also a right to complain to the Local Government Ombudsman if the LA has failed to follow proper procedure or where there has been an irregularity in the way the appeal has been handled. However, the LGO cannot investigate the merits of the LA's decision but if the LA's decision is flawed, an application for judicial review may be made.