



[Home](#) » [Special Educational Needs in New Guidance](#)

# Special Educational Needs in New Guidance

THIS PAGE WAS WRITTEN IN 2023. IT WAS ARCHIVED AT THE END OF MARCH 2026 [LINK]

Special educational needs is covered in Chapter 9 of [the new draft home education guidance](#), England. This page is looking at paragraphs 9.1 to 9.5 of [the new draft](#). (The [draft](#) SEND chapter goes up to 9.13 and there are slight improvements in the later paragraphs, see <https://edyourself.org/special-needs-in-new-guidance-2/>) Legal references are to [Part 3 of the Children and Families Act 2014](#). [Extracts from the SEND Code of Practice are in blue](#). Chapter 9 [draft](#) is very selective in what it chooses to take from the Code.

**The new guidance is not ready to be used. It is still at the draft stage.** The consultation closed 18.1.24. The current guidance remains in force until such time as a final new version is published. The current guidance can be found here <https://www.gov.uk/government/publications/elective-home-education>

The new [draft](#) SEND chapter incorporates a lot of material from the current (2019) SEN chapter but **i/** important information is still left out; **ii/** points from statutory guidance in the SEND Code of Practice are ignored; **iii/** new advice added to [draft](#) 9.4 and 9.5 is unclear and unhelpful and inconsistent.

The [new draft](#) SEND chapter should not be considered in isolation when considering the impact of new guidance on SEND families because [the new draft guidance](#) has already suggested detailed “*suitability assessments*” amounting to annual monitoring as well as using the School Attendance Order process backed up with child protection enquiries if the LA feels it has insufficient information about educational provision.

## Home Educating with EHCP

Legal references for this page: the Children and Families Act 2014 Part 3; the Education Act 1996; the SEND Regulations 2014; the SEND Code of Practice; the School Attendance (Pupil Registration) Regulations 2024; case law established via the Upper Tribunal or Judicial Review which is linked directly in the text; government Home Education Guidance for ... [Continue reading](#)



”

## SEND Code of Practice

Education of children with special needs and disabilities otherwise than at school is covered in paragraphs 10.30 – 10.38 of the SEND Code of Practice which are reproduced below. EOTAS (although that term is not used) is explained at paragraph 10.31 [“where local authorities and parents agree that home education is the right provision”] while ... [Continue reading](#)



Ed Yourself

**Draft 9.3** is a reworking of current 8.3 plus information about discretionary support taken from current 8.8. **Draft 9.3** also makes the same point as current 8.3 and 8.4 about LAs using formal powers in relation to School Attendance Orders if education is deemed unsuitable. There is nothing really new here; it just appears in a different order. **Draft 9.3** also edits what appears in the [SEND Code of Practice](#) about support and enforcement.

”

For comparison purposes the SEND Code says “10.36 In some cases a local authority will conclude that, even after considering its power to provide support to home educating parents, the provision that is or could be made for a child or young person with an EHC plan does not meet the child or young person’s needs. The local authority is required to intervene through the school attendance order framework ‘if it appears...that a child of compulsory school age is not receiving suitable education’. The serving of a school attendance order is a last resort if all attempts to improve provision are unsuccessful. ‘Suitable education’ means efficient full-time education suitable to the child or young person’s age, ability and aptitude and to any SEN he or she may have.”

**Draft 9.4** is new. It is confusing and misleading and unhelpful, implying that the EHCP should be reviewed and amended before a child can be home educated which is wrong in law. It is also inconsistent with the (correct) position set out at **draft 9.7**.

**Draft 9.5** starts by reworking current 8.4 and says “When a child has a EHC plan, it is the local authority’s duty to secure that the special educational provision, specified in the plan, is made available to the child (s.42(2))”. **In fact the s 42 duty is to secure the provision itself** not to secure that provision “is made available” which is a weaker formulation and could give the mistaken impression that the duty is discharged if an **offer** of provision is made such as a school place being “available”.

The next bit in **draft 9.5** is new and very unclear. It may mean that Section F should continue to specify the provision which would be required in a formal setting and that LAs should not gut the EHCP to strip out provision from Section F on the basis that the LA will not be providing support. Alternatively it may mean that Section F should not specify parents making special educational provision since this would be unlawful. Either of those points would be worth making but if either are intended then this must be expressed much more clearly. My page on home educating with an EHCP is here <https://edyourself.org/home-educating-with-ehcp/>

**Draft 9.5** goes on to deal with the annual review of the EHCP but leaves out a helpful point from the current guidance which says at 8.12 2019 that ARs “should provide an opportunity for parents to seek additional support or discuss alternatives to home education”

The draft guidance could usefully signpost to Chapter 9 of [the SEND Code of Practice](#) which sets out the process for annual reviews where a child does not attend school. Alternatively the guidance could mention Regulation 21 <https://www.legislation.gov.uk/uksi/2014/1530/regulation/21/made> which sets out statutory timescales. There is absolutely no reference in the guidance to annual review deadlines <https://edyourself.org/12-week-deadline-to-amend-ehcp/>

The reference to “early review” in **draft** 9.5 is not appropriate.

### **EHCP Annual Review**

EHCPs [Education Health and Care Plans] must be reviewed at a minimum once a year which means the review should be concluded (not begun) 12 months from the date of the last review. [Source = Children and Families Act 2014 s44] The statutory timescales for review are set out in Regulations and also covered in ... [Continue reading](#)



**Ed Yourself**

Home education is not a placement which can just be swapped out for a different placement; case law has established that home is not a setting.

### **EOTAS Case Law Leaving Section I Blank**

NN V Cheshire East is a case I won at the Upper Tribunal in 2021. It provides guidance on section 61 of the Children and Families Act 2014 related to Education Otherwise Than At School [EOTAS] arranged by the local authority where it is inappropriate for provision to be made in a school. (In this particular case it was ... [Continue reading](#)



**Ed Yourself**

The law sets out the path to be followed where the LA “conclude that the EHE provision that is being made for a child with a EHC plan is not suitable” and this can be found at 9.11 in **the new draft guidance**. If early reviews are to be mentioned at all then **the new** 9.5 could say that LAs should heed parents’ request to bring forward the annual review or consider parental request for a re-assessment of the child’s needs (disregarding the national shortage of educational psychologists for a moment) At the very least 8.12 2019 should be retained.

## **Current Guidance**

### **Guidance**

The current version of home education guidance for local authorities in England was published in April 2019. The emphasis is on ensuring LAs are fully aware of existing powers and duties. The Home Education Guidance does not introduce any new powers or duties for local authorities to monitor the suitability of home education nor any ...

[Continue reading](#)



**Ed Yourself**