Guidance on Looked After Children with Special Educational Needs and Disabilities
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1. Introduction

1.1 The majority of looked after children have some form of Special or Additional Educational Need. As a group, looked after children are more than three times more likely to have SEN and nine times more likely to have an Education Health and Care Plan (EHCP), than the general pupil population.

1.2 Many looked after children will have a range of needs, not just educational. As a result, there are usually a large number of services across social care, education and health that will need to work together to ensure looked after children have their needs appropriately identified and are given the support they require to meet agreed outcomes.

1.3 Looked after children may have special educational needs and disabilities (SEND) for various reasons. Many looked after children have complex social, emotional and psychological issues as a result of their early childhood experiences and the impact of trauma and attachment difficulties. Some looked after children have specific learning difficulties, sometimes a result of the pre-care educational experiences. A small number of looked after children have a complex physical disability which means they require an EHCP.

1.4 It is important that all children with SEND receive the educational provision which meets their needs. The most effective support for looked after children with additional or special needs comes from within their own school. Schools with an understanding of the impact of trauma and attachment difficulties will be the most effective in meeting the needs of looked after children.

1.5 However, for looked after children, many of whom will have had difficult and unstable home and school lives before coming into care, it is imperative that their needs are quickly and efficiently identified, assessed and provided for so that the effect of any instability on their education is reduced to a minimum. Looked after children can be placed to live with foster carers or in a children’s home a long way from where they would normally live and often this will be outside the area of the local authority which looks after them, often for reasons which are in the child’s best interest. Because they are placed “out-of-authority” there can sometimes be confusion as to the responsibilities that local authorities have towards the child if the child needs to be assessed for an EHCP or already has one.
1.6 The purpose of this guidance is to explain how Islington Council is responsible for meeting the SEND of looked after children. It does not create any new obligations, but decisions made in relation to individual children should be consistent with this guidance and operate in the best interests of the child and comply with relevant legislation relating to SEND and Looked After Children’s Education

- Promoting the education of looked-after children and previously looked-after children. Statutory guidance for local authorities. February 2018
- The designated teacher for looked-after children and previously looked-after children. Statutory guidance on their roles and responsibilities. February 2018
- Children’s and Families Act 2014
- SEND Statutory Code of Practice 2015
- Education Act 1996
- The Education Regulations 1996 (The “Belongings Regulations”)
- Children Act 1989
- The Care Act 2014
- Working Together 2015

2. Background

2.1 The term ‘looked after children’ is defined in law under the Children Act 1989. A child is looked after by a local authority if he or she is in their care or is provided with accommodation for more than 24 hours by the authority.

2.2 Looked after children fall into four main groups:

- Children who are accommodated under voluntary agreement with their parents (section 20);
- Children who are the subject of a care order (section 31) or interim care order (section 38);
- Children who are the subject of emergency orders for their protection (section 44 and 46);
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- Children who are compulsorily accommodated. This includes children remanded to the local authority or subject to a criminal justice supervision order with a residence requirement (section 21).

2.3 When a child comes into care the local authority will arrange a suitable care placement. Local authority services, should do all that is possible to minimise disruption to the child’s education. The Virtual School takes the lead role in ensuring that children are placed in appropriate education provision as quickly as possible and must work with other services to minimise disruption to a child’s education.

2.4 For Islington, between 70- 80% per cent of looked after children’s care placement is normally not within the boundary of the authority (i.e. an out-of- authority placement) and this will often mean a new educational placement will need to be arranged because the distance to travel to the current school is too great.

2.5 Twenty-one per cent of Islington’s looked after children have an EHCP. 60% of these live outside of Islington; 26% attend a residential special school (38 week or 52 week) and 30% attend a day special school. Generally, about 60% of all looked after children have some form of SEND.

2.6 All local authorities have a duty to consider (and where necessary) undertake assessments, draw up and maintain EHCP for children with SEND, including looked after children.

3. Responsibility for Special Educational Provision

3.1 For children with SEND, but without an EHCP, it is the school or other education setting that must make provision for the child’s SEND through additionally delegated resources for that purpose. When a decision is made that a looked after child must be assessed to see whether an EHCP is required, the authority that carries out the assessment is determined by Section 24 of the Children and Families Act 2014, this means that the assessment must be carried out by the authority where the child lives (i.e. is ordinarily resident).

3.2 For the purposes of Part IV of the Education Act 1996 and Section 24 of the Children and Families Act 2014, a local authority is responsible for a child if he or she is in their area. The
term ‘in their area’ is not defined in the legislation. This phrase is usually used to mean ‘ordinarily resident in their area’. This means that a SEND assessment must be carried out by the authority where the child is ordinarily resident. Where a looked after child is in a settled placement with foster parents or in a children’s home, then the authority where the foster parents are resident, or where the home is situated, will be the authority responsible for carrying out the SEND assessment and for making and maintaining any EHCP.

3.3 However, given the complexity of looked after children lives it is open to local authorities to make ‘ad hoc’ arrangements in individual exceptional cases, which are in the best interests of the child. The local authority placing the child could agree to accept the responsibility for assessing a child or making and maintaining an EHC Plan where there are practical reasons for doing so (e.g. where children move placement in quick succession or have a long term plan to move to a permanent placement, it can be in the best interests of the child for the care authority to “hold” the assessment or EHCP, at least for a short time, even though the child is living out of authority). Clearly both authorities must be in agreement before such arrangements can go ahead. Normally, however, it is in the child’s interests to be monitored and supported in accordance with arrangements local to the area in which they are living by professionals with up-to-date knowledge of local services and issues.

4. Making a new assessment

4.1 Requests for new assessments of SEND should be made when there is agreement supported by evidence among the professional network that it is appropriate. The Virtual School must agree with this request. Requests can only be made by the school/education setting, the parent or the young person themselves if they are over 16.

4.2 Evidence for this request should be contained in the child’s Personal Education Plan. The Virtual School and child’s social worker should seek advice from the SEND service in the area where the child lives before proceeding with a request, as evidence will be required that the child’s needs cannot be met from within the local area’s Local Offer; this is particularly the case when considering a request for an assessment of young person aged 16-25.

4.3 Looked after children with highly complex needs living in Islington, but currently without EHCP and likely to require a specialist education provision should be referred to Islington’s
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Education Health and Care Management Board. Professionals should familiarise themselves with the terms of reference of the Board.

4.4 Where a child is the subject of section 20 arrangement, consent from the child’s birth parents must be sort before proceeding. Young people over the age 16 need to also give consent if they are deemed to have “mental capacity”.

4.5 Generally, for looked after children where it becomes necessary to conduct an assessment of their SEND, the local authority in which they are ‘ordinarily resident’ will be the authority responsible for undertaking the assessment. Being an out-of-authority looked after child should make no difference to the assessment process, however professionals need to be aware local authority's processes and procedures differ when making a request for an assessment, therefore advice should be sought from the resident local authority SEND team before proceeding. The Virtual School should lead on this. The placing local authority should be engaged in the process where they are the corporate parent of the child and should advocate for and support the child in the same way as any good parent would. The maximum duration within which an assessment should normally take place is 20 weeks.

5. Children with existing EHCPs

5.1 When an out-of-authority placement is made for a child who already has an EHCP, generally that EHCP should transfer to the authority where the child will be living. Good practice is that local authorities should always discuss moves of looked after children with receiving authorities before a final decision is made as this is a good way to ensure such placements are made as smoothly as possible. This process should be led by the Virtual School.

5.2 While the placing authority no longer maintains the EHCP, in the case of looked after children, they will still have financial responsibility for the special educational provision set out in the EHCP (and home to school transport if needed) because the child continues to ‘belong’ to them as determined by regulation 7 of The Education (Areas to which Pupils and Students Belong) Regulations 1996 (the ‘Belonging Regulations’). The receiving authority will be able to recoup the cost of the statement through the normal recovery process.

5.3 As the placing authority has a financial and corporate parenting responsibility for the child there is sometimes confusion among professionals as to the extent of their power in
determining education provision when a child’s EHCP is maintained by another Local Authority. Legislation and guidance on this issue is very clear. While the placing authority can advise, challenge and support, the Local Authority which maintains the EHCP is ultimately responsible for determining education provision for the child. Financial responsibility for the EHCP of looked after a child does not confer the right to determine education provision.

5.4 The placing authority will still be under a statutory duty to promote the educational achievement of the child (DfE 2018) for as long as the child continues to be looked after by them, and should therefore continue to advocate for that child in the same way as any good parent would. The Virtual School would need to consider any proposed changes to the EHCP that might be proposed by the receiving authority.

6. **52-week placements**

6.1 When making an assessment of a child’s SEND (or re-assessing the needs of a child with an existing EHCP) it may be that the most appropriate provision is for the child to be placed in a 52-week residential care and education placement. In Islington these are always out of authority. In such cases for the purposes of ordinary residence the child could be considered as living in the placing authority and therefore they would continue to have the duty to maintain any EHCP. Such decisions must be made on a case by case basis however, as access to relevant education and health support services, local to the placement, will be better understood and accessed by the SEND service in the area the placement is made to. Requests for 52 week placements need to be submitted and agreed by the Joint Agency Panel (JAP) following relevant procedures, where the decision will also be made as to whether or not to retain full responsibility for the child’s EHCP.

7. **38-week placements (or other time period)**

7.1 It may be that some residential placements are for a time period of less than 52-weeks – usually 38 weeks (term-time) placements. In such cases as the looked after child returns ‘home’ to where they are ordinarily resident outside term time, then the resident authority would maintain the EHCP. For example, where a child attends a 38-week residential
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placement and ordinarily resides at an address outside Islington, the EHCP must be maintained by the authority where the child lives.

8. Requests for Emergency Funding

8.1 There are times when looked after children, including those without EHCPs may require additional funding to support their education needs. For example, it is good practice to provide 1-1 tuition for children who move placements in an emergency and/or do not have an education provision. In these situations, where children have EHCPs, the tuition relates to provision set out in the EHCP and cannot be met through the resources normally available / allocated through the EHCP, it is reasonable for SEND to fund this. It is the responsibility of the Virtual School to set up and oversee this tuition and if agreed, recoup the funding from SEND.

8.2 Requests for additional funding for children with EHCP and in an education provision should always come via the Annual Review process, and should be made to Local Authority responsible for maintaining the EHCP.

9. SEN Support – Short Term ‘Exceptional Needs’ Funding

9.1 Short term exceptional needs funding is available for SEN support interventions which cost over and above the ‘notional’ £6000 which is provided to schools as part of the core budget and is to enable the achievement of specified outcomes through the provision of an enhanced school Local Offer for a time-limited period.

9.2 This can be for children and young people without an EHC Plan.

9.3 When a school submits a request for exceptional needs funding, the decision about whether to agree the request is based on provision of information that clearly indicates the school has used the £6000 notional SEN budget to provide SEND support and that through exceptional circumstances and/or a lack of progress the school is seeking to provide an enhanced Local Offer of provision for a time-limited period.
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9.4 The school’s information will demonstrate an ‘Assess, Plan, Do, Review’ approach to SEN support, with a clear focus on the achievement of outcomes for the child. There will be evidence of parent/carer involvement in decision-making.

9.5 Requests submitted to the appropriate SEND Team (sen@islington.gov.uk for Islington) by secure email will be considered on the basis of the evidence and local advice; the resident Local Authority will either agree or reject the request.

10. Roles and Responsibilities

10.1 Decision making for looked after children with SEND can be complex. This is often the result of the large number of professional agencies, spanning across social care, education, health and commissioning being involved in a child’s life and the interplay between these services. This can be further complicated by the decision making processes for looked after children. However, all decision making should be guided by the following principles:

- The best interest of the child
- Avoiding delay
- All services acting as an effective corporate parent – “if this were my child”
- Compliance with legislation

11. The Virtual School

11.1 The Virtual School Head is a statutory role within the Local Authority and as such has lead responsibility in ensuring looked after children’s education is promoted. Given its role in monitoring the attainment and progress of all looked after children and its involvement in most children’s education, the Virtual School is often in the best position to advise on educational matters relating to individual looked after children.

11.2 In practice the means the Virtual School is the lead service in ensuring that all looked after children

- Are placed in high quality education provision which meet their needs
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- Have a robust and effective Personal Education Plan that is used as tool for driving up education outcomes
- Where they are out of school are placed in an appropriate education setting as quickly as possible
- Have access to support and interventions which enable them to succeed

11.3 Specifically relating to children with SEND the Virtual School must work in collaboration with all services for looked after children, including Local Authority SEND teams. All looked-after children will have an allocated Virtual School Worker who will be responsible for co-ordinating the following work:

- Requests for statutory assessment
- Ensuring that EHCP Annual Reviews are completed
- The transfer of SEND papers between Local Authorities when a looked after child moves
- Assessing the appropriateness of education provision (with SEND teams) as part of formal review processes

12. Local Authority SEND teams

12.1 Local Authority SEND Teams have a statutory duty to maintain the EHCPs of looked after children who are ordinarily resident, in the same way as for any other child with SEND. Specifically, for looked after children, Local Authority SEND team should:

- Ensure all children with an EHCP have an allocated key worker.
- Monitor and scrutinise the quality of education provision for looked after children resident in their area, in consultation with the placing authority’s Virtual School
- Work without delay in securing appropriate education when a child is not in school or requires a change of provision
- Work in partnership with other services, including the Virtual School, social worker, foster carer and relevant health professionals
13. Social Workers

13.1 The child’s allocated social worker is responsible for child’s care plan, which sets out how the local authority will meet the care needs of the child, addressing all important dimensions of a child’s developmental needs. These include health, education, emotional and behavioural development, identity, family and social relationships, social presentation and self-care skills. The Care Plan will specifically include a Personal Education Plan (PEP) and a Health Plan (both are a statutory requirement) which will particularly assess and set out the child’s education and health needs. It may be through making these assessments that a child’s SEND will be identified.

13.2 The statutory duty on Local Authorities to Promote the Education of Looked after Children (2018) says when formulating a child’s care plan and making decisions about a child the social worker must take into account the likely impact on the child’s education and must consult the Virtual School Head.

13.3 Social Workers also have a responsibility for initiating and co-ordinating assessments by other agencies (e.g.) which may be required for an assessment of SEND. Social Workers are also responsible for ensuring the child and birth parents wishes and feeling are gathered and made know during the SEND process.

13.4 It is the looked after child’s social worker (in close consultation with the VSH in the authority that looks after the child) that will ultimately make any educational decision on the child’s behalf. However, for a child in a stable, long-term foster placement, the day-to-day responsibility for taking these decisions should be delegated to the carer who will advocate for the looked after child and make appeals to the First-tier Tribunal (SEN and Disability) as necessary.

14. Commissioning

14.1 Placement Commissioning teams are responsible for sourcing and commissioning children’s social care placements. Acting on advice from social workers, and other relevant services they play a key role in brokering placements with the SEND team (and where relevant Health teams) for children who require residential placements. Placement Commissioning
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needs to ensure that all placements for looked after children are made in accordance with the principles stated above and only after all relevant services have been consulted fully, including the SEND service for the area in which the looked-after child will be normally resident.