

Guide to the Belonging Regulations

Guide to financial responsibility for making special educational provision for children who are currently looked after (CLA)

Introduction

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. 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);
- 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).

Children supported at SEND Support without an Education, Health and Care Plan

For Currently Looked After children with SEND, but without an EHCP, the school makes provision for the child's special educational needs and disabilities as part of the Graduated Response.

Children who require an EHC Needs Assessment

Whether or not to carry out an EHC Needs Assessment is the decision of the authority where the child is ordinarily resident. Ordinarily Resident means that the child is in a settled placement with foster parents or in a children's home. It is the authority where the foster parents are resident, or where the home is situated, which is the authority responsible for carrying out the EHC Needs Assessment and for making and maintaining any Education, Health and Care Plan.

Sometimes Local Authorities make 'ad hoc' arrangements in individual cases. For example, the local authority where the child is ordinarily resident could delegate the responsibility for assessing a child or making and maintaining an Education, Health and Care Plan to the placing authority where, for example, there are practical reasons for doing this or in cases where this would be in the child's best interests. Both authorities must be in agreement before such arrangements can go ahead.

Top Up Funding

Whilst the Authority where the child is living/placed is responsible for deciding whether or not to carry out an EHC Needs Assessment, including the issuing and monitoring of any EHC Plan, it is the Authority to which the child is looked after who is responsible for funding any additional provision that is identified within the Plan (i.e. Element 3 Top Up Funding)

This means that while the placing authority no longer maintains the Plan, in the case of looked after children, they will still have financial responsibility for the special educational provision set out in the Plan because the child continues to 'belong' to them.

The educational setting will be responsible for recoupment of Element 3 Top Up Funding from the Authority that the child is CLA to. The School should do this through contact with the Local Authority's SEND Department who will explain the procedures for that Authority.

CLA children who belong to other Local Authorities in Special Schools

Place funding is adjusted annually between Local Authorities by the EFSA using School level returns. This import adjustment means that a special school or specialist unit must not "charge" the other (home Authority) for the place.

Particular Guidance relating to children placed in residential educational placements

52 week placements

The child is treated as living in the placing Authority and they continue to have the duty to maintain and fund any EHCP

38 week placements (or other time period less than 52 weeks)

As the looked after child returns 'home' to the placing authority, i.e. to where they are ordinarily resident outside term time, then the placing authority would maintain and fund the Plan.

