



Special Educational Needs and Disability Act 2001

2001 CHAPTER 10

PART 1

SPECIAL EDUCATIONAL NEEDS

Mainstream education

1 Education in mainstream schools of children with special educational needs

In the Education Act 1996 (“the 1996 Act”), for section 316 substitute—

“316 Duty to educate children with special educational needs in mainstream schools

- (1) This section applies to a child with special educational needs who should be educated in a school.
- (2) If no statement is maintained under section 324 for the child, he must be educated in a mainstream school.
- (3) If a statement is maintained under section 324 for the child, he must be educated in a mainstream school unless that is incompatible with—
 - (a) the wishes of his parent, or
 - (b) the provision of efficient education for other children.
- (4) In this section and section 316A “mainstream school” means any school other than—
 - (a) a special school, or
 - (b) an independent school which is not—
 - (i) a city technology college,
 - (ii) a city college for the technology of the arts, or

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(iii) a city academy.

316A Education otherwise than in mainstream schools

- (1) Section 316 does not prevent a child from being educated in—
- (a) an independent school which is not a mainstream school, or
 - (b) a school approved under section 342,
- if the cost is met otherwise than by a local education authority.
- (2) Section 316(2) does not require a child to be educated in a mainstream school during any period in which—
- (a) he is admitted to a special school for the purposes of an assessment under section 323 of his educational needs and his admission to that school is with the agreement of—
 - (i) the local education authority,
 - (ii) the head teacher of the school or, if the school is in Wales, its governing body,
 - (iii) his parent, and
 - (iv) any person whose advice is to be sought in accordance with regulations made under paragraph 2 of Schedule 26;
 - (b) he remains admitted to a special school, in prescribed circumstances, following an assessment under section 323 at that school;
 - (c) he is admitted to a special school, following a change in his circumstances, with the agreement of—
 - (i) the local education authority,
 - (ii) the head teacher of the school or, if the school is in Wales, its governing body, and
 - (iii) his parent;
 - (d) he is admitted to a community or foundation special school which is established in a hospital.
- (3) Section 316 does not affect the operation of—
- (a) section 348, or
 - (b) paragraph 3 of Schedule 27.
- (4) If a local education authority decide—
- (a) to make a statement for a child under section 324, but
 - (b) not to name in the statement the school for which a parent has expressed a preference under paragraph 3 of Schedule 27,
- they shall, in making the statement, comply with section 316(3).
- (5) A local education authority may, in relation to their mainstream schools taken as a whole, rely on the exception in section 316(3)(b) only if they show that there are no reasonable steps that they could take to prevent the incompatibility.
- (6) An authority in relation to a particular mainstream school may rely on the exception in section 316(3)(b) only if it shows that there are no reasonable steps that it or another authority in relation to the school could take to prevent the incompatibility.

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- (7) The exception in section 316(3)(b) does not permit a governing body to fail to comply with the duty imposed by section 324(5)(b).
- (8) An authority must have regard to guidance about section 316 and this section issued—
 - (a) for England, by the Secretary of State,
 - (b) for Wales, by the National Assembly for Wales.
- (9) That guidance shall, in particular, relate to steps which may, or may not, be regarded as reasonable for the purposes of subsections (5) and (6).
- (10) “Prescribed”, in relation to Wales, means prescribed in regulations made by the National Assembly for Wales.
- (11) “Authority”—
 - (a) in relation to a maintained school, means each of the following—
 - (i) the local education authority,
 - (ii) the school’s governing body, and
 - (b) in relation to a maintained nursery school or a pupil referral unit, means the local education authority.”

General duties of local education authorities

2 Advice and information for parents

In the 1996 Act, insert the following section—

“General duties of local education authorities

332A Advice and information for parents

- (1) A local education authority must arrange for the parent of any child in their area with special educational needs to be provided with advice and information about matters relating to those needs.
- (2) In making the arrangements, the authority must have regard to any guidance given—
 - (a) for England, by the Secretary of State,
 - (b) for Wales, by the National Assembly for Wales.
- (3) The authority must take such steps as they consider appropriate for making the services provided under subsection (1) known to—
 - (a) the parents of children in their area,
 - (b) the head teachers and proprietors of schools in their area, and
 - (c) such other persons as they consider appropriate.”

3 Resolution of disputes

In the 1996 Act, insert the following section—

“332B Resolution of disputes

- (1) A local education authority must make arrangements with a view to avoiding or resolving disagreements between authorities (on the one hand) and parents of children in their area (on the other) about the exercise by authorities of functions under this Part.
- (2) A local education authority must also make arrangements with a view to avoiding or resolving, in each relevant school, disagreements between the parents of a relevant child and the proprietor of the school about the special educational provision made for that child.
- (3) The arrangements must provide for the appointment of independent persons with the function of facilitating the avoidance or resolution of such disagreements.
- (4) In making the arrangements, the authority must have regard to any guidance given—
 - (a) for England, by the Secretary of State,
 - (b) for Wales, by the National Assembly for Wales.
- (5) The authority must take such steps as they consider appropriate for making the arrangements made under subsections (1) and (2) known to—
 - (a) the parents of children in their area,
 - (b) the head teachers and proprietors of schools in their area, and
 - (c) such other persons as they consider appropriate.
- (6) The arrangements cannot affect the entitlement of a parent to appeal to the Tribunal.
- (7) In this section—

“authorities” means the governing bodies of maintained schools and the local education authority,

“relevant child” means a child who has special educational needs and is a registered pupil at a relevant school.
- (8) For the purposes of this section a school is a relevant school in relation to a child if it is—
 - (a) a maintained school or a maintained nursery school,
 - (b) a pupil referral unit,
 - (c) a city technology college, a city college for the technology of the arts or a city academy,
 - (d) an independent school named in the statement maintained for the child under section 324, or
 - (e) a school approved under section 342.”

4 Compliance with orders

In the 1996 Act, insert the following section—

“336A Compliance with orders

- (1) If the Tribunal makes an order, the local education authority concerned must comply with the order before the end of the prescribed period beginning with the date on which it is made.
- (2) Regulations under this section, so far as they relate to Wales, require the agreement of the National Assembly for Wales.”

Appeals

5 Unopposed appeals

In the 1996 Act, insert the following section—

“326A Unopposed appeals

- (1) This section applies if—
 - (a) the parent of a child has appealed to the Tribunal under section 325, 328, 329 or 329A or paragraph 8(3) of Schedule 27 against a decision of a local education authority, and
 - (b) the authority notifies the Tribunal that they have determined that they will not, or will no longer, oppose the appeal.
- (2) The appeal is to be treated as having been determined in favour of the appellant.
- (3) If an appeal is treated as determined in favour of the appellant as a result of subsection (2), the Tribunal is not required to make any order.
- (4) Before the end of the prescribed period, the authority must—
 - (a) in the case of an appeal under section 325, make a statement under section 324 of the child’s educational needs,
 - (b) in the case of an appeal under section 328, 329 or 329A, make an assessment of the child’s educational needs,
 - (c) in the case of an appeal under paragraph 8(3) of Schedule 27 against a determination of the authority not to comply with the parent’s request, comply with the request.
- (5) An authority required by subsection (4)(a) to make a statement under section 324 must maintain the statement under that section.
- (6) Regulations under this section, so far as they relate to Wales, require the agreement of the National Assembly for Wales.”

6 Maintenance of statement during appeal

In paragraph 11 of Schedule 27 to the 1996 Act (circumstances in which a local education authority may cease to maintain a statement), after sub-paragraph (4) insert—

- “(5) A local education authority may not, under this paragraph, cease to maintain a statement if—

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- (a) the parent of the child has appealed under this paragraph against the authority's determination to cease to maintain the statement, and
- (b) the appeal has not been determined by the Tribunal or withdrawn."

Identification and assessment of educational needs

7 **Duty to inform parent where special educational provision made**

(1) In the 1996 Act, insert the following section—

“317A Duty to inform parent where special educational provision made

- (1) This section applies if—
 - (a) a child for whom no statement is maintained under section 324 is a registered pupil at—
 - (i) a community, foundation or voluntary school, or
 - (ii) a pupil referral unit,
 - (b) special educational provision is made for him at the school because it is considered that he has special educational needs, and
 - (c) his parent has not previously been informed under this section of special educational provision made for him at the school.
- (2) If the school is a pupil referral unit, the local education authority must secure that the head teacher informs the child's parent that special educational provision is being made for him at the school because it is considered that he has special educational needs.
- (3) In any other case, the governing body must inform the child's parent that special educational provision is being made for him there because it is considered that he has special educational needs.”

(2) After subsection (3) of section 123 of the School Standards and Framework Act 1998 (c. 31) (provision for children with special educational needs), insert—

- “(3A) Subsection (3B) applies if—
- (a) a local education authority or other person providing relevant nursery education for a child makes special educational provision for him because it is considered that he has special educational needs;
 - (b) no statement under section 324 of the Education Act 1996 is maintained for the child; and
 - (c) his parent has not previously been informed under subsection (3B) of the special educational provision made for him.
- (3B) The local education authority or other person concerned must inform the child's parent that special educational provision is being made for him because it is considered that he has special educational needs.”

8 **Review or assessment of educational needs at request of responsible body**

In the 1996 Act, insert the following section—

“329A Review or assessment of educational needs at request of responsible body

- (1) This section applies if—
 - (a) a child is a registered pupil at a relevant school (whether or not he is a child in respect of whom a statement is maintained under section 324),
 - (b) the responsible body asks the local education authority to arrange for an assessment to be made in respect of him under section 323, and
 - (c) no such assessment has been made within the period of six months ending with the date on which the request is made.
- (2) If it is necessary for the authority to make an assessment or further assessment under section 323, they must comply with the request.
- (3) Before deciding whether to comply with the request, the authority must serve on the child’s parent a notice informing him—
 - (a) that they are considering whether 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 their officer from whom further information may be obtained, and
 - (d) of the parent’s right to make representations, and submit written evidence, to them before the end of the period specified in the notice (“the specified period”).
- (4) The specified period must not be less than 29 days beginning with the date on which the notice is served.
- (5) The authority may not decide whether to comply with the request until the specified period has expired.
- (6) The authority must take into account any representations made, and any evidence submitted, to them in response to the notice.
- (7) If, as a result of this section, a local education authority decide to make an assessment under section 323, they must give written notice to the child’s parent and to the responsible body which made the request, of the decision and of their reasons for making it.
- (8) If, after serving a notice under subsection (3), the authority decide not to assess the educational needs of the child—
 - (a) they must give written notice of the decision and of their reasons for making it to his parent and to the responsible body which made the request, and
 - (b) the parent may appeal to the Tribunal against the decision.
- (9) A notice given under subsection (8)(a) to the child’s parent must—
 - (a) inform the parent of his right to appeal, and
 - (b) contain such other information (if any) as may be prescribed.
- (10) On an appeal under subsection (8) the Tribunal may—
 - (a) dismiss it, or

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- (b) order the authority to arrange for an assessment to be made in respect of the child under section 323.
- (11) This section applies to a child for whom relevant nursery education is provided as it applies to a child who is a registered pupil at a relevant school.
- (12) “Relevant school” means—
 - (a) a maintained school,
 - (b) a maintained nursery school,
 - (c) a pupil referral unit,
 - (d) an independent school,
 - (e) a school approved under section 342.
- (13) “The responsible body” means—
 - (a) in relation to a maintained nursery school or a pupil referral unit, the head teacher,
 - (b) in relation to any other relevant school, the proprietor or head teacher, and
 - (c) in relation to a provider of relevant nursery education, the person or body of persons responsible for the management of the provision of that nursery education.
- (14) “Relevant nursery education” has the same meaning as in section 123 of the School Standards and Framework Act 1998, except that it does not include nursery education provided by a local education authority at a maintained nursery school.
- (15) “Prescribed”, in relation to Wales, means prescribed in regulations made by the National Assembly for Wales.”

9 Duty to specify named school

In section 324 of the 1996 Act (statement of special educational needs), after subsection (4) insert—

“(4A) Subsection (4)(b) does not require the name of a school or institution to be specified if the child’s parent has made suitable arrangements for the special educational provision specified in the statement to be made for the child.”

Amendment of statement of special educational needs

10 Amendment of statement of special educational needs

Schedule 1 makes further provision concerning the rights of parents and others where a statement of special educational needs is amended.