

6. Amendment & Cessation of a Statement

The LEA's procedure is summarised on two flowcharts to be found in Appendix D to this document:

9. Amendment of a Statement, and
10. Cessation of a Statement

6.1 The Amendment of a Statement

A proposal to amend a statement will most often arise from the annual review. The parents should already have received copies of the review report and the LEA's recommendations. An amendment may also arise as a direct result of a parental request for a statutory re-assessment, the procedure for which is described in sections 2.45-2.49 above.

The LEA may not amend a statement except in accordance with paragraph 2A of Schedule 27 to the Act (as modified by the SEN & Disability Act 2001). This requirement, however, does not apply:

- where the statement is amended in compliance with an order of the Tribunal
- where the statement is amended as a result of directions made under section 442(4) of the Act (revocation of school attendance order at the request of the parent)

Note that LEA agreement to change the name of the school in the statement at the request of a parent does not constitute an amendment proposed by the LEA and hence does not have to follow the prescribed amendment procedure.

6.2 Where the LEA are of the opinion that an amendment is appropriate, they will, as required, write (SEN31 – version A, B or C as appropriate) to the parents informing them of the proposal, and of their right, under paragraph 4 of Schedule 27 of the Act, to make representations within a period of 15 days beginning with the date on which the letter was 'served'. The amendments proposed will be detailed on an attached form (SEN32).

6.3 In order to reach a decision, the LEA will consider the last review report, any advice submitted for that review, and any representations made by the parents. The LEA will write to the parents to advise them of their decision.

If the LEA decides not to amend the statement, they will write (letter XX17) to the parents within 8 weeks of the original proposal letter (the SEN31 – version A, B or C as appropriate).

- 6.4 When the LEA decides to make an amendment they will write (letter SEN33) to the parents to advise them accordingly. Attached to the letter will be a copy of the amended statement. The letter will inform the parents of their right under section 326(1) of the Act to appeal to the Tribunal against the description in the statement of the authority's assessment of the child's special educational needs, the special educational provision specified in the statement or, if no school is named in the statement, that fact.

Under Regulation 14(6), the LEA must make the amendment within 8 weeks of sending the letter of proposal to the parents (the SEN31 letter).

6.5 Parental Request for a Change of Named School

Under paragraph 8 of Schedule 27 of the Act (as amended by the Standards and Framework Act 1998 and the SEN & Disability Act 2001), the parent of a child for whom a statement is maintained may ask the LEA to change the school or institution named in the statement to that of a maintained school. (i.e. this procedure ONLY applies where the school named by the parent is a **maintained school**).

The LEA have a qualified duty to comply with this request, provided it is not made less than 12 months after -

- (a) a similar request
- (b) the sending of a final or final amended statement to the parents
- (c) the date when any appeal to the Tribunal was concluded

If one or more of these conditions apply, then the 12 months period would be taken from whichever date occurred later. If this time period is 12 months or more, then

The LEA shall comply with the request unless -

- (a) the school is unsuitable to the child's age, ability or aptitude or to his special educational needs, or
- (b) the attendance of the child at the school would be incompatible with the provision of efficient education for the children with whom he would be educated or the efficient use of resources.

[Act, Schedule 27(8)(2)]

6.6 Under Regulation 17(5), provided the request falls outside the 12 months period listed in 6.5 above, the LEA must respond to the parental request within 8 weeks from the date on which it was received. Before naming a new school, the LEA would first consult with the governing body, and, if the school is maintained by another authority, that LEA.

6.7 Where the LEA decide to comply with this parental request, they will write (SEN48) to the parents within 8 weeks from the date the request was received, to inform them accordingly. Under paragraph 326(2)(a) of the Act the parents then have **no right of appeal** against the contents of the statement.

Where the LEA decide not to comply with this parental request, they will write (SEN49) to the parents within 8 weeks from the date the request was received, to inform them accordingly. The parents will be advised, in the letter, of their right, under paragraph 8(3)(b) of Schedule 27 of the Act, to appeal to the Tribunal against the LEA's decision.

6.8 **The Cessation of a Statement**

A proposal to cease to maintain a statement will most often arise from the annual review. The parents should already have received copies of the review report and the LEA's recommendations. A cessation may also arise as a direct result of a parental request.

The LEA may not cease to maintain a statement except in accordance with paragraph 11 of Schedule 27 to the Act. This requirement, however, does not apply [Schedule 27(9)]:

- where the LEA cease to maintain a statement for a child who has ceased to be a child for whom they are responsible, or
- where the LEA are ordered to cease to maintain a statement as a result of an order by a Tribunal

6.9 Where the LEA are of the opinion that it is no longer necessary to maintain a statement, they will write (SEN34) to the parents advising them of the LEA's proposal. Parents will be given 15 days in which to make representations to the LEA.

Where, following this period, the LEA are still of the opinion that it is no longer necessary to maintain the statement, they will write (SEN35) to the parents informing them of their decision. The parents will be advised of their right to appeal to the Tribunal against the LEA's decision.

6.10 Under Regulation 17(8), the LEA shall not cease to maintain the statement -

.....before the expiry of the prescribed period during which the parent may appeal to the Tribunal against the determination.

[Regulation 17(8)]

The “prescribed period” is noted under paragraph 7(3) of The Special Educational Needs Tribunal Regulations 2001. A parent must deliver the notice of appeal to the Secretary of the Tribunal so that it is received no later than the first working day after the expiry of 2 months from the date on which the authority gave the parents notice that they had a right of appeal. Thus, the LEA will only be able to cease to maintain the statement within the period of 8-12 weeks from the date of the decision letter (SEN35) to the parents.

6.11 If the parents do appeal, then paragraph 11(5) of Schedule 27 of the Act states that the LEA cannot cease the statement if the appeal has not been determined by the Tribunal or withdrawn.

6.12 A statement will generally remain in force until and unless the LEA ceases to maintain it. However, as noted in the Code:

A statement will lapse automatically when a young person moves into further or higher education. Therefore, if the young person, the parents, the LEA and the further education institution are all in agreement about the young person’s transfer, there is no need to formally cease the statement since the young person will cease to be a pupil for whom the LEA is responsible after leaving school, and so the statement will lapse.

[Code 8:121]

6.13 **The Disabled Persons (Services, Consultation and Representation) Act 1986**

Section 5(3) of this Act sets out procedures for notifying the Social Services Department of any school leavers who have been registered as ‘disabled’ by them. Specifically, the LEA must notify them during the 8-12 month period before the date they are due to leave (8 months is the latest and 12 months the earliest).

On September of each year, the LEA will check with schools whether any children recorded as ‘disabled’ are due to leave school in the following summer. We will do this by generating a standard report (XX)

for each school listing those children in years 11 or above who are registered as disabled. The school will be asked to inform the LEA, by the end of September, of any children who are due to leave. In October of each year, the LEA will generate a standard report from its SEN database listing all those potential school leavers registered as disabled (giving name, dob, school and address). This will be sent to the Social Services Department with a covering letter advising them of the likelihood of the pupils listed ceasing to receive full-time education.

- 6.14 If the LEA learns of any 'disabled' school-leaver whose name has not already been notified to Social Services then, as required by section 5(4) of this Act, the LEA will notify them as soon as reasonably practicable.