
STATUTORY INSTRUMENTS

1994 No. 1047

The Education (Special Educational Needs) Regulations 1994

PART III

STATEMENTS

Notice accompanying a proposed statement

12. The notice which shall accompany a copy of a proposed statement served on the parent pursuant to paragraph 2 of Schedule 10 to the Act shall be in a form substantially corresponding to that set out in Part A of the Schedule and shall contain the information therein specified.

Statement of special educational needs

13. A statement of a child's special educational needs made under section 168(1) shall be in a form substantially corresponding to that set out in Part B of the Schedule, shall contain the information therein specified, and shall be dated and authenticated by the signature of a duly authorised officer of the authority concerned.

Time limits

14.—(1) Where under section 167 an authority have made an assessment of the educational needs of a child for whom no statement is maintained they shall within two weeks of the date on which the assessment was completed either—

- (a) serve a copy of a proposed statement and a written notice on the child's parent under paragraph 2 of Schedule 10 to the Act, or
- (b) give notice in writing to the child's parent under section 169(1) that they have decided not to make a statement and that he may appeal against that decision to the Tribunal.

(2) Where under section 167 an authority have made an assessment of the educational needs of a child for whom a statement is maintained they shall within two weeks of the date on which the assessment was completed—

- (a) under paragraph 10(1) of Schedule 10 to the Act serve on the child's parent a notice that they propose to amend the statement and of his right to make representations;
- (b) under paragraph 11(2) of Schedule 10 to the Act give notice to the child's parent that they have determined to cease to maintain the statement and of his right of appeal to the Tribunal; or
- (c) serve on the child's parent a notice which informs him that they have determined not to amend the statement and their reasons for that determination, which is accompanied by copies of the professional advice obtained during the assessment, and which informs the child's parent that under section 170(1)(c) he may 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.

(3) Subject to paragraph (4), where an authority have served a copy of a proposed statement on the child's parent under paragraph 2 of Schedule 10 to the Act they shall within 8 weeks of the date on which the proposed statement was served serve a copy of the completed statement and a written notice on the child's parent under paragraph 6 of that Schedule, or give notice to the child's parent that they have decided not to make a statement.

(4) The authority need not comply with the time limit referred to in paragraph (3) if it is impractical to do so because—

- (a) exceptional personal circumstances affect the child or his parent during the 8 week period referred to in paragraph (3);
- (b) the child or his parent are absent from the area of the authority for a continuous period of not less than 4 weeks during the 8 week period referred to in paragraph (3);
- (c) the child's parent indicates that he wishes to make representations to the authority about the content of the statement under paragraph 4(1)(a) of Schedule 10 to the Act after the expiry of the 15 day period for making such representations provided for in paragraph 4(4) of that Schedule;
- (d) a meeting between the child's parent and an officer of the authority has been held pursuant to paragraph 4(1)(b) of Schedule 10 to the Act and the child's parent has required that another such meeting be arranged or under paragraph 4(2) of that Schedule has required a meeting with the appropriate person under to be arranged; or
- (e) the authority have sent a written request to the Secretary of State seeking his consent under section 189(5)(b) to the child being educated at an independent school which is not approved by him and such consent has not been received by the authority within two weeks of the date on which the request was sent.

(5) Where under paragraph 8(1) of Schedule 10 to the Act the child's parent asks the authority to substitute for the name of a school or institution specified in a statement the name of another school specified by him and where the condition referred to in paragraph 8(1)(b) of that Schedule has been satisfied the authority shall within 8 weeks of the date on which the request was received either—

- (a) comply with the request; or
- (b) give notice to the child's parent under paragraph 8(3) of that Schedule that they have determined not to comply with the request and that he may appeal against that determination to the Tribunal.

(6) Where under paragraph 10(1) of Schedule 10 to the Act an authority serve a notice on the child's parent informing him of their proposal to amend a statement they shall not amend the statement after the expiry of 8 weeks from the date on which the notice was served.

(7) Where under paragraph 11(2) of Schedule 10 to the Act an authority give notice to the child's parent that they have determined to cease to maintain a statement they shall not cease to maintain the statement—

- (a) before the expiry of the prescribed period during which the parent may appeal to the Tribunal against the determination, or
- (b) after the expiry of 4 weeks from the end of that period.

Review of statement where child not aged 14 attends school

15.—(1) This regulation applies where—

- (a) an authority review a statement under section 172(5) other than on the making of an assessment,
- (b) the child concerned attends a school, and
- (c) regulation 16 does not apply.

(2) The authority shall by notice in writing require the head teacher of the child's school to submit a report to them under this regulation by a specified date not less than two months from the date the notice is given and shall send a copy of the notice to the child's parent.

(3) The head teacher shall for the purpose of preparing the report referred to in paragraph (2) seek advice as to the matters referred to in paragraph (4) from—

- (a) the child's parent;
- (b) any person whose advice the authority consider appropriate for the purpose of arriving at a satisfactory report and whom they specify in the notice referred to in paragraph (2), and
- (c) any person whose advice the head teacher considers appropriate for the purpose of arriving at a satisfactory report.

(4) The advice referred to in paragraph (3) shall be written advice as to—

- (a) the child's progress towards meeting the objectives specified in the statement;
- (b) the child's progress towards attaining any targets established in furtherance of the objectives specified in the statement;
- (c) where the school is not established in a hospital and is a maintained, grant-maintained or grant-maintained special school, the application of the provisions of the National Curriculum to the child;
- (d) where the school is not established in a hospital and is a maintained, grant-maintained or grant-maintained special school, the application of any provisions substituted for the provisions of the National Curriculum in order to maintain a balanced and broadly based curriculum;
- (e) where appropriate, and in any case where a transition plan exists, any matters which are the appropriate subject of such a plan;
- (f) whether the statement continues to be appropriate;
- (g) any amendments to the statement which would be appropriate; and
- (h) whether the authority should cease to maintain the statement.

(5) The notice referred to in paragraph (2) shall require the head teacher to invite the following persons to attend a meeting to be held on a date before the report referred to in that paragraph is submitted—

- (a) the representative of the authority specified in the notice,
- (b) the child's parent,
- (c) a member or members of the staff of the school who teach the child or who are otherwise responsible for the provision of education for the child whose attendance the head teacher considers appropriate,
- (d) any other person whose attendance the head teacher considers appropriate, and
- (e) any person whose attendance the authority consider appropriate and who is specified in the notice.

(6) The head teacher shall not later than two weeks before the date on which a meeting referred to in paragraph (5) is to be held send to all the persons invited to that meeting copies of the advice he has received pursuant to his request under paragraph (3) and by written notice accompanying the copies shall request the recipients to submit to him before or at the meeting written comments on that advice and any other advice which they think appropriate.

(7) The meeting referred to in paragraph (5) shall consider—

- (a) the matters referred to in paragraph (4); and

- (b) any significant changes in the child's circumstances since the date on which the statement was made or last reviewed.
- (8) The meeting shall recommend—
 - (a) any steps which it concludes ought to be taken, including whether the authority should amend or cease to maintain the statement,
 - (b) any targets to be established in furtherance of the objectives specified in the statement which it concludes the child ought to meet during the period until the next review, and
 - (c) where a transition plan exists, the matters which it concludes ought to be included in that plan. d
- (9) If the meeting cannot agree the recommendations to be made under paragraph (8) the persons who attended the meeting shall make differing recommendations as appears necessary to each of them.
- (10) The report to be submitted under paragraph (2) shall be completed after the meeting is held and shall include the head teacher's assessment of the matters referred to in paragraph (7) and his recommendations as to the matters referred to in paragraph (8), and shall refer to any difference between his assessment and recommendations and those of the meeting.
- (11) When the head teacher submits his report to the authority under paragraph (2) he shall at the same time send copies to—
 - (a) the child's parent,
 - (b) the persons from whom the head teacher sought advice under paragraph (3),
 - (c) the persons who were invited to attend the meeting in accordance with paragraph (5),
 - (d) any other person to whom the authority consider it appropriate that a copy be sent and to whom they direct him to send a copy, and
 - (e) any other person to whom the head teacher considers it appropriate that a copy be sent.
- (12) The authority shall review the statement under section 172(5) in light of the report and any other information or advice which they consider relevant, shall make written recommendations as to the matters referred to in paragraph (8)(a) and (b) and, where a transition plan exists, shall amend the plan as they consider appropriate.
- (13) The authority shall within one week of completing the review under section 172(5) send copies of the recommendations and any transition plan referred to in paragraph (12) to—
 - (a) the child's parent;
 - (b) the head teacher;
 - (c) the persons from whom the head teacher sought advice under paragraph (3);
 - (d) the persons who were invited to attend the meeting in accordance with paragraph (5), and
 - (e) any other person to whom the authority consider it appropriate that a copy be sent.

Review of statement where child aged 14 attends school

- 16.—**(1) This regulation applies where—
- (a) an authority review a statement under section 172(5) other than on the making of an assessment,
 - (b) the child concerned attends a school, and
 - (c) the review is the first review commenced after the child has attained the age of 14 years.

(2) The authority shall for the purpose of preparing a report under this regulation by notice in writing require the head teacher of the child's school to seek the advice referred to in regulation 15(4), including in all cases advice as to the matters referred to in regulation 15(4)(e), from—

- (a) the child's parent,
- (b) any person whose advice the authority consider appropriate for the purpose of arriving at a satisfactory report and whom they specify in the notice referred to above, and
- (c) any person whose advice the head teacher considers appropriate for the purpose of arriving at a satisfactory report.

(3) The authority shall invite the following persons to attend a meeting to be held on a date before the review referred to in paragraph (1) is required to be completed—

- (a) the child's parent;
- (b) a member or members of the staff of the school who teach the child or who are otherwise responsible for the provision of education for the child whose attendance the head teacher considers appropriate and whom he has asked the authority to invite;
- (c) a representative of the social services authority;
- (d) a person providing careers services under sections 8 to 10 of the Employment and Training Act 1973⁽¹⁾;
- (e) any person whose attendance the head teacher considers appropriate and whom he has asked the authority to invite;and
- (f) any person whose attendance the authority consider appropriate.

(4) The head teacher shall not later than two weeks before the date on which the meeting referred to in paragraph (3) is to be held serve on all the persons invited to attend that meeting copies of the advice he has received pursuant to his request under paragraph (2) and shall by written notice request the recipients to submit to him before or at the meetingwritten comments on that advice and any other advice which they think appropriate.

(5) A representative of the authority shall attend the meeting.

(6) The meeting shall consider the matters referred to in regulation 15(7), in all cases including the matters referred to in regulation 15(4)(e), and shall make recommendations in accordance with regulation 15(8) and (9), in all cases includingrecommendations as to the matters referred to in regulation 15(8)(c).

(7) The report to be prepared by the authority under paragraph (2) shall be completed after the meeting, shall Ucontain the authority's assessment of the matters required to be considered by the meeting and their recommendations as to the matters required to be recommended by it and shall refer to any difference between their assessment and recommendations and those of the meeting.

(8) The authority shall within one week of the date on which the meeting was held send copies of the reportcompleted under paragraph (7) to—

- (a) the child's parent;
- (b) the head teacher;
- (c) the persons fro whom the head teacher sought advice under paragraph (2);
- (d) the persons who were invited to attend the meeting under paragraph (3); and
- (e) any person to whom they consider it appropriate to send a copy.

(9) The authority shall review the statement under section 172(5) in light of the report and any other information or advice which it considers relevant, shall make written recommendations as to the matters referred to in regulation 15(8)(a)and (b), and shall prepare a transition plan.

(1) 1973 c. 50. Sections 8 to 10 were replaced by section 45 of the Trade Union and Employment Rights Act 1993 (c. 19).

(10) The authority shall within one week of completing the review under section 172(5) send copies of the recommendations and the transition plan referred to in paragraph (9) to the persons referred to in paragraph (8).

Review of statement where child does not attend school

17.—(1) This regulation applies where an authority review a statement under section 172(5) other than on the making of an assessment and the child concerned does not attend a school. 6§

(2) The authority shall prepare a report addressing the matters referred to in regulation 15(4), including the matters referred to in regulation 15(4)(e) in any case where the review referred to in paragraph (1) is commenced after the child has attained the age of 14 years or older, and for that purpose shall seek advice on those matters from the child's parent any other person whose advice they consider appropriate in the case in question for the purpose of arriving at a satisfactory report.

(3) The authority shall invite the following persons to attend a meeting to be held on a date before the review referred to in paragraph (1) is required to be completed—

- (a) the child's parent;
- (b) where the review referred to in paragraph (1) is the first review commenced after the child has attained the age of 14 years, a representative of the social services authority;
- (c) where subparagraph (b) applies, a person providing careers services under sections 8 to 10 of the Employment and Training Act 1973; and
- (d) any person or persons whose attendance the authority consider appropriate.

(4) The authority shall not later than two weeks before the date on which the meeting referred to in paragraph (3) is to be held send to all the persons invited to that meeting a copy of the report which they propose to make under paragraph (2) and by written notice accompanying the copies shall request the recipients to submit to the authority written comments on the report and any other advice which they think appropriate.

(5) A representative of the authority shall attend the meeting.

(6) The meeting shall consider the matters referred to in regulation 15(7), including in any case where the review is commenced after the child has attained the age of 14 years the matters referred to in regulation 15(4)(e), and shall make recommendations in accordance with regulation 15(8) and (9), including in any case where the child has attained the age of 14 years or older as aforesaid recommendations as to the matters referred to in regulation 15(8)(c).

(7) The report prepared by the authority under paragraph (2) shall be completed after the meeting referred to in paragraph (3) is held, shall contain the authority's assessment of the matters required to be considered by the meeting and their recommendations as to the matters required to be recommended by it, and shall refer to any difference between their assessment and recommendations and those of the meeting.

(8) The authority shall within one week of the date on which the meeting referred to in paragraph (3) was held send copies of the report completed under paragraph (7) to—

- (a) the child's parent;
- (b) the persons from whom they sought advice under paragraph (2);
- (c) the persons who were invited to attend the meeting under paragraph (3); and
- (d) any person to whom they consider it appropriate to send a copy.

(9) The authority shall review the statement under section 172(5) in light of the report and any other information or advice which it considers relevant, shall make written recommendations as to the matters referred to in regulation 15(8)(a) and (b), in any case where the review is the first review commenced after the child has attained the age of 14 years prepare a transition plan, and in any case where a transition plan exists amend the plan as they consider appropriate.

(10) The authority shall within one week of completing the review under section 172(5) send copies of their recommendations and any transition plan referred to in paragraph (9) to the persons referred to in paragraph (8).

Transfer of statements

18.—(1) This regulation applies where a child in respect of whom a statement is maintained moves from the area of the authority which maintains the statement (“the old authority”) into that of another (“the new authority”).

(2) The old authority shall transfer the statement to the new authority, and from the date of the transfer—

- (a) the statement shall be treated for the purposes of the new authority’s duties and functions under Part III of the Act and these Regulations as if it had been made by the new authority on the date on which it was made by the old authority, and
- (b) where the new authority make an assessment under section 167 and the old authority have supplied the new authority with advice obtained in pursuance of a previous assessment regulation 6(5) shall apply as if the new authority had obtained the advice on the date on which the old authority obtained it.

(3) The new authority shall within 6 weeks of the date of the transfer serve a notice on the child’s parent informing him—

- (a) that the statement has been transferred,
- (b) whether they proposed to make an assessment under section 167, and
- (c) when they propose to review the statement in accordance with paragraph (4).

(4) The new authority shall review the statement under section 172(5) before the expiry of whichever of the following two periods expires later—

- (a) the period of twelve months beginning with the making of the statement, or as the case may be, with the previous review, or
- (b) the period of three months beginning with the date of the transfer.

(5) Where by virtue of the transfer the new authority come under a duty to arrange the child’s attendance at a school specified in the statement but in light of the child’s move that attendance is no longer practicable the new authority may arrange for the child’s attendance at another school appropriate for the child until such time as it is possible to amend the statement in accordance with paragraph 10 of Schedule 10 to the Act.

Restriction on disclosure of statements

19.—(1) Subject to the provisions of the Act and of these Regulations, a statement in respect of a child shall not be disclosed without the parent’s consent except—

- (a) to persons to whom, in the opinion of the authority concerned, the statement should be disclosed in the interests of the child;
- (b) for the purposes of any appeal under the Act;
- (c) for the purposes of educational research which, in the opinion of the authority, may advance the education of children with special educational needs, if, but only if, the person engaged in that research undertakes not to publish anything contained in, or derived from, a statement otherwise than in a form which does not identify any individual concerned including, in particular, the child concerned and his parent;
- (d) on the order of any court or for the purposes of any criminal proceedings;

- (e) for the purposes of any investigation under Part III of the Local Government Act 1974 (investigation of maladministration)(2);
 - (f) to the Secretary of State when he requests such disclosure for the purposes of deciding whether to give directions or make an order under section 68 or 99 of the Education Act 1944(3);
 - (g) for the purposes of an assessment of the needs of the child with respect to the provision of any statutory services for him being carried out by officers of a social services authority by virtue of arrangements made under section 5(5) of the Disabled Persons (Services, Consultation and Representation) Act 1986(4);
 - (h) for the purposes of a local authority in the performance of their duties under sections 22(3)(a), 85(4)(a), 86(3)(a) and 87(3) of the Children Act 1989(5); or
 - (i) to one of Her Majesty's Inspectors of Schools, or to a registered inspector or a member of an inspection team, who requests the right to inspect or take copies of a statement in accordance with section 3(3) of or paragraph 7 of Schedule 2 to the Education (Schools) Act 1992(6) respectively.
- (2) The arrangements for keeping such statements shall be such as to ensure, so far as is reasonably practicable, that unauthorised persons do not have access to them.
- (3) In this regulation any reference to a statement includes a reference to any representations, evidence, advice or information which is set out in the appendices to a statement.

(2) 1974 c. 7; Part III has been amended by paragraph 9(1) of Schedule 10 to the Community Land Act 1975 (c. 77), by paragraph 14 of Schedule 22 and Part XI of Schedule 34 to the Local Government, Planning and Land Act 1980 (c. 65), by paragraph 51(a) of Schedule 14 to the Local Government Act 1985 (c. 51), by paragraph 4 of Schedule 3 to the Local Government Act 1988 (c. 9), by paragraph 19 of Schedule 17 to the Housing Act 1988 (c. 50), by sections 23(1), (25, 194(1) and (4), and 195(2) of, and paragraph 38 of Schedule 11 and Part II of Schedule 12 to, the Local Government and Housing Act 1989 (c. 42), by section 1(6) of and paragraph 12 of Schedule 1 and paragraph 3 of Schedule 26 to the Water Act 1989 (c. 15), and by section 2(1) of and paragraph 25 of Schedule 1 to the Water Consolidation (Consequential Provisions) Act 1991(c. 60).

(3) 1944 c. 31.

(4) 1986 c. 33.

(5) 1989 c. 41.

(6) 1992 c. 38; paragraph 7 of Schedule 2 was amended by the Education Act 1993 (c. 35), Schedule 19 paragraph 173(4).