

Generational Reform to Special Educational Provision: Implications for Local Authorities

Lauren Fullerton¹ & Arran Dowling-Hussey²

This is an analysis of the Government's February 2026 programme of reform for Special Educational Needs and Disabilities (SEND). It examines the implications for local authorities, including statutory duties, litigation risk, public law accountability, and transitional governance. The well heralded reforms, announced on 23 February 2026, which were slightly delayed, represent the most significant restructuring of the SEND system since the 2014 introduction of Education, Health and Care Plans (EHCPs).³

1. Overview of the Reform Programme

The Department for Education ('DfE') published the '*Schools White Paper Every Child Achieving and Thriving together with SEND Reform: Putting Children and Young People First.*'⁴ This document, released as set out in late February, introduce *inter alia* national inclusion standards, a major funding package, and a progressive shift towards mainstream support.⁵ The reforms aim to reduce reliance on EHCPs, now projected to stabilise by 2035 after a decade of sustained increases.⁶ While EHCPs remain statutory, new *Individual Support Plans* ('ISPs') will become the primary mechanism for documenting support in mainstream settings. Local authorities will therefore navigate two overlapping regimes for several years.

2. EHCPs: Continued Statutory Exposure

Despite the Government's ambition to limit EHCPs to pupils with the most complex needs, EHCPs remain legally binding. The long-term reduction in EHCP numbers is anticipated to arise not from statutory reform but from enhanced mainstream

¹ Lauren Fullerton is a barrister practising at 4-5 Gray's Inn Square she is a member of chambers Education Group and can be contacted at lfullerton@4-5.co.uk

² Arran Dowling-Hussey is a barrister practising at 4-5 Gray's Inn Square she is a member of chambers Education Group and can be contacted at adhussey@4-5.co.uk

³ Department for Education and Bridget Phillipson MP, 'Specialist SEND support in every school and community' (Press Release, 23 February 2026).

⁴ Department for Education, *Every Child Achieving and Thriving: Schools White Paper* (23 February 2026).

⁵ Birmingham City Council, *SEND Reform White Paper Summary – February 2026* (2026).

⁶ Kiran Stacey and Ben Quinn, 'Fewer children in England to get EHCPs by 2035 under SEND overhaul' *The Guardian* (London, 23 February 2026).

support and increased early intervention.⁷ Local authorities should expect increased challenge at assessment and decision-to-issue stages, including allegations of fettering discretion or applying unlawfully restrictive thresholds. Because EHCPs continue to confer enforceable rights, they will remain the focal point of SEND Tribunal litigation.⁸ Disputes are likely to intensify where parents perceive inconsistent, or resource-driven, decision-making, particularly during the transition period.

3. Individual Support Plans and Public Law Risk

Individual Support Plans ('ISPs') will apply to pupils receiving targeted or specialist support without an EHCP.⁹ Although non-statutory, ISPs will have legal significance. They will be subject to public law standards of fairness, rationality, and consistency. Parents who cannot appeal to the SEND Tribunal may instead pursue challenge by judicial review or under the Equality Act 2010. This represents a substantial change in the litigation landscape. Instead of Tribunal-led adjudication, local authorities will face more pre-action correspondence, systemic challenges, and discrimination claims. ISPs must therefore be supported by robust evidence, transparent reasoning, and consistent criteria.

4. Mainstream Inclusion Standards and Equality Duties

National inclusion standards will define the baseline support available in every school.¹⁰ These standards interact directly with existing Equality Act 2010 duties, including the obligation to make reasonable adjustments. Local authorities remain responsible for strategic oversight of mainstream provision in their areas. If inclusion standards are not met, or if reasonable adjustments are not delivered, authorities may face challenge on grounds including: (a) disability discrimination; (b) failure to ensure appropriate mainstream placements; or (c) systemic failures in local SEND pathways. As statutory routes narrow, Equality Act litigation is likely to become more prominent, particularly where children with complex needs rely on multiple forms of intervention in mainstream settings.

5. Funding, Capacity and Defensibility

The Government has committed over £7 billion to SEND reform, comprising: £1.6bn for the Inclusive Mainstream Fund; £1.8bn for the 'Experts at Hand' workforce model; £3.7bn capital investment for accessibility and special school places; and more than

⁷ Ibid.

⁸ Ibid.

⁹ Supra, note 5.

¹⁰ Supra, note 3.

£200m for workforce training.¹¹ While this represents a substantial investment, funding adequacy will remain central to the defensibility of local decision-making. Historically, local authorities have struggled to defend decisions where resource constraints hindered delivery. The reformed system intensifies this risk: failure to meet national inclusion standards may expose authorities to public-law and equality-based challenge. Local authorities should ensure that funding allocations, workforce planning, and commissioning arrangements are documented and linked transparently to decisions about support.

6. Transition Period: Governance and Litigation Risk

The transition to the new system will take place between 2029 and 2035. Assessments will begin under the new regime from 2029, while no changes will be made to existing EHCPs before 2030.¹² Transition from EHCPs to ISPs will only occur at natural educational stages. No child will lose existing support or a special-school placement during this period.¹³ The extended transition creates significant legal risk due to the coexistence of two systems. Challenges may arise regarding:

- inconsistency between local policies and national guidance;
- delays in assessment or transfer between regimes;
- confusion over cohort-specific rights;
- legitimate expectation claims based on assurances.

Local authorities must therefore adopt robust transition governance frameworks, with early legal involvement to ensure compliance with statutory duties.

7. Key Practice Points for Local Authority Lawyers

Local authority legal teams should focus on:

- auditing assessment pathways to ensure lawful criteria and documentation;
- applying public-law standards rigorously to ISP decision-making;
- preparing for an increase in Equality Act claims;
- implementing strong oversight mechanisms for inclusion standards;
- contributing to transition planning from an early stage; and
- maintaining comprehensive records of decisions and rationales.

8. Conclusion

¹¹ Supra note 3; supra note 5.

¹² Supra note 5.

¹³ Contact, 'The Schools White Paper and SEND Reforms' (23 February 2026).

February 2026 reforms reshape rather than reduce legal exposure for local authorities. EHCP litigation will continue to dominate in the short term, while challenges under public law and the Equality Act will increase as ISPs become the principal support mechanism. Effective governance, resourcing, and documentation will be critical to navigating the next decade of SEND reform.

Members of 4-5 Gray's Inn Square's Education Group can advise on all aspects of education law. For enquiries as to the professional availability of members of the group please email: clerks@4-5.co.uk