



# SENlegal

NEWSLETTER

Issue 24  
Phase Transfer Special Edition



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Congratulations to the winner of our  
Christmas Card Design Competition 2025!

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topics covered in our Newsletter?

01284 723952

customerservices@senlegal.co.uk

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# Phase Transfer Timeline

In the Spring of each year, Local Authorities across the country have a statutory deadline to produce a finalised EHC Plan for every child and young person moving between a 'phase' of education, i.e. from Primary to Secondary School. **The deadline is 31 March for transfers from secondary to post-16, and 15 February for any other phase transfer, i.e. primary to secondary.**

These deadlines are so that children/young people have ample time for transition into a new placement, and so that there is plenty of time for Appeals to be brought, heard and concluded in the SEND Tribunal in time for the new school year where there are disagreements. However, this is only possible if Local Authorities meet their phase transfer deadlines.

With the Tribunal working at absolute capacity this year, it is more important than ever to ensure that this deadline is being met.

For children transferring from Early Years to Primary, Primary to Secondary (and everything in between and before) - You should have already had your Annual Review/Phase Transfer Review to meet the final deadline. If you haven't it's important you get your school to arrange it as soon as possible in the new year.

For young people transferring from Secondary to post 16 and from post-16 onwards, you also want to ensure your annual review/phase transfer review takes place at the earliest possible date in January to meet the final deadline.



## Following your Annual Review meeting:

The Local Authority has **4 weeks** to confirm that they will amend the child/young person's EHC Plan. This decision should be accompanied by an amendment notice with a draft amended EHC Plan. Section I of this EHC Plan will be left blank until the plan is finalised.

Young people/Parents have **15 days** to make comments on the EHC Plan, it is important you ensure that you have your say on the draft and also specify the placement you would like to be named. The draft will be used to consult with potential placements.

If you are unhappy with the final EHCP when you receive it, you have **two months** from the date of the decision letter enclosing the amended EHC Plan to appeal to the SEND Tribunal. Whether that is primary to secondary, or secondary to post-16, the two-month deadline is the same. The earlier you appeal the more likely your appeal will be heard before the start of the new school year.

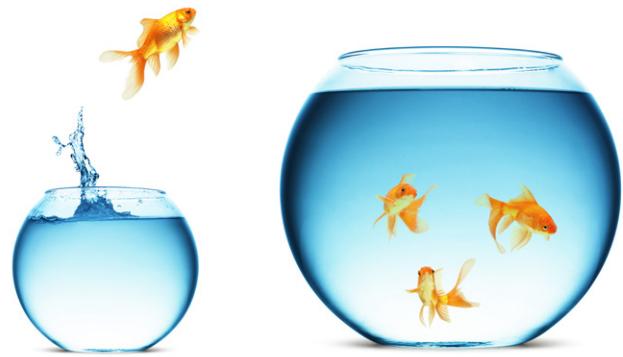
## If you do not receive a final EHCP by 15th February / 31st March:

If you still do not yet have your amended final EHC Plan from your Local Authority by the deadlines above, you should chase this as soon as the deadline passes but do not leave it too long. If the deadline passes and you are having no luck chasing the final EHCP, you should also consider whether you need to issue a Pre-Action Protocol Letter to obtain this, if so, we can assist.



# Local Authorities duty to consult

By Deborah Camp, Solicitor



Most, but not all, phase transfers will require a change of placement. This may be from nursery to primary school, from primary school to secondary school, or from secondary school to a post-16 setting such as sixth form or college. As part of the phase transfer process, you will have the opportunity to state your preference for the school or other educational setting you would like to be named in your child's EHCP from the following academic year.

Where you are requesting a certain type of placement, the Local Authority has a legal duty under **section 39(2) of the Children and Families Act 2014** to consult with the governing body, proprietor or principal of the school. This applies if your preferred placement is:

- a maintained school;
- a maintained nursery school;
- an Academy;
- an institution within the further education sector in England;
- a non-maintained special school; or
- an independent special school or special post-16 institution approved by the Secretary of State under section 41 (also sometimes referred to as a 'section 41 approved setting').

If you request one of the types of schools or colleges listed above, the Local Authority must consult with that setting to identify whether it would be a suitable placement to name in your child's EHCP. The Local Authority must name your preferred placement unless one or more of the exceptions set out in **section 39(4) of the Children and Families Act 2014** applies. The consultation responses will form part of the evidence for the legal test to determine whether any of these exceptions apply. This is explored further in Nicole's article below.

The Local Authority must provide sufficient information to the school to allow it to properly consider the request. This would include your child's current EHCP, with copies of all the appendices referred to in Section K, as well as any other relevant reports such as recent annual review documentation.

The SEND Code of Practice confirms that schools are expected to respond to consultation requests **within 15 days**. You should ask the Local Authority to let you know once the consultations have been sent out so that you can monitor the deadline for the school's response.

If you are requesting an independent school or an independent special school that is not 'Section 41 approved', the Local Authority is not under the same strict duty to consult as it is with other types of schools. That said, the Local Authority must still consider your request and may agree to consult with the school as your preference. Any school must be consulted before being named in Section I of an EHCP.



[www.get-information-schools.service.gov.uk](http://www.get-information-schools.service.gov.uk)

**Helpful tip:** If you are unsure about the type of school or college, you can easily check this using the Get Information about Schools service. This is an online register of all schools and colleges in England and you can search by name, reference number, location or by Local Authority area.

If school type is shown as 'other independent special school' or 'other independent post-16 institution', you will need to scroll down the page to see whether it is a 'Section 41 approved' setting.



# The Right to Parental Preference

By Nicole Lee, Head of Legal

In the approach to the phase-transfer deadlines which impact all children and young people moving from one phase of education to another, it is crucial to remember the underlying legal principle that parents have a right for their children to be educated in accordance with their preference.

This principle can first be found in **Section 9** of the **Education Act 1996**, which states that;

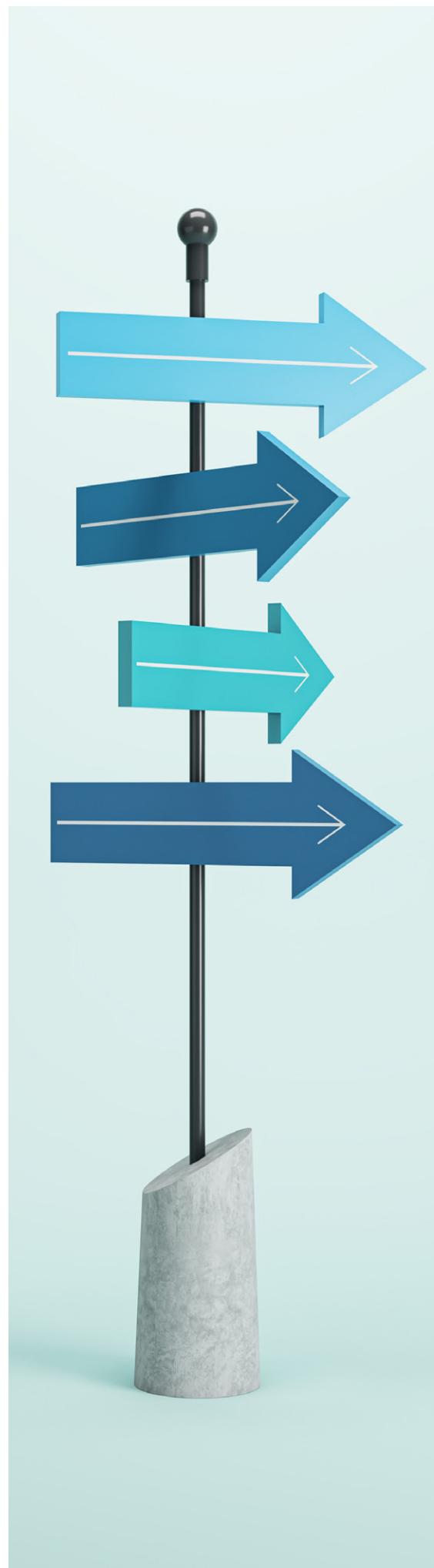
*"In exercising or performing all their respective powers and duties under the Education Acts, the Secretary of State and local authorities shall have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents, so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure."*

In its most basic terms, this means that parents are entitled to their preference of school, and as long as it is a suitable school for that child and is not more expensive than an alternative school which is also suitable. **Section 9** applies to all types of school, including independent mainstream and independent special schools.

The right to parental preference is also contained in **Sections 38 and 39** of the **Children and Families Act 2014**. The right to parental preference under these Sections **does not** however apply to independent mainstream or independent special schools, unless the independent special school is approved under **Section 41** (please see Deborah's article above for further exploration of the different types of schools and the duty for the LA to consult with these).

If you request that one of these 'types' of schools are named in your child's EHC Plan, the baseline legal position is that it should be named, unless one of the very strict legal criteria set out in **Section 39** apply. These are:

- (a) the school or other institution requested is unsuitable for the age, ability, aptitude or special educational needs of the child or young person concerned, or
- (b) the attendance of the child or young person at the requested school or other institution would be incompatible with—
  - (i) the provision of efficient education for others, or
  - (ii) the efficient use of resources.



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The burden of “proving” that one or more of the above criteria apply should be on the school and/or LA, but very often, parents find themselves having to reverse argue the criteria do not apply. Very often, school consultations are lacking in detail, and may even only refer to the wording from **Section 39** e.g. “We are not a suitable placement for Jack, because his placement would prevent the efficient education of others.” This is not sufficient to override the right to parental preference. Case law has clarified that if a school is not named due to the placement being “incompatible with the efficient education of others”, then extensive evidence to support this should be provided. This includes:

- which other children’s education would be affected by the child attending the school.
- was the standard of those other children’s education currently at, or above, the “efficient education” standard?
- what effect would the child’s attendance have on the standard of those other children’s education?
- If the effect was to reduce the standard below that of “efficient education”, was that unavoidable or, for example, could adjustments reasonably be made to avoid that effect?

Unless one of the grounds above can be satisfied, parents are entitled to their preference of maintained school, and the starting position for an LA should be that the preference will be upheld. If you have found that this is not the case, and that your preference is being ignored without good reason, we can help.

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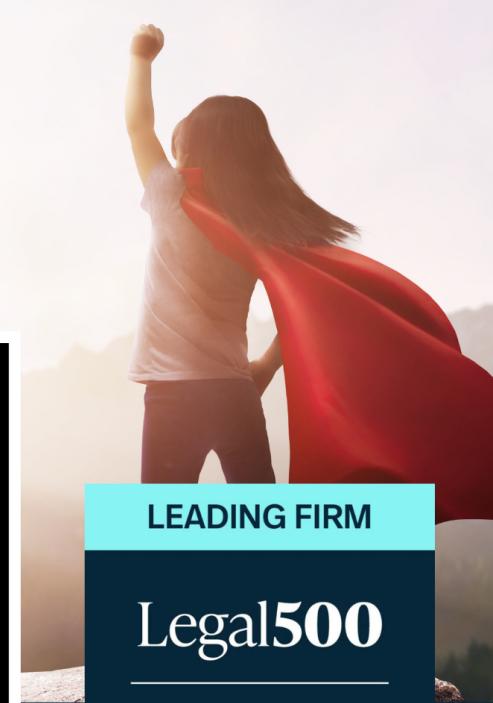


NEXT GENERATION  
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**Richard Nettleton**  
Solicitor & Director

**Hayley Mason-Seager**  
Senior Solicitor & CEO

**Nicole Lee**  
Head of Legal





# Phase Transfer Hearings



By Hayley Mason-Seager, Senior Solicitor & CEO

As many parents will be aware, over the last number of years, the time from when an Appeal is first registered by the SEND Tribunal to the hearing date has been getting longer and longer. Cases that are being registered at present are having to wait on average just over a year before their hearing date.

This is problematic for many reasons; not least because the child/young person at the centre of the appeal has to wait such a long time for an outcome. A year is also a very long time in a child's life and the child/young person's needs could change in this period, which may require updated evidence, and further time and cost to those already in the Appeal process as a result of the delays.

As a result, at the SEND User Group meeting on 17th November 2025, the Tribunal made us aware of a key change for phase transfer cases that they will be introducing from January 2026 to shorten the time that families are waiting for their hearing date.

This means that from January 2026, the first time the Tribunal will look at an Appeal that is registered, is at the point the bundle is filed with the Tribunal. The date the bundle is required to be filed will be included in the Tribunal's Case Management Directions which you receive when an Appeal is registered. At that point, once the bundle has been received, the Tribunal will carry out a 'case review', to determine whether the case is ready to proceed to hearing. If so, the parties will be given a Hearing date, which is expected to be approximately 4 weeks in the future.

This is a key change in the Tribunal process as it means you will no longer receive a Tribunal Hearing date when a parental Appeal is registered. Instead, you must wait for the first case review by the Tribunal, and only at that point will you receive notice of Hearing. Alternatively if the Tribunal feels that the Appeal is not ready to proceed, it is likely a Case Management Hearing will be ordered, or Directions given, to get the parties to a position where they are ready for Hearing.

If this new system works, the Tribunal's intention is that we will end up with a system where Hearing dates are much sooner than they are currently, perhaps getting back to a place where Hearings were heard within 16 weeks of being registered, which is what we did manage to achieve in years gone by.

The Tribunal reports that currently Hearing dates are taken up by cases that are not ready to be heard, which means they displace cases that are ready and the system isn't working effectively. It is intended that the new system would prevent that, as hearings would only be listed once they were deemed ready for Hearing. If this new pilot works, we may then see this system rolled out across all Tribunal appeals, so it's a case of 'watch this space.'

*Continued on next page...*

## To recap for all Phase Transfer cases:

-  *Do not panic if when your appeal is registered you do not get a Hearing date.*
-  *Make a note of your bundle deadline (which will be after the Further Information date) as it is around this time the Tribunal will be reviewing your case.*
-  *Ensure your case is prepared as fully as possible and everything is submitted as far in advance of the Further Information date as possible, so the bundle is reflective of both parties' positions.*
-  *Keep an eye out for your Notice of Hearing as the date will only be weeks in the future, and you don't want to miss it.*



*\*Figures correct as at 23rd December 2025*

# EHCP health checks

Our professional EHCP 'health check' service is the only fixed-fee service we offer at SEN Legal and provides you personal and expert advice on your child/young person's draft or final, education, health & care plan (EHCP).

## SILVER health check

- ✓ Your draft/ final EHCP and appendices will be read by one of our specialist solicitors.
- ✓ Our solicitors will make recommendations on amendments or additions based on the law and available evidence, and advise whether there is sufficient evidence to achieve changes to your EHCP.
- ✓ Our solicitors will discuss their recommendations with you via a **30 minute telephone call**.
- ✓ We will schedule your telephone call with us **within 7 days** of us receiving all necessary paperwork and confirming your instructions.

## GOLD health check

£650 (+VAT)

- ✓ Your draft/ final EHCP and appendices will be read by one of our specialist solicitors.
- ✓ Our solicitors will make recommendations on amendments or additions based on the law and available evidence, and advise whether there is sufficient evidence to achieve changes to your EHCP.
- ✓ Our solicitors will advise you of their recommendations via email, so you have a written record of our recommendations.
- ✓ We will send your report to you within 7 days of us receiving all necessary paperwork and confirming your instructions.

## PLATINUM health check

£950 (+VAT)

- ✓ Your draft/ final EHCP and appendices will be read by one of our specialist solicitors.
- ✓ Our solicitors will make recommendations on amendments or additions based on the law and available evidence, and advise whether there is sufficient evidence to achieve changes to your EHCP.
- ✓ Our solicitors will advise you of their recommendations via email, so you have a written record of our recommendations.
- ✓ We will send your report to you within 7 days of us receiving all necessary paperwork and confirming your instructions.
- ✓ In addition, you will have a **one hour meeting** with one of our specialist solicitors to discuss the EHCP, evidence, and the options available to you to challenge your local authority (if required). This meeting will be within 7 days of us sending our report to you and can be either in person at one of our offices (Bury St Edmunds or Cambridge) or virtual, via Microsoft Teams or Zoom.



SENlegal

MERRY  
*Christmas*

Please Note - our offices will be closed over the festive period from 23rd December 2025 until 2nd January 2026.

We wish you all a very Merry Christmas and Happy New Year.

