

SENlegal

NEWSLETTER

Parent's Newsletter Edition 11



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Your Legal right to a mainstream education.

Elective Home Education
Your choice, or no choice?



Transition reviews

- *don't miss the deadline!*

While 2020 has been a different year in the world of SEN by comparison to its predecessors with the suspension of certain Legislation and Regulations at various points and school closures due to outbreaks, the focus ahead to transition reviews (also known as phase transfer) and the 15th February deadline (31st March for secondary school to post-16 placements) for the amendment of an EHCP is fast approaching!

Parents across the country are searching for placements and we hope that Local Authorities (*especially those subscribed to this newsletter*) are contributing with appropriate suggestions that can not only meet your child's needs but deliver the provision required in the plan. However, every year we see the same situation where a child in a specialist placement suddenly at secondary phase transfer has a large mainstream school named in their EHCP with little regard to the impact this will have on the child. Therefore, the SEND Tribunal exists to deal with issues like this and any amendments to your child's EHCP carries a two month Right of Appeal should this situation occur.

As a parent of a child of moving to secondary school with an EHCP, ask yourself:

1) When is your Transition Review/Annual Review?

2) Has a date been provided by the current school? If not, why not, chase them for this date.

3) Do you have a preferred secondary placement in mind? (*Naming a school at the Annual Review does not guarantee it and any placement you name, is not set in stone, if you change your mind when the draft plan is issued*).

Following an Annual Review (*for tips on this, see: our past article here*), a decision must be provided by the LA within 4 weeks of the review date. A problem many parents encounter is that this decision is late, and they decide to use the LA compliant procedure. These procedures as we have detailed in previous newsletter articles can take an inordinate amount of time to reach an outcome and still not resolve the issue that a decision has not been provided.



by Richard Nettleton, Solicitor

If your decision is not provided within the timeframes (i.e. **4 weeks from the date of the meeting**), this is unlawful. A Pre-Action Protocol letter written by a solicitor setting out the LA's breach is the quickest way to get a decision and something we can help with.

Once a decision is issued setting out any proposed changes, a parent has at least 15 days to provide their views and confirm their preferred placement. The LA will then issue a finalised plan with Section I completed.

This will either be:

- 1.) Your preferred placement
- 2.) The LA will name another placement, normally citing that the expenditure of the parental placement is unreasonable (seen most often in the cases of specialist placements) and that the LA's school can meet your child's needs.

If option 2 happens (which is sadly not uncommon) you have a right of appeal to the SEND Tribunal.

Our advice to any parent who is in this situation is act now, ensure the review is completed within the next month and do not leave yourself in a position where you are still awaiting your decision and the Local Authority will have missed their statutory deadlines. This will put you on the backfoot with any Appeal and may mean there is not sufficient time in which to have this resolved prior to September 2020. SEND Tribunal appeals which are currently being registered are currently coming through with a Hearing date at the end of March 2021. In less than 2 weeks, we predict that Hearings will tip over into April 2021 let alone appeals submitted in February 2021. If you want to ensure that you are ahead of the log jam of phase transfer appeals, **acting now is essential**.

Expert Resources to help support your child whilst at home.

Thank you to all our experts for their valuable contributions!
For all resources, visit senlegal.co.uk/expert-resources.



Dr Lindsay Peer
Educational Psychologist



Jane West
Physiotherapist



Melinda Eriksen
Occupational Therapist



The Emotional side of Dyslexia.



Bike riding tips for children with coordination difficulties.



Exercises to do with your children at home.



Juanita Hurley
S.A.L.T



Aniesa Blore
Occupational Therapist



Sharon Horswell
S.A.L.T



Supporting your child's language at home.



Breathing exercise to calm anxiety in children.



Building social skills at home with LEGO.



by Rebecca De Winter, Trainee Solicitor

The time is very much approaching for parents to start to think about future placements for their children and where they wish their children to attend.

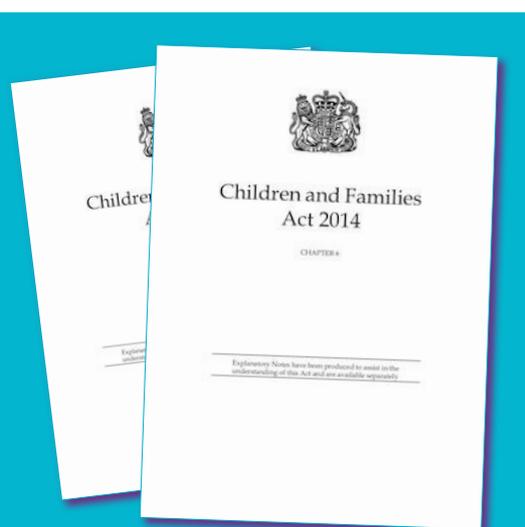
However, when considering this, many parents do not realise that their child with special educational needs has a lawfully enforceable right to attend a mainstream school, this includes settings such as Further Education Colleges. This is the case whether your child has an EHC Plan or does not have an EHC Plan. The legal starting point is that your child should be educated within a mainstream setting. For the purposes of this article we will focus on specifically children with EHC Plans.

Many parents will have reached a point in their child's education where mainstream school is just not suitable to meet needs and they are fighting to achieve a specialist placement. However, there are many children where this is not the case and mainstream can and will work, often with the need for additional provision, but the Local Authority are seeking to go against the parental wish for mainstream education and name a specialist setting. If this applies to you, it is important to remember your child has a legally enforceable right to a mainstream education.

*The legal right to this is set out within the **Children and Families Act 2014** at **Sections 33 and 39**.*

Section 39 must be considered first. Under **s.39 of the Children and Families Act 2014**, when a Local Authority receives a request for a particular school (i.e. your mainstream school choice) or other setting to be named in an EHC plan, they must consult the school or other setting and secure that the school is named.

...continued on next page



Click sections below to read the **Children & Families Act 2014**.

Section
33

Section
39



The Local Authority do have grounds in which to reject the parental preference being named under **Section 39**. This is either due to it being an inefficient use of resources, or the institution requested is unsuitable for the age, ability, aptitude or special educational needs of the child or young person concerned. The exceptions are usually applied where parents make requests for specific maintained special schools or independent special schools, where there are significant fees involved. However, the exceptions under **Section 39** can validly apply to a request to a mainstream setting.

*If the Local Authority refuses your request for a mainstream placement under **Section 39**, then **Section 33** must then be considered.*

Section 33 makes it clear that children will be educated within a mainstream setting, unless it is incompatible with:

1. The wishes of the child's parent or young person; or
2. The provision of efficient education for others.

If the Local Authority asserts the incompatibility applies and your child's attendance will be incompatible with the efficient education of others, the Local Authority must be able to show that there are no **reasonable steps** that they can take to prevent the incompatibility. Local Authorities are under a duty to spend money to overcome that incompatibility up to a reasonable level. **Section 33** does not permit a Local Authority to refuse to name a mainstream school or setting in Section I of an EHC Plan on cost grounds.

This may seem complicated and unnecessarily long winded, but in its simplest form, provided you wish for your child be educated within a mainstream setting, unless your Local Authority can prove there is nothing they can do to prevent this being incompatible with the efficient education of others, a mainstream setting must be named in Section I of your child's EHC Plan.

It must be highlighted that **Section 33** is based on the assumption that, with the right support, the child can and should be included in mainstream education. The Local Authority should focus on the removal of barriers to learning and participation in mainstream education, not the cost. This point often gets lost with LA's across the country, as I am sure everyone reading this will appreciate.

If you are confronted with this situation, you should make the LA aware that you are familiar with the relevant legislation and how this applies to your situation. If the LA still refuses to place your child in a mainstream school or you require any help getting the right placement named for you child in their EHC Plan please do not hesitate to contact us at customerservices@senlegal.co.uk – we can help.



We've done it again!...

We're delighted to have been ranked in this years Legal 500.

Thank you to all our colleagues and clients for your wonderful testimonials.



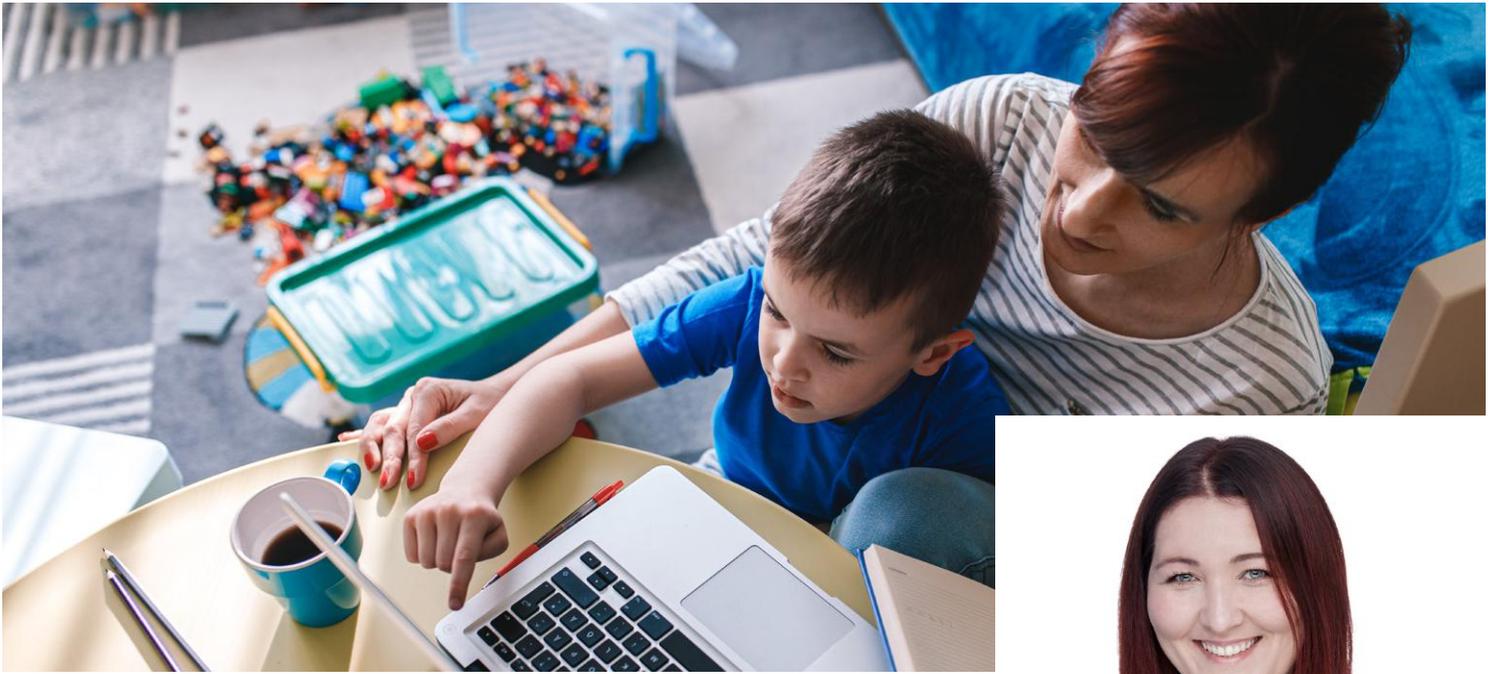
Nicole Lee
Senior Solicitor



Melinda Nettleton
Principal Solicitor



Hayley Mason
Senior Solicitor



by Nicole Lee, Senior Solicitor

Elective Home Education Your choice, or no choice?

With guidance relating to COVID-19 continuing to change on a regular basis, it is of little surprise that the pandemic continues to impact upon special educational provision, and not always in the way that you would expect.

We have received an increase in both requests for advice and instructions relating to home education. Whilst there is no “one size fits all” piece of advice when it comes to home educating your child, there has been a common theme in the enquiries we have received. Sadly, that theme is the prevalence of misinformation, and in some cases, parents feeling forced to “electively” home educate their child following threats of exclusion.

When it comes to Elective Home Education, the clue is in the name. It must be “Elective”, meaning that the parent has chosen to educate their child at home.

No parent should be forced into educating their child, not least because making the decision to electively home educate can have an extremely detrimental legal impact on the legal rights of children with EHC Plans.

Under **Section 42** of the **Children and Families Act 2014**, a Local Authority is under an absolute legal obligation to provide all of the provision contained in Section F of an EHC Plan. However, **Section 42(5)** provides a get out clause for the Local Authority, who are not obligated to fund the provision for children whose parents have made “suitable alternative arrangements”.

Therefore, unknowingly, some parents we have spoken to have found themselves in a situation where they have started home educating as they felt they had no other option, and then found out that this means their child is not entitled to the provision set out in Section F of the EHC Plan. Even more sickening when parents often have to fight tooth and nail for that EHC Plan in the first place.

Many of these enquiries cite the current situation as being linked to the COVID-19 lockdown, where an extensive period out of education and with no provision has resulted in a worsening or a regression of needs.

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If your child's needs have changed to the extent that their current provision is no longer suitable to meet their needs, please do not feel strong armed into "elective" home education. There are other options, including calling an interim review of your child's EHC Plan in which additional provision can be sought. Alternatively, if you feel that home education is now the way forwards, you can request a formal "Education otherwise than at school" arrangement be written into your child's EHC Plan, so that they can be educated at home, whilst still being entitled to the special educational provision they need.

Home education should always be a choice. If you are in a position where you feel you have no choice, please get in touch, so that we can advise you how to take back control.



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SEND Law right now. And why you mustn't confuse EOTAS with home education.

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