

SENlegal

NEWSLETTER

Issue 4 - April 2018



For Parents, Guardians
and Carers of Children
with SEND.

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Want to find out more about the topics covered in our Newsletter?



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By Nicole Lee - Specialist Solicitor, SEN Legal.

One of the key changes made by the Children and Families Act 2014, was the extension of education services to the age of 25. The Section 139A Learning difficulty assessment which related to the assessment of and duty to provide for young people of over 16 was repealed, and if appropriate, EHC Plans and the special educational provision within can now continue to the age of 25.

In conjunction with this, Section 21(5) of the Children and Families Act 2014 changed the definition of Special Educational provision, which is now;

“Health care provision or social care provision that educates or trains a child or young person is to be treated as special educational provision (instead of health care or social care).”

This enshrines into statute the decades old case law principle that special educational provision is anything called for by a child’s learning difficulty.

In principle, this seems simple. EHC Plans can be maintained up to the age of 25 where appropriate, and any provision that educates or trains that young person is educational provision, and should be contained in Section F of the EHC Plan. In practice however, this is a concept which Local Authorities seem to struggle with. Under the previous system, once a young person left education, responsibility

(and thus, financial liability) would pass from education services, to adult social care.

In an age of ever tightening budgets, many Local Authorities seem to be using the post-19 transfer process as an opportunity to cease to maintain EHC Plans, on the basis that a young person’s needs can now be better met by social care. This ignores The Special Educational Needs and Disability Regulations 2014 which make clear that ceasing to maintain an EHC Plan should be a final resort decision, rather than the first course of action that it currently seems to be (Regulations 29 to 31).

This is where the legal definition of Special Educational provision becomes of paramount importance. If the provision is educating or training the young person e.g. continuing to develop the young person’s life and independence skills, then this is educational provision, and not social care provision. Education is not limited to the achievement of qualifications, which seems to be the current attitude.

So why does this matter?

When it comes to who foots the bill, it does not matter at all. Parents need not be concerned if the cost of the continued educational provision is met by education, social care, or a combination of the two. All that matters, is that the bill is paid.

However, it very much matters where in an EHC Plan the provision is included. This is because it is only the educational Sections of an EHC Plan which can be Appealed to the SEND Tribunal. Once provision is written into Section F of the EHC Plan, the Local Authority are under an absolute obligation to make sure the provision is in place.



What do I do if my Local Authority has notified me that they are going to cease to maintain the EHC Plan?

In short, act quickly. The Local Authority cannot cease to maintain an EHC Plan overnight, with the Children and Families Act 2014 stating at Section 45(4) that the Local Authority cannot cease to maintain the EHC Plan until after the deadline in which you can submit an Appeal to the SEND Tribunal has expired with no Appeal having been submitted, or if an Appeal is submitted, until the Appeal has been finally determined. This gives you time to prepare for and submit an Appeal to the SEND Tribunal against the Local Authority's decision. This means the Local Authority must continue to maintain the young person's EHC Plan, and fund all of the provision and the placement named in the Plan, until an Appeal has been finally concluded. Depending on how quickly an Appeal is submitted, this likely means the Local Authority may have to continue to maintain the EHC Plan for a further 6 – 7 months at the very minimum.

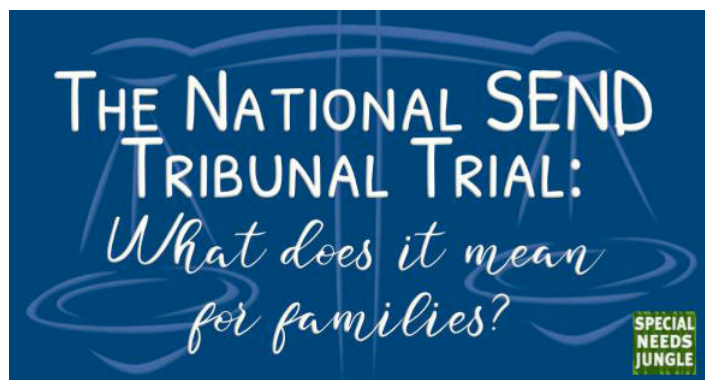
If you are concerned that your Local Authority are going to attempt to cease to maintain your or your child's EHC Plan, or if you have received notification that this is their intention, then we can assist in successfully Appealing this decision, as well as rewriting the content of the educational sections, with a view to safeguarding continuing Special Educational Provision for up to an additional 6 years.



Did you read SEN Legal Senior Solicitor, Hayley Mason's latest blog post on the Special Needs Jungle Website?

To find out more about the National SEND Tribunal Trial and what it means for families...

Click here! →



EHCP HEALTH CHECK

Offering you personal expert advice on your draft or final EHC Plan from our team of specialist Solicitors. We'll check your plan and offer guidance on areas that would benefit from being amended or added to.

- ✓ Our Legal team will report their findings to you via phone or email, dependent on your preference.
- ✓ We aim to turn around all reports in 7 days.
- ✓ We charge a one-off fee of just **£300 (+VAT)**.



To book your health check, call us on **01284 723952**.

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**BDA International Conference
and EXPO 2018**



BDA International Conference & EXPO 2018

Visit the **SENlegal** team on #ParentPower day on Saturday 14th April 2018 in Telford.

For more information, visit bdainternationalconference.org



By Karen McAtamney - Senior Solicitor, SEN Legal.

Some schools have a tendency to behave like they're all seeing, all knowing entities. They're not. They're one part of the system. The time spent within initial teacher training courses specifically on SEN remains very limited, meaning that many mainstream teachers have superficial knowledge or knowledge skewed by the needs of particular children they've taught before.

School staff have a range of qualifications but are not medically qualified doctors and it is the rare school that has a psychologist as a staff member. They do not have the professional qualifications to dispute diagnoses given by professionals or the provision they recommend.

Directing your limited time and energy at the right target is important. So, whilst a claim for disability discrimination against the school in those circumstances may be possible, it is important to remember that where children have more complex needs your argument about what those needs are and what provision your son or daughter needs is with the Local Authority and not with the school. If your child's school are disputing their diagnoses you would therefore be well advised to consider making a request for an EHC Needs Assessment.

If your child already has an EHC Plan and there are difficulties with the school, you can often get help by seeking an Emergency Annual Review of the EHC Plan. This is worth doing if you are being presented with unevidenced options eg. move your child to a special school or put them back a year. No state funded mainstream school can insist on you making that sort of choice and the Annual Review will lead to a right of appeal to the Tribunal and the Tribunal makes decisions on the basis of evidence.

Where a school claims to know more than it does or to be making decisions on the basis of uninformed opinions, the school can safely be ignored because you can work around them. There is no point spending time and effort trying to persuade someone who thinks they know everything that your son is actually Dyslexic or your daughter has an Autistic Spectrum Condition. You will get much more out of bypassing the school and forcing the LA to make proper provision.



Upcoming 2018 workshops for parents, carers and professionals

Saturday 21st April

Legal Advice - Obtaining
an EHC Plan Workshop

10am - 1pm

Saturday 12th May

Legal Advice - Schools
Exclusions Workshop

10am - 1pm

Speaker: Melinda Nettleton, Principal Solicitor at SEN Legal

All sessions will be held at HACS Resource Centre, Dudley Place, Hayes UB3 1PB.
For more information or to book, contact catherine@hacs.org.uk

**the
autism
show**
*The National
Event for Autism*

in association with



The National
Autistic Society



Come and meet team
SEN Legal at the Autism
show 2018 in London
and Manchester.

London

**15- 16 June 2018
EXCEL**

[Click here for more Info](#)

Manchester

**29 - 30 June 2018
EVENT CITY**

[Click here for more Info](#)

'My child has not been offered a place at our preferred choice of school, what can I do?'



By James Brown - Trainee Solicitor, SEN Legal.

Unfortunately, particularly at this time of the year, you alongside many other parents, will be left asking this question. For children with EHC Plans or Statements (which by law should still not be in place) the deadline for the Local Authority to amend their EHC Plan to name the primary school or secondary school that the child will be transferring to in September was 15th February 2018.

If your child does not yet have an EHC Plan or their special educational needs do not qualify for an EHC Plan, you should have received confirmation of the secondary school your child will be attending by 1st March 2018. Primary School's confirmation will be 16th April 2018.

Unfortunately, many parents and children will not be offered a place at their preferred school of choice. **This then leads to the question what can I do about this? The answer is that you have a right to Appeal against this decision.**

If your child has an EHC Plan (Statement)

If your child has an EHC Plan and you are not happy with the school that has been named within Section I of the plan, you have a right to Appeal against this to the Special Educational Needs and Disability Tribunal.

As a parent you have a right to request that a particular school is named within Section I of your child's EHC Plan. You are able to request that the following schools are named:

- Maintained schools (either mainstream or special)
- Academies
- Non-maintained special schools
- An independent school which is registered under Section 41 of the Children and Families Act 2014.

* You are able to request that a wholly independent school is named but different rules apply for this. Please do get in touch if this is the case for you.

Your Local Authority are bound to name your preferred school, unless they can show that one of the reasonings listed below apply:

- The school is unsuitable for your child on the basis of age, ability, aptitude or SEN; or
- Your child's attendance at the school is incompatible with efficient education for others, or
- Your child's attendance at the school is incompatible with the efficient use of resources.

If your Local Authority or your preferred school have stated that one of these reasons apply for your child, you will need to gather evidence to prove that they are wrong. Appropriate evidence is essential to challenging this decision. If you would like to discuss what evidence is needed for an Appeal to the SEND Tribunal or advice regarding the Appeal process, please do get in touch. We are more than happy to help with such issues.

If your child does not have an EHC Plan

If your child does not have an EHC Plan and your child is not allocated a place at your chosen school you are able to Appeal this decision to the Independent Appeal Panel. Depending on the school that you have applied for will decide who is responsible for arranging the Appeal panel.

The Independent Appeal Panel will apply a two-stage test to an admission appeal. The two-stage test can be found within the School's Admissions Appeals Code. The key parts of this two-stage test to consider when preparing an Appeal is:

- Whether the Admissions Arrangements have been consulted and correctly applied, considering the mandatory requirements of the **Schools Admissions Code 2014** and **Part 3 of the Schools Standards and Framework Act 1998**.
- The prejudice which may be caused to the school, its resources and the efficient education of others for **any** additional children to be admitted to the school.
- The prejudice caused to **your** child if they are not allocated a place at your chosen school.

To be successful in the Appeal you will need to present evidence on these points. You will need to present your reasoning as to why your child should attend your preferred choice of school and the prejudice this will cause your child if they are not admitted.

The evidence you present to the Panel is the key to you having the best chance of being successful in your appeal. According to the latest DFE statistics, out of the **60,886** admission appeals lodged in relation to admissions for a place in September 2016/2017, only **9714 (21.8%) of these appeals were successful**. Preparation and evidence is essential to ensuring you stand the best chance of your Appeal being successful.

If you need any advice in regards to the evidence you will need or how to prepare an admission appeal, please do get in touch. We will be able to assist you with this.

Special Needs and Legal Entitlement, Second Edition

“This is a **'must have'** book to have on the shelf for anyone dealing with the needs of children with SEN...”



Amazon review - 24th January 2018

