

# SENlegal

## NEWSLETTER



Professional's Newsletter Edition 10



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[www.senlegalforschools.co.uk](http://www.senlegalforschools.co.uk) 



## Notional Budget - Shortfall on Funding.

*By Melinda Nettleton, Principal Solicitor*

Do you keep being told that £6,000 is being withheld from your EHC Plan Funding by the Local Authority because you have £6,000 delegated funding? Our advice is to check your Notional Budget!

Often the delegated budget works out at only £3,000 per pupil, sometimes less. If you have five EHC Plans in your school all being withheld funding, that is £15,000 missing - fifteen EHC Plans is a shortfall of £45,000. Money properly owed to your school.

Cumulatively over the years, that is a lot of money going missing and Local Authorities do not give the money back easily. We have seen schools try to negotiate but endless negotiations like wading through treacle, follow.

We have a track record in cutting through those talks and successfully recovering the funding owed to you so that it can be used to properly support pupils with SEN. If there is a shortfall in the money you are receiving, contact us today. You never know how much you may recover.



**17 & 18 MARCH 2020** | **NEC** BIRMINGHAM

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**Dyslexia**  
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**SENlegal**

**Need advice or  
more information?**

Call our friendly team on **01284 723952** to  
speak with one of our specialist Solicitors,  
or contact us online by **clicking here**.





*By Melinda Nettleton,  
Principal Solicitor*

## Putting up with **un**reasonable decisions?

I was recently asked if there was anything the school could do when an Annual Review concluded that they could not meet need and the Local Authority had decided not to amend that child's EHC Plan. The parents were not able to appeal to the SEND Tribunal but wanted more appropriate provision in place. The school did not want to exclude.

Unreasonable decisions by Local Authorities, whether leading to continued disruption and violence or other issues, can be successfully challenged by schools and the Local Authority's decision can be set aside. The duty to admit in **Section 43** of the **Children and Families Act 2014** does not stop a school overturning an unreasonable decision - not to amend placement or naming the school. This situation is always an opportunity to achieve something better for the child or young person.

Putting up with it because the school thinks it has to does not help anyone. Not the child or young person who needs better provision, the pupil cohort or teaching staff. It just encourages Local Authorities to save money by relying on inappropriate placements.

Schools cannot appeal to the SEND Tribunal to change Local Authority decisions but there are other means. We can challenge unreasonable decisions and submit papers to the Courts, if necessary, to change an unreasonable Local Authority decision.



What the law says about duty to admit in Section 43 of the Children and Families Act 2014:

<http://www.legislation.gov.uk/ukpga/2014/6/section/43>



## Something worth shouting about...



**SENlegal** achieved a success rate of **98%** in 2019, with **86%** of successful appeals being settled prior to a Tribunal hearing.

[www.SENlegal.co.uk](http://www.SENlegal.co.uk)



The logo for SENlegal for Schools, with 'SENlegal' in a stylized font and 'for Schools' below it.[www.senlegalforschools.co.uk](http://www.senlegalforschools.co.uk) A background image showing a group of school children in a classroom, some looking at books and others talking.

## Expert Legal Services & Advice for Schools, Colleges & Academies

## SENlegal services for Schools & Colleges.

Having gained a full understanding of all the features of an education organisation that make it different from a work place in commerce or industry, SEN Legal quietly and discreetly act as legal advisers to independent, maintained and non-maintained schools.

We advise on underfunded EHC Plans, Notional Budgets and the £6,000 cap, misuse of the statutory duty to admit sometimes requiring building works and funding to the detriment of other pupils' (successful resistance is possible). We also advise schools about maladministration and investigation following complaints to the Standards & Testing Agency (STA), about national curriculum assessments, accuracy or correctness, Admissions & Exclusions, OFSTED, Data Protection, Contract Terms, the Equality Act, Deputyship, DOLS and Restraint.

- ✓ Ofsted complaints (inc. Judicial Review & Injunctions where appropriate).
- ✓ Non-payment of fees by LAs.
- ✓ Refusal to pay fee increases.
- ✓ Top up funding/delegated budgets & the LA's financial obligations
- ✓ Complaints to the Education Funding Agency.
- ✓ The National Contract vs your own.
- ✓ Demands for cost breakdowns.
- ✓ Contractual Default Notices
- ✓ Disability Discrimination & reasonable adjustments.
- ✓ Safeguarding & DBS checks.

We're great at cutting out excess LA paperwork. We start from the proposition that teachers are best doing what they are trained to do. We can sort out the legal minimum and give you more time to do just that!



# Transitioning from children to adult services.

By Rebecca de Winter, Paralegal



The legal age of becoming an adult is 18 years in England and Wales, this can be a very unsettling period for parents and carers of young person with Special Educational Needs. The young person will transition from the care children's services to new world of adult services.

The Care Act was introduced in April 2015 to ensure that there is no gap in services when a young person makes the transition. The act stipulates that any children's services a young person is receiving before their 18th birthday will continue after their 18th birthday until adult care and support takes over.

## When should parents start thinking about this transition?

This transition should be a gradual process. The process should ideally begin around the age of 14 years, in England tying in with the Year 9 school annual review. It is helpful that many young people will already have an Education, Health and Care Plan (EHCP) in place that sets out the provision they will require.

From the age of 14 years, parents and carers should also start discussing plans for transferring to adult healthcare with their healthcare professionals, such as GP.

## What should parents do to get the ball rolling?

Before the young person turns 18 a request must be made for the Local Authority to undertake a "child's needs assessment" to determine if a child is likely to have needs when they turn 18 and what these needs will be. After the assessment, the Local Authority should draw up a care and support plan.

*Both the Children and Families Act 2014 and the Care Act 2014 deal with support for young people with care and support needs preparing for adulthood.*

## Local Authority's Duty to Assess.

The Local Authority are under a duty to carry out the assessment if it considers it is a "significant benefit" to the child and if it is likely that they will have eligible needs for care and support when they reach the age of 18. Surprisingly, 'significant benefit' is not related to the level of a young person or carer's needs, but rather to the timing of the transition assessment. Meaning the Local Authority need to consider whether it is an appropriate time for the young person or carer to have an assessment to help with preparing for adulthood.

### Statutory guidance lists the factors which may be considered by the Local Authority:

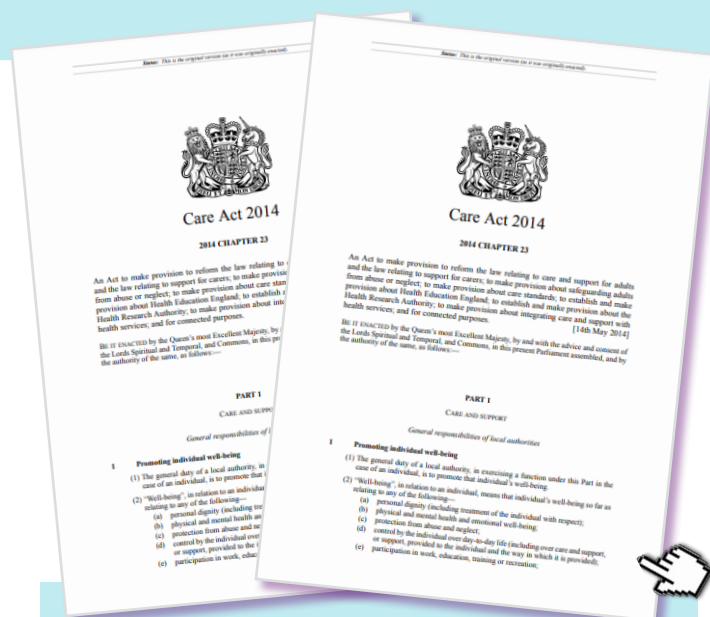
- Stage the young person has reached at school and any upcoming exams;
- Does the young person want to enter further/higher education or training;
- Does the young person want to get a job;
- Is the young person planning to move out of their parental home;
- The time it may take to carry out an assessment;
- The time it may take to plan and put in place the adult care and support;
- Any relevant family circumstances; and
- Any planned medical treatment.

## Assessment of needs as a Carer.

The Local Authority must also carry out a "child's carer's assessment". The assessment will look at the carer's ability and willingness to continue caring for the young person after they turn 18, and any support the carer themselves might need. The Local Authority should draw up a care and support plan for the carer.

## What if a parent's request is refused?

If the Local Authority turns down the request on the basis decides there is no 'significant benefit', it must provide reasons for this in writing 'in a timely manner'. They must also provide information and advice on what can be done to prevent or delay the development of needs for support. If refused, the parents, carer or young person can make another request.



*Click on the images above to read the section of The Care Act 2014 which deal specifically with the transition of children to adult care and support.*

*For the whole document, visit:*

[www.legislation.gov.uk/kpga/2014/23/contents/enacted](http://www.legislation.gov.uk/kpga/2014/23/contents/enacted)

# Visit the **SENlegal** team at these events...

## Events Calendar - January/April 2020

<b>JAN</b> 25 <sup>th</sup>	<b>BDA Parent Pop Up Roadshow</b>	<i>These free events are aimed at Parents, Carers or anyone who wants to learn more about Dyslexia.</i>	<a href="#">More Info</a>
<b>FEB</b> 25 <sup>th</sup>	<b>HACS Legal Advice Workshop</b>	<i>Obtaining an Education Health &amp; Care Plan (EHCP) Workshop for Parents, Carers &amp; Professionals</i>	<a href="#">More Info</a>
<b>MAR</b> 9 <sup>th</sup>	<b>SNAP PCF Information Day</b>	<i>Preparing for Adulthood information day with a morning legal workshop provided by SEN Legal</i>	<a href="#">More Info</a>
<b>MAR</b> 17 <sup>th</sup> -18 <sup>th</sup>	<b>The Naidex Show 2020</b>	<i>Europe's most comprehensive trade, professional &amp; consumer event dedicated to the independent living</i>	<a href="#">More Info</a>
<b>MAR</b> 20 <sup>th</sup> -21 <sup>st</sup>	<b>The Dyslexia Show 2020</b>	<i>The UK's first free to attend exhibition dedicated entirely to understanding &amp; awareness of Dyslexia</i>	<a href="#">More Info</a>

**Dyslexia**  
SHOW 2020

Birmingham NEC  
20<sup>th</sup> - 21<sup>st</sup> March



**SNAP PARENT CARER FORUM**  
CENTRAL BEDFORDSHIRE

Flitwick, Bedfordshire  
9<sup>th</sup> March



**HACS**  
Hillingdon, London  
25<sup>th</sup> February

**46 Naidex**

Birmingham NEC  
17<sup>th</sup> - 18<sup>th</sup> March

**British Dyslexia**  
Association

Kingston Upon Thames  
25<sup>th</sup> January



# Annual Reviews - preparation is key!

By Hayley Mason - Senior Solicitor, SEN Legal.



Where a child/young person is in receipt of an EHC Plan, it must be reviewed annually by the Local Authority. The first review must be held within 12 months of the plan being finalised.

Although it is a Local Authority duty, in preparation for an Annual Review the School the child/young person attends will often consult with the child/young person's parents and the Local Authority about the EHC Plan and arrange the Annual Review meeting. Schools also often find themselves gathering information to put into the Annual Review report and circulating the papers two weeks before the meeting.

When I receive these reports, what is often alarming is the amount of progress the child/young person appears to have made with no information as to how such progress has been possible. This is particularly evident in reports prepared by specialist settings. For Example:

*"Johnny has really progressed in his speech and language and has achieved all of his outcomes"....[with no further explanation provided].*



In specialist settings where it is standard practice for teachers to be trained and experienced in autism/dyslexia, or to have on-site speech and language/occupational therapy, or a multi-disciplinary team, these settings often fail to adequately set out the provision they provide. Mainly because this is so common practice for them, that they take it as a given that the child will receive it.

The difficulty with an annual review report failing to explain what provision is actually being put in place to achieve such progress, is that this can result in the child being removed from the setting or provision being taken out of their EHC Plan. The Local Authority determine the child no longer needs the support, on the basis that progress has been made without it

So, the above example might accurately read:

*"Johnny continues to receive one hour of speech and language therapy delivered per week by the on-site speech and language therapist, which has really progressed his expressive language skills. As a result of this continued work, next term Johnny will work towards....[insert outcome here]."*



Perhaps in this example, every child receives direct SALT and that is why the school do not think to document it. The difficulty with not doing so is that often the Local Authority will not attend the actual meeting so when reviewing the EHC Plan and all of the evidence, the LA are wholly reliant on the papers before them to decide (within 4 weeks):

1. Whether the LA will be leaving the child/young person's EHC Plan as it is;
2. Whether they will be amending the EHC Plan; or
3. That they are ceasing to maintain the child/young person's EHC Plan.



If the level of detail (described above) is missing from the Annual Review papers however, a number of Local Authorities are coming to the understandable conclusion of '*why should we continue to fund this EHC Plan?*' when, on the papers without any specialist support being put in place, the child has met their intended outcomes?

The Local Authority may decide that if all progress has been made, a specialist setting is no longer necessary and 'Johnny's' needs can instead be met in a mainstream setting costing your school an expensive place. This is also likely to be contrary to the child/young person's wishes, or what would properly be conveyed in the paperwork (if properly drafted).

Whichever decision the Local Authority makes, either 1, 2, or 3 above, this decision will provide the child/young person's parent(s)/young person with a Right of Appeal to the SEND Tribunal. To avoid an appeal, **properly prepared Annual Review papers are key.**



We recognise that due to time and budget constraints, also often a lack of co-operation, putting these papers together can be cumbersome for a school/institution. If the child/young person's parent(s) have legal representation, you may wish to ask them to look through the paperwork for you, before they are circulated to ensure all of the relevant information is contained in the first instance to avoid any unnecessary delays/misunderstandings. A Legal Representative experienced in this field will often know the school's provision well and will be able to pick up on missing information.

We know schools are often stretched for time and resources but please do not let a lack of preparation cost you a place in your setting (and the funds that come with that) or the parent/young person an Appeal. With correct preparation, annual reviews can often run smoothly without requiring parents to Appeal to the SEND Tribunal and have the effect of securing their current provision/placement for another year. **Good preparation now will pay dividends later.**

## Professional EHCP Health Checks

- ✓ 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).**

