

SENlegal

NEWSLETTER



Issue 6 - October 2018

For Parents, Guardians
and Carers of Children
with SEND.



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Getting your Ducks in a row - Preparing for an SEND Tribunal.

The Power of Specificity.

Upcoming events where you'll find the team from SEN Legal.

SENlegal.co.uk


Knowledge
Empowers
You

The law surrounding SEN is complex, but knowing your basic legal rights is a **KEY** tool in navigating the system.



The Welsh System - Making a Statement?

By Nicole Lee - Specialist Solicitor.



If you have a child with Additional Learning Needs and live within Wales, you have probably heard about the major changes on the horizon to the way in which the Additional Learning Needs of children in Wales will be supported.

However, anyone who has ever set out to sea will know that the horizon has a nasty habit of moving with you. So, what happens until we hit land? We have had many enquiries from schools and parents alike needing to ask this very question, highlighting a worrying attitude in several Local Authority areas.

This attitude would appear to be, "change is on the way, so we're doing nothing for now." This is unlawful. It is not disputed that the Statementing system under the Education Act 1996 is woefully outdated. However, it is still in force. The ALN system will not go live until September 2020 (at least), with the system under the Education Act 1996 coming to an end in 2023. It is absolutely not the case that the current position allows Local Authorities to leave children with no legally enforceable provision in the interim.

Many parents will understandably be concerned at the prospect of needing to negotiate the Education Act system, only to then have to negotiate the ALN system once the transition between systems starts to take place. However, the alternative of waiting until the ALN system is in place, and then trying to navigate a new system without the cushion of legally enforceable provision, may to some be a far worse prospect.

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**.

Know your Legal Entitlement

- 1 You can request a statutory assessment of your child. If your child's school does not support the request, or is very slow in making the request, you can make the request for yourself under Section 329 (1) of the Education Act 1996.
- 2 The Local Authority must make a decision whether or not to undertake a statutory assessment within 6 weeks.
- 3 If they do not agree to assess, you must be provided with a Right of Appeal to the Special Educational Needs Tribunal for Wales.
- 4 If they do agree to assess, relevant professionals should undertake assessments within a 10 week period.
- 5 If the Local Authority decide to issue a Statement, then they have 2 weeks to draft a proposed Statement.
- 6 You then have 8 weeks to negotiate with the LA about the text of the proposed Statement, before the LA must finalise it.

This totals 26 weeks (6 months), which is of course far less time than the coming into force of the ALN Bill in 2020. Once the ALN Bill comes into force, the Statement would remain valid, and the Local Authority will be under an obligation to ensure the provision is in place during the transition process from the Statement system, to the ALN System.



Don't be all at sea. If you need help navigating the current landscape, we can steer you in the right direction.

Knowing your child's entitlement is the key to plain sailing.

**Come and meet us at
Kidz to Adultz North
Thursday 8th November 2018
9.30am — 4.30pm
EventCity, Barton Dock Road,
Manchester, M17 8AS**



A FREE event for children & young adults up to 25 years with disabilities and additional needs, their families, carers and all the professionals who support them.

The Power of Specificity

By Angela Tyrrell - Chartered Legal Executive.

Section F of an EHC Plan is extremely important tool - it should set out sufficient special educational provision to meet each and every need specified in Section B. This is not a choice, it is a legal requirement (Section 37(2) of the Children and Families Act 2014 states "An EHC Plan is a plan specifying...").

Regulation 12(1)(f) of The Special Educational Needs and Disability Regulations 2014 provides that the LA must set out the required special educational provision.



If the law is quite clear that provision must be specified, why do we so often see Section F littered with vague terminology such as "access to", "opportunities for", "regular support"? What does 'regular' mean to you? Regular meals suggest daily meals, however, regular dental check-ups suggest once or twice a year. There is a vast difference.

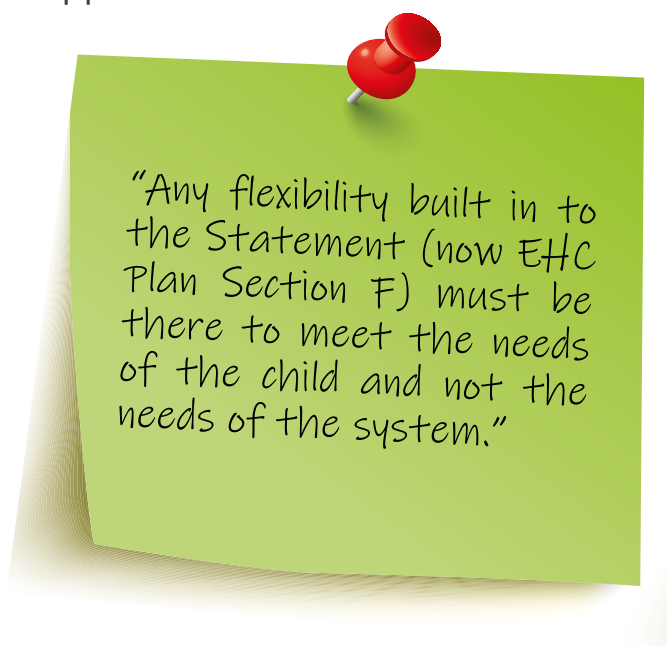
Paragraph 9.61 of the Code of Practice issued under the 2014 Act, provides that:

"EHC Plans should be clear, concise, understandable and accessible to parents, children, young people, providers and practitioners. They should be written so they can be understood by professionals in any Local Authority."

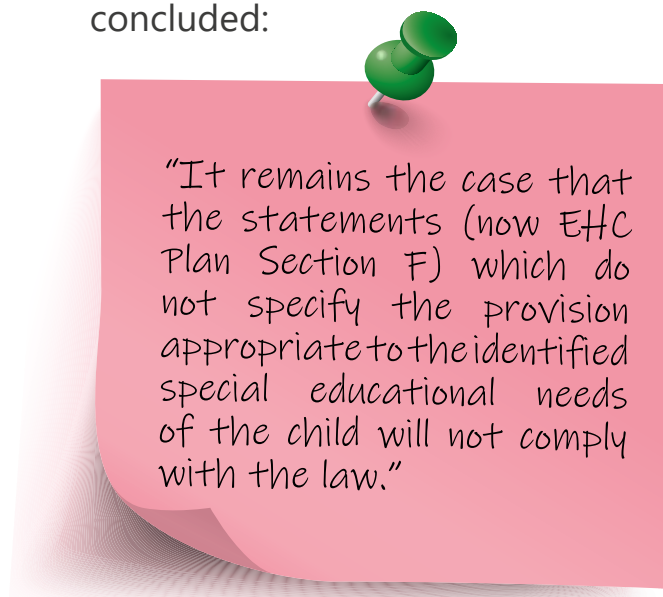
"...provision must be detailed and specific and should normally be quantified, for example, in terms of the type, hours and frequency of support and level of expertise, including where this support is secured through a Personal Budget".

The danger when provision is non-specific and vague, is that very limited or no provision, is likely to result. Vague wording is also impossible to enforce. Any provision within Section F must be so specific and clear as to leave no room for doubt as to what should be delivered (L v Clarke and Somerset County Council (1998) ELR 129).

What about allowing for flexibility in the School's approach/arrangements? In *IPSEA v Secretary of State for Education and Skills* 2003 EWCA Civ 7, (2003) ELR 393 the Court of Appeal held:



The decision of the Court of Appeal concluded:



In the most recent case on specificity, *B-M and B-M v Oxfordshire County Council* (SEN) (2018) UKUT 35 (AAC) HS/3005/2017, Judge Rowley stated *"the bare provision for programmes tailored to needs add nothing."* Such wording is described as adding nothing, noting further that *"..the word opportunities" is vague, meaningless and unenforceable."*

In this case, the LA argued that a high degree of specificity was not required when placement is in a special school and there needed to be a degree of flexibility. Judge Rowley observed that legal authorities do not suggest that even for children in specialist provision, the requirement of specificity can be abandoned. Nor can the need for some flexibility be used as a reason for lack of specificity, where detail could reasonably be provided. Judge Rowley observed, by way of an example, that *"[C] will have support from a Learning Support Assistant"* failed to identify how much support he will have, or what training and experience the LSA should have.

In addition to vague wording, we also often come across funding formulas or reference to banding arrangements in Section F. Regulation 12 provides the form of an EHC Plan and the list of requirements does not require details of funding or funding source to be stated within Section F. An LA's funding arrangements with the School has no bearing on the provision within Section F- if the provision is clearly stated within Section F, it must be delivered, regardless whether it exceeds the level of funding stated within Section F. Funding arrangements are irrelevant in Section F and potentially misleading for parents and Schools.

Vague, unspecific and meaningless words in Section F must not be ignored. The Upper Tribunal made it very clear that program content, duration and frequency of delivery, training and skill mix required to deliver and retraining should all be specified. Consequently, to be an effective Section F, specificity is key.

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**.



the transition event East 2018

Organised by my family our needs

Thursday 15th November 2018
Newmarket Racecourse

The poster features a vibrant orange background with a colorful geometric pattern of triangles in shades of teal, purple, yellow, and green on the left side. The text is white and positioned on the right side of the poster.

Getting your ducks in a row - Preparing for a SEND Tribunal and the importance of Independent Experts.

By James Brown - Trainee Solicitor



You may have received a decision from your Local Authority refusing to assess your child, refusing to issue an EHC Plan, or perhaps you have received a draft or finalised EHC Plan that you are unhappy with. Sound familiar? If so, you are likely to now be preparing to submit an Appeal to the SEND Tribunal. Parents can often find this a daunting and stressful experience as it is a complex legal process.

Set out below is a brief guide of what you can expect as you move forward with your Appeal and what to look out for, along with some top tips to ensure you are best prepared to succeed.

1 - TIME TO APPEAL

You have two months from the date of your Local Authority's decision letter, or one month from the date of the mediation certificate (whichever is longer) to submit your Appeal to the SEND Tribunal. This time period is important, if you miss the deadline the Tribunal will not register your Appeal. It is important to make a note of this deadline, so you are clear of the date you need to submit your Appeal by.

2 - MEDIATION CERTIFICATE

Before you are able to submit your Appeal to the Tribunal you must obtain a mediation certificate and you must do so within 2 months of the date of the Local Authority's decision letter. Parents are often mistaken in believing that this means you will need to participate in mediation with the Local Authority, it doesn't. The only requirement is that you obtain a mediation certificate, which you can do by simply contacting the mediation service set out within the decision letter. The Tribunal will not give you a 'red mark' for not participating in mediation, they are simply not interested.

***It is important to remember your mediation certificate can extend the deadline in which you need to Appeal by an additional month. Therefore, if for whatever reason you need to do so, you can delay obtaining your mediation certificate to extend your deadline.**

3 - INDEPENDENT EXPERT EVIDENCE

Independent expert evidence is key within the SEND Tribunal. The Tribunal bases its decision on evidence. The Tribunal are unable to award provision, or independent placements, solely based on what you feel your child needs. Independent experts will identify what your child's needs are and the provision required to meet those needs. Unfortunately, Local Authority and NHS experts will normally only recommend what they are to provide within their Local Authority area, rather than what is actually required to meet your child's needs. Therefore, it is always best to have independent experts assess.

The SEND Tribunal is a specific area of work and you will need to ensure any independent expert you instruct is well-versed in this area and is prepared to attend the Tribunal.

***It is important to arrange your experts' assessments as soon as possible, good experts in this area have very busy diaries. You will need to ensure the assessment dates allow enough time for their evidence to be available for your Appeal. You will need to time the submission of your Appeal around the assessment dates.**

4 - SUBMITTING YOUR APPEAL

In order to submit your Appeal to the Tribunal, you will need to complete the Notice of Appeal form found on the Tribunal's website. You will also need to submit a copy of your mediation certificate, the LA's decision letter, your child's EHC Plan (if applicable) and any other relevant evidence.

5 - THE APPEAL PROCESS

Once your Appeal has been submitted to the SEND Tribunal, the Tribunal will then register the Appeal and issue case directions. The key case directions to look out for are:

1. The Local Authority's response – usually within 4 weeks of the Appeal being registered, the Local Authority must submit their response to your Appeal and whether they oppose.

The Local Authority should also send you the Working Document (if applicable), which is a word version of your child's EHC Plan, where you are able to rewrite the contents of the plan, with the amendments you feel are necessary. Your amendments should reflect the evidence of your independent experts. You will then need to send this to the Local Authority, who should respond with what amendments they agree or disagree with.

2. Further Information deadline – usually within 8 weeks of the Appeal being registered, both you and the Local Authority will need to submit all the further evidence you wish to rely on in the Tribunal. It is important to make a note of this deadline and inform your experts of this date, so they are clear when their evidence will need to be sent to you by.

3. The Hearing – The Hearing should take place within 12 weeks of your Appeal being registered. You will need to check this date with your own diary and with any of the witnesses you wish to bring with you.

The SEND Tribunal process is a complex legal procedure. We hope the above will help you with any Appeal you are currently planning to submit or you have ongoing. **If you do need any assistance with your Appeal, we are happy to help.**





NDA/ BDA's Parent Pop-Up Roadshow Event!

3rd November 2018 11:30 am – 4:00pm
Malcolm Arnold Academy, Trinity Avenue, Northampton, NN2 6JW

Join Helen Boden, BDA Chief Executive, Arran Smith (Microsoft), Hayley Mason (SEN Legal) and John Hicks (Dyslexia Parenting Coach) for this informative event.

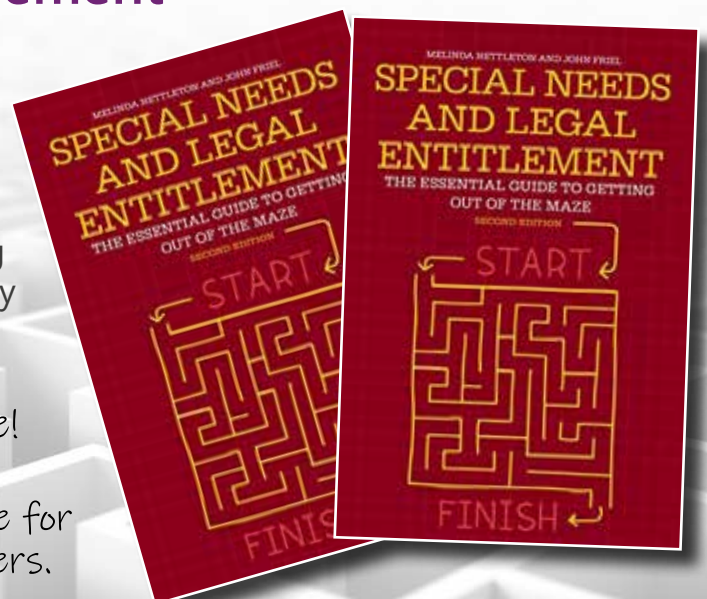
What is dyslexia? Supporting your child's needs; BDA CEO, Helen Boden
Empowering Potential; Arran Smith
Navigating the SEN maze: entitlement, provision and appeals; Hayley Mason
How does my child's dyslexia affect me?; John Hicks

To book your FREE ticket, go to <https://parenteventnda.eventbrite.co.uk>



Special Needs and Legal Entitlement - Second Edition

Fully updated to include the most recent developments in law and practice, the second edition of this comprehensive and straightforward guide to the legal rights of children and young people with special educational needs clearly explains the key issues in a complex system.



★★★★★ – SEN magic must have!

★★★★★ – Really excellent resource for parents and practitioners.

★★★★★ – If your child has Educational Needs, you need this book.

Available for purchase at **amazon.co.uk**