

**PRACTICAL HELP TO SECURE THE BEST
EDUCATIONAL SUPPORT FOR YOUR CHILD OR YOUNG
PERSON (0-25 YEARS)**

BARRATTS
S O L I C I T O R S

Personal Injury and
Clinical Negligence
Specialists

Barratts Solicitors

Jay Tomlinson

Jay.tomlinson@barratts.legal

Legal Definitions

- Child
- Compulsory school age
- Participation age
- Young person
- Special Education Needs

What are special educational needs?

1. The child or young person must either have a learning difficulty or a disability;

AND

2. That learning difficulty or disability must require special educational provision to be made for him or her.

Section 20 (1) Children and Families Act (CFA) 2014

What is a learning difficulty or disability?

Child of compulsory school age or a young person (CYP):

- **significantly greater difficulty in learning** than majority of peers **or**
- has a **disability** which **prevents or hinders** them from making use of facilities of a kind generally provided for peers in mainstream schools/mainstream post-16 institutions

Child 0-5 years:

- test is whether child will fall within definition at compulsory school age

Section 20 CFA 2014:

What is a disability?

- **physical or mental impairment** which has **substantial and long-term adverse** effect on CYP's ability to carry out normal day to day activities (same definition of disability as in the Equality Act 2010)

What is special educational provision (SEP)

- The learning difficulty or disability must call for SEP to be made
- SEP for CYP 2-25 years is educational or training provision that is **additional to or different from** provision made generally for their peers in mainstream environments in England.
- SEP for a child under 2 is educational provision of any kind.

See section 21 of CFA 2014

Local Authority: supporting and involving CYP

Duty under **Section 19 CFA 2014**. LA must have regard to:

- (a) **views, wishes and feelings** of child and parent or young person
- (a) importance of child and parent or young person **participating as fully as possible in decisions**
- (b) importance of child and parent or young person being provided **information and support** necessary to enable them to make decisions
- (c) need to support child and parent or young person to facilitate development of child or young person and to help him or her achieve **best possible educational and other outcomes**

Local Offer

Contents of Local Offer includes:

- Education, health and social care provision
- Arrangements for assessment and EHC plans
- Travel arrangements
- Provision to assist in preparing children and young people for adulthood/independent living

Duties of schools and colleges

Section 66 CFA 2014:

- Must use **best endeavours** to secure special educational provision for all children and young people (whether they have an EHCP or not) for whom they are responsible.
- Duty does not apply to special schools.

Section 68 CFA 2014:

- Duty to inform parents and young people if special provision is made
- Only applies where a child or young person does not have an EHC plan.

SEN information report

Section 69 CFA 2014

Must be published on websites and updated annually

Must include, for example, information about how parents are consulted, needs are identified, assessed and progress measured, approaches to teaching, SEN and staff expertise.

Four areas of SEN

- Communication and interaction
- Cognition and learning
- Social, emotional and mental health
- Sensory and/or physical

SEN support in schools

- A graduated approach
- Assess
- Plan
- Do
- Review

Involving parents and pupils in planning and reviewing progress

- Must provide an annual report on progress
- Should meet with parents at least 3 times each year
- Views of pupils should be included in discussions
- A record of outcomes, action and support agreed to be given to parent and shared with all appropriate school staff.

Specialists

- Schools can involve at any time, especially if poor progress
- Educational Psychologists
- Children and Adolescent Mental Health Service (CAMHS)
- Specialist teachers including teachers of hearing/visual impairment
- Therapists (SALT/Physio/OT)

SEN Funding mainstream schools (not nurseries) and colleges:

- Element One - AWPU (Age Weighted Pupil Unit). Roughly £4,000 per pupil
- Element Two – Designated Schools Grant/Schools Block. Referred to as Notional SEN Budget. Not ring fenced. £6,000 per pupil
- Element Three- High Needs Block. LA tops up funding above £6,000

SEN Funding maintained (not independent) special schools and colleges:

- Base funding of £10,000 per pupil (Element one + Element two)
- Element 3 Funding – LA tops up funding above £10,000

Education Health Care Needs Assessment (EHCNA)

Assessment triggered by:

- Section 36(1) CFA 2014 – Request by parent/young person/school/post-16 institution **or**
- Section 24 CFA 2014- LA becomes responsible when child/young person with SEN is identified or brought to its attention

The EHC Needs Assessment

Legal test s.36(8) CFA 2014:

- (a) the child or young person has or may have special educational needs, and
- (b) it may be necessary for special educational provision to be made for the child or young person in accordance with an EHCP

The process must be collaborative and LA must seek advice and information on SEN and provision

Timeline:

6 weeks – decision to assess or not/notice/appeal rights

14 weeks – complete assessment and issue draft

16 weeks – notice of refusal to issue EHCP/right of appeal

15 days from draft – parents to respond/request school or other institution

15 days – LA consult school or other institution/other LA

20 weeks - final EHCP/ notice of rights to appeal/mediation

Contents of the Plan – why you need to get it right

- Section A: The views, interests and aspirations of the child and their parents or of the young person.
- Section B: The CYP's special educational needs.
- Section C: The CYP's health needs which relate to their SEN.
- Section D: The CYP's social care needs which relate to their SEN .
- Section E: The outcomes sought for the CYP (including outcomes for adult life and the arrangements for the setting of shorter term targets by the educational establishment).
- Section F: The special educational provision required by the CYP.

- Section G: Any health provision reasonably required by the learning difficulties or disabilities which result in the CYP having SEN (including any Individual Health Care Plan made for them).
- Section H1: Any social care provision for under 18's under s.2 Chronically Sick and Disabled Persons Act 1970
- Section H2: Any other social care provision reasonably required
- Section I: The name and type of the school, maintained nursery school, post-16 institution or other institution/type of school if placement not named (draft should never name the school)
- Section J: Personal Budget
- Section K: List of advice and information gathered during the EHC needs assessment which must be attached (in appendices).

Placement

The parent or young person has the right to request the following types of placements to be named in EHC plan:

- maintained nursery school
- maintained school and any form of academy or free school (mainstream or special)
- non-maintained special school
- further education or sixth form college
- independent school or independent specialist colleges (approved by the Secretary of State under s.41 CFA 2014 and published in a list available to all parents and young people)

If any of the above placements are requested the local authority must comply with that preference and name the school or college in the EHC plan unless:

- it would be unsuitable for the age, ability, aptitude or SEN of the child or young person, or
- the attendance of the child or young person there would be incompatible with the efficient education of others, or the efficient use of resources

Annual Reviews

- EHC plans must be reviewed by the LA as a minimum every 12 months but an interim or early annual review can be called at any time.
- Advice and information gathered and sent out 2 weeks before annual review
- Annual review meeting – focus on whether outcomes met/need to be changed
- Report sent to LA and to all parties within 2 weeks of meeting
- Within 4 weeks of meeting LA must notify whether EHCP is to stay the same, be amended (amendment process to be started without delay) or ceased (rights of appeal/mediation if intention to cease)

Phased Transfers

- Relevant early years education to school
- Infant school to junior school
- Primary school to middle school
- Primary school to secondary school
- Middle school to secondary school or
- Secondary school to a post-16 institution

Deadlines

EHC plan must be amended by:

31st March - if transferring from secondary school to post-16 institution

15th February - all other phase transfers

Transfer of EHC plans between local authorities

- EHCP to be transferred on day of move or within 15 days of LA becoming aware of move if LA did not receive 15 days notice prior to move
- On transfer new LA becomes responsible for securing SEP
- Temporary placement until EHCP is amended if impractical to continue attending named placement
- New LA cannot refuse to pay school fees until EHCP has been amended
- New LA can bring forward annual review/conduct new EHC Needs Assessment
- Within 6 weeks of transfer must notify when it intends to carry out review and whether new EHCNA is proposed
- Must review the EHCP either within 12 months of issue/last annual review or within 3 months of transfer whichever is later

Appealing to the SEND Tribunal

Appeal will be brought by parent of a child or by the young person if that young person has mental capacity.

The parent or young person can appeal against:

- Refusal to carry out an EHCNA (and refusal to reassess)
- Refusal to issue an EHC plan
- Refusal to amend an EHC plan following a review or reassessment
- Decision to cease to maintain an EHC plan.
- The contents of an EHC plan but only Sections B, F and I

Time limit: 2 months from date of LA letter or one month minus one day from date of mediation certificate, whichever is later

Consideration of mediation

- Compulsory consideration of mediation before appeal can be lodged except for appeals about Section I only
- Mediation Adviser must be independent of the LA
- Even if parent or young person does not want mediation they must obtain certificate confirming they have received mediation advice
- If parent or young person does engage in mediation and it fails, the certificate will state that mediation has taken place

Disability Discrimination

- Equality Act 2010 (EQA)
- Gives rights to bring claims for disability discrimination against schools, other educational settings and local authorities.
- Only claims against schools can be brought in SEND Tribunal
- Claims against Colleges of Further Education and LA brought in County Court
- Claims for disability discrimination can be consolidated with a SEND appeal
- 6 month time limit for bringing claims

- Claim is adversarial in nature
- Disability must be proven even if school accepts pupil is disabled – must be physical or mental impairment which has substantial and long term adverse effect on ability to carry out normal day to day activities
- Failure to make reasonable adjustments is most common type of discrimination claimed
- Duty to make reasonable adjustments extends to provision of auxiliary aids and services but subject to cost and practicality considerations and must be reasonable
- Defences to claims of disability discrimination
- Remedies typically ordered in disability discrimination cases

Judicial Review

High Court considers actions and decisions of public bodies to establish whether the action (which can include inaction) or decision was lawful or not.

It is **not** an appeal against a decision but looks at process/way in which the decision was made

Grounds include: Illegality, procedural impropriety, irrationality
Breach of Human Rights Act 1998

Time Limits 3 months, only extended in exceptional cases

Pre Action Protocol Letter

Funding – Legal Aid

Remedies and Damages

Making a complaint

- Follow the organisation's complaints policy
- Remember school Governors are responsible for SEN policy so complaints can be escalated to the Governors.
- Complaints about maintained schools (those funded by the LA) can be escalated to the LA
- Some complaints about Academies and Free Schools can be escalated to the Education Funding Agency and ultimately to the Secretary of State for Education
- Some complaints about LA can be referred to the Local Government Ombudsman usually after the LA complaints policy is exhausted

Local Government Ombudsman (LGO)

- LGO will investigate claims of maladministration by public bodies
- Complaints to be brought within 12 months but discretion to extend especially in cases of severe maladministration and injustice and/or issue has wider public interest
- Investigations concluded within 52 weeks except in exceptional circumstances and investigators must keep complainants in touch with the progress of their case at least every 28 days

For further details and where to get help, an Information Pack Is available after this talk. Please email Jay Tomlinson if you would like a copy.

Your pack includes details of:

- Sources of information and advice
- SEN and Disability law
- Feel free to contact me if you need any further advice or help:

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