

SENlegal

NEWSLETTER



Issue 6 - October 2018

For Professionals, Schools
and Academies working in
the SEND sector.



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The Welsh System - Making a Statement?

Helping parents to prepare for the SEND Tribunal.

The Power of Specificity.

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

Knowledge
Empowers
You


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

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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 It is not disputed that the Statementing system under the Education Act 1996 is woefully outdated.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.

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**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.

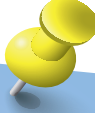


If the law is quite clear that provision must be specified, why do we so often see Section F littered with vague terminology such as "access to", "opportunities for", "regular support"? What does 'regular' mean to you? Regular meals suggest daily meals, however, regular dental check-ups suggest once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

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



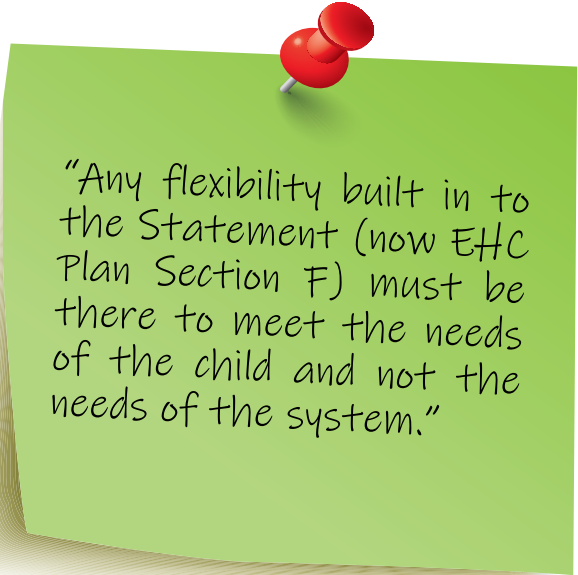
"EHC Plans should be clear, concise, understandable and accessible to parents, children, young people, providers and practitioners. They should be written so they can be understood by professionals in any Local Authority."



"...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".

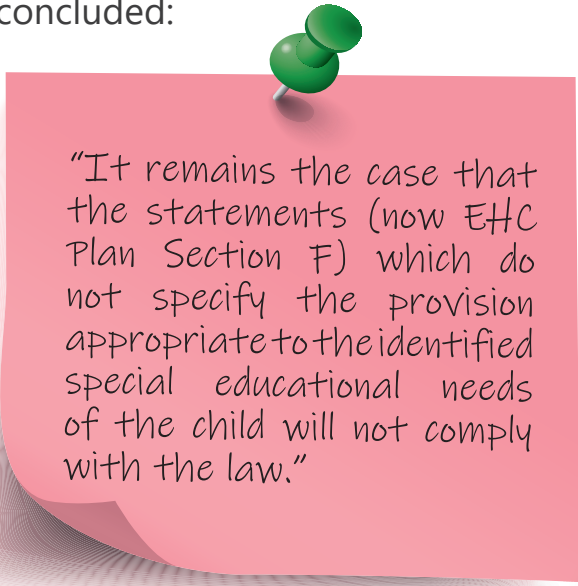
The danger when provision is non-specific and vague, is that very limited or no provision, is likely to result. Vague wording is also impossible to enforce. Any provision within Section F must be so specific and clear as to leave no room for doubt as to what should be delivered (*L v Clarke and Somerset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



"Any flexibility built in to the Statement (now EHC Plan Section F) must be there to meet the needs of the child and not the needs of the system."

The decision of the Court of Appeal concluded:



"It remains the case that the statements (now EHC Plan Section F) which do not specify the provision appropriate to the identified special educational needs of the child will not comply with the law."

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.

SENlegal services for Schools & Colleges.

For those in the know, SEN Legal has discreetly provided advice to schools and colleges for the last 20 years. At our last two Annual Conferences for professionals, our Principal Solicitor Melinda Nettleton has presented a range of topics which have been of recent concern to our clients' schools and colleges, including:

- ✓ 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 LAs' 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 also 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 what you do best!

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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**.

the
transition
event East 2018

Organised by
 my family
our needs

Thursday 15th November 2018
Newmarket Racecourse

Getting your ducks in a row - Parents preparing for the SEND Tribunal and how you can help.

By James Brown - Trainee Solicitor



You may currently be working with parents who have now received a decision from the Local Authority refusing to assess their child, refusing to issue an EHC Plan, or who have received a finalised EHC Plan which doesn't name the school they want for example and are now preparing to submit an Appeal against this decision to the SEND Tribunal. The SEND Tribunal is an invaluable forum for parents to achieve the necessary provision needed for their child.

The Tribunal process is a complex legal process and set out below are the steps parents will need to take to prepare their Appeal and also some tips on how you can assist parents in this process.

1 - TIME LIMITS TO APPEAL

Parents have two months from the date of the Local Authority's decision letter, or one month from the date of the mediation certificate, whichever is the longer to submit their Appeal to the SEND Tribunal.

2 - MEDIATION CERTIFICATE

Before parents can submit their Appeal to the Tribunal they must obtain a mediation certificate and must do so within 2 months of the date of the Local Authority's decision letter (unless the Appeal is against Section I alone, which we would never advise). 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 parents obtain a mediation certificate. The Tribunal does not give any 'red marks' to parents for not participating in mediation, they are simply not interested.

3 - INDEPENDENT EXPERT EVIDENCE

As I am sure you will be aware, 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 parents feel their child needs. Therefore, it is essential that parents are arranging for experts' assessments, and do this as soon as possible, to allow sufficient time for the evidence to be available for the Appeal.

4 - SUBMITTING THE APPEAL

In order for parents to submit their Appeal to the Tribunal, they will need to complete the Notice of Appeal form found on the Tribunal's website. Alongside this, parents will need to submit a copy of their mediation certificate, the LA's decision letter, their child's EHC Plan (if applicable) and any other relevant evidence. Some parents will have legal representatives acting for them in this process.

How can you help?

✓ A copy of your most recent OFSTED report.

Tribunals are increasingly asking for a copy of a school's most recent report. The Tribunal will want as much information as possible to reach their decision and the OFSTED report will assist with this. If there have been any concerns raised within the OFSTED report, it is useful to provide evidence of any steps you have taken to address the concerns. For example, a witness statement you may wish to supply.

✓ A copy of your most recent prospectus.

It may have been since the prospectus was published there have been changes to the school or the provision on offer. If so, a letter detailing the updates will be useful.

✓ A detailed document or assessment report of how you as a school can meet the needs of the child.

It will be very helpful to the Tribunal to have your thoughts as school as to the suitability for the child. This should include details of any assessment period the child has previously attended at the school and provide a breakdown of how you propose to meet needs.

✓ Provide the fees of the placement.

The Tribunal will need to know what the costs of a placement at your school will be and what this includes. For example, the Tribunal will want to know how much therapy will be delivered and how this is represented within the fees. To simply state that the fees are 'X' amount of pounds will not be as helpful to a parent's Appeal as providing a detailed breakdown will be.

✓ A signed Provision of Place Form.

For independent or non-maintained schools the Tribunal requires a Provision of Place form to be completed, to confirm a place is available for the child. It is useful to set out within the Provision of Place form how long you are able to hold that place for.

*It is also very useful if a representative from the school attends the Tribunal Hearing in support of the parents Appeal. The Tribunal are likely to have questions and a representative from your school will be best placed to answer these.

The SEND Tribunal is a complex legal procedure. We hope the above will help you as a school assist any parents having to navigate their way through this.





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**