

SENlegal

NEWSLETTER



Issue 8 - June 2019



In this Newsletter:

Potential to Settle - The Working Document Process.

The 'out of care' con you need to be aware of.

Further Education Colleges - An attempt to mislead Parents?

Recent changes to the Disabled Student Allowance.

Upcoming events and Workshops.

What is The Chelsea Foundation?

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

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British Dyslexia!
Association



If your child or you, have a diagnosis of a specific learning difficulty (SpLD) i.e. Dyslexia, Dyspraxia/DCD, and are looking to go to University in September - do not forget that following many years of lobbying by the BDA, from February 2019, all students with a diagnosis of an SpLD before they were 16 no longer have to get another assessment in order to apply for the disabled student allowance (DSA).

An assessment for a specific learning difficulty, undertaken at any age, will allow young people with a SpLD (i.e. Dyslexia) to apply for support right through to Higher Education without the need for further post-16 assessments.

This announcement from the Department for Education came a long way in beginning to recognise Dyslexia in the same way as any other disability. No other disability requires a young person to be reassessed post-16 and for those with a SpLD's the process is now the same.

The financial burden for families post-16 of an additional assessment can now be avoided, removing the barrier to young people getting the right support at University. Great work by the BDA!



British Dyslexia!
Association

 Microsoft

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BDA's FREE Parent Pop-Up Roadshows

SUFFOLK

29th June 19

Visit BDA website to book

HAMPSHIRE

6th July 19

Visit BDA website to book

LEEDS

28th Sept 19

Visit BDA website to book

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



WHAT IS THE CHELSEA FOUNDATION?

The Chelsea Foundation's Disability Inclusion programme enables young people and adults with any disability to participate in regular, organised football matches and coaching sessions in a safe and enjoyable environment.



FOUNDATION



Thanks to the Premier League & the BT Disability Fund, the Chelsea Foundation seeks to make existing programmes as inclusive as possible so that disabled people can take part in a wider range of activities.

Through the delivery of equality and disability awareness training for coaches & teachers, the Chelsea Foundation embeds a culture of inclusive sport and physical activity, ensuring disabled people can access the sport or physical activity of their choice, inspiring them to be more active and encouraging them to develop the skills and confidence to realise their potential.

Pan-disability teams for males and females of all abilities aged from four years old to adult enjoy professional football coaching and play in FA-recognised leagues, cups and tournaments both domestically and abroad. The Chelsea Foundation also runs the Surrey FA Talent Identification Programme, and the FA Regional Talent Centre for elite cerebral palsy players in the South-East region. These life-changing opportunities provide a boost to players' self-confidence and self-esteem.



To find out more, visit www.chelseafc.com/en/foundation

Potential to settle?

The Working Document Process



As you may remember from the January edition of our newsletter, in 2017/18:

- Families registered **5,679 appeals** with the SEND Tribunal (20% up on last year) which is the highest total ever recorded.
- **5000** of those appeals were seen through to completion.
- Of those 5,000 appeals, **2,300** had to be decided by the SEND Tribunal - **85% were concluded in favour of parents**
- This means **2,700** were concluded without the need for a hearing.

How these 2,700 Appeals were concluded will vary considerably. However, from our own experience, many appeals concluded before the Hearing date are as a result of the parties engaging in the Working Document process.

So what is the Working Document?



A Working Document is a copy of your child's EHCP (that you as a parent appealed) in word format. The LA initially sends version 1 to the parents, then both parties (parents and LA) have an opportunity to amend the document passing it backwards and forwards with changes about the needs and provision that you consider your child should have contained within their plan.

The insertions and changes you are requesting must be evidence based. It is important if you are getting independent expert advice from an Educational Psychologist, Occupational Therapist or Speech and Language Therapist, that they are willing to defend their work in a Tribunal and provide recommendations that are 'specific.' If they will just write you a report and will not defend their work, you run the risk of not having an expert witness if you find that you need to go to a hearing. Having your experts with you to justify their recommendations, is important.

In 2017/18:

5679

Appeals registered with the First Tier Tribunal in 2017/18.

+20%

This is an increase of 20% on 2017 (highest ever recorded).

5000

5000 of those appeals were seen through to conclusion.

2300

Seen to conclusion were decided by SEND Tribunal.

If you are working through the Working Document process currently, these key points may help;

- ✓ Sections B, F & I are legally enforceable. Do not waste a large volume of your time amending Section A.
- Being concise is key. It can be very easy to want to include everything that ever happened to your child in the EHCP. *“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”*
- ✓ The document has a key (*below), always follow it. As a parent the additions you make will always be in bold. The LA's will be in italics.
- Ensure you renumber the draft each time you submit it - version 1 will be first issued by the LA, version 2 will then be the parents copy and you will keep changing the number every time it goes back and forth between the parties. You do not want to do a lot of work on the document to find that it was an earlier version. It also helps to be able to refer back to older versions if needed.
- ✓ Ensure anything you add is specific. Vague, unspecific and meaning words in Section F will dilute enforceability. Specificity particularly in Section F is key.

*Key for amendments to The Working Document:

Normal type	→	Original EHC Plan
<u>Underlined type/</u> Underlined strikethrough	→	Amendments/deletions agreed by both parties
Bold type	→	Parents' proposed amendments
Bold strikethrough	→	Parents' proposed deletions
<i>Italic type</i>	→	LA's proposed amendments
<i>Italic strikethrough</i>	→	LA's proposed deletions

If you are not able to reach an agreement and do require a Hearing, the Working Document removes discussion on the day between both parties and the Tribunal will focus on the areas in dispute. Remember, do not settle for a poor deal for your child, no matter how much pressure at the last minute or the temptation of being able to adjourn the hearing. Ensure that what is being proposed will actually provide you what your child needs.

Take your time, think about what your child needs and the evidence you have and good luck, as a parent the figures are in your favour!

Further Education Colleges

An attempt to mislead parents?



Some parents appear to be receiving phone calls and letters saying that their Child/Young Person must move on to a Further Education College (FE) at 16.

There is nothing in the **Children and Families Act 2014** or the **Special Educational Needs and Disability Regulations 2014** which says that, so a parent's first question should always be "can you show me where it says that please?"

Know your rights...

There is nothing in the **Children and Families Act 2014** or the **Special Educational Needs and Disability Regulations 2014** to say that a Child/Young Person must move on to a Further Education College at 16.

Whilst an FE college may be less expensive for the Local Authority, the legal test remains - what is the educational provision required? Parents can also take comfort from the following cases:

W v Gloucestershire County Council [2001] All ER (D) 121, in that case the High Court decided that a child could not be moved once an examination course has started unless this would be without detriment.

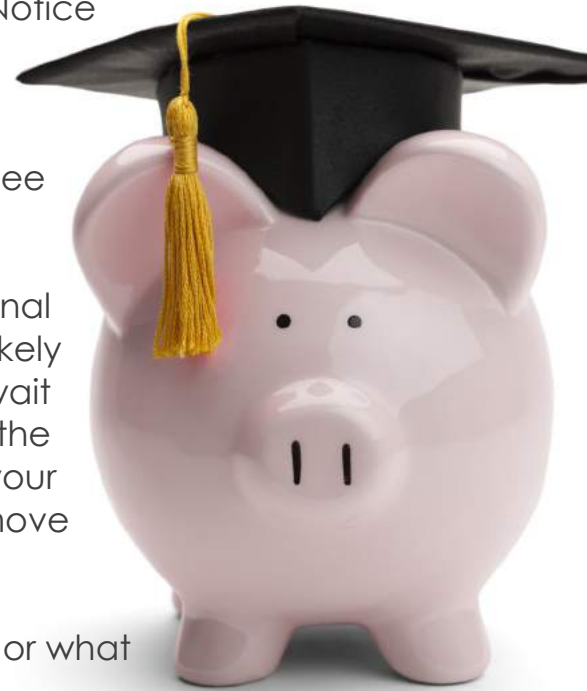
Examination body, curriculum content, course numbers, order in which modules are taught, and ability to "catch up" also make it very difficult for a Local Authority to change schools or school to college. In *R (S) v Norfolk County Council [2004] EWHC 404 (Admin)* the High Court ordered interim relief to preserve the status quo pending an Appeal.

Continued on next page...

In the alternative should the Local Authority issue a Notice ceasing to maintain the EHC Plan, the EHC Plan remains in force if there is an Appeal to the SEND Tribunal until the Appeal is decided. This means that any specialist independent school fees **must continue to be paid** (see **Section 45(4)(b)** of the **Children and Families Act 2014**)

Bearing in mind the increased workload in the SEND Tribunal and consequently delayed hearings, the EHCP will likely be extended for the greater part of a year whilst you wait for a hearing date which means for the whole time, the independent school/college continues to be paid and your child/young person, remains as they are – a tactical move perhaps.

If you need advice about whether to Lodge an Appeal or what your rights are, contact us today. We can help.



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**.

the autism show
The National Event for Autism

in association with



Come and meet team
 SEN Legal at the Autism
 show 2019 in London
 and Manchester.

London
14 - 15 June
ExCel

[Click here for more Info](#)

Manchester
28 - 29 June
EventCity

[Click here for more Info](#)

The Out of Care “Con” you need to be aware of...



Following the Winterbourne view care home scandal, adult social care have generally adopted policies of transforming care - in other words, pushing young people with learning difficulties out of care and pressuring parents to opt for supported living instead.

The Advantages claimed are:

- Community ties – you will have your young person living on the doorstep;
- The young person deserves a chance of an ordinary life; and
- They claim residents are more independent, engage more, thrive.

The factual context behind the Local Authority model of choice is that since 2010 there has been a £7m cut to the adult social services budget i.e. there is an economic advantage. Under this model, the Local Authority pay for accommodation in residential care. In supported living there is a tenancy (like a flat share with the young person's own room, shared kitchen + bathroom and carers coming in) the tenancy means that the accommodation is paid for by housing benefit, shifting 1/3 of the cost from Local to Central Government. Hence the “out of care push” is backed by a massive financial package.

There are complaints that the Carers are untrained, low wages translate to low skills and high turnover. Carers don't have the ability to communicate (for example, by appropriate sign language). There is a lack of consistency, multiple carers (20-30 recorded in some cases) ever changing, that the young person is hanging about the home with insufficient 1-1 support to go out or if they go out, they are prey to manipulation by criminal elements. The commissioning assessments are often for basic support only and even maximum payments are not enough to do the job.

The things college and care staff say can additionally, be the biggest source of frustration for families. They will want to emphasise that their provision has been excellent, their care is good and your young person is “doing really well” or “absolutely fine” these overly positive words will get recorded in the assessment notes

and count against your young person, if a change and long term care, rather than supported living is required.

Radio 4 research indicated lately a big rise in serious injury, **up 300%** in last 8 years exposing unsafe environments. In 2011 – 2018 there were **2,041** unexplained deaths, **134** of these deaths, in 2018 alone. A rise of 40% in 8 years. Also in 2011-2018 there were **3,700** serious injuries. This is a rise of **279%**.

The Statutory Regulation is much more limited in supported living, unlike care homes. A CQC inspection for supported living takes place where the Head Office of the Supported Living company/agency is registered, bizarrely not the supported living placement itself.

‘Since 2010 there has been a £7m cut to the adult social services budget’

Parents who attempt to monitor their young person (issues such as how money is spent, what is actually delivered?) are frustrated. They cannot apply for records under the GDPR/Data Protection Legislation, because they are not the “data subject”. There is no provision for those with learning difficulties in the legislation. The only way to access records, is to have a Power of Attorney (which cannot be granted by a young person, who has no understanding of the issues they are giving away), or Deputyship. This means that obtaining Deputyship is essential, if parents are going to be able to monitor Supported Living placements effectively.

If you need advice on Power of Attorney, Deputyship or adult social care, contact us – we can help.



Upcoming workshops for parents, carers and professionals

Obtaining an Education, Health & Care Plan

Saturday 22nd June

10am - 1pm

NHS continuing healthcare, adult social care, Power of Attorney & Deputyships

Tuesday 16th July

10am - 1pm

Speakers to include: Melinda Nettleton and James Brown of 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

When it comes to your child's future, only the best will do.



With a **97% success rate** in:

- ✓ Appeals to SENDT
- ✓ Disability Discrimination
- ✓ Deputyships
- ✓ EHC Plans/ Statements
- ✓ Judicial Reviews
- ✓ Admissions Appeals
- ✓ Social Services
- ✓ Care Proceedings

* Latest figures from 2018



To find out more about how SEN Legal can achieve the best possible results for your and your child, call our friendly team on **01284 723952**.

Specialist SEN & Disability
Legal Practice
senlegal.co.uk