

Virtual National Conference of Parent Carer Forums

IPSEA: SEND law: an overview of relevant legislation and routes of redress

#LetsParticipate23

Planning Partners

SEND law: an overview of relevant legislation and routes of redress

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In this workshop, we will cover:

- Welcome to IPSEA
- Introduction to SEND law framework
- Overview of routes of redress
- What's next? Brief discussion of SEND Review implications
- Questions and answers

Introduction to IPSEA

- National charity offering free and independent legally-based advice and support on special educational needs and/or disabilities (SEND)
- Advice to parents, carers and young people – Advice Line, Tribunal Helpline and a Tribunal casework service
- Information on SEND at www.ipsea.org.uk
- Training for parents/carers, professionals, schools, colleges and local authorities
- Policy work at regional and national level

Want to know more?

Book your [parent carer forum training](#)!

Or come along to our parent carer [training days](#)!

8 Feb – SEND law and young people

24 Feb – introduction of SEND law

27 Feb – EHC plan masterclass – obtaining an EHC plan

31 March – introduction of SEND law

Introduction to IPSEA

Top issues:

- asking for an EHC needs assessment
- EHC plans advice
- naming a school with an EHC plan
- implementation issues
- annual reviews
- content of final EHC plans
- missed legal deadlines

SEND law framework

Key sources are:

- [The Children and Families Act \(“CAFA”\) 2014 Part 3](#)
- [Chronically Sick and Disabled Persons Act \(“CSDPA”\) 1970](#)
- [Children Act \(“CA”\) 1989](#)
- [The Special Educational Needs and Disability Regulations 2014 \(“SEND Regulations”\)](#)

SEND law framework

Key sources (cont) are:

- Case law (some cases under ‘old’ law, Education Act 1996, still relevant)
- [The Special Educational Needs and Disability Code of Practice 2015](#)
 (“the Code of Practice”)

CAFA 2014

Key legal duties and definitions:

- definition of special educational needs and special educational provision
- when EHC needs assessments must be carried out
- EHC plans:
 - when required
 - contents
 - conditional right to have a particular setting named
- appeal rights to SEND Tribunal

CAFA 2014

Sitting underneath CAFA 2014 are the SEND Regulations:

- EHC needs assessment process
- legal deadlines
- prescribed sections and detail of EHC plan (sections A – K)
- how and when EHC plans are to be reviewed
- mediation detail (e.g. Reg 37 – decision making authority)

CSDPA 1970 and CA 1989

Children's social care legislation

Section 2 CSDPA 1970 - specific duties on LAs to provide certain services to those under 18 to meet needs.

CA 1989 – general duties on LA to assess and provide services to children and their parent carers. Section 17 is the gateway to obtaining services under CSDPA 1970 (services can only be provided to a child identified as 'in need' under CA 1989).

Case law and the Code of Practice

Case law

- Upper tribunal cases are binding on SEND Tribunal and LAs
- [Noddy Guide 2022](#)
- Helpful interpretation of CAFA and SEND Regulations

Case law and the Code of Practice

Code of Practice

- statutory guidance
- duty to “have regard” to it
- the law overrides the Code of Practice if differences between them

Quiz time!

Q. Where would we find the definition of special educational needs?

Q. Where would we find the process for an EHC needs assessment?

Q. Can an LA apply higher thresholds in its policies?

Routes of redress

How to resolve issues:

- ✓ complain to LA
- ✓ complain to LGSCO
- ✓ judicial review
- ✓ mediation
- ✓ appeal to SEND Tribunal

Which route to take:

- the complaint
- the solution required
- are other options available?
- urgency?

Routes of redress

Complaining to LA

Breach of legal duties and timescales.
Follow internal process

Complaining to the Local Government and Social Care Ombudsman (LGSCO)

Investigates claims of maladministration
leading to injustice.

Considers the way a decision is reached.

Must complain within 12 months. Can
make recommendations.

Routes of redress

Judicial review (JR)

Ask a court to look at the decision made by a public body and say if it was made in a fair, lawful and reasonable way.

Use as last resort. 3 month deadline.

Two stages

Seek legal support and [check legal aid.](#)

Routes of redress

Mediation

More informal route than appeal.

Right to try if whenever you can appeal (even if only section I appeal).

LA must arrange if parent / carer wants it.
Can take supporter.

LA representative to have decision making authority.

Routes of redress

[Appeal to SEND Tribunal](#)

Appealable decision / contents of EHC plan. Requirement to consider mediation (unless section 1 only).

Later of: **2 months** from date of decision / final plan letter or **one month** from mediation certificate.

Forms available [here](#). Get support [here](#).

Decision made based on evidence and law.

Routes of redress

What has happened?

- LA refused to carry out EHC needs assessment...
- LA breached legal timescale for issue of final EHC plan...
- LA failing to implement provision in the EHC plan...

What can you do about it?

- consider mediation. Appeal in the SEND Tribunal option.
- complain to LA - complain to the LGSCO / JR if matter is urgent.
- complain to LA – complain to LGSCO / JR if matter is urgent.

Routes of redress

What has happened?

- LA decided to cease to maintain EHC plan...
- School discriminated on grounds of disability...
- LA not included all SEP in the EHC plan

What can you do about it?

- consider mediation. Appeal to SEND Tribunal option.
- claim in the SEND Tribunal
- consider mediation. Appeal to SEND Tribunal option.

Myth busting!

1. The LA does not have to attend mediation?
2. The timescales to complain to the LGSCO and apply for JR are the same.
3. You should wait until the next review of the EHC plan to sort out issues?
4. It is expensive to appeal in the SEND Tribunal.

SEND Review – what's next?

Key concerns of IPSEA:

1. Dilution of existing SEND legal rights
2. Restricted access to SEND legal rights



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www.ipsea.org.uk

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- ✓ Help us reach more families by fundraising for us – the money you raise will help fund our free advice and support services for families of children and young people with SEND