

WELCOME TO THE
PARENT AND CARER ALLIANCE C.I.C.

**Conference for Parents and Carers
of Children and Young Adults with
Special Educational, Health and
Social Care Needs
22nd November 2022**

Parent and Carer Alliance



Care Action Protect Empower

info@parentandcareralliance.org.uk



LangleyWellingtonLLP Solicitors
Gloucester & Cheltenham



Education@LangleyWellington.co.uk www.EducationLawyers.co.uk

PARENT AND CARER ALLIANCE C.I.C.

LUCY FULLARD
&
LOUISE ARNOLD
DIRECTORS

Parent and Carer Alliance



Care Action Protect Empower

info@parentandcareralliance.org.uk

EDUCATION LAWYERS
Part of LangleyWellingtonLLP Solicitors
Education Legal Services for Families, in particular, Special Educational Needs and Disability

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Gloucester & Cheltenham



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WHO ARE THE ALLIANCE?

2 Directors who are parent carers themselves.

4 Advocates and a family support worker

Our Aims are that families:

- Feel less alone, more recognised and supported,**
- Are better prepared and informed, and**
- Are able to champion getting the needs of their vulnerable children met**

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WHAT DOES THE ALLIANCE DO?

- ❑ Webinars on legislation and rights
- ❑ Advice Service and social media
- ❑ Families meeting and sharing experiences
- ❑ Local and national projects to improve services

www.parentandcareralliance.org.uk/events

www.parentandcareralliance.org.uk/webinars

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NEXT EVENTS

- ❑ 24th November **CARERS RIGHTS DAY COFFEE**
Highfields Garden World, 10 am to 12 pm
- ❑ 1st December **PHYSIOTHERAPY WEBINAR**
Online 7 pm focusing on respiratory management
- ❑ 13th December **EDUCATION LAWYER ADVICE**
Free 30 minute consultations with Rukhsana Koser

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ADVOCACY & ADVICE

Telephone advice

Online question form

Free of charge if you live in Gloucestershire due to funding from the National Lottery and Barnwood Trust –

One to one support: Advocate or Family support worker

Self funded support is also available, including independent social work assessments for Tribunal

www.parentandcareralliance.org.uk/advice/service/

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PHYSIOTHERAPY SUPPORT

- ❑ Self funded support from an Independent Physiotherapist whose services include Physiotherapy reports for Tribunal

Free of charge if you live in Gloucestershire due to funding from Gloucestershire community foundation -

- ❑ Emergency physiotherapy if you become injured whilst caring

- ❑ Online advice for supporting the person you care for

www.parentandcareralliance.org.uk/physiotherapy/

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IMPROVING SERVICES

The Alliance has been commissioned by Professor Luke Clements and the School of Law's Legal Entitlements & Problem-Solving (LEaP) Project at the University of Leeds, to undertake a consultation into Disability Needs Assessments.

The aim is for the experiences and expertise of Parent Carers and their families to contribute to creating a better disability needs assessment which could be done more effectively and result in better support for families whose children have additional needs.

We need and appreciate your help

www.parentandcareralliance.org.uk/action

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FIND OUT MORE & STAY UP TO DATE

- ❑ Become an Associate
info.parentandcareralliance.org.uk/welcome/join-opt-in
- ❑ Join our closed Facebook Group
www.facebook.com/groups/parentandcareralliance
- ❑ Follow our Facebook page
www.facebook.com/parentandcareralliance.org.uk
- ❑ Follow us on Twitter twitter.com/AndCarer
- ❑ Visit our website www.parentandcareralliance.org.uk

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Gloucester & Cheltenham



THANK YOU
PLEASE GIVE FEEDBACK

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info@parentandcareralliance.org.uk

07918 043705

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Gloucester & Cheltenham



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Health & Social Care rights in context of SEN

Luke Clements
Cerebra Professor of Law & Social Justice
School of Law, Leeds

SEND
D



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Not known to the service

File opened 2020 closed 2021 no provision

Did not reach the threshold for assessment

*love and kisses
social services*

Ditto

Paediatric services

The right to an assessment



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- Disabled children and parent carers have a right to be assessed for their social care and support needs
- The definition of a disabled child is very wide – including not only physical and sensory impairments but also a **mental disorder** of any kind
- The duty to assess a disabled child's support needs – s17 Children Act 1989
- The duty to assess a parent carer's support needs – s17ZD Children Act 1989

Support for disabled children & their families



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The Children Act 1989 and the Chronically Sick and Disabled Persons Act 1970 reserve a range of support services for disabled children and their families :

- Personal assistance
- Direct Payments
- Short breaks
- Community based activities
- Home adaptations



Challenging local barriers

Some authorities unlawfully:

- refuse to assess a disabled child / parent carers until they have tried short term support – eg ‘early help’ / parenting classes:
- state that only children who meet the criteria for an assessment by their Disabled Children’s Team can access supports under the CA 1989 / CSDPA 1970;
- create severe criteria that have to be satisfied to have an assessment by the DCT.

This is unlawful – a families needs for support depend on their needs – not on which care team assesses them.

Table 1 – Table of abilities and needs to help identify likely appropriate routes for assessment and support

Skills area	Able	Mild	Moderate	Severe	Profound	Untested
Learning	Able for age	- Usually functionally independent - Identified Specific Learning Disability	- Moderate Learning Difficulty	- Severe Learning Difficulty	- Profound Learning Difficulty	
Gross motor skills i.e.: Mobility	Able for age	- Usually able to walk but has difficulty i.e.: long distance, may be slow, may have poor balance - Mild motor impairment or difficulties	- Moderately delayed - Walks with aids or may use a wheelchair - May require help with changing position or postural management for function	- Requires assistance to move in and out of position - Markedly abnormal movement - High level postural management required - Not independently mobile	- Unable to walk and uses wheelchair exclusively - Unable to transfer without assistance	
Fine motor skills i.e.: hand and eye coordination	Able for age	- Possible tremor, awkward release, unsteadiness. - Delay in acquisition of skills - Some difficulties in play, writing, drawing or dressing.	- Restricted movements of one or both hands when reading / stretching / feeding / writing / dressing - Poor manipulative skills.	- Severely limited manipulative skills. - Requires aids / assistance for all fine motor function.	- Cannot grasp and release with either hands. - Physically unable to feed self or write.	
Speech, language and communication	Able for age	- Some speech or language difficulties or a mild delay in language skills which may be in related with a general development delay.	- Moderate delay of language skills which may be related with a general development delay. - Uneven development of verbal and non-verbal skills.	- Communications difficulties present as the primary delay in development of social skills and learning. - Absence of language and communication development. - May use augmented communication methods	- Presentation of complex communication needs. - Alternative communication methods used.	
Self help	Able for age	- Some delay in daily living skills i.e.: eating, washing - Organisational difficulties requiring supervision	- Requires facilitation with daily living skills e.g.: eating, washing, dressing, toileting	- Requires constant assistance with daily living skills e.g.: eating, washing, dressing, toileting	- Totally dependent on others for daily living skills e.g.: eating, washing, dressing, toileting	
Vision	Able for age	- Minor visual field loss - Visual activity < 6/18 in better eye or problem in one eye	- Problem in at least half visual field - Visual activity 6/24 - 6/36 in better eye - Reads print with aids	- Visual activity 6/36-6/60 in better eye	- Registered blind	
Hearing	Able for age	- One ear normal hearing and other has profound loss > 70 dB or bilateral loss 30-40 dB	- Bilateral loss 41-70 dB in better ear and/ or failed free-field testing 2 or more occasions in 6 months	- Hearing loss 71-90 dB in better ear	- Profound bilateral hearing loss >90 dB in better ear	
Behaviour	Able for age	- Infrequent aggressive or difficult to manage behaviours. Sometimes tearful /	- Frequent aggressive or difficult to manage behaviours. Frequent tearful /	- Persistently aggressive or difficult to manage behaviours. - Depressed / anxious enough to be considered at risk of self	- Severe persistent self-harm behaviours (head banging, overdose) or assessed as suicide risk by	





Ombudsman reports

A 2021 ombudsman report concerned a parent who was experiencing considerable difficulties caring for her son who had genetic and developmental conditions, learning difficulties, PDA and autism and requested that the authority undertake a Parent Carer Needs Assessment (PCNA).

This was not done because the authority's Disabled Children's Team considered that her son did not meet its the threshold for an assessment.

This was unlawful.

no 20 002 897 (Essex CC) 17.02. 21.



Ombudsman reports

A 2018 LGO report concerned a child with significant mental health needs and in relation to whom there was professional acceptance that respite care was 'needed to prevent a family breakdown'.

This was refused because his impairment was not sufficiently severe to enable him to receive a service from the Council's child health and disability team.

Ombudsman finding (para 46)

- Regardless of which team provided the care, the Council assessed the need and was under a duty to provide [the] respite.

no 17 011 899 (Poole BC) 26.10.18.



Ombudsman reports

it is incorrect to state that budget constraints are a legitimate reason for not meeting the identified support needs of a child.

Each person within the Council's area must be assessed on an individual basis, and their needs met accordingly. Budget constraints must not dictate the level of support offered.

Complaint No 16 011 against *Lambeth LBC* 13.6.18 para 37.



Ombudsman reports

A parent complained that a LA commissioned 'Early Help' service was unsuitable for her son and asked for a DP so that she could purchase something suitable.

The LA accepted that her son was disabled, but said he was not sufficiently disabled to warrant an assessment by the disabled children's team.

It said it has a graduated approach to services as follows:

- Level 1 (universal help);
- Level 2/3 (early help)
- Level 4 – statutory intervention is required either there is a child in need or



Ombudsman reports

Level 4 was defined as ‘a child in need of protection’ or one that had complex care needs and disabilities which require specialist services.

Only children at Level 4 were eligible for direct payments

Ombudsman

- In finding maladministration he held that the child was ‘entitled to direct payments under the 1989 Act regime because he is disabled’ (para 30).

Complaint no 0 012 558 against Liverpool CC 14.12.21



Ombudsman reports

Single mother with two children: one with significant disabilities & in need constant supervision.

- Council advised her that it expected parents to organise their work responsibilities around the needs of their children: that it was not its responsibility of to provide direct payments solely to enable parents to work
- But she could use the respite breaks she received to enable her to work



Ombudsman reports

Maladministration

Council has failed to understand the law.

- The child's assessment and carer's assessment should 'feed into each other'.
- Council knew son needed constant supervision.
- Council also knew mother in full time work and the nature of her job meant she could not pursue flexible working.
- These were key factors but neither the son's assessment nor the carer's assessment properly considered those issues



Ombudsman reports

- Government guidance clearly states authorities should not assume a carer is happy to continue in their caring role.
- Councils are required to consider whether a carer wishes to work.
- Nothing in the assessments to suggest the Council properly considered the impact on ... if she did not receive support during school holidays.

Kent County Council No. 14 015 230 7 June 2016.



Ombudsman reports

- Government guidance clearly should not assume a carer is their caring role.
- Councils are required to consider wishes to work.
- Nothing in the assessments properly considered the impact receive support during school

Kent County Council No.

Local Government
OMBUDSMAN

Report by the Local Government Ombudsman

Investigation into a complaint against

Kent County Council

(reference number: 14 015 230)

7 June 2016

Challenging LA failings



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These things are important:

- Developing a young persons independence
- Their social networks and experiences
- Their transitions into adulthood;
- Enabling parents to work, train, attend college etc

Support is essential ~ Parent care support groups;

Resources eg

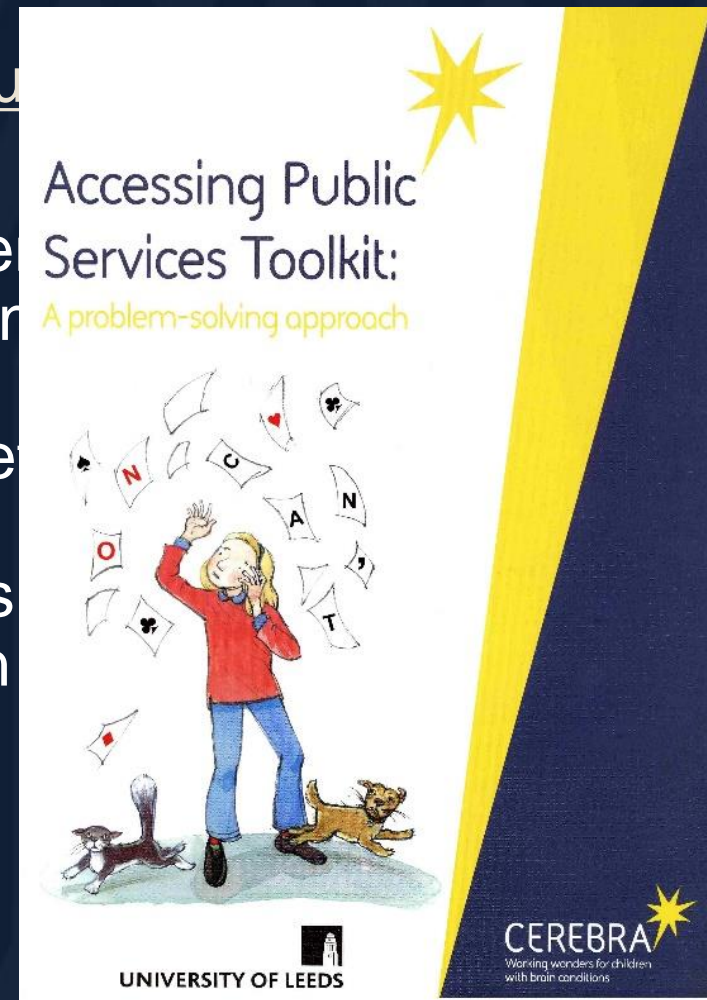
- Materials on my website – publications, lectures, precedent letters etc www.lukeclements.com



Template letters

<https://cerebra.org.uk/get-advice-support/financial/template-letters-england/>

- We want to ask for an assessment
- We want to complain about an 'urgent need' assessment
- The council still hasn't completed provided any interim support
- The council says that our child is
- We're still waiting for a care plan
- etc etc





●

Role of the EP in special education

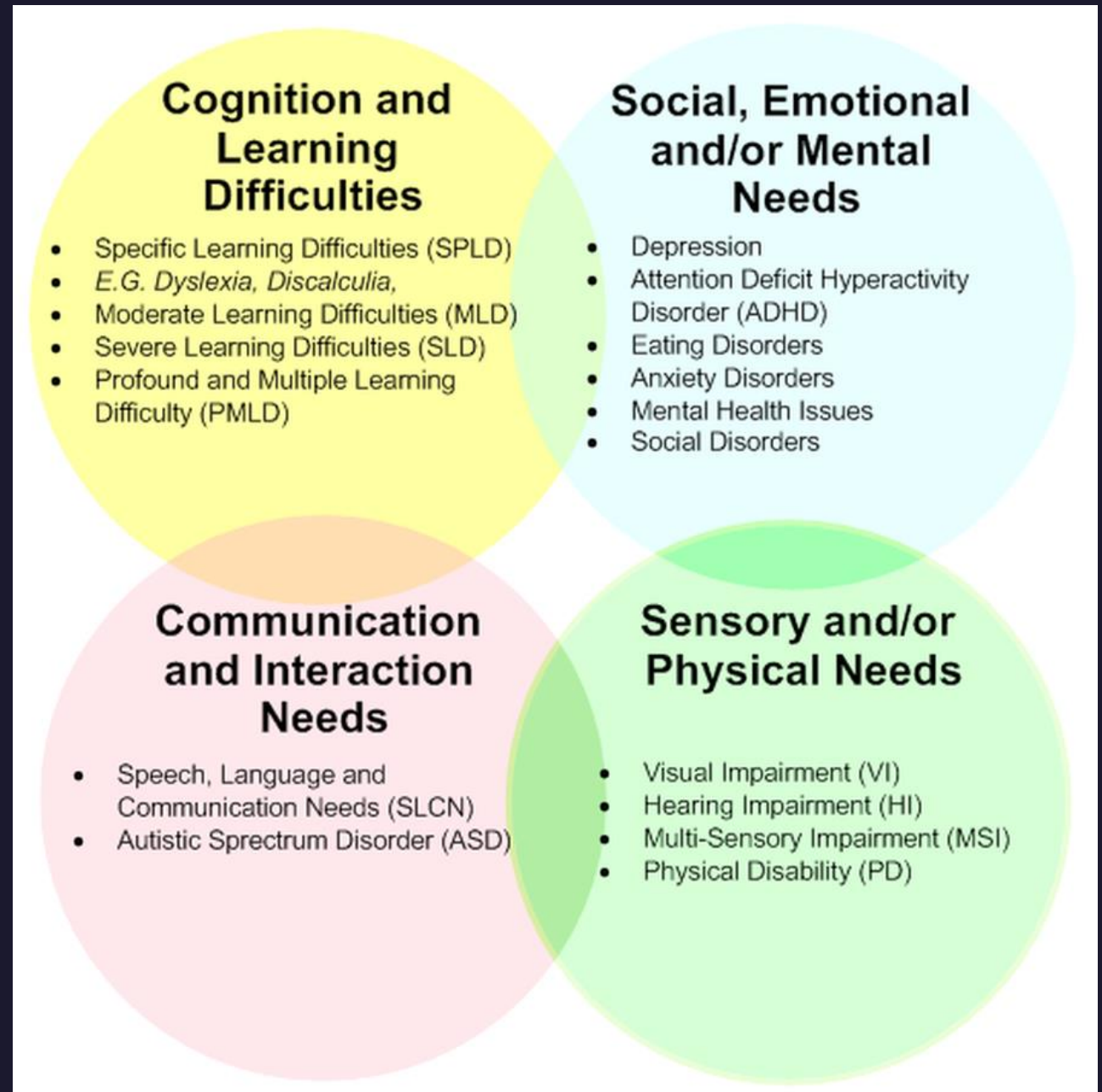
Melanie Hartgill
EDUCATIONAL PSYCHOLOGIST





SEN code of practice

Special education needs



The two models of disability

The Medical Model of Disability



This is a diagram of the traditional Medical Model of Disability, which the Social Model was developed to challenge.

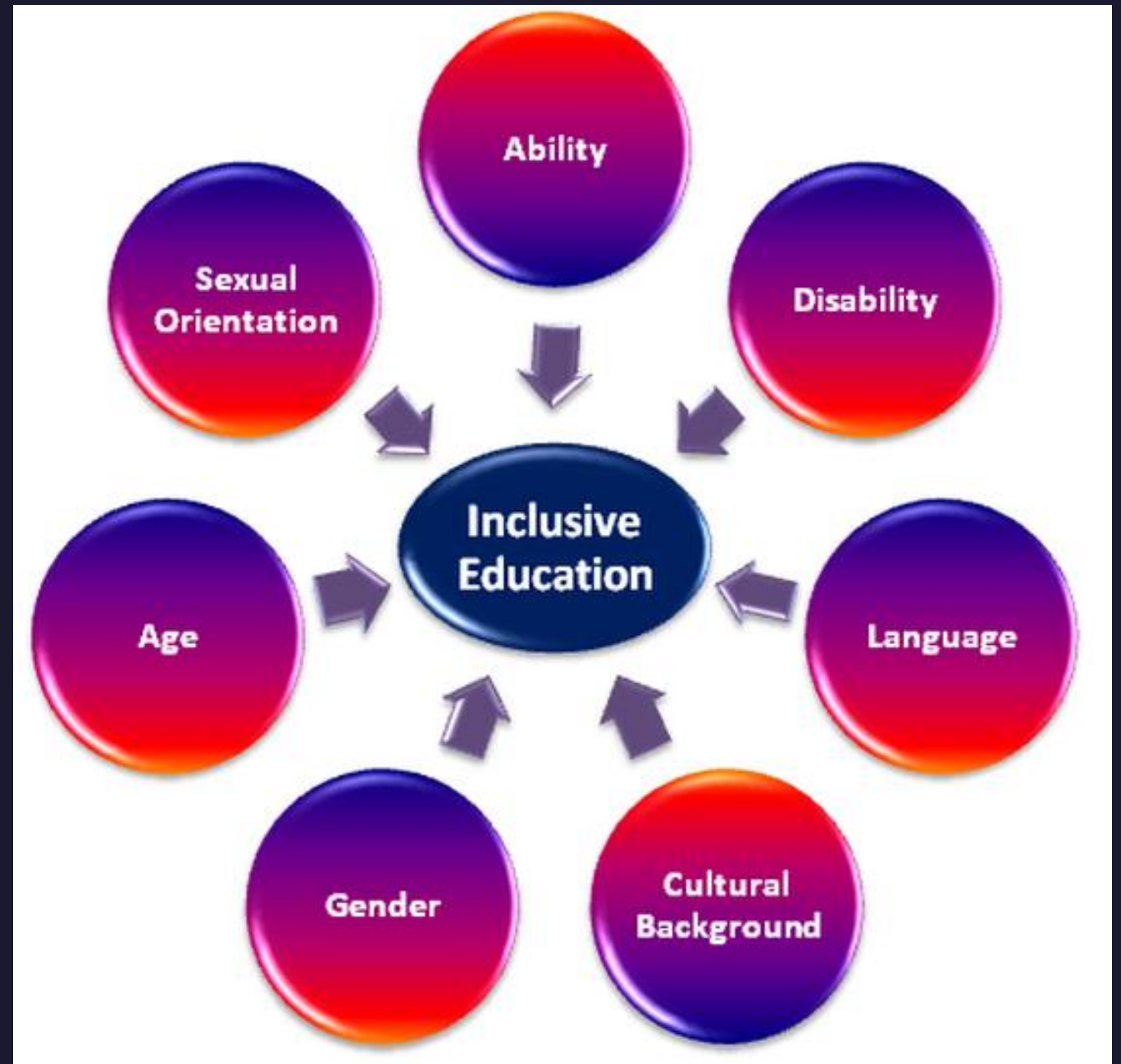
The two models of disability

The Social Model of Disability



The Social Model of Disability states that the oppression and exclusion people with impairments face is caused by the way society is run and organised.

What is inclusive education?



Educational psychology

Psychology helps to measure the probability that an aim is attainable

Edward Thorndike



What does an EP do?



Where does the EP fit in?



Identify key strengths



Consider the child's views



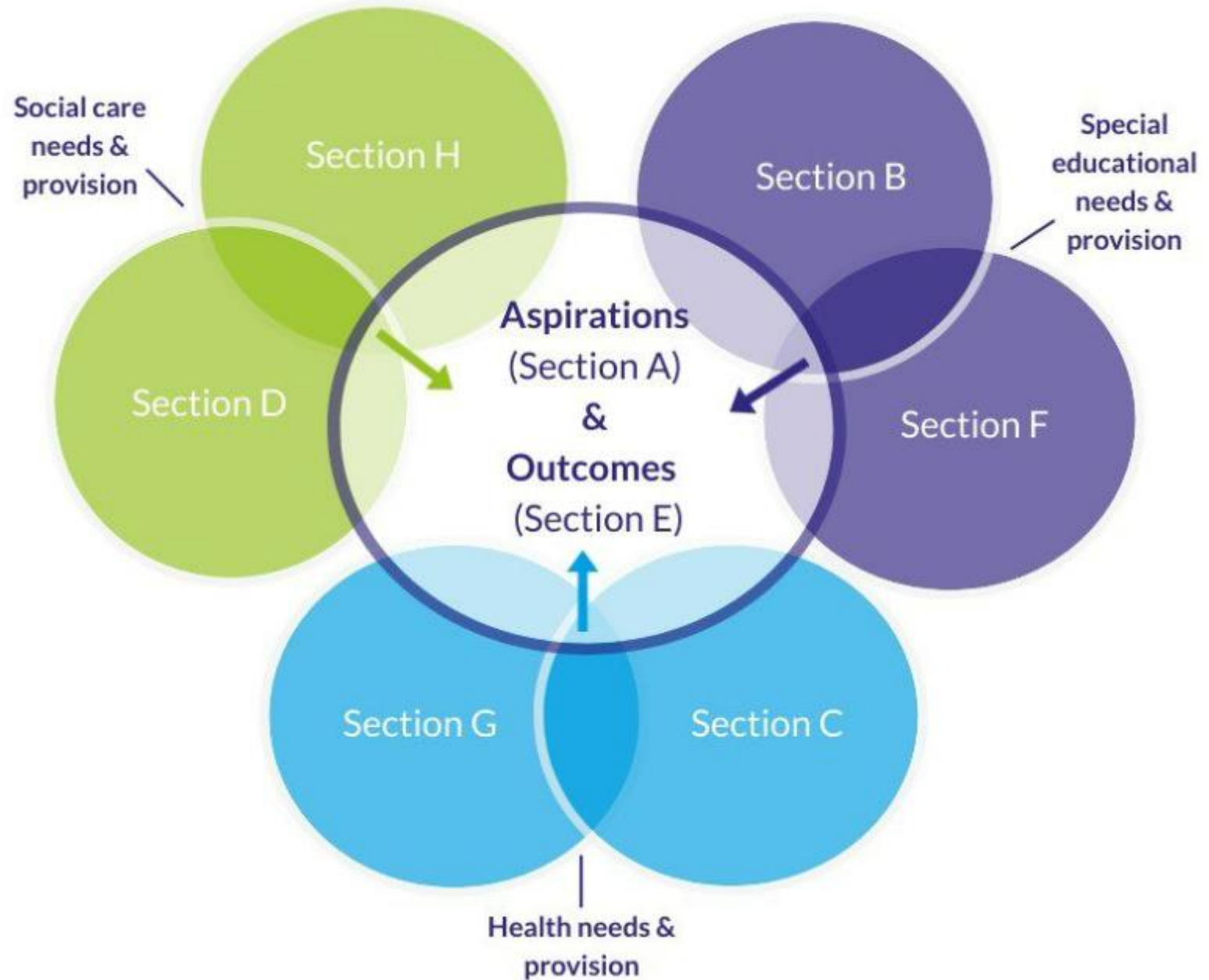
Clarify and define the needs of the CYP



Identify the provision



A good EHC Plan





The EP in tribunal

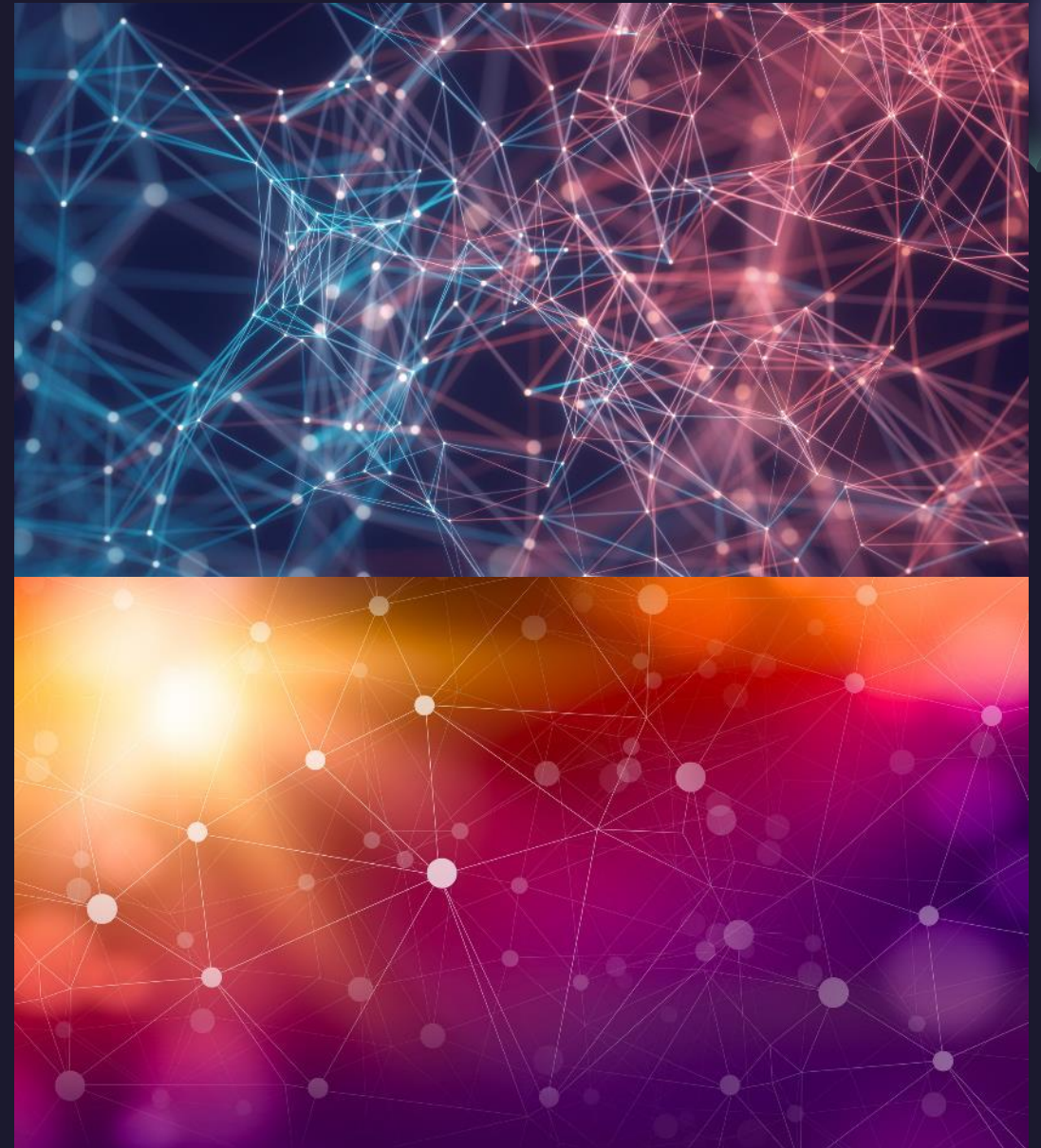


Thank You

Melanie Hartgill

letstalk@melaniehartgill.com

www.melaniehartgill.com



THE ROLE OF THERAPY IN SEN

Patricia Rush
Independent Occupational Therapist
&
Nancy Arnaud
Independent Speech and
Language Therapist

dtcltd@btinternet.com

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LangleyWellingtonLLP Solicitors
Gloucester & Cheltenham

Education@LangleyWellington.co.uk www.EducationLawyers.co.uk



SEN Law and SEND Tribunal

*Ms Shazia Akhtar, Barrister,
Gatehouse Chambers
Mrs Rukhsana Koser, Partner
Education Lawyers*

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Gloucester & Cheltenham



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Definitions

Special Educational Needs

Child has a learning difficulty or disability which calls for special educational provision to be made

Significantly greater difficulty in learning than majority of the other children of the same age

Disability preventing or hindering making use of the facilities other children of the same age in a mainstream schools

Special Educational Provision

Education or training that is additional or different from that made generally for others of same age in mainstream setting

Progress is not limited to academic progress it has to include progress in communication, co-ordination, sensory, behavioural, social, emotional and mental health

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Gloucester & Cheltenham



Law and Guidance

- Part 3 of the Children and Families Act 2014
- The Special Educational Needs and Disability Regulations 2014
- The Special Educational Needs (Personal Budgets) Regulations 2014
- SEND Code of Practice dated January 2015
- Special educational needs and disability – A Guide for Parents and Carers, dated August 2014

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LangleyWellington LLP Solicitors
Gloucester & Cheltenham



SEN Support in Schools

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SEN but no EHCP

Local Authority obligations are:

- Consider EHC Needs Assessment
- To make arrangements for the provision of suitable education at school or otherwise than at school for those children of compulsory school age

School must use its best endeavours to secure the SEP called for by the pupil's SEN is made

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What is SEN Support in School

- All educational settings (nurseries, schools, colleges and further education) must make sure they meet the “reasonable” Special Educational Needs of children and young people they identify as needing extra support
- This is additional to or different from the support generally given to other children of the same age.
- The purpose of SEN Support is to help children achieve the outcomes or learning objectives set for them by the school. Schools should involve parents in this process.

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Types of SEN Support in School

- Special learning programmes
- Extra help from a teacher or a learning support assistant
- Making or changing materials and equipment
- Working with child in a small group
- Observing the child in class or at break and keeping records
- Making sure the child has understood things by encouraging them to ask questions and to try something they find difficult
- Helping other children work with the child, or play with them at break time
- Helping the child with physical or personal care, such as eating, getting around school safely, toileting or dressing.
- Schools may also involve specialists to advise them on effective support and interventions e.g.

Educational Psychologist, Advisory Teaching Service

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A Graduated Approach

When a child is identified as having SEN, the education setting should take action to remove barriers to learning and put effective special educational provision in place.

The SEN support should be based on the graduated approach based on four steps. These are:

□ Assess

Teaching staff should work with the SENCO to assess child's needs, so they can give the right support.

They should involve parents in this process and, wherever possible.

Sometimes schools will seek advice from a specialist teacher or a health professional.

□ Plan

If the school decides that a child needs SEN support they must tell parents.

The school should talk with parents about the outcomes that will be set, what help will be provided and agree a date for progress to be reviewed.

This is often done through a SEND Support Plan.

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A Graduated Approach

□ Do

Child's teacher is usually responsible for the work that is done with a child, and should work closely with any teaching assistants or specialist staff involved. The school should tell parents who is responsible for the support a child receives.

All those who work with your child should be made aware of:

- Their needs
- The agreed outcomes
- The support being provided
- The teaching strategies that are required.

□ Review

The school should review a child's progress, and the difference that the help a child has been given has made, on the date agreed in the plan.

Parents and child should be involved in the review and in planning the next step.

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SEN and EHC NEEDS ASSESSMENT

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Practical Tips

Keep a file of all documents

Documents can include

- ❖ Medical reports/diagnosis
- ❖ School reports
- ❖ Individual Education Plan, Provision Map
- ❖ Minutes of meetings with school or other professionals
- ❖ Correspondence with school, Local Authority, other professionals

KEEP A PAPER TRAIL

After a call or face to face discussion send an email summarising your discussion

Keep a note book - write in it like a journal

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Who can Request an EHC Needs Assessment

Parent can make a request to the LA

School can make a request to the LA

If Parent makes a request – sensible to let the school know

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Request

Draft a letter setting out your request (LA may have a form on their website)

Find out who is Head of Special Needs Education at your Local Authority

Set out background information

Key conclusions and recommendations from medical reports, professional reports

List evidence in support

Set out Legal Test

Diarise when you send the letter to LA, obtain a delivery receipt and ask for an acknowledgement

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Legal Test

Section 36 (8) of the Children and Families Act 2014 states:-

“The local authority must secure an EHC needs assessment for the child or young person if, after having regard to any views expressed and evidence submitted under subsection (7), the authority is of the opinion that—

*the child or young person **has** or **may have** special educational needs, and*

*it **may be necessary** for special educational provision to be made for the child or young person in accordance with an EHC plan.”*
(emphasis added)

A very low threshold

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What LA does next

Acknowledge your request – chase if not received

Explain what happens next

LA may ask you for more information

LA will contact the school for information

A decision on the original request must be communicated to you within 6 weeks

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Criteria for issuing an EHC Plan

- An EHC plan **must** be issued - where, in the light of the EHC Needs Assessment, it is **necessary** for special educational provision to be made for a CYP in accordance with a Plan
- If the CYPs needs cannot be reasonably met within the resources ordinarily, normally available in a mainstream setting, an EHC Plan should be issued
- LA should have considered whether child has made progress in all areas not just academic progress
- If your child is awarded exceptional funding (one off and for limited period) by the LA – it has accepted that child's needs can not be met within the resources available in a mainstream setting

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Common reasons for refusing an assessment

The CYP is not academically behind

It is not possible to obtain an EHC Plan for dyslexia

CYP primary need is health and not education

CYP is not behind his peers e.g. 4 years

CYP needs are not particularly severe

CYP has not spent enough time on SEN Support

School should apply for local exceptional needs funding

School has not spent all the funding delegated in SEN support

ALL ABOVE REASONS ARE UNLAWFUL

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LA refuses to assess

Week 6 – receive a letter refusing assessment must set out:

- Reasons for refusing for assessment
- Right of appeal
- Details of mediation advisers
- Way forward meeting – ask why your child not meet legal criteria

Don't be put off appealing the decision by the LA say it will reconsider the decision at a later stage.

Appeal – high success rate of appeals to SEND against refusal to assess

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LA agrees to an EHC Needs Assessment

The assessment will help establish the CYPs needs and provision required

Advice must be obtained from parents, CYP, school, medical advice, Educational Psychologist and Social Care

Parents can ask for advice to be obtained from SLT, OT, CAMHS

When advice is provided, the written report should make sure that the support recommend is detailed, specific and quantified

Advice must be provided within 6 weeks

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Timescales

LA decides not to issue an EHC Plan must do so by week 16 – explain why, right of appeal and mediation advice

LA decides to issue a draft EHC Plan must do so by weeks 14-15

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Draft EHC Plan

The draft EHC Plan must be sent to the parents by the Local Authority (LA) between weeks 14-16 of EHC Needs Assessment process.

It should arrive with a letter from the LA and all the advice and information gathered as part of the EHC Needs Assessment process.

There's a lot to consider at this stage and timing is crucial, so be prepared and act quickly.

If everyone has been working together as they should have been, there should not be any great surprises in your child's draft EHC plan.

It is a legal document and the wording is very important, so you need to check it carefully.

Parent asks for changes to draft Plan must have evidence to support the changes requested

Independent Expert evidence – LA should consider all evidence but don't until you are in Tribunal process

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Gloucester & Cheltenham



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Timescales

You have 15 days from the date the draft was sent to:

- Ask for changes to or make comments (officially called ‘making representations’) about the plan.
- Express your preference of school to be named in section I of the plan.
- Ask the local authority to arrange a meeting with you to discuss the draft plan.
- If time is very tight, for example if you are trying to get some help to check the plan, ask the local authority for an extension. Most will agree to this – the exact wording of the regulations is at least 15 days.

As a result of your representations the local authority may:

- Issue a final plan with all or some of the changes you want.
- Issue an unchanged final plan.
- Make changes of their own and reissue the plan in a draft form.

It is always good to negotiate with the local authority, but do not engage in endless ‘ping pong’. If it looks as if the local authority is not going to agree to your changes, it is generally preferable to get a final plan and then go for mediation and/or appeal as necessary.

Even if you “sign off” the draft plan, you will still have the right to appeal once the final version has been issued.

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Evidence and Reports

The reports are the information and advice gathered from different people as part of the EHC needs assessment. They should be at the back of the plan and listed in Section K.

The first thing you need to do is to check the reports, as the content of the plan will be based on this evidence.

Check that all reports are listed, including your own views and any independent evidence you may have sent in. If anything is missing, inform the local authority immediately.

You may want to make additional copies of the reports that you can write on.

Go through the reports and highlight all difficulties identified and any help that has been recommended. It can be helpful to use different colours for needs and provision.

Also make a note of any differences of opinion, for example about what your child can or can't do, or about the amount of support required.

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What should an EHC Plan contain?

No national standard format for EHCP – different LA's have different templates

The requirements for each section are set out in paragraph 9.69 of the CoP and strongly recommend that parents and young people check this carefully. The EHCP must contain:

Section A – the views, interests and aspirations of the child/young person and their parents

Section B – the child or young person's special educational needs

Section C – the child or young person's health needs which relate to their SEN

Section D – the child or young person's social care needs which relate to their SEN

Section E – the outcomes sought for the child or young person

Section F – special educational provision required by the child or the young person

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What should an EHC Plan contain?

Section G – any health provision reasonably required by the learning difficulties or disabilities which result in the child or young person having SEN

Section H1 – any social care provision which must be made for a child or young person

Section H2 – any other social care provision which result in the child or young person having SEN

Section I – placement

Section J – personal budget (including arrangements for direct payments)

Section K – appendices – list and attach all documents upon which the EHC Plan is based

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Most important Sections

The legally enforceable sections of EHC Plan are:

- **Section B** - It should be a 'pen portrait' of the child or young person's special educational needs, outlining their areas of difficulty in accessing learning.
- **Section F** - this section should include all the special educational provision required to meet the child or young person's special educational needs.
- **Section I** - this section should include the name and type of the school or post-16 institution which the child or young person will attend.

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What does a Poor EHC Plan look like?

A poorly written plan may include more than one of the following:

No reference to diagnosis E.g. ASD despite the child having the diagnosis for many years

Lots of historical information no longer relevant reference to a school child not attended for many years

Blank sections in the EHC Plan

Special Educational Provision which should be in Section F as it educates and trains recorded in wrong and unenforceable Sections of the EHC Plan – D and H

Reference to funding at a certain level (this meaningless)

Therapy input being provided only by school staff and not by appropriately qualified and experienced therapists.

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Section B – Special educational needs

Describes the child's special educational needs i.e. What your child has difficulty with.

Start with summary /general description of your child.

Formal diagnosis e.g. ASD, Dyspraxia, Cerebral Palsy and test scores – then must specify the actual difficulty your child has because of the condition

It is a legal requirement that **all** the child's difficulties are listed in this section, so you can easily check that there is provision to meet each need.

Code of Practice defines four broad areas of SEN namely

- Cognition and learning

x has a specific learning difficulty namely dyslexia

y's working memory is at the 1st percentile for her age and she has difficulty processing information and following complex instructions.

- Communication and interaction

z's spoken language is at an early stage of development and she communicates through a mixture of gestures, signing and single words.

a has difficulties with social use of language and he cannot hold a reciprocal conversation.

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Section B – Special educational needs

- Social, emotional and mental health

x has been diagnosed with ADHD and his behaviour can be very impulsive.

y has very high anxiety levels and finds the school environment extremely stressful and has periods of school refusal.

- Physical, Motor and Sensory

x has cerebral palsy which affects his right side and can experience difficulty trying to move round small places and cluttered environment.

x has difficulty manipulating objects such as pencils, buttons, zips etc.

x has handwriting difficulty and using tools such as compasses, rulers and cutlery.

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Section F – Special Educational Provision

It is in relation to the issue of the detail and specificity of provision that most disagreements arise.

Some LAs have a tendency to set out support in very vague terms.

Section F should be as clear as possible as to what the child or young person will receive.

Wording describing any itemised provision must be specific and quantified e.g. speech and language therapy - how much, how frequently, delivered by whom, where, when in the school day?

Will the delivering professional understand what is intended.

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Section F Provision

Challenge vague wording such as

- 'as appropriate' / 'as required'
- 'regular' / 'periodic'
- 'subject to review'
- 'would benefit from' / 'access to'

Ask for detail and specificity

- How long and how often receive therapy or programmes.
- Content of therapy or teaching programmes.
- Necessary qualifications and experience of staff clearly stated.

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Examples of Provision

LSA

Emotional Learning Support Assistant

Speech and language therapy

Occupational therapy

ABA

Specialist tuition

Social group sessions

Acoustic systems

Community access/independence training

Transport training

Hydrotherapy

Counselling

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Case Law – Provision

Class sizes: H v Leicestershire [2000] ELR 471.

Staff qualifications and experience: R v Wandsworth ex parte M [1998] ELR 424.

Specification as to small group work: L v Clarke and Somerset [1998] ELR 129.

Specification as to therapeutic input: R v Harrow ex parte M [1997] FCR 761.

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Points to note

Less specificity may be required for a child in a specialist placement – but not in most cases & does not mean LA's can issue non-specific plans.

LA should consider all evidence including reports from parents – if depart from parent evidence must explain why

Any provision which “trains or educates” a CYP is recognised and specified in Section F of an EHC Plan as special educational provision

SLT, OT, Physio are often required to address a child's educational needs and should be included in Section F and not as health provision

LA cannot refuse to include a particular therapy in EHC Plan just because it is not available in the area

Must not contain anything allowing support to be changed without a right of appeal

Must not say support will be provide by parents or NHS

Funding details are unnecessary – just need details of provision

An LA cannot write a plan to fit the school it will nominate for the child

It is NOT the responsibility of the school to arrange the provision specified in an EHC plan

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Remember a poorly or badly written EHC Plan, which does not specify the child's special educational needs and does not quantify the proper amount of provision those needs require may result in child's difficulties being categorised as 'naughty behaviour'

Mainstream schools are not funded or resourced to provide a more enhanced package of support above what is written in an EHC Plan – the only remedy school is left with is exclusion.

Every child with SEN is entitled to a properly specified, detailed and quantified EHC Plan so that it is when a professional looks at the plan first time it is clear what the child's needs are and the provision they require to support them.

The special educational provision should be what the child requires and NOT what the Local Authority is willing to provide.

There is no 'this is what we can afford' clause in the legislation.

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Section I – Placement

LA must consult parents as to their preference as to placement

LA must meet parental preference placement unless it is unsuitable for the child concerned, or the attendance of the child at the requested school would be incompatible with the efficient education of others, or the efficient use of resources

If CYP needs can be met cheaply in LA school then it can ignore parental preference

If named in Section I – school must admit child

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Final Tips

When you read the plan do you clearly understand what is written in the document – if you do not understand it then it should be challenged

Is the information contained in the EHC Plan relevant – e.g. If child is 12 years old then information about nursery education is no longer relevant

Are all the diagnosis written into Section B – Special Educational Needs

Is the wording clear and specific in Section B – if your expert evidence concludes X has a diagnosis of Autism Spectrum Disorder – then make sure it is recorded in Section B

Are the therapies in the right sections – SaLT and OT should be in Section F if they are not then you can not force the Local Authority to provide the provision

Detailed, specific and quantified provision – what, by who, how often and for how long. Words such as access to opportunities for, enable the Local Authority to provide as little as they want/can afford.

After the Plan is reviewed check everything is still in the plan and therapies have not disappeared out of the plan

Give the Local Authority no more than 4-6 weeks to arrange the therapies when Plan is first issued or issued as an amended Plan after an Annual Review or after Tribunal proceedings – do not give them any longer and if NHS do not have capacity to deliver the therapies then the LA must commission a private therapist

If provision is quantified in Section F and it stops being delivered – a simple pre action protocol letter from a solicitor explaining the Local Authority is in breach of its legal duty, can lead to it being swiftly restarted.

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Who has a duty to deliver what is in an EHC Plan

LA has a duty to ensure they identify all CYP who have, or may have, SEN for whom they are responsible

Only an LA can carry out an EHC Needs Assessment

LA has an absolute duty to arrange provision in section F and simply has to be delivered

The duty cannot be delegated to a school or college

A failure to provide the provision included in the EHC plan is remedied by way of judicial review in the High Court

Health provision in an EHC Plan must be delivered by the local commissioning group

Social care provision must be delivered by Social Services

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SEND Tribunal

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Which decisions can be appealed?

The authority decided not to carry out a needs assessment.

The authority declined to issue an EHC plan.

The content of the plan is inadequate.

The authority decided not to amend an EHC plan following an annual review.

The authority decided to cease to maintain the plan.

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Right of Appeal – Deadline

Parents and young people have a two-month right of appeal to the Tribunal following a decision by their local authority.

In order to register an appeal, they will require a mediation certificate (this can be obtained any time during the two-month right of appeal), which should be issued either three working days following:

- ❖ mediation; or
- ❖ a decision by a parent/young person not to engage mediation.

Parents or young people can lodge an appeal either within 2 months of the original decision or within one month of the mediation certificate (whichever is later).

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Evidence

Independent expert evidence is important and key to a successful appeal

The LA will obtain evidence from its own Educational Psychologist, therapists and teaching staff which no doubt will support the LA's case

Independent experts advice on the basis of what provision is required to meet the CYPs difficulties as opposed to what the LA or NHS resources allow

Witnesses attending on behalf of parents must have seen the child and produced a recent and current report at the time of going to a hearing

Other sources of evidence can include school records, LA records and records held by the NHS Trust

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The Tribunal process

The Tribunal process generally spans 3 months.

If matters cannot be resolved between parties during this process, a hearing will be required.

At the hearing, the case will be determined by a tribunal judge, who is a trained legal professional (either a barrister or a solicitor), accompanied by one to two lay members (who are experienced in the field of SEN).

The SEND Tribunal makes decisions based on the written evidence in front of it. Therefore you must ensure that they have good, current evidence to support your case.

Independent experts determine the level and extent of the young person's SEN and the provision required.

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Gloucester & Cheltenham

Education@LangleyWellington.co.uk www.EducationLawyers.co.uk



Social Care and Health

As part of a special educational appeal, the SEND tribunal will be able to make non-binding recommendations on the health and social care aspects of Education, Health and Care (EHC) plans

There has to be an educational component to the appeal for it to be considered under the SEND Tribunal National Trial

During the appeal Health and Social Care can be compelled to respond to request for information, evidence and send a witness , if required

There is an expectation that the recommendations will be followed

If they are not going to be followed then social care and health will need to write to the parents/young person and Tribunal within 5 weeks of the decision, explaining why they have decided not to follow the recommendations

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Appeal Timetable

Appeals are registered within 10 days of being lodged with the Tribunal

Upon registration a 3 month appeal timetable is set as follows:-

Week 6 – the LA must respond and file its Attendance Form

Week 9 – both parties file further evidence with the Tribunal

2 weeks before the hearing the appeal bundle is sent by the LA

Working Document is prepared and filed by the LA with the Tribunal 10 days before a hearing

Week 12 – the final appeal hearing takes place

Week 14 – the Tribunal sends out its decision to Parties

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info@parentandcareralliance.org.uk



LangleyWellingtonLLP Solicitors
Gloucester & Cheltenham

Education@LangleyWellington.co.uk www.EducationLawyers.co.uk



Shazia Akhtar

020 7691 0024

shazia.akhtar@gatehouselaw.co.uk

Rukhsana Koser

01452 555 166

Education@LangleyWellington.co.uk

www.EducationLawyers.co.uk

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Exclusions and Disability Discrimination

Wendy Rainbow, IPSEA Legal Team



Part one - exclusions



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Exclusion and SEND

What we know:

- Children and young people with SEND are disproportionately likely to be excluded from school
- Children and young people with SEND are more likely to experience unlawful exclusions
- Important to understand the law in England relating to exclusions – as it relates to maintained schools, academies and alternative provision
- **NB** Independent schools and FE institutions (except for school sixth forms) set their own exclusion policies – must comply with Equality Act 2010
- Guidance: [Suspension and permanent exclusion from maintained schools, academies and pupil referral units in England, including pupil movement](#)

The power to exclude

- There are only two types of exclusion which are lawful: permanent and fixed period/suspension
- Only the head teacher of a school (or the teacher in charge of a pupil referral unit) can exclude a pupil
- The decision to exclude a pupil must be lawful, reasonable, fair and proportionate
- Permanent exclusion: only *“in response to a serious breach or persistent breaches of the school's behaviour policy; and where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school”* (para 11 of Guidance)



What must the school do?

Notify parent:

- Of reason for and length of exclusion
- Explain right to make representations
- If needs to be approved at a meeting of governors, right to attend that meeting

Notify local authority of all exclusions

Notify governors of:

- Any permanent exclusion
- Any exclusion bringing total days excluded in a term to more than five
- Any exclusion which would result in the pupil missing a public examination or national curriculum test

If permanent exclusion approved by governors, must then inform parent of right to appeal to Independent Review Panel



Education for the excluded child

- If fixed period/suspension :
 - First 5 days: school must take reasonable steps to set and mark work
 - At day 6, governing body must arrange full-time, suitable education
- If permanent exclusion, LA must arrange full-time, suitable education
- Guidance – Where a school has concerns about the behaviour, or risk of exclusion, of a child with SEN, it should work with LA to consider whether additional support required.
- Also, “*Where a pupil has an EHC plan, schools should consider requesting an early annual review or interim/emergency review.*”



Myth 1 – “Part-time timetables”



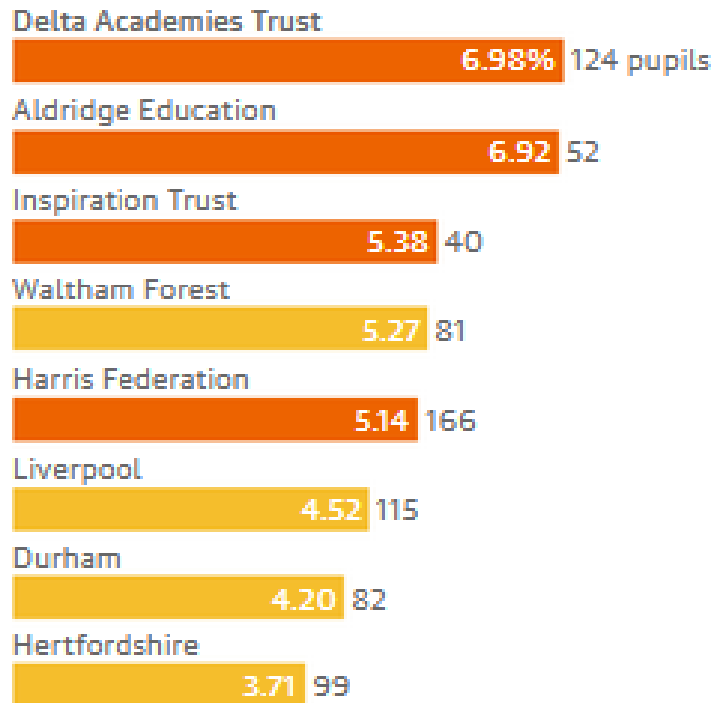
- Section 19 Education Act 1996: where a child is unable to attend school because of exclusion, ill-health or otherwise, LA to arrange suitable, full-time alternative education
- **Only** exception to full-time is if not in best interests due to physical or mental health of child – but **only LA can take this decision**
- May be discriminatory – *RD and GD v The Proprietor of Horizon Primary (Responsible Body) (SEN)*: [2020] UKUT 278 (AAC)



Myth 2 – “Off-rolling”

Trusts and authorities with the highest percentage losses, 2017 to 2018

Academy trusts Local authorities



Guardian graphic. Source: Department for Education

“Off-rolling” - simply a way to describe an unlawful activity

[The Education \(Pupil Registration\) \(England\) Regulations 2006](#) sets out strictly limited reasons where a child may be removed from a school roll

Recent focus from DfE and Ofsted on schools where pupils ‘disappearing’ from roll before GCSEs



Myth 3 – “Change rather than exclude”



- Teacher Voice report, March 2018 - over a fifth of respondents (teachers) believed they could encourage parents to withdraw their child and apply to another school as an alternative to a permanent exclusion
- Guidance at para 20: “... *the threat of exclusion must never be used to influence parents to remove their child from the school*”
- Same will apply where the destination is home education



Myth 4 – the ‘Informal’ exclusion

- There is no such thing as an informal exclusion – only unlawful exclusions
- For example, asking parent to take child home for part of day or during lunch times or to keep child at home
- Guidance at para 19: *“An informal’ or ‘unofficial’ exclusion, such as sending a pupil home ‘to cool off’, is unlawful when it does not follow the formal school exclusion process and regardless of whether it occurs with the agreement of parents.”*

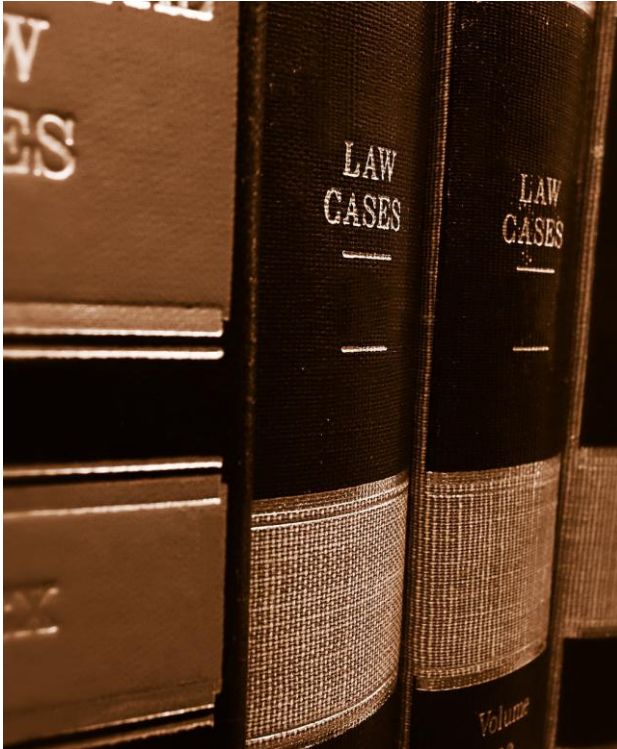


What should I do if my child is excluded?



- Statutory process for appealing exclusions
- First to governing body
- Then to Independent Review Panel (can recommend, but not order, reinstatement)
- If exclusion was result of disability discrimination then possible to make a claim to SEND Tribunal – which can order reinstatement amongst other remedies
- Consider if more/different SEP is required – using **CAFA 2014** processes

Don't forget the Equality Act 2010



- Schools also must comply with Equality Act 2010
- Includes duty to make reasonable adjustments – blanket or ‘zero tolerance’ policies unlikely to be lawful
- Previously schools sought to rely on exclusion in equalities law that ‘tendency to physical abuse’ could not be a disability
- [C and C v The Governing Body of a School \(SEN\) \[2018\] UKUT 61 \(AAC\)](#) overturned this view, stating EQA 2010 still applies – school must show exclusion is a “*proportionate means of achieving a legitimate aim*”



For further information



- Guide on school exclusions published by the National Children's Bureau, the Association of School and College Leaders and IPSEA
- Available on our website
<https://www.ipsea.org.uk/news/school-exclusions-what-is-legal>



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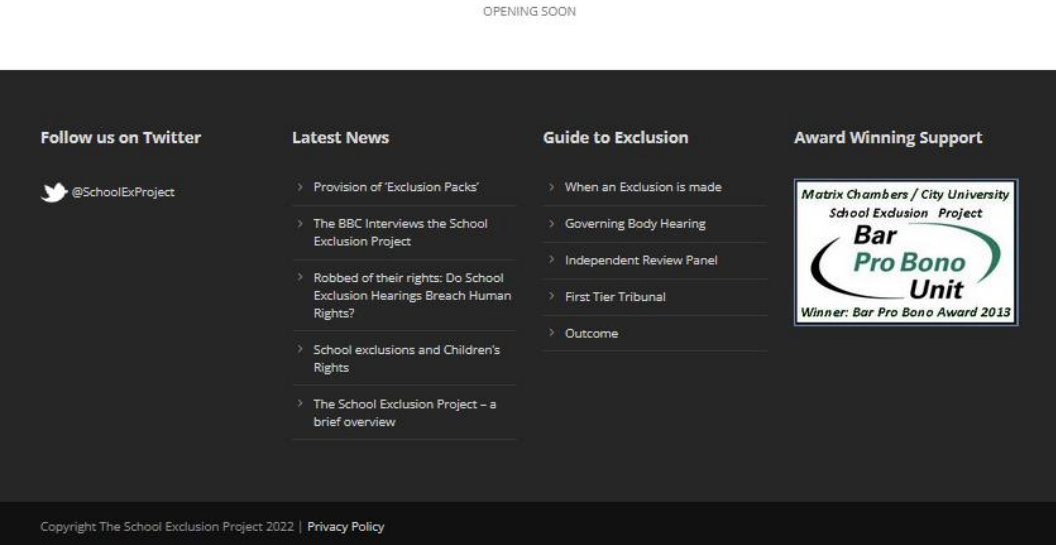
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For further information



Advice on writing 'written representations' to the Governors

Examples and guidance on writing 'written representations' to the Governors



Part two - Disability Discrimination



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Disability discrimination



The Equality Act 2010

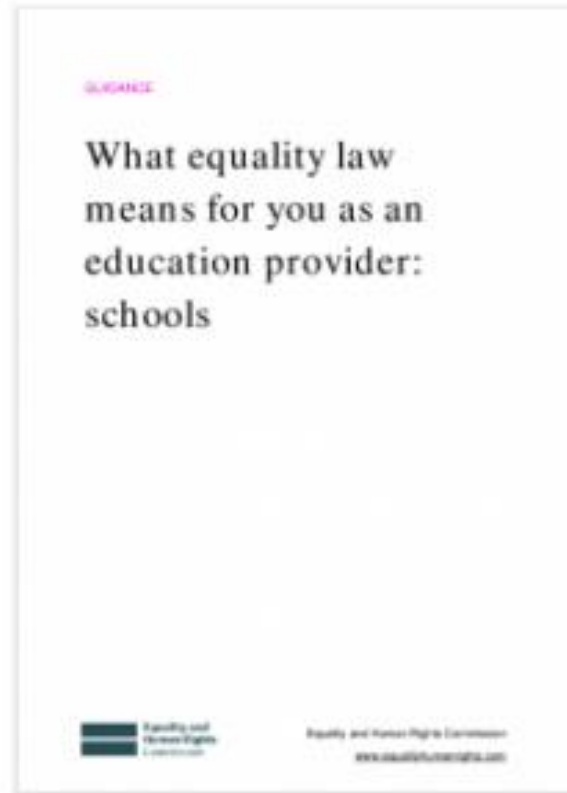
- Defines disability

Types of discrimination

- Unfavourable treatment arising from disability
- Direct discrimination
- Indirect discrimination
- Failure to make a reasonable adjustment



Guidance



No statutory code – useful non statutory guidance:

- Equality and Human Rights Commission (“**EHRC**”) - guidance for schools on the EQA
- EHRC - guidance on the definition of disability
- EHRC - guidance on reasonable adjustments for disabled pupils
- DfE - Guidance for schools



What to do next

- Have a look at - <https://www.ipsea.org.uk/disability-discrimination>
- Formal complaint - what type of [disability discrimination](#) you believe has taken place, and what action you think the school should take to remedy it
- Escalate the complaint to the Department for Education (maintained schools) or the Education and Skills Funding Agency (if an academy, a free school, a college or an apprenticeship provider)
 - set out the facts and explain why the school or college's formal complaint procedure failed to resolve matters
 - explain why the actions are unreasonable or unlawful
 - provide evidence (copies of any letters or emails which show what has happened)
 - copy of the letter to a local councillor and ask them to take the matter up directly with the council
- Bring a claim to the SEND Tribunal

Claims to the SEND Tribunal

- The EQA gives rights to bring claims for disability discrimination against various bodies, including schools, other educational settings and local authorities - only claims against schools can be brought to SEND Tribunal
- They look back to what happened at the time
- There's a time limit of 6 months
- A claim under the EQA against a school is adversarial in nature; the burden on the parents to prove the case is greater – you must establish each element of the claim



1. Must prove disability

- Even if the school has accepted that the child is disabled and even if the child has a statement or an EHC plan

*A person (P) has a disability if –
P has a **physical or mental impairment***

and

*the impairment has a **substantial and long-term adverse effect** on **P's ability to carry out normal day-to-day activities***

Section 6(1), EQA



2. Must establish each part of the claim

- Direct discrimination under section 13 – no defence, difficult to establish

A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats, or would treat others

EQA 2010 s.13

- Discrimination arising from disability under section 15

A person (A) discriminates against a disabled person (B) if:

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

EQA 2010 s.15



2. Continued

- Indirect discrimination under section 19

*A person (A) discriminates against another (B) if A applies to B a **provision, criterion or practice** which is **discriminatory** in relation to a relevant protected characteristic of B's*

EQA 2010 s.19(1)



2. Continued

- A failure to comply with the duty to make reasonable adjustments, section 21

The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

EQA s.20(3)

The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid

EQA s.20(5)



Remedies

Typical orders:

- a formal written apology to the child
- disability training for staff
- guidance for staff
- review or alteration of school or LA policies
- additional tuition
- relocation of facilities
- reinstate an excluded pupil

What cannot be ordered?

- Financial compensation
- Changes to a child's statement or EHC plan
- Removal or alteration of physical features
- Dismissal of a teacher

Other/better options?



For a child/young person without an EHC plan consider:

- requesting an EHC needs assessment?

For a child/young person with a vague EHC plan, consider:

- Seeking changes to the EHC plan/bringing an appeal after annual review, to ensure that it identifies and specifies the child's needs and provision properly?
- requesting a reassessment?

Feedback

Your feedback is important to us! Please scan and complete the survey.





For further information on our work, visit:

www.ipsea.org.uk

IPSEA training

- ✓ Find out more about our face-to-face training
- ✓ Enrol on our suite of online courses
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Support us

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– the money you raise will help fund our free advice and support services for families of children and young people with SEND



IPSEA
Independent Provider of Special
Education Advice

The role of the LGSCO in SEN complaints

Jessica Kong, Investigator

22 November 2022

Overview

- > Who we are and what we do
- > SEN: what we can and can't investigate
- > Remedies
- > Reports
- > What you can do as parents and carers

Who we are and what we do

- > Investigate complaints from the public about councils, adult social care providers and some other organisations
- > Independent, impartial and free
- > Unique power to extend investigations
- > Last step in the complaint process

SEN: what we can't investigate

- > Right of appeal – Special Educational Needs and Disability Tribunal (SENDIST)
- > Hillingdon Judgment - R (on the application of ER) v CLA (LGO) [2014] EWCA civ 1407
- > Jurisdictional matters can be complicated

Children out of school – what is the council's responsibility?

- > The Education Act 1996, Section 19
- > Councils must “make arrangements for the provision of suitable education at school or otherwise than at school for those children of compulsory school age who, by reason of illness, exclusion from school **or otherwise**, may not for any period receive suitable education unless such arrangements are made for them.”
- > Suitable education is “suitable to a child’s age, ability and aptitude including any special educational needs”

Children out of school – what is the council's responsibility?

- > It is for the council to decide if it is satisfied a child is unfit to attend school
- > Council must clearly record its decision and rationale for why it considers it does not have a duty to make alternative provision.
- > Decisions must be made based on all available evidence
- > Councils must take action to require the child or young person's attendance at school.

The meaning of 'otherwise': councils must not restrict alternative provision

- > 'Otherwise' can mean a child is unable to take advantage of any available schooling, or they do not have a school place
- > When children are without places, councils may need to arrange alternative education

What is suitable full-time education?

- > Provision must be full-time unless it would not be in the child's best interests due to their physical or mental health
- > Decision to provide less than full time must be clearly recorded and kept under regular review
- > Should be of a standard a child would receive in school
- > "Full-time" ranges from 21 hours in KS1 to 25 hours in KS4 – one-to-one tuition can count for more

Focus Report: Out of school, out of sight?

- > This report focuses on a council's duty to arrange alternative provision
- > Highlights several case studies relating to children out of school or where struggling with little education
- > Report identified six recommendations
- > Available to download from our website

Common Faults

- > Delay – at any/all stages of EHC process
- > Failure to secure provisions set out in EHC plan
- > Failure to meet key dates for reviews
- > Failure to issue
- > Failure to arrange alternative education

Remedies: **Our approach**

- > Remedy individual injustice and recommend wider service improvements
- > Require evidence of compliance with all recommendations
- > Action on non-compliance
- > Ombudsman's guidance on remedies

Parents and Carers: what can you do?

- > Tell the council about any problems or concerns
- > Familiarise yourself with the council's duties and responsibilities. Be aware of statutory timescales.
- > Try and resolve things with the council first. Give them a reasonable amount of time to take action.
- > Make a complaint.

Questions?

How to complain to the LGSCO

- > Please first read our [step by step process for making a complaint](#). This explains what you need to do before registering a new complaint with us.
- > Once you have, please use our [complaint form](#). It is the quickest way to register a new complaint.

Other ways to register a complaint, if you cannot use our online complaint form:

Call 0300 061 0614 to talk to a complaints advisor about registering a new complaint.

You can [make a new complaint by post](#)