

SENlegal

NEWSLETTER



Professional's Newsletter Edition 9



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SEND system - The verdict is in

Three new members join the SEN Legal team.



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House of Commons Education Committee

*Special educational
needs and disabilities
First Report of Session 2019*

The Verdict is in...

By James Brown, Specialist Solicitor



Whilst every MP in the country is seemingly busy debating Brexit and not doing much else, it appears that a select committee of MP's have been doing something of use and have produced an insightful report into the failings of the current SEND system - House of Commons Education Committee, Special Educational needs and disabilities, First report of Session 2019-20.

"The significant shortfall in funding is a serious contributory factor to the failure on the part of schools and local authorities to meet the needs of children and young people with SEND".

What actually is this report?

The report itself is an inquiry into the SEND system following the 2014 reforms led by 11 MP's, consisting of Conservative, Labour and SNP MP's. The report looks at what the current state of play for the SEND system is and specifically at the 2014 reforms (Statements to EHCP's), i.e. have they been successful? Have they achieved their purpose? The report is unequivocal in its conclusion that the SEND system is currently failing, and the reforms have not worked.

"We heard that in some cases staff in schools and local authorities do not know the law, give misleading or unlawful advice, and in some cases, publish erroneous information on their website"

The report concludes at paragraph 232:

"...the weight of the evidence, gathered through our inquiry and by other in their own work, review and experiences, is clear. The system is not working – yet... Families are in crisis, local authorities are under pressure, schools are struggling. And they cannot wait for the outcome of another review: they have waited patiently for long enough. The Government must act decisively and soon. It must implement our recommendations with immediate effect and move swiftly to address the many other problems that we identify in our report. A generation of children depends on it."

The findings of the committee's report will sound all too familiar to parents, professionals and schools operating in the SEND system. The report acknowledges there is a lack of information and funding provided to both schools and professionals working within the system.

There are specific points within the report which highlight the lack of funding going into schools and for professionals to provide support.

Want to read the full report?

Search Google for 'Special educational needs and disabilities First Report of Session 2019' or click here >>



The report also highlights that the recently released plans for increased funding from the Government do not go far enough. Paragraph 9 of the report states:

"On 30 August 2019, the Department for Education announced an increase in funding of £14 billion for schools between now and 2022/23. This included only just over £700 million for children with SEND in 2020-2021. The Department also announced an extra £500 million of funding for further education. However, it is disappointing that schools must wait until the next financial year for this much-needed funding for SEND, and we need to see more detailed about how this money will be distributed and whether it will be ring fenced. We are pleased that the Government is addressing the funding needs, and this is a big step in the right direction, but we are not convinced about the extent to which this announcement alone will tackle the funding challenges for support for children and young people with SEND."

In short, the funding does not go far enough. There is also no guarantee of how this money will be distributed or used. It is also very much dependent on the Government in charge at the time. With a general election looming, there is no guarantee the succeeding Government will implement this. The funding may be scrapped.

Whilst this funding is awaited, the reality of the situation is that schools are underfunded. Schools are not receiving adequate funding for the provision within EHC Plans and they are not receiving the correct level of funding through the notional budget. Both these points can be challenged, and the money schools are owed, obtained from the Local Authority. Unfortunately, it takes a legal fight to get this out of a Local Authority. This is a fight we can help you with.

The Local Authority are under a statutory duty to fund the specified special education provision within an EHC Plan, **Section 42(2) of the Children and Families Act 2014**. If the Local Authority are not providing adequate funding to you for this provision, they are failing in their statutory duty. This can be resolved through 'Pre-Action Protocol' correspondence. If you would like to know more information in relation to this, please do contact us.




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Expert Legal Services & Advice for Schools, Colleges & Academies

We welcome three new members to the SEN Legal team...



Kyra Harvey
Customer Service

"I joined SEN Legal in September 2019. I am the newest member of the Customer Service Team providing support to the Legal Team and undertaking a range of general office duties including telephone reception, data entry and record management."

"I'm likely to be one of the first people you speak to when you call the office and I will do my best to assist you."



Allys Kelsey
Paralegal

"I joined SEN Legal in September 2019 as a paralegal. My work includes liaising with clients, drafting documents and supporting the solicitors on cases."

"I have 5 years secretarial experience in various areas of law, my last 2 years were predominantly with real estate law. When deciding to take the next step in my legal career I wanted to branch into an area of law that makes an impact on people's lives, helping children and young adults achieve what they want from school and life seemed to be the perfect fit. I hope to start my studies to become a qualified lawyer in the future."



Rebecca de Winter
Paralegal

"My name is Rebecca de Winter and I joined SEN Legal in September 2019 as a Paralegal. In 2018, I obtained a Distinction in my Graduate Diploma in Law (GDL) from University of East Anglia."

"I am currently undertaking the Legal Practice Course at BPP University in Cambridge. Prior to pursuing a career in law, I was a qualified scientist working in the Biotechnology Industry. I have chosen to work within the field of SEN law as I am passionate about children and young people being able to access their educational needs, whilst supporting parents and schools to achieve this."

SENlegal
meet our team

Improving the prospect(us)

By Nicole Lee, Specialist Solicitor

A question that we routinely come across at events all over the country is, "We want a place at XYZ school as it is the only school that can meet our son's needs. How do we do it?" That is too big a question to answer in a short article, so instead, I am going to focus on the evidence that the Tribunal need to see from a school, in order for an Appeal to be successful.

All too often we see that the only evidence submitted to the SEND Tribunal about a school is a Prospectus, Inspection Report, and a letter confirming a place has been offered. In order for a Tribunal Panel to Order that a School should be named in Section I, the Tribunal cannot rely on evidence that the School is a "good" school. A good Ofsted report can set nothing more than a baseline for the case to build on.

The Tribunal needs to see detailed evidence specific to the child who has been offered a place. What they need to know is can this school meet the child's individual needs, how are they going to meet those needs, and how much is it going to cost.

School reports or offer letters which effectively say, "The child came to our school, we saw him, we are offering a place," are not appropriate. Similarly, it is complete irrelevant whether or Local Authority's already place children at the school. That gives no indication of the School's ability to meet the needs of the child whose EHC Plan is the subject of the Appeal. In the case of **London Borough of Southwark v Animashaun [2005] EWHC 1123 (Admin)**, [2006] ELR 208 it was further stated "*a Tribunal may draw reassurance or comfort from those facts, but no more*".

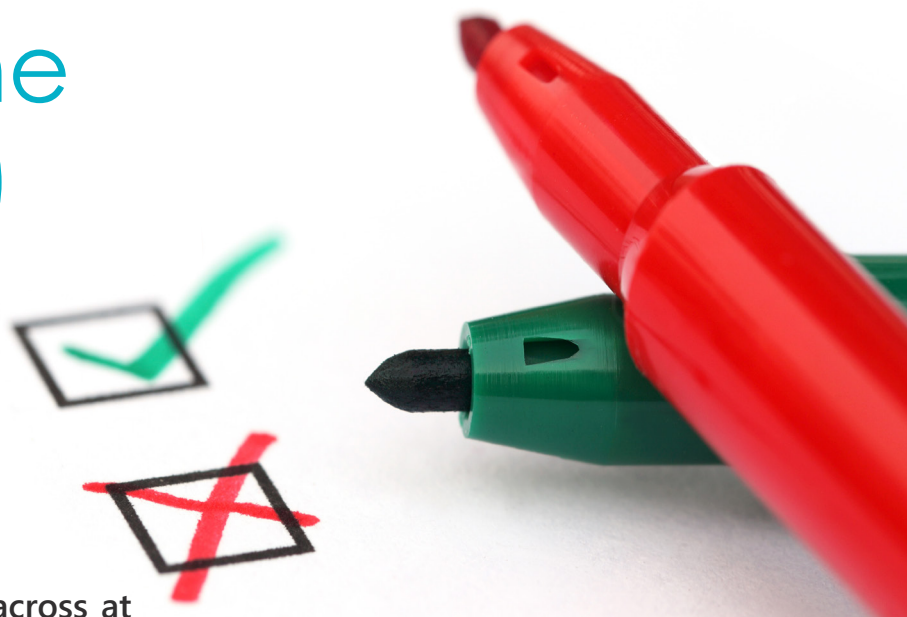
When producing school reports to contribute to the SEND Tribunal, it may be useful to have a 'checklist' of information to provide, to ensure that all of the bases are covered. Before drafting, the school should have read all of the background information relating to the child, and then consider;

- (i) What the child's or young person's needs are.
- (ii) What provision is required for the child's special educational needs including teaching staff with additional training and experience or post graduate qualifications/ therapies/ behavioural management/ waking day curriculum and life skills where appropriate.
- (iii) Are the school able to provide this provision?
- (iv) How does this individual student fit into the profile of students that we have at the school/FE college?
- (v) How much will this provision cost?

It is very important that this information is as specific and detailed as possible, with all provision quantified, and an explanation provided as to how this provision is adequate to meet the child's needs.

They should then outline;

- (i) The type of setting they would provide.
- (ii) The number of students at the school
- (iii) The size of the class group the Child or Young Person would be in.
- (iv) The gender mix of the school
- (v) The primary needs of existing students.
- (vi) The qualifications/skill mix of those teaching and caring for the students.
- (vii) The peer group the student would be in.
- (viii) The primary needs of the students with whom he or she would be placed.



When drafting a report, schools should cover their current Ofsted status and, if there are any outstanding issues relating to Ofsted, demonstrate what they are doing to address Ofsted's criticisms and concerns and ensure the provision that they are proposing can adequately meet the child's need.

The school should always bear in mind whether it is an appropriate setting and whether it can provide all the provision necessary to meet the student's Special Educational Needs. With that in mind, a school should ensure they have viewed the working document to ensure the provision suggested can be provided at the school, and that the costings are correct.

The key point to remember when a parent is Appealing for a particular school, is that they are not trying to show the Tribunal that it is a good school for any child. They need to evidence that it is the right school for THEIR child.

A good quality school report will provide you with one of the pieces that make up the bigger picture of a successful Appeal, and a successful placement at a school, hopefully for many years to come. We are proud to work with schools and parents to achieve placements and maintain those placements in the long-term. If you and your prospective parents are having difficulty navigating the waters of an Appeal, then we are more than happy to guide you through!



Finally, we just wanted to say...

Thank you



to all our clients and colleagues for these fantastic testimonials reported in The Legal 500.

We are so grateful to have such a wonderful team supporting us here at SEN Legal and really making a difference for children with special educational needs.

“

Melinda Nettleton could well be called the Godmother of education law. Her knowledge of this area is exceptional. She is a fierce advocate for those with special educational needs and fights her clients' cases fearlessly.

”

“

Hayley Mason is a rising star. At a very young age she made partner as a result of her considerable hard work, strong knowledge base and good client care skills. Her attention to detail is remarkable.

”

“

They know exactly what evidence is needed from where and are able to call on a range of relevant experts who are experienced in giving evidence to the First Tier Tribunals.

”

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