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# **‘The Law Trumps All’ – understanding legal obligations and working effectively with others**

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# Know the Law!

- Undertake IPSEA's on-line legal training – essential!
- Read SENCology blog – 'the law trumps all'
- Ensure you know 'absolute' information:
  - Irwin Mitchell Factsheets & Template letters
  - IPSEA
  - Douglas Silas
  - Browne Jacobson
- Support SLT and staff understanding of the parameters of new legislation

# What do reforms mean for SENCoS?

The SENCo role is a strategic one working with the senior leadership to review and refresh the SEND provision and then with the classroom/subject teacher to review its practice ensure every child with SEND gets the personalised (and appropriate) support that they need.



# What do reforms mean for SENCOs?

The role involves:

- overseeing day-to-day operation of school's SEND provision;
- coordinating provision for children with SEND;
- liaising with designated teacher where a Looked after Child has SEND;
- advising on graduated approach to SEND Support;
- advising on use of delegated budget/other resources;
- liaising with parents/carers of children with SEND;
- links with other education settings and outside agencies;
- liaising with potential next providers of education;
- working with head and governors on Equality Act; and
- ensuring that SEND records are up to date.



# Remember – still...

‘The SENCo must be a qualified teacher working at the school. A newly appointed SENCo must be a qualified teacher and, where they have not previously been the SENCo at that or any other relevant school for a total period of twelve months, they must achieve a National Award in Special Educational Coordination within three years of appointment.’

(Code of Practice, 6.85).

# What do reforms mean for teachers?

‘The classroom teacher plays a central role constantly reviewing and monitoring progress and setting targets for the child.’

(Code of Practice, section 6.45-6.56)

Classroom and subject teachers are at the heart of the new SEND Support system, driving the movement around the four stages (assess, plan, do, review) of action with the support guidance of the SENCo and specialist staff.

# What do reforms mean for teachers?

The classroom teacher should:

- **Focus on outcomes for the child:** be clear about the outcome wanted from any SEND support
- **Be responsible for meeting special educational needs:** use the SENCo strategically to support the quality of teaching, evaluate the quality of support and contribute to school improvement
- **Have high aspirations for every student:** set clear progress targets for students and be clear about how the full range of resources are going to help reach them
- **Involve parents/carers and students in planning and reviewing progress:** seek their views and provide regular updates on progress





# Inclusive analysis and provision...

- Remember, no amount of intervention will make up for poor quality teaching
- Analysis of progress and provision for support should be driven by subject/specialist knowledge
- Teachers should set a clear date to check progress and evaluate the support and have open conversations with parents/carers about what support is intended to achieve, how they will know whether it has worked and what they will do next if it hasn't





# Also worth remembering...

What the reforms means for Headteachers::

- Should take overall responsibility for implementing the SEND reforms
- Ensure that the SENCo is able to influence strategic decisions about SEN
- Ensure the wider school community understands the implications of the reforms for whole school improvement (from governors to classroom teachers and teaching assistants)
- Put in place arrangements to ensure parents /carers are regularly engaged in discussions about the progress of their child (at least three times a year)



# Also worth remembering...

What the reforms mean for Headteachers:

- Ensure a process is in place for involving parents/carers and young people in reviewing provision and planning for those currently on school action/plus and any newly identified students with SEND
- Develop relationship with post 16 providers and explore how you will support students with SEND with their transition to post 16 education

# Key questions and miss-information!

- **Is it the responsibility of the school of the school to arrange the provision specified in a statement (or an EHC plan)?**
- No! This is a common myth – LA duty.
- Fact: The legal responsibility for arranging the provision specified in a statement falls upon the Local Authority. This is an absolute obligation. If a school cannot make the provision specified in Part 3 of the statement from their own SEN budget, the Local Authority must arrange the provision.
- Law: Section 324 (5) (a) (i) of the Education Act 1996 says “the authority shall arrange that the special educational provision specified in the statement is made for the child.”
- NB: This is true not only for statements but also for EHC plans (Section 42 (2) of the Children and Families Act 2014).

# Key questions and miss-information!

- **Can a particular therapy be included in a statement or EHC plan if it is not available from the local health service? YES – it can!**
- **Fact:** If a child's SEN are identified in Part 2 of the statement, provision to meet these needs has to be made in Part 3. The only relevant issue is meeting the child's needs (not whether resources are locally available).
- **Law:** The landmark case of *R v The Secretary of State for Education and Science, ex parte E* [1992] 1 FLR 377 CA ruled that “the statement must specify in part 2 the authority's assessment of the special educational needs of the child ... and in part 3 the special educational provision to be made for the purpose of meeting those needs”.
- **NB:** This is true not only for statements but also for EHC plans, see paragraph 9.69 of the SEN and Disability Code of Practice 2014, “Provision must be specified [in Section F] for each and every need specified in Section B”.
- Section 21 (5) of the Children and Families Act 2014 says: “Health care or social care provision which educates or trains a child or young person is to be treated as special educational provision (instead of health care provision or social care provision).”



# Key questions and miss-information!

- **Who actually has a duty to deliver what is in an EHC plan?**
- It is the LA's duty to ensure they identify all children and young people who have or may have SEN and/or disabilities for whom they are responsible because they live in their geographical area. Only the LA can carry out an EHC needs assessment to identify needs and provision to meet those needs. If they then issue an EHC plan it is the LA alone that has the legal duty to ensure that the educational provision is then made. This duty can never be delegated to a school or college whatever funding arrangements are in place. If a school or college's actual resources – finances or teaching expertise – cannot make the provision outlined in the plan, the LA must provide it.
- Where there is health provision in an EHC plan, the local health commissioning body – usually the Clinical Commissioning Group – has the duty to provide.
- It is also the Local Authority's duty to provide the social care provision in an EHC plan if it results from an assessment under social care legislation.



# Key questions and miss-information!

- **How do (I) parent/carers get a personal budget or direct payment?**
- Your LA is obliged to consider identifying a personal budget for educational provision for your child or young person only if you request it when they are carrying out an EHC needs assessment or when they are reviewing an EHC plan. The personal budget is the notional amount of money that would be needed to cover the cost of making the special educational provision specified in the EHC plan. You cannot have a personal budget unless you have an EHC plan.
- You can at the same time ask the LA to identify elements of the personal budget which you could then receive as a direct payment. This is an actual amount of money that you would receive so that you could commission the provision in the EHC plan yourself.
- A head teacher or principal has a veto if they do not agree to a direct payment being made for special educational provision which would need to be delivered in their school or college.
- You cannot not appeal a decision made by a LA not to identify a personal budget or direct payment but you can ask them to review it.

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# SEN and Disability Law...

- **What changed when the Children and Families Act 2014 was implemented on 1/9/14?**
- Don't panic! Much of the new law is still the same – some is even better. If a child has special educational needs (SEN) under the old system, they will still have SEN under the new system. If a child has a statement of SEN they must be transferred to an Education Health and Care (EHC) plan unless their needs have changed and they no longer need a statement.
- **What support must be provided according to the Children and Families Act 2014?**
- The local authority (LA) has a duty to consider how a child or young person can be supported to achieve the “best possible educational and other outcomes”. This reflects a new and higher level of outcome required by the new law than under the old system.





# SEN and Disability Law...

- **Who is covered by the Children and Families Act 2014?**
- The new system of supporting children and young people with SEN is now the same from birth to 25 years - as long as they stay in education (certain kinds of employment) or training.
- The new SEN legal framework will only cover children and young people if they have SEN. A child or young person will have SEN if they have a learning difficulty (which may be a disability) and their school or college cannot provide what they need. This new system will not cover children or young people if they are disabled and have health and/or social care needs but no SEN (EHCPs are Education PLUS Health and/or Social needs).
- A young person in further education (i.e. college) is now legally entitled to the special educational provision specified in their EHC plan. This is new. Regrettably though, EHC Plans do not apply to higher education (i.e. university).



# What must the school or college do?

- If a child or young person has SEN but does not have a statement or EHC plan they are still entitled to support that enables them to achieve the “best possible educational and other outcomes”. The school or college that a child or young person attends should put support in place to make sure this is happening. If it does not, the LA has the responsibility to ensure it does.
- If a child or young person has an EHC plan the school/college named in Section I of the plan must do their best to deliver the special educational provision specified in Section F. If they cannot do this, the LA, which has a direct duty to the child or young person to secure the provision they need, must provide the school/college with the resources (finances or expertise) to do so.
- Whether or not they have an EHC plan, the school or college must tell you if your child or young person has been identified as having SEN, they must identify their needs to the best of their ability and they must put the right support in place to make sure they progress and achieve specified outcomes. All this information should be documented in a clear record that should be available to upon request. The school must meet with parents/carers at least three times a year to discuss this record.



# What must the school or college do?

- **Is it the responsibility of the school of the school to arrange the provision specified in a statement (or an EHC plan)?**
- No! This is a common myth.
- Fact: The legal responsibility for arranging the provision specified in a statement falls upon the Local Authority. This is an absolute obligation. If a school cannot make the provision specified in Part 3 of the statement from their own SEN budget, the Local Authority must arrange the provision.
- Law: Section 324 (5) (a) (i) of the Education Act 1996 says “the authority shall arrange that the special educational provision specified in the statement is made for the child.”
- NB: This is true not only for statements but also for EHC plans (Section 42 (2) of the Children and Families Act 2014).



# What must the school or college do?

- **Can the school send my child home to ‘cool off’ or ask me to collect my child from school (to prevent exclusion and as long as I agree)?**
- **No! This is another common myth.**
- **Fact: Unofficial or informal exclusions (like sending a student home to ‘cool off’) are illegal – even if the parent agrees.**
- **Law: “Exclusion from Maintained Schools, Academies and student Referral Units in England” is the statutory guidance that confirms this (in paragraph 13).**

# Travel and Transport...parent/carer questions

- **My child has SEN but because we live within a 3 mile radius of school/college, we aren't eligible for transport are we?**
- Local Authorities are required to provide free school transport for any child who is eligible. This may include children with SEN, disabilities or mobility problems which mean that the child cannot reasonably be expected to walk to school even if they live within statutory walking distance (2 miles for Primary School and 3 miles for Secondary School).
- Law: Section 508b of the Education Act 1996 and Schedule 35b (which defines eligibility).
- **Whose duty is it to arrange home to school/college transport?**
- It is a duty on the local authority in which you are ordinarily resident. Local authorities have a duty to make necessary travel arrangements for all 'eligible children', attending "qualifying schools" and a discretion to make travel arrangements for other children in their area.



# Travel and Transport...parent/carer questions

## ➤ What is a qualifying school/college?

➤ These are defined as:

- maintained (publicly funded) schools,
- non maintained special schools,
- student referral units,
- maintained nursery schools,
- city technology colleges and academies
- in the case of a child with a statement of special educational needs (or EHCP), an independent school if this is the only school or the nearest school named in Part 4 of the statement. (Para 15(3) Sched. 35B)

➤ Children who receive education somewhere other than at school (for example education at an alternative provision for children who are excluded or have medical needs which means they cannot attend school young people in Key Stage 4 attending further education colleges) can also qualify as eligible children



# Travel and Transport...parent/carer questions

## ➤ Is my child an eligible child?

The following four categories of children are eligible:

### **1. Children who attend schools beyond the statutory walking distance**

These children are eligible for free school transport, provided that the local authority has made no "suitable arrangements" for boarding accommodation or attendance at a nearer school. This replicates the previous legal right to free home-school transport where children live beyond walking distance and attend their nearest suitable school. The statutory walking distance is 2 miles for children under 8 years old and 3 miles for children of 8 or over (see 'How is distance measured?').

### **2. Children with SEN, disabilities or mobility problems**

The legislation requires the local authority to arrange free school transport for some groups of children who attend schools within statutory walking distance. The first is those with special educational needs, disability or mobility problems which mean that they cannot reasonably be expected to walk to their school and no suitable arrangements have been made by the local authority to enable them to attend a nearer school.

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# Travel and Transport...parent/carer questions

## ➤ Is my child an eligible child?

The following four categories of children are eligible:

### **3. Children whose route to school is unsafe**

- The second category of those eligible for free transport to schools even though they live within walking distance covers those who cannot reasonably be expected to walk to their nearest suitable school because of the nature of the routes they could reasonably be expected to take. The local authority should assess the route at the times the child would be using it. They should take into account:
  - the age of the child
  - whether risks might be less if the child were accompanied by an adult and whether that is practicable
  - the width of the road and the existence of pavements
  - the volume and speed of traffic
  - street lighting
  - different conditions at different times of year

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# Travel and Transport...parent/carer questions

## ➤ Is my child an eligible child?

### 4. Children from low income families:

Secondary school age children from low income families who attend schools over 2 and up to 6 miles from their home will be eligible for free school transport even if the school they attend is not their nearest suitable school, providing there are not three or more suitable schools which are nearer to their home.

Under the legislation, secondary age students from low income families who receive education elsewhere than in school, for example, if the child is excluded from school and is receiving education at a place which is over 2 and up to 6 miles from their home will also be eligible for local authority school transport, whether or not there is a nearer suitable school.

Secondly, secondary age children from low income families who attend a school over 2 miles but under 15 miles away from home will be entitled to free school transport if their parent has expressed a wish for them to be educated at that particular school based on the parent's religion or belief and, having regard to that religion or belief, there is no nearer suitable school. This applies to parents with a particular religious or philosophical belief, including those with a lack of religion or lack of belief.

Junior age children (aged 8 – 10) from low income families who live more than 2 miles (rather than 3) from their nearest suitable school become eligible for free school transport from the local authority.



# Travel and Transport...parent/carer questions

- **What is 'low income'?**
- A child will qualify for potential eligibility under the 'low income' provisions if he is entitled to free school meals, or if his parents or carers receive working tax credit at the maximum rate.
- **How is distance measured?**
- The courts have determined that the distance between home and school is the nearest available route along which a student, accompanied as necessary, can walk with reasonable safety to school.

# Travel and Transport...parent/carer questions

- **What are travel arrangements?**
- "Travel arrangements" are defined in section 508B (4) of the Education Act 1996 and pages 48-51 of the government's statutory guidance.
- "Home to school travel arrangements", in relation to an eligible child, are travel arrangements relating to travel in both directions between the child's home and the relevant educational establishment in question in relation to that child.
- They include arrangements for the provision of transport, **and any of the following arrangements – but only if they are made with parental consent:**
  - provision of one or more escorts (whether alone or together with other children) when travelling to or from the relevant educational establishment
  - payment of the whole or any part of a person's reasonable travelling expenses;
  - payment of allowances in respect of the use of particular modes of travel.
  - voluntary arrangements made by the parent.
  - "Travel arrangements", in relation to an eligible child, must not give rise to additional costs and must include appropriate protection against those costs.



# Travel and Transport...parent/carer questions

- **Do travel arrangements have to be suitable?**
- Yes. The Home to School Travel and Transport Guidance (paras 34 and 35) defines suitable travel arrangements. In particular:
  - They must enable an eligible child to reach school without such stress, strain or difficulty that they would be prevented from benefiting from the education provided".
  - They must enable the child to travel in reasonable safety and comfort although this does not necessarily mean a door-to-door service. However, arrangements that entailed a child walking an unreasonably long distance to catch a public bus would be unlikely to be 'suitable'.
  - The guidance suggests maximum reasonable journey times of 45 minutes for primary school children, and 75 minutes for secondary school children. This may be shorter for children with SEN and/or a disability.
  - The child's age and disability would have to be taken into account. Breaks might be needed when children live a long way from their school.
  - Those who operate the travel arrangements such as bus drivers and escorts must be subject to enhanced DBS (formally CRB) checks and should have undertaken disability equality training.

# Travel and Transport...parent/carer questions

- **I have heard that transport needs to be non – stressful, what does that mean?**
- The issue of school transport for children with statements was raised in the case of *R v Hereford and Worcester CC, ex parte P* (1992). The court held that it was implicit that the transport provided by the local authority should be “non-stressful” if the child was to benefit from education.
- **I would like to take my child to school/college myself. Will the LA help with my costs?**
- Local authorities can make payments to parents and carers of young people with SEN to act as an escort or to use the family car to take the student to school. Government guidance says that the authority’s policy should set out when they will do this and the amounts parents are entitled to.
- The SEND 0-25 Code of Practice (paras 9.126a and 10.29) says that when a local authority names a residential provision some distance from the parents’ home the local authority **must** provide reasonable transport or travel assistance.
- Sometimes there is a space on a vehicle that can be used by a student who is not eligible for free home-to-school transport. LAs can make a charge for spare seats. This should be set out in their policy and explain the circumstances such a seat may be withdrawn if required for students who are eligible for free transport.



# Travel and Transport...parent/carer questions

- **My child has an EHC plan (or a statement of special educational needs). Does this mean that they are automatically entitled to transport?**
- Not automatically. In theory children with statements/EHC plans should receive transport if they fit one of the categories. If a child with a statement/plan happens to be sufficiently able to be able to get to school on their own and does not fit within one of the categories they will not be entitled to free home-school transport.
- In practice deals are sometimes struck over school transport when parents are in dispute with their local authority over the costs of placement at different schools. The SEND 0-25 Code suggests that authorities may name a school preferred by parents even where this is not the nearer school, if parents agreed to meet all or part of the transport costs.



# Travel and Transport...parent/carer questions

- However parents should only enter into such agreements if the school which the LA wish the child to attend is in fact a suitable school **and** if the parents believe the LA can show that their preferred school would be an inefficient use of the LA's resources. If parents have challenged the LA at the SEND Tribunal and won with the parents' preferred school being named in the statement/plan unconditionally, the parents' choice of school is then deemed to be the nearest suitable school and it automatically follows that transport will be provided if the child is an eligible child for the purpose of home to school transport.
- The SEND 0-25 Code of Practice 2014 suggests that transport will only be recorded in an EHC plan in exceptional cases where the child has particular transport needs. However transport costs may be provided as part of a personal budget where one is agreed and included in the EHC plan as part of the special educational provision (paras 9.215 and 9.217).

# For more information...

- Look at IPSEA's main website
- Undertake their foundation learning modules
- Look at IPSEA FAQs
- Look at Irwin Mitchell's SEND Information Factsheets & Template Letters
- Read SENCology – especially the Law Trumps All post

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