



Best Legal Practice for Children with Special Educational Needs (SEN)

28 March 2007

Summary

Children Law UK and The Children's Legal Centre (CLC), which is based at the University of Essex, came together for the first time to jointly run this course.

In January 2006 the Department for Education and Skills released figures showing that 236,700 pupils across all schools in England and Wales had statements of SEN: that is 2.9% of the school pupil population. There were also 1,293,000 pupils with SEN but who did not have statements and that figure represented 15.7% of pupils across all schools. Children with SEN are vulnerable and need assistance in different ways. Educational provision must be tailored to their individual needs and such provision should be kept under regular review and scrutiny so that it can be adapted as the child's needs change.

Alison Fiddy, solicitor at CLC gave a comprehensive course for the beginner but also of relevance and reminder to the more experienced education lawyer. The course was popularly attended with professionals from a variety of disciplines including solicitors, barristers and magistrates. Present were also some parents with children with SEN; they were able to share a little of their own experience of the education system. Given the volume of topics to cover, the course was timed well and took the delegates right through from a consideration of the various types of SEN which a child may have through to preparing grounds of appeal to the Special Educational Needs and Disability Tribunal (SENDIST).

The areas covered during the day included:

- What are SEN and examples of SEN
- The ways of meeting the needs of children with SEN, namely 'School Action', 'School Action Plus' and a 'Statement of SEN'
- How to apply to a local authority for statutory assessment of a child's SEN and what type of decisions a local authority may make upon a request for statutory assessment
- What does a statement of SEN look like, its various parts and the typical issues to look out for in statements
- The proposed statement and the final statement

- The SENDIST process, including: timescales; procedure; lodging an appeal; the case statement; grounds of appeal; and funding
- Reviews of statements and changes to statements

Finally, issues such as looked-after children, home-to-school transport and post-16 education for young people with SEN were covered.

There was an opportunity for general discussion throughout the day. Certain key areas seemed to particularly give rise to interest and concern for the delegates. Looked-after children who are already a vulnerable group often are not fortunate enough to have parents who are engaged in relation to their education. Whereas most children with SEN will have a parent or guardian who will fight on that child's behalf for either statutory assessment of SEN or through the SENDIST for more suited provision, children who are looked-after are at an acute disadvantage. Although the child has the local authority as corporate parent; more likely that not, the local authority who retains a care order for the child (and therefore parental responsibility) will be the same local authority responsible for the statement of SEN (through its education department). This presents an inherent conflict given that local authority education departments have tight budgets and will try to avoid providing enhanced provision to a child with SEN because that usually means having to commit more money. Where the local authority is also the corporate parent, it is unimaginable that a social worker would exercise the local authority's parental responsibility of the child and issue an appeal notice to the SENDIST against the same local authority's education department. Effectively, that would be biting the hand that feeds him/her. Those children therefore remain disadvantaged as a result.

It was also interesting to note that the family courts have traditionally encouraged fathers without parental responsibility to obtain it either through the courts or through agreement with the child's mother (and any other person with parental responsibility for the child) to enable that father to obtain details of the child's progress in education and to aid communication with school. However, the education legislation only refer to parents and that is a wider definition as it encompasses carers and guardians. If reliance can be placed on that, then a father without parental responsibility should not necessarily need to obtain it to extract information about his child's education from the school: the school should be providing that information in any event, by virtue of the father being a parent.

Given that the delegates came from a range of professional worlds but were all concerned to know more about children with SEN, the course proved a fantastic forum to do just that but also to share experience and knowledge.