



IPSEA
Independent Parental Special
Education Advice



SEND Law Update

Ali Fiddy
Chief Executive, IPSEA



What this session will cover...

- Statistics
- Tribunal update – National Trial
- Where local authorities are getting it wrong
- Case law update

DfE Statistics: numbers of CYP with SEN

	2013	2014	2015	2016	2017	2018
Pupils on roll	8,249,810	8,331,385	8,438,145	8,559,540	8,669,080	8,735,100
Pupils with SEN	1,545,610	1,492,950	1,301,445	1,228,785	1,244,255	1,276,215
Incidence (%)	18.7	17.9	15.4	14.4	14.4	14.6
Pupils with Statement or EHC plan	229,390	232,190	236,165	236,805	242,185	253,680
Incidence (%)	2.8	2.8	2.8	2.8	2.8	2.9

Tribunal Statistics: number of appeals

	Registered with the Tribunal	Decided by the Tribunal	Decided in favour of the parent/young person
Sept 2011 - Aug 2012	3557	823	564
Sept 2012 - Aug 2013	3602	808	682
Sept 2013 - Aug 2014	4063	797	660
Sept 2014 - Aug 2015	3147	788	680
Sept 2015 - Aug 2016	3712	883	780
Sept 2016 - Aug 2017	4725	1599	1418
Sept 2017 - Aug 2018	5679	2298	2035

Tribunal Statistics: types of appeals

	Refusal to assess	Refusal to issue an EHC plan	Refusal to amend EHC plan following AR	Content of sections B and F	Content of sections B, F and I	Content of section F	Content of sections F and I	Content of section I or no placement named in section I	Ceasing to maintain an EHC plan
Sept 2014 - Aug 2015	603	97	1	53	238	18	7	137	1
Sept 2015 - Aug 2016	1185	321	6	265	762	77	75	486	7
Sept 2016 - Aug 2017	1494	371	49	366	1170	107	144	771	35
Sept 2017 - Aug 2018	1717	515	45	420	1470	141	138	965	46

Tribunal Statistics: appeals by age group

	Appeals registered relating to under 5s	Appeals registered relating to 5-16 year olds	Appeals registered relating to 16+ year olds
Sept 2013 – Aug 2014	10%	89%	1%
Sept 2014 – Aug 2015	10%	85%	5%
Sept 2015 – Aug 2016	8%	81%	11%
Sept 2016 – Aug 2017	7%	81%	12%
Sept 2017 – Aug 2018	7%	80%	13%

SEND Tribunal: single route of redress national trial

- Two year trial extending the powers of the Tribunal to make non-binding recommendations about the health and social care aspects of EHC plans
- Applies to all types of appeals except refusals to carry out an EHC needs assessment
- Parents and young people must register the appeal against an educational decision

SEND Tribunal: single route of redress national trial

- Potentially involve health and social care professionals as well as SEN Teams
- Number of cases much higher than anticipated
- Cases are taking up more Tribunal time
- Listed for 2 days
- Disputes between education and social care

The SEND Crisis: where are LAs getting it wrong

Disabled Children vs Secretary of State for Education



1
 after 10 go
£14,020
 pledged of £10,000 stretch target from 506
 pledges

SEND Family Action
 Families of disabled children are taking action against cuts to special education provision.

Families waiting too long for special needs support in England

By Ben Weisz
 Political reporter, BBC Sussex

7 January 2019

Share



5 Live Investigates

The Children 'Vanishing' From Schools

Special needs pupils being failed by system 'on verge of crisis'

Rising demand puts councils in England at risk of bankruptcy, Guardian investigation reveals



Children's COMMISSIONER

Skipping School: Invisible Children

How children disappear from England's schools

FEBRUARY 2019



'Devastating' cuts hit special educational needs

Many local authorities are plunging into the red to meet their obligations as spending trebles in three years

● **'It's hard to watch your child struggle. All you can do is chase people'**



Bristol parents successfully challenge cuts to SEN budget

October 2018

"I am not satisfied that had the Defendant acted lawfully there would necessarily have been any reduction at all" - R (on the application of (1) KE (2) IE (3) CH v Bristol City Council [2018] EWHC (Admin) 2103

Local Government & Social Care OMBUDSMAN

Education, Health and Care Plans: our first 100 investigations



Focus Report: learning lessons from complaints
 October 2017
 www.lgo.org.uk

Ofsted
 raising standards
 improving lives

Missing special needs support 'a national scandal'

By Hannah Richardson
 BBC News education reporter

4 December 2018

Share



Ofsted

Re-visits to local areas issued with a written statement of action

Ofsted Annual Report 2017/18

“We are still seeing too many local areas providing a sub-standard service when it comes to SEND provision.”

- Weaknesses in identification
- Variation in quality of EHC plans
- Non-implementation of provision in EHC plans
- Poor provision for 19-25 year olds

Local Government and Social Care Ombudsman

Focus Report – Education, Health and Care Plans: our first 100 investigations

- Published October 2017
- Key issues arising in the first 100 complaints investigated relating to EHC plans
- Investigators had upheld nearly 80% of the complaints received – average is 53%

Local Government and Social Care Ombudsman

- Delay
- Inadequate assessments
- Provision for young people post-19 including transport

Joint Local Area SEND Inspections

- 84 inspections to date – 41 required to produce Written Statement of Action
- Ofsted and CQC report – Local area SEND inspections: one year on (Oct 2017):
 - Excluded, absent or missing from school
 - Poor access to therapy services
 - Poor access to child and adolescent mental health services (CAMHS)
 - No coordinated 0–25 service
 - Lack of involvement

Case law update

Judicial reviews

- Budget cuts:
 - Bristol
 - Surrey
 - Hackney
 - Secretary of State
- Changes to transport policy – Leicestershire

Case law update

B & M v Cheshire East Council [2018] UKUT 232 (AAC)

- Achievement of outcomes may indicate that a young person no longer requires the special educational provision specified in an EHC plan. However, it does not follow that where outcomes have been achieved it is no longer necessary to maintain the EHC plan.

Birmingham City Council v KF [2018] UKUT 261 (AAC)

- Transport can be special educational provision if it "*educates or trains*".

Final thoughts...

- Number of CYP with SEND is increasing
- Appeals to Tribunal are increasing – National Trial adds another layer of complexity
- LAs are failing to comply with the law:
 - Assessment of needs
 - Statutory timescales
 - Content of EHC plans
 - Joint-working
 - Budget cuts

Visit www.ipsea.org.uk
for more information on our work

Training

- Enrol on our suite of online courses
- Find out more about our face-to-face training events across the country
- Access our topical webinar series
- Sign up for updates on the latest SEND law news

Support us

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