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Common Myths in SEND Law

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Housekeeping

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Zoom - video

You can turn your video on and off by:

- Hovering your cursor near the bottom of your screen
- The buttons will appear at the bottom of your zoom screen
- Click the camera to turn your camera on and off



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Zoom - microphone

When microphones are available you can turn them on and off by:

- Hovering your cursor near the bottom of your screen
- The buttons will appear at the bottom of your zoom screen
- Click the microphone to turn your camera on and off



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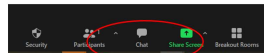
4

Zoom – Questions

Questions can be asked using the chat function which is highlighted on the screenshot below.

To ask questions in chat:

- Hover cursor at the bottom of your screen
- The chat button will appear – see screen shot below
- Click chat and a chat box will appear for you to write in.



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Questions



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About IPSEA

- National charity offering free and independent legally-based information, advice and support to help get the right education for children and young people with special educational needs and/or disabilities (SEND)



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What we do

- Advice to parents, carers and young people – Advice Line, Tribunal Helpline and a Tribunal casework service
- Information on special educational needs and disability on www.ipsea.org.uk
- Training for parents/carers, professionals, schools, colleges and local authorities
- Policy work at regional and national level
- Consultancy service
- Custom advice services
- Legal updates subscription service



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What we'll look at today

- Sources of SEN law
- Education health and care needs assessments
 - Common myths and issues to look out for
 - Questions
- Education health and care plans
 - Common myths and issues to look out for
 - Questions
- Mediation
 - Questions



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Sources of SEN law

- The Children and Families Act (“CAFA”) 2014 Part 3
- Regulations made under the CAFA 2014 – The Special Educational Needs and Disability Regulations 2014 (“SEND Regulations”)
- Case law (some cases under ‘old’ law, Education Act 1996, still relevant)
- The Special Educational Needs and Disability Code of Practice 2015



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Where do you start?

- Remember: CAFA 2014 is the source of the law
- But a good place to start is the Code of Practice
- The Code contains the **key information** used by professionals to decide whether children and young people require support for their special educational needs and how such support is to be given
- Legal duty on LAs, governing bodies, schools, FE colleges, NHS and the SEND Tribunal to **“have regard”** to contents



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Education Health and Care needs assessments



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EHC needs assessments

Steps to getting an EHC plan

1. Request an EHC needs assessment of child or young person's SEN (see [Model Letter 1](#))
2. EHC needs assessment carried out by LA
3. Draft EHC plan issued by LA – consult with parent/young person & the parent/ young person's choice of school/FE college
4. Final EHC plan issued by LA



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EHC needs assessments

Step 1: Request - s36(1) CAFA

- **EHC needs assessment** is of educational, health care & social care needs s.36(2) CAFA 2014
- **Only** the LA can conduct an EHC needs assessment
- **Only** this kind of assessment can lead to an EHC plan being issued



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EHC needs assessments

Step 1: Request - s36(1) CAFA

Common myth – only schools or an LA can apply for an EHC needs assessment

- a request can be from child’s parent, young person, school or post 16 institution – LA **must** respond within 6 weeks (if late, chase – see [Model letter 9](#))

Common myth – you can’t apply for an EHC needs assessment without a diagnosis

- No diagnosis is needed to request an EHC needs assessment – you have to meet the legal test



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The legal test for an EHC needs assessment – s36(8) CAFA

The LA **must** secure an EHC needs assessment for the child or young person if ... the authority is of the opinion that –

- (a) The child or young person has or **may** have special educational needs; and
- (b) it **may** be necessary for SEP to be made for the child or young person in accordance with an EHC plan



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Common myths & unlawful policies (1)

Common myths

If the LA says they won't assess because

- The school/college hasn't spent £6,000 on SEN provision
- There isn't an education psychologist report
- There hasn't been at least 3 terms worth of 'assess, plan, do review' from the school or similar from the college
- All the professionals involved don't agree a EHC Plan is needed

will be acting unlawfully



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Common myths & unlawful policies (2)

Common myths

- Mandatory use of "request form" for an EHC needs assessment request
- Thinking the statutory deadlines are targets



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Law v Policy

Local authorities drafting internal policies that apply a different test or standard to that set out in law

Law trumps policy!



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EHC needs assessments Step 2: information and advice – Reg 6(1)

The LA **must** seek advice on **needs/provision/outcomes**:

1. Child's parents or the young person
2. Head teacher or principal of school/post-16 settings that they are attending
3. Medical advice and information from a health care professional
4. Educational psychologist
5. Advice and Information in relation to social care



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EHC needs assessments Step 2: information and advice – Reg 6(1)

- 6. Advice and Information from **any other person LA thinks appropriate**
- 7. Advice and information in relation to prep for adulthood and independent living (for pupils in or beyond Yr 9)
- 8. **Any person** child's parent or young person **reasonably requests**

If hearing or visual impairment issues - specialist educationalist.
All of this applies equally to EHC needs assessment carried out as part of transition
(See [Model Letter 7](#) if the LA is not carrying out the assessment properly).



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Common myth

- A parent's independent expert report isn't independent



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Education, Health and Care Plans




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What is an EHC plan?

- A legal document creating duties on LAs and CCGs
- Must cover educational needs/provision
- May cover health and social care needs and provision
- Only available to children/young people with special educational needs




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Duty to issue an EHC plan
Legal test - s37(1) CAFA

Where, in the light of an EHC needs assessment, it is necessary for special educational provision to be made for a child or YP in accordance with an EHC plan.....the LA must secure that an EHC plan is prepared for the child or young person ...”



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EHC plans – issues: Non-binding “EHC plans”

Some LAs are issuing documents which are not legally binding but look similar to an EHC plan:

- “My Plan”
- “Person-centred Plan”
- “SEN Support Plan”
- “Care Plan”

See <https://www.ipsea.org.uk/News/non-statutory-ehc-plans>



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Format of EHC plans

Section A	Views, interests and aspirations of child and their parents or young person
Section B	All of the child or young person’s special educational needs (SEN)
Section C	Health care needs which relate to the child or young person’s SEN
Section D	Social care needs which relate to the child or young person’s SEN
Section E	The outcomes sought. These are the intended result of provision which is being put in place - they are NOT the provision itself
Section F	The special educational provision required by the child or young person
Section G	Health care provision
Section H1	Social care provision required under Chronically Sick and Disabled Persons Act 1970
Section H2	Other social care provision
Section I	Placement – the name and type of institution to be attended by the child or young person
Section J	Where there is a personal budget, the details of this and the outcomes it should support
Section K	A list of the advice and information gathered



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Format of EHC plans – issues

- No standardised format of an EHC plan (see the Code of Practice)
- 152 varieties of EHC plan – 1 per LA
- Lack of clarity
- Difficult to compare

- See <https://www.ipsea.org.uk/what-an-ehc-plan-contains>



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Format of EHC plans – issues

- Linking provision to outcomes instead of SEN
- LAs not following the A-K requirement
- Combining sections
- Including additional sections – e.g. “parents' responsibilities”, “non-statutory”
- Funding in EHC plans



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Contents of EHC plans - specificity

L v Clarke & Somerset CC [1998] ELR 129

“so specific and so clear as to leave no room for doubt as to what has been decided is necessary in the individual case. Very often specification of hour per week will no doubt be necessary and there will be a need for that to be done.”

Case about special educational provision but could apply to **all** matters which need to be “specified” in an EHC plan.



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Lack of specificity – issues

- “Opportunities for...”
- “Equivalent to...”
- “Access to...”
- “Subject to review...”
- “It is recommended that...”
- “Individual programmes to ... may be helpful”
- “Regular...”
- “Frequent...”

See - <https://www.ipsea.org.uk/what-should-be-in-the-sections-relating-to-education-sections-b-and-f>



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Funding - issues

An EHC plan can refer to bands or other funding arrangements but *not* instead of [specification](#) of special educational provision

See - <https://www.ipsea.org.uk/News/banding-ehcplans>



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Transfer from Statements of SEN to EHC plans

Unlawful transfers:

- Not undertaking a lawful EHC needs assessment
- Not seeking advice and information
- Unilateral decision to use existing evidence to draw up an EHC plan even when it's very out of date
- Not calling a transfer review meeting or telling parents "after the event" that an annual review meeting was a transfer review meeting
- Not giving sufficient notice of the commencement of the process



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Mediation

- Before bringing an appeal to the SEND Tribunal, mediation must be considered – it's not compulsory, but it must be considered*
- Mediation is a less formal way of trying to settle the dispute between you and the LA. It involves a meeting between you, the LA and an independent mediator, who will try to help you reach agreement on the points of dispute.
- The mediation may also be attended by other relevant parties such as representatives from the child or young person's school or college.
- It is free of charge.

See - <https://www.ipsea.org.uk/mediation>

*The exception is if you are appealing only about the school or college placement, or where no school or college is named and you are appealing about that fact.



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Mediation – myths

- Not giving parents sufficient information about the arrangements for mediation – appeal letters simply tell parents to contact the LA or IASS, or look at the Local Offer, for further information about mediation
- LAs telling parents that agreements reached at mediation are not legally binding



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Final thoughts...

Remember:

- Law trumps policy
- Law trumps the SEN Code of Practice
- Starting point must always be the statute and accompanying regulations



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