



The operation of EHCP's during Covid-19

The information in this factsheet is correct as of the time of writing 10/06/2020

EHCPs – Section F provision and how the current Secretary of State Notice will be potentially affecting delivery of these provisions:

- **As LA's currently don't have an absolute legal duty to deliver Section F provision, because of Covid-19 legislation, what must they be doing instead?**

Until at least 30 June 2020 LAs now don't have a legal duty to deliver Section F provision because of a number of reasons, such as lack of SEN LA staff due to Covid-19, staff being redirected and limited resources. LAs must now use 'reasonable endeavours'. This also applies to health authorities for Section G provision.

- **What is meant by 'reasonable endeavours' to deliver Section F provision?**

'Reasonable endeavours' does not mean the LA does nothing – LAs must see what provision they can reasonably provide for each child with an EHCP. LAs must consider the child/young person and their parents' views in doing so, as well as arrangements for monitoring the provision.

- **What happens if I have concerns/issues with the provision my LA is/isn't providing at this time?**

Speak with your child's school and your LA. Look for any creative/flexible options, such as requesting a personal budget for direct payments for the provision or if you as a parent are having to deliver provision because of social distancing.

What if my child cannot receive their Section H provision?

There is guidance that says support should continue providing services, with flexibility. This could mean attending virtual sessions by telephone or online. Another option is if you are receiving direct payments then they can be used to secure services from family members. You will need approval to do this but it is unlikely that a public body could reasonably conclude that it is not necessary for care to be provided by close family members in the same household to fill the gaps in the usual package of care. The new guidance today also opens this up to other persons in certain circumstances.



- **Children with EHCPs currently at home vs children with EHCPs still attending school:**

Should there be a difference in the provision my child is getting through their EHCP at home compared to at school?

There may be practical differences in terms of how provision is delivered. In schools, the frequency and timings of provisions may be different due to staff/room requirements and the need to keep people safe. At home, see if therapy provisions can be delivered online, therapists to model exercises you can then support your child with at home, and potentially travelling to a safe venue for direct therapies if possible as possible options.

- **How can EHCP provision be safely delivered to my child at home?**

Again, speak with your child's therapists/support to see what can be delivered online. If therapists/support are still coming into the home then take all necessary precautions.

Can Social Services provide any additional support?

As above, Direct Payments can be used with flexibility and the Guidance makes suggestions such as making payments for two months rather than one month at a time. It may be worth asking for an assessment under Section 17 of the Children Act 1989 with a view to requesting additional support.

- **What if you have been refused an EHCP by your LA – appeals process under Covid-19:**

Is the SEND Tribunal still operating under Covid-19 and is the process for lodging an appeal any different?

Yes, the SEND Tribunal is still operating under Covid-19. The process to lodge an appeal is still the same through email. If you are looking to instruct experts for assessments consider any potential delays or restrictions because of Covid-19, such as experts who need to self-isolate. If assessments are not able to be carried out in person then see if the experts are happy to do so remotely. Allow yourself enough time to gather your evidence including from school.

Would I be expected to attend a Tribunal hearing in person?

Currently hearings are held remotely, with overall positive feedback. It is likely these will continue for the foreseeable future, at least under Covid-19, but in each appeal the Tribunal will let you know before your hearing if this will be remote and how to access this.



I also want to challenge my Section H provision, what are my options?

The Tribunal can make 'recommendations' to the health and social care sections of a plan. These are non-binding but there is an expectation they will be followed. If they are not going to be followed then the relevant body will need to write to the parents/young person and Tribunal as soon as practicable, explaining why they have decided not to follow the recommendations. If you wish to challenge the health or social care provision alone then you cannot appeal to the Tribunal and can follow the Complaints procedure.

The Boyes Turner Education Team is working remotely during this time and fully able to continue to deal with new enquiries. We can help at whatever stage you are with your EHCP and can be contacted on 0118 952 7219 or via senexpertsolicitors@boyesturner.com

To find out more about how Boyes Turner's specialist Community Care team can help you please contact **Jemma Garside** by email at jgarside@boyesturner.com