

STATEMENTS OF SPECIAL EDUCATIONAL NEEDS

What to expect

At the point when statutory assessment has been completed and the local authority has agreed to issue a Statement parents often breathe a sigh of relief and are so relieved to receive a Statement that they simply accept the draft that they are offered. It is frequently as a result of this approach that parents subsequently become quite disillusioned and wonder why they took so much trouble to achieve a Statement because they perceive that nothing very much has changed for their child.

It is therefore particularly important parents should be closely involved in the process of negotiating the contents of the Statement of Special Educational Needs (SEN) during the eight weeks (and occasionally more) which is available for that purpose.

SENs are in six parts, of which Parts 2, 3 and 4 are the most important. Part 1 sets out the child's and parents' details, whilst parts 5 and 6 set out respectively the child's non-educational needs and provision to meet those needs. There is no statutory duty for the local authority to supply what is set out in Part 6. The Statement should also have annexed to it copies of all reports relied on in the assessment process, and any other relevant documents including the statement of the parents' views.

The most important parts are 2, 3 and 4, and I will therefore go into these in more detail.

Part 2

Part 2 has sometimes been referred to as the section which sets out the diagnosis of the child's problems, with Part 3 being in effect the prescription. It summarises the child's learning difficulties, and it is important that it should do so completely and accurately, not least so that teachers and others dealing with the child know what to expect. It is usually convenient to set the problems out under specific headings, for example literacy and numeracy, motor control, communication, and social and emotional problems.

The SEN Code of Practice notes that for most children speech and language problems should be included in Part 2, since language underpins the whole of the learning process; they may also be referred to in Part 5, but if they are only included in Part 5 that should be challenged. Likewise, problems with motor control (co-ordination) are also likely to be classed as learning difficulties, especially where they result in problems with writing.

Part 3

This normally starts with a list of objectives for the child, based on the problems identified in Part 2. It should then set out precisely what is to be done to meet the child's needs. This is important not only so that each and every teacher, assistant etc dealing with the child knows precisely what they should be doing to help the child, but also because, if provision is not specified and detailed in Part 3, it may be difficult for the parent to enforce the child's entitlement to it. If SEN provision is set out in this section of the Statement the local authority has a statutory duty to ensure the child receives it: if

they fail to do so, that duty can be enforced by an action through the High Court for judicial review which can be brought in the child's name and which may therefore be funded by legal aid if the child qualifies financially. However, if provision is not specific, that is very difficult to do: if a Statement provides that "X would benefit from opportunities to receive therapy throughout the year" that is largely meaningless and would be completely impossible to enforce through the courts. By contrast, if the Statement provides "X will receive one hour per week direct 1:1 speech and language therapy from a qualified therapist" it is very easy to check whether that is happening and to enforce it if it is not.

It is in relation to the issue of the detail and specificity that most disagreements arise. Some local authorities have a tendency to set out support in very vague terms, for example to say that the child "will benefit from" or should have "opportunities to receive" specific provision. Such terms, if they appear in draft Statements, should always be challenged; there is simply no reason the Statement should not state that the child "will receive" the support in question.

The following are further points which tend to arise:

- If a Statement provides for a child to receive programmes, the Statement should specify who is to draw up and monitor the programmes, who is to ensure their delivery, and what training and/or experience they should have.
- Statements often provide for children to be taught in a school where they can receive whole class, small group and individual teaching. The Statement should normally set out how much time is to be spent respectively in small group and individual teaching, who is to be in charge of the groups, who is to provide 1:1 teaching and again what training and monitoring they should have.
- Where Statements provide for outside support, for example from specialist teachers and therapists, consideration should be given to writing in extra time for these individuals to attend meetings, particularly annual review meetings, unless that is already covered by an agreement between the authority and the provider in question.
- Occasionally Statements provide for the local authority to change support if, after reviewing provision, they decide that the child needs more or less help. However, that is unlawful: support should only be changed normally after going through the formal process of amendment.
- Statements sometimes provide for support by reference to the authority's banding system, i.e. a statement that the child will receive support at Band X under the local SEN policy. That is again unlawful, because it means the authority can amend support simply by changing their banding arrangements without going through formal amendment. Support should not be set out in terms of the funds to be allocated but in terms of the actual support which this translates into, because the child is entitled to that support irrespective of cost. For similar reasons, it is not appropriate for the Statement to say that some of the support will be met from funds delegated to the school – financial arrangements between the authority and the school are irrelevant to the individual child's entitlement to receive help.

- Statements should match provision to need, not vice versa. One local authority is notorious for always stating that speech therapy should be given in blocks of 4-6 sessions for one term a year, simply because that is the model their local Primary Care Trust provides: invariably that authority loses when this is challenged in tribunal because it is clear that they are not looking at what each child actually needs.

The one exception to the principle that Parts 2 and 3 should be specific and detailed is in relation to children who are placed in special schools. The courts have recognised that such schools can be expected to have the necessary expertise to ensure that children's needs are met, and also need to be able to react quickly and flexibly as children develop. However, where a child is in a special school, the need for that type of school should be specified, simply to avoid any arguments in the event of the child moving schools for any reason.

Part 4

This section sets out the school which the child will attend. When a draft Statement is issued, this section will be blank, because the local authority is required to consult the parents as to their preferences. If the parents' preference is for a mainstream school, that preference should be met unless it would be prejudicial to the efficient education of other children. If the preference is for an independent school, the local authority has no obligation to meet that unless it is unable to nominate another school or provision which will meet the child's needs appropriately and at lesser cost. The local authority is not under any obligation to name the best school for the child; its obligation is limited to ensuring that the child's needs are met, i.e. that the provision is good enough.

The local authority must consult potential schools at which they envisage the child could be placed, normally supplying them with a copy of the Statement and the reports annexed to it. If the school states that it is unable to take a child or meet the child's needs, the local authority should not accept that blindly; if it disagrees, it may name the school in any event. If the school still disputes this, the issue can be referred to the Secretary of State for Children, Schools and Families for adjudication.

If the local authority is not able to identify a specific school, it is entitled initially to name simply a type of school whilst it continues to try and find a school place. However, it should only do this rarely, normally only where a specialist school is envisaged, and it should have some interim provision in place in the meantime.

It should be noted that, when the contents of a Statement are being negotiated, the authority will not normally include any provision in Part 2 and 3 unless there is evidence for it in the shape of experts' reports. It may therefore well be worth the parents' while to consider obtaining independent expert evidence on this; and if they have previously obtained reports during the assessment process or for other purposes, copies should be provided. During the assessment process the parents will also have had the opportunity to ask the local authority to take into account specific reports or to request that they consult particular experts. The authority is not required automatically to accept the advice of independent experts, but if there is conflicting advice, they are required to give their reasons for preferring one source of advice over another. Perhaps not surprisingly,

authorities regularly prefer the evidence of their own and Primary Care Trust experts over independent experts, but if they do so wholesale whilst effectively ignoring independent evidence they should be challenged on this.

Parents should consider carefully how much time they are going to spend arguing with the local authority about provision in the Statement. The important thing from the child's point of view is obviously to ensure that the Statement is finalised without too much delay, because it does not take legal effect until it is signed. Authorities will normally offer the chance of a meeting, and it is worth using that opportunity not only to negotiate but also to gain some sense of how willing the authority is likely to be to compromise. If, however, the reality is that the parents and the local authority are poles apart - particularly if there is likely to be radical disagreement as to school placement - it may well be worth not spending time in fruitless negotiations but simply asking the authority to finalise the Statement immediately so that an appeal to the Special Educational Needs and Disability Tribunal can be entered as soon as possible.

More detailed information about the process can be obtained from the Special Educational Needs Code of Practice, available free from the Department for Children, Schools and Families, or online at <http://www.teachernet.gov.uk/docbank/index.cfm?id=3724>

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