


# The Impact of a Child's Additional Needs on Private Family Law Proceedings

## Aimee Fox, Family & Education Barrister

**3PB**  
BARRISTERS

London	Birmingham	Bristol	Oxford	Winchester	Bournemouth
020 7538 8055	0121 289 4333	0117 928 1520	01865 793 736	01962 868 884	01202 292 102

1



### Legal Definition of Special Educational Needs


#### Section 20 Children and Families Act 2014

#### When does a child have SEN?

- A learning difficulty or disability which calls for special educational provision to be made.
- A significantly greater difficulty with learning than others of the same age.
- Difficulty or prevention in making use of facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions.

[www.3pb.co.uk](http://www.3pb.co.uk)

2



Section 36(8) - When is an assessment required?

36(8) Children and Families Act 2014 (Assessment of education, health and care needs) provides as follows:

The local authority must secure an EHC needs assessment for the child or young person if, after having regard to any views expressed and evidence submitted under subsection (7), 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 special educational provision to be made for the child or young person in accordance with an EHC plan.

[www.3pb.co.uk](http://www.3pb.co.uk)

3



Disputes about EHC Plans


- Refusal to assess a child or young person
- Refusal to issue an EHCP
- Content of an EHCP
- Dispute over placement

***JW v Kent County Council [2017] UKUT 281 AAC***

Both parents can be joined as separate parties if they hold different views.

[www.3pb.co.uk](http://www.3pb.co.uk)

4



3PB  
PARTNERS

## Ceasing to Maintain an EHCP (Section 45 Children & Families Act 2014)

Examples of when the LA may no longer be responsible for the child/young person when:


- The child moves or leaves education
- Special educational provision is no longer necessary.
- The outcomes have been achieved.

BUT

- Can't cease solely on the basis the young person has reached 19.

[www.3pb.co.uk](http://www.3pb.co.uk)

5



3PB  
PARTNERS

## Why does an EHCP Matter?

- Defines and describes special needs
- Legally binding on LA in respect of educational provision

EVIDENTIAL VALUE:

- Contains appendices (Educational Psychologist, Psychiatrist, Speech & Language Therapist, Occupational Therapist, Physiotherapist)
- LA, NHS and/or privately commissioned reports and the plan is reviewed annually

[www.3pb.co.uk](http://www.3pb.co.uk)

6



## Evidential Value

- Social, emotional, mental health challenges?
- Difficulties coping with change?
- Sensory issues?
- Physical environment?
- Sibling attachment and relationship dynamics?
- Think about the needs in school compared to home?

Record keeping:

- Individual Education Profile
- Individual Behaviour Profile
- Attendance Records
- Attainment Records/Progress Reports
- Subject Access Request

[www.3pb.co.uk](http://www.3pb.co.uk)

7



## Other Options to Explore?

Local Offer


- Section 30 Children & Families Act 2014
- Look at Local Offer in current area and new area.

Ask LA for a needs assessment

- Short breaks
- Care at home
- Aids
- Financial help e.g. towards travel costs for hospital visits

[www.3pb.co.uk](http://www.3pb.co.uk)

8



Department for Education Guidance 3rd September 2018 'Understanding and Dealing with Issues Relating to Parental Responsibility'

*"Individuals who have parental responsibility for, or care of, a child have the same rights as biological parents. For example to:*

- receive information – such as pupil reports*
- participate in statutory activities – such as voting in elections for parent governors*
- be asked to give consent - such as to the child taking part in school trips*
- be informed about meetings involving the child - such as a governors' meeting on the child's exclusion*

*School and local authority staff must treat all parents equally, unless a court order limits a parent's ability to make educational decisions, participate in school life or receive information about their children. In most circumstances, the question schools must ask themselves when making decisions is not just whether the parent holds parental responsibility but whether they are a parent under education law."*

[www.3pb.co.uk](http://www.3pb.co.uk)