

The Special Needs Jungle  
Coronavirus & SEND Law ebook  
with SEN lawyer,  
Hayley Mason



Edited by Tania Tirraoro

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# Introduction

Following the announcement that schools would be temporarily closed as a result of the Coronavirus outbreak, there was much confusion. The Government said children of key workers and “vulnerable children” would still be able to attend school. But what did this mean?

Special Needs Jungle’s readers sent more than 200 questions in to our SEND legal columnist, Hayley Mason, Senior Solicitor at SEN Legal.

Hayley has spent many hours answering the questions. Her answers were published in four parts on the Special Needs Jungle website. We’ve gathered them here into one downloadable publication.

Please share this with your fellow parents or professionals so that everyone knows what the new Coronavirus Act means for children and young people with special educational needs and disabilities.

We’d like to extend our grateful thanks to Hayley for donating her time and expertise in writing these articles. We hope you find them helpful.

Tania Tirraoro  
27th March 2020

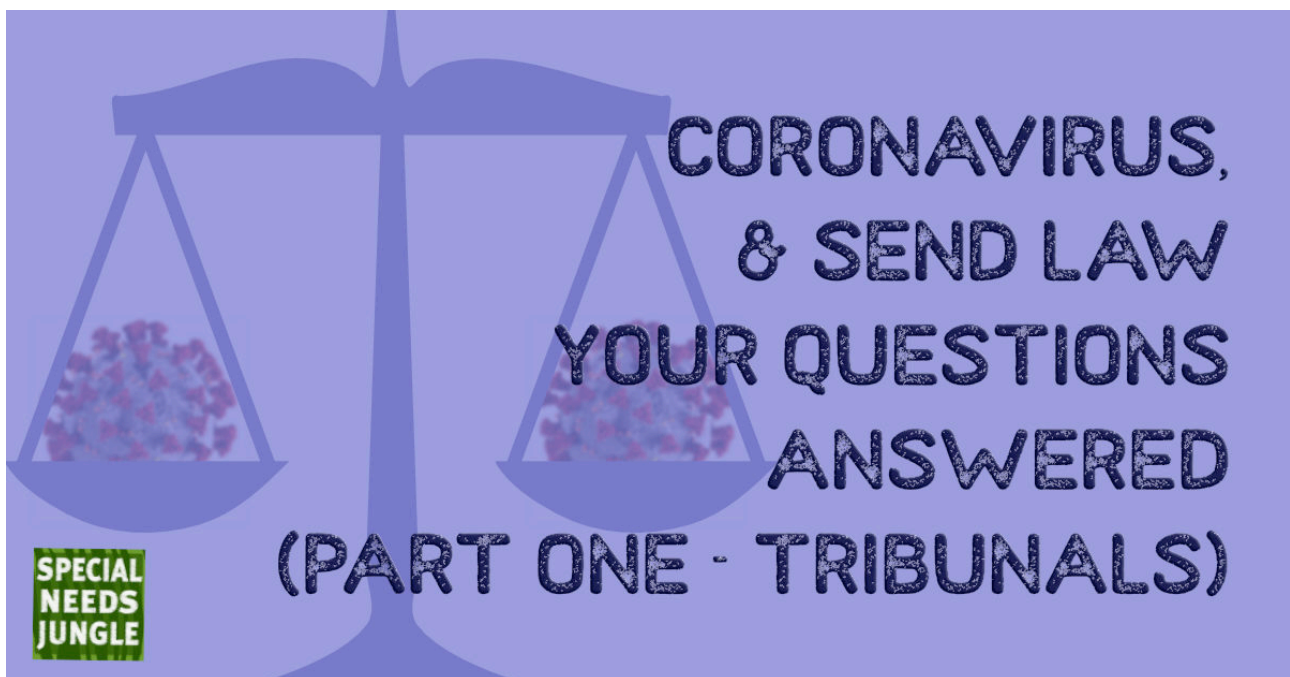
# About Hayley Mason

Hayley is a Director and Senior Solicitor at SEN Legal Ltd; a highly successful education and disability law firm with a national client base. She has a vast range of expertise in obtaining fundamental special educational provision on behalf of parents of children and young people with special educational needs.

Hayley is also specialised in Court of Protection work. She regularly lectures in this area and was involved in the ground-breaking case in the Matter of H, on the application of F & M [2015] EWCOP 52, concerning the appointment of successive deputies in a combined Health and Personal Welfare and Property and Affairs deputyship application in July 2015. Hayley also acts on behalf of colleges in relation to DOLS/COP work.

Hayley Mason has been the legal columnist for Special Needs Jungle since 2017.

# 1: What's happening with the SEND Tribunal?



## Questions received include:

- The local authority (LA) agreed an independent placement and transitions started but other sections are unresolved. We are isolating for 12 weeks and the Tribunal is due in this time. Help!
- I am challenging my Education, Health and Care plan (EHCP). I have had trouble securing an educational psychologist's report – both finding somebody who does Tribunals or will see somebody in these COVID times. What should I do?
- We had our hearing on the 10th and we adjourned until 28th April – what will happen to our hearing?
- Mediation due 21/04 for refusal to assess. Yr 5, autism diagnosis and 1:1 support required. Timewise, what legally is the best thing to do?
- What to do if our already slow LA do not respond in time to request for specialist post-16 placement for September and too little time is left for Tribunal appeal?
- My daughter is currently off school as she has diabetes type 1 and Downs syndrome. What support should she get as transition to secondary school is in August and the Tribunal is due in April?
- My son is year 6 ASD, ADHD and has an EHCP. Secondary placement not yet confirmed. If schools close before we have a confirmed place what will happen? He'll have no school in September 2020?
- We are in the midst of taking our local authority to Tribunal as they haven't named a school in our son's EHCP. How likely is it that the Tribunal will happen and what will happen in the interim?

- For those with Tribunal appeals lodged – any indication if the Tribunal will continue to sit in the coming weeks/months or do we give up hope now?
- Just waiting to hear back from appeal. Will the decision still be circulated? And if appeal is won will there be a postponement of starting new school due to assessments needing to be done due to the coronavirus?
- My daughter's Tribunal is at the end of April and all that is left to agree are the amendments to the working document and transition to the new school in September. Can I request a telephone hearing instead?

## What does the SEND Tribunal guidance say?

*“Decisions about the education of children and young people are vitally important and the Tribunal is making every effort to conclude as many appeals and claims as possible. The Tribunal are already aware of parents, young people, local authority representatives and witnesses who are self-isolating and social distancing, putting pressure on all services at this unprecedented time.*

*“Following today's announcement from the Senior President of Tribunals<sup>1</sup>, all hearings in the First-tier Tribunal Special Educational Needs and Disability will move away from face to face hearings and make use of the technology available. From Monday 23 March 2020, the Tribunal will use technology to enable hearings to proceed for the duration of the COVID-19 pandemic.*

*“Hearings will be on paper or by telephone and where possible video, where the technology permits. The arrangements for your hearing will be confirmed at least 2 days before the date on which your hearing is listed, and it would assist if you could check whether you are able to access telephone and internet services either in your home or locally. You will not be required to travel to the hearing venue if you have either telephone or internet video facilities.*

*“If parties do not have a reliable telephone or internet service available in their homes, it may be possible to arrange to use the IT equipment or telephones at your nearest Courts and Tribunals hearing venue. There is no need to contact the Tribunal to obtain the details as the administrative team are working to issue those details to you in time for your hearing.*

*“Please do not contact the Tribunal helpline because at present, the Tribunal's own resources are reduced due to self-isolation and social distancing and it is at the point two days before your hearing, if you haven't received correspondence from the Tribunal that you should contact the office.”*

Therefore, if you have an upcoming Tribunal, please do not panic. Your hearing will go ahead by telephone or video conferencing. You should use this time to check whether you have a reliable telephone or internet service in your home or it may be possible to arrange to use the equipment or telephones at your nearest courts and tribunals hearing venue. Don't wait until the day and then risk losing your hearing date.

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<sup>1</sup> [https://www.judiciary.uk/announcements/covid-19-national-guidance-for-the-family-court-message-from-president-of-the-family-divison/?utm\\_source=](https://www.judiciary.uk/announcements/covid-19-national-guidance-for-the-family-court-message-from-president-of-the-family-divison/?utm_source=)

## **Children in a phase-transfer year**

For parents of children with special educational needs (SEND) in a phase-transfer year, these appeals are being prioritised on a 12-14 week basis, so if you have not yet lodged your appeal and you are awaiting decisions as to school placement from your LA, lodge your appeal now and let the LA confirm the placement during the appeal. You need to set the timescale running or you may end up with your child going back to school in September and if you appeal at that time, you will need to wait a further 12-14 weeks for the appeal to be heard. Similarly, if you are waiting for mediation to be arranged, appeal now and if your LA are serious about negotiating you can still do so in the Tribunal process. I must stress that even if your child is going to a new phase of education at a new school in September, it is not too late to appeal now.

## **Adjourned hearings**

If you have already had your hearing part-heard and adjourned, the second part will continue by telephone/video.

## **Unable to gather evidence**

If you are not ready to go to hearing because you are not able to compile your own evidence (perhaps your experts cannot assess due to the pandemic) it is absolutely fine to inform the Tribunal that you would like to vacate your current hearing and re-list at a later date.

This allows more listings at the Tribunal for those hearings that must proceed. If you are in this category I would urge you to inform the Tribunal as soon as possible via a 'request for changes' form.

## **How Tribunal panels will work during this time**

From 23rd March, the First-Tier Tribunal have also issued a practice direction, setting out how Tribunal panels will work during the Coronavirus pandemic. This will apply to ALL SEND appeals and applications within the First-tier and Upper Tribunals. Namely:

1. Wherever possible, the Tribunal will continue to hear appeals before a "standard" panel. That being, a panel made up of a Judge, and one or two members.
2. If a salaried Judge considers a case could not proceed, or there would be an unacceptable delay if the appeal is dealt with by a "standard" panel, the Judge can decide for the case to be heard by a Judge alone, or with a Judge and a panel of fewer or different members.
3. When deciding how the appeal should proceed, the Judge must have regard to the urgency of the case, and the overriding objective that the case must be dealt with "fairly and justly".
4. If the Judge decides to alter the "standard" panel, they can determine what members will hear the case.



5. If the standard panel is altered, the Tribunal may seek the advice of one or more non-legal members to assist in decision making, provided the advice is recorded, and disclosed to the parties.

Tribunal Decisions should still be delivered in the normal way (within 14 days of the Hearing) but we must remember to be patient at this time. If you do not receive your Decision in this time, this may be due to a shortage of staff at the Tribunal's administrative office and the decision will be sent out to you as soon as possible.

It is important to additionally note from the First Tier Tribunal guidance re video/telephone hearings that all new Appeals EXCEPT those which are phase transfer, will be registered on a 20-week timetable. Phase transfer appeals will, as stated above, be prioritised on a 12-14 week basis. This has needed to be done for such a long time to prevent the levels of hearings being vacated that we were seeing before this pandemic started.

## 2: EHCP Timescales



### Questions received about timescales include:

- Our school is about to apply for an EHCP for our year 6 daughter to hopefully have 1:1 support in place for transition to secondary school in September. Are there delays? Are staff still working?
- I have recently put an EHC needs request in for my daughter. Can the local authority relax the timescales regarding making decisions and carrying out the assessment?
- My son has been accepted for assessment for his EHCP but what happens if the school is closed? The council are expecting to have all reports in from various professionals by April 16th?
- Will local authorities be required to complete statutory work...legal timeframes etc EHCP's during this time?
- My son has just received his first draft EHCP. Where do I stand legally in asking for an extension to name a school? Due to COVID-19 I am unable to tour schools so cannot pick one to name yet?
- We are due a meeting to review the first draft of my daughter's EHCP following assessment in January. I am worried that it will not happen due to the school closing. Can I ask to do it via correspondence?
- We recently won our tribunal re the contents of an EHCP and are due the amended EHCP by 20th March 2020. Our local authority (LA) have always breached statutory timeframes. What do we do if they breach in light of COVID-19?

- We had a final amended EHCP sent a couple of weeks ago which was incorrect with the post-16 placement for our daughter. After informing the Council and the School, I am still waiting to hear – what next?
- My son is due to transfer to a post 19 placement in September 2020. Could the final EHCP now be delayed and no placement named?
- Still awaiting paperwork after EHCP annual review. It took place in January. Where do we stand in such situations?
- What happens to my annual review?

## Coronavirus Act

As expected, lots of the questions submitted focused on EHC Needs Assessment requests that had either just been submitted or agreed, and whether the local authority could now disregard the timescales in light of the new legislation in the Coronavirus Act<sup>2</sup>

## Parents and young people in the process of obtaining an EHCP

As it stands, the Children and Families Act 2014 and The Special Educational Needs and Disability Regulations 2014 that set out the timescales for the LA to follow remain unchanged in light of the Coronavirus Act. This means that the legal timescales **must** still be followed. The Equality Act 2010 also remains unchanged.

Thus parents and institutions will still be able to request EHC needs assessments, which can still be carried out in the normal way. Decisions should still be issued on time. For new EHC Plans, or if you are awaiting your final EHC Plan, those processes will continue, and legally, the same deadlines will continue to apply. If those deadlines are missed by the local authority, they can still be challenged by way of Judicial Review.

There is nothing to prevent new requests for EHC needs assessments to be made. Parents can submit their own request for an EHC needs assessment rather than requesting that the school do so. No particular forms need to be filled in for a legally valid request for an EHC needs assessment to be made.

## It's tough for everyone - LA officers included.

The only word of caution I would provide is understandably everybody is in a difficult position at the moment. Many people have to work from home for the first time, looking after children and trying to make it work and that includes LA officers.

With that in mind, I suggest you give some grace to the absolute deadlines, but this does not mean local authorities can flout deadlines or do nothing. I would suggest a one-two week grace period would be sufficient and if you still do not receive anything from the LA, at that point you should consider the sending of a pre-action protocol letter.

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<sup>2</sup> [https://publications.parliament.uk/pa/bills/cbill/58-01/0122/cbill\\_2019-20210122\\_en\\_2.htm](https://publications.parliament.uk/pa/bills/cbill/58-01/0122/cbill_2019-20210122_en_2.htm)

The government has hinted in their vulnerable children guidance that they are considering whether to introduce legislation to amend the timescales for EHC plan processes, presumably from needs assessments to issue of the plan.

The guidance states:

*“We are also considering whether regulations need to be amended in order to allow greater flexibility on the timescales relating to the EHC plan process”*

## Annual Reviews of Special Educational Needs

The only caveat to the good news of the timescales remaining the same is that one timescale does appear to have changed as a result of the Coronavirus Act. If your child has an annual review in the near future, then it is likely that these will be suspended or postponed until further notice. This is because the duty to carry out an annual review under section 44(1) CFA 2014 may be disapplied in the event of a temporary continuity order.

It is not guaranteed, and I am aware that some local authorities and schools are being very creative and holding annual reviews by video conferencing to allow their caseloads not to mount during this crisis, so you should check with your individual school and LA. However, if the LA/school decide to postpone and do not want to hold the review remotely, you cannot force them to do so. This is, however, beneficial if you are happy with the support your child is receiving as set out in their EHCP, as this will continue until any such time it is reviewed.

## Appeals timescales

Appeals in respect of refusals to assess, refusals to issue, and against the content of issued EHCPs. can also still be lodged with the First-tier Tribunal. The FTT has already put measures in place to attempt business as usual. It is holding case management hearings and appeals by telephone and video link. Early indications are that this is a viable way of conducting at least some final hearings.

We do know from the guidance of the First Tier Tribunal dated 19th March 2020,<sup>3</sup> that there is a slight change. Any new appeals are now going to be listed on a 20-week timetable (unless you have a phase transfer case, which will be 12-14 weeks). This reverts back to the old Tribunal timetable prior to the Children and Families Act 2014.

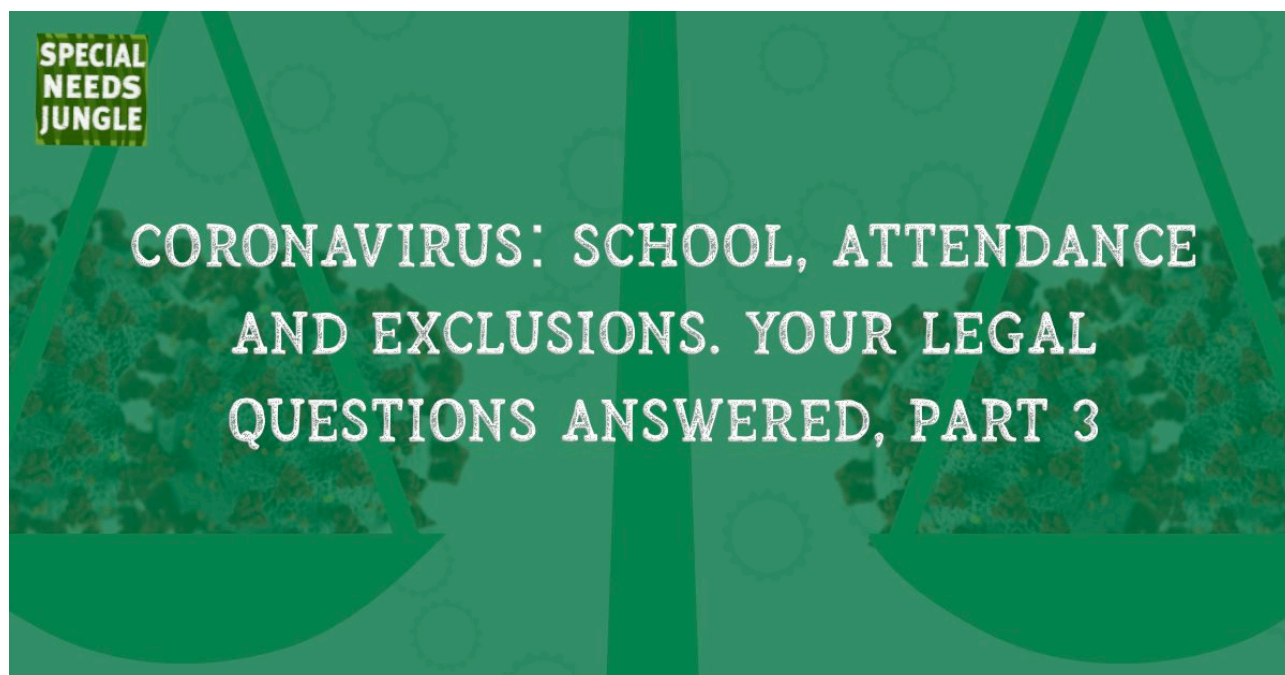
My personal opinion is that while this is longer, it's a step in the right direction. It will help avoid the mass appeals at the tribunal, resulting in frequent hearing vacations, because there are not enough judges to hear the appeals. It also allows parents more time to gather their own evidence and ensure their case is as strong as possible, before presenting it to the Tribunal.

All in all, in terms of timescales, parents of children with special needs remain protected which is very good news. It will allow cases to continue through the often hard-fought EHCP process. If any such legislation is brought out to amend any of the timescales set out above, I will duly update this blog for you.

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<sup>3</sup> <https://www.specialneedsjungle.com/latest-coronavirus-information-relevant-for-send-families/>

### 3: School, attendance and exclusions



#### **Who can attend school, should they, the ramifications of not attending and if your child is at school and is excluded.**

Questions received include:

- My son has complex medical and physical needs and severe learning difficulties. How will his education needs be met? He attends a specialist, non-residential college.
- If schools will stay open to those with an EHCP does this also include nurseries and pre-schools? Are they obliged to do so?
- I am a SENCO and SALT. I look after 10 children with EHCPs. I also have a daughter with an EHCP who attends a special school. What provision are they required to put in place for her?
- My school has rescinded my youngest son's place after originally offering me one during the outbreak (he has an EHC Plan). The reason they are giving is that his brothers are being cared for at home! Can they do this?
- I have two children with ASD. Their schools would not help with the EHCP process so they do not have them. I am a carer and my husband is a postman. Can they go to school?
- Can I send my child to school during the shutdown if he has an EHC Plan? Can the (mainstream) school refuse to allow him to come in?
- Are schools only open for key workers' children?
- My son has an EHCP for SEMH and attends a special school. He has a history of anxiety, OCD and school phobia. He has been refusing to attend school due to coronavirus anxiety. Can I get fined for non-attendance?

- Will keeping our children who have an EHCP at home have a negative impact on the future provision they receive?
- Do children with EHCPs who attend special school have to attend? Will there be penalties or a risk of the EHCP being discontinued? My child has diabetes type 1 and asthma.
- My daughter aged 12 has 22.5 hours of 1:1 support in her EHCP. I am planning to educate her at home from Monday. Could the LA refuse to fund the hours of 1:1 support when she returns to school if I do this?
- My child has an EHCP and has a 38-week residential placement Monday – Friday. I want her home, but need to make sure that the LA keep funding her placement and her place is held open.
- Will school still be able to exclude children with EHCPs during this period?

## Who can currently attend school?

Schools closed their gates on Friday 20th March 2020 for an indefinite period to everybody except those ‘vulnerable’ children, or children of a ‘key worker’. Unhelpfully, however, no guidance was produced setting out exactly who would fall into these categories, prompting a cascade of questions to Special Needs Jungle from worried parents about whether their children would qualify.

The following list of who would be entitled to a place has been published<sup>4</sup> which confirmed:

“Vulnerable children include children who are supported by social care, those with safeguarding and welfare needs, including child in need plans, on child protection plans, ‘looked after’ children, young carers, disabled children and those with education, health and care (EHC) plans. We know that schools will also want to support other children facing social difficulties, and we will support head teachers to do so.

Parents whose work is critical to the COVID-19 response include those who work in health and social care and in other key sectors outlined below.”

As you will note, **the definition of vulnerable children “includes”**, according to the guidance, **those who have a social worker and those children and young people up to the age of 25 with EHC Plans** (I was asked a lot about particular age groups but I can confirm this applies across all children/young adults with an EHCP.)

The eight categories of critical/key workers included:

- Health and Social Care
- Education and Childcare
- Key Public Services
- Local and National Government
- Food and other Necessary Goods
- Public safety and National security

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<sup>4</sup> <https://www.gov.uk/government/publications/coronavirus-covid-19-maintaining-educational-provision/guidance-for-schools-colleges-and-local-authorities-on-maintaining-educational-provision>

- Transport; and
- Utilities, Communication and Financial Services

Thus, if your child has an EHC Plan, or you are a critical/ key-worker (in line with the government guidelines) your child ‘can’ attend school and provision should also be made for them throughout the Easter holidays. Please note the word ‘can’ attend and not ‘must’.

This includes early years settings right up until post-16 colleges.

You can read more about childcare providers and local authorities' responsibilities during the Coronavirus pandemic [here](#).<sup>5</sup>

## Should your ‘vulnerable’ child attend school at this current time?

### The guidance states:

*“Many parents working in these sectors may be able to ensure their child is kept at home. **And every child who can be safely cared for at home should be.***

Please, therefore, follow these key principles:

1. If it is at all possible for children to be at home, then they should be.
2. If a child needs specialist support, is vulnerable or has a parent who is a critical worker, then educational provision will be available for them.
3. Parents should not rely for childcare upon those who are advised to be in the stringent social distancing category such as grandparents, friends, or family members with underlying conditions.
4. Parents should also do everything they can to ensure children are not mixing socially in a way which can continue to spread the virus. They should observe the same social distancing principles as adults.
5. Residential special schools, boarding schools and special settings continue to care for children wherever possible.”

It is likely a result of further questions asked, which forced the government to issue further ‘Guidance on vulnerable children and young people’ on 22nd March 2020 providing more clarity. You can find the guidance [here](#).<sup>6</sup>

## What does this mean for my vulnerable child?

The important things this further guidance confirms that was not clear in the original guidance issued is that:

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<sup>5</sup> <https://www.gov.uk/government/publications/coronavirus-covid-19-early-years-and-childcare-closures/coronavirus-covid-19-early-years-and-childcare-closures#responsibilities>

<sup>6</sup> <https://www.gov.uk/government/publications/coronavirus-covid-19-guidance-on-vulnerable-children-and-young-people/coronavirus-covid-19-guidance-on-vulnerable-children-and-young-people>

1. **Children and young people with EHC Plans will not be automatically eligible for a school or college place.** Their eligibility will be subject to a risk assessment by their setting in conjunction with LAs and their parents to determine whether their needs can be met at home.
  - I would stress at this point that it is very important for parents, however hard it may be, to be realistic about whether you are able to meet your child's special educational needs 24 hours a day for an indefinite time. If you are, fantastic and wherever possible, you should keep them at home. However, if you need to send your child to school because you do not think you could manage with the severity of their needs at home, this is nothing to be ashamed of.
  - This risk assessment does not allow a headteacher to simply close a school and not provide any alternative provision for children in these two categories. An individual risk assessment should be completed for every case.
2. (While we know this is not happening up and down the country) **the government did also ask that all schools and early years settings should remain open for children of critical workers and vulnerable children wherever possible.** If your child's normal school has however shut and provision needs to be made for your child, it is possible for your child to attend another school in your area (which might not be your child's normal school but would be able to provide support to them).
3. For children who are awaiting an EHC Plan or the outcome of a tribunal appeal in respect of one, and/or who are on the brink of receiving social care support, schools will have the discretion to carry out a risk assessment and provide support, but will not be required to do so.

This leaves a lot of discretion in the hands of the child or young person's setting, together with a considerable amount of risk-assessing to be done in a very short period of time. That's without taking into account the work involved for settings in deciding if parents of non-vulnerable children come within the definition of key/critical workers.

Children with EHC plans are therefore likely to fall into two categories:

1. **Those who would be at significant risk**, i.e. could not be supported at home (e.g. profound and multiple learning difficulties; receiving significant levels of personal care support in the setting) – **who should go to school; and**
2. **Those whose needs can be met at home**, i.e., not receiving personal care in their setting or whose limited needs for personal care can be met in their home.

## What are the ramifications of non-attendance?

So, parents whose child technically could have a place but they prefer to keep them home, had further questions: Would they be penalised financially or by their child losing future provision as a result? **No. The Government is in fact encouraging those parents of children in the eligible categories to allow them to stay at home, if they can.**

The guidance also confirms that local authorities will need to use their "reasonable endeavours" to ensure provision is available across the local area. Parents who consent to changes to, or reductions in, provision during the outbreak, will not be considered to have agreed to a permanent



amendment of the EHC Plan. This is particularly important for those parents worried they would lose provision in Section F of their EHC Plans when their child returns to school.

Similarly, **finances will not be issued for non-attendance**. Funding for all schools and FE colleges will be maintained and not reduced because of lower attendance

Thus rest assured if you are keeping your child at home because it is safer and you are able to do so, you do not need to panic and being penalised for doing so.

The DfE will also put in place a new process allowing reimbursement of exceptional costs faced by schools as a result of COVID-19; details to be published shortly.

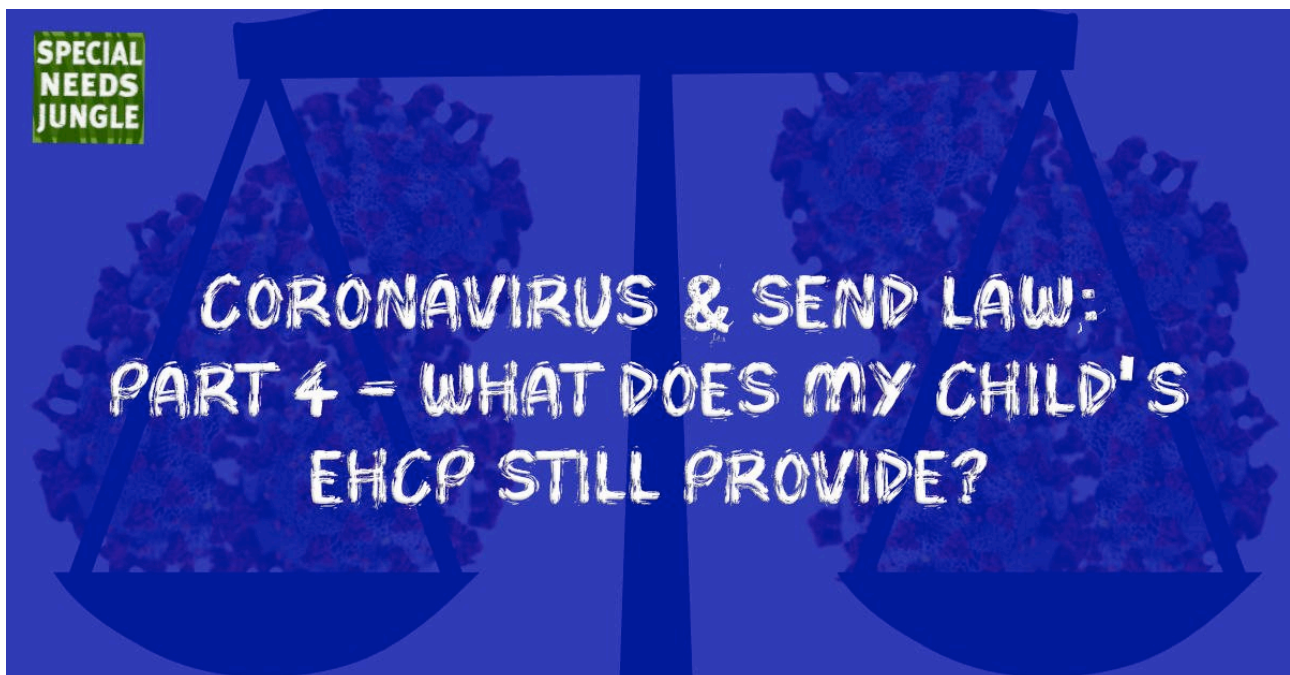
## What about exclusions?

Finally, in addition to queries of attendance and non-attendance, concerns were also made as to whether children would still be able to be excluded during this time.

**At the moment the guidance does not deal with exclusions.** The power to exclude has not been disapplied by law. This is probably because most children are not in school, so it hadn't been contemplated that exclusions would need to be addressed.

Until such point, **any potential exclusion would still need to be non-discriminatory, reasonable, fair and proportionate. It would likely be very difficult to satisfy those requirements in the current situation the country is in.** Schools must have a legitimate aim to keep children or staff safe. They must also have a lawful reason to exclude, but the proportionality of any exclusion will differ hugely in the current climate. It should, therefore, be reserved as a very last resort and instead, alternatives to exclusions will be crucial in this time of national emergency.

## 4: What does my child's EHCP still provide?



In this final section, we'll cover what will be the most important for the next weeks or months ahead. What does your child's hard-won EHCP mean now? What can it provide during the #CoronavirusLockdown and social distancing?

I hope you can recognise issues below similar to your own situation. In these uncertain times, sharing information and making parents lives even a tiny bit easier is an essential part of our work.

Questions received include:

- In light of the government announcement about indefinite school closures in England what provision (if any) are schools to provide children with EHCPs? My son has dedicated 1:1 TA support.
- How can we manage/teach our learning at home without our EHCP allocated TA support? School is setting virtual work but we are struggling.
- My daughter is 18 with an EHC Plan. She has a mentor, SALT sessions and English lessons in college, she also receives a 1:1. Should she be seeing these people outside of college or by Skype if college closes?
- If schools close, can I deliver speech and language therapy sessions to children on my caseload with EHCP's via video link? Will this be reimbursed in the same way as 1:1 school sessions?
- When ABA programmes are funded through an EHCP, will the funding still be provided so the provision can be delivered through home ABA sessions when schools close?
- How are government/LAs/schools proposing to meet the provision in Section F of children's EHCPs?

- My daughter is out of school, what happens to the therapies in her EHCP?
- For us on personal budgets, when schools close will the LA still be legally obligated to fund our 1:1 programme when I am running academics and EHCP targets with his 1:1 from the home setting?
- How does it work when schools close regarding EHCP stated support e.g. OT and SALT? Do therapists have a legal duty to continue to work with kids over Skype?
- My child just received a finalised EHCP naming a SEN School for September 2020. At the moment LA have granted 1:1 as his current school struggles. Can they refuse the SEN school named from September?

## The Coronavirus Act

It is important to note that the Coronavirus Bill, has now been passed and is now Legislation under the Coronavirus Act 2020. You [can find the whole Act here](#).<sup>7</sup>

Despite substantial lobbying, the Bill went through Parliament without any amendments. As a result, the Coronavirus Act 2020 now provides for the possibility of a temporary relaxation of duties on local authorities. The relevant part for our purposes is Schedule 17, part 1, “Notices temporarily removing or relaxing statutory provisions etc: England” - however it isn’t all doom and gloom!

## What does this mean for your child?

1. Most importantly, EHC Plans will remain in force.
2. Under Section 42 of the Children and Families Act (CFA) 2014 as it currently stands, there is an absolute duty upon local authorities to secure and deliver special educational provision contained within an EHC Plan.

However, under the Coronavirus Act 2020, the Secretary of State has the power to modify this requirement so instead rather than an absolute duty, Local Authorities are able to use ‘**reasonable endeavours**’ to deliver the provision.

1. The legislation also gives the Secretary of State the power to disapply Section 43 CFA 2014 – which requires a school named in Section I of an EHC plan to admit a child/young person as a pupil.
2. The duty to undertake annual reviews of EHCP’s under section 44 CFA 2014 may also be put on hold.

Despite the guidance currently available from the Government (causing mass panic for parents and allowing local authorities to think they can simply suspend the EHCP process, **which is unlawful**) it is important to note that the measures stated above will not apply automatically.

In order for any of these situations to come into force, Schedule 17 of the Act has created a power for the Secretary of State to issue a notice disapplying or modifying the existing statutory provisions (listed above) for up to one month at a time, but there can be repeated notices.

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<sup>7</sup> [www.legislation.gov.uk/ukpga/2020/7/pdfs/ukpga\\_20200007\\_en.pdf](http://www.legislation.gov.uk/ukpga/2020/7/pdfs/ukpga_20200007_en.pdf)

When issuing such notice, the Secretary of State must take reasonable steps to bring the notice to the attention of those likely to be affected. I would assume it would be listed on the Department for Education website. The notice must give the reasons why the issuing of the notice is considered necessary and proportionate. The reasons **must** relate to the incidence or transmission of coronavirus.

What seems to have been misinterpreted however is until that time – the duty on a local authority to secure provision in an EHC Plan remains unchanged. I.e. LAs still have to provide provision in Section F of an EHC Plan.

## So, if a notice is issued what happens then?

Even when a Notice is issued, this does not mean that local authorities can simply do nothing. What it means is that the duty under section 42 is to be treated as discharged if the LA has used 'reasonable endeavours' to discharge the duty.

In reality this will involve looking at creative options to provide for delivery. They cannot simply refuse to provide anything because the school is shut for example, that is unlawful.

## What can I ask for? Be flexible – talk to your LA

The current public health crisis will leave no aspects of our lives untouched. Most obvious, the care and support which children/young people ordinarily receive will be massively disrupted and I can understand whole-heartedly why this worries parents.

It remains that we are in an unprecedented situation and nobody has all the answers. The reality as we go through the coming weeks and months, is that services may close, 1:1s may need to self-isolate or become unwell. This national emergency calls for open minds and collaboration about **how** we can creatively deliver provision more than ever, to ensure children/young people



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Link to the updated guidance can be found here: (specifically look at para's 20-21 for the delivery of provision i.e. Section F under an EHCP)



Coronavirus (COVID-19): guidance on vulnerable children and young people  
gov.uk



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For anybody who missed Friday's important blog on this issue [@SpecialNdsJungle](#) Govt Guidance has now been updated to confirm an LA's duty to provide Sec F of an [#EHCP](#) \*has not yet changed\* under the Act. Until SoS makes a notice, LA's must secure provision (unless impossible) [#SEN](#)



with special educational needs can continue to get the care and support they need.

That said, what you are asking for does have to be practically available in the current crisis or you are setting yourself up for disappointment.

Thus, practically if you:

- have a speech and language therapist who is willing to deliver sessions via remote access (Skype, Zoom or some other means) and this session is likely to be effective, suggest it;
- Similarly, with OT or physio - can they video link to your home and talk you, as parents, through some easy to follow exercises that you could do with your child to avoid them becoming overloaded;
- Parents that are lucky enough to be trained ABA providers, can you continue the programme at home, or can your ABA staff continue to perform ABA in the home and directly invoice the LA;
- And any other creative means of providing support remotely. All options should be explored.

## Next steps

- First of all, if it is not possible to put support in place for your child at the moment because you are unwell, self-isolating or other reasons, be kind to yourself. This is a marathon, not a race and all parents are currently muddling through the situation as best they can.
- If you do wish to try to arrange the support in your child/young person's EHCP, I would advise you to put together a plan of what you can practically and safely put in place, while your child is accessing limited schooling or at home.
- If is any cost involved, put it to your LA. This is for no other reason than I don't want parents to pay for support and your LA to disagree to fund it and you be left out of pocket.
- We must appreciate that at this time councils are under an unprecedented strain and their contact may not be instant, but they should be aware of their legal duty to continue to deliver provision in an EHC Plan and be working creatively with parents how best to do that as quickly as possible.
- Only by discussing the situation with parents and exploring the options available to them will LAs be able to satisfy the requirement that they have performed 'all reasonable endeavours' when the Notice comes in. A blanket refusal or disregard for their duties will not suffice.

## Updated Guidance

The Guidance has been updated to confirm that an LAs duty to provide Section F of an EHCP \*has not yet changed\* under the Act. Until the Secretary of State for Education makes a notice, LAs **must** secure provision (unless impossible)<sup>8</sup>

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<sup>8</sup> <https://twitter.com/haylez10/status/1244615925879525376?s=21>

1. Coronavirus and SEND law: Your questions answered (part one - Tribunals) Hayley Mason

- <https://www.specialneedsjungle.com/care-coronavirus-using-direct-payments-pay-family-members-care/>

2. Coronavirus and SEND law: Your Questions Answered (part two – Timescales)

- <https://www.specialneedsjungle.com/coronavirus-and-send-law-your-questions-answered-part-two-timescales/>

3. Coronavirus: School, attendance and exclusions. Your legal questions answered, part 3

- <https://www.specialneedsjungle.com/coronavirus-school-attendance-exclusions-your-legal-questions-answered-part-3/>

4. Coronavirus and SEND law: Part 4 What does my child's EHCP still provide?

- <https://www.specialneedsjungle.com/coronavirus-and-send-law-part-4/>

5. Care in a time of Coronavirus: Using direct payments to pay family members for care -Steve Broach

- <https://www.specialneedsjungle.com/care-coronavirus-using-direct-payments-pay-family-members-care/>

6. Steve Broach, Public Law Barrister on the Coronavirus Bill's implications for disabled children

- <https://www.specialneedsjungle.com/steve-broach-public-law-barrister-on-the-coronavirus-bills-implications-for-disabled-children/>

7. Calming Coronavirus anxiety in children (and everyone else)- Angela Kelly

- <https://www.specialneedsjungle.com/calming-coronavirus-anxiety-children-everyone-else/>

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