



IPSEA

Independent Parental Special Education Advice

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I've just received a draft EHC Plan: what should be in it?

The Local Authority's duty is to specify all of the special educational provision that is necessary to meet your child's special educational needs (SEN). This duty to specify all the special educational provision required is statutory and is set out in s.37 of the Children and Families Act 2014, which says that the plan must "specify" certain matters. IPSEA have a useful resource about this duty, called "The duty to specify" which can be found in the 'Resources' tab here:

<https://www.ipsea.org.uk/what-you-need-to-know/ehc-plans/draft-ehc-plans>

Within that 'Resources' tab you will also find the "IPSEA EHC plan checklist" which will also be helpful for you to read, and you could use this to check whether the draft EHC plan is written in the correct way.

In relation to the duty to specify, some key principles that have been established through case law are that:

- The statement must set out all of the child's special educational needs (not simply those that relate to the classroom) in Part 2 and all of the provision necessary to meet them in Part 3: **R v Secretary of State for Education and Science ex part E** [1992] 1 FLR 377)
- The statement provision should normally be quantified in terms of hours, whether that provision is to be made (or funded) by the LA or the school: **L v Clarke & Somerset County Council** [1998] ELR 129) In this important case, the Judge in decided that:

"... in very many cases it will not be possible to fulfil the requirement to specify the special educational provision considered appropriate to meet the child's needs, including specification of staffing arrangements and curriculum, unless hours per week are set out."

Although these cases were decided in relation to statements, the principles will apply equally in relation to EHC plans, and the requirements for a plan to be specific and quantified are equally clear. The SEN and Disability Code of Practice refers to the need for an EHC plan to be specific at paragraph 9.69 and you can find a link to the Code here:

https://www.ipsea.org.uk/file-manager/SENlaw/send_code_of_practice_january_2015.pdf

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The wording of the Code of Practice clearly reflects the wording in the **L v Clarke & Somerset County Council** case when it states:

“Provision **must** be detailed and specific and should normally be quantified, for example, in terms of the type, hours and frequency of support and level of expertise”

There are certain words and phrases – such as ‘regular’ and ‘as necessary’, ‘would benefit from’ – which might be used in an EHC plan that isn’t properly written, as a way of avoiding specifying and quantifying provision. The EHC plan should make it clear who will do what, how often they will do it and for how long they will do it. Taking speech therapy as an example; in order to ensure that section F of an EHC plan was appropriately specified and quantified in relation to that special educational provision, the following matters would need to be clear when reading the plan:

- Who will carry out the sessions of therapy? (Speech and language therapist or a trained LSA?)
- How long they will last for?
- How frequently will the sessions take place?
- Will the sessions take place on a one-to-one basis or with other children in a group? (and if so, what might the size of such a group be?)
- If the sessions are being delivered by someone other than a qualified speech therapist, how often will the programme be reviewed by such a therapist?

If these matters are not clear, there is likely to be a real risk that the EHC plan might not be sufficiently specific, and this could lead to problems with the special educational provision which is actually delivered to the child.

It is also worth noting that if section F of an EHC plan simply refers to a sum of money or a ‘Band’ into which the child falls when describing the special educational provision they require, this is very unlikely to be sufficient to meet the legal requirements on specification. Whilst it wouldn’t be unlawful in itself to refer to an amount / Band, the details of the provision that the child or young person requires should always be fully set out in the plan as well.

It will not be lawful for the EHC plan to delegate the responsibility for determining the amount of a support provision that child or young person should receive, to a school or college – this should be set out in the EHC plan, by the Local Authority themselves, leaving no room for doubt as to what is required.

It is also very clearly established – and Local Authorities have been reminded of this by the Department for Education at various times – that it would not be lawful for a Local Authority to have a blanket policy of never quantifying provision within a statement or EHC plan. If your Local

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Authority have told you in writing that it is not their policy to quantify EHC Plans, or have a written policy to this effect which you have obtained, then this is written evidence of an unlawful blanket policy and you can forward this to us or complain about it to your Local Authority.

If the Local Authority refuses to specify and quantify the provision in Section F of the EHC plan, and finalises the draft plan in a 'vague' form, then unfortunately the only course of action open to you will be to exercise your right of appeal to the First Tier Tribunal (SEND) against the finalised EHC plan.

You can get advice and support in preparing an appeal through our Tribunal Help Line and you can book a call to speak with one of our Tribunal Helpline volunteers here:

<https://www.ipsea.org.uk/contact/advice-and-support/tribunal-helpline>

We can only provide information through this service, rather than offer direct advice. So if you need this, or you wish to discuss the situation with someone, you should book a call with one of our Advice Line volunteers:

<https://www.ipsea.org.uk/contact/advice-and-support/advice-line>