

Written evidence submitted by IPSEA

Submission to the House of Commons Education Committee from IPSEA

Inquiry: Children's Homes

April 2021

Introduction

1. IPSEA (Independent Provider of Special Educational Advice) was established in 1983 and currently advises more than 4,000 parents and carers of children with special educational needs and/or a disability (SEND) every year.
2. We deliver two free and independent telephone advice services to parents/carers and young people. Our Advice Line provides legally-based next step advice on any educational issue that relates to a child or young person's SEND, such as exclusion from school, discrimination and the process for securing additional support. On our Tribunal Helpline we give next step advice on proceedings in the First-tier Tribunal (Special Educational Needs and Disability) – more commonly known as the SEND Tribunal. This is also the gateway to our Tribunal Support Service through which we represent parents who are making appeals or claims to the SEND Tribunal. The Tribunal hears disputes between parents and local authorities regarding educational support for children and young people with SEND and also claims of disability discrimination against schools.
3. Our helplines and Tribunal Support Service are largely delivered by volunteers, which enables us to provide our services to parents free of charge. The range of services that IPSEA delivers across England places us in a unique position to identify trends and common issues.
4. As well as training parents and carers on the SEND law framework, IPSEA also provides regular training to bodies such as SEND Information, Advice and Support Services (SENDIASS), education professionals and local authorities.
5. We have noted the Committee's terms of reference. **This submission addresses the issue of how children with special educational needs who live in children's homes access the educational provision and support they need. We wish to draw the Committee's particular attention to the role of SEND Tribunal appeals and other routes of redress in ensuring that children's needs are properly identified and met, and the absence of a parental figure for many children in children's homes who will exercise the right of appeal and complaint.**
6. IPSEA is happy to provide any further information that the Committee would find useful, or to provide oral evidence if required.

Special educational provision for children in care homes

7. As well as a good place to live, children in the care system need a place at a school or other education setting that meets their needs and provides any special educational support they require. It is essential that local authorities consider children's educational needs alongside their care needs from the outset. Addressing a child's special

educational needs plays a key role in avoiding a breakdown in their care placement and improving the outcomes they are able to achieve.¹

8. It has been estimated that 70 per cent of looked after children have some form of special educational needs. A report this year by Ofsted states that children living in children's homes are "20 times more likely to be in special education than all children nationally". The same report includes the information that three-quarters of these children have an education, health and care (EHC) plan or receive SEN support at school.²
9. However, while these figures may give an indication of the complexity of the needs of children in children's homes, they do not tell us much about the quality of the educational provision that children with SEND in care homes receive, or the extent to which their needs are being met and good outcomes achieved.
10. We know from our experience of helping families secure the educational provision their children need and supporting them through SEND Tribunal appeals that active parental involvement is crucial in ensuring that children with SEND receive the right provision, in an education setting that meets their individual needs. Because local authorities so often make poor, including unlawful, decisions,³ the appeal system has come to play a pivotal role in making sure that children with SEND receive the educational provision and support to which the law entitles them.
11. The number of appeals to the SEND Tribunal has risen steadily each year since 2014, doubling in that time, with more than 90 per cent of decisions now in favour of parents, and young people.⁴ However, achieving this outcome depends on a child's parent, or an individual who the law recognises as fulfilling a parental role, exercising their right of appeal against decisions taken by their local authority about the child's education. The same applies to the main other routes of redress, specifically complaints to the Local Government and Social Care Ombudsman and applications for judicial review where a local authority has failed to comply with its legal obligations towards a child with SEND.
12. There is considerable evidence that looked after children under-achieve in education. Their existing disadvantages are exacerbated by the frequent necessity of appealing local authorities' decisions on special educational support, and by the limitations on who can bring an appeal to the SEND Tribunal on their behalf.

Defining a parent

13. In general terms, the legal definition of a parent involves considering who holds parental responsibility. However, section 576 of the Education Act 1996 says this:

"Parent, in relation to a child or young person, includes any person: (a) who is not a parent of his [or hers] but who has parental responsibility for him [or her]; or (b) who has care of him [or her]."

14. In other words, a foster carer, extended family member or any other person caring for a child on an informal basis may constitute their parent for the purposes of education law: there is no requirement for them to hold formal parental responsibility. Any individual who 'cares' for a child with SEND can therefore exercise the right of appeal to the SEND Tribunal.

¹ Education for looked after children (childlawadvice.org.uk)

² Ofsted (February 2021), 'The education of children living in children's homes'.

³ SEND 2020: What's the current state of Ofsted local area inspections? - Special Needs Jungle

⁴ Tribunal Statistics Quarterly, July to September 2020 - GOV.UK (www.gov.uk)

15. However, for a child with SEND who lives in a children's home, the position is far from straightforward. In a children's home, there is no obvious parent. The individual who may come closest to this role is a child's keyworker. But each keyworker will have responsibility for a number of children, and may not have a particularly close relationship with the child concerned. In addition, such an individual may consider exercising a right of appeal on behalf of a child beyond their role. The result is that individual children with SEND in children's homes may have no-one advocating for them and ensuring that their needs are fully understood and met.
16. This is where independent reviewing officers (IROs) have a vital role to play. IROs need to have a good understanding of how the special educational needs of looked after children are effectively identified, assessed and met.⁵ They should also ensure that each child's care plan and EHC plan are properly joined-up. This does not always happen as a matter of course. We regularly observe a lack of engagement between social care and SEN teams in local authorities, with a tendency for some social care teams to see the duties set out in the Children and Families Act 2014 as an 'education' responsibility rather than a shared duty.

Appealing SEND decisions for children in children's homes

17. The right to appeal to the SEND Tribunal is given to parents (or individuals acting as parents, as described above), or to young people themselves if they are over the age of 16.⁶ Children below the age of 16 have no right of appeal in their own right.
18. If a child with SEND lives in a children's home, is under 16 and does not have a school place that meets their needs or has an inadequate EHC plan, they may effectively have no right of appeal if they have no parental figure who is inclined to pursue an appeal on their behalf. The options are likely to be a biological parent or a social worker.
19. In the case of biological parents, many are estranged from their child who lives in a children's home. Even where they are not, they may be reluctant to mount any kind of challenge against the organisation responsible for looking after their child, or may have no interest in doing so. With regard to social workers, in our experience it is rare for a social worker to make a SEND appeal on a child's behalf, even where the need to appeal is clear and obvious. We observe that social workers are averse to challenging (or may not think they have the right to challenge) the decision of another department within their local authority which has decided, for example, that a child does not require an EHC needs assessment or a specialist school placement.
20. There is a conflict inherent in a local authority maintaining a role simultaneously as 'parent' and education decision-maker. A local authority is unlikely, in practice, ever to appeal against itself. We are not aware of any case where a child living in a children's home has been the subject of an appeal on their behalf to the SEND Tribunal.
21. One possible solution would be to give children under 16 the right to appeal to the SEND Tribunal in their own right. This was considered under the Labour government in 2009, which consulted on giving children a right to appeal to the SEND Tribunal and to make claims of disability discrimination. The expectation at this time was that most appeals

⁵ Council for Disabled Children (May 2016), 'The role of independent reviewing officers in education, health and care needs assessments and plans for looked after children and young people with special educational needs: a briefing from the Council for Disabled Children'.

⁶ From the last Friday in the June after a young person turns 16.

would continue to be made by parents or carers, with children only exercising their individual right to appeal if their parent or carer was unable or unwilling to do so.⁷

- 22. We urge the Committee to recommend that all children with SEND living in children's homes should have the right to appeal to the SEND Tribunal in their own right, with access to the necessary support and advocacy to enable them to exercise this right. Social care teams should also be proactive in ensuring that young people over the age of 16, who currently can appeal in their own right, know about this and receive the necessary support to enable them to do so.**

April 2021

⁷ Department for Children, Schools and Families (2009), 'Consultation on giving children and young people a right to appeal'.