

Written evidence submitted by IPSEA

IPSEA's submission to the Education Committee's Inquiry into the impact of COVID-19 on education and children's services

Follow-up to oral evidence session on 1 July 2020

IPSEA's Chief Executive, Ali Fiddy, gave oral evidence to the Committee on 1 July 2020. She was asked to provide supporting evidence of the unlawful behaviour of local authorities that she referred to during the evidence session. This is set out below. The scope of this submission is limited to the issues we were specifically asked to provide evidence on.

1. About IPSEA

- 1.1 IPSEA (Independent Provider of Special Education Advice) was established in 1983 and currently advises over 4,000 parents and carers of children with special educational needs and/or a disability (SEND) every year.
- 1.2 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 – e.g. exclusion from school, discrimination and the process for securing additional support. On our Tribunal Helpline we give next step advice on appeals and disability discrimination claims to 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.
- 1.3 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.

- 1.4 IPSEA regularly trains other bodies including SEND Information, Advice and Support Services, education professionals, local authorities and parents/carers.
- 1.5 Our views are based on evidence from what the families we support tell us and our experience whilst supporting them.

2. Executive Summary

- 2.1 IPSEA is concerned about the extent to which some local authorities have taken advantage of the temporary relaxation of their legal obligations towards children and young people with SEND both before and after they were introduced.
- 2.2 In particular, some local authorities have used the relaxation of the timescales in the Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020 as justification for failing to make decisions that are appealable to the SEND Tribunal or to unlawfully delay making decisions or taking steps that are not covered by the Regulations.

3. The Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020

- 3.1 The Regulations provide that where it is not reasonably practicable or it is impractical for a local authority to meet certain deadlines “*for a reason relating to the incidence or transmission of coronavirus*”, it must instead complete that step as soon as it is practicable to do so. The timescales to which the Regulations apply include the handling of requests for EHC needs assessments, decisions about whether to issue EHC plans, the preparation, issue and amendment of EHC plans, and annual reviews. These are all matters which are appealable to the SEND Tribunal and delays in relation to these processes result in delays to rights of appeal being triggered. The changes relating to statutory timescales will remain in place until 25 September 2020.
- 3.2 At IPSEA, we have seen or heard about a number of local authorities misusing these Regulations, specifically by applying unlawful blanket policies under which they have refused to accept requests for EHC needs assessments due to the coronavirus pandemic and/or delayed making decisions not covered by the Regulations. Some of these policies were applied early on in lockdown prior to the amendment Regulations

being introduced. Others were introduced after the Regulations came into effect. At neither point were the approaches adopted a lawful option open to the local authorities concerned.

- 3.3 Birmingham City Council: in mid-May 2020, a parent shared a letter with us that she had received from Birmingham City Council at the end of April about her son's post-16 phase transfer placement. The letter confirmed the placement that would be named in the amended EHC plan but failed to enclose the EHC plan with the following explanation:

"We apologise for the delay in the administration of this letter and that [the] EHC plan is not enclosed at this time. This is due to current situation relating to Covid-19 ... a finalised plan will be sent to you by 31st May 2020."

- 3.4 For young people moving from secondary school to a post-16 institution, the local authority must amend their EHC plan by the 31 March in the calendar year of the transfer (Regulation 18(1) The Special Educational Needs and Disability Regulations 2014). Birmingham City Council was retrospectively applying the Amendment Regulations to decisions/steps which were legally required to have been taken prior to the Regulations being introduced. This is unlawful.

- 3.5 Bury Council: on 31 March 2020, we were contacted for advice by a parent who told us that Bury Council had agreed to undertake an EHC needs assessment in relation to her daughter, but a caseworker had then contacted her to say that all EHC needs assessments were being put on hold for the foreseeable future as it was impossible to ask for reports from professionals while the government's social distancing advice was in place. The parent asked the caseworker to at least obtain reports from those professionals who had already seen her daughter, but she was told that all requests for reports had to be sent out on the same day with the same six week deadline. The local authority was operating an unlawful blanket policy.

- 3.6 Essex County Council: a letter was shared with us which the Director of Education had sent to all schools and settings in the county on 31 March 2020. The letter included the following paragraph:

"Please could we request that schools and settings do not make requests for new EHCNAs until further notice. EHCNA should be a thorough and

meaningful assessment of a child's needs and clearly that would not currently be possible."

3.7 The letter also stated that as the Coronavirus Bill had now been passed, some of the legal duties around EHC plans had been relaxed allowing "schools to now use their 'reasonable endeavours' (rather than 'best endeavours') to support these children." However, the temporary legislative changes were not in force until 1 May 2020 and have never included a dilution of schools' duties to support children and young people with EHC plans.

3.8 Liverpool City Council: one of our volunteers shared a letter with us in March 2020 which had been sent to a parent confirming the local authority's decision following a request for an EHC needs assessment. This letter stated as follows:

"The LA is not currently initiating statutory assessments at this time due to current global events. The LA is unable to fulfil assessments from health due to staffing and colleagues in social care must prioritise direct safeguarding work as more pressure is placed on their service. Educational Psychologist assessments cannot be conducted appropriately in the current climate of school closures, social distancing and self-isolation, as they are unable to complete cognitive assessments or carry out observations in situ. Due to school closures, the LA is also unable to seek appropriate information from schools should we not already have this."

3.9 Liverpool City Council was operating an unlawful blanket policy.

3.10 Norfolk County Council: on 30 March 2020, one of our volunteers sent us a link to an information page on the local authority's website which stated that no new requests for EHC needs assessments would be considered. This page has now been amended to state that the local authority is accepting new requests and "*wherever possible we will try ensure that the current situation with Covid-19 does not unduly delay our decision making or reduce quality.*" We do not know when the original text was withdrawn, but while it was in place it constituted an unlawful blanket policy.

3.11 Peterborough City Council: in late June 2020, a member of staff from a school in Peterborough who was seeking advice from us on behalf of a family informed us that

the local authority was not accepting requests for EHC needs assessments at the present time. This is an unlawful blanket policy.

- 3.12 West Sussex County Council: a parent shared an email exchange she had with the local authority's Director of Children's Services (DCS) after she complained about the delay in the issuing of her child's EHC plan. In an email dated 29 March 2020, the DCS stated "*I will look into the reasons for the delay ... but there is currently a lifting of some of the statutory timescales linked with SEND.*" The relaxation of the statutory timescales did not come into effect until 1 May 2020.
- 3.14 Wiltshire Council: a parent contacted us at the end of April 2020 reporting that during a conversation with her local authority she was told that it had written to all schools and early years providers telling them not to apply for EHC needs assessments at the current time. We raised this with Wiltshire Council who denied this was the case.

3. Conclusion

- 3.1 IPSEA is very concerned about the widespread misuse of the temporary legislative changes both before and after they were introduced. Even though some of the examples of unlawful policy set out above will have been formally withdrawn, we suspect that many local authorities are continuing these practices and there will be a significant number of children and young people who have been impacted by the approaches taken by local authorities early on in lockdown. We would very much like to know whether local authorities who have adjusted their policies to reflect the correct legal position have reverted to those families to whom they gave wrong and/or misleading information to remedy the harm caused.
- 3.2 It is important not to lose sight of the fact that prior to the current challenges posed by the coronavirus pandemic, the SEND system was widely recognised as being in crisis. At the root of this was a consistent failure on the part of many local authorities to comply with the law at the most basic level when their legal obligations were absolute. The impact of giving them any discretion means that many more children and young people with SEND are likely to lose out on the support they need. Once again, the onus is on parents/carers to challenge local authority unlawful policy and practice.

IPSEA
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