

Temporary Coronavirus Changes to Children and Families Act

Hayley Mason for Special Needs Jungle 1 May 2020

Good morning parents. I've just been asked by Special Needs Jungle just to cover the key changes that came in yesterday because I appreciate there'll be a lot of worry and a lot of concern from parents.

So just to really summarise where we are at the moment.

We had two key things happen yesterday. The first thing was the Section 42 modification, so this is something that we have been expecting. It was something that came out in the Coronavirus acts, but you would have heard me if you've seen me on various front platform saying that the Notice is not enforced yet. Yesterday we were issued by that Notice from the secretary of state. So what the Notice does is at the moment or previously to today, in fact there was an absolute duty on local authorities to provide provision in section F of any EHC plan.

So if your local authority wasn't providing what was in section F of any EHC plan to the exact of what it said in that EHC plan, you could essentially judicially review them if they refuse to put it in place. What this Notice does is it modifies the duties on local authorities. So, what it says is that the local authority must use all reasonable endeavours to deliver the provision in section F. So, it changes from an absolute duty to a reasonable endeavours duty. Now what I must be really, really clear on is this does not mean local authorities do not have to do anything and local authorities that may be watching this. This doesn't mean that you can just say to parents, take your children home. We're not going to provide anything for them. We're too strapped for time or money. That's not what they're saying is it says you need to use all reasonable endeavours.

And also all of the government guidance, which you'll now be able to find online also suggest things such as, um, using the most amount of technology as possible. So if it is possible to deliver therapy through Skype or FaceTime or Zoom or Microsoft Teams or any of those other platforms, you are encouraged to do so.

Similarly, with occupational therapy, speech and language therapy, physiotherapy, if there are any other creative means by which you can deliver section F in the EHC plan, you should indeed do so. And that is encouraged. It's also important to note that this is only in relation to Section 42 of the Children and Families Act, which is the provision of section F EHC plans. The Coronavirus Act actually gave us the opportunity, gave the government the opportunity, to also reduce their obligations around annual reviews and under section 43, which is the duty on educational settings to admit children into schools.

And actually those powers have not been enforced. So the Notice is only applying to section 42 and annual reviews should still go ahead similarly to school, should still be admitting children.

The other key thing that happened yesterday was there was a modification to timescales. So what also happened was there was a statutory instrument introduced new regulations, which basically says all of the SEND regulations as they currently stand relating to EHCP processes are now amended. So the actual bulk of the processes, everything still has to happen. So there cannot be any blanket bans.

Local authorities cannot just say due to Coronavirus Act, we're not carrying out any EHC Needs assessments. We're pausing the process. We're not doing anything. And the naughty local authorities that I've seen letters like that from need to quickly catch up, well they will be caught out. The Government is very clear that blanket bans can cannot happen.

So, what we're actually seeing in timescales is those standard timescales that were very clear in the regulations before. So the six weeks to assess for an EHC needs assessment, the 10 weeks following on from that if local authorities were going to assess, to issue a decision whether or not to assess, the issuing of draft EHC plans, issuing of finally EHC plans, children transferring between local authorities, annual review decisions within four weeks... Those are all of the different timescales and there's a full list of them which are affected.

And again, what the local authorities need to be aware of is this is not a veto not to do anything. What the new guidance, what the new regulations allows is the local authorities have to provide these things as soon as reasonably practicable. It doesn't say don't provide them and it doesn't say delay them as long as you possibly can.

They're very different things. So as soon as reasonably practical and we have seen some really good examples of local authorities really getting on board with this. So for example, if we should have waited six weeks for any EHC needs assessment decision, we have seen over 42 writing to parents say understandably, we're really short staffed at the moment. Some of our staff have had to go into the frontline. So instead we're aiming to provide you a decision within eight weeks or 10 weeks at least parents being kept informed and local authorities are still providing the processes. So what they cannot do is just stop process altogether. They still need to gather all of the evidence for an agency needs assessment. And one important thing for

them to be aware of as well is this has to be for a reason in relation to the incident or transmission of Coronavirus.

It's a very specific requirement. If local authorities are just saying that they've got no funding or they're short staffed, generally that doesn't matter. This has to be in relation to Coronavirus so it might be more understandable for those EHC needs assessments where therapists, NHS staff might have been that read. I've worked the front line but there is less of an argument to be made if you have a draft EHC plan in your hands and you just need that EHC plan to be final or finalised and that's taking a long time. That's a very different argument.

So what we just need to be aware of is these two, the Notice and the amendment of the regulations is not a blanket ban. You must do everything. You can use those reasonable endeavours and use what is reasonably practicable to deliver these. Any local authorities that do enforce a blanket ban or refuse to carry out processes will likely find themselves with a judicial review.

And just to say to parents as well. Similarly to what we said in the eBook, similarly to what we've said since the Coronavirus Act that came out, this is an opportunity to be flexible with your local authority and be creative as to the technology and use it to your full advantage. And I would still encourage you to do so. We will be over the weekend updating the eBook because we provided an eBook via special needs jungle with all of the information you need to know, which obviously now needs to be updated and we will do so as soon as possible over the weekend for you. And just to say to parents once more, please be reassured. You have an army of advocates out there who are behind you a hundred percent of the way as we have at the moment. The notice can only be in place for a month.

So it's coming into force today and it stops on the 31st of May, but it can be extended. The new regulations to amend all of the timescales is in place until the 25th of September. But does state, if there's amendment to the government guidance about staying at home or social distancing, then indeed that might need to end sooner.

So you do have an army of advocates, we are right behind you and we are protecting your rights. As soon as it is possible to get these Notices and get these regulations out of the way for you, we will indeed do so. So please rest assured that we are fighting your corner and do not accept any blanket bounds. If something fits and feels different to you or feels like it's not quite sitting with the law, just feel free to reach out. Reach out to the excellent guys at Special Needs Jungle and other advocates that do lots of work on social media to ask them a question and see if indeed the local authority are following the guidance, but stay strong. Say stay safe, stay well and we will be back in as normal as soon as we possibly can.