

TRANSCRIPT:

Special Needs Jungle's Tania Tirraoro speaks to SEND solicitor, Hayley Mason of SEN Legal about the implications of lockdown3 on children with SEND.

HM: Many parents are concerned what the current situation is since the national lockdown was announced on Monday.

What the position is, is that if children have an EHC plan by the very nature that they have that EHC plan they are classified as vulnerable. Which means that they fit into one of the exceptions of the group of children that can still go into school during the national lockdown. So what the general rule is, is that all schools are to close until February half-term.

However, if you have a vulnerable child or are a child of a critical worker and both of these have been outlined by the government on gov.uk, which I'm sure Tania, we can pop a link to the guidance as well.

Then those children can continue to go into school, and I think that also causes some concern for parents because some parents of children with EHC plans do actually want to keep them at home, they feel that they are safer at home and then are worried that they're going to be penalised in some way by having them at home, and that is not the case.

The exception is there for the parents that need to use it. So if your child needs are too great to have at home, that opportunity is there for you to send your child into school under their EHC plan for them to continue to receive the necessary support. However, if you would prefer for your own reasons to keep your child at home because they are safer at home, and you can facilitate some form of learning with them, then you are perfectly able to do so and there won't be any fines or repercussions that I know some parents are concerned about.

TT: Some parents are saying that their schools their special schools are closed completely to every child and that everybody has to do remote work from home so where does where does that leave them, if they don't have the opportunity to send their child to school?

HM: So in the majority most special schools should still be open by the very nature that in order to attend a special school generally children have EHC plans. So they are the group of schools that we would be expecting not to be closed. If they *are* closed, primarily because perhaps they've had an outbreak in the school and they don't have enough staff, the legal position which protects children with EHC plans is still there. So what that means is those parents, if they do want to send their children to school and they need that support, what they should do is contact their local authority and inform their local authority that their school has shut. And there are arrangements that need to be made by the local authority for that child to attend another school in that area. So I know from the last lockdown, even in independent specialist settings where independent ASD schools for example closed, those children ended up going to another independent ASD setting with transport still provided by the local authority. But you need to let the local authority know and don't just sit at home and panic. Phone the local authority, let them know what the situation is and they should in fact arrange for education at another school, even though it won't be the normal school that your child attends. I know it's not ideal, but for those children who school is a lifeline, I think they should be able to utilise that.

TT: And what about the laws in the first lockdown, we had a situation where disabled children's rights were removed. There's been nothing that's come out about education today from the Department for Education. Do you think that that's more likely that they won't be repeating that?

HM: I mean with the government, Tania, we have to have a pinch of salt because we know they like to spring these things on us. But I know you at Special Needs Jungle and I obviously, are following this by the minute. I would be very surprised if we see any reduction to section 42 this time around, which I hope will be music to parents' ears. We did obviously see a modification to section 42 of the Children and Families Act and what that says is that is an absolute "must" duty that Section F of an EHC Plan MUST be provided. It's a legal requirement that schools and local authorities have to deliver that provision, and in the first lockdown we did see that disappear. But it has been back in place since August and going into September obviously when schools reopened properly, even when we went into the second lockdown in November, that modification didn't take place it was very much still in force. I think we're better informed this time because it's not the first time schools are experiencing this as it was in the first lockdown and also they've adapted ways of working, and they know what staffing they need. And also we have an outcome you know, the vaccines are in place, I know that they are rolling them out. We don't know necessarily, but they're aiming for February half-term, whereas in the first lockdown I think the case was we never knew when it was going to end and that's why the modifications came into force. So I'm certainly not expecting the modification to come in force.

If there is any change to that obviously I'm happy to do another video and we can update parents, but for now any children with EHC plans must still be receiving the support that's set out in Section F. It's a legal requirement, unless the parent is choosing to have the child at home.

TT: So what can parents do if, for example, their child has a visual impairment and in the last lockdown they weren't able to access education and they couldn't go into school, or they don't have sufficient devices or internet access, but their child has an EHCP, but they can't go into school, what are their rights? Because it seems like there's nowhere for them to go?

HM: Obviously if they have an EHC plan they can still go into school that's for parents to choose whether they want to send them in or not. There is additionally something that just reminded me, speaking there is a new update to the Guidance also that says if children are struggling with support at home for lack of devices or lack of space or because they need support for their mental health, this is not exclusively for children with EHC plans, but there is a discretion on the school and the local authority that those children may also be able to attend.

So there is a little bit of an ambiguous factor there for some children who previously couldn't go into school, that may now be able to. But also parents need to be kind to themselves. If a parent of a child with visual impairment didn't want to send them into school because they didn't feel that they were safe in doing so, wanted to keep them at home perhaps they can't access the learning materials... Firstly if that child has an EHC plan, every attempt should be made by the school to differentiate the resources so that child can still access learning. That's, you know, disability discrimination in

not doing so. Everybody should be doing their utmost to make classes accessible regardless of a disability. But also if parents are at home with children and they are struggling to deliver home learning---parents aren't teachers, and parents just need to cut themselves a little bit of slack. There's a lot of pressure on parents and we've seen that and lots of parents being judged for what they are and aren't doing. You have to remember that the situation is different for every single parent and every single child and I don't think that parents should think they are teachers. Parents should just do their very best and not beat themselves up about what they can and can't do at home.

TT: Something I've just been talking to Renata about is how exams for 2021 have been cancelled and how disabled children may be put at a disadvantage if it's done on assessments of whether they managed last year. What does the law say, if anything, about what your rights are. Presumably this is unknown territory, but if you're worried that you're going to end up being disadvantaged in your exam results what can you do about it?

HM: I think it's going to depend what they actually release they've been quite guarded at the moment about what the actual situation with the exams is going to be and so we're going to have to wait some guidance to come out. But in terms of actual... children can't be discriminated against because of the current situation we know that much. So what we need to be looking at is when schools do return, is there any additional support that the children are going to need in order to catch up. So looking at EHC plan annual reviews that are perhaps coming up, and what additional support children might need going into school. They might need some enhanced provision and obviously emergency annual reviews can be asked for if there is a change in circumstances which I think at the moment that is a possibility to ask for an emergency annual review. But also, to work with the school. It is unknown territory, we're not just talking about general discrimination in exams we're talking about a lot of lost learning so I think we're going to see lots of guidance. The law isn't, obviously, up to date on this because it's something that's just happening at the moment, but if they do think we're going to see lots of changes and particularly with what's going on with the exams at the moment, I think we'll see lots of guidance will all come around about this. But for now all parents can do is when we return to normal, see what additional support their child needs and start asking for that support if it's what their child requires.

TT: Okay so just to quickly summarise, I think that point that you made in particular about about mental health and being able to go into school is particularly important to restate. So if you could just give a quick summary of the main points so that parents can be left with no doubt of what their entitlements are.

HM: Yes of course, so children who are attending school normally and do not have any other difficulties the general rule is they should be home learning at home not going into school until February half-term. If your child has an EHC plan by the very fact they have their plan they are exempted (from having to learn at home) and if you want to send them into school because they need that support you can do so. There are other children that fit into the vulnerable category as well and that might include children in need, children with social workers, support adopted children etc., there's a full list that we'll put a link up for. And similarly there is a discretionary, so not a

guaranteed, exception but there is a discretionary exemption for children who may find it difficult to home learn due to lack of space or lack of devices, and the local authority or the head of a school can actually allow those children to go in at their discretion. And that also includes a discretion for children whose mental health may be affected by being at home, so that is something if you feel like your child fits into that category you can speak to the school and local authority to allow them to go in. And the final exemption is critical workers. If any parents are critical workers in terms of education teachers NHS staff, public services, fire, police, you know, retail, bin men, anything like that obviously they are under the critical work exemption so they can also send their children in. And it's just a case of doing what's right for each parent, each child, in each individual case and just learning to be kind to each other over this period while we all try and navigate this new this new time that we're all in.

TT: That's great thanks very much Hayley and just to remind everybody Hayley is starting a new webinar series with her firm we have tweeted and shared on Facebook about this and we'll pop a link in there as well. Just to say a special thank you to Hayley for coming on this evening after a full day of work and I'm sure she'll be back if there's any other update thanks Hayley.

HM: Of course, Tania, thank you bye-bye