

CHILDREN AND YOUNG PEOPLE'S RIGHTS

TRAINING DAY: SWAIN & CO SOLICITORS

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- COMMUNITY CARE AND EDUCATION -



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1. INTRODUCTION

This hand-out focuses on the rights of children and young people in two areas:

- community care;
- education law.

The context

Every Child Matters (Green Paper, 2003)

Children Act 2004. Key points:

- Part 1: establishment of a Children's Commissioner for England.
- Part 2: establishment new Children's Services departments.
- Section 10: new duty on local authorities to make arrangements to promote co-operation between the authority and different agencies. Aim is to improve the well-being of children in the authority's area.

Development of a Common Assessment Framework (CAF) for all services for children.

2. COMMUNITY CARE

- *Identifying the needs of a child or young person*
- *Meeting those needs*

Children Act 1989. Part 3 sets out broad range of local authority duties and powers in relation to children in need.

Definition of "child in need" contained in s. 17(10):

- "... a child shall be taken to be in need if –
- (a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under [Part 3 of the Act];
 - (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services, or
 - (c) he is disabled."

"General duty" set out in s. 17:

- "17
- (1) It shall be the general duty of every local authority ... –
 - (a) to safeguard and promote the welfare of children within their area who are in need; and
 - (b) so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs."

To facilitate the general duty, all local authorities have a broad range of specific duties and powers contained in Part 1 of Schedule 2 and the remainder of Part 3. Two of the most important:

(1) **Assessment of needs.** See:

- Schedule 2, para 1: reasonable steps to identify the extent to which there are children in need within their area.
- Schedule 2, para 3: power to assess the needs of a child in need for the purposes of the Act at the same time as carrying out an assessment under various other pieces of legislation.

(2) **Accommodation.** See:

- Section 17(6): local authority's powers include a power to provide accommodation.
- Section 20: duty on local authorities to provide accommodation for any child in need within their area where certain conditions are met.

3. EDUCATION

Article 2 of the First Protocol to the ECHR:

"No person shall be denied the right to education."

Special educational needs

Definition in s. 312 of the Education Act 1996:

- (1) A child has "special educational needs" ... if he has a learning difficulty which calls for special educational provision to be made for him.
- (2) A child has a "learning difficulty" ... if –
 - (a) he has a significantly greater difficulty in learning than the majority of children of his age,
 - (b) he has a disability which either prevents or hinders him from making use of educational facilities of a kind generally provided for children of his age in schools within the area of the LEA.

SEN Code of Practice. <http://www.teachernet.gov.uk/>

Right under the Education Act 1996 to request a statutory assessment: LEA must carry out the assessment where child probably has SEN **and** it is probably necessary for LEA to determine the special educational provision which any learning difficulty he may have calls for (see s. 323 of the 1996 Act).

Para 8.1 of the Code of Practice:

“The LEA may decide that the degree of the child’s learning difficulty and the nature of the provision necessary to meet the child’s special educational needs is such as to require the LEA to determine the child’s special educational provision through a statement.”

Right of appeal to what used to be the Special Educational Needs and Disability Tribunal (now First-Tier Tribunal (SEN and Disability)).

Content of a statement:

- Part 1: basic introduction to the child.
- Part 2: child’s SEN as identified during the process of assessment.
- Part 3: specifies special educational provision needed to meet those needs.
- Part 4: type and name of school where that provision is to be made.
- Part 5: all relevant non-educational needs.
- Part 6: non-educational provision needed to meet those needs.

School admissions

School Admissions Code, February 2009

Certain categories of children enjoy special rights under the Code:

- Children with SEN.
- Looked-after children.

Right of appeal: *School Admissions Appeals Code*, February 2009

Appeals heard by Independent Appeals Panel. Hearing takes place in two stages:

- (1) Admissions authority has to show that admitting the child would cause prejudice to the school.
- (2) If Panel find that the school proves prejudice, child's parents have the opportunity to put their case. Test is whether the prejudice to the child of not attending the school would outweigh the prejudice to the school.

Panel's decision may be judicially reviewed.

School exclusions

Headteacher has power to exclude a pupil from a maintained school. Exclusion may be for a fixed period or permanent.

Decision to *permanently* exclude a child: only justified where the basic facts have been clearly established on the balance of probabilities. More serious the allegation, the more convincing the evidence substantiating the allegation needs to be.

Government's statutory guidance: "*Improving Behaviour and Attendance*" (September 2008). Key principles:

- Two-stage test
- Participation in process by child or young person
- Process followed by the school is very important
- Need for even-handedness
- Equality duties and need to avoid discrimination
- Excluded grounds
- Proportionality
- Child's rights following exclusion

Right of appeal to an Independent Appeals Panel. Panel will have three options:

- Uphold the decision to exclude.
- Direct immediate reinstatement of the pupil **or** reinstatement at some future date.
- Allow the appeal, but decide that because of exceptional circumstances or other reasons it is not practical to order reinstatement.

Decision of Appeals Panel may be judicially reviewed.