

## Section F EHCP Factsheet

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### How specific does Section F have to be?

Essentially, as specific as it needs to be so it is clear and unambiguous. Most EHCPs that come to us initially have vague, non-specific and unquantified provision – this leaves the risk that the Section F won't be delivered for the child/young person. There is case law and guidance on what information needs to be included in Section F provision, which includes:

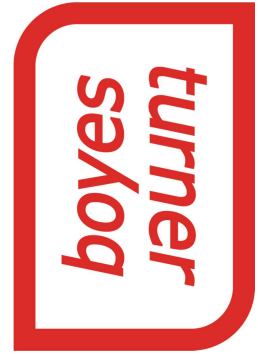
- What provision it is.
- If the support is 1:1 or in a group.
- If a group/with another pupil/s, do they have similar needs to the particular pupil? How many pupils/a maximum number?
- The frequency and duration of direct provision – so, how often per day/week/month and for how long for each session.
- Who to oversee the provision, and what training/experience/qualifications do they need? "Staff member" or "Adults" are unlikely to be sufficient.
- How will the provision be monitored/reviewed, and by who?
- Time for staff training.

You should ask yourself if the EHCP make sense for someone who reads it without knowing the C/YP? If the support is unclear, then it is difficult to enforce!

### What sort of provision can you ask to be included in Section F?

Any provision that has been identified to meet the C/YP educational needs as set out in Section B. For example:

- SLT
- OT
- PT
- Hydrotherapy
- Repeat a year
- 1:1
- Max class sizes
- Lego therapy
- Music therapy
- ABA
- iPad/alternative method to record work
- Social skills work
- Emotional/therapeutic support
- Very rare – transport



## Does Section F need to confirm the funding banding too?

It is not necessarily an issue if the funding banding is detailed but this mustn't be at the expense of clear, detailed and specified provision. Reference to xx no. of hours funds/monetary equivalent allocated is not the same as saying how much 1:1 support the C/YP needs – this is the detail needed so provision can be delivered consistently and as required. Remember also, that the LA is financially responsible for any provisions the school named cannot provide through their own resources – this is unless parents and LA have reached a different agreement.

## Can independent experts recommend Section F provision

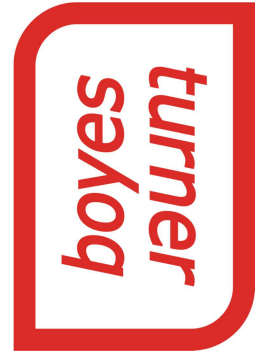
Yes. From our experience, we find independent experts' reports are often more detailed and clearer than those from an LA expert. If a LA says they won't accept an independent report then challenge this as this sounds like a blanket policy, which is unlawful. If you are challenging the content of the EHCP at the SEND Tribunal then independent expert reports can also be used here. Clear instructions to independent experts are key in preparing for what changes are needed for Section F.

## What can you do if the LA doesn't deliver the provision in Section F?

Since the country being in national lockdown from 4 January 2021, there are different sources of government and legal information as to children/young people's rights for their Section F provision to be delivered. The information is not clear however, with different requirements set out, and this can make it difficult to understand what LAs and schools need to be doing during this time.

Government guidance is that all schools will remain open for vulnerable children, which includes those with EHCPs, but in some cases it may be deemed safer for the child/young person to remain at home – if the latter, then The Coronavirus Act 2020 Provision of Remote Education (England) Temporary Continuity Direction states that the child/young person's education setting has a duty to provide remote education in accordance with the latest government guidance or law around Covid-19. The Direction applies to all maintained schools, Academies, non-maintained special schools and independent schools where placements are funded by public funds (i.e. through an EHCP).

LA duties have not (to date) been lessened in terms of delivering Section F of EHCP provision. They still have an absolute duty to do so (under S42(2) of the Children and Families Act (2014)), even if your child/young person is not at school. A letter from the Under-Secretary of State for Children and Young People, Vicky Ford, (on the 14 January 2021) explained in some circumstances under national lockdown, it may be more difficult for LAs to meet their S42 duty. In these cases, LAs must work with parents/families, the education setting and health partners (where applicable) to make alternative arrangements. If provision cannot be delivered as usual at the education setting (e.g. due to insufficient staffing) then it is sufficient for this provision to be as close what the child/young person would normally



receive, and arrangements for review and monitoring discussed with the family in advance to agree an approach that will be in the child/young person's best interest. This somewhat contradicts the absolute s42 duty.

In any case, check the Section F wording is clear and unambiguous – if not, then as mentioned before, it can be difficult to challenge the LA about non-delivery (noting that under current Government advice, full Section F delivery of provision may not be possible).

If the school is not delivering provision in accordance the EHCP, then you should discuss it with the school/college in the first instance (noting the above paragraph and possible circumstances when full delivery may not be possible at the education setting).

Depending on what the education setting is able to provide under lockdown, you may be able to consider a complaint to the LA as the first step in terms of them not delivering their duty in line with Section F of the EHCP (noting the above exceptions). The complaint should copy in the LA legal team. If the complaint remains unresolved, you can either:

- a) Complain to the Local Government Ombudsman – this is not a quick fix and remedies can be limited to smaller sums and/or apologies or changes to LA processes/training ordered/recommended; or
- b) Consider Judicial Review which is the threat of/proceeding to legal action against the LA. Outcomes can be the LA reinstates/begins to deliver the provisions missing/costs for provision parents may have had no choice but to fund privately. This process can be costly and time-consuming however, and is a last resort only. We would recommend seeking legal advice before doing so.

Hopefully, you won't have this issue. Remember – it is essential to get Section F clear from the beginning, via an appeal to the SEND Tribunal if necessary! The SEND Tribunal is still operating as normal during lockdown.

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**\*ALL INFORMATION CORRECT AS OF THE DATE OF PUBLICATION (20 January 2021)\***

If you have any questions or require advice, please contact the Special Educational Needs team on **0118 467 6547** or [senexpertsolicitors@boyesturner.com](mailto:senexpertsolicitors@boyesturner.com). Appeals to the Tribunal can be extremely difficult and expert advice should always be considered.

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