

INFORMATION SHEET

Coronavirus and the Law



making a difference
to the lives of people with
severe learning disabilities

Barrister Steve Broach has answered some questions that we anticipated might arise from our families this week. Many thanks to Bindmans LLP for putting us in touch with him.

1. If residential schools close would children who are accommodated under Section 20 have rights as looked after children? Would these also apply to children who are funded by education?

Steve: Yes, any child whose placement is accepted to be under s 20 of the Children Act 1989 would continue to have rights as a looked after child, including the right to be placed in the most appropriate placement available (section 22C). Parents would of course also have the right to terminate the accommodation and bring the child home if this was the 'least worst' option. Children who are funded by education would not enjoy this right, however if the LA has accepted that the child has an educational need for a 'waking day' curriculum then it will need to seek to find alternative residential schooling. The Government has confirmed that children with EHCPs should be able to continue to go to school.

2. If children are funded through an EHCP for 1:1 support, would there be any legal right to insist that Teaching Assistants are deployed to the family home to support them (if reasonably practicable?)

Steve: Yes, absolutely. The duty to secure the provision in section F of a child's EHCP under section 42 of the Children and Families Act 2014 is not dependent on the child attending any particular setting. As such the LA must secure that provision for the child at all times unless it can show that it is impossible for it to do so (on the basis that the Admin Court will not make orders which the LA are not capable of complying with). The Coronavirus Bill intends to make the section 42 duty only a 'reasonable endeavours duty' but this is not yet law.

3. If care staff are unable to work would this be an 'extenuating circumstance/only way of securing the support' and would it be reasonable for direct payments to be paid to family members, even those living in the same home, who may have to take time off of work?

Steve: Yes. Under both the adults' and children's schemes, LAs have the power to make Direct Payments to family members if the LA accepts that it is necessary. It seems to me that usual care workers being unable to work would easily qualify. This may be a point on which formal advice is required as it is relatively technical – and I can see from Twitter is already causing concern. However, receiving Direct Payments may have impact on the family members benefits and so anyone who is concerned about that will need to seek advice.

Last Updated: 20 March 2020