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Module 19: SEN and the Law

Over the last 75 years, governments and schools have made tremendous strides in equal rights for students identified as needing special educational services. As a result of these strides, individuals with special needs are legally protected. Companies, schools, and individuals who infringe on their rights risk legal action. As you are trying to assist students with special educational needs, it is important that you understand how the law protects these students, and what services and/or considerations you are legally required to provide. Throughout this module, we will discuss the laws that protect individuals with disabilities, how these laws apply to the school system, and how you can use your knowledge of the laws to better serve students with special educational needs.

What you will learn in this module:

19.1 SEN Code of Practice

19.2 SEN in Schools

19.3 EHC Plans

19.4 Tribunals

19.5 Discrimination

19.6 Advice and Support

19.1 SEN Code of Practice

Along with the Children and Families Act of 2014, came the Special Educational Needs and Disability Code of Practice. It is a revised, and updated piece of legislation on how the law protects individuals. It is primarily for students, and individuals under 25 who have been tested, and are in need of special educational accommodations. The overall idea of this Code of Practice is to protect these individuals. It requires institutions, especially schools, to provide accommodations for individuals with disabilities. Accommodations must be provided even when they come at an expense to the school or institution.

Individuals who need special educational consideration are entitled to the same level of education as students without a disability. However, providing them with that education means that they must be bestowed with extra services. This legislation is rather complicated, and we will attempt to decode, and summarize it in this section of the course. Understanding the SEN Code of Practice is



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extremely important if you are going to work with individuals who need special educational accommodations. It will protect you legally, and help you understand what you can lawfully expect your school or institution to provide for them.

19.1.1 Understanding for Whom the Code of Practice is Written

First of all, **it is important to understand who must abide by the SEN Code of Practice**. While most of you are working on this course to help special educational students in the school setting, it is applicable to more than just schools. Individuals and institutions that must abide by the SEN

Code of Practice include:

- School administrations
- College administrations
- Employment authorities, social service providers, educational authorities, and housing services
- Academy proprietors
- Early year care providers and specialists
- The National Health Service Commissioning Board, local health boards, and CCGs (clinical commissioning groups)
- Some financial foundations, including NHS Trusts and NHS Foundation trusts

While the code only has legal precedence for individuals and administrations in these areas, the code is a great guideline for how to appropriately provide service, and aid individuals with special educational needs.

19.1.2 Decoding the Code of Practice

Now that we understand who the SEN Code of Practice was designed to help, **what does the actual Code of Practice say?** What are the guidelines and requirements outlined in this essential piece of legislation? Much of what is written in the Code of Practice, as seen in the Children and Families Act of 2014, is simply an update of previous legislation. We will discuss the major ideas it outlines in order to properly prepare you to work within its requirements.

The Basics:

Any individual or institution who is covered by the jurisdiction of the SEN Code of Practice must aid and/or service any SEN or disabled individuals, giving particular credence to:

- **The opinions,** views, and desires of the individual and the individual's parents.



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- **The full participation of the individual**, and the individual's parents in the decision making process. This includes keeping them consistently informed and involved in decisions regarding the individual.
- **Giving the individual, and the individual's parents the appropriate support** to help the individual find the greatest amount of success possible in school, and prepare the individual to be a functioning and successful adult.

The Code of Practice is in place to ensure that:

The Code of Practice is in place to ensure that:

The individual and his or her parents are given the opportunity to remain involved in the SEN process.

Individuals are identified, tested, and provided with intervention as early as possible.

Individuals and their parents are given an appropriate amount of choice in the accommodation of the individual by the school or institution.

The SEN process is a collaborative effort between many different experts, including educators, social service providers, and health service providers.

The needs of every individual who is labeled SEN or has a disability are met with high quality instruction and intervention.

The school or institution is making its best effort to maintain the individuals inclusion in the classroom.

SENT module 9: The individual is provided with sufficient preparation for the responsibilities of being an adult, including earning and maintaining employment, and living independently.

19.1.3 Decoding the Code of Practice

Involvement

Taking a close look at the basic principles behind the SEN Code of Practice, **the most important idea that stands out, is the idea of involvement**. One of the biggest changes in the ways that schools and institutions provide support for SEN individuals, and individuals with disabilities (aside from the guidelines that all such schools and institutions must now follow) is the **increased involvement of the individual and parents in the process**.

We will discuss this in more detail when we go over how SEN students are identified, tested, and provided with accommodations in the school setting, as well as how parents are involved in the process.



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Schools are required to keep parents involved in the EHC process by keeping them informed of the plan being put into place. **Teachers are required to keep parents involved in their student's performance in the classroom.** Teachers should be making consistent contact with parents in regards to student performance and behavior. Communication becomes exponentially important when it is regarding SEN and disabled students. Immediate changes in accommodation and intervention may be necessary if the current plan is not successful.

High Quality Education

Another idea that is outlined in the SEN Code of Practice is the need for high quality education for SEN and disabled students. We will discuss this in more detail in a later section, but this requirement goes beyond the high quality education that teachers are required to provide for all of their students. High quality education for SEN and disabled students requires:

- **Differentiation:** Most interventions and accommodations for SEN and disabled students requires specialized instruction from the teacher. This differentiation can be as small as giving a student preferential seating or a few more minutes on tests and timed activities, or as large as providing alternate texts, lessons, and/or materials for students who need it.
- **Monitoring:** Teachers need to consistently monitor the performance of these students in order to make sure that interventions are working properly, and that accommodations are appropriate.
- **High Expectations:** Teachers need to maintain high expectations for SEN and disabled students, just as they do with other students, to ensure that these students are progressing and growing.

19.2 SEN In Schools

Individuals of all ages may have special educational needs. This designation is most important in schools because they are responsible for the educational development of all students. Schools are best able to serve students with special educational needs when they are identified early. This allows the EHC Plans to be created, evaluated, and fine-tuned while the student is still developing and learning. The earlier a school can design interventions, and make accommodations for students with special educational needs; the more impact they will have on the student's development and educational success. We have discussed this process in some detail in other areas of the course, but here is a basic overview of the steps we will take in Module 10. We will look at specific case studies, and specifically break down how educators should initiate, and follow through with the SEN process.

19.2.1 The SEN Process

Observation: The observation process should be initiated by anyone who works with children, including teachers and parents. If a parent has a concern that his or her child has a disability or needs special educational accommodations, he or she should report those concerns to the school, and to the teacher.



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Teachers should naturally observe all of their students. They need to be constantly aware that a student's poor performance or difficulty in the classroom may be due to a disability.

Testing: Once a teacher observes that a student may have a disability or need special educational services, he or she refers the student to the appropriate person within the building who can evaluate the student. The professional will provide the appropriate testing, and analyze the student's performance to decide if he or she will benefit from extra services.

Planning: An EHC Plan is initiated. This requires the local authority to use information provided from a number of sources, including the individual, the individual's parents, classroom teachers, special educational teachers, social service professionals, and anyone who is involved with the individual's case.

Intervention: The student's teachers (not just the teacher who referred the student) will receive a report of required interventions and accommodations, and implement them for the student in question. It is important to note that the school is not solely responsible for upholding the EHC. If the accommodations in the EHC Plan are too expensive for the school's budget, then the local authority is responsible for paying the difference.

Observation: The intervention process is fluid, and further observation is important to evaluate whether the interventions and accommodations are appropriate. If they are not working, a new plan needs to be put in place. If they are appropriate, the group simply approves the continuation of the plan.

19.2.2 Identification

It can sometimes be difficult to evaluate why a student is struggling in the classroom. There are an infinite number of variables that could be affecting the student at any given time. For example, how does a teacher tell the difference between a student who acts differently some days because he or she needs medication, or because he or she had an altercation at home in the morning? There is no perfect answer to this question. It takes a number of different actions from the teacher as well as the ability to piece the puzzle together.

Here are some steps that a teacher can take to differentiate between students who need special educational services, and students who need something else (motivation, more challenging material, differentiation, etc.).

1. **Observe:** The teacher observes his or her students and keeps track of their performance. They note the areas where the students seem to have deficiencies or when students stray from normal patterns. Special Educational Needs students display a disparity between intelligence and



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performance, so teachers should look out for this disparity. In the observation stage, the cause is not always obvious.

2. **Questioning:** The teacher should speak with the student. Depending on his or her relationship with the student, and the nature of the student's struggle; the teacher can be up front with his or her questioning, or subtle and discreet. The teacher should always be respectful with his or her questioning, and never make the student feel uncomfortable or stigmatized. Here are a few examples of the types of questions a teacher can ask:
 - a. "I see you had trouble with this assignment. What do you think was causing you the most trouble?"
 - b. "You don't seem to be yourself today. Is everything all right?"
 - c. "Can you explain to me how you came to this answer?"
3. **Trying Different Techniques:** Before taking the leap of referring the student for special educational needs testing, a teacher can try some student interventions to see how he or she responds. This may help bring the student's true struggle to light, and give the teacher a more accurate picture.

Early intervention is important. So, much of the burden of identifying students who may have special needs falls on early educators. Most of the time, students have been identified by the time they reach high school. It is still important for middle school teachers, high school teachers, and even collegiate professors to be aware of this process.

19.3 EHC Plans

An EHC (Education Health and Care) Plan is a legal document that states the minimum amount of services and/or accommodations that must be provided for an individual by a school or institution.

The process of getting an EHC Plan is:

19.3.1 Requesting a Plan



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Requesting an EHC Plan is not complicated. It is a process that your local professionals are very familiar with. Here are some frequently asked questions about requesting an EHC Plan:

Who can request an EHC Plan?

An EHC Plan request can come from a number of sources, including:

- Teachers
- Parent/Guardian
- School, nursery, or college administrator
- Health professionals

How does one request an EHC Plan?

Your local authority will handle assessing whether an EHC Plan is appropriate for an individual, so you can request a plan by contacting them. You can search online for the appropriate local authority [here](#).

What happens next?

Your local authority will assign someone to collect data in order to make a decision. This is called the EHC Plan Assessment, and the process is detailed in our next section.

19.3.2 EHC Plan Assessment

Once a request has been processed, the local authority will assign a coordinator to the individual, and the coordinator's job will be to decide whether a full assessment for an EHC Plan is appropriate for the individual in question. A panel of local authority members makes the final decision. Therefore, it is the coordinator's job to provide the panel with enough information to make a fair and informed decision.

Gathering Information

When the coordinator sets out to gather information, he or she makes contact with a number of different people, including:

- The individual in question
- The individual's parents/guardians
- The school or institution that the individual attends



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- Any relevant professionals who have worked with the individual including teachers, special educational professionals, health service professionals, and social service professionals.

The main questions that the coordinator will try to answer when he or she makes contact with these people are:

- What is the nature of the individual's need? In other words, what will the individual need to succeed?
- What interventions and accommodations, if any, have already been put in place for the individual?
- Can the individual reasonably receive appropriate support in his or her current environment?

Once the coordinator returns with enough information, the panel reviews everything they have, and decides whether a full assessment should be made for the individual in question.

EHC Plan Assessment

Once the panel decides that the individual has a need for an EHC Plan Assessment, they will continue to collect more detailed information about the individual.

In order to properly make a determination, the panel will once again contact the school, and health and care professionals to get their professional assessment.

The assessment process is generally very open and honest, which means that the local authority will keep the parents/guardians, and the individual informed about what information is being collected, and the choices and options that are available for the individual.

19.3.3 Creating an EHC Plan

If the panel decides that an EHC Plan is appropriate for the individual, then a group is assembled to meet. Using the information that has been gathered, during the request and assessment period, they will create a plan that will help the individual succeed. This new group will consist of:

he individual	he individual's parents or guardians
n official who will help prepare e family for the meeting	he coordinator from a local authority



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ny relevant educational, other persons that the local authority deems necessary
ealth care, and social service
rofessionals

During the meeting, the assembled group will discuss the individual and his or her struggles, and create a legal document that:

- Reflects the individual's feelings and goals
- Identifies the individual's special educational needs, as well as the strategies that will be put into place to help accommodate the individual.
- Describes the education that the individual needs.
- Outlines any health services and/or social services that the individual needs.
- Provides all information that was collected by the coordinator and the panel during the EHC Plan Assessment.
- Details the appeal process for the parent(s)/guardian(s).

Once an EHC Plan is created, it is a legal document that must be followed by relevant schools and/or institutions. Once created, the individual and parent(s)/guardian(s) have the right to appeal if they are not happy with the result. We will discuss that in the next section.

If the EHC is enacted as is, and no appeals are made, then the plan will be subject to an annual review. Every year, a group will convene to decide if the interventions and accommodations are having the intended effect on the individual, and helping him or her succeed.

This meeting will consist of:

- The individual and the individual's parent(s)/guardian(s)
- A classroom teacher who works with the individual
- A member of the local authority
- Any health care or social services professionals who work with the individual

19.4 Tribunals

If a parent/guardian is not happy with the results of the EHC process, he or she has the right to appeal the decision. An appeal may be made whether he or she is appealing the panel's decision not to pursue an EHC Plan, or appealing the details of the EHC Plan.

There are several ways to initiate an appeal. The most direct and appropriate way to appeal is to seek out mediation. You may file for a tribunal if mediation does not work.



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Mediation

While you are within your rights to skip right to filing for a tribunal, it usually results in you being sent to seek mediation first. The logical first step in the appeal process is to contact a mediation and disagreement resolution service first.

The service will be an independent entity that does not work for the local authority. They will work to resolve the problem quickly and locally.

If they are unable to resolve the problem to your satisfaction, you can then file for a tribunal. You should be able to show evidence that you have at least attempted mediation.

First-Tier Tribunal

A First-tier Tribunal is an official appeal, and can be filed for a number of reasons, including:

- The local authority refuses to assess the individual's needs.
- The local authority has not clearly stated the individual's special educational needs.
- The local authority will not review the needs of the individual.
- The local authority decides not to pursue an EHC Plan at all.
- The local authority unfairly changes the EHC Plan that is in place.
- The local authority discards or rejects the EHC Plan without proper reason.

A hearing will be held if the reasoning behind a parent appealing the local authority, with a First-tier Tribunal, is judged to be fair. The parent will want to seek representation. At the hearing, the local authority and the appealing parties will plead their cases using any evidence and/or information that is available. A ruling will be made by 13 tribunal members.

If your appeal is successful, then the local authority must follow the decree of the tribunal within a reasonable amount of time (the duration of which relies on the actions that need to be taken). If the appeal is unsuccessful, then the original decision of the local authority is carried out. You may still seek further review from the tribunal, but usually the initial decision is final.

19.5 Discrimination

The main goals of all legislation regarding individuals with special educational needs and disabilities is to ensure that they are receiving what they need, and to make sure that they are not being discriminated against. It is illegal to treat someone negatively because they have a disability or require special educational needs. The law is meant to protect individuals from any such discrimination.



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If you are an individual who is protected under these provisions, or the parent of an individual who is protected under these provisions, then you have the right to take action if you feel that discrimination is taking place. If you suspect discrimination is occurring, you may appeal to a Tribunal for protection and resolution. There are some rules to follow during the process:

- You must make your claim within 6 months of the act of discrimination that is the subject of your appeal.
- The individual being discriminated against, the individual's parent(s), or the individual's guardian(s) must make the claim.
- The claim must cite a specific reason, such as:
 - The school is not taking strides to include the individual.
 - The school is not carrying out the individual's EHC Plan properly.
 - The school is not providing the individual with the mandated services and aids.
 - A school or institution is refusing to admit the individual on the grounds of the individual's special educational needs and/or disability.

Claims of discrimination are taken very seriously. If a Tribunal finds that a school or institution is discriminating against an individual who has special educational needs and/or disabilities, they may face heavy fines, or even be forced to shut down (this is only if the school or institution shows a pattern of discrimination over time).

19.6 Advice and Support

The laws regarding the proper treatment of students with special educational needs and disabilities can be complex and confusing. There are some basic and simple tips that educators can follow to make sure they are giving their students the best chance of succeeding.

- **Follow the interventions and accommodations laid out by the EHC Plan exactly.** A lot of work went into creating the plan. If you think that a modification is pointless or has no effect, then take note of it, and bring it to the council at the annual EHC review. If you think another intervention will be more effective, you are welcome to try it out as long as you continue the mandated interventions, and the new intervention does not completely contradict the mandated intervention.
- **Be as inclusive as possible.** Discrimination laws attempt to find the least restrictive environment for a student, which means that you will want to treat any students with special educational needs just like everyone else when you can. Do not let a student's disability become the only thing anyone knows about them.
- **Constantly monitor, observe, and communicate.** Pay attention to how students are performing in your class, as well as what strategies are working, and what strategies are not working. Do not be afraid to communicate your findings with the individual and the individual's parents. The



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success of the student is the responsibility of everyone around him or her, so involve the student's parents.

- **Be flexible with your instruction and your teaching methods.** No one knows exactly what is going to work with every single student, so when something is working, go with it. Conversely, if you notice that something is not working, drop it. Do not be afraid to stray from your plans (your lesson plans, not the EHC Plan) to make progress with your students.
- **Be patient with students who have special educational needs** because everyone has strengths and weaknesses. All students need varying amounts of time and aid to understand material or complete a task.
- **Keep in constant contact with other professionals** who are working with the student, including classroom teachers, special educational teachers, social service providers, and/or health services providers. With proper collaboration, everyone can share their successes and failures in order to better inform the instruction of the individual.

Remember, the laws regarding students with special educational needs and disabilities are not designed to restrict you as an educator. They are to ensure the fair treatment of these students. Respect the decision of the professionals working on EHC Plans, and offer suggestions when you think something will work better. Always follow the EHC Plan that is currently in place, and only make changes to your strategies if they work in tandem with the interventions mandated by the EHC Plan.

[Link to Exam](#)