

A background image of a green leaf with prominent veins, partially covered by a dark teal horizontal band.

No More (School) Drama

Overview for today's session

1. Outline your child with SEND's Rights and Entitlements
2. Parental duty to educate
3. Elective Home Education
4. Interim Education
5. Right to Special Educational Provision in an EHC Plan whilst out of school
6. Education Otherwise than at School

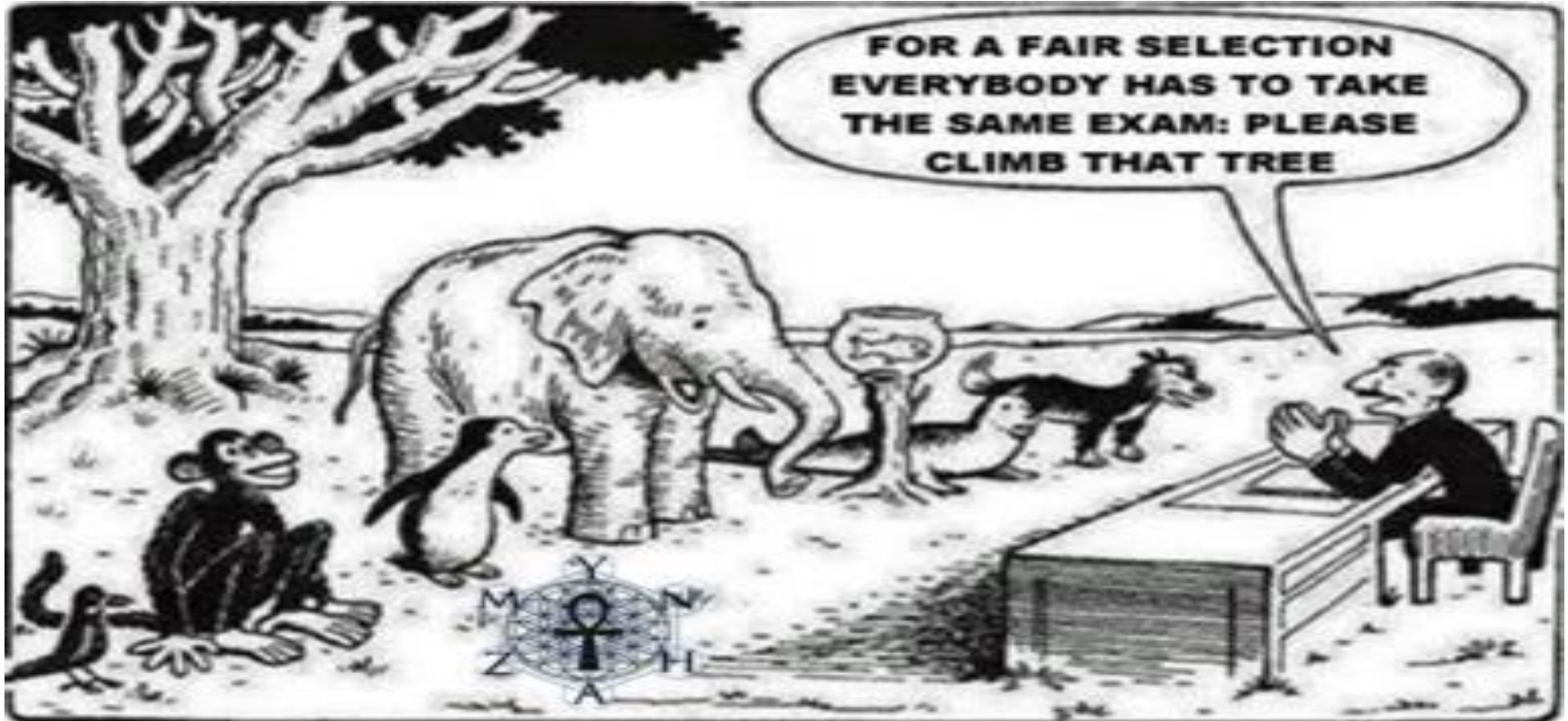
Caveat: not giving specific legal advice today



**“EDUCATION
IS THE MOST POWERFUL
WEAPON WHICH YOU CAN USE TO
CHANGE THE WORLD.”**

**NELSON
MANDELA**

Our Education System – Fit for purpose?



Everybody is a genius. But if you judge a fish by its ability to climb a tree, it will live its whole life believing that it is stupid.

Square Pegs



The problem with trying to fit a square peg into a round hole is not that the hammering is hard work. It's that you risk destroying the peg!

Squaring the Circle



- Children and young people to receive the support they need in education, health and social care; and
- Parents overcome challenges they face navigating the education system
- Irony & Necessity – Having a powerful enough why typically provides you with the how...

Key to this is understanding your Child's Rights and Entitlements

- Right to SEN Support & Reasonable Adjustments
- Likely right to EHC needs assessment, compliance with timeframes SEND regulations and possible right to EHC plan and conditional right to preferred school, conditional right to a package of **education otherwise than at school EOTAS**
- Right to provision specified in their EHC plan
- **Right to education- suitable & full time (unless medically unfit) including interim**
- Right to health and social care assessment and possibly care/respice provision
- **Right to protection from harm**
- Right to freedom from disability & other discrimination
- Right to fair trial (disciplinary processes) and freedom from inhumane & degrading treatment (isolations, humiliation?)
- Right to have their 'best interests' as primary consideration in decision and actions concerning them.
- Right to data held about them (Subject Access Request) and Data Rectification

Parental Duty to Secure Education

NOT send child to a School

- **S7 Education Act 1996** The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable—
 - (a) to his age, ability and aptitude, and
 - (b) to any special educational needs they may have, either by regular attendance at school **or otherwise**.
- **444 Offence: failure to secure regular attendance at school of registered pupil.**
- (1) If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence.
- (nb. exceptional circumstances court /school attendance order)

Reasons for 'otherwise' than at school

- Ideological, philosophical and/or religious
- Disillusionment with School System
- Safeguard child from harm and promote their welfare
- Physical or mental health reasons – medically unfit
- Exclusion and Off-rolling
- No suitable school able to meet SEND needs
- School not reasonably accessible
- Disputes with current school

Elective Home Education Lifestyle Choice - Own Expense

- Deletion of a child from a school register (AKA removal from school role)
- The Education (Pupil Registration) (England) Regulations 2006
- **8.**—(1) child has ceased to attend the school and the school has received written notification from the parent that the pupil is receiving education otherwise than at school;
- (2) where registered pupil at a special school shall not be removed from the admission register of that school without the consent of that authority, or if that authority refuse to give consent, without a direction of the Secretary of State.
- [Elective home education - GOV.UK \(www.gov.uk\)](http://www.gov.uk)



Interim Education – LA Duty

- Children have a right to suitable full time education (fact on school register and/or has or does not have an EHCP irrelevant)
- **S19 Education Act 1996** Local Authority must make arrangements for suitable education at school or otherwise for children of compulsory school age who cannot by reason of illness, exclusion or otherwise may not for any period receive suitable education (and if over 16 under 19 s15Z A&B Education Act 1996 as amended)
- [Education for children with health needs who cannot attend school - GOV.UK \(www.gov.uk\)](http://www.gov.uk)



www.dailymail.com - AP JBS3



EHCP – LA duty to secure provision in EHC Plan includes when out of school

- Is an EHCP worth the paper it's written on?
- **S42 Children and Families Act 2014** – LA must secure provision detailed in the EHC Plan (in particular Section F educational provision but also Section H social care)
- Failure to do so is Breach of Statutory Duty
- LA can be held to account: enforce with: **Judicial Review/Complaint to LA /LGSO – can include financial recompense**



EOTAS – LA Funded package of Special Education Provision in EHCP

PROPOSED EOTAS TIMETABLE for XXXXX incorporating Section F provision and costing (hours made up of : maths 3¹, English 3², Science 3³, ICT 3⁴, Music 2⁵, Food tech 3⁶, PE 4⁷ and Life Skills 3⁸, SALT 2⁹, Zones of Regulation 1¹⁰, Social skills group 1¹¹)

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
9:00 – 10:00	Swimming ¹²	English	Science	English	Science		
10:00 – 11:00	Swimming	SALT	Science	SALT	Science		PE: Karate
			Break		Break		
11:00-12:00	Swimming	Break	English	Break	Maths (A2E)	PE: Karate ¹³	
		Food Tech		Food Tech			
12:00 – 13:00	OT ¹⁴ /home learning	Food Tech	Maths (A2E)	Food Tech	Life Skills		
13:00 – 14:00	Lunch	Lunch	Lunch	Lunch	Lunch	Music: Piano	
14:00 – 15:00	Maths (A2E)	Life Skills Community trip	Social skills group	ICT	Zones of Regulation/home learning ¹⁵		

¹ Maths 3 hours pw provided by A2E @ £?ph=£?pw x 38 weeks= £.... or if inadequate capacity can be provided by Fleet Tutors @ £50ph=£150pw x 38 weeks= **£5,700**

² English 3 hours pw provided by A2E @ £?ph=£?pw x 38 weeks = £.... or if inadequate capacity can be provided by Fleet Tutors @ £50ph =£150pw x38 weeks= **£5,700**

³ Science 3 hours pw provided by A2E @ £...pw x 38 weeks = £....or if inadequate capacity can be provided by Fleet Tutors @£150pw x38 weeks = **£5,700**

⁴ ICT 3 hours pw provided by Surrey's online learning service @ £? pw x 38 weeks = £.... or if inadequate capacity by Fleet Tutors @£150pw x38 weeks = **£5,700**

⁵ Music lessons (piano) @£60 ph x 2 pw =£120 x 38 weeks = **£4560**

⁶ XXX is working towards Entry Level Food Tech qualification and has a specialist interest in cooking 3 hours pw @ £25ph =£75pw x 38 weeks = **£2850**

⁷ PE to include: Karate 2 hours pw @ £85 per month x 8 months = **£680** pa Swimming **£TBC**– Football 1.5 hours pw @ £130per term x 3 = **£390**

⁸ Life Skills 3 hours pw including travel training £16ph = £48pw x 38 weeks =**£1824** and any nominal travel expenses

⁹ SALT 2 hours per week direct plus 11 indirect @ £75ph x 38 weeks = 87 hours pa = **£6525**

¹⁰ Zones of regulation 45m, OT is able to deliver these session @£80 ph x 28.5 per annum = **£2,280**

¹¹ Social skills group 45 mins pw - surrey to arrange e.g. from SOLD @ £... or if no capacity private SALT can provide SS training at £75ph x 38 weeks = 28.5 hours = **£2137.50**

¹² Includes travel and changing time

¹³ To regulate ADHD and as alternative to school based playtimes and PE - 4 PE sessions. Many activities are only accessible outside of school times timetable extends over 7 days

¹⁴ Fortnightly (alternating with home learning on other week) as block of 6 direct sessions of OT per term=18 +21 indirect= 39 hour per annum @ £80ph= **£3,120**

¹⁵ Home learning timetabled on weeks when there is no OT or Zones of Regulation session, nominal expenses for learning resources, books, printing, subscriptions etc.

Legal Test for EOTAS

- **S61 Children and Families Act 2014: Special educational provision otherwise than in schools, post-16 institutions etc**
- (1) A local authority in England may arrange for any special educational provision that it has decided is necessary for a child or young person for whom it is responsible to be made otherwise than in a school or post-16 institution or a place at which relevant early years education is provided.
- (2) **An authority may do so only if satisfied that it would be inappropriate for the provision to be made in a school or post-16 institution or at such a place.**
- (3) Before doing so, the authority must consult the child's parent or the young person.

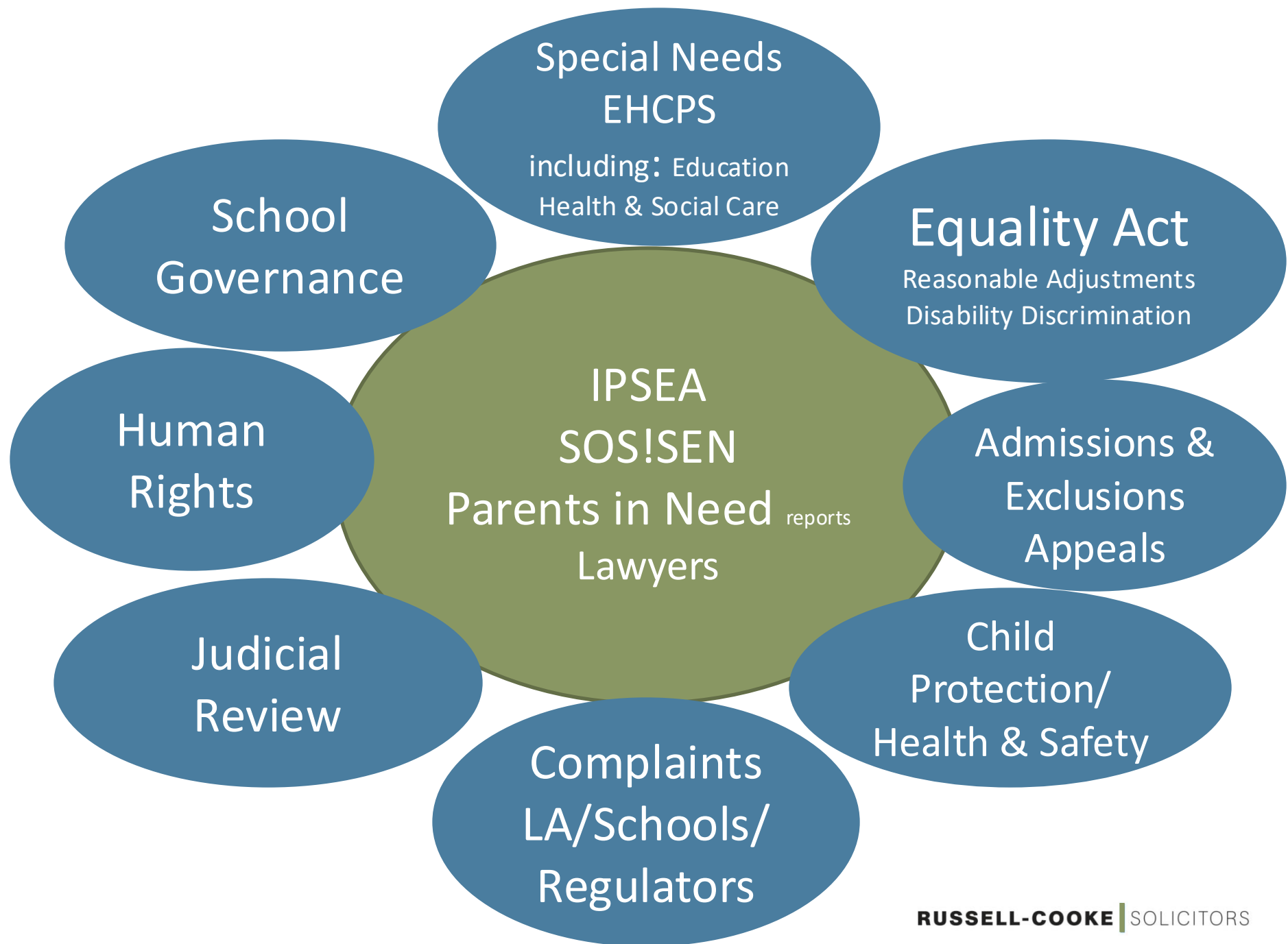
How to Get an EOTAS written into EHCP?

- Request on issue of Draft EHC plan or at annual/emergency review
- **If agreed** EOTAS provision in section F / Section I of EHCP blank
- If refused – Appeal to First Tier Tribunal (SEND Appeal)
- Around two-thirds of cases settle without hearing/ around 92% of those going to hearing succeed **i.e. original LA decision often wrong**



Evidence & Persistence is Key

- Gather Evidence:
- Subject Access Request (SAR): School and LA (UK GDPR 2021/Data Protection Act 2018)
- Medical and other involved professionals
- Independent expert reports e.g. EP, OT, SALT, funded Privately/Legal Help (legal aid lawyer)/Parents in Need
- Tribunal Case Management Directions
- Quality of evidence: **Tribunal standard**: robust specific and quantified – expert willing and experienced witness



From Exclusion to Education lawyer

Never underestimate what your child is capable of ...

Chambers
AND PARTNERS

The
**LEGAL
500**



 The Law
Society
Gazette



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