

IPSEA's submission to the All-Party Parliamentary Group for Special Educational Needs and Disabilities' (SEND) inquiry into the impact of COVID-19 on educational transitions for children and young people with SEND – November 2020

1. About IPSEA

- 1.1 IPSEA (Independent Provider of Special Education Advice) was established in 1983 and currently advises over 4,000 parents and carers of children with special educational needs and/or a disability (SEND) every year.
- 1.2 We deliver two free and independent telephone advice services to parents/carers and young people. Our Advice Line provides legally-based next step advice on any educational issue that relates to a child or young person's SEND – e.g. exclusion from school, discrimination and the process for securing additional support. On our Tribunal Helpline we give next step advice on proceedings in the First-tier Tribunal (Special Educational Needs and Disability) – more commonly known as the SEND Tribunal. This is also the gateway to our Tribunal Support Service through which we represent parents who are making appeals or claims to the SEND Tribunal. The Tribunal hears disputes between parents and local authorities regarding educational support for children and young people with SEND and also claims of disability discrimination against schools.
- 1.3 Our helplines and Tribunal Support Service are largely delivered by volunteers, which enables us to provide our services to parents free of charge. The range of services that IPSEA delivers across England places us in a unique position to identify trends and common issues.
- 1.4 IPSEA regularly trains other bodies including SEND Information, Advice and Support Services, education professionals, local authorities and parents/carers.

- 1.5 Our views are based on evidence from what the families we support tell us and our experience whilst supporting them. This written evidence has also drawn on previous evidence submitted in response to the call for evidence for the Education Committee's Inquiry into the impact of COVID-19 on education and children's services in July 2020.
- 1.6 The quotes in this submission are from parents¹ and IPSEA volunteers, some of whom also have children and young people with SEND.

2. Introduction

- 2.1 IPSEA is concerned about the negative impact the government, local authorities and educational settings' response to COVID-19 has had, and continues to have, on children and young people with SEND.
- 2.2 Legally by definition, children and young people with special educational needs (SEN) have significantly greater difficulty in learning than the majority of others of the same age or have a disability which prevents or hinders them from using the facilities generally provided for others of their age in mainstream schools or post-16 institutions. Those who are disabled have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities². Whether they have a learning difficulty or disability, all children and young people who have SEN require special educational provision to meet their needs³. Therefore, the risk the COVID-19 pandemic posed to the education and wellbeing of children and young people with SEND, over and above their peers without SEND, was foreseeable.
- 2.3 This risk was realised in the continued failure to meet the needs of children and young people with SEND, often in clear breach of the law intended to protect them.
- 2.4 The All-Party Parliamentary Group invites written submissions on the impact of COVID-19 on educational transitions. We have identified three key transitions during the COVID-19 pandemic as set out below. In each case, the impact of the response

¹ In this evidence the term "parent" is used to refer to those with parental responsibility or care of the child or young person, as defined in section 576 Education Act 1996.

² Section 6(1) Equality Act 2010

³ Section 20 Children and Families Act 2014

to COVID-19 on children and young people with SEND has been overwhelmingly negative.

2.5 Below we set our views/findings from our helplines and tribunal support service in sections:-

- Transitions upon and during closures of educational settings
- Transitions upon and following the re-opening of educational settings
- Transitions to new educational settings

3. Transitions upon and during closures of educational settings

3.1 Through our helplines, Tribunal Support Service and training we have heard that children and young people with SEND did not receive adequate support upon their transition to remote or a different kind of education when educational settings closed in March.

3.2 During this time children and young people who had, or may have had SEN, were also affected by local authorities transitioning to temporarily amended legal obligations.

3.3 At IPSEA, we are aware that:

3.4 Children and young people with SEND found it difficult or were unable to access education remotely, either online or on paper.

3.4.1 This was because the work set was not appropriately differentiated, was provided using software they could not access and/or they did not receive special educational provision required by their SEN that they would have had at their setting (e.g. the support of trained teaching assistant 1:1 under the supervision of a qualified teacher).

3.4.2 Parents and volunteers have told us that:

“At least 10 times parents said that their child had been unable to access the learning, sometimes because the work set was not differentiated and did not take into account their child's SEN. Often the child found virtual learning difficult to engage

with, they require a more personal approach. Many times the one to one support that is required was not made available.”

“It was my own and other local parents that I know experience [that] what was eventually sent was in no way achievable or accessible for the children. Parents were also offered no extra support.”

“The support they were receiving and access to education was greatly reduced. Services were no longer being offered”

“[a child’s] school refusing situation was made worse by COVID-19 [as they received] limited support from school”

“Mostly there has been a distinct lack of support for children with SEN and/or disabilities with their usual provision either unavailable or when it did become available, it was in a less effective format.”

3.4.2 These difficulties were experienced even though some parents gained an increased insight into their child’s needs while they were at home. For example, a mother of a child with ADHD who “*saw how difficult it was for him to focus and attend to his learning*” which had not previously been understood by their school.

3.4.3 Some parents told us their children who were struggling to attend school before the closures found being at home easier. We believe that this is likely to reflect inadequacies in their provision before the pandemic rather than there being a benefit to home learning.

3.4.4 We have also heard of children who were unable to attend a setting but received alternative provision before the pandemic being “*left with no alternative education*” when schools closed in March.

3.5 Children and young people with education, health and care (EHC) plans were at home experiencing the above difficulties because their setting refused attendance.

3.5.1 We have been told of settings refusing attendance based on risk assessments with little or no input from parents or unlawfully excluding children in response to a

perceived inability to meet their needs attempting to rely on COVID-19 as a reason to justify this.

3.5.2 Parents and volunteers have told us that:

“[A year 3 previously looked after] child with significant needs [who] has an EHC plan, was refused entrance to school from March to end of June [having been on an] unlawful part-time timetable from the end of January and that was used as a reason for no attendance at all in summer term”

“There is a Facebook page for West Sussex parents. When the issue of risk assessments was mentioned in a post, only one parent replied to say one had been done in consultation with her, a couple of others were done without parents' knowledge and many others weren't aware of the requirement for them to be done at all.”

“[A child] attended X Primary school until March 2020. He had 1:1 support for 20 hours per week. [He] has not been back at school since [the first national] lockdown. The school has refused to [allow him to] attend due to his high needs. [He] has not had any education since lockdown started. He has struggled/refused to do his work online and no tutoring or other form of education has been offered as an alternative.”

3.6 Children and young people did not receive the special educational provision they require as specified in their EHC plans, at home or at their educational setting.

3.6.1 Notices issued by the Secretary of State under the Coronavirus Act 2020 relaxed local authorities' absolute duty⁴ to secure this provision to a “reasonable endeavors” duty. This applied from 1 May to 31 July. This meant that local authorities needed to do what they reasonably could to secure provision at this time. Local authorities have never been permitted to simply put a child or young person's special educational provision “on hold”. During this time the “best endeavours” duty⁵ of the majority of educational settings to meet the needs of all children and young people with SEN, including those with EHC plans, remained in place without any significant

⁴ Section 42(2) Children and Families Act 2014

⁵ Section 66 (2) Children and Families Act 2014

enhancement in funding, support or timely, adequate guidance to assist settings. At this time, schools had a higher duty threshold than local authorities. This left more children and young people with EHC plans with unmet needs.

3.6.2 For example, when a parent of two primary school age children with EHC plans informed the school that they had not been provided the differentiated work they needed, the school told them to use the work set for the year below. This was inappropriate and too difficult for the children. The school did not use its best endeavours to meet the children's needs and failed to recognise this when the parent formally complained. The local authority did not appear to have any involvement despite both children having EHC plans and its duty to use its reasonable endeavours to secure their special educational provision.

3.6.3 Parents and volunteers told us:

"Schools in my local authority supporting those with education, health and care plans offered little to no support and sent out paper packs with work on that most children could not do."

"...if they are still attending school a lot of provisions set out in education, health and care plans are unable to be met due to the policies the school puts in place to safeguard kids from COVID-19, simple things such as a pass to the toilet but that are essential for them."

"Unfortunately, this is the response I heard during volunteering calls. I have had just one occasion where a child did get to have a tutor to zoom in with the child a few hours per day but it did not even amount to 1/4 of what the EHC plan stated and the kid is clearly struggling."

"All the provision that was written in the plan was also on hold meaning the child was unable to attend school as a result."

"An independent residential school [named in a child's EHC plan] closed at lock down and has not provided any sort of support at all or any online education/courses. They [could not] confirm when they will reopen. They have not offered any form of provision...no reasonable endeavors were made"

“[A child’s] EHC plan has 32 hours 1:1 provision...the [mainstream] school are currently only allowing [her] in school for a total of 1 and a half hours a day [because] “due to COVID they need the room for other SEN children”. This is within a “nuture room”. The parent has been regularly liaising with the school and local authority as he just wants his child to receive an education. The local authority from these discussions increased support to 2:1 so 64 hours of support a week but the school are still adamant that [she] is only allowed in school for 1 and a half hours a day.”

3.6.4 The situation for these children and young people was made worse by erroneous communication from some local authorities.

3.6.5 For example, a letter shared with us from the Director of Education of Essex County Council which was sent to all schools and settings in the county on 31 March 2020 stated that at as the Coronavirus Bill had now been passed, some of the legal duties around EHC plans had been relaxed allowing “schools to now use their ‘reasonable endeavours’ (rather than ‘best endeavours’) to support these children.” However, the temporary legislative changes were not in force until 1 May 2020 and never included a dilution of schools’ duties to support children and young people with SEN including those with EHC plans.

3.7 The above caused an increase in some children and young people’s SEN which were left unmet.

3.7.1 Parents and volunteers told us:

“Personally my son was not able to access education when his setting was closed. He is unable to transfer skills to a home setting. A teacher on zoom just made him scream, and whilst I tried to use some of the resources he would not be engaged. He was offered 3 days in the last 2 weeks of term, one of which was the last day (so a half day) and this was only after I explained that family life was breaking down. A tablet never materialized from the local authority. He effectively had no education since March as a result his challenging behavior increased and we are now [in November] having to consider a residential 52 week placement”.

“In June, because X has a EHC plan the school did a risk assessment of him and as a result put in place a plan for him to come for half days at first and only gradually move back to a full timetable. Because of Covid, [his] mother was not allowed on

site to help X transition to the school day, and his anxiety and school refusal started getting worse again.”

3.8 The full identification of children and young people’s SEN, health and social care needs and the provision required to meet them did not occur or was delayed. This delayed children and young people’s needs being met.

3.8.1 Some local authorities used the relaxation of the timescales in the Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020 (the Amendment Regulations) as justification for failing to make decisions that are appealable to the SEND Tribunal or to unlawfully delay making decisions or taking steps that are not covered by the Amendment Regulations.

3.8.2 The Amendment Regulations provided that where it was not reasonably practicable or was impractical for a local authority to meet certain deadlines “*for a reason relating to the incidence or transmission of coronavirus*”, it must instead complete that step as soon as it was practicable to do so. These changes were in place from 1 May until 25 September 2020. For the majority of this period educational settings were closed to most and children and young people with SEND when they were experiencing the above challenges.

3.8.3 The timescales to which the Amendment Regulations applied included the handling of requests for EHC needs assessments, decisions about whether to issue EHC plans, the preparation, issue and amendment of EHC plans, and annual reviews. These are all matters which are appealable to the SEND Tribunal and delays in relation to these processes result in delays to rights of appeal being triggered and tangible delays in children and young people’s needs being met. For example a helpline volunteer told us that “*the process of obtaining an EHC plan had been put on hold meaning the child was remaining out of education.*”

3.8.3 At IPSEA, we have seen or heard about a number of local authorities misusing the Amendment Regulations, specifically by applying unlawful blanket policies under which they have refused to accept requests for EHC needs assessments due to the COVID-19 pandemic and/or delayed making decisions not covered by the Amendment Regulations. Some of these policies were applied early on in lockdown prior to the Amendment Regulations being introduced. Others were introduced after

the Amendment Regulations came into effect. At neither point were the approaches adopted a lawful option open to the local authorities concerned.

3.8.4 Bury Council: on 31 March 2020, we were contacted for advice by a parent who told us that Bury Council had agreed to undertake an EHC needs assessment in relation to her daughter, but a caseworker had then contacted her to say that all EHC needs assessments were being put on hold for the foreseeable future as it was impossible to ask for reports from professionals while the government's social distancing advice was in place. The parent asked the caseworker to at least obtain reports from those professionals who had already seen her daughter, but she was told that all requests for reports had to be sent out on the same day with the same six week deadline. The local authority was operating an unlawful blanket policy.

3.8.5 Essex County Council: The letter from Essex County Council referred to above included: *"Please could we request that schools and settings do not make requests for new EHCNAs until further notice. EHCNA should be a thorough and meaningful assessment of a child's needs and clearly that would not currently be possible."* This was an unlawful blanket policy.

3.8.6 Liverpool City Council: one of our volunteers shared a letter with us in March 2020 which had been sent to a parent confirming the local authority's decision following a request for an EHC needs assessment. This letter stated the following unlawful policy:

"The LA is not currently initiating statutory assessments at this time due to current global events. The LA is unable to fulfil assessments from health due to staffing and colleagues in social care must prioritise direct safeguarding work as more pressure is placed on their service. Educational Psychologist assessments cannot be conducted appropriately in the current climate of school closures, social distancing and self-isolation, as they are unable to complete cognitive assessments or carry out observations in situ. Due to school closures, the LA is also unable to seek appropriate information from schools should we not already have this."

3.8.7 Norfolk County Council: on 30 March 2020, one of our volunteers sent us a link to an information page on the local authority's website which stated that no new requests for EHC needs assessments would be considered. This page was later amended to state that the local authority is accepting new requests and *"wherever possible we*

will try ensure that the current situation with Covid-19 does not unduly delay our decision making or reduce quality." We do not know when the original text was withdrawn, but while it was in place it constituted an unlawful blanket policy.

- 3.8.8 Peterborough City Council: in late June 2020, a member of staff from a school in Peterborough who was seeking advice from us on behalf of a family informed us that the local authority was not accepting requests for EHC needs assessments at the present time. This is an unlawful blanket policy.
- 3.8.9 West Sussex County Council: a parent shared an email exchange she had with the local authority's Director of Children's Services (DCS) after she complained about the delay in the issuing of her child's EHC plan. In an email dated 29 March 2020, the DCS stated "*I will look into the reasons for the delay ... but there is currently a lifting of some of the statutory timescales linked with SEND.*" The relaxation of the statutory timescales did not come into effect until 1 May 2020 and even then would have needed to apply in a child or young person's individual circumstances.
- 3.8.10 In limited cases the parent agreed to delay for practical reasons. For example when during mediation in the summer term a local authority agreed to conduct an EHC needs assessment for a child in September (which is late), the parent did not seek earlier commencement of the assessment because "*there was no-way [A] could have been assessed outside of school due to COVID, if an EP [educational psychologist] had tried a remote assessment they wouldn't have seen his triggers*". However, alternative settings for an EP observation which may have enabled the assessment to proceed do not appear to have been explored.

4. Transitions upon and following the re-opening of educational settings

- 4.1 We are aware of a common theme that special educational provision to support children and young people's return to educational settings in September was lacking.
- 4.2 Over two months later, many children and young people remain without the provision either they received prior to their setting's closure or that they currently require where this has changed.
- 4.3 At IPSEA we have heard that:

- 4.3.1 Children and young people with SEND who returned to their educational setting did not receive adequate support for this transition.**
- 4.3.2 This included those with EHC plans, despite local authorities' absolute duty to secure special educational provision specified within them applying since 1 August.
- 4.3.3 An IPSEA volunteer told us they spoke to parents whose children with SEND had *"No reintegration plan"* and *"were told their child's support as specified in EHC plan wouldn't be provided"* This included 1:1 support.
- 4.3.4 Another volunteer told us that children whose EHC plans were finalised during the Summer term, returned to school in September *"but their schools were not providing the support [specified in] the EHC plan. In fact the schools were providing very little support"*.
- 4.3.5 For some children this led to rapid exacerbation of their SEN:
- 4.3.6 A parent of a year four child with Down's syndrome who has an EHC plan told a volunteer they *"still ha[ve] no 1:1 support at lunch and break times"*. Their parent has observed *"gaps [between him and his peers] are getting bigger and that he would benefit from more specialist support"*. They reported that *"the COVID lockdown really knocked him out and he has become much more drawn into himself, barely communicating...[and his] teaching assistant does not know sign language which is essential for communicating with [him]"*.
- 4.3.7 CAMHS accepted a referral for a year 6 child but have not seen him due COVID. He had a EHC plan in place before returning to school in September. His parents told us they *"managed to get him at the beginning of the year, he did so well for the first 3 weeks but has hit a wall...he is very anxious about COVID and this has just made the situation worse."*
- 4.3.8 We have been told that children and young people who found being at home easier than attending school, found the transition back to school particularly difficult. This included some children and young people with ASD.
- 4.3.9 Overwhelmingly parents and volunteers report that these failures, upon the transition back to school, had a negative impact on children and young people with SEND.

4.3.10 In one case, the parent of a child receiving SEN support reported that, due to the school using “bubbles”, a TA who used to leave their child to support other classes now remains in his class all day. This was of benefit to that particular child but, given what other parents have told us, this type of arrangement is likely to be at the cost of other children’s needs not being met.

4.3.11 One positive comment that we are aware of is of a child whose secondary school on the Isle of Wight put children into groups which they stayed in for all lessons in one room and teachers came to them, rather than the pupils having to move around the school.

4.4 Children and young people with SEND have been prevented from returning to their educational settings on re-opening. Some compulsory school age children have been unlawfully excluded from full-time education⁶.

4.4.1 We are aware of children and young people with SEND, with and without EHC Plans, who have been told they are unable to transition back to their setting because their needs cannot be met there due to COVID-19.

4.4.2 For those with EHC plans this is despite local authorities’ absolute duty to secure their special educational provision and settings named in EHC plans having a legal duty to admit them⁷.

4.4.3 While at home, the majority of these children and young people have experienced the same challenges they faced when educational settings were closed to most as described above.

4.4.4 Parents and volunteers told us:

4.4.5 *“Prior to COVID [child] received 1:1 support. School advised [that the] child cannot return to school as due to COVID [they are] not allowed to implement 1:1 support.”*

⁶ For the right to suitable full-time education see section 19 Education Act 1996

⁷ Section 43(2) Children and Families Act 2014

- 4.4.6 “*[child] has not been into school most of this term ‘because of COVID 1:1 support is not available’, the school have now agreed after half-term holiday [he] can go back 1 hour a day for a week and then should be able to go back fulltime. The school did provide online learning opportunities but these were on a software format not compatible with the computers already in family home*” This child is currently not allowed out at breaktime and reports feeling punished as result which leads to more challenging behaviour.
- 4.4.7 A child with an EHC plan “*had an operation on her leg and was not able to wear her prosthesis. As a result she would need to be in a wheelchair for the short term, consequently, the parent had difficulty persuading the school to take her back as support was not available for her.*”
- 4.4.8 One parent told us their child has a medical condition which weakens their immune system but did not have a plan to manage this in place before or after the COVID pandemic hit the country. Despite having an EHC plan, they had received no support during the setting’s closure or upon the re-opening of their school and the child has been out of school throughout this time.
- 4.4.9 Some children who transitioned back to their settings were subsequently required to self-isolate. One parent told us of 118 children in their child’s school year having to self-isolate and the online classroom set up by the school not working.
- 4.4.10 One helpline volunteer told us “*the most common denominator is if the class is sent home then they are just sent work from home, the parents are told not much else can be done due to COVID-19 and short staff.*”
- 4.4.11 Children and young people receiving education otherwise than at a school or post-16 institution, have also not returned to receiving their full provision. For example, one parent told us:
- “This term we have had no provision other than piano lessons through zoom. We are very grateful his piano lessons have continued but are really worried about the future as no one seems to reply to emails or phone calls.”*
- 4.5 Settings have introduced blanket policies for the management of COVID-19 without making adjustments for individual children with SEND.**

4.5.1 An IPSEA volunteer spoke to the parent of a 10 year old child with an EHC plan who was out of school because their head teacher would not allow her to use different handwashing products to other pupils, despite the need for her to do so being evidenced in two letters from her GP. Using the new handwash introduced by the school in September, exacerbated the child's eczema making her feel like her hands were burning. The head teacher's reasoning for not allowing her to use the GP prescribed product was that it did not meet COVID safe standards, despite containing the same antibacterial as the school's soap and the GP stating that she needed to use it. The local authority had not offered support to resolve the situation which has resulted in the child not accessing education and the education welfare service investigating her non-attendance causing her parent to fear being fined.

4.5.2 Another volunteer spoke to a parent whose child had been excluded following their transition back to school in September for spitting when this behaviour arose from their SEND.

4.6 Parents of children and young people who live with someone whose health is at a high risk if they contract COVID-19 concerns regarding their return to educational settings were not addressed.

4.6.1 This resulted in some parents resisting their children's return to school and being told that, as they were expected to attend, the school would no longer provide any support for education at home.

4.6.2 In at least one case, a parent told a volunteer that their concern was exacerbated by their child's inability to follow instructions. Support for education at home was refused and the parent feared an attendance order despite having a letter of support from their GP and the parent trying to work with the school to find a solution.

4.6.3 Department for Education guidance on how settings should approach situations like this was initially unclear and not updated in a timely manner.

5. Transitions to new educational settings

5.1 Some children and young people were due to transition to a new setting in September and this was disrupted in the context of the COVID-19 pandemic.

5.2 Parents and volunteers told us:

5.3 Children and young people in a phase-transfer year⁸ experienced delays and we unable to participate effectively in decisions about their transfer.

5.3.1 EHC plans for children due to transfer to a new phase of education at this time should have been reviewed and amended before the Amendment Regulations introduced a potential relaxation to the legal deadline for the annual review in an individual case. However, at IPSEA we are aware of local authorities retrospectively applying the Amendment Regulations to decisions/steps which they were legally required to take prior to the Amendment Regulations being introduced on 1 May.

5.3.2 For example, in mid-May 2020 a parent shared a letter with us that she had received from Birmingham City Council at the end of April about her son's post-16 phase transfer placement. The letter confirmed the placement that would be named in the amended EHC plan but failed to enclose the EHC plan with the following explanation:

"We apologise for the delay in the administration of this letter and that [the] EHC plan is not enclosed at this time. This is due to current situation relating to Covid-19 ... a finalised plan will be sent to you by 31st May 2020."

5.3.4 This was unlawful: For young people moving from secondary school to a post-16 institution, the local authority must amend their EHC plan by the 31 March in the calendar year of the transfer⁹.

5.3.5 IPSEA volunteers also noted breaches of the post-16 phase transfer deadline: Some amended EHC plans were not amended until June or, in multiple cases, the last week of August. These unlawful delays left no time for the young people to prepare for or be supported in a managed transition to their new setting. Those who did not agree with the placement named in their EHC plan were unable to appeal to the SEND Tribunal before the September transition.

5.3.6 Parents and young people reported that they were not permitted to visit educational settings when they were closed to most pupils. This meant that they found it difficult

⁸ Defined in regulation 2(1) of the Special Educational Needs and Disability Regulations 2014

⁹ Regulation 18(1) of The Special Educational Needs and Disability Regulations 2014

to choose which setting they would have liked the child or young person to transition to in September and in some cases prevented them from triggering the local authority's conditional duty to name it in their EHC plan¹⁰.

- 5.3.7 In an appeal against the setting named for a child's primary to secondary school phase transfer, evidence revealed that the local authority had named the school the parent appealed against without informing them that they were consulting it. This meant that the parent and child were unable to attempt to visit or even talk to staff at the setting and form a view on it before it was named in the EHC plan. In contrast, during the appeal, the local authority insisted on obtaining the autistic child's views on his placement. Unfortunately, it did so in an unfamiliar council building rather than at school or home or via teaching staff. This caused the child distress, exacerbated challenging behaviour and triggered concerning fantasies. The parents made every effort to work with the local authority to resolve the appeal enabling the child to transition to a suitable new setting at the start of the September term. The local authority did not reciprocate. The parents made the difficult decision to temporarily home educate pending the outcome of the appeal rather than risk unnecessarily subjecting the child, who has difficulty with change, to potentially transition to two settings within a short period of time. The local authority conceded the appeal agreeing to the setting sought by the parents at the last minute in October. It's unclear to what extent COVID-19 caused delay in the local authority's engagement with the appeal but it referred to issues with, "COVID-19 restrictions" in correspondence with the Tribunal Support Service volunteer supporting the parents.
- 5.3.8 A parent told an IPSEA volunteer that their child had regressed socially since the first national lockdown and that their special educational provision has not been implemented since they transitioned from infant to junior school in September. Unfortunately, while the child had started to make some friends in infant school with the help of his TA, in junior school he is not being supported and this progress is falling away.
- 5.3.9 Another parent of a child with an EHC plan was unaware of the phase transfer process and their local authority unlawfully required them to complete a general preference form before the start of this term. Had they not accessed advice from an IPSEA helpline volunteer they would have been unable to seek the timely

¹⁰ Section 39(3) Children and Families Act 2014

commencement of the child's phase transfer review and been left having expressed a preference for settings they were unable to visit due to COVID-19 pandemic.

5.4 Children and young people in unsuitable settings or out of school before the pandemic have not been able to transition to educational settings that can meet their needs.

5.4.2 The parent of the year 3 previously looked after child who had not received full-time education since January 2020 (referred to above) told us he has returned to school on an unlawful part-time timetable. This was despite his annual review meeting taking place in July 2020 and his parent seeking a change of placement to a school which caters for pupils with similar SEN. The local authority had not completed his annual review and his SEN remained unmet when the IPSEA volunteer spoke to his parent in September.

5.3.2 Another volunteer reported that a child who was meant to reintegrate into secondary school after being home educated for a few years needed the special educational provision in their EHC plan to be implemented to facilitate a successful transition. This did not happen "*due to COVID restrictions at school*". The child has anxiety and gastroenterological problems. They needed a toilet pass but were told they could not have one due to current circumstances. This is something very simple and the failure of the school to provide this (based on the dubious justification of the COVID pandemic) made the return of the child to school impossible.

5.3.3 After two weeks of a parent trying to speak with their child's SENCO, we were told a plan was agreed to support the return of a child, who has anxiety and was school refusing before school closures. This involved the child's new TA meeting them and their parent in the school car park at an agreed time, the TA spending time getting to know her and taking her on a tour of her year group's "bubble area" and taking her to a lesson in an area of her interest starting with simple work "set up so she could succeed". This did not happen. The TA did not meet the child as agreed, leaving her waiting for a substantial amount of time which triggered her anxiety. The child reported the experience of attempting to transition to school as making her "*angry and upset because she found everything about the school so stressful*". The same child's GP conducted a mental health assessment virtually and reported that the child was having suicidal thoughts and is now unfit to attend school.

6. Conclusion

- 6.1 Children and young people with SEND have faced more educational transitions as a result of COVID-19. For the children and young people IPSEA supports, this resulted in a complete loss or at best, a reduction, of education and special educational provision. For some this has exacerbated their SEND which remain unmet.
- 6.2 Intended educational transitions were disrupted by local authorities and settings' responses to the pandemic. Leaving children and young people without suitable placements for longer.
- 6.3. The temporary relaxation of local authorities' legal obligations and their misuse of these legislative changes is likely to have left more children and young people with unmet SEND.
- 6.4 It is important not to lose sight of the fact that, prior to the challenges posed by the COVID-19 pandemic, the SEND system was widely recognised as being in crisis. At the root of this was a consistent failure on the part of many local authorities to comply with the law at the most basic level when their legal obligations were absolute. The impact of giving greater discretion to fulfil statutory duties inevitably meant that many more children and young people with SEND lost out on the support they need.
- 6.5 To be clear, in the vast majority of cases it is not COVID-19 itself which has had the above detrimental effect on children and young people with SEND, but the response of the government, local authorities and settings to the pandemic.
- 6.6 Once again, the onus is unfairly on parents to challenge unlawful policy and practice in pursuit of the education of children and young people with SEND are legally entitled to. This renders further inequality to those children and young people who do not have parents or carers who are able to do so.