

A summary of key law regarding special educational needs provision

For reference, the SEND Code of Practice is available here:

<https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

From Matrix Law (March 2025):

The below is summarised, with full details available at this link:

<https://www.matrixlaw.co.uk/wp-content/uploads/2025/03/Noddy-No-nonsense-Guide-to-SEN-law-2025-v18-050325.pdf>

Do the terms ‘waking day curriculum; or ‘extended day curriculum’ (also known as a 24-hour curriculum) have any legal meaning?

No. The Upper Tribunal has acknowledged the imprecision of the term “waking day curriculum”. It generally means that “the person’s special educational needs are such that they call for special educational provision to be delivered beyond ‘normal hours’”. It may be linked with residential placement, but not necessarily (East Sussex CC v TW [2016]).

Some of the dangers of the use of the non-statutory term “waking day curriculum” as a proxy for the more nuanced approach which is required have been explained in LB Southwark v WE [2021]. Upper Tribunal Judge Jacobs memorably stated at in relation to the term “waking day curriculum”:

“If those words do not induce a feeling of dread in a judge of this Chamber, at least they produce a sense of foreboding”.

These judgements show that the LA and professionals should not be suggesting a general recommendation for a waking day provision. Needs should be explained clearly in section B, and provision in section F should link to those needs. Any reference to waking day or similar curriculum, added by a school or other provider, does not have meaning in law.

Placement (section I) is then agreed to meet the need in Section F.

Is there a particular rule about when a child requires out of hours special educational provision?

It has been said that a “waking day curriculum” may be justified if the CYP needs to “translate into his home and social and indeed all areas of his life and functioning, the skill which he learns within the school and school room”: S v SENDIST [2007].

However, simply because a CYP needs consistency of approach this does not necessarily mean an educational need which should be met beyond the school day in a residential setting: LB Hammersmith and Fulham v JH [2012] UKUT.

This does not mean in a particular case the First Tier Tribunal cannot lawfully decide that a need for a consistency of provision is special educational provision in the circumstances of the particular young person, but it would be **in extremely rare cases** Westminster CC v First Tier Tribunal [2023].

The question to be asked is whether the “need for a consistent program was such that [the CYP’s] educational provision in section F of their plan could not reasonably be provided unless accommodated on the site where [the child] was educated”: Hampshire CC v JP [2009].

Examples of that situation might include:

- the position where more of the provision in question is needed than can be delivered within the hours of the school day – provision in section F (number of hours) is greater than a school day.
- where the child/young person specifically needs that provision throughout their waking hours (or at least beyond the school day) for example due to medical needs.
- or • because the educational provision in question relates to something which can be provided within a school setting.

The key in each case is that the provision in question (whether initially seen as educational provision or as social care provision) involves education and/or training (which then makes it Special Educational Provision under Children and Families Act 2014 s21) and the need for it goes beyond or outside the ordinary school day.

It is not sufficient to say that support to help a CYP “to generalise skills learnt at college in out of college time” becomes Special Educational Provision by virtue of CFA2014 s21(5). The question is whether this falls on the “education and training” side of the line or the “support” side of the line, which is a question of fact. GL v West Sussex CC [2017].