

Challenges to SEND funding

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A recent High Court decision has confirmed that the use of funding bands to allocate funding to children with Education Health & Care Plans is not unlawful and is sufficient to meet the duties placed on local authorities to secure special educational provision set out in such a plan. The challenge was brought by a number of families within Hackney local authority area and they challenged banding as well as 5% reductions in the amounts of funding within the bands. The judge stated that that banding was acceptable and referenced by the DfE as one method of allocating top-up funding to a child. The key point was that the local authority must ensure that the funding is sufficient to make the provision required for the individual child and in this case given the availability of additional funding on request, the banding system was lawful.

The wider decision supports local authorities on two fronts – it provides some protection against claims based on welfare or equality considerations by adopting a common sense approach to interpretation of the review provisions of the 2014 Act. It also permits the use of bands or matrices to allocate funding – however this will be subject to the funding being sufficient to secure the required provision. This latter point may well continue to be a source of conflict between local authorities, parents and schools.

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