Browne Jacobson

Challenges to SEN admissions

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Under the Children & Families Act 2014, schools must be consulted before being named in an EHCP and being required to admit a child as a pupil. The case confirms that the consultation process must be lawful which means sufficient time and information must be provided and that the school's responses must be properly considered.

If the local authority cannot provide evidence of such consideration, it may give rise to a successful challenge in the courts. The court also acknowledged that it was appropriate for schools to approach the ESFA under the complaint mechanisms in the Education Act 1996 to resolve the issues prior to issuing proceedings.

The decision confirms that decisions taken by a local authority to place a child with SEN in a school have to be taken on a lawful basis.

The decision confirms that consultation is required and that decisions must be evidenced. Schools, when responding to a consultation, must detail all the concerns they have around the unsuitability of the school in terms of the provision required to meet the child's needs and the problems that the child's attendance would cause.

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