



# Section I EHCP appeal

**A parent or young person has a right to request any of the following types placements:**

school or college:

- A maintained school or nursery (mainstream or special)
- An academy (mainstream or special)
- An institution in the further education sector
- A non-maintained special school

A section 41 school (these are independent schools which have 'opted in' to be able to be requested by parents ).

If you are not sure what type of school you're asking for, check on the Government Website 'Get Information about Schools'.

**The only reason the local authority can refuse to name your preferred school is if;**

The setting is unsuitable for the age, ability, aptitude or special educational needs ("SEN") of the child or young person; or

The attendance of the child or young person would be incompatible with the provision of efficient education for others; or the attendance of the child or young person would be incompatible with the efficient use of resources. This is set out in section 39(4) CAFA 2014.

The LA has to prove that at least one of these conditions applies in order to dislodge the parent or young person's preference.

**If the LA says that the school you have asked for is not suitable for your child you will need to:**

Gather evidence about the type of children who are admitted by the school you want. Look at the OFSTED report and prospectus of the school.

Look at the evidence that you have about your child's needs and, if necessary, consider seeking evidence from elsewhere.

If the LA says that the attendance of your child at the school you want will be incompatible with the provision of efficient education for the other children in your child's class, you will need:

Evidence of exactly what the incompatibility will be - the 'incompatibility' has to be a real concrete thing that stops the other children being educated, for instance a behavioural problem that can't be dealt with and which is constantly interfering with others' learning. It's not something trivial or avoidable. If your child has a behavioural problem, is it still a problem if he or she gets the right support.

Often this argument is used where the school is 'full'. Find out if the school is over-subscribed, if so by how many children? Has the school exceeded the stated number of children in the past? Is there any flexibility in terms of which class your child would go into? Exactly how many adults and children will be in that class? There is no definition in law of what it means for a school to be 'full'. LAs are able to name schools which say they are 'full' in EHC plans and must do so unless they are able to prove the child's attendance is incompatible with the efficient education of others.

In order to refuse to name a school, the LA has to show that because of the high numbers of pupils in the school, the child's needs won't be met, or that other children's needs would not be met, or that there would be an inefficient use of resources (for example, as a result of them having to appoint another teacher or build another classroom).

**If the LA says the attendance of your child at the school you want would be incompatible with the efficient use of resources**, you will need: exact details of the costs the LA say they will incur at the school of your choice, including transport. Exact details of the cost of a place at the school the LA have named, including transport and any external support (such as therapists coming into the school). Often LAs say it will not cost them anything to send a child to a particular school but investigations can prove otherwise.

## **2. The right to a mainstream education**

If a parent or a young person wants a mainstream school or college named in the EHC plan, there is another part of the law they can rely on as well. Section 33 CAFA 2014 says that a child or young person with an EHC plan must be educated in a mainstream setting unless:

1. It is against the wishes of the child's parent or the young person; or
2. It is incompatible with the provision of efficient education for others and the LA shows that there are no reasonable steps that it could take to prevent the incompatibility. Even if the LA successfully argued that a mainstream school was unsuitable for the ability, aptitude or SEN of the child (one of the lawful reasons for refusing a school, or college), if they wanted to name a special school against the parents' or young person's wishes they would also have to show that it was incompatible with the provision of efficient education for others.

Note, however, that this is a right to mainstream education but not necessarily a right to a particular mainstream school.

Where parents are making representations for an independent setting, the LA must have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents, so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure (section 9 Education Act 1996. If a young person is requesting an independent school or college, the LA should consider this as part of their duty to consider the young person's views, wishes and feelings (section 19 CAFA 2014).

The difference is this: when a parent requests a section 38(3) school or college, the LA must comply with the request unless the limited exceptions outlined above apply. If the LA refuses to name the parents' choice, the onus is on the LA to prove why it is not possible.

However, when a parent appeals for an independent setting to be named in an EHC plan, the onus is on them to prove that none of the schools the LA is offering can meet the child's needs, or that the cost of the placement will not constitute unreasonable public expenditure.

Public expenditure includes all the costs to the public purse of the placement not just those incurred by the LA education budget. This can include social care costs, health costs and any other costs incurred by any public body. If the parent or young person cannot show this, the Tribunal will not order an independent school to be named. It does not matter that the independent setting proposed is an excellent school and/or better suited to the child needs than the school the LA has in mind. LAs, and Tribunals acting in the LA's place on an appeal, are not bound to offer a child 'the best' provision to meet their needs – only what is necessary to meet their needs.

In practice, the most important point to prove is not that the independent setting is better than the LA's proposed school, but that the school offered by the LA cannot meet the child or young person's needs.

Where a parent or young person is appealing for an independent setting, they will generally need evidence from a professional as to why the independent setting is the:

only school which can meet the child or young person's needs.

Additionally, there must be an offer of a place from the independent setting. Unlike the section 38(3) schools listed above, an LA cannot order an independent school to accept a child or young person.

It is always worth checking whether the independent setting is in fact a section 41 school or a non-maintained special school – if it is, it comes within the list in section 38(3), and so then the burden shifts to the LA to show that it is not appropriate.

In most cases it will be important to appeal against sections B and F of your child's amended EHC plan, as well as section I. This is because the school named in section I of a plan should be a logical conclusion to what sections B and F say.

Section B of a plan should fully describe your child's difficulties and section F should specify the provision he or she needs.

## **Submitting your appeal**

The first thing to make a note of is the deadline for making an appeal. You must send an appeal form to the Tribunal within two months of the final amended EHC plan.

Mark any deadlines on your calendar and in your diary. (If the two months ends in August, then you have until the first working day in September to get the form to the Tribunal.)

You should have been sent a letter from the local authority (“LA”) when they issued you with the final amended EHC plan. This letter should contain the following information on your rights of appeal:

- (a) your right to appeal that decision;
- (b) the time limits for doing so;
- (c) information about mediation;
- (d) the availability of—
  - (i) disagreement resolution services; and
  - (ii) information and advice about matters relating to the special educational needs of children and young people.

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### **For further information please contact:**

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