

Appealing the school named in an EHC plan

At this time of year IPSEA gets many calls from parents who have just received the amended education, health and care (“**EHC**”) plan naming the secondary school their child will attend in September. If you are unhappy with the school named in your child's amended plan you can appeal to the First-tier Tribunal (Special Educational Needs and Disability) (the “**SEND Tribunal**”). This fact sheet explains:

- Which schools or colleges parents or young people have a right to request, and the reasons a local authority (“**LA**”) is allowed to refuse
- The right to a mainstream setting
- How to request an independent placement
- Why you should also consider appealing Sections B and F of the EHC plan
- How to submit your appeal, and what evidence you should provide to the Tribunal in support of your appeal.

1. Schools or colleges you have a right to request

A parent or young person has a right to request any of the following types of 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 – you can find a list of section 41 schools [here](#)).

These are listed in section 38(3) of the Children and Families Act (“**CAFA**”) 2014.

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 the request 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 (see how to improve section F below)?
- 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, detailed above under 'Requesting a nursery, 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.

3. Asking for an independent school or college

Parents and young people do not have a **right** to request an independent school in the same way that they can request the settings listed above, set out in section 38(3) CAFA 2014. However, this does not mean that they cannot **ask for and argue for** a place at an independent setting which is not on the above list.

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** the appropriate

school to name in the EHC plan. If you are not sure what type of school you're asking for, check on the government website ['Get Information About Schools'](#).

4. Consider including Sections B and F in your appeal!

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.

It might help to illustrate this with an example:

Jack is a child with a diagnosis of Asperger's syndrome. In addition he has balance problems as a result of mild hemiplegia. He is a vulnerable child both emotionally and physically. His parents believe he needs to attend the smallest mainstream secondary school in the area which has a good track record of supporting children with SEN and where the support he receives from an LSA would be provided by only one or two people. The school has a 'safe haven' within the SEN department that children can go to during break time if they don't feel they can cope with the main playground. This school is all on one level so Jack will not be put in danger by using stairs along with hundreds of other students between lessons.

The LA, however, have named the mainstream secondary school that is nearest to Jack's home. This happens to be the biggest school and the way they support students with SEN is very different. For one thing they have subject based LSAs which means Jack will have to cope with being supported by as many as 8 different people. This school does not have an area that students can go to at break. This school is on 3 levels and Jack will have to move between classes on all floors.

In this situation Jack's parents need to look at his plan in the following way:

Section B needs to fully describe Jack's physical and emotional vulnerability. If it does not his parents need to look at the evidence that exists and draw out comments that will help illustrate these difficulties. They need to appeal against this part of the plan, arguing for amendments that make it more accurate

Section F needs to fully describe the provision and environment that Jack needs because of his difficulties. The plan should specify that the school Jack attends

is able to offer support from a limited number of adults. It should state that the school should be on one level. It should state that the school has a safe area that can be used by students at break time. If section F of the plan does not specify these things, the parents should appeal against it, arguing that it be amended accordingly. In order to justify amendments like this the parents will have to look for comments and recommendations in the reports they already have **and** consider asking professionals to write reports to that effect.

If sections B and F do not accurately set out Jack’s needs and the provision required to meet those needs, the Tribunal may conclude that the LA’s choice of school is suitable. It is important to ensure the EHC plan is an accurate reflection of the child or young person’s needs, because the Tribunal will choose the school they consider can meet the needs as set out in the EHC plan.

See IPSEA’s EHC plan checklist [on our website](#) for further detail on what the law says sections B and F should contain.

5. 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, or **one month** from the date you obtain a mediation certificate, whichever is the later.

Mark any deadlines on your calendar and in your diary. (If the two months/one month 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.

The Tribunal may well extend the deadline if all this information was not provided and the deadline has passed.

How do I register an appeal?

You will need to fill in an appeal form, which you can obtain from the [Tribunal's website](#). Make sure you are using the right form depending on whether the appeal or claim concerns a child or a young person. We strongly recommend you read the booklet about 'How to appeal' which is also available on the site.

You will need to fill out various forms and send in supporting evidence to the Tribunal, along with a copy of the current EHC plan. **Remember to keep copies** of all of your paperwork (letters, reports etc.), so you have a clear record of everything you've sent.

You can submit your appeal either by email or by post. If you send it by post, we recommend that you send it by recorded delivery.

6. Evidence to support your appeal

Where a parent or young person is requesting amendments to an EHC plan, they will need to provide evidence to support the changes they want to be made.

We have set out below evidence which you may wish to submit in support of your appeal. You should send as much evidence as you can at the time you register your appeal, but don't worry if you haven't got it all together by that point – you can submit further evidence after you've registered your appeal.

Professional reports

Key evidence about the child or young person's SEN and the provision required to meet that SEN will usually be found in reports from professionals. Useful sources of expert opinion include:

- The health service: if the child or young person has been seen recently by a specialist or is receiving help from a health professional such as a speech and language therapist;
- Evidence from the child or young person's current school or other institution;
- Privately obtained reports from independent professionals, such as an educational psychologist, occupational therapist or speech and language

therapist. The relevant professional organisation (such as the British Psychological Society for educational psychologists) publishes names of members who can provide a private assessment. If the professional specialises in the difficulties experienced by the child/young person their views will have more weight. Private reports can be very expensive, so you may wish to consider:

- If you qualify for Legal Aid, this could cover the cost of an independent report – you can [check if you can get legal aid online](#);
- Voluntary organisations that specialise in a particular disability may be able to provide an assessment at a modest cost.

If there was a recent EHC needs assessment (including on transition from a Statement to an EHC plan), the LA should have sought information and advice from a range of professionals, including an educational psychologist – see the section on [what happens in an EHC needs assessment](#) for more information. If the LA should have obtained an up-to-date report from a particular professional and failed to do so, you should ask them to do this. If they refuse you can ask the Tribunal to order that they obtain the report needed – you can do this using the Request for Changes form on the Tribunal’s website.

Other evidence about needs and provision

As well as professional reports, the following can be useful sources of written evidence:

- Written statements from those involved with the child or young person. This can be particularly useful if they cannot attend as a witness. For example:
 - Evidence from teachers;
 - Evidence from someone who knows the child or young person from outside school, such as a worker at a youth club or a carer;
 - Views and experiences of the parent – they will be the person who knows their child best, and what they have to say is evidence. Although the parent will be there on the day of the hearing it may be sensible to put in a witness statement explaining their perspective to ensure they get all their points across.
- Views of the child/young person, written by themselves if they are able to do so or via a third party.
- Home–school diaries.
- Video/audio evidence (this should be short and to the point; video evidence more than 10 minutes long is highly unlikely to be watched in full). It would be

best to contact the Tribunal to find out how to submit your evidence, and you should send with it an explanation of who made the recording and how long it is, the nature of the evidence, the identity of any witness recorded, and a statement of the facts the evidence seeks to establish.

- Published information from voluntary groups relating to the child's learning difficulty, or references to relevant research and findings – although beware of relying too much on secondary evidence. The best evidence is going to be primary evidence about the child/young person.
- Reports from annual reviews.
- Examples of the child or young person's work over time.

The key point is to think about the changes you want made to the EHC plan, and work out what evidence you need to show that those changes are necessary.

Evidence about the school or other institution

You should include relevant information about the school or institution you want. This should include its most recent Ofsted report, its prospectus, details of the costs of the placement, and any reports or assessments about the child or young person which the school or other institution has produced. You can refer to this evidence to support your arguments that this setting can support the child or young person's needs.

In the case of a school which is wholly independent, you will need to include the consent of the school in order to ask the Tribunal to name it in the EHC plan. This should be a letter from the school confirming that they have offered the child or young person a place.