

## Information for Parents and Carers

### Appeals about the Named School, or That There is No School (or College/Setting) Named in Section I of an EHC Plan

We would recommend you also appeal the contents of the EHC plan, as your child's needs and required provision are relevant in every appeal about the school/setting named.

Firstly, it's important to fully understand why the local authority reached this decision. It's always a good idea to continue talking to the local authority about your concerns or any questions you have. These discussions will help you to decide whether to appeal, and if you do, will be helpful for preparing your appeal.

As you are appealing against Section I it is not a requirement to go to mediation but it is worth considering because the local authority could reconsider their position as a result of the mediation

If you decide to appeal, you must complete a SEND35 appeal form and send it with a copy of the decision letter to the tribunal service within 8 weeks of the date on the letter (see our Send Tribunal Process guide for more information).

#### The Legal Position

The Children and Families Act 2014 says:

The child's parent or the young person has the right to request a particular school, college or other institution of the following type to be named in their EHC plan:

- maintained nursery school
- maintained school and any form of academy or free school (mainstream or special)
- non-maintained special school
- further education or sixth form college
- independent school or independent specialist colleges (where they have been approved\* for this purpose by the Secretary of State and published in a list available to all parents and young people) (38)

## The Legal Position (continued)

The local authority may only reject your request to name your chosen school where:

- The school or other institution is unsuitable for the age, ability aptitude or special education needs of the child or young person
- The attendance of the child or young person would be incompatible with the provision of efficient education for others
- The attendance of the child or young person would be incompatible with the efficient use of resources (39)

Some Independent schools have opted in. There is a list of approved independent schools and colleges, known as 'section 41' schools.

## What does this mean?

You can request to name a school or setting, provided it is one of the types listed above.

The local authority may only reject your chosen school for one of the above reasons; it would not be lawful to refuse because a school is full for example.

You cannot request the local authority consult with an Independent school that has not opted into section 41, but you can make representations for one.

The Act also says that children and young people should be educated in mainstream schools, unless incompatible with the wishes of the child's parent or the young person, or with the efficient education of others. (33.2)

Where the local authority do not agree with your request for a particular school (due to one of the reasons above) they must name a school they think appropriate, or a type of school they think would be appropriate.

This is the most complex type of appeal, we do not cover every possible scenario here and you may want to talk your particular situation through with us.

You should also appeal the contents of the EHC plan with an appeal about the setting named. If you don't the judge cannot make an order to change the needs and provision within the plan. See our separate section appealing the contents of an EHC plan.

## Supporting Evidence

Keep in mind what the law says about which school or setting you can request, and build your case around the reason/s the local authority have refused your request which will fall in one or more of these categories:

1. The school or setting you have requested is unsuitable

Admitting your child to the school you have requested would be incompatible...

2 .....with the efficient education of others

3 .....with the efficient use of resources

So let's look at these reasons more closely.

### 1. Unsuitability

You will need to evidence that the school you are requesting is suitable, i.e. can meet the needs of your child, and that the school or type of school named by the local authority is unsuitable.

If you are appealing for a mainstream school, the law is weighted on your side as children and young people have the right to a mainstream education.

Mostly we hear from parents appealing against mainstream for a specialist setting, and we will focus on gathering the evidence for this type of appeal here.

If you are appealing for an Independent setting, you will need a written offer of a place ahead of the hearing, as the judge will need to see they are prepared to admit your child before making an order.

Evidence for the school you are requesting might be from:

- What the EHC plan says (or you would like it to say) your child's needs and provision are
- Your child's views - a good example might be where your child says they do not understand the lessons, or perhaps have low confidence or self-esteem due to feeling 'too different' in their current school.
- The school or setting's own website and their SEN information report - the type of school, specialism, experience of teaching children with similar SEN - link it to your child's needs where you can
- The curriculum followed and qualifications children are entered for

The range and nature of the needs of other children in the school/year/class

- Information you have gathered from visiting the school - focus on what it is that makes you feel it is the right school, the environment, the children you saw when visiting and how they were being taught, the classes, or the staff and facilities available etc.

## 1. Unsuitability (continued)

- Progress reports (IEP/pupil passport/provision map/behaviour or exclusion record) from the current setting that show little or no progress despite ongoing targeted support
- Behaviour policy and how it may suit your child
- Assessment/specialist reports showing the areas of difficulty, levels and rate of progress and particularly where there is deterioration with their mental health
- Prospectus & Ofsted report - the tribunal panel will want to see these documents, and you may be able to point to some of the information or findings within your appeal notes

Consider also the response from the setting you have requested, where the local authority has consulted with them and they say they are unsuitable...

Does the response:

- Fully explain their reasons
- Consider and respond to how they could/couldn't meet your child's needs and
- Correspond with their 'offer' (e.g. look at their website for types of students they admit and also their SEN information report)

Education Other Than at School (not to be confused with elective home education)

Section 61 of the Children and Families Act says that, provided they are satisfied that it would be inappropriate for provision to be made in a school/setting, a local authority may arrange for any special educational provision to be made 'otherwise than in a school or post-16 institution or a place at which relevant early years education is provided (subject to consulting with parents and the young person)'.

This section of the Act can be helpful if you are seeking to secure home tuition for all or part of your child/young person's education.

To argue successfully in this scenario, you will need to gather evidence to show that attending a school/setting would be inappropriate. In addition to some of the evidence we've already mentioned above you should include:

- Information about the last school/setting your child went to and their attendance record, including information about why this was not working well
- Support and strategies used
- Any professional reports or emails indicating that attending a school would be detrimental
- Details of the provision/package of support you have identified, including costs, and why this would be appropriate for your child

## 1. Unsuitability (continued)

### Residential schools

You will need to establish that your child/young person needs educational provision extending beyond the school day. Relying on arguments around them needing constant supervision is not likely to be sufficient. Evidence might include:

- Social Care involvement - where no previous involvement consider making a request for assessment
- Cost savings that could be made if your child/young person were to attend a residential school (that they would receive a 5-day package, or would remove the need for a specialist service as examples)
- How this could support successful transition into adulthood
- Where this is the nearest suitable setting, but it is too far for your child/young person to travel daily without causing stress or strain

Then consider how to evidence against the school named by the local authority for example:

- The setting's own website and their SEN information report - check it against your child's needs and provision in the EHC plan
- Prospectus and Ofsted report - highlight anything that evidences against naming the school for your child
- Where the local authority have named your child's current school (or another school of the same type) - any examples indicating they are unable to meet your child's needs, such as the environment being unsuitable. This is common for a child/young person with social and sensory needs who may feel overwhelmed in a mainstream environment. Include any emails or notes from professionals that indicate your child would be better suited to a different type of setting.

## 2. Incompatibility with the efficient education of others

Though it is unlawful to refuse because a setting is full, what the local authority are saying here is that admitting your child/young person to the setting you have requested would impact so greatly on the education of others that this would be incompatible. You will need to think about how you can counter this within your case.

The starting point would usually be looking at the response from the setting - the local authority will have consulted with them (though not necessarily the case for an Independent school as they do not have to - read our section 'what the law says').

Does the response:

- Fully explain how the education of others would be impacted
- Provide any detail about the number of students in the year group and set up of the classes including staffing
- Provide any detail of previous numbers of year groups/classes - i.e. have they exceeded their numbers previously?
- Include detail about how they might accommodate the child

The tribunal will expect the setting you have requested to have considered how they could admit your child, and provide evidence that the impact of admitting 'just one child' would be so great this would be incompatible. If the information you have been provided with does not go into enough detail highlight this in your appeal, the judge will likely unpick this further at the hearing.

## 3. Admitting your child to the school you have requested would be incompatible with the efficient use of resources

This is about the local authority duty to have regard to the 'public purse' and is used where they believe your child/young person's needs can be met 'more cheaply'.

Costs can only be compared with 'like for like' provision, for example with a mainstream versus specialist appeal, your key arguments will be about proving suitability of the setting/s, and not the cost.

Where the local authority 'offer' is for a specialist setting (remember a unit is mainstream in law) and you are requesting a different specialist setting, costs are relevant but make sure you have evidenced suitability first - i.e. how your child's needs cannot be met at the setting proposed by the local authority.

The local authority will be required to provide details about the cost of the setting they propose and, if they are citing cost as the reason they cannot name your chosen setting, they will likely include a comparison (and incorporate transport costs if this is also a factor).

### 3. Admitting your child to the school you have requested would be incompatible with the efficient use of resources (continued)

However, they may not have provided this information for the setting you are requesting and you will need to find this out. Costs will vary depending on the needs of your child and the type of school you are seeking so the best place to start is with the setting - ask them to provide a cost breakdown.

You can ask the local authority whether they already transport students to the school you are requesting to establish whether this will reduce transport costs, a shared taxi for example.

Where an Independent school have made an offer of a place following a consultation, they would usually send the local authority a breakdown of costs. You can ask the setting or the local authority for this.

Where the costs of your requested setting are higher:

- Consider the overall cost to the public purse, such as listing in your appeal the services and therapists that would need to be available if your child didn't go to the setting you want for them, for example mental health or occupational therapists
- Look at whether the setting you are seeking has on-site therapists, particularly where the EHC plan includes this provision. Perhaps it will be cheaper for your child overall to attend a setting where this is included
- It can be useful to refer in your appeal to the law that says 'children and young people should be enabled to achieve their best' (see our information 'what the law says'). You could acknowledge that costs are higher for your chosen setting, but this provides your child with the chance to 'achieve their best.'

If you do not have cost breakdowns for either or both settings by your evidence deadline, make it clear in your case that you have requested it but that this information is outstanding.

### Witnesses

You can ask professionals to be your witness including school staff; establish whether they will be in support of your appeal. You can ask if they will provide a letter or report which helps you to evidence your key points that you can then include in your appeal. You could ask if they will come along to the hearing, if they decline you can request a summons for them to attend - before you do this be sure they intend to support your case!

Where you have an offer from an Independent school or College the tribunal will expect a representative to attend the hearing to answer any questions about provision.

Therapists and psychologists are likely to charge a daily fee to attend a hearing, and it will be your responsibility to cover this cost.

If you need to ask any questions or for further advice, please contact:

Barnardo's SENDIASS on [southteessendiass@barnardos.org.uk](mailto:southteessendiass@barnardos.org.uk)