



## Cumbria SEND Information, Advice and Support Service

Offering impartial information, advice and support to children and young people with special educational needs and or disabilities and their parents & carers.

### Requesting a Particular School or College in an EHC Plan

**My son/daughter is getting their first EHC Plan/ The Local Authority is proposing to amend the EHC Plan. How do I ask for a particular school / college to be named in it?**

When the Local Authority send you a draft EHC Plan or propose amendments to an existing EHC Plan, they must give you at least 15 days, beginning with the day on which the draft plan/notice of amendments is served, in which to:

- (a) Make representations about the content of the draft plan/proposed amendments, and to request that a particular school or institution be named in the plan; and
- (b) Require the local authority to arrange a meeting between them and an officer of the local authority at which the draft plan/proposed amendments can be discussed.

The types of school which you have a right to request are set out in s.38 (3) of the Children & Families Act 2014 and they are:

- a maintained school, mainstream or special;
- an Academy (which includes free schools);
- an institution within the further education sector in England (i.e. an FE college)
- a non-maintained special school;
- an independent school approved under s41 of the Children and Families Act 2014

A non-maintained special school is a type of special school which is not maintained by the state but charges fees on a non-profit making basis. Most non-maintained special schools are run by major charities or charitable trusts.

The Secretary of State can approve certain special schools or post-16 institutions under s.41 of the Children & Families Act 2014 and this will mean that a request to name them in an EHC plan can be made. You can find a list of the schools and institutions approved under s41 here:

<https://www.gov.uk/government/publications/section-41-secretary-of-state-approved-list/section-41-secretary-of-state-approved-list>

The majority of schools on the list independent special schools, but there are an increasing number of colleges and post-16 institutions joining the list too.

If you make a request for one of the schools or institutions listed in s.38(3), the Local Authority can **only** refuse your request using one or more of the exceptions in s39(4) Act..

These are that:

- (a) the school or other institution requested is unsuitable for the age, ability, aptitude or special educational needs of the child or young person concerned, or
- (b) the attendance of the child or young person at the requested school or other institution would be incompatible with—
  - (i) the provision of efficient education for others, or
  - (ii) the efficient use of resources.

These are the **only** exceptions that the Local Authority can use to refuse the request, and the **only** ones that they would be able to rely on if the case were to go to the SEND Tribunal.

The Local Authority has a duty to consult with the school which a parent or young person requests, but the final decision as to which school or institution to name in the final plan rests with the Local Authority. When one of the schools or institutions listed in s.38(3) has been requested, the Local Authority can choose to name that school / college, even where the school / college has said that they do not wish to be named, or they feel that they cannot meet the child or young person's needs.

### **What about a dual placement?**

There is no legal reason why an EHC plan cannot name a dual placement in Section I. It will be for you to tell the Local Authority why you think that this is the option which best meets your son/daughter's needs as set out in the draft EHC plan and to provide them with any supporting evidence that you have.



### **What happens if the school I want to request is full?**

It is important to remember that the school being 'full' is not a reason in law for refusing a request for a school and it is not one of the exceptions in s.39(4) as set out above. Schools can take more pupils than the 'nominal' figure on roll, although there will come a point at which they cannot be expected to admit any more pupils – and the Local Authority might argue that to do so would be 'incompatible with the provision of efficient education' of other children. However, the test of incompatibility is a strong one; it is more than simple 'inconvenience' and there is case law which suggests that the Local Authority would have to show which children would be affected and how. The Local Authority might also seek to argue that an additional child might represent an 'inefficient use of resources' if they had to employ extra staff or build additional facilities. However, in practice, it is very often possible to accommodate an extra child within an existing classroom. As such, it is always advisable to ask the Local Authority to explain the basis of their objection to naming a school (which they are likely to find difficult), rather than accepting any suggestion that a school is "full".

### **What if the school I want to request isn't one of the types listed above?**

You can also ask for a different type of school, such as an independent school that isn't on the approved list, but the Local Authority can refuse, without being limited to the reasons in s39(4).

It's very likely that the Local Authority will refuse, because if they name an independent school they would be responsible for funding all of the fees. So they are likely to make the case that your son or daughter's needs can be appropriately met in a maintained school / Academy (where places will both cost broadly the same amount) and that placing him or her at an independent school would be 'incompatible with the efficient use of resources'.

You will have the right of appeal to the SEND Tribunal against the finalised EHC Plan (or at least against Sections B, F and I - special educational needs, special educational provision and placement).

The Tribunal is an evidence-based process, and the content of Sections B and F within the EHC Plan will be a key part of the evidence that the Tribunal will consider in an appeal about naming an independent school. You would need to ensure that the EHC Plan sets out all of your son or daughter's SEN and all of the special educational provision that is necessary to meet them: if there are features of provision available at your preferred placement that are not available in maintained



school placements / Academies, it will be important that your son or daughter's need for this provision is clearly expressed within section B the Plan, and that the provision linked to those needs is specified at section F - this will strengthen your claim that only this school could meet their needs.

The Local Authority may well refuse to agree to this if it's evident that what's being described would be supportive to your case for a place at the independent school. However, this would not necessarily be a negative if you were to appeal to the Tribunal because you would be able to appeal against all of Sections B, F and I. This is likely to be necessary to ensure that you can 'build' a case to show that the provision to meet your child's needs can only be made at your chosen schools.

Under s19 of the Children and Families Act 2014, Local Authorities must have regard to:

'(d) the need to support the child and his or her parent, or the young person in order to facilitate the development of the child or young person and to help him or her achieve the best possible educational and other outcomes.'

We should emphasise that the phrase 'must have regard to' is not the same as imposing a statutory duty and it also right to point out that this section does not require the Local Authority to offering the best possible special educational provision. Nevertheless, this section does mean that the Local Authority should be considering how the best possible outcomes might be achieved, and it would certainly be open to a parent to argue that those would be achieved by a child attending an independent school.

### **What happens if the Local Authority refuses to name the school or college that I request?**

If you are not happy with the school named in the final Plan (or other aspects of sections B or F of the Plan), you have the right to go to mediation and/or the SEND Tribunal. You must at least consider mediation unless your appeal is only about the school / college (or type of school / college) named in the Plan or the fact that no school or college has been named at all. .

### **My son/daughter already has an EHC Plan: how do we get the school / college in it changed?**

If you already have an EHC Plan which names a particular school or college in Section I and you want to change this, you will firstly need to get the Local Authority



to change the EHC Plan. Annual review is often a good time to seek changes to an EHC Plan.

If an annual review isn't imminent, it is open to you to ask for an early annual review to be held and we have a model letter of request which you can adapt for this purpose.

If your son or daughter's SEN have changed considerably and it's been more than 6 months since your last EHC needs assessment, then you might want to ask for a re-assessment of your child's education, health and care needs. Again, we have a model letter for this purpose.

If the Local Authority refuses to change an EHC Plan following a review, or refuses to carry out a re-assessment, then this will trigger a right of appeal.

If the Local Authority agrees to change the EHC Plan following a review or a re-assessment, then you will have the opportunity to request that a particular school is named in the Plan, and all the information set out in the first section of this factsheet will also be relevant in that situation.