

Naming a place of learning with an Education Health and Care Plan (EHCP)

Early years, school and post 16+ admissions with an EHCP are different to the normal admissions process. A Local Authority (LA) cannot make you go through the normal admissions process if you (16+) or your child (parent/carer) have an EHCP.

Parent/carers or young people have a legal right to request a particular place of learning is named in an EHCP or express a preference for an independent school/college.

A parent/carer or young person can request or express a preference for a particular place of learning when they receive a draft EHCP or a notice that states the LA will be amending the plan.

Parent/carers and young people have a right to a mainstream education if this is what they want but this does not mean a right to a particular mainstream school.

Right to request

Parent/carers or young person have 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.

The LA must consult with any place of learning they are asked to and they can consult with as many places as necessary. Although the LA must consult with the parent/carer or young person's preference they can consult with any place of learning they think may also be suitable and able to meet need.



Expressing a preference for an independent school or college (non-section 41)

Parent/carers and young people can express a preference for an independent school or college to be named in the EHCP, but the LA do not have to consult or name. They must however, have regard to the general principle that the child is educated in accordance with the wishes of their parent/carers as far as possible with the avoidance of unreasonable public spending. The LA have a duty to consider the young persons preference by gathering and listening to their views, wishes and feelings.

If a parent/carer or young person asks for an independent setting to be named in the draft plan as their preference, then they need to prove that none of the schools the LA are offering can meet needs or that the cost of the placement is not unreasonable public spending.

Where a parent/carer or young person is requesting an independent setting they will need evidence from a professional that shows or states why the independent setting is the only school or college which can meet the child or young person's needs.

The LA cannot name an independent school or college in an EHCP without that school or colleges consent, or order that they accept a child or young person without an offer of a placement.

Legal tests when naming a place of learning

The only reason a LA can refuse to name parent/carer or young person preference 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.

The LA has to prove that at least one of these conditions applies in order to not name the parent/carer or young persons preference.

Naming a place of learning

A parent/carer or young person can submit preference for a place of learning either at the draft stage of the EHCP or if the LA have sent a notice to state they will be amending the plan; this normally happens at phase transfer.

Prior to the LA naming the school they must consult with:

- (a) the governing body, proprietor or principal of any school or other institution the authority is considering having named in the plan, and
- (b) if that school or other institution is maintained by another LA, that LA.

The LA should give them 15 days to respond to their consultation, if the place of learning fails to respond to the consultation the LA can decide whether to name them or not without their response.

The final decision about naming a placement lies with the Local Authority but they must ensure they are naming parent/carer or young person preference unless they can't for one of the legal reasons.

LAs can direct a place of learning (but not independent school or colleges) to take a child or young person if it deems that they are suitable and can meet needs. Once the EHCP is finalised whatever place of learning is named in Section I must admit that child or young person.

The LA are legally allowed to name type of setting in section I but means that there is no place of learning that has the duty to admit the child or young person.

If a parent/carer or young person is unhappy with the placement named in Section I of the EHCP or there is only a type of school named, they can challenge this decision at the First Tier Tribunal.