



# #7 Admissions

## Frequently asked questions for parents and young people

These Frequently Asked Questions have been prepared to provide a summary of the key duties on local authorities following the introduction of the Children and Families Act 2014. They are not to be treated as providing legal advice and should be used as a guide only.

If legal advice is required contact SEN4You directly on 01908 082422 or [Advice@SEN4You.co.uk](mailto:Advice@SEN4You.co.uk)

### KEY PROVISIONS

- Sections 39, 40, 41 and 43 Children and Families Act 2014
- Chapter 9, SEN and Disability Code of Practice 2014

#### Can parents or the young person express a preference for a school/college when an EHC Plan is being issued?

Parents or the young person (when aged over 16) may express a preference for the following types of educational establishment:

- Maintained school or nursery;
- Academy (which includes free schools);
- Non-maintained Special School;
- Independent Specialist School/College approved by the Secretary of State;
- Further Education College;
- Sixth Form.

#### Does the local authority have a duty to name the parents' /young person's preference for a school/college?

Yes. The local authority is required to name the preferred school/college unless it can demonstrate that any of the following apply:

- The school/college is unsuitable in light of the child/young person's age, ability, aptitude or special educational needs (SEN);
- It would represent an inefficient use of the local authority's resources to name the preferred school;
- It would prejudice the efficient education of other children to name the preferred school.

#### What happens if the school/educational setting preferred by the parent/young person is not included in the list above?

As the child's parent or the young person you also make representations for places in non-maintained early years provision or at independent schools or independent specialist colleges or other post-16 providers that are not approved and the local authority must consider this request.

However, the local authority is not under the same conditional duty to name the provider but must have regard to the general principle in section 9 of the Education Act 1996 that children should be educated in accordance with their parents' wishes, so long as this is compatible with the provision of efficient instruction and training and does not mean unreasonable public expenditure. The local authority will need to be satisfied that the institution would admit the child or young person before naming it in a plan since these providers are not subject to the duty to admit a child or young person even if named in their Plan.

#### So what does efficient education of other children mean?

Efficient education means providing for each child or young person a suitable, appropriate education in terms of their age, ability, aptitude and any SEN they may have. Where a local authority is considering the appropriateness of an individual institution, 'others' is intended to mean the children and young people with whom the child or young person with an EHC Plan will directly come into contact on a regular day-to-day basis.

#### Can parents/young people request a dual placement?

Yes. Children with EHC Plans can attend more than one setting under a dual placement. Dual placements enable children to have support from a mainstream and a special school. This can help to prepare children for mainstream

education and enable mainstream and special schools to share and develop their expertise in supporting children with different types of SEN.

Where appropriate, a young person with an EHC Plan can attend a dual placement at an institution within the further education sector and a special post-16 institution. The local authority should work with the young person, post-16 provider and independent specialist college to commission such a placement where they will achieve the best possible outcome for the young person.

In order for a child with SEN, who is being supported by a dual placement to be deemed as being educated at a mainstream school, they should spend the majority of their time there.

### **What if, as parents or the young person, we do not want to express a preference?**

Where a parent or young person does not make a request for a particular nursery, school or college, or does so and their request is not met, the local authority has a duty to specify mainstream provision in the EHC Plan unless it would be:

- Against the wishes of the parent or young person;
- Incompatible with the efficient education of others.

The local authority would then seek to name the nearest most suitable educational placement to the child/young person's home address.

### **Can the local authority refuse to name a mainstream setting?**

Yes, but only if the local authority can show incompatibility with the efficient education of others. Mainstream education

cannot be refused on the grounds that the school is unsuitable for the child.

Even where incompatibility is identified, the local authority must also demonstrate that there are no reasonable steps which can be taken to overcome the incompatibility.

### **Does the local authority have to tell the educational setting, as part of the consultation, that a direct payment will be used to deliver services?**

Yes. The local authority must seek the agreement of the nursery, school or post-16 institution where the draft plan sets out any provision to be delivered on their premises which is secured through a direct payment. Where this includes a direct payment for SEN provision, it must include formal written notice of the proposal specifying:

- The name of the child or young person in respect of whom direct payments are to be made;
- The qualifying goods and services which are to be secured by direct payments;
- The proposed amount of direct payments;
- Any conditions on how the direct payments may be spent;
- The dates for payments into a bank account approved by the local authority;
- Any conditions of receipt that recipients must agree to before any direct payment can be made.

If the setting does not agree to accommodate the provision being funded by a direct payment, then the direct payment cannot be used in that setting.





### **Does the local authority have a duty to consult with a setting before naming it?**

Yes. The local authority must consult the governing body, principal or proprietor of the school or college concerned and consider their comments very carefully before deciding whether to name it in the child or young person's EHC Plan, sending the school or college a copy of the draft plan.

If another local authority maintains the school, they too must be consulted.

### **How long is the consultation process?**

The nursery, school or college and, where relevant, the other local authority, should respond within 15 calendar days.

### **What if the educational setting raises concerns about the child or young person's admission following the consultation process?**

The local authority will have to consider the responses very carefully and decide if the preference should prevail. This will mean that the local authority will have to respond setting out for the educational setting why the child/young person should be admitted and why any possible difficulties can be overcome.

### **What if the school or setting refuses to be named?**

The final decision on whether the school or college should be named rests with the local authority. Where the school/college is named in an EHC Plan they are required to admit the child or young person.

### **What about Academies?**

Academies are under the same duties as maintained schools. The admissions arrangements for children with EHC Plans are set out in their Funding Agreement and they must agree to being named unless they can demonstrate that the child's or young person's attendance would be incompatible with the provision of efficient education of other children. They must also show that no reasonable steps can be taken to overcome the incompatibility.

### **Can the local authority direct an Academy to admit?**

Yes. Where an Academy is named in an EHC Plan the Governing Body is required to admit the child/young person.

### **Can an Academy challenge the local authority's decision to name them?**

Yes. The Academy can refer the matter for determination to the Secretary of State in accordance with the provisions of its funding agreement. The Secretary of State's determination is final, although it would be subject to any appeal parents made to the First Tier Tribunal. The Secretary of State is not interested in the merits of why the Academy has been named but whether they have been properly consulted and whether the local authority has dealt with any concerns clearly.



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