

ASK THE
JUDGE



#9 Home/Alternative Education Arrangements and Part Funding for Children/Young People with EHC Plans

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

KEY PROVISIONS

- Section 7 The Education Act 1996
- Section 42 and 63 Children and Families Act 2014
- Chapter 10 SEN and Disability Code of Practice 2014

Can a parent make their own educational arrangements for a child/young person with Special Educational Needs (SEN)?

Yes. Under section 7 of the Education Act 1996 parents are free to make their own educational arrangements for their child whether they have an Education, Health and Care (EHC) Plan or not. They do however need to demonstrate that the arrangements made are suitable to meet the child's SEN.

Can a parent home educate a child with an EHC Plan?

Yes. Under section 7 of the Education Act 1996 parents have the right to educate children, including children with SEN, at home. Home education must be suitable to the child's age, ability, aptitude and SEN.

Can a child/young person with an EHC Plan be withdrawn from school to be home educated without the consent of the local authority?

No. Although parents are able to deregister their child from a mainstream school without the agreement of the local authority, they must still have the consent of the local authority before they can lawfully home educate their child.

Where a child or young person is a registered pupil and the parent decides to home educate, the parent must notify the school in writing that the child or young person is receiving education otherwise than at school, the school must then remove the pupil's name from the admission register. The best way for this to be managed is for the school to convene an annual review meeting.

If the school is a special school, the local authority must give consent for the child's name to be removed, but this should not be a lengthy or complex process. There is no provision in law for a 'trial period' of home education. Again, the best way for this to be managed is via the annual review process.

What happens if the local authority is concerned about the suitability of the home education?

If the local authority is not satisfied that the alternative arrangements made by the child's parent or the young person are suitable, it could either conclude that the arrangements are not suitable and name another appropriate school or college or it could choose to assist the child's parent or the young person in making their arrangements suitable, including through a financial contribution. But the local authority would be under no obligation to meet the costs of those arrangements.

In addition, the local authority has powers to secure the child's attendance at school by issuing a School Attendance Order if it is concerned about the suitability of the home education arrangements.

Does the local authority have a duty to pay for provision/schools named in an EHC Plan?

When an EHC Plan is maintained for a child or young person the local authority must secure the special educational provision specified in the plan.

If a local authority names an independent school or independent college in the plan it must also meet the costs of the fees, including the costs of support, any boarding and lodging where relevant.

If parents make their own educational arrangements, does the local authority have a duty to provide for the child/young person?

No. The local authority is relieved of its duty to secure the special educational provision in the EHC Plan, including securing a place in a school or college named in the Plan, if the child's parent or the young person has made suitable alternative arrangements for special educational provision to be made, in an independent school or college or at home.

Can parents make their own educational arrangements without any input from the local authority?

No. Where the child's parent or the young person makes alternative arrangements, the local authority must satisfy itself that those arrangements are suitable before it is relieved of its duty to secure the provision.

It can only conclude that those arrangements are suitable if there is a realistic possibility of them being funded for a reasonable period of time by the parents.

If it is satisfied, the local authority need not name its nominated school or college in the EHC Plan and may specify only the type of provision. This is to avoid the school or other institution having to keep a place free that the child's parent or the young person has no intention of taking up.

Where the parents are home educating, is the local authority required to fund the provision at home?

Local authorities should fund the SEN needs of home educated children where it is appropriate to do so. This will depend on the child's individual circumstances and consideration as to why their needs cannot be met within school provision. The high needs block of the Dedicated Schools Grant is intended to fund provision for all relevant children and young people in the authority's area, including home educated children.

Does the local authority have any right to access the family home if they are concerned about the delivery of home education?

No. Local authorities do not have the right of entry to the family home to check that the provision being made by the parents is appropriate. They may only enter the home at the invitation of the parents. However, if the local authority does have concerns about the welfare of a child it may consider a referral to social care or consider using its powers to enforce school attendance.

What if the local authority agrees that home education is the only appropriate provision for the child/young person?

In cases where local authorities and parents agree that home education is the right provision for a child or young person with an EHC Plan, the Plan should make clear that the child or young person will be educated at home. If it does then the local authority, under section 42(2) of the Children and Families Act 2014, must arrange the special educational provision set out in the Plan, working with the parents.



In cases where the EHC Plan gives the name of a school or type of school where the child will be educated and the parents decide to educate at home, the local authority is not under a duty to make the special educational provision set out in the plan provided it is satisfied that the arrangements made by the parents are suitable.

Does the local authority have a duty to contribute to the costs of school placements where the parents make their own educational arrangements?

The local authority has discretion to provide financial assistance to parents where it has concerns in respect of the suitability of the provision proposed being provided at a school.

However, there is no general duty to contribute to the funding of placements arranged by parents.

What happens if parents make their own arrangements to the health provision in an EHC Plan?

The health commissioning body is still responsible for arranging the health care specified in the child or young person's EHC Plan. If the child's parent or the young person makes alternative arrangements for health care provision then the health commissioning body would need to satisfy itself that those arrangements are suitable. If the arrangements are not suitable the health commissioning body would arrange the provision specified in the plan or, if they felt it appropriate, assist the child's parent or the young person in making their own arrangements suitable.

What happens to the social care provision in an EHC Plan if parents make their own arrangements?

For social care provision specified in the plan, existing duties on social care services to assess and provide for the needs of disabled children and young people under the Children Act 1989 continue to apply.

Where the local authority decides it is necessary to make provision for a disabled child or young person under 18 under section 2 of the Chronically Sick and Disabled Person Act (CSDPA) 1970, the local authority must identify which provision is made under section 2 of the CSDPA, under which there is a duty to provide the services assessed by the local authority as being needed. The local authority must specify that provision in the EHC Plan and it must secure that provision.

Does the EHC Plan still have to be reviewed where the parents have made their own arrangements?

Yes. The local authority must review the plan annually to assure itself that the provision set out in it continues to be appropriate and that the child's SEN continue to be met.

Where the local authority has decided that the provision is appropriate, it should amend the plan to name the type of school that would be suitable but state that parents have made their own arrangements under section 7 of the Education Act 1996.

