

Requesting and naming school or college for a child or young person with an EHC Plan

When considering what school to request for your child or young person, you may find it helpful to know as much as possible about each school you and your young person might be considering. You may need to know that your preferences are based on a sound understanding of what each school can offer your child/children or young person. We hope the suggestions outlined in this factsheet will help you through this important process in your child's/young person's education.

Requesting a nursery, school or college with an EHCP

As a parent or young person you will be able to request a particular school or college when you receive a draft EHC plan (an Education, Health and Care Plan) or an Amendment Notice amending an EHC plan. This might be when your child is receiving an EHC plan for the first time; if the EHC plan is being amended after an annual review; or if the EHC plan is being amended at any other time (for example, if the child or young person has to move schools and the EHC plan needs to be amended to reflect that change).

You as a parent or the young person in their own right, has 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

These are listed in section 38(3) of the Children and Families Act ("CAFA") 2014. (A specialist unit or resourced provision may be a separate institution or part of a mainstream school).

Please note that the only reason the local authority can refuse the request 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.

Family Action Islington SEND Service (Impartial Support Advice and Information on Disability and Special Educational Needs). Lough Road Centre, 61-71 Lough Road, London. N7 8FF

Advice line: 020 3031 6651

Email: islingtonsend@family-action.org.uk

Facebook: <https://www.facebook.com/IslingtonSENDIAS> Website: www.islington-send.org.uk
Registered charity no: 264713 Registered company limited by guarantee in England and Wales no: 01068186

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This is set out in section 39(4) CAFA 2014. The LA has to prove that at least one of these conditions applies in order to dislodge the parent or young person's preference.

If you want in your child's or young person's EHCP one of the above types of school or college to be named and the LA (Local Authority) is refusing to consult with them, or if they have rejected your request for a reason other than one of the reasons listed above, you can come for support to **Islington Sendias** by calling us on our Advice Line on **020 3031 6651** or emailing us at: islingtonsend@family-action.org.uk

If the local authority have already finalised your child's EHC plan and named a different school, you can go to Mediation and also appeal to the First-tier Tribunal (Special Educational Needs and Disability) (the "SEND Tribunal").

Mediation services

If you still feel that there are unresolved concerns or decisions that you are not happy with following on from communications with the Local Authority, you may like to consider mediation. Mediation is a less formal way of working out a solution to a problem. It involves the use of a completely independent person who is trained in resolving disputes to help the people involved agree on a way to resolve the problem. Mediation works best if the people involved are able to compromise as in these circumstances the mediator is able to use this to try and obtain an agreement that all involved are happy with. The cost of mediation is paid for by Islington Council.

Mediation in Islington is provided by **Global Mediation** and they can be contacted on **0800 064 4488** or email sen@globalmediation.co.uk.

There are independent disagreement resolution and mediation services that are available to help to overcome disagreements. Considering mediation is a requirement for those wishing to appeal to HM Courts and Tribunal Service.

The First-tier Tribunal (Special Educational Needs and Disability)

The "SEND Tribunal" is an independent national tribunal which hears parents' and young people's appeals against LA decisions about the special educational needs of children and young people. **Islington Sendias** can advise and prepare you for both Mediation and Tribunal.

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The right to a mainstream education

If you as a parent or your young person wants a mainstream school or college named in the EHC plan, there is another part of the law you can rely on as well. Section 33 CAFA 2014 says that a child or young person with an EHC plan must be educated in a mainstream setting unless:

- it is against the wishes of the child's parent or the young person; or
- it is incompatible with the provision of efficient education for others and the LA shows that there are no reasonable steps that it could take to prevent the incompatibility.

Even if the LA successfully argued that a mainstream school was unsuitable for the ability, aptitude or SEN of the child or young person (one of the lawful reasons for refusing a school, detailed above under 'Requesting a nursery, school or college'), if they wanted to name a special school against your parental views or your young person's wishes they would also have to show that it was incompatible with the provision of efficient education for others.

It is worth noting that although this is a right to mainstream education, this is not necessarily a right to a particular mainstream school.

Steps that are taken after parent or young person is naming a school?

An LA, before naming a school, must consult:

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

The LA should give them 15 days to respond. If they fail to respond, the LA does not have to wait to make a decision about naming a school/college. The LA still needs to observe the statutory deadlines for issuing a final plan. The LA should issue the draft EHC plan (or amendment notice) by the deadline to make sure it can comply with its consultation duties.

The final decision rests with the LA where your child or young person lives as this is the responsible local authority. This is even if the school or college, and/or the where the school or college is located (if different), objects, the home LA can still choose to name the school or college in the plan.

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What happens when young person or parent asks for an independent school or college?

Your young person (16+) and you as parents have a right to request for your child the settings listed above, set out in section 38(3) CAFA 2014 (Please see page 1 of this factsheet). However, this does not mean that you cannot ask for a place at an independent setting which is not on the above list. Where you as a parent are making representations for an independent setting, the LA must have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents, so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure (section 9 Education Act 1996). If your young person is requesting an independent school or college, the LA should consider this as part of their duty to consider the young person's views, wishes and feelings (section 19 CAFA 2014).

The difference is this: when a parent or young person requests a section 38(3) school or college, the LA must comply with the request unless the limited exceptions outlined above apply. If the LA refuses to name the parent or young person's choice, the onus is on the LA to prove why it is not possible. However, when a parent or young person asks for an independent setting as part of their 'representations' on the draft EHC plan, the onus is on them to prove that none of the schools the LA is offering can meet the child or young person's needs, or that the cost of the placement will not constitute an unreasonable public expenditure. Public expenditure includes all the costs to the public purse of the placement not just those incurred by the LA education budget. This can include social care costs, health costs and any other costs incurred by any public body

If however, as a parent or young person you cannot show this, the LA is under no obligation to look at independent provision. It does not matter that the independent setting proposed is an excellent school and/or better suited to the child or young person's needs than the school the LA has in mind. LAs are not bound to offer a child or young person with SEN 'the best' provision to meet their needs – only what is necessary to meet their needs. In practice, the most important point to prove is not that the independent setting is better than the LA's proposed school or college, but that the school or college offered by the LA cannot meet your child's or young person's needs.

Where you or your young person is requesting an independent setting, they will generally need evidence from a professional as to why the independent setting is the only school or college which can meet the child or young person's needs. Additionally, there must be an offer of a place from the independent setting. Unlike the section 38(3) schools listed above, an LA cannot order an independent school to accept a child or young person. It is always worth checking whether the independent setting is in fact a section 41 school or a non-maintained special school – if it is, it comes within the list in section 38(3), and so then the burden shifts to the LA to show that it is not the appropriate school to name in the EHC plan.

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What happens once a school or college is named in an EHC plan?

If one of the type of nurseries, schools or colleges listed in section 38(3) CAFA 2014 is named in section I of your child's EHC plan then they must admit the child or young person

- If an independent school is named in section I, then the LA must pay any fees payable in respect of education or training provided for the child or young person at that school, institution or place in accordance with the EHC plan
- If you disagree with the choice of school named in the plan by the LA then you could challenge the decision at appeal as well.
- If you receive an EHC plan which does not specify a particular school/college, then you can come for advice to Islington Sendias.

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