SEND Empowerment
ADVICE & SUPPORT

Appealing the School Named in an EHC Plan

A Guide for Parents and Carers

For parents and carers of children and young people with an Education, Health and Care Plan in England

If you are unhappy with the school or college named in your child's Education, Health and Care Plan (EHCP), you have the right to appeal to the Special Educational Needs and Disability Tribunal (the SEND Tribunal). This guide explains how the process works and how to give your appeal the best possible chance.

This guide explains:

- Which schools and colleges you can request
- The reasons a Local Authority (LA) can refuse your request
- Your right to a mainstream school
- How to request an independent school
- Why appealing Sections B and F of the EHCP matters
- How to submit your appeal and what evidence to include

Which Schools and Colleges Can You Request?

As a parent or carer, you have the right to request any of the following types of school or college to be named in your child's EHCP:

- A state-funded mainstream school or nursery
- A state-funded special school
- An academy (mainstream or special)
- A college or further education institution
- A non-maintained special school
- A Section 41 school or college, these are independent settings that have chosen to make themselves available to parents requesting placements through the EHCP process. You can find a list of Section 41 schools on the government website.

> **Tip:** If you are not sure what type of school you are asking for, you can check on the government website 'Get Information About Schools'.

When Can the LA Refuse Your Request?

The Local Authority must name your preferred school or college unless it can prove at least one of the following:

- The setting is not suitable for your child's age, ability, aptitude or special educational needs
- Your child or young person’s attendance would be incompatible with the provision of efficient education for others.

- Naming that school would not be an efficient use of public money

The LA has to provide clear evidence for whichever reason it gives. Simply stating one of these reasons is not enough, they must be able to prove it.

If the LA says the school is not suitable for your child:

- Gather information about the school, look at its Ofsted report and prospectus.
- Compare this with the evidence about your child's needs.
- Consider whether professional reports support your case.

If the LA says your child attending would disrupt other pupils:

- The LA must show a real, concrete disruption, not something minor or that could be resolved with the right support.
- If the school says it is 'full', ask exactly how many pupils are on roll and whether there is any flexibility.
- There is no legal definition of a school being 'full'. An LA can still be required to name a school that says it has no places, unless it can prove the child's attendance would genuinely cause the issues described above.

If the LA says it would be an inefficient use of resources:

- Ask for the exact breakdown of costs the LA says it would incur, including transport.
- Ask for the costs of the school the LA is proposing, including transport and any outside professionals.
- The LA must weigh the extra cost against the educational, health and social care benefits to your child.

Your Right to a Mainstream School

If you want your child to receive mainstream education, the law provides important protection. Under section 33 of the Children and Families Act 2014, where the section applies, the Local Authority must secure that your child is educated in a mainstream setting unless:

- You, as the parent or carer, do not want mainstream education; or
- Mainstream education would be incompatible with the provision of efficient education for others.

The LA cannot rely on incompatibility with the efficient education of others if reasonable steps could be taken to prevent that incompatibility.

This means that an LA can't decide that a special school would be a "better fit" for your child. If you want mainstream education, the statutory test must be considered. However, this is a right to mainstream education, not necessarily a right to one particular mainstream school. A

request for a specific school is considered separately under the rules relating to parental preference.

> **This is a right to mainstream education but not necessarily to one specific mainstream school.**
> If you and the LA agree your child should be in a mainstream setting but disagree about which school, this right does not help you secure a particular school. The section above about requesting your preferred school would apply instead.

Requesting an Independent School

Parents do not have an automatic right to request an independent school in the same way as the schools listed above. However, you can still make a case for an independent placement, and the LA must take your views seriously.

When you ask for an independent school, the key difference is:

- For schools on the standard list, the LA must name your choice unless it can prove one of the limited reasons above
- If the independent school is not a Section 41 approved school, it doesn't fall within the list of settings for which parents have the conditional right to request under the Children and Families Act 2014. You can still ask for a wholly independent school to be named, but you will usually need strong evidence showing why the LA's proposed placement isn't appropriate and why the independent placement is appropriate for your child's needs. Cost and the overall use of public resources may also be relevant.

When working out whether the cost is reasonable, the LA should consider the total cost to the public purse, including any health or social care costs, and weigh this against the benefits to your child.

> **Tip:** It is always worth checking whether the independent school you want is actually a Section 41 school or a non-maintained special school. If it is, it falls into the standard list and the burden shifts back to the LA to justify not naming it.

> **If you are requesting an independent school, you will usually need:**
> A professional report explaining why only that school can meet your child's needs, and a letter from the school confirming they have offered your child a place.

Why You Should Also Appeal Sections B and F

Depending on the issues in your child's plan, you may need to consider appealing Sections B and F as well as Section I.

Here is why:

- Section B should fully describe your child's needs and difficulties

- Section F should set out, in specific detail, the support and provision your child requires
- The school named in Section I should be a logical conclusion to what Sections B and F say

If Sections B and F do not accurately reflect your child's needs and the provision they require, the Tribunal may decide that the LA's choice of school is appropriate, even if you believe a different school is better suited to your child.

An example to help explain this:

Imagine a child who needs to be in a smaller school environment, to be supported by only one or two familiar adults, and to have access to a calm, quiet space during break times.

If the EHCP does not say these things clearly in Sections B and F, the Tribunal cannot order that a school meeting those needs must be named because the plan does not reflect them.

If Section F is updated to say specifically that the child requires a small school setting, a limited number of supporting adults, and access to a safe space, then the Tribunal can look at which school actually meets those requirements.

> **Tip:** Before submitting your appeal, read through Sections B and F carefully. Ask yourself: does this plan accurately describe my child and what they need? If not, include those sections in your appeal too.

Submitting Your Appeal - Deadlines

The most important thing to do first is check the deadline for making your appeal. You must make sure the SEND Tribunal receives your appeal within two months of the date on the Local Authority's decision letter (or letter enclosing the final EHC plan), or one month from the date on your mediation certificate, whichever is later.

> **Write the deadline date in your calendar as soon as you receive the final EHCP.**
> If the deadline falls in August, you have until the first working day in September.
> If the deadline falls between 25 December and 1 January, you have until the first working day in January.

Important: If you are appealing Section I only (the school or other institution named), you do not have to consider mediation or obtain a mediation certificate before appealing. If you are also appealing Sections B and/or F, you will normally need to contact the mediation service and obtain a mediation certificate before registering your appeal.

How to Register Your Appeal

To make an appeal, you will need to:

- Complete an appeal form this is available on the SEND Tribunal's website (gov.uk)
- Include a copy of the current EHCP
- Include supporting evidence (see below)
- Submit the form by email or post if posting, use recorded delivery and keep proof of postage

> **Tip:** Keep copies of everything you send all letters, reports and forms. You will need a clear record of everything throughout the appeal process.

When the LA issued the final amended EHCP, they should also have sent you a letter confirming your right to appeal, the time limit, and information about mediation and disagreement resolution services. If you did not receive this, the Tribunal may allow extra time.

If your appeal is late, you can ask the Tribunal to accept it out of time and explain the reasons for the delay. The Tribunal will decide whether the late appeal should be accepted.

Evidence to Support Your Appeal

Strong evidence is one of the most important parts of a successful appeal. You should try to include as much relevant evidence as possible when you register your appeal, but you can also add further evidence after you have registered.

Professional Reports

Reports from professionals carry significant weight in appeals. Useful sources include:

- Reports from health professionals currently working with your child for example, a speech and language therapist, occupational therapist, or paediatrician
- Reports from your child's current school
- Independently obtained reports from professionals such as an educational psychologist or occupational therapist

> **Tip:** If you are considering a private assessment, check whether you might be eligible for Legal Aid, which can cover the cost. Some charities that specialise in specific disabilities may also be able to provide assessments at reduced cost.

Other Useful Evidence

As well as professional reports, the following can all be helpful:

- A written statement from you as the parent, you know your child best, and your perspective is valuable evidence
- Written views from your child or young person
- Statements from teachers or other adults who know your child
- Home–school diaries or communication records
- Examples of your child's work overtime
- Reports from Annual Reviews

- Short video or audio evidence, if submitting this, keep it brief and contact the Tribunal first for guidance on how to submit it

Evidence About the School You Are Requesting

You should also include information about the school or college you want your child to attend:

- The school's most recent Ofsted report
- The school's prospectus
- Details of the costs of the placement
- Any assessments or reports the school has produced about your child

If you are requesting a fully independent school, you must also include a letter from the school confirming they have offered your child a place.

Appeal Checklist for Parents

Use this checklist to help you keep track of the steps involved in appealing the school named in your child's EHCP.

Before You Submit Your Appeal

- **Check the deadline**
  You must appeal within two months of the final EHCP, or one month from your mediation certificate, whichever is later.
- **Note any holiday deadline extensions**
  If the deadline falls in August or over Christmas, check the extended dates above.
- **Read Sections B, F and I of the EHCP carefully**
  Consider whether Sections B and F accurately describe your child's needs and required provision.
- **Decide whether to appeal Sections B and F as well as Section I**
  Appealing all three sections together usually gives the strongest case.
- **Gather professional reports**
  Collect any reports from health, education or other professionals involved with your child.
- **Gather evidence about your preferred school**
  Include the Ofsted report, prospectus and details of the costs of the placement.
- **If requesting an independent school, get a place offer letter**
  The school must confirm in writing that they have offered your child a place.

Submitting Your Appeal

- **Complete the appeal form**
  Download from the SEND Tribunal website (gov.uk).
- **Include a copy of the current EHCP**
  Attach the most recent final version of the plan.
- **Attach all evidence gathered**
  Include as much as possible at this stage, you can add more later.
- **Submit by email or recorded post**
  Keep proof of submission and the date you sent it.
- **Keep copies of everything submitted**
  You will need these throughout the appeal process.

After Submitting Your Appeal

- **Confirmation received from the Tribunal**
  Check the Tribunal has received your appeal and note any reference number given.
- **Continue to gather any outstanding evidence**
  You can submit further evidence after registering your appeal.
- **Keep notes of all contact with the LA**
  Record dates, names and what was discussed in any conversations or meetings.

Need Help or Advice?

You're not alone. As an independent SEND Advocacy, we offer **free, confidential support** to help you understand your child's rights and options.

If any part of this process does not happen as it should, please contact us for support and advice.

info@send-empowerment.co.uk

www.send-empowerment.co.uk

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