

Appealing the School named in your EHCP

Information Fact Sheet

You have received notice of what your/your child's educational placement will be, as named in Section I of the EHCP. Sometimes the Local Authority (LA) might not name your preferred school of choice, which can feel frustrating. Below are the potential reasons for this decision and what the legal grounds around them should be. If you are unhappy with the LA's decision for school placement in your/your child's EHCP and you wish to lodge an appeal, then you will need to follow the correct legal process.

What type of School can I request?

The *types* of school which you have a right to request are set out in Section (S.) 38(3) of the **Children & Families Act 2014 (CAFA 2014)** and they are:

- a maintained school, mainstream or special;
- an Academy (which includes free schools);
- an institution within the further education sector in England (i.e. an FE college)
- a non-maintained special school;
- an independent school as approved under (S.41 CAFA 2014)

Why can the LA refuse my request?

If you make a request for one of the schools or institutions listed above, the LA can **only** refuse your request using one or more of the exceptions in (S.39(4) CAFA 2014)

These are that:

- a) **the school or other institution requested is unsuitable for the age, ability, aptitude or special educational needs of the child or young person concerned, or**
- b) **the attendance of the child or young person at the requested school or other institution would be incompatible with—**
 - I. **the provision of efficient education for others, or**
 - II. **the efficient use of resources.**

These are the **only reasons** that the LA can use **to refuse your request**, and the **only** ones that they would be able to rely on if the case were to go to the SEND Tribunal.

Make a note of your appeal deadline



This is the first thing you should do. Mark any deadlines on your calendar and in your diary. You must send an appeal form to the SEND Tribunal within **two months** of the final amended EHC plan, or **one month** from the date you obtain a mediation certificate, whichever is the later. (If the two months/one month ends in August, then you have until the first working day in September to submit the form).

What you will need to submit for your appeal



Local Authority decision letter

A signed and dated letter from the LA giving you the right of appeal to HM Courts & Tribunals Service



Mediation certificate

A signed copy or I confirm that my appeal is about the school/college/institution or type of school/college/institution only whereby a mediation certificate is not necessary



Completed SEND35 appeal form

With your reasons for making the appeal
(form can be found on the gov.co.uk website or google SEND35)



EHCP

A copy of your/child's EHC plan and all the documents listed in Part K



Evidence documents

To support your appeal (you can add to this later up until the Tribunal's evidence deadline, so don't let this delay your appeal submission)



A list of all the documents

Of those enclosed with the application (it will be helpful to the SEND Tribunal if you put your evidence in chronological order, and then write out a list explaining what each document is).

What is Mediation?



A less formal way of trying to settle the dispute between you and the LA. It involves a meeting between you, the LA and an independent mediator, who will try to help you reach agreement on the points of dispute.

How do I get a Mediation certificate?

You need to either:

1. Undertake mediation, and if this does not settle all of the points in dispute, you will be issued with a certificate confirming you took part in mediation; or
2. Speak to a mediation advisor, and you will be issued with a certificate confirming you have been told about your right to mediate but you do not want to do so

You do not need to obtain a mediation certificate if you are appealing just the school placement (section I in the EHC plan) alone.

Check Section B and F of the EHCP

It is important to ensure the EHC plan is an accurate reflection of ALL your/your child's needs because the Tribunal will choose the school that they consider can meet the needs as described in the EHC plan.

In most cases it will be important to appeal against sections B (your/child's difficulties) and F (the provision he or she needs) in your/child's amended EHC plan as well as section I. This is because the school named in section I of a plan should be a logical conclusion to what sections B and F say.

If sections B and F do not accurately set out your/child's needs and the provision required to meet those needs, the Tribunal may conclude that the LA's choice of school is suitable. Therefore, it is important to ensure that section B and F are specific and quantifiable.

NEEDS (B) + PROVISION (F) = SCHOOL (I)

The LAs reasons to refuse explained

1. “The school you have requested is not suitable for your child”

- Gather evidence about the type of children who are admitted by the school you want. Look at the OFSTED report and prospectus of the school.
- Look at the evidence that you have about your child’s needs and if necessary, consider seeking evidence from elsewhere.

2. “The attendance of your child at the school you requested would be incompatible with the provision of efficient education for others”

- The LA must prove exactly what the incompatibility will be. It must be a real concrete thing that stops the other children being educated.
E.g. a behavioural problem that cannot be dealt with and which is constantly interfering with others learning. It is not something trivial or avoidable.
- Often this argument is used where the school is “full”. There is no definition in law of what it means for a school to be “full”. LAs can name schools which say they are “full” in EHC plans and must do so unless they are able to prove the child’s attendance is incompatible with the efficient education of others.
- Find out if the school is oversubscribed, if so by how many children?
Has the school exceeded the stated number of children in the past?
Is there any flexibility in terms of which class your child would go into?
Exactly how many adults and children will be in that class?
- In order to refuse to name a school, the LA has to show that because of the high numbers of pupils in the school, the child’s needs won’t be met, or that other children’s needs would not be met, or that there would be an inefficient use of resources (for example, as a result of them having to appoint another teacher or build another classroom).

3. “The attendance of your child at the school you requested would be incompatible with the efficient use of resources”

- The LA must provide exact details of the costs they say they will incur at the school of your choice, including transport.
- The LA must also provide exact details of the cost of a place at the school they have named, including transport and any external support (such as therapists coming into the school). Often LAs say it won’t cost them anything to send a child to a particular school, but investigations can prove otherwise.

4. For parents requesting a mainstream placement

- (S.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, and wanted to name a special school against the parents' or young person's wishes, they would also have to show that it was incompatible with the provision of efficient education for others. Note, however, that this is a right to *mainstream education* but not necessarily a right to a particular mainstream school.

5. For parents requesting an independent placement

- You cannot request an independent school in the same way that you can request the settings listed in (S.38(3) CAFA 2014). This means that the process to ask for and argue for a place at this type of setting is different.
- You must have an offer of a place from the independent setting. Unlike the S.38(3) schools, an LA cannot order an independent school to accept a child or young person.
- Check whether the independent setting is in fact a S.41 school or a non-maintained special school – if it is, it comes within the list in S.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.
- The LA must have regard to the general principle that pupils are to be educated in accordance with their parents' wishes and the pupils' wishes (S.19 CAFA 2014), so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure (S.9 Education Act 1996).
- It is *your* responsibility to prove that none of the schools the LA is offering can meet your child's needs, or that the cost of the placement will not constitute 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 you cannot show this, the Tribunal will not order an independent school to be named. It does not matter that the independent setting proposed is an excellent school and/or better suited to the child needs than the school the LA has in mind. LAs, and Tribunals acting in the LA's place on an appeal, are not bound to offer a child '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, but that the school offered by the LA cannot meet the child's needs.
- You should acquire evidence from a professional as to why the independent setting is the only school which can meet your child's needs.

Filling in the SEND35 appeal form

Ensure that you fill in the form using black ink if doing it by hand.

Section 1: Who

Enter your child's name and date of birth, or yours if you are a young person, and gender

Section 1: Who is the appeal about?

A child under 16 years old

A young person aged 16 or over and under 25 years old

Surname

First name(s)

Gender Male Female Other

Date of birth

Section 2: What are you appealing against?

I am asking the Tribunal make a decision on the following issues (please tick all those that apply)

- The Local Authority secured an EHC assessment but refused to make an EHC plan
- The Local Authority has issued an EHC plan following an EHC Needs Assessment
- The Local Authority has refused to secure a Re-Assessment of EHC Needs
- The Local Authority has carried out an annual review of the EHC plan
- The Local Authority has refused to amend the EHC plan after an EHC Needs Re-Assessment
- The Local Authority has decided that the EHC plan is no longer necessary and are going to 'Cease to Maintain' the plan
- and**
- I disagree with what the EHC plan says about the child or young persons special educational needs (Section B)
- I disagree with what the EHC plan says about the educational help/provision the child or Young Person requires (Section F)
- I disagree with the school/college/institution named in the EHC plan (Section I)
- or**
- The Local Authority has not named a school/college/institution in the EHC plan (Section I)

Section 2: What

Enter your situation and decision(s) you are appealing against. Tick all that apply to you.

Remember to consider whether Section B and F need to be changed to reflect the suitability of the school you are requesting.

You will need to fill in details about the school you want on the next page.

Section 3: Why

You will need to explain which decision you are appealing against or which parts of the EHC plan you disagree with. This is called your reasons for appeal.

It is often easier to put your reasons for appeal on a separate sheet and write 'See separate sheet headed Reasons for Appeal' in the box on the form. This also prevents possible loss of information when the form is printed and turned into the Tribunal bundle.

This is where you set out why you think the LA's decision is wrong, or why the contents of the EHC plan need to change. Try to put in everything you need to say, your full case, at this point.

Section 3: Reasons for appeal

I am bringing the appeal because (to be completed in all appeals):

I disagree with the description of special educational needs (Section B of the EHCP) because:

I disagree with the specification of special educational provision (Section F of the EHCP) because:

The LA have not considered

I disagree with the LA's choice of school/college/institution (Section I of the EHCP) because:

I prefer my choice of school/college/institution (Section I of the EHCP) because:

(please continue on a separate page if necessary)

Grounds of appeal – DRAFT

Feel free to use this as a template for your reasons of appeal and include all the points that apply to you. This example is for an LA naming a mainstream school in an EHC plan, but the parental preference is a specialist school. This can be edited to suit your situation:

1. My son/daughter, **[name]** is diagnosed as having **[diagnosis]**. I attach his/her diagnosis. In addition, he/she has:
(insert from list below adding appropriate details e.g. diagnosis, date of, therapy given, progress, existing needs.)
 - a. Speech and language difficulties (see report attached)
 - b. Sensory difficulties (see report attached from occupational therapist)
 - c. Cognitive difficulties
 - d. Physical difficulties
 - e. Sleep difficulties
 - f. Eating difficulties
 - g. Anxiety issues
 - h. Behavioural issues
 - i. Lack of self-help skills
2. The EHC plan does not fully or accurately describe his/her special educational needs because:
(set out what needs changing in Section B of the EHC Plan)
3. He/she has attended **[name of current/latest school]**. I attach his/her latest pre-school/school report/annual review. That placement agrees with me that **[name]** needs a specialist school placement and supported my parental preference for a place at **[school name]**, a LA maintained special school.
4. I made representations to the LA to name **[school name]** school in the EHCP.

5. In breach of its statutory duty the LA failed to inform me as to the placement to be named in the EHC plan on or before the **[date of offer deadline]**. On the **[date of offer given]** the LA informed me that it had named **[school name]**, a LA maintained mainstream school in the EHC plan, but the panel were yet to finalise admissions to my preferred school and would not be meeting and offering placement until later in **[date given]**.
6. On the **[date of letter received]** I received confirmation from the LA that it was naming **[school name]** School in the EHCP and was not naming **[school name you want]**, my parental preference. Its failure to do so is a breach of Section 39(3) of the Children and Families Act 2014. The LA has not suggested that my chosen school will be unsuitable for my son's/daughter's needs or that a placement there would be incompatible with the provision of efficient education of others or the efficient use of its resources.
7. The available evidence shows that my son/daughter will not be appropriately placed in the mainstream school named or indeed in any LA maintained mainstream school because:
(List the reasons)
8. In addition, the provision suggested in the EHC plan is clearly insufficient to meet my son's/daughter's needs. He/ she will need much greater support if placed in a mainstream school as suggested in the EHC plan.
(Insert any provision you say is needed above that shown in the EHC plan)
9. Despite requests the LA has not suggested any other special school maintained by it or an adjoining LA which would be suitable for my son's/daughter's needs nor any independent school which would be suitable.

I therefore ask the Tribunal to:

- A. Amend Part B of the EHC plan to accurately set out my son's/daughter's special educational needs.
- B. Amend Part E of the EHC plan to insert the additional provision needed to meet my son's/daughter's needs.
- C. To find that the mainstream school named in the EHCP cannot meet my son's/daughter's needs
- D. To hold that my son/daughter needs placing in a special school experienced and expert in the provision of education for children with **[diagnosis/difficulties]**
- E. Name my preferred school in Section I of the EHC Plan
- F. In the alternative identify the type of school required

Section 5: Making the appeal

LA decision

Which local authority made the decision that you are appealing against?

What is the date on the decision letter from the local authority?

Late appeal or no mediation certificate

You must send your appeal to the Tribunal no later than 2 months from the date of the Local Authority's decision letter or within one month of the date of the mediation certificate, if later.

If the appeal is submitted to the Tribunal more than 2 months after the date of the Local Authority's letter or one month after the date of the mediation certificate, you must set out in writing the reasons for the delay and why you think the appeal would succeed if time for making the appeal is extended. If you do not do so, the papers will be returned to you without being registered or seen by a Tribunal Judge.

If you do not have mediation certificate you must set out in writing why you have not been able to get one. If you do not give an explanation, the papers will be returned to you without being registered or seen by a Tribunal Judge.

My appeal is being made late
 I do not have a mediation certificate

Section 5: Local Authority & Mediation

Enter the name of your LA and the date of the decision you're appealing against or the date of the final EHC plan.

If you are appealing Section I only (placement), and therefore do not require a mediation certificate, then you will need to enter this reason here.

If it is a late submission of appeal, (after your deadline) then you must set out your reasons why it is late here.

Section 6: You

Enter your name and contact details here.

Add details of anyone else who has parental responsibility, if possible; if you have a reason for not wishing to include this information, this must be stated.

Add any special requirements to make the process accessible to you: say here if, for instance, you need documents translated, wheelchair access, a reader or a signer, or cannot manage negotiations over the phone.

Section 6: Who is making the appeal?

I am making this application to appeal.

Please tick only one of these options – see page 1 for explanations:

Parent or other – on behalf of a child under 16 years old
 Young Person – aged 16 and under 25 years old
 Alternative Person – making an appeal in the 'best interests' of a young person who does not have the Mental Capacity to bring an appeal themselves

A. Details of first person making the appeal

Mr Mrs Miss Ms
 Other

Surname

First name(s)

Home address

Postcode

Daytime phone number

Mobile phone number

Email address

If you are not the Young Person, what is your relationship to the child or Young Person e.g. parent, foster parent

Things you should do:

- Keep it short and to the point.
- Separate your points into paragraphs.
- Number your paragraphs or organise them under headings.
- Refer to any evidence that supports your points with relevant quotes or if you need to refer to a whole report, state the report author, job title/service and date as well as page numbers if possible. (You can send more evidence later and you should say if you know there is evidence that you do not have yet but intend to send later.)
- Refer to the legal issues.

Things you should *not* do:

- Get bogged down on history. If there is a long history of difficulties between you and the LA let the evidence (e.g. letters between you and the LA) speak for itself.
- Submit any non-relevant evidence. Although you may have many years of reports and emails, to avoid overwhelming the Tribunal and to ensure that they have time to read what is important to your case, only submit the evidence that supports your reasons for appeal.

Please note we have only spoken about key sections of the form here. There are other sections you will also need to read and fill in.

Evidence

You will need to provide evidence to support the changes that you want to be made to the EHC plan. As much as possible, you should try to get together any supporting evidence to submit with your appeal form. In your reasons for appeal, you should refer to this evidence to support your arguments (for example, if you are saying that you/your child has not made progress despite the support they currently receive, refer to school reports and/or annual review records which show this). Don't worry if you don't have everything ready to send straight away; you can submit more evidence after you've registered your appeal. You must send in enough information for the LA to be able to respond.

Professional reports

Key evidence about the child or young person's SEN and the provisions required to meet that SEN will usually be found in reports from professionals. Useful sources of expert opinion include:

- **The Health Service** e.g. speech and language therapist, occupational therapist, CAMHS, paediatrician, GPs, medical professionals, physiotherapists, psychiatrists etc.
- Evidence from the child or young person's **current school** or other institution e.g. attendance records, current and previous pupil passports/ IEPs, communication with school (emails, texts, letters), meeting minutes, education psychologist reports, pupil progress reports, exclusion letters, part time timetable risk assessments, incident reports, after school clubs, school trip risk assessments.
- Privately obtained reports from **independent professionals**. These can be very expensive so you may wish to consider:
 - If you qualify for legal aid: <https://www.gov.uk/check-legal-aid>
 - Voluntary organisations that specialise in a particular disability may be able to provide an assessment at a modest cost.
- If there was a recent EHC needs assessment, the LA should have sought information and advice from a range of professionals including an **educational psychologist**. The LA should have obtained an up-to-date report from a particular professional and if they failed to do so, you should ask them to do this. If they refuse, you can ask the Tribunal to order that they obtain the report needed – use the "Request For Change SEND7" form: <https://www.gov.uk/government/collections/special-educational-needs-and-disability-tribunal-forms>

Other evidence about “needs” and “provision”

As well as professional reports, the following can be useful sources of written evidence:

- Written statements from those involved with the child or young person e.g. teachers, someone who knows the child or young person from outside school such as at a youth club or a carer, the child/young person (written by themselves if they are able to do so) or the parents (to ensure they get all their points across).
- Home/ school diaries.
- Video/ audio evidence (this should be short and to the point. Video evidence more than 10 minutes is unlikely to be watched). Attach with it a statement of the facts the evidence seeks to establish.
- Published evidence or references to relevant research and findings. Beware of relying on this too much as the best evidence is going to be primary evidence about the child/ young person.
- Reports from annual reviews.
- Examples of the child/ young person’s work overtime.

Evidence about the school or other institution

You should include relevant information about the school or institution you want.

This should include:

- Its most recent Ofsted report
- Its prospectus
- Details of the costs of the placement
- Any reports or assessments about the child/ young person which the school or other institution has produced.
- In the case of a school which is wholly independent, you will need to include the consent of the school in order to ask the Tribunal to name it in the EHC plan. This should be a letter from the school confirming that they have offered the child/ young person a place

Appealing the School named in your EHCP: Summary

The LA can only refuse your requested school if it would be:

1. Unsuitable for you/your child
2. Incompatible with the education of others
3. An inefficient use of resources

- It is the LA's responsibility to prove that your request is unsuitable.
- If you requested independent, it is your responsibility to prove that the LA's placement options are unsuitable.

- **Mediation** is an informal way to solve problems
- You do **not** need a certificate if appealing Section I only

Obtain mediation certificate by:

- a) Taking part in mediation or
- b) Contacting a mediator to say you do not want mediation

- Make a note of your appeal deadline as soon as you receive it
- Ensure you fill in the form correctly
- Keep the appeal form answers clear, organised, concise, and to the point
- Refer to the legal issues and your own evidence documents for each of your points
- Do not overwhelm the SEND Tribunal with irrelevant evidence and history
- Include evidence from professional reports, statements about needs and provision, and the school you want

- Make copies of your bundle and keep the originals for yourself
- **What you need to submit:** LA letter, Mediation certificate, Appeal form, EHCP, evidence, list of documents

Remember that:

NEEDS (B) + PROVISION (F) = SCHOOL (I)

Section B, F and I of the EHCP should complement each other.

Where to submit your appeal



Do not send your original documents to the Tribunal. Use photocopies or scanned documents and keep the originals. If you do not have access to a scanner, you can download free document scanning apps onto your phone e.g. DocScan Free. Do not send photos of reports as they can easily cause your report to exceed the Tribunal's 14MB attachment data limit and may not be received.

Email

(currently the Tribunal's preferred option):

send@hmcts.gsi.gov.uk

write in the subject line of your email:
'New Appeal'

***It is important to note that the data limit for attachments is 14MB**

Telephone number to ask questions or to confirm receipt: **01325 289350**

Postal Address

(it is recommended that you send it recorded delivery):

**HM Courts & Tribunals Service
Special Educational Needs and
Disability Tribunal
1st Floor, Darlington Magistrates Court
Parkgate
Darlington
DL1 1RU**



Make a note of your appeal deadline. Add to calendars, diaries, and set reminders



Received signed LA decision letter



Signed mediation certificate/confirm not necessary



Complete SEND35 appeal form with your reasons



Add the EHCP and all documents listed in Part K



Add the evidence documents that support your appeal



Add a chronological list of all the documents enclosed



Make scans/photocopies of your appeal bundle, keep the originals for your records



Register your appeal: submit a COPY of your bundle to the SEND Tribunal



Submit any further evidence that is relevant up until the evidence deadline