

**Guidance on
Admission of Pupils
with an Education,
Health and Care
Plan**



Guidance on Admission of Pupils with an Education, Health and Care Plan (EHCP)

This document provides information for schools on the admissions process for pupils with Special Educational Needs and Disabilities (SEND) and an Education, Health and Care Plan (EHCP).

The Children and Families Act 2014 continues the presumption in favour of mainstream schooling set out in the 1996 Education Act

In Cumbria, the majority of children and young people with SEND will attend a mainstream school or college near to home. The capacity of mainstream schools, in terms of experience and confidence, to meet the needs of children with SEND has increased significantly in recent years. There are now more children than ever with complex and significant barriers to learning who, with carefully planned support, are making both expected and above expected academic and social progress in their local mainstream school. This has enabled children with additional needs to be educated alongside their siblings and other children who live in their community.

Some parents (and indeed the young person themselves) express a preference for a school or college which is not the nearest one to home. Parents of children with special educational needs and disabilities have a right to express a preference for a setting which is not the nearest to home, and make an informed choice, in the way that all other parents do.

The information that schools publish on their website about the arrangements that are in place for assessing and meeting the needs of children with additional needs will be key in helping parents make informed decisions, as will the welcome and reception they receive when they visit.

All schools and colleges will recognise their duties in relation to the admission of children and young people and will not treat any child less favourably in this respect because of a reason associated with a special educational need or disability.

Operational Guidance

School funding to support learners with SEND

The core budget for mainstream schools includes funding for SEND Pupils whose additional support costs are lower than £6,000. For pupils aged 5 to 15 years in mainstream schools a notional SEN amount will be shown in the school's budget. This is not a ring-fenced amount but is an indicative amount that schools may set aside to provide appropriate support for pupils with SEND.

In November 2016, as part of the High Needs deficit recovery plan, Schools Forum agreed that the first 11 hours (£7,150) of additional support will be funded from mainstream core budgets. Where individual pupils require additional support in excess of £7,150 per annum, the excess will be met by the commissioning local authority through agreed top-up funding associated with the individual pupil as outlined in Cumbria's SEND Handbook.

Resourced Provision in mainstream schools is funded through a combination of per pupil funding through the local schools funding formula £4,000 plus £6,000 per place for those occupied by pupils on roll and £10,000 per place for the remainder of places to be funded. Costs above £10,000 for individual pupils will be met through agreed top-up funding by the commissioning local authority.

For nursery schools, SEND pupils needs are met through the per pupil early years funding formula. For costs assessed by the local authority as not met through the early years funding system, an agreed per pupil top-up is paid by the commissioning authority.

For post-16 pupils, support is provided by the school through its core 16 to 19 national funding formula budget (Element 1) plus £6,000 per place based on the number of places to be funded (Element 2). Costs in excess of Element 2 will be met by the commissioning local authority through agreed top-up funding.

The local authority will consult with schools chosen by the parent. It will assume where the EHC plan indicates mainstream that all Cumbrian schools can meet need.

Where the local authority considers a particular mainstream place to be incompatible with the efficient education of others it must demonstrate, in relation to maintained nursery schools, mainstream schools or mainstream post-16 institutions in its area taken as a whole, that there are no reasonable steps that it, or the school or college could take to prevent that incompatibility.

This requires evidence from the selected school that **there are no reasonable steps it could take to prevent that incompatibility.**

Appeals Process for SEND Children

Parents can request placement at any school and make representation for an independent school. The LA cannot influence a parental request, more often referred to as parental preference. The LA must consider this request and apply to the maintained schools on the parents behalf. This includes consideration of taking pupils over planned admission numbers.

Parents who wish to appeal about school admissions for this group of pupils, do so to the independent Special Educational Needs and Disability Tribunal service run by Her Majesty's Courts and Tribunal Service and not to the Local Authority's School Appeal Service. At these Tribunals the legal test for not admitting a child to a mainstream school is set very high and the Judge and expert panel robustly scrutinise what reasonable steps can be made to admit a child to a mainstream school of a parent's choice. Cumbria Local Authority cannot defend any of these appeals without clear evidence from schools of why reasonable steps cannot be taken.

Where the LA accepts the school's position that reasonable steps cannot be taken, school will need to work closely with the LA to enable them to defend any subsequent Tribunal. This means that substantial documentary evidence is likely to be needed from the school, and a member of the school' staff usually the Headteacher and/or SENCO will usually be required to attend the Tribunal hearing to give evidence.

Answers to typical enquiries regarding admissions:

We cannot meet the child's needs – As per the legislation and Code of Practice, this is not a reason a mainstream school can give for not admitting a child. Schools need to consider the individual needs of each child and what can be done to remove barriers to inclusion. Attached is a pro-forma that we would encourage schools to use when considering admission requests.

We are/will be over PAN (Pupil Admission Number) for that year group – Places are allocated to SEND children and other priority admissions first. For in year admissions, the legislation requires us to look at what effect placing one more child will have on the other children in the class. Schools are unable to refuse a place on the grounds that they are up to published pupil admission number.

We have a higher percentage or number of applications than other local schools – We understand that this is an issue that can fluctuate year on year. You must consider each individual child's needs and what reasonable steps can be made. Again, you would need to consider what effect placing one more child will have on the other children in the class. The LA must apply for a school place based on parental preference, we cannot influence parental preference by suggesting they consider a school with spaces.

This is not the school of parental preference – The SEND Team work with families to ensure that we are aware of their parental preference. However, on the rare occasion that we are unaware of or parents have not expressed a preference, the Local Authority has a duty to make provision and will nominate the closest mainstream school to the home address. The same application process will apply.

There is not enough support in the EHC Plan – The receiving school can attend the child's Annual Review at their current school to hear what the issues are and how you can make reasonable steps. In both instances the Local Authority will consider whether the request for additional resources is evidenced and an efficient use of resources. Efficacy of resources is a case that can be made in Tribunal.

Additional/Further Information

The following principles regarding admission are taken from the SEND Code of Practice March 2015

Relevant legislation: Sections 33 and 39 of the Children and Families Act 2014

9.78 The child's parent or the young person has the right to request a particular school, college or other institution of the following type to be named in their EHC plan:

- Maintained nursery school;
- Maintained school and any form of academy or free school (mainstream or special);
- Non-maintained special school;
- Further education or sixth form college;
- Independent school/specialist colleges/special schools (where they have been approved for this purpose by the Secretary of State and published in a list available to all parents and young people).

9.79 If a child's parent or a young person makes a request for a particular nursery, school or post-16 institution in these groups the local authority must comply with that preference and name the school or college in the EHC plan unless:

- It would be unsuitable for the age, ability, aptitude or SEN of the child or young person, or
- The attendance of the child or young person there would be incompatible with the efficient education of others, or the efficient use of resources

Efficient education means providing for each child or young person a suitable, appropriate education in terms of their age, ability, aptitude and any special educational needs 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

9.80 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

9.83 The nursery, school or college and, where relevant, the other local authority, should respond within 15 days. Where a nursery, school or college identified at 9.78 above is named on an EHC plan they must admit the child or young person

9.84 The child's parent or the young person may 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 on the list mentioned at 9.78 above and the local authority must consider their request. 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 should 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

9.85 Children with EHC plans can attend more than one school 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.

9.86 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 that will achieve the best possible outcome for the young person. To be deemed as being educated in a mainstream further education institution, young people should spend the majority of their time there

9.87 The local authority should consider very carefully a request from a parent for a denominational school, but denominational considerations cannot override the requirements of the Children and Families Act 2014

Where no request is made for a particular school or college or a request for a particular school or college has not been met

Relevant legislation: Sections 33 and 40 of the Children and Families Act 2014

9.88 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 must specify mainstream provision in the EHC plan unless it would be:

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

9.89 Mainstream education cannot be refused by a local authority on the grounds that it is not suitable. A local authority can rely on the exception of incompatibility with the efficient education of others in relation to maintained nursery schools, mainstream schools or mainstream post-16 institutions taken as a whole only if it can show that there are no reasonable steps it could take to prevent that incompatibility. Where a parent's or young person's request for a particular mainstream school or mainstream post-16 institution has not been met, the school or post-16 institution in question becomes a possible candidate for consideration by the local authority according to the conditions in the above paragraph

9.90 Where the local authority considers a particular mainstream place to be incompatible with the efficient education of others it must demonstrate, in relation to maintained nursery schools, mainstream schools or mainstream post-16 institutions in its area taken as a whole, that there are no reasonable steps that it, or the school or college, could take to prevent that incompatibility

Efficient education means providing for each child or young person a suitable, appropriate education in terms of their age, ability, aptitude and any special educational needs they may have. Where a local authority is considering whether mainstream education is appropriate (as opposed to considering the appropriateness of an individual institution) the term 'others' means the children or young people with whom the child or young person with an EHC plan would be likely to come into contact on a regular day-to-day basis.

Where a parent or young person wants mainstream education and it would not be incompatible with the efficient education of others, the local authority has a duty to secure that provision.

Reasonable steps

9.91 What constitutes a reasonable step will depend on all the circumstances of the individual case. The following are some of the factors that may be taken into account:

- Whether taking the step would be effective in removing the incompatibility;
- The extent to which it is practical for the early years provider, school, college or local authority to take the step;
- The extent to which steps have already been taken in relation to a particular child or young person and their effectiveness;
- The financial and other resource implications of taking the step; and
- The extent of any disruption that taking the step would cause.

9.92 The following are examples of reasonable steps that might be taken in different circumstances:

Reasonable steps to ensure that the inclusion of a child with challenging behaviour in a mainstream primary school setting is not incompatible with the efficient education of others may include:

- Addressing factors within the class that may exacerbate the problem, for example using circle time to discuss difficult relationships and identify constructive responses;
- Teaching the child alternative behaviour, for example by taking quiet time in a specially designated area at times of stress;
- Providing the child with a channel of communication, for example use of peer support;
- Using a carefully designed system of behaviour targets drawn up with the child and linked to a reward system which, wherever possible, involves parents or carers;

- Ensuring that all staff coming into contact with the child are briefed on potential triggers for outbursts and effective ways of heading off trouble at an early stage;
- Drawing up a contingency plan if there is an outburst in class, for example, identifying with the child a key helper who can be called to remove the child from the situation; and
- Ensuring that if there is any possibility that positive handling may need to be used to prevent injury to the child, young person or others or damage to property, relevant staff have had training in appropriate techniques, that these have been carefully explained to the child and that the circumstances in which they will be used are recorded in a written plan agreed with and signed by the child and their parents or carers.

Reasonable steps to ensure that the inclusion of a child with challenging behaviour in a mainstream primary school setting is not incompatible with the efficient education of others may include:

- Ensuring all possible steps are taken to provide structure and predictability to the child's day, for example by the use of visual timetables, careful prior explanation of changes to routines and clear instructions for tasks;
- Ensuring that the child is taught a means of communicating wants and needs using sign, symbol or spoken language;
- Working with a member of staff on a structured programme of activities designed to prepare him or her for joining in class or group activities, for example by using 'social scripts' to rehearse appropriate behaviour;
- Having an individual workstation within a teaching space where distractions can be kept to a minimum and everything needed for the work to be done can be organised in sequence; and
- Ensuring that all staff are briefed on the warning signs which may indicate potential behaviour challenge and on a range of activities which provide effective distraction if used sufficiently early.

Reasonable steps taken to ensure that the inclusion of a young person with a learning disability who does not use verbal communication in a mainstream course at a further education college is not incompatible with the efficient education of others may include:

- The involvement of staff from the college's learning support team in the school-based transition reviews;
- An orientation period during the summer holidays, to enable the student to find his or her way around the college campus and meet the learning support staff;
- Opportunities to practise travelling to and from college;
- The development of an individual learning programme outlining longer term outcomes covering all aspects of learning and development, with shorter term targets to meet the outcomes;
- Supported access to taster sessions over a first year in college;
- A more detailed assessment of the young person's needs and wishes provided by learning support tutors during a 'taster' year;
- Staff development to ensure an understanding of the student's particular method of communication;
- Use of expertise in access technology to identify appropriate switches or communication boards to facilitate the student's involvement in an entry-level course; and
- Courses normally covered in one year planned over two years to meet the young person's learning needs.

9.93 There may be a range of reasons why it may not always be possible to take reasonable steps to prevent a mainstream place from being incompatible with the efficient education of others – for example, where the child or young person's behaviour systematically, persistently or significantly threatens the safety and/or impedes the learning of others

9.94 A decision not to educate a child or young person in a mainstream setting against the wishes of the child's parent or the young person should not be taken lightly. It is important that all decisions are taken on the basis of the circumstances of each case and in consultation with the parents or young person, taking account of the child or young person's views

Local authorities should consider reasonable steps that can be taken for mainstream schools and mainstream post-16 institutions generally to provide for children and young people with SEN and disabled children and young people.

Response to consultation for a place for a child with an Education, Health and Care Plan (EHCP)

Insert School Name

Response to consultation for a place for a child with an Education, Health and Care Plan (EHCP).

Insert School Name is able/not able to offer a place to insert **Child/Young Person's NAME/DOB** (Child/Young person's name and date of birth). Please include below.

If you are stating that the school is not able to offer a place please provide a detailed description of your reasons below.

Please ensure you take account of the guidance provided to ensure your response is lawful in line with the Special Educational Needs Code Practice (2015);

9.79 If a child's parent or a young person makes a request for a particular nursery, school or post-16 institution in these groups the local authority must comply with that preference and name the school or college in the EHC plan unless:

- It would be unsuitable for the age, ability, aptitude or SEN of the child or young person, or
- The attendance of the child or young person there would be incompatible with the efficient education of others, or the efficient use of resources

*Completion of this form will support you in demonstrating the evidence as to why the school should **not** be named in the EHCP for the above named pupil. Responses must clearly relate to the individual pupils needs and the explanations as to why the school is unable to meet needs.*

School Context

1. Please indicate the PAN of the school and the number currently on roll
2. Please indicate the number of children in each class in the relevant year group
3. If you believe there are issues around the space or layout available for this child due to their individual needs please provide an explanation of the issues and the possible solutions you have considered to address these

Please provide Floor plans, if available.

Pressure on Resources

4. Please indicate how many children the school has on roll who have an EHCP (Information relating to the needs of other individuals within the cohort that may have an impact can be include but must be anonymised)
5. Please indicate how many are in the relevant year group
6. It will be helpful to provide information about the needs of these children, although they should not be identified
7. Please indicate how many children the school has on their SEN Support register
8. Please indicate how many are in the relevant year group

Provision

9. Please describe how you would make provision for this child
10. Please indicate clearly what you would be able to provide from the schools existing resources and what would be required additional resource
11. Please provide a breakdown of the proposed costs of the provision from the schools perspective

Please return your completed form to the relevant area office via the email inbox below, including any supporting documentation.

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