



**Supporting information for  
Parents or Carers with a  
Child or Young Person  
attending Private  
Independent Schools  
(Non-Section 41 Schools)**

**2024**

# Information Pack

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## INTRODUCTION

This Information Pack has been produced to support parents and carers who have a child or young person with an EHCP in a Private Independent School.

It has been produced to provide information to support you and to provide answers to some frequently asked questions.

Key references in this document are:

- The Children's and Families Act 2014
- The SEND Code of Practice 2015

When using this document each question has comments and information in black text, then information regarding the question from:

- The Children's and Families Act - included in Grey boxes
- The SEND Code of Practice - included in Blue boxes
- Other law, regulations and information is also highlighted and included throughout the document where appropriate

**The information in this information pack is provided for general purposes only and does not constitute Advice. The information is correct as at the time it is provided, October 2024 and is subject to changes in the Law.**

Please seek information and advice on your own individual case as all circumstances will be different

## Can the Local Authority (LA) review the plan again, when we have just had a review? Or it is not a transition year?

It is highly unusual that all the EHCP's of children and young people in independent schools are being reviewed at the same time. The Local Authority has the right to review and change a plan at any time. Although, consideration should be given to if this is classed as a blanket policy, which will be discussed later in this document.

LA's have the right to review a plan every 12 months but can only amend after a review, it is not common practice to hold another review in quick succession unless one is needed due to a change in the child or young person's circumstances.

The LA must review the EHC plan under the provisions of the Children and Families Act 2014 at least once a year. An annual review is a review of if the plan is still appropriate or if it needs to be changed. The review process for changing an EHCP includes:

- Consultation with the parent of the child or young person, and with the school or institution being attended if there is one
- A review meeting
- Obtaining of information and the preparation of an annual review report
- The making of a decision by the LA (to maintain the plan and leave the EHCP as it is, to amend it or to cease it);
- The child's parent or the young person should be informed within four weeks of the review meeting of the decision, if the plan has been amended a draft of the plan should be sent to the parent at the same time.
- Parents / young people have at least 15 days to respond to the draft EHCP
- All decisions are appealable to the first-tier tribunal
- A final EHCP has to be issued within 12 weeks of the meeting

### SEND Code of Practice

9.193 This section applies to amendments to an existing EHC plan following a review, or at any other time a local authority proposes to amend an EHC plan other than as part of a re-assessment. EHC plans are not expected to be amended on a very frequent basis. However, an EHC plan may need to be amended at other times where, for example, there are changes in health or social care provision resulting from minor or specific changes in the child or young person's circumstances, but where a full review or re-assessment is not necessary.

9.194 Where the local authority proposes to amend an EHC plan, it must send the child's parent or the young person a copy of the existing (non-amended) plan and an accompanying notice providing details of the proposed amendments, including copies of any evidence to support the proposed changes. The child's parent or the young person should be informed that they may request a meeting with the local authority to discuss the proposed changes.

9.195 The parent or young person must be given at least 15 calendar days to comment and make representations on the proposed changes, including requesting a particular school or other institution be named in the EHC plan

9.198 When sending the final amended EHC plan, the local authority must notify the child's parent or the young person of their right to appeal and the time limit for doing so, of the requirement for them to consider mediation should they wish to appeal, and the availability of information, advice and support and disagreement resolution services.

### **Children's and Families Act Sec 44 Reviews and re-assessments**

1. A local authority must review an EHC plan that it maintains—
  - a. in the period of 12 months starting with the date on which the plan was first made, and
  - b. in each subsequent period of 12 months starting with the date on which the plan was last reviewed under this section.
2. A local authority must secure a re-assessment of the educational, health care and social care needs of a child or young person for whom it maintains an EHC plan if a request is made to it by—
  - a. (a)the child's parent or the young person, or
  - b. (b)the governing body, proprietor or principal of the school, post-16 institution or other institution which the child or young person attends.
3. A local authority may also secure a re-assessment of those needs at any other time if it thinks it necessary.
4. Subsections (1) and (2) are subject to any contrary provision in regulations made under subsection (7)(b).
5. In reviewing an EHC plan maintained for a young person aged over 18, or deciding whether to secure a re-assessment of the needs of such a young person, a local authority must have regard to whether the educational or training outcomes specified in the plan have been achieved.
6. During a review or re-assessment, a local authority must consult the parent of the child, or the young person, for whom it maintains the EHC plan.
7. Regulations may make provision about reviews and re-assessments, in particular—
  - a. (a)about other circumstances in which a local authority must or may review an EHC plan or secure a re-assessment (including before the end of a specified phase of a child's or young person's education);
  - b. (b)about circumstances in which it is not necessary for a local authority to review an EHC plan or secure a re-assessment;
  - c. (c)about amending or replacing an EHC plan following a review or re-assessment.
8. Regulations under subsection (7) about re-assessments may in particular apply provisions of or made under this Part that are applicable to EHC needs assessments, with or without modifications.
9. Regulations under subsection (7)(c) must include provision applying section 33 (mainstream education for children and young people with EHC plans) to a case where an EHC plan is to be amended following a review.

## **My Child or Young Person should be moving to a different School or College in Sept 2025, is that why this is happening?**

If you have a young person who is due to change school in the next academic year, such as moving from primary to secondary school or moving from secondary school to college, these are classed as transition years. If you are in a transition year you will have different review dates and the final plan with the new named school or provision needs to be issued earlier. For children moving school the plan needs to be finalised by 15<sup>th</sup> February and for young people moving to college / post 16, the plan needs to be issued by 31<sup>st</sup> March.

#### SEND Code of Practice - Transition review dates

9.179 The review and any amendments must be completed by 15 February in the calendar year of the transfer at the latest for transfers into or between schools. The key transfers are:

- early years provider to school
- infant school to junior school
- primary school to middle school
- primary school to secondary school, and
- middle school to secondary school

9.180 For young people moving from secondary school to a post-16 institution or apprenticeship, the review and any amendments to the EHC plan – including specifying the post-16 provision and naming the institution – must be completed by the 31 March in the calendar year of the transfer

## Can the Local Authority consult with other schools without my consent?

An EHC plan must not be disclosed without the consent of the child or the young person, **except for specified purposes or in the interests of the child or young person**. A school consultation would likely to be considered in the interests of the child or young person, however is a review of all Specialist Independent Special School places in the best interests of the child as an individual?

#### Children's and Families Act Section 28 – Co-operation, Section 29 Reciprocal Co-operation

- A LA must co-operate with each of its local partners; and each local partner must co-operate with the LA in the exercise of the LA functions under Part 3 of the CFA.
- LA must ensure co-operation with those operating social services functions
- The LA to co-operate with certain schools in the carrying out of their functions: - Mainstream schools/mainstream nurseries - 16 to 19 Academies - FE, sixth form, designated colleges - PRUs and alternative provision Academies

#### SEND Code of Practice

Disclosure of an EHC plan Relevant legislation: Regulations 17 and 47 of the SEND Regulations 2014

9.211 A child or young person's EHC plan must be kept securely so that unauthorised persons do not have access to it, so far as reasonably practicable (this includes any representations, evidence, advice or information related to the EHC plan). An EHC plan must not be disclosed without the consent of the child or the young person, except for specified purposes or in the interests of the child or young person. If a child does not have sufficient age or understanding to allow him or her to consent to such disclosure, the child's parent may give consent on the child's behalf. The specified purposes include:

- disclosure to the Tribunal when the child's parent or the young person appeals, and to the Secretary of State if a complaint is made to him or her under the 1996 Act
- disclosure for the purposes of investigations of maladministration under the Local Government Act 1974
- disclosure to enable any authority to perform duties arising from the Disabled Persons (Services, Consultation and Representation) Act 1986, or from the Children Act 1989 relating to safeguarding and promoting the welfare of children
- disclosure to Ofsted inspection teams as part of their inspections of schools or other educational institutions and local authorities

## Can the Local Authority move my child to another placement without a review? Or without changing the EHCP?

When naming a school the Local Authority have to consult with parents and their school of choice must be named unless it 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:
  - the provision of efficient education for others; or
  - the efficient use of resources.

The named school needs to be put into the EHCP in section I and a final plan issued

The Local Authority should not incorrectly focus on the appropriate educational setting without first identifying the needs and provision required. When this has been done the Local Authority needs to find a setting that can meet the needs of the child or young person. Under their absolute duty to deliver the EHCP in its entirety. It is unlawful to only provide part of the provision in the plan.

### SEND Code of Practice

Where the parent young person wants a Section 38(3) type of school or a section 41 school which is treated the same as section 41 school:

The school or college requested in an EHC plan; Must be named unless LA can establish one of the three conditions in section 39(4)

Must be named unless:

- 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.

### **Children's and Families Act - School Consultation**

Under s.39(2) CFA 2014, the LA must consult the governing body of the school or other institution requested by the parent or YP if it is one of the types of school or institution listed in s.38(3) CFA 2014.

- If the school or other institution is maintained by another LA, that LA must also be consulted (s.39(2)(c) CFA 2014).
- The school or other institution should respond within 15 calendar days (paragraph 9.83 SEND CoP).
- LA must proceed to make a decision (even in the absence of a response from the school or other institution within 15 calendar days) and issue the final EHC plan within 20 weeks of receiving the request to carry out an EHC needs assessment or of the LA becoming responsible.

**If you have an EHCP and a school has been named without a review or consultation this is unlawful and the Local Authority is in Breach of their Obligations (please see pre-action protocol letter)**

## Can a Local Authority decide to review all Children and young people at Private Independent Schools at the same time?

It is unusual for a Local Authority to decide to review all private independent school plans at the same time, normally a plan will be reviewed annually once a year in line with the SEND Code of Practice and the Children's and Families Act.

If you have a Child or Young person in a transition year e.g. moving from primary to secondary or secondary to post 16 then their plans will be reviewed early so that the plans can be finalised in February and March naming their new school.

If a child or young person's needs change then an early review can be requested or a reassessment.

In the case of a Local Authority reviewing all Independent School EHCP's at the same time citing that it is to 'help them make sure that the current placement is the most effective place for a child or young person to achieve their potential and that the placement represents an effective use of public resources', This shows a predetermination of the issue prior to the review. This could potentially be classed as a blanket policy, targeting only one group of children and young people, however, this would need further legal consideration.

Many children and young people are placed in private independent schools as they are the only schools able or available to meet the child or young person's needs e.g. they may need an education with a multi-disciplinary approach with education and therapies working together.

The Local Authority still has the absolute duty to deliver what is in a child or young person's EHCP. This includes all of the provisions cited in section F.

## Can the Local Authority decide to change the school named in my child or young person's plan?

Parental/carer/young person's preferences are extremely important in the law and there is a duty to regard their views, wishes and feelings in order to help them to achieve 'best outcomes'. This is referred to as the Local Authorities Section 19 duties.

As discussed previously, when naming a school the Local Authority has to consult with parents and their school must be named unless it is unsuitable for the age, ability, aptitude or special educational needs of the child or young person concerned; or the attendance of the child or young person at the requested school or other institution would be incompatible with the provision of efficient education for others; or the efficient use of resources.



## Children's and Families Act

**Section 19 duty** applies when a local authority in England exercises any function under Part 3 – i.e. the part of the CFA 2014 dealing with SEN and disability

- It is a **duty** to have **regard to** the following matters
- This is a strong legal **must** duty
  - (a) the views, wishes and feelings of the child and his or her parent, or the young person;
  - (b) the importance of the child and his or her parent, or the young person, participating as fully as possible in decisions ...
  - (c) the importance of the child and his or her parent, or the young person, being provided with the information and support necessary to enable participation in those decisions;
- (d) the need to support the child and his or her parent, or the young person, in order to facilitate the development of the child or young person and to help him or her **achieve the best possible educational and other outcomes**.

## What if a placement they suggest cannot meet need e.g. is unable to provide the therapies in the plan?

For children or young people with an EHC plan, the best endeavours duty applies, but additionally the local authority (LA) has an **absolute duty to secure the provision in their EHCP**. It is not enough for the LA to simply 'try its best' to provide it: the LA must make sure that it is provided.

The LA's absolute duty to secure the special **educational** provision, includes the provision of any therapy that trains or educates e.g. Speech and Language Therapy or Occupational Therapy

### SEND Code of Practice

9.131 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 as special educational provision it must also meet the costs of the fees, including any boarding and lodging where relevant

## Children's and Families Act

**42 Duty to secure special educational provision and health care provision in accordance with EHC Plan**

**(1) This section applies where a local authority maintains an EHC plan for a child or young person.**

**(2) The local authority must secure the specified special educational provision for the child or young person.**

(3) If the plan specifies health care provision, the responsible commissioning body must arrange the specified health care provision for the child or young person.

(4) "The responsible commissioning body", in relation to any specified health care provision, means the body (or each body) that is under a duty to arrange health care provision of that kind in respect of the child or young person.

(5) Subsections (2) and (3) do not apply if the child's parent or the young person has made suitable alternative arrangements.

(6) "Specified", in relation to an EHC plan, means specified in the plan.

**Therapies that train or educate have to be treated as special educational provision and included in section 'F' educational provision in the EHCP, which the LA has an absolute duty to provide, not Health.**

### Children's and Families Act

- **Section 21 (5) of CFA 2014: "Health care provision or social care provision which educates or trains a child or young person is to be treated as special educational provision (instead of health care provision or social care provision)." OT, SALT etc**
- LAs must exercise their functions with a view to ensuring the integration of educational provision with health care provision and social care provision where this would promote the well-being of children and young people or improve the quality of special educational provision (section 25). **'Well-being' includes physical and mental health and even emotional well-being**, protection from abuse and neglect, participation in education, training or recreation, domestic, family and personal relationships, and more. The extensive definition can be found in section 25(2).

It is important that if you are getting advice for your EHCP from professionals e.g. Speech and Language Therapists, Educational Psychologists, Occupational Therapists that you make sure that this advice is defined, quantified and specified so that for the therapy it details:- frequently, duration, if it is direct therapy provided by the therapist and if not, what level of skills and training is required by the person delivering the therapeutic provision

### **SEND Code of Practice 9.51 Professional's Evidence**

The evidence and advice submitted by those providing it should be clear, accessible and specific.

- They should provide advice about outcomes relevant for the child or young person's age and phase of education and strategies for their achievement.
- Professionals should limit their advice to areas in which they have expertise. They may comment on the amount of provision they consider a child or young person requires.

The advice in the box below details the guidance given to Educational Psychologists in the Guidance for Educational Psychologists providing advice and information for Education, Health and Care Needs Assessments

### **Guidance for Educational Psychologists providing advice and information for EHCNAs:**

- Psychological contributions to EHCNAs must focus on the needs of the Child or young person, be independent, and not be driven by financial or other constraints.
- Any advice provided by an EP should not be influenced by consideration of specific educational settings.
- Recommendations for provision should be sufficiently clear and specific so that there can be agreement about whether or not they are being followed.
- Best practice would be the provision of robust advice leading to clear, specific and quantifiable provision. The Upper Tier Tribunal has recognised this position.
- Guidance should be provided in terms of 'no less than', 'at least' or 'always'

## What if a new placement cannot meet my child or young person's academic needs and capability?

If your young person's preference is to take for example 5 GCSE's and aspires to do so then the Local Authority, the provision put in place and placement provided should allow them to do this and to achieve 'their best outcomes'. All children are entitled to an appropriate education one that is appropriate to their needs.

### SEND Code of Practice

6.1 All children and young people are entitled to an appropriate education, one that is appropriate to their needs, promotes high standards and the fulfilment of potential. This should enable them to:

- achieve their best
- become confident individuals living fulfilling lives, and
- make a successful transition into adulthood, whether into employment, further or higher education or training

### **Children's and Families Act**

**Section 19 duty** applies when a local authority in England exercises any function under Part 3 – i.e. the part of the CFA 2014 dealing with SEN and disability

- It is a **duty** to have **regard to** the following matters
- This is a strong legal **must** duty
  - (a) the views, wishes and feelings of the child and his or her parent, or the young person;
  - (b) the importance of the child and his or her parent, or the young person, participating as fully as possible in decisions ...
  - (c) the importance of the child and his or her parent, or the young person, being provided with the information and support necessary to enable participation in those decisions;
- (d) the need to support the child and his or her parent, or the young person, in order to facilitate the development of the child or young person and to help him or her **achieve the best possible educational and other outcomes.**

## What if a new suggested placement doesn't have the right cohort of students for my highly vulnerable young person?

It is important that all children and young people have a relevant cohort, make sure that you ask any placement about this, It is always beneficial to look at aspects such as the classroom size, number of other students. The cohort of students in a provision the LA are naming in your young persons EHCP. What are their needs, abilities and behaviours.

It would not be practical to place a highly vulnerable young person in a setting where they could easily be targeted, bullied or coerced for example it would not be appropriate for that young person to be placed in a provision where the cohorts needs are behavioural needs, smoking, vaping, swearing, violence etc.

- Aspects to take into consideration are things that relate back to academic ability and cohort.

Are the cohort of students in the suggested placement of the same academic ability as your young person?

- Is your young person going to be placed in an incredibly vulnerable position and be targeted?
- Is the placement of your young person going to be detrimental to their Well Being and Mental Health?
- Are the cohort of students in the suggested placement academically as able as your young person?
- Will your young person be safe with the cohort of students?

Your young person needs a cohort that is similar to them, where they feel that they can fit in and make meaningful connections and friendships

Every child has a right to feel safe

## My child or young person was unable to attend school or had several failed placements before moving to their current School, why are they looking to move them? It will make things worse again!

It is important that this information is provided to Local Authority in the review and where possible evidence is gained and presented to support this e.g. length of time of of at the school, transition plan in, evidence and reports from schools, alternative provisions, and professionals

An EHCP is a legal document so providing evidence of needs is critical to ensure that they can be captured correctly in the EHCP, these needs and the provision required to meet them should be fully defined, quantified and specified. This is discussed further in the question below.

## Can they remove provision from an EHCP that my child still needs?

If you have evidence from professionals to support the needs of your child and the provision / therapies that need to be put in place to support them, then **those provisions need to remain in the EHCP unless it can be proved otherwise**. They cannot be removed on the basis that e.g. a setting is not able to provide them, if provisions have been identified by professionals and included in an EHCP, they should not be removed without proof that they are no longer needed e.g. an updated assessment or review by the professional who made the recommendations.

An EHCP is a legal document, to ensure that it is legally enforceable EHCP provision in section 'F' must be, defined, quantified, and specified. Otherwise, the document is subjective. It should not include 'woolly' words or phrases such as:

Will have access to...

Will benefit from...

Will have opportunities for....

All provisions in section F need to be quantified in terms, of time, duration, frequency, who is providing it and their level of skills, training, experience.

### Children's and Families Act

#### Specifying a plan

An EHC plan is defined in section 37(2): "For the purposes of this Part, an EHC plan is a plan specifying—

- (a) the child's or young person's special educational needs;
- (b) the outcomes sought for him or her;
- (c) the special educational provision required by him or her;
- (d) any health care provision reasonably required by the learning difficulties and disabilities which result in him or her having special educational needs;
- (e) in the case of a child or a young person aged under 18, any social care provision which must be made for him or her by the local authority as a result of section 2 of the Chronically Sick and Disabled Persons Act 1970 (as it applies by virtue of section 28A of that Act);
- (f) any social care provision reasonably required by the learning difficulties and disabilities which result in the child or young person having special educational needs, to the extent that the provision is not already specified in the plan under paragraph
- (e)." The first words of this section therefore qualify everything which follows, i.e. an EHC plan is a plan which "specifies" all of the matters which follow. Case law has established that a duty to specify means that the wording must be so specific and so clear as to leave no room for doubt as to what has been decided is necessary in the individual case. 1 This duty applies to all of the sections of the EHC plan set out in section 37(2)

### SEND Code of Practice

- Special education provision 9.69 under Section F
  - Provision must be detailed and specific and should normally be quantified in terms of type, hours, frequency of support and level of expertise
  - Provision must be specified for each and every need specified in section B
  - Provision must normally be quantified in terms of hours. This is a legal requirement exception to is where flexibility is needed to meet the changing needs of a young person extremely rare

## What is the difference between a Section 41 school and a Non-Section 41 school Private Independent School?

Specialist Independent schools fall into 2 categories section 41 schools and none section 41 schools. This is based on if they have registered and are on the Secretary of State's list of approved Private Independent Special Schools.

A section 41 Private Independent School agrees that the Local Authority can treat them as maintained School e.g. the a parent or young person can request them to be named in an EHCP, and the Local Authority can direct them to take a student if required

A non-Section 41 School – Is a wholly Private Independent Special School and the decision on if to admit a child or young person rests entirely with the School. Parents or young people are able to make representations for this type of school to be named

The following link can be used to look up the schools who are on the section 41 list, however, it is also a good idea to check directly with your school as schools can move on and off the list [Independent special schools and post-16 institutions - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

An institution approved... under section 41” is an independent special school or college which has opted to be approved by the Secretary of State as one which a parent or young person can request to be named in an EHC plan. This means that the LA must consider the request on the same grounds as other schools or institutions covered in this section.

The only schools which do not come within this list are independent schools which are neither non-maintained nor institutions approved by the Secretary of State under section 41 of the Act. Where those schools are concerned, the parent or young person has the right to make representations for them and to use section 9 of the EA 1996, but not to make a formal request under section 38 of the Act. This is a considerably weaker right.

## How do I make representations for a Private Independent School which in a Non-Section 41 School?

If you would like to make representations for a Private Independent School you can make your views and wishes known by ‘making representations’ for that placement

The LA must consider parents’ wishes paragraph 9.84 of the SEND Code of Practice.

### SEND Code of Practice

**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 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

The LA has the power to name a school outside of the section 38(3) (maintained and section 41 schools) list through section 40(2) of the Act.

### Children’s and Families Act

40 (2)The local authority must secure that the plan—

(a)names a school or other institution which the local authority thinks would be appropriate for the child or young person concerned, or

(b)specifies the type of school or other institution which the local authority thinks would be appropriate for the child or young person.

When considering this, the LA must have regard to “the views, wishes and feelings of the child and his or her parent, or the young person” (section 19 of the Act).

#### **Children’s and Families Act**

##### **Section 19 Local authority functions: supporting and involving children and young people**

**In exercising a function under this Part in the case of a child or young person, a local authority in England must have regard to the following matters in particular—**

**(a) the views, wishes and feelings of the child and his or her parent, or the young person;**

(b) the importance of the child and his or her parent, or the young person, participating as fully as possible in decisions relating to the exercise of the function concerned;

(c) the importance of the child and his or her parent, or the young person, being provided with the information and support necessary to enable participation in those decisions;

(d) the need to support the child and his or her parent, or the young person, in order to facilitate the development of the child or young person and to help him or her **achieve the best possible educational and other outcomes.**

Parents can also refer to Section 9 of the Education Act which says that children and young people should be educated in line with the wishes of the parents and therefore is always relevant regardless of what type of school or institution is under discussion wherever a child or a young person has a parent who has expressed a wish as to where or how they should be educated.

#### **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

**Parents have a right to make representations for an independent placement and it may be named if it is appropriate, and the school offers the child or young person a place.**

**If parents or young people are not able to show that their independent choice is more cost efficient than the LA’s proposed choice, then they have to show that there is no school or institution within the section 38(3) (maintained and section 41 schools) list which is appropriate for and can meet the needs of the child or young person.**

#### **Children’s and families Act**

##### **Section 63 Fees for special educational provision at non-maintained schools and post-16 institutions**

(1) Subsection (2) applies where—

(a) a local authority maintains an EHC plan for a child or young person,

(2) The local authority 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.

(3) Subsection (4) applies where—

(4) The local authority must pay any fees payable in respect of the special educational provision made at the school, institution or place in question which is required to meet the special educational needs of the child or young person.

(5) Where board and lodging are provided for the child or young person at the school, post-16 institution or place mentioned in subsection (2) or (4), the authority must also pay any fees in respect of the board and lodging, if satisfied that special educational provision cannot be provided at the school, post-16 institution or place unless the board and lodging are also provided.

## Why are things different with an Independent Special School?

Normally Local Authorities consult with schools during an EHCP process to name a school in section 'I' Placement, the Local Authority has to make consultations for maintained schools and section 41 schools, for wholly independent schools outside of section 41, the Local Authority can still consult with them, but they don't have the same legal duties. However, parents are still able to make representations for specialist Independent Schools, as outlined in the SEND Code of Practice 9.84

### SEND Code of Practice

**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 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

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.

### Children and Families Act

#### Section 40.2

The local authority must secure that the plan—

(a) names a school or other institution which the local authority thinks would be appropriate for the child or young person concerned, or

(b) specifies the type of school or other institution which the local authority thinks would be appropriate for the child or young person.

#### Section 19.a

The LA Must have regards to: Section 19(a) Children and Families Act 2014

"In exercising a function under this Part in the case of a child or young person, a local authority in England must have regard to the following matters in particular – (a) **The views, wishes and feelings of the child and his or her parent, or the young person**"

### Education Act

Section 9 Education Act 1996 Duty on the LA to: "... 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.



The Local Authority can only name a Non-Section 41 School in an EHCP if the Independent school/institution is offering a place, it cannot name against the wishes of a setting.

The LA can direct Section 41 schools to take students, they are not able to do this with wholly private independent schools as the final decision remains with the school

## Are they going to do this every year?

The Local Authority Must carry out an annual review each year, however, during your review meeting you have the opportunity to ask the Local Authority to extend the placement until the end of the key stage

## When will I know the decision after an annual review?

4 weeks After an annual review meeting the Local Authority should send you notification on if they intend to maintain (keep the plan the same), amend it, or cease the plan. If the Local Authority plans to amend the plan they should send you a copy of the revised draft plan with the changes on it at the same time as the notification, 4 weeks after the meeting. At this point under regulation 22 you will have at least 15 days to respond

### **The Special Educational Needs and Disability Regulations 2014 - Regulation 22 states:**

*(2) Where the local authority is considering amending an EHC plan following a review it must—*

*(a) send the child's parent or the young person a copy of the EHC plan together with a notice specifying the proposed amendments, together with copies of any evidence which supports those amendments;*

*(b) provide the child's parent or the young person with notice of their right request the authority to secure that a particular school is or other institution is named in the plan under section 38(2)(b)(ii)*

*(c) give them at least 15 days, beginning with the day on which the draft plan was served, in which to—*

*(i) make representations about the content of the draft plan;*

*(ii) request that a particular school or other institution be named in the plan;*

*(iii) request a meeting with an officer of the local authority, if they wish to make representations orally.*

The LA has a total of 8 weeks from the date it sent out the notice of amendments in which to issue the finalised plan SEN Reg 22 (3). A final EHCP Must be issued within 12 weeks of the annual review meeting

After the Final EHCP has been issued you will have the right to appeal to the First Tier Tribunal on the educational aspects of the finalised plan the needs, provision or placement (sections B, F, I) if you do not agree.

## Can an EHCP be revoked after a final is issued?

Once a final EHCP has been issued then changes required to it need to be done via a review and with consultation and involvement of the parents, carers, child or young person

### SEND Code of Practice

9.125 When changes are suggested to the draft EHC plan by the child's parent or the young person and agreed by the local authority, the draft plan should be amended and issued as the final EHC plan as quickly as possible. The final EHC plan can differ from the draft EHC plan only as a result of any representations made by the child's parent or the young person (including a request for a Personal Budget) and decisions made about the school or other institution (or type of school or other institution) to be named in the EHC plan. The local authority must not make any other changes – if the local authority wishes to make other changes it must re-issue the draft EHC plan to the child's parent or the young person (see paragraph 9.77). The final EHC plan should be signed and dated by the local authority officer responsible for signing off the final plan.

## Is reviewing all Independent Specialist Schools EHCP's at the same time a blanket policy?

Blanket policies are unlawful, Local Authorities must treat each child or young person as an individual, there are several examples in Law where blanket policies have been prohibited, and what a Local Authority has to have regards to. Examples of blanket policies are shown below

### SEND Code of Practice

Paragraph 9.14 factors which Local Authorities must pay particular attention to when determining whether an EHC needs assessment is required. These include:

- Academic attainment and rates of progress
- Nature, extent and context of CYP's SEN
- Evidence of action already being taken by placement
- Evidence that where progress has been made, only as a result of additional intervention and support above usually provided
- Evidence of physical, emotional and social development and health needs
- Local authorities may develop criteria or guidelines to help them decide but must be **prepared to depart from criteria where compelling reason to do so. They must not apply a blanket policy to particular groups / types of needs and must consider the child or young persons needs individually and on their merits.**

Legal consideration needs to be given to if the Local Authority has applied a blanket policy by selecting a particular group / type of need in selecting to review the EHCP's of all children in private independent schools. If there was predetermination of the issue prior to the review?

The local authority has an absolute duty to provide the provision in section F of the EHCP, if there is no suitable alternative which can provide the full provision required e.g. moving a child or young person from a provision which can meet need to one that cannot then this would be considered unlawful.

The previous code of practice highlighted other examples of blanket policies

## SEND Code of Practice

### **Assessments on an individual basis**

**8:37 LEAs must make decisions about which actions and provision are appropriate for which pupils on an individual basis.**

This can only be done by a careful assessment of the pupils' difficulties and consideration of the educational setting in which they may be educated. Provision should normally be quantified (e.g. in terms of hours of provision, staffing arrangements) although there will be cases where some flexibility should be retained in order to meet the changing special educational needs of the child concerned. It will always be necessary for LEAs to monitor, with the school or other setting, the child's progress towards identified outcomes, however provision is described. **LEAs must not, in any circumstances, have blanket policies not to quantify provision.**

Sec 7:79 LEAs should make clear that the Regulations 54 require that the advice must relate to the educational, medical, psychological, or other features that appear relevant to a child's current and future educational needs. The advice must also set out how those features could affect the child's educational needs and the provision that is considered appropriate in the light of those features. Those giving advice may comment on the amount of provision they consider appropriate. **Thus LEAs should not have blanket policies that prevent those giving advice from commenting on the amount of provision they consider a child requires.**

## Can I Appeal? Go to Tribunal?

In an annual review you have the right to appeal to the First Tier Tribunal when you receive the decision notification from the LA informing you of their decision to maintain, amend or cease the EHCP if you disagree with that decision

You then have the right to appeal to the First Tier Tribunal when you receive your Final EHCP (within 12 weeks from the review meeting) if you do not agree with the content, needs and provision or the placement.

As part of the appeal process you will be offered the opportunity to attend mediation, to try and resolve the dispute.

To register an appeal you will need to speak to the mediators to either arrange mediation or to tell them you do not want to proceed with mediation. Whatever your decision the Mediators will issue you with a mediation certificate either when you have taken part in mediation or when you have informed that you are not going ahead with the mediation. The number on the certificate is required to be able to register an appeal to the First Tier Tribunal.

Appeals need to be registered within 2 months of the final EHCP being issued (the date on the letter) or within 1 month of a mediation meeting.

After registering your appeal the Tribunal Service will send you confirmation, an appeal date, a timetable, and other supporting documentation.

### **Government Statistics Tribunal Service - In 2022/23**

HMCTS recorded 12,000 outcomes in relation to SEN appeals, an increase of 29% compared to 2021/22. Of these outcomes, 68% (8,000) of cases were decided by the tribunal, up 6 percentage points on 2021/22.

**Of the cases decided, 98% (7,800) were in favour of the appellant, up 2 percentage points on 2021/22.**

### **Children's and Families Act – Sec 51 Appeals**

(1) A child's parent or a young person may appeal to the First-tier Tribunal against the matters set out in subsection (2), subject to section 55 (mediation).

(2) The matters are—

(a) a decision of a local authority not to secure an EHC needs assessment for the child or young person;

(b) a decision of a local authority, following an EHC needs assessment, that it is not necessary for special educational provision to be made for the child or young person in accordance with an EHC plan;

(c) where an EHC plan is maintained for the child or young person—

**(i) the child's or young person's special educational needs as specified in the plan;**

**(ii) the special educational provision specified in the plan;**

**(iii) the school or other institution named in the plan, or the type of school or other institution specified in the plan;**

**(iv) if no school or other institution is named in the plan, that fact;**

(d) a decision of a local authority not to secure a re-assessment of the needs of the child or young person under section 44 following a request to do so;

**(e) a decision of a local authority not to secure the amendment or replacement of an EHC plan it maintains for the child or young person following a review or re-assessment under section 44;**

(f) a decision of a local authority under section 45 to cease to maintain an EHC plan for the child or young person.

(3) A child's parent or a young person may appeal to the First-tier Tribunal under subsection (2)(c)—

**(a) when an EHC plan is first finalised for the child or young person, and**

**(b) following an amendment or replacement of the plan.**

## **What is a Pre-action Protocol Letter? And when can I use one?**

A Pre-Action Protocol Letter is a Solicitor's letter which can be sent to the Local Authority when it has failed to fulfil its legal obligations regarding children and young people with special educational needs. This is about them not following the legal process, as opposed to you not agreeing with one of their decisions. The Pre-action protocol letter is the start of the Judicial Review process, informing the Local Authority of your intentions. Pre-action protocol letters can be sent for the following reasons:

- To challenge the local authority – If the Local Authority has failed to fulfil its legal obligations, for example not meeting statutory timescales for and EHCP, or not quantifying or specifying an EHCP, other reasons include:
  - Failure to notify you within six weeks if they intend to conduct an EHCP Needs Assessment after your initial request.
  - Failure to inform you within 16 weeks if they plan to issue an EHCP Plan after your EHCP Needs Assessment request.
  - Failure to provide the final EHCP Plan within 20 weeks after your EHCP Needs Assessment request.
  - Failure to deliver a decision within four weeks of an Annual Review
  - Inadequate provision of appropriate or full-time education to your child
  - Unlawful refusal to provide or fund home-school transport.
  - Negligence in conducting appropriate social care assessments or providing relevant social care support and services.
- Seek resolution: To challenge the Local Authority's unlawful behaviour and outline the desired actions that the local authority should take to rectify the situation promptly without having to take the case to judicial review

- Provide evidence: The letter provides a written record of your concerns and evidence of the local authority's unlawful acts. Informing the local authority of their legal obligations and highlighting the consequences if they fail to rectify the situation within a specified timeframe.

Although this is the first step of the Judicial process, the aim of the letter is also if possible, to come to a resolution so that a full Judicial Review is not required. If a satisfactory resolution is not found, then the next step will be to go forward into a Judicial Review.

**Please note if thinking of actioning a pre-action protocol letter this should be done before registering a complaint with the LA otherwise you will have to wait until the complaint process has concluded, which could potentially delay you from submitting at Pre-Action Protocol letter**

## Can I make a complaint? Who to?

### The Local Authority

In the first instance, you can make your concerns known to your SEND Officer, then to the Local Authority via their complaint processes, if necessary, copying in the Director of Children's Services for serious complaints.

**If your complaint is due to the Local Authority breaching their obligations then you should consider a Pre-action Protocol letter prior to submitting a complaint, please see the above question for further information on Pre-action Protocol letters.**

### The Secretary of State

#### **SEND Code of Practice 11.73**

If disagreements have not been resolved at the local level, under sections 496 and 497 of the Education Act 1996 **complaints can be made to the Secretary of State for Education** that either the governing body of a maintained school or **a local authority has acted unreasonably or has failed to carry out one of its duties under the Education Acts, including their SEN duties.**

### Ofsted

Ofsted inspect both schools and Local Authorities so concerns can be raised about the actions of a local authority, their processes and their obligations to meet their duties as a whole

#### **Send Code of Practice 11.76**

Ofsted can consider complaints from parents and others about early years providers and schools, but only where the complaint is about the early years provision or the school as a whole rather than in relation to individual children, and where the parent or other complainant has tried to resolve the complaint through the early years provider's or school's own complaints procedure

## Local Area Government and Social Care Ombudsman

### SEND Code of Practice 11.89

The Local Government Ombudsman (LGO) can investigate **complaints against local authorities where the complaint has not been resolved by the local authority's complaints procedure.**

The LGO investigates the process by which local authority decisions were made and whether there has been maladministration, rather than examining the merits of a decision which has been properly taken. The LGO will decide whether there has been an injustice to the complainant and/or there is evidence of maladministration. Maladministration can include delay, failure to take action and failure to follow procedures.

The LGO does not investigate the merits of decisions which have been properly taken, but which the complainant thinks are wrong, but does look at the decision-making process and the delivery of provision set out in EHC plans. 1

1.90 The LGO does not investigate matters which can be appealed to the Tribunal, such as a decision not to carry out an assessment (see paragraph 11.45). **The LGO can investigate complaints that the special educational provision set out in EHC plans is not being delivered and, in doing so**

11.93 If the LGO finds evidence of fault in the way a decision has been made, it will generally ask the local authority to reconsider the decision and consider if other remedies are available. Where there is evidence of systemic failings, LGO recommendations could include review of systems, policy and procedures. In addition, **if during the course of an investigation the LGO identifies other children who are similarly affected they can widen the scope of their investigation to include them**

## Judicial Review

### SEND Code of Practice 11.100 - Judicial review

Parents and young people can make an application to the Administrative Court for Judicial Review. **The Administrative Court can consider decisions of local authorities in the exercise of their duties including decisions on special education for children and young people.** For example, a judicial review in relation to EHC plans would be a **review of the way in which decisions that are reflected in the plan were made rather than the content of these decisions.** An application for judicial review will be considered only once all other options for remedy have been exhausted. Any application for judicial review is time bound. Guidance on making an application for Judicial Review is available from the Ministry of Justice website

For Judicial review please refer to the Pre-action Protocol Letter section, as the start of this process

## The First Tier Tribunal

You can appeal to the First Tier Tribunal Service when you have a decision point in an EHCP process or a review, or when you receive the final EHCP.

You are able to appeal on the following areas if you are unhappy with them:

- Failure to carry out a needs assessment
- Failure to issue a plan
- EHCP
  - The needs of the child or young person
  - The content of the plan
  - The placement (name of school or provision)

Appeals need to be lodged within 2 months of the finalised EHCP (date on the letter and document) or 1 month after mediation.

### **Children's and Families Act – Section 51 Appeals**

(1) A child's parent or a young person may appeal to the First-tier Tribunal against the matters set out in subsection (2), subject to section 55 (mediation).

(2) The matters are—

- (a) a decision of a local authority not to secure an EHC needs assessment for the child or young person;
- (b) a decision of a local authority, following an EHC needs assessment, that it is not necessary for special educational provision to be made for the child or young person in accordance with an EHC plan;
- (c) where an EHC plan is maintained for the child or young person—
  - (i) the child's or young person's special educational needs as specified in the plan;
  - (ii) the special educational provision specified in the plan;
  - (iii) the school or other institution named in the plan, or the type of school or other institution specified in the plan;
  - (iv) if no school or other institution is named in the plan, that fact;
- (d) a decision of a local authority not to secure a re-assessment of the needs of the child or young person under section 44 following a request to do so;
- (e) a decision of a local authority not to secure the amendment or replacement of an EHC plan it maintains for the child or young person following a review or re-assessment under section 44;**
- (f) a decision of a local authority under section 45 to cease to maintain an EHC plan for the child or young person.

**(3) A child's parent or a young person may appeal to the First-tier Tribunal under subsection (2)(c)—**

- (a) when an EHC plan is first finalised for the child or young person, and
- (b) following an amendment or replacement of the plan.**

(4) Regulations may make provision about appeals to the First-tier Tribunal in respect of EHC needs assessments and EHC plans, in particular about—

- (a) other matters relating to EHC plans against which appeals may be brought;
- (b) making and determining appeals;
- (c) the powers of the First-tier Tribunal on determining an appeal;
- (d) unopposed appeals.

## What can I do?

There are a number of things that you can do next, these include:

- Use emails rather than phone calls, if a phone call follow up in writing
- Keep copies of all communications e.g. emails, put in a folder, electronic or paper
- Gather evidence, take notes at meetings and circulate to attendees
- Record meetings with consent, ask for meetings to be transcribed
- When you are applying for a none-Section 41 school the burden of proof is on the parent to prove that it is the right School
- Go through your EHCP to make sure that all of your provisions are quantified and specified, if not look to get this information clarified
- Look at updating any reports from professionals
- Make sure all professional recommendations have been included in your EHCP from their reports
- Gather Evidence of your young person's needs and the provisions that are provided
- Assess how another placement can meet need, Can they meet all areas in Section F? this includes therapies that educate. The LA has an absolute duty to provide them as specified in section F of the EHCP
- Make sure that no therapies that train or educate move into the 'Health' section of the EHCP
- If appropriate (please refer back to page 19 & 20 to consider if a complaint or Pre-action Protocol letter is required in your circumstances) consider raising a formal complaint with the Local Authority and other relevant bodies Template letters are provided in the appendix of this document
- Consider data subject access requests
- Take advice and consider a Pre-Action Protocol letter if you believe that the Local Authority is in breach of its duties in your case (refer to page 19) consider this before submitting a complaint
- If you do not agree with an EHCP after a review look to go to mediation and to apply to the First Tier Tribunal to appeal
- Join your local Parent Carers forum – Parents Voice for support
- At Tribunal the judge will be looking to answer the following questions:
  - Is the Independent school suitable
    - If it the only school that can meet need?
  - Is the Local Authorities school suitable
  - Does the cost amount to unreasonable expenditure
    - All costs for the local authority school should be considered e.g. transport, delivery of
  - If the placement is more expensive what are the benefits? And do these outweigh the costs?



## Useful Links

[Derby's SEND Local Offer - Derby City Council](#)

[Derby SEND | Information & Advice Support Service \(SENDIASS\) \(derbysendiass.org.uk\)](#)

[\(IPSEA\) Independent Provider of Special Education Advice](#)

[Check if you can get legal aid - GOV.UK \(www.gov.uk\)](#)

[SEND code of practice: 0 to 25 years - GOV.UK \(www.gov.uk\)](#)

[Children and Families Act 2014 \(legislation.gov.uk\)](#)

[Education Act 1996 \(legislation.gov.uk\)](#)

[Complaints procedure - Ofsted - GOV.UK \(www.gov.uk\)](#)

[Make a complaint - Local Government and Social Care Ombudsman](#)

[Applying for a pre-action protocol letter \(The PAP Project\) – SOS!SEN \(sossen.org.uk\)](#)

[Global Mediation - Mediation Services in London & Nationwide](#)

[First-tier Tribunal \(Special Educational Needs and Disability\) - GOV.UK \(www.gov.uk\)](#)

[Independent special schools and post-16 institutions - GOV.UK \(www.gov.uk\)](#)

[Data Subject Rights Request - Before you begin - Section 1 - myAccount \(derby.gov.uk\)](#)

[Home | First Look SEN](#)

[Education SEN Law Solicitors. \(hcbgroup.com\)](#)

[Education Law | Birkett Long LLP](#)

## Useful Contacts

<p>Nathan Davies HCB Education Law Tel: 0333 202 7175 Email <a href="mailto:nathandavies@hcbgroup.com">nathandavies@hcbgroup.com</a> Website: <a href="http://www.hcbgroup.com">www.hcbgroup.com</a></p>	<p>Thomas Emmett Birkett Long Solicitors Tel: 0330 818 2913 Email: <a href="mailto:thomas.emmett@birkettlong.co.uk">thomas.emmett@birkettlong.co.uk</a> Website <a href="http://www.birkettlong.co.uk">www.birkettlong.co.uk</a></p>	<p>Fleur Roseblade First Look SEN Tel: 07812478150 Email: <a href="mailto:Fleur.roseblade@firstlooksen.co.uk">Fleur.roseblade@firstlooksen.co.uk</a> Website <a href="http://www.firstlooksen.co.uk">www.firstlooksen.co.uk</a></p>
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## Appendix 1 – LA Template Letter for Letter to the Local Authority

Address

Date

FAO: The Director of Children's Services

LA SEND Team

Address

### Ref: (Child's Name and Date of Birth) Concerns over unscheduled reviews of EHCP's for all Children and Young People of Specialist Independent Schools

I would like to raise my deep concerns about the unscheduled review of (child's name) EHCP. (Child's name) had (his/her) last annual review on XX date where (School Name) was named in section I as (his/her) placement able to meet (his / her) needs. I am concerned that after only X months another review is taking place, this does not appear to be an effective use of time or resources, or in the best interests of my child.

The Review letter cites the reason for the review is to check that the current placement is the most effective place for my child to achieve their potential and that the placement represents an effective use of public funds. When this has been agreed previously on (date of the last review). It is extremely concerning that it appears that all children and young people at (school name) have also had a letter reviewing their EHCP, seeming that all (name La) children and young people at the school have been targeted as part of a blanket policy rather than looking at each young person's needs and the provision required to meet them.

The Local Authority appears to be incorrectly focusing on the educational setting without first assessing and identifying the individual needs and the provision required and where this can be delivered. They have been very proficient at talking to the Local Press about the cost of independent schools, without looking at the reasons my child attends, as it is the only place that can meet the needs in their EHCP.

My child requires a multi-disciplinary approach as identified by professionals which requires therapies and education to work together to support their needs, which can be delivered at (school name), according to the Children and Families Act Section 21 any **“Health care provision or social care provision which educates or trains a child or young person is to be treated as special educational provision in section F (instead of health care provision or social care provision).”** E.g. Speech and Language and Occupational Therapy.

**Section 9.131** of the SEND Code of Practice states that 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 as special educational provision it must also meet the costs of the fees, including any boarding and lodging where relevant

The Children and families Act section 42 outlines **the Local Authorities Duty to secure special educational provision and health care provision in accordance with EHC Plan**

(1) This section applies where a local authority maintains an EHC plan for a child or young person.

(2) **The local authority must secure the specified special educational provision for the child or young person.**

**This includes all provisions outlined in section F including therapies that train or educate, they are the absolute responsibility of the Local Authority to deliver**, it is not ok to only deliver part of the provision or to reduce the provision in an EHCP to fit into an Educational setting. The placement needs to be able to meet the needs and provision not the other way around and a child's needs having to fit the provision a placement can offer.

It is my parental preference that (Name) remains at (school name) under the Children and Families Act section 19. The LA Must have regards to: Section 19(a) a local authority in England must have regard to the following matters in particular – (a) The views, wishes and feelings of the child and his or her parent, or the young person”. The Education Act section 9 specifies the **Duty on the LA to: “... 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.**

(Name's) school is able to provide efficient instruction and training and it is able to deliver (his /her ) EHCP in its entirety.

I will seek further legal advice and consult if attempts are made to withdraw my (son/daughter) from a setting which can fully meet (his/her) needs to one that is not able to fully meet them. If a failure to secure the provision occurs, it will not be appropriate to apply the usual complaints timescales, I will take advice on legal action including, but not limited to, judicial review. I hope that it will not be necessary to take this matter further.

Yours sincerely

Name & Signature

**Note:** consider if a Pre-action Protocol Letter would be more appropriate in your circumstances before making a complaint

## Appendix 2 – LA Template Letter for Professional Bodies e.g. Local Area Ombudsman

Address

Date

Professional Body information  
Address

**Ref: Concerns over (name LA) Local Authority’s unscheduled reviews of EHCP’s for all Children and Young People at Specialist Independent Schools with a view to moving all placements**

I would like to make you aware of my deep concerns about the unscheduled review of all EHCP’s for children in (Local Authority area) who attend a Private Independent School.

The Review letter cites the reason for the review is to check that the current placement is the most effective place for my child to achieve their potential and that the placement represents an effective use of public funds. It is extremely concerning that it appears that only children and young people at Private Independent Schools have had a letter reviewing their EHCP, seeming that all (LA Area) children and young people at these type of schools have been targeted as part of a blanket policy rather than looking at each young person’s needs and the provision required to meet them.

The Local Authority appears to be incorrectly focusing on the educational setting without first assessing and identifying the individual needs and the provision required and where this can be delivered. They have been very proficient at talking to the Local Press about the cost of independent schools, without looking at the reasons children and young people attend, being the only place that can meet the needs in their EHCP.

The children involved require a multi-disciplinary approach which requires therapies and education to work together to support their needs, many of these children have been out of school for long periods before going to their current school or suffer from school based trauma. A lot of these children have quite complex therapy needs which cannot be met at any of the maintained provisions as they do not have their own therapists and rely on ‘Health’ who would be unable to meet the therapy requirements in and EHCP.

The Children and Families Act Section 21 any “Health care provision or social care provision which educates or trains a child or young person is to be treated as special educational provision in section F (instead of health care provision or social care provision).” E.g. Speech and Language and Occupational Therapy.

Section 9.131 of the SEND Code of Practice states that 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 as special educational provision it must also meet the costs of the fees, including any boarding and lodging where relevant

The Children and families Act section 42 outlines the Local Authorities Duty to secure special educational provision and health care provision in accordance with EHC Plan

(1) This section applies where a local authority maintains an EHC plan for a child or young person.

(2) The local authority must secure the specified special educational provision for the child or young person.

This includes all provisions outlined in section F including therapies that train or educate, they are the **absolute responsibility of the Local Authority to deliver, it is not ok to only deliver part of the provision or to reduce the provision in an EHCP to fit into an Educational setting. The placement needs to be able to meet the needs and provision not the other way around and a child's needs having to fit the provision a placement can offer.**

Parental preference seem to be being ignored, and no regard is being given to where and how parents want their child to be educated.

Under the Children and Families Act section 19. The LA Must have regards to: Section 19(a) a local authority in England must have regard to the following matters in particular – (a) The views, wishes and feelings of the child and his or her parent, or the young person”. The Education Act section 9 specifies the Duty on the LA to: “... 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.

If does not appear that children and young people are being treated in line with law and regulations. They are being reviewed via a blanket policy with the intention to rename placements in provisions that will not be fully able to meet need, whilst ignoring parental preferences. This will force hundreds of children, young people and their families to have to go to tribunal, putting further pressure on the system, and potentially leaving children and young people without a school place until an appeal has been concluded. I cannot see where the child, young person or their families have being put at the heart of this decision-making.

Yours sincerely

Name & Signature

**Note:** consider if a Pre-action Protocol Letter would be more appropriate in your circumstances before making a complaint