

EHC Plan Consultation Workshop

SENCO meet the SEND Team

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When a consultation is made- open EHC Plan

When an EHC Plan is open at draft stage or, when an amendment notice is issued, Parents or Young Person (16 and above) have the right to make request a change of placement at this stage (*mover in to the LA's is an exception to this rule*)

The Law:

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 or independent specialist colleges (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)

The Local Authority will also consult with schools they deem appropriate, if mainstream, this will always be local to the families home.

Schools must base their response on the EHC Plan, and Appendices and have 15 calendar days to do so



EHCP Consultation and the Law

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



Section 33 and 39 of the children and families Act 2014

Section 9 of the Education Act

Page 174 – SEND Code of Practice

The Local Authority considers responses in line with the law criteria. It is at this point the LA can decide to name a school in section I. The SEND team will sometimes challenge responses and address your points to make you aware of inclusive practice and what is expected (*this is not a legal requirement as it is expected all Schools should know the law around this*)



Consultation –criteria and consideration

The threshold for a mainstream school not to be named is extremely high

It would be unsuitable for the age, ability, aptitude or SEN of the child or young person

- *This is an argument that **can not** be made by a mainstream school as there is an expectation that differentiation should take place*

The attendance of the child or young person there would be incompatible with the efficient education of others

- *Incompatibility with the efficient education of others needs to be made out*
- *Responses need to demonstrate reasonable steps that could be taken to remove incompatibility (this is not just in the class but throughout the School)*

Or the efficient use of resources

- *This can only be made out by the Local Authority.*



Consultation- what the LA/Tribunal Judge considers

For a Local Authority to defend a school's response at Tribunal we need to see:

- What reasonable steps have been taken to demonstrate why *incompatible* cannot be removed, throughout the school throughout the day (*demonstrated by examples or tried tested*).
- The tribunal would also consider the building size and maybe request a blueprint of the school.
 - Reflection on your Inclusion/SEN Policy



Example of Tribunal

Background: A 14-year-old boy with a diagnosis of Autism Spectrum Disorder and Severe Learning Difficulties, had only been to a special school for one week aged 4 and was then withdrawn by his mother. He was then home schooled by his mother.

Reason it went to tribunal: At age 14 the case was in a SENDist tribunal because his mother said she wanted him in a mainstream school and the local authority named a special school. He was assessed by an Educational Psychologist and Special and Language Therapist. He had the communication skills of a typical 3-year-old child and still presented with severe learning difficulties.

Result: Even with this evidence as the bias is for mainstream education the Tribunal directed the local authority to go and find a mainstream school for him.

This shows the very high thresholds tribunals will place on school's and local authorities when it comes to the right of parents to request mainstream education.



Responses from Mainstream Schools

BAD EXAMPLES:

Cannot admit as we are full in that year group

The School is over numbers - *This will not hold up in tribunal.*

Cannot meet the needs as the child requires specialist provision - *This is not for school to determine*

A parent has not been consulted regarding school places, and also the concerns raised about the plan not being yet finalised and that she wants a school closer to home, in support of parental preference, we will not be offering a place. – *This is not a response in line with legislation*

Child is not able to use spoken language to express herself – *make reasonable adjustments*

Child- is not toilet trained and do not have the facilities for changing – *What would it take to get this?*

Has violent outbursts so could put other children at risk – *So what could be the possible triggers and how could these be removed.*

On admission to out school, it would be detrimental to his education and that of others. – *But this requires lots more details and most instances to be tried and tested for this to be made out in law.*

Child requires a lot of support more support than a mainstream school can offer. – *Why can't a mainstream school offer?*



Movers in to Hillingdon

Law:

The requirement for the child or young person to attend the educational institution specified in the EHC plan continues after the transfer. However, where attendance would be impractical, the new authority **must** place the child or young person temporarily at an appropriate educational institution other than that specified – for example, where the distance between the child or young person’s new home and the educational institution would be too great – until the EHC plan is formally amended. The new authority may not decline to pay the fees or otherwise maintain the child at an independent or non-maintained special school, or a boarding school named in an EHC plan unless and until they have amended the EHC plan.

It is a priority for the Local Authority to temporarily place a Child with an EHC Plan in a school to avoid a Child Missing Education and to avoid a child being discriminated against due to having an EHC Plan.

Section 47 of the Children and Families Act 2014 and Regulations 15 and 16 of the SEND Regulations 2014



When the school is named and you disagree

- You must still admit the child – ***Failure to do so can be seen as discrimination***
- Start a transition plan – to ensure it is in the best interest of the child
- Discuss with professionals involved or seek advice from professionals, SAS, EP, SALT, OT, CAMHS
 - Schools can not appeal the decision to be named

If you feel you have concerns with being named, you can report to the Secretary of State (***You will be expected to know the law around this***)

Local Authorities can also report Schools to the secretary of State for not following the law



“ INCLUSION IS NOT BRINGING PEOPLE INTO WHAT ALREADY EXSISTS; IT IS MAKING A NEW SPACE, A BETTER SPACE FOR EVERYONE” – *George Dei*



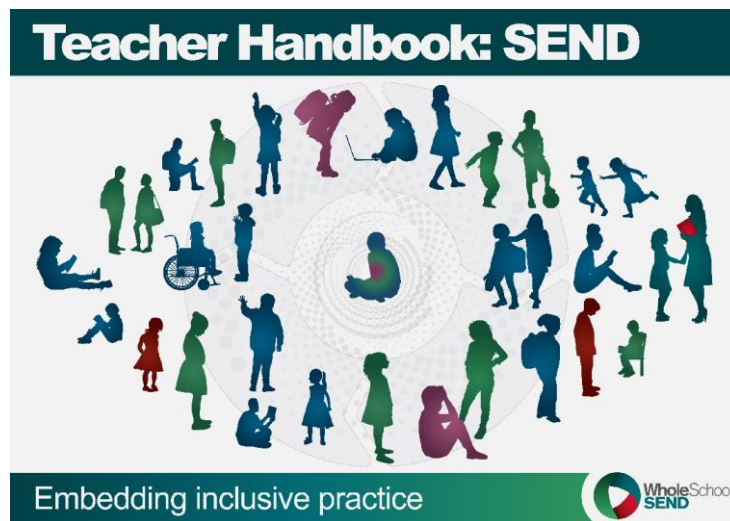
Inclusions starts with language; We can! **Not-** we cannot!
Creativity is the key to inclusive practice.

Contents

Law Resources:

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

<https://www.ipsea.org.uk/>



Q&A

1. How do you determine that a child requires specialist if the school they are in does not say so?

This is a combination of looking at the EHC Plan/Review/ Professionals reports which identifies needs, not identifying a setting. The Local Authority would then discuss with parents and seek views, consults to specialist schools are made to seek a views. This is all gathering evidence to determine if specialist is required. It would then be considered at panel and ratified. However we would not name specialist again parents wishes.

2. Is there a limited to consultations that are made when seeking a new placement? *No, however we need to be realistic on how many consultations are made to ensure placements are commutable distance from home.*

3. How is it that mainstream school is expected to take children with high needs but how can we provide the correct curriculum pathway? *Recommended that schools that required take up the offers from Pentland Field and Cotesford Mainstream on how you can think creatively around this.*

4. If we request to see the other school consulted with or the responses can we have access to these? *No this is child case folder which is confidential, parents would need to give permission for this to be shared.*

5. If parents do not give their consent should the Local Authority still consult with the school? *Yes the local authority have the right to consult and share this if it is relevant to the process.*

