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Please note that the content contained within this presentation does not constitute legal advice and it is provided for general information purposes only. Legal content is based on the law as at 05 October 2026.

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What are the key sources of law?

Education Act 1996	Children and Families Act 2014 ('CAFA')	'The SEND Regulations'	Statutory Guidance	Other Key Sources
Comprehensive framework governing education in E&W. [Link]	Established the EHC Plan system. [Link]	Special Educational Needs and Disability Regulations 2014	2015 Special Educational Needs and Disability Code of Practice: 0 to 25 ("the SEND Code of Practice")	Children's Wellbeing and Schools Act 2026
As relates to SEND - not completely replaced by CAFA 2014.	Sought to join up services.	Adds detail to CAFA provisions; tends to set out the process.	Expectation is that will be followed. Take care with interpreting 'guidance'.	Equality Act 2010
Relevance - questions of parental preference (Section I)	Extended scope of 'statements' (now EHC Plans) to post-16	SEND (First Tier Tribunal Recommendations Power) Regulations 2017	Explains how LAs, schools, and professionals should identify, support and meet the needs of CYP with SEN.	Tribunal Procedure Rules
(Specialist) School Transport still underpinned by EA 1996; Part IV – duties on LAs and on providers to support children w/SEND.	Rights of appeal are codified in the CAFA 2014	Relevant for 'extended appeals'	Intention: to help ensure consistent approach across the country.	Children Act 1989

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What is an Education, Health and Care (EHC) Plan?

- Defined under Section 37 Children and Families Act 2014.
- An EHC Plan specifies the child's or young person's special educational needs and the **special educational provision** required… as well as, inter alia, any **health provision** and **social care provision** reasonably required by the learning difficulties and disabilities which result in the child or YP having SEN…
- Form is prescribed by law – 11 sections A to K.
  - Regulation 12 of the Special Educational Needs and Disability Regulations 2014 and the 2015 SEND Code of Practice (See in particular table at paragraph 9.69).

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What is an Education, Health and Care (EHC) Plan? (Supplementary Handout – please click image below)



Bevan Brittan

EDUCATION, HEALTH AND CARE PLANS (EHCPs)

Guidance on the various sections of an Education, Health and Care Plan ('EHCP') and what they mean.

Background

The purpose of this information is to provide general guidance on EHCPs, the Children and Families Act 2014 ('CFA') and the SEND Code of Practice 2015 (the 'Code') which together creates the framework for EHCPs and statutory duties of the Local Authority ('LA').

This note does not provide guidance on conflict which may emerge around EHCP dispute resolution. It does not provide other guidance around EHCPs including indicative timeframes, or about the lifecycle of the EHCP. This advice note does not contain information on situations where a child or young person lacks capacity. For more specific advice on these, or other areas, we would be happy to assist.

1 GENERAL INTRODUCTION

An EHCP is a document which specifies a child[1] or young person's[2] identified special care, health and educational needs. Whether or not a child or young person is capable of obtaining qualifications is not a relevant consideration when deciding whether they should have an EHCP. The only question is whether an EHCP is necessary in order for them to obtain the special educational provision they require.

An EHCP identifies the provisions which need to be put in place for the child or young person so that the LA can meet those needs. The EHCP requires connectivity between the LA's activities for the individual as well as health providers and social care bodies as well as other related parties such as the individual, their parents and schools. The benefit of this is that the parent and child or young person will have a single document outlining all provisions in place for them which encourages greater participation of all interested parties.

An EHCP is drawn up by the LA after an EHC assessment has taken place which identified the need for an EHCP. There is a requirement on the LA to keep education and care provision under review and these plans can remain in place until the individual reaches the age of 25. Whilst this document refers to children and young persons it is necessary to keep this in mind.

1. A 'child' is one aged up to 18 years.
2. A 'young person' is aged 19 or over and under 25.

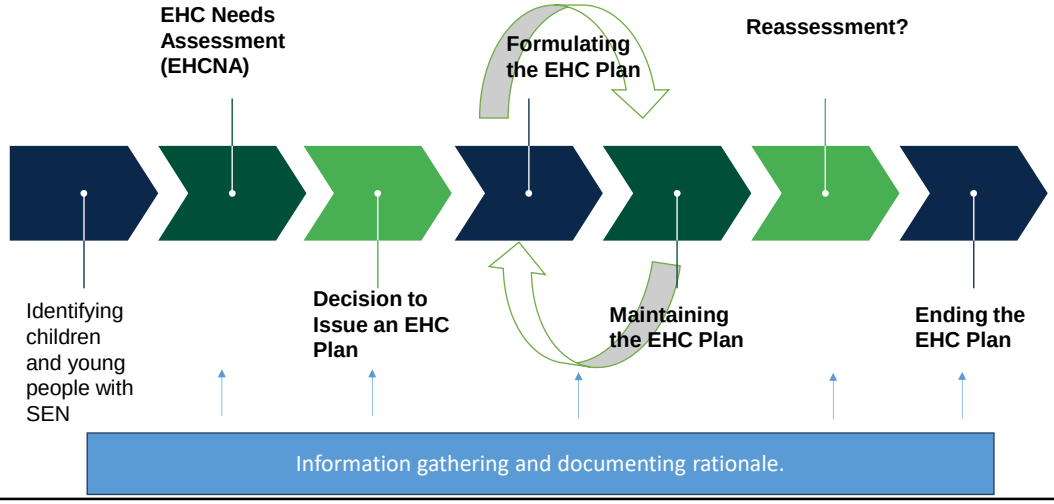
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Parameters of the EHCP

- These are plans that can continue to 25 if special needs persist and the young person remains in education and/or training.
- Local Authority leads* the process (social care and education are separate functions for the LA).
- Typical EHC Plan pathway takes 20 weeks.
  - Important it captures all needs and it must be comprehensive.
  - This is a tight timetable.
- Premise that education, social care and health all have a part to play – duty to cooperate - each have sections of the EHCP where needs and provision documented accurately and fully.
- Problems can arise when LA/health do not engage well; provision 'falls between'.
- Do not assume that things such as occupational therapy/physiotherapy and speech and language therapy at school are health provision– usually education (see next slide).

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The EHC Plan Road Map
From needs assessment to finalising the Plan



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What are Special Educational Needs?

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20 When a child or young person has special educational needs

(1) A child or young person has special educational needs if he or she has a learning difficulty or disability which calls for special educational provision to be made for him or her.

(2) A child of compulsory school age or a young person has a learning difficulty or disability if he or she—

(a) has a significantly greater difficulty in learning than the majority of others of the same age, or

(b) has a disability which prevents or hinders him or her from making use of facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions.

(3) A child under compulsory school age has a learning difficulty or disability if he or she is likely to be within subsection (2) when of compulsory school age (or would be likely, if no special educational provision were made).

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What is Special Educational Provision?

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What is Special Educational Provision?

Section 21, Children and Families Act 2014

- For a child aged two or more or a young person, means educational or training provision that is additional to, or different from, that made generally for others of the same age in—

(a)mainstream schools in England,

(b)maintained nursery schools in England,

(c)mainstream post-16 institutions in England, or

(d)places in England at which relevant early years education is provided. (Section 21 (1))

- For a child aged under two, means educational provision of any kind. (Section 21(2))

- Special Educational Provision is set out within Section F of an EHC Plan.

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What is Special Educational Provision?

London Borough of Bromley v Special Educational Needs Tribunal and others [1999] ELR 260

- Some provision 'unequivocally educational'; some 'unequivocally non-educational'.
- Between is 'a shared territory of provision which can be intelligibly allocated to either'.
- Court adopted Oxford English Dictionary's definition of education: 'systematic instruction, schooling or training given to the young … in preparation for life'.
- The 'shared territory' is is a grey area of provision which might, on the particular facts of a case, be either: a question of fact for the decision maker i.e. the Local Authority (on appeal, the First-Tier Tribunal) – *R (A) v Hertfordshire County Council [2007]* ELR 95.

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What does Post-2014 Act case law tell us?

DC & DC v Hertfordshire County Council (SEN) [2016] UKUT 0379 (AAC)

- 'Systematic instruction, schooling or training'.
- Little doubt that a form of provision relating to a matter within the curriculum is educational.
- Even provision requiring the adaptation of a school's physical environment may constitute educational provision.
  - An example would be the provision of a low noise or low distraction environment for a pupil with a sensory disorder.
- Provision should, of course, be directly related to the pupil's learning difficulty or disability – 'additional to or different from'.
- Upper Tribunal contrasted some examples for a hypothetical pupil with an anxiety disorder.

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DC & DC v Hertfordshire County Council (SEN) [2016]

- Mindfulness training: Special Educational Provision
  - Objective is to enable the pupil to remain calm, keep focussed in class and relate to other children at playtime. Mindfulness is based on principles and practice to secure what is learned.
- CBT: Special Educational Provision
  - Teaching pupil how to deal with anxiety that pops up suddenly.
- Hypnosis: Not Special Educational Provision
  - The pupil is being practiced upon in order to change their behaviour. Their behaviour is affected subliminally. 'It may be thought unlikely that this would be educational provision any more than taking an anti-biotic for a sore throat'.
- Judge went on to describe common factors of SEP provision – 'the educational markers' they display:
  - Input needed.
  - Identification of what a programme is meant to develop in the pupil.
  - How this development is to be achieved.

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What is the 'grey area' of provision?

- OT – almost always treated as SEP
- Physiotherapy – usually but not always
- Counselling – sometimes

- What about provision from nurses, doctors and other medical staff?
  - Older case-law: nursing care unequivocally a non-educational need.
  - *DC and DC*: question is not whether provision is medical, but whether the learning disability (SEN) calls for that provision.
  - 'Support of a psychiatrist' might amount to special educational provision.

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Who gets an EHC Plan?

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36 Assessment of education, health and care needs

(1)A request for a local authority in England to secure an EHC needs assessment for a child or young person may be made to the authority by the child's parent, the young person or a person acting on behalf of a school or post-16 institution.

(2)An "EHC needs assessment" is an assessment of the educational, health care and social care needs of a child or young person.

(3)When a request is made to a local authority under subsection (1), or a local authority otherwise becomes responsible for a child or young person, the authority must determine whether it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.

[….]

(8)The local authority must secure an EHC needs assessment for the child or young person if […] the authority is of the opinion that—

(a)the child or young person has or may have special educational needs, and

(b)it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.

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37Education, health and care plans

(1)Where, in the light of an EHC needs assessment, it is necessary for special educational provision to be made for a child or young person in accordance with an EHC plan—

(a)the local authority must secure that an EHC plan is prepared for the child or young person, and

(b)once an EHC plan has been prepared, it must maintain the plan.

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What does health and care provision look like in an EHC Plan?

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Section 21, Children and Families Act 2014

(3)“Health care provision” means the provision of health care services as part of the comprehensive health service in England continued under section 1(1) of the National Health Service Act 2006.

(4)“Social care provision” means the provision made by a local authority in the exercise of its social services functions.

But what about health or social provision which educates or trains?

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What about health/social care provision which educates or trains?

Section 21, Children and Families Act 2014

(5) “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).”

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What is the dividing line between education and health/social care provision…

- Section 21(5) Children and Families Act 2014 has the effect of treating health care provision or social care provision which has an ‘educating or training’ effect as special educational provision (instead of health care provision or social care provision).
- ‘Deemed’ special educational provision c.f. ‘direct’ special educational provision.
- Why does this matter?
  - Changes where the provision is included in the EHC Plan.
  - As a consequence, changes which public body has the responsibility for securing the provision.
  - Impacts on parent/young person’s rights of appeal to Tribunal.

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What is the dividing line between education and health/social care provision…

- Health provision which might ordinarily be included in Section G of an EHC Plan – with responsibility for securing the provision resting with the ICB – is included in Section F, and it becomes the responsibility of the Local Authority to secure.
- Social Care provision which might ordinarily be included in Section H1/H2 of an EHC Plan is included in Section F.
  - Remains the responsibility of the Local Authority.
  - Alters a parent/young person's right of redress including appeals to the Tribunal.
- Speech & Language Therapy, Occupational Therapy, and Physiotherapy are most common examples of deemed special educational provision.
  - Speech & Language Therapy should be treated as educational unless there are "exceptional reasons for not doing so" *X&S v Caerphilly Borough Council* [2004] EWHC 2140

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Is there a dividing line?

- ***R&RK v Hertfordshire County Council* [2025] UKUT 381 (AAC)**
- Upper Tribunal declined to '*formulate a test, still less a definition*'.
- Reaffirmation of the principle that: that "educational provision" does not (necessarily) require evidence of the provision educating or training.
- Tribunal can (should?) approach questions of provision – and where it sits in an EHC Plan – in a particular Order. Sections G and H before Section F?
- Remains a boundary between SEP and other provisions – but arguably as blurred as ever!

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Examples of what might/might not be Section F provision

- Is a hearing aid special educational provision?
  - Yes - *EAM v East Sussex County Council* [2022] UKUT 193 (AAC).
  - A school has installed a loop system for a pupil with a hearing impairment and the class teacher uses a microphone. With their hearing aid on the 'T setting' – pupil can hear the lesson.
  - The microphone and the loop system are both educational provision. But they do not themselves educate the pupil. The hearing aid may be both an educational provision and a health care provision, but again it does not educate the pupil. The teacher and the contents of the lesson educate the pupil.
- What about a powered wheelchair?
  - The Upper Tribunal considered this in *East Sussex County Council v JC* [2018] UKUT 81 (AAC).
  - Held: if use educates or trains, no rule excluding it from being educational training provision – judgment emphasised importance of evidence and the Tribunal (or Local Authority when not in an appeal) making adequate findings.
- Need for adequate findings => importance of robust evidence.

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Examples of what might/might not be Section F provision

- Is mentoring support special educational provision?

"A will have up to 5 hours per day with a specialist worker from an organisation such as I-support and/or autism mentors and/or a personal assistant/companion to assist A in accessing her education and travelling independently, helping her with her organisational and planning skills including management of her educational commitments and homework and helping A put into practise strategies she learns as part of her SALT and OT, as well as other independence and communication skills"

  - Potentially - something which supports (or even facilitates) education can lawfully be educational provision, such as mentoring support: *Westminster City Council v FTT* [2023] UKUT 177 (AAC).

- Is an internet connection special educational provision?
  - Potentially - *EAM v East Sussex County Council* [2022] UKUT 193 (AAC)

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Summary – what factors should I consider when deciding if provision is Special Educational Provision?

- **Where to start**: education, although it may be very wide ranging in concept, is about instruction, schooling or training, so one or more of these factors is likely to be discernible in provision which is asserted to be educational.

- **Remember:** the provision should be directly related to the pupil's learning difficulty or disability – Special Educational Provision is provision that is 'different from' or 'additional to' provision made generally for others of the same age in a mainstream setting.

- **Guiding principles:**
  - Direct educational provision need not itself educate or train – examples: hearing aid (*EAM v East Sussex*) ; mentoring support (*Westminster CC*).
  - Contrast with deemed special educational provision – need to show that it 'educates or trains'.
  - Ultimately it is a decision for the Local Authority decision maker (and on appeal, the Tribunal).
  - Document your rationale.
  - Duty is to secure what is reasonably required.

Can a local authority require a parent to secure special educational provision?

Duty to secure special educational provision

'Section 42 Duty' – Section 42(2) Children and Families Act 2014

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

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Can a local authority require a parent to secure special educational provision?

- No unless the LA satisfies itself (and can demonstrate) that the **parents have voluntarily made suitable alternative** arrangements.
- Remember: Section 42(5) - subsections (2) and (3) do not apply if the child's parent or the young person has made suitable alternative arrangements.
- *A v Cambridgeshire County Council and anor* [2002] EWHC 2391.
- *TW and KW v Hampshire County Council* [2022] UKUT 00305 (AAC) – provision funded by e.g. a PI payment

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How long does a local authority have to secure Section F provision?

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Time limits on securing provision

- *ZK v London Borough Redbridge* [2020] EWCA Civ 1597
  - Considered the meaning/weight of the LA's duty to 'secure'.
- What about following a First-Tier Tribunal appeal?
  - Bulk of provision within 5 weeks i.e. the period within which the LA has to amend and (re)issue the EHC Plan following a decision notice.
  - *R (BA) v Nottinghamshire County Council* [2021] EWHC 1348 (Admin).
- Threat of public law challenge in event of failure to secure.
  - Not a 'best endeavours' obligation.

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Does a local authority need to secure the best possible provision for a child or young person?

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What about the views, wishes, and feelings of the child/their parent?

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What does the law says about the child/young person's wishes?

- Section 19 Children and Families Act 2014

[…] 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

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What does the law says about parents' wishes?

- Starting point: the concept of parental responsibility within the Children Act 1989.
- Section 3(1): all the rights, **duties,** powers and **responsibilities** and authority that, by law, a parent of a child has in relation to the child and their property.
- Not boundary-less – there will be a tipping point where the parent's wishes do not accord with their using PR in the best interests of the child.
- As long as a young person has capacity, can make decisions of their own.

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What does the SEND framework(s) say re: parents' wishes?

- Section 19 Children and Families Act 2014
  - LA must have regard to views, wishes and feelings of parent and child.
- Section 9 Education Act 1996
  - [-] the Secretary of State and **local authorities shall 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.
- Particular significance when naming a setting in Section I.

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How should views, wishes and feelings feature in the EHC Plan?

- Regulation 7, Special Educational Needs and Disability Regulations 2014 - when securing an EHC Needs Assessment, a local authority must:
  - consult child (and parent) or young person;
  - take into account views, wishes and feelings
- Regulation 11 - when preparing an EHC Plan, a local authority must take into account evidence received during Needs Assessment – as above, by virtue of Reg 7, - should include views, wishes and feelings.
- Regulation 12(1)(a) – when preparing an EHC Plan a local authority must set out— the views, interests and aspirations of the child and his parents or the young person (section A)
- EHC Plan is a living document – views, wishes and feelings should be canvassed during annual review.

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What is the impact on the naming of a setting/Section I?

- (Conditional) Duty on a local authority to name the school/setting requested by the child's parent/young person.
  - List of settings in Section 38(3) Children and Families Act.
  - Starting point: setting within this list must be named in Section I.
  - Statutory exceptions recorded within Section 38(4) – suitability; incompatibility with efficient education of others; incompatibility with efficient use of resources.
- Section 9, Education Act 1996 must also be considered even where a statutory exception established –or- where request for independent setting made.
- No equivalent right to request EOTIS but parents' wishes to be taken into account when considering if a[ny] school would not be suitable.

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How will the Tribunal take into account views, wishes and feelings?

- Like the local authority, the Tribunal is obliged to take into account a child/young person's views.
- The Tribunal is required to expressly deal with these views in its decision notice - ***M & M v West Sussex County Council*** **(SEN) [2018] UKUT 347 (AAC)**.
- When appropriate, parental evidence can be used to adduce a child's views ***BB v London Borough of Barnet*** **[2019] UKUT 285**.
- The older and more mature the child, the greater the weight to be given give to their views ***West Sussex County Council v ND*** **[2010] UKUT 349 (AAC)**
  - Principle applies to both local authorities and the Tribunal.

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What if the parent(s)'s views conflict with those of the child/young person?

- Age and capacity determining factors.
- Even where CYP is deemed to lack capacity, efforts should be undertaken to canvas (and record) their views.
- Young person holds right of appeal (if has capacity).
  - In instances where Tribunal has concerns that parent is not acting in the best interests of the young person, can appoint a replacement litigation friend ('Alternative Person').

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What happens if the parents disagree?

- Check position around Parental Responsibility.
- One parent's wishes should not override the other where both have Parental Responsibility.
- In all cases - the child should be kept central.
- Either parent can apply to the Family Court in private proceedings for a Specific Issue Order.
  - But would hope that a way forward can be agreed without need for recourse to Family Court.

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What does the law say about the naming of a school or college in an EHC Plan?

Naming a setting in an EHC Plan

- Section I of a finalised EHC Plan must set out:

'- *the name of the school, maintained nursery school, post-16 institution or other institution to be attended by the child or young person and the type of that institution or, where the name of a school or other institution is not specified in the EHC plan, the type of school or other institution to be attended by the child or young person (section I)'* – **Regulation 12(1)(i) Special Educational Needs and Disability Regulations 2014.**

- Exception: EOTIS – Section I must be left blank (case law including *Derbyshire CC v EM and DM* [2019]; *NN v Cheshire East Council (SEN)* [2021]).

- A draft EHC Plan must not name a specific institution or a type of institution – **Section 38(5) Children and Families Act 2014**.
  - NB//this applies to drafts of a first EHC Plan – reviews of EHC Plans following a different process. It will be expected that amendment notices set out the setting/type of setting to be named.

- When issuing a draft EHC Plan (first Plan) or a proposed amended EHC Plan (following review) – parent or young person must be informed of their right to request a particular school or other institution named in the EHC Plan.

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Parental/Young Person Preference

- Parents/the young person has a right to request that a particular setting ('school or other institution') is named in the EHC Plan.
- This is a broad right although not completely unfettered.
  - Applies to a setting that falls within the list described at Section 38(3) Children and Families Act 2014

(a) a maintained school;
(b) a maintained nursery school;
(c) an Academy;
(d) an institution within the further education sector in England;
(e) a non-maintained special school;
(f) an institution approved by the Secretary of State under section 41 (independent special schools and special post-16 institutions: approval).

- Starting point: where a request is made for a setting listed above to be named in the EHC Plan – the Local Authority must secure that the EHC Plan names this setting.
- Limited statutory exceptions (next slide).
- Evidential bar is set quite high

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Statutory exceptions

- Where a request is made for a setting (which falls within the list at Section 38(3) Children and Families Act 2014) is be named in the EHC Plan – rebuttable presumption that the Local Authority must secure that the EHC Plan names this setting.
- 'Conditional Duty to Name'. **Section 39(3) Children and Families Act 2014**

- The Local Authority does not need to name parental/young person's preference where it can show that one of the exceptions in Section 39(4) Children and Families Act 2014 applies:
  I. The school or other institution requested is unsuitable for the age, ability, aptitude or special educational needs of the child or young person concerned ('suitability exception')

The attendance of the child or young person at the requested school or other institution would be incompatible with—

  II. The provision of efficient education for others; or
  III. The efficient use of resources.

  - For the Local Authority to show that one of the statutory exceptions applies.
  - Role of setting consulted very important: robust evidence required to establish an exception applies – often this evidence can only come from the setting itself.

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Summary – consultations with a potential setting/naming in Section I

- Evidence is key. Track decision making and rationale.
- Whilst it is the Local Authority's responsibility to collate and adduce evidence – support of setting consulted is key.
- Except for wholly independent placements, presumption that parental preference setting will be named in EHC Plan.
- Three statutory exceptions.
- When analysing issues of cost of respective placements, not enough to reject the parental/young person's preference on the basis that it is more expensive - especially when relying on 'efficient use of resources'

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What is Education Otherwise Than In School/College (EOTIS/C)?

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Section 61 Children and Families Act 2014

61 Special educational provision otherwise than in schools, post-16 institutions etc

(1) A local authority in England ***may*** arrange for any special educational provision that it has decided is necessary for a child or young person for whom it is responsible to be made otherwise than in a school or post-16 institution or a place at which relevant early years education is provided.

(2) An authority may do so only if satisfied that it would be inappropriate for the provision to be made in a school or post-16 institution or at such a place.

(3) Before doing so, the authority must consult the child's parent or the young person.

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EOTIS

- Education Otherwise Than In School (EOTIS) – sometimes referred to as Education Otherwise Than At School (EOTAS).
  - What's the difference?
  - There is no difference – although the Tribunal is seemingly making a concerted effort to use EOTIS. *London Borough of Camden v KT* [2023] UKUT 225 (AAC)
  - *KT* decision also helpful confirmation that Section F provision **can** be provided in the child/young person's home
    - NB//remember Section 42(2) – non-delegable duty; must not be an expectation that parents will deliver provision unless voluntarily agreed to do so AND LA can be satisfied these are suitable arrangements.
    - Not the same as 'Elective Home Education' .
- Common myth: parents have right to request EOTIS in the same way they can request particular setting is named.
  - No such statutory right exists.
  - Presumption in favour of school-based provision – *AA & BB v Bristol City Council* [2023] UKUT 52 (AAC)

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EOTIS

- Whilst there is a presumption of school-based provision, Local Authorities should carefully consider representations for EOTIS where made by parents.
- Importance of robust and thorough consultations with a range of settings.
- Our experience: often a lack of firm/robust evidence – adduced in a timely manner – results in EOTIS being decided by Tribunal as 'there is no viable alternative'.
- Consultations around phase-transfer years/over summer holidays can be particularly tricky.

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And finally…



Credit: Scientific American
Original authors: Caitlin O'Connell and Tim Rodwell

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Any questions?

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