

The process of choosing a school or college for a child or young person with SEN differs depending on whether the child or young person has an Education, Health and Care (EHC) plan or not.

Children without EHC plans

Most children with special educational needs (SEN) do not have an EHC plan. They are supported from the help generally available in the school. You can find more information about this in our [SEN Support in Mainstream Schools Factsheet](#).

Children with or without EHC plans have the **right to go to mainstream school**. You can find more information about this right [here on the IPSEA website](#). It is important to note that this is a right to mainstream education but not necessarily a right to a particular mainstream school.

Without an EHC plan, your child will get a school place through the **normal admissions system**. You can find more information about this in our [Admissions Factsheet](#).

For local admission arrangements in Milton Keynes, please see: <https://www.milton-keynes.gov.uk/schools-and-lifelong-learning/school-admissions>

If your child does not have an EHC plan, you may still find this factsheet useful because it explains the differences between **types of school**.

When choosing a school, it is always a good idea to **visit** it. Our [Visiting Schools if your Child has SEN Factsheet](#) has a handy list of things to look out for and ask on your visit.

Children with EHC plans

The admissions system for children with EHC plans is different; you **do not** go through the normal admissions system.

Parents or young people have a legal right to request that a particular school or college is named in an EHC plan (or 'make representations' for an independent school, college or other institution).

This means that you can **express a preference** to the local authority (LA) for the school you want:

- at the time you get the first draft EHC plan; or
- when your child moves to a different phase of education; or
- at an annual review; or
- when amendments are made at any other time

What happens after I make a request?

Once you have made your request, the LA **must** consult with the setting and give them 15 days to respond. If they fail to respond, the LA does not have to wait to make a decision about naming a school/college. The LA still needs to stick to the **legal deadlines** for issuing a final plan. The LA should issue the draft EHC plan (or amendment notice) well before the deadline to make sure it can comply with its consultation duties. Our [EHC Needs Assessments Factsheet](#) and [Annual Reviews Factsheet](#) explain these timescales in more detail.

The final decision rests with the LA where the child or young person lives. Even if the school or college, and/or the LA where the school or college is located (if different), objects, the home LA can still choose to name the school or college in the plan.

Section 39(4) of the [Children and Families Act \(2014\)](#) says that the **only** reason the local authority can refuse the request is if:

- The setting is unsuitable for the age, ability, aptitude or special educational needs (“**SEN**”) of the child or young person; or
- The attendance of the child or young person would be incompatible with the provision of efficient education for others; or
- The attendance of the child or young person would be incompatible with the efficient use of resources.

The onus is on the LA to prove that at least one of the above conditions applies in order to dislodge your preference. This applies to the following **types** of school or college, **regardless of whether they are within your own LA** (these will be explained in more detail later):

- A maintained school or nursery (mainstream or special)
- An Academy (mainstream or special)
- An institution in the Further Education sector
- A non-maintained special school
- A section 41 independent school.

Asking for an independent school or college

If you ask for an independent setting (that is not a section 41 school, see below) as part of your 'representations' on the draft EHC plan, **the onus is on you** to prove that none of the schools the LA is offering can meet your child or young person's needs, **or** that the cost of the placement will not constitute unreasonable public expenditure.

If you cannot show this, **the LA is under no obligation** to look at independent provision. It does not matter that the independent setting proposed is an excellent school and/or better suited to your child or young person's needs than the school the LA has in mind.

LAs are not bound to offer a child or young person with SEN 'the best' provision to meet their needs – only what is **necessary** to meet their needs.

If you are requesting an independent setting, you will generally need evidence from a professional as to why the independent setting is the only school or college which can meet your child or young person's needs. Additionally, there must be an offer of a place from the independent setting.

The courts have considered situations in which an independent setting should be named in an EHC plan and given examples of when a setting would be considered an unreasonable public expenditure. You can read about these cases in the [case law section](#) on the IPSEA website.

You will need to check if the independent setting is in fact a **section 41 school or a non-maintained special school** here [on the government website](#) – if it is, it comes within the list above where the onus is on the LA to show that it is **not** the appropriate school to name in the EHC plan for one of the legal reasons above.

What happens once a school or college is named in an EHC plan?

- If one of the type of nurseries, schools or colleges listed above is named in section I of an EHC plan then they **must** admit the child or young person.
- If an independent school is named in section I, then the LA **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.
- The LA may name a **type** of school or college (rather than a particular school/college). This is lawful, but it means that there is no school/college with the duty to admit the child or young person.

If you receive an EHC plan which does not specify a particular school/college, then you can appeal to the SEND Tribunal and seek to have a particular school/college named in the EHC plan. You can also appeal if you disagree with the choice of school named in the plan by the LA. You can find further information about this in our [Appealing to the SEND Tribunal Factsheet](#).

Types of school

The basic division between types of school and other institutions (including post-16 institutions and early years providers) is between:

- those controlled by a local authority (LA) – referred to as **maintained** – shorthand for “maintained by a local authority”;
- those controlled by the Secretary of State – referred to generically as **Academies**;
- those which are neither of the above, which are usually controlled by private contracts between the parties.

Maintained schools or other institutions

Educational institutions controlled and funded (**maintained**) by local authorities (sometimes referred to as ‘**state**’ schools) include:

- **mainstream schools** (such as mainstream community schools, voluntary-aided, trust, foundation, or grammar schools)
- **nurseries** (free-standing or part of a community primary school)
- **special schools**
- **alternative provision** (including Pupil Referral Units); and
- **post-16 institutions** (Further Education colleges and sixth form colleges).

These are regulated by statute, regulations and statutory guidance.

A **Pupil Referral Unit** is for children who need to be educated out of school, often because they have been excluded. They have the same legal status as schools in some respects but do not have to teach the national curriculum.

You can find a list of **local Special Schools** on the [Milton Keynes Local Offer](#)

Academies

These are schools controlled and funded directly by the Secretary of State for Education and include:

- Academies
- Free schools
- UTC Schools
- Studio schools
- Academy special schools
- alternative provision Academies

- Academy boarding schools

These are **not maintained or controlled by LAs**. They are subject to a contract between the Academy trust (owner) and the Secretary of State known as the "Funding Agreement". Much (but not all) of the law and guidance for maintained schools applies to them as do many of the regulations for independent schools. They are subject to the same inspections as state schools by Ofsted.

Independent schools

All of the schools referred to above are controlled by the state in some way, i.e. maintained schools which are controlled by LAs or Academies which are controlled by the Secretary of State.

Other schools which are not controlled in those ways are broadly referred to as independent schools. These are:

- **Independent schools** – these are mostly controlled by charities ('not for profit') but there are some private 'for-profit' owners. Due to their independence their provision is not standardised across the sector as for the state sector. They include prep schools, public schools, and private nurseries (early years provision). Some private schools are registered as 'specially organised to make provision with pupils for SEN'. However, for legal purposes, independent schools are **neither special nor mainstream**, but all called 'independent'.
- **Non-maintained special schools** – these are all charitable foundations and 'not for profit'. This type of school will take a mixture of children and young people with and without EHC plans but in practice almost 100% of their pupils are publicly funded through EHC plans.
- **Section 41 schools** – these are independent special schools which have been approved by the Secretary of State under section 41 of the Children and Families Act 2014 as schools which a parent or young person can **request to be named in an EHC plan**. This means parents or young people have a right to request this type of school is named in an EHC plan in the same way they can request a maintained school.
- **Private post-16 institutions** – these may also opt for section 41 status.

How can I find out about a particular school?

Department for Education: The [Department for Education website](#) has a database which you can search by the name of the school, the location, or the local authority. It lists information about the type of school and other basic details such as the age of pupils and the name of the head teacher.

Ofsted: Inspection reports, obtainable from the [Ofsted website](#), also give a brief outline of the type and characteristics of educational institutions.

Home schooling and 'education otherwise'

You can choose to home educate your child but you should be aware that, if your child has an **EHC plan** and you choose to **electively home educate**, it means that the LA **no longer has a legal duty** to secure any special educational provision which was specified in the EHC plan. This is because you are deemed to be making your own **suitable alternative arrangements**.

If the current educational placement is not working, it may be better to amend the EHC plan to set out **different special educational provision** and/or name a **different school** rather than attempting to take on home education without support.

If school or college is not appropriate for your child or young person, the LA can arrange for any required special educational provision to be delivered somewhere other than in a school, college or early years setting. This is often known as '**education otherwise than at school**' (**EOTAS**). The **LA duty would then remain** for continuing to secure and fund that provision.

See local Milton Keynes information on [home schooling and EOTAS](#) click on the link.

If you feel that home education (rather than education otherwise) is the right course, the first step is to write to the school and explain that you intend to make arrangements for your child's education at home. You should also write to the LA and ask it to amend **Section I of the EHC plan** in order to record that the child is being educated at home.

If your child currently attends a **special school**, you will need to write to the LA (not the school) to get its agreement to take your child off the school roll. If your child is at any other type of school, you do not need the permission of the school or the LA.

If you decide to educate at home, the LA **must still review the EHC plan** annually to assure itself that the provision set out in it continues to be appropriate and that the child's SEN continue to be met.

If your child or young person has SEN but is **without an EHC plan**, you are entitled to take your child out of school in order to home educate, and you do not need the permission of the school or the LA to do so. Do be aware, though, that if your child is home educated, the LA **does not** have any duties to provide **SEN Support** and provision that your child may have been receiving at school.

If your child or young person is in a situation where their school or college placement is in danger of breakdown, it may be advisable to ask the LA for an **EHC needs assessment**. If appropriate, this would be an opportunity to fully identify all of your child or young person's needs and work out what support they need to access education.

Our [Requesting an EHC Needs Assessment Factsheet](#) has more information about how to do this.

Where can I get more information, advice and support?

You can find more information about choosing schools here:

- [IPSEA](#)
- [Contact](#)

Milton Keynes Special Educational Needs & Disability Information, Advice & Support Service (MK SENDIAS) can give you:

- Information about SEND support, including information about SEND funding
- Advice about what to do if you are not happy with the support your school is providing
- Support to prepare for school meetings and Annual Reviews.
- Information and advice about your rights to request an EHC needs assessment and support with the process
- Help to navigate Appeals and Complaints procedures
- Information about other organisations, support groups and information services that could help

You can contact us:

- By completing a [referral form](#)
- Via our [website](#) for lots of useful information and factsheets
- To discuss your concerns by phone on 01908 254518
- By [email](#), briefly outlining your concerns
- On [Facebook](#)