

Article EHCPs



Basic rights

Regardless of whether you home educate or send your children to school, parents have the legal right to apply directly to the local authority for an EHC assessment. If you want your child assessed, you should write to your local authority explaining your child's particular special needs and challenges and your child's circumstances. Particularly the difficulties you face home educating and or placing your child in a school. Include any documents sent to you by the LA or schools you have applied to. Add your opinion of what special educational provision is necessary. The local authority is legally required to reply to you within six weeks to let you know whether they agree to carry out an EHC needs assessment. If they refuse you have the right to appeal.

The initial assessment

The test for carrying out an EHC needs assessment is whether the child or young person has or may have special educational needs, and whether it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan. If your child's current school is currently failing to meet their or prospective schools are saying they cannot meet your child's needs, it seems likely that your child requires additional provision.

EOTAS

If you decide to continue to home educate in the long term, there is not necessarily the same obligation upon the local authority to provide special educational provision. However, it could be possible to make a case that 'education other than at school' (EOTAS) be made, enabling you to access special educational provision at home at the LA's expense. This is only possible where the local authority is satisfied that it would be 'inappropriate for the [special educational] provision to be made in a school'.

To meet this test, you need to demonstrate that education in a school would be inappropriate. The case of *TM v London Borough of Hounslow* [2009] EWCA Civ 859 ruled that all the circumstances must be looked at including the child's background and medical history; the particular educational needs of the child; the facilities that can be provided by a school; the facilities that could be provided other than in a school; the comparative cost of the possible alternatives to the child's educational provisions; the child's reaction to education provisions, either at a school or elsewhere; the parents' wishes; and any other circumstances.

Time Scale

If you choose to home educate with a view to applying later, you need to be aware that the process from initial application to finalising the plan takes up to 20 weeks. If the LA refused your request for assessment or refused to issue a plan, it could take much longer, especially if you need to appeal.

The Plan

With regard to the plan itself, a Local Authority is required to set out all the special educational provision needed to facilitate the child's learning, including strategies to manage anxiety and support for any additional needs. Your choice of school will be given preference by the local authority subject to some narrow conditions which the Authority could use to change it.

Parental responsibility

You have a general responsibility under s7 of the Education act 1996, to provide an education suitable to your child's age, ability and aptitude and any special needs she may have.

You should also be aware that you have a legal duty to ensure your child's regular attendance at any school with which your child is registered. A failure to do so could result in prosecution. To mitigate this risk, you should ensure the school is recording her absences as authorised absences.

If you look at IPSEA you will find a number of resources that can help you, including a model letter that you can send to the local authority requesting an EHC assessment.

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

home education FAQ: www.home-education.org.uk/forums.htm