



IPSEA

Independent Parental Special Education Advice

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My son/daughter has SEN – Can they be educated at home and will the Local Authority support them?

Section 7 of the Education Act 1996 places a duty on every parent of a child of school age to ensure that they receive efficient full time education suitable to their age, ability and aptitude, and to any special educational needs they may have. However, a parent can fulfil this duty either by sending their child to school or, "otherwise" – which includes a parent educating their own child at home.

But although Local Authorities have the power to provide support to parents who are home educating their children they cannot be compelled to secure special educational provision if you choose to home educate.

It is, however, possible for education otherwise than in a school to be specified in an EHC Plan. S.61 of the Act deals with this circumstance:

“(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.”

The question to be asked under s.61 (2) is whether or not education in a school would be “inappropriate”. The case of **TM v London Borough of Hounslow** [2009] EWCA Civ 859 confirmed that to answer that question, all the circumstances of the case must be looked at. These will include:

“...without giving any exhaustive list... 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 particular circumstances.”

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Therefore, it might be possible to make the argument that it would not be appropriate for your son/daughter to be educated in school and that whilst he or she requires special educational provision to be made under an EHC Plan, this must be education otherwise than at school as envisaged by s.61 of the Act.

It will also be important to consider what other kinds of provision might be necessary and what type of support or services you would be seeking to have included as provision within an EHC Plan. For example, if your son/daughter needs access to a service such as speech and language therapy, there is no reason why it should not be specified as special educational provision within an EHC Plan for a home-educated child. It might also be reasonable to ask for the input of a Local Authority's specialist teaching service to be specified within an EHC Plan.

We already have an EHC Plan – how do we change it?

In order to get the Local Authority to secure provision whilst educating your son/daughter at home, then you would have to either get them to agree to do this, based on the evidence you have that education in school would be inappropriate, or alternatively, if they refused to amend the EHC Plan, then you would have to bring an appeal to the SEND Tribunal in order to try and have the EHC Plan written to reflect the fact that education otherwise than in school would be the only appropriate way in which your son/daughter's SEN could be met.

The Local Authority may well try to argue that his needs could be met in a school, and so this is the argument that you would be expected to meet. Any evidence or reports which you had which confirmed that your son/daughter was not actually in a position to be educated in a classroom environment could well be helpful in supporting your case for home education.

If you still feel that home education is the right course, the first step is to write to the school and explain that you intend to make arrangements for your son/daughter's education at home. If your child is attending a special school, you would also actually need the Local Authority's permission to remove them from the school roll, and so you would also need to write to them to request that. In any event, you should write to the Local Authority and ask them to amend the EHC Plan in Section I in order to record that he or she is being educated at home (and argue for the amendments to Section F if you want education otherwise than in school to be specified and secured by the Local Authority). Your letter might look something like this:

Dear Director of Education,

I am writing as the parent of John Smith, who has an EHC plan maintained by your Authority. I wish to inform you that I intend to exercise my right under section 7 of the 1996 Education Act to educate John at home. I believe that I can do this in a way which is appropriate to his age,

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ability and aptitude and his special educational needs, and I will be happy to provide you with information on the programme and curriculum which I intend to arrange for John.

[If John attends a special school, you should add, 'I therefore request that the Authority should give consent for John's name to be removed from the admission register of ... school in line with Regulation 2 of The Education (Pupil Registration) (England) Regulations 2006.']

I believe that, in this situation, it is appropriate for you to amend John's EHC plan at section I to reflect the new arrangements, and I request that you now do this as soon as possible. At the same time, I would like to request an amendment to section F of the EHC plan as follows:

"The Authority's Advisory Teacher for the Hearing Impaired to visit Mrs Smith on a termly basis to advise on the home education programme and offer advice on approaches and aids."

I look forward to your reply...

If your Local Authority (or Tribunal) refuses to amend Section F of the EHC Plan, you can still educate your son/daughter at home. However, you will not be entitled to the support for him or her which you would have had if Section F had been amended.

Finally

If you haven't done so already, you may also wish to consider contacting Education Otherwise:

<http://www.educationotherwise.net/> or the Home Education Advisory Service:

<http://www.heas.org.uk/>. Both organisations have helplines and provide further information on home education generally and you may also wish to seek further advice or information from them.

We can only provide information through this service, rather than offer direct advice. So if you need this, or you wish to discuss the situation with someone, you should book a call with one of our Advice Line volunteers:

<https://www.ipsea.org.uk/contact/advice-and-support/advice-line>