



Choosing a Nursery,  
School or College:

## **A Guide for Parents and Carers of Children with SEN**

Produced by Birkett Long Solicitors  
[birkettlong.co.uk](http://birkettlong.co.uk)



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## Education: Making The Right Choice

Choosing a place of learning for your child is one of the biggest decisions any parent has to take.

For the parent of a child with Special Educational Needs (SEN), finding the right nursery or school – and helping them to choose a college when they are older is vital.

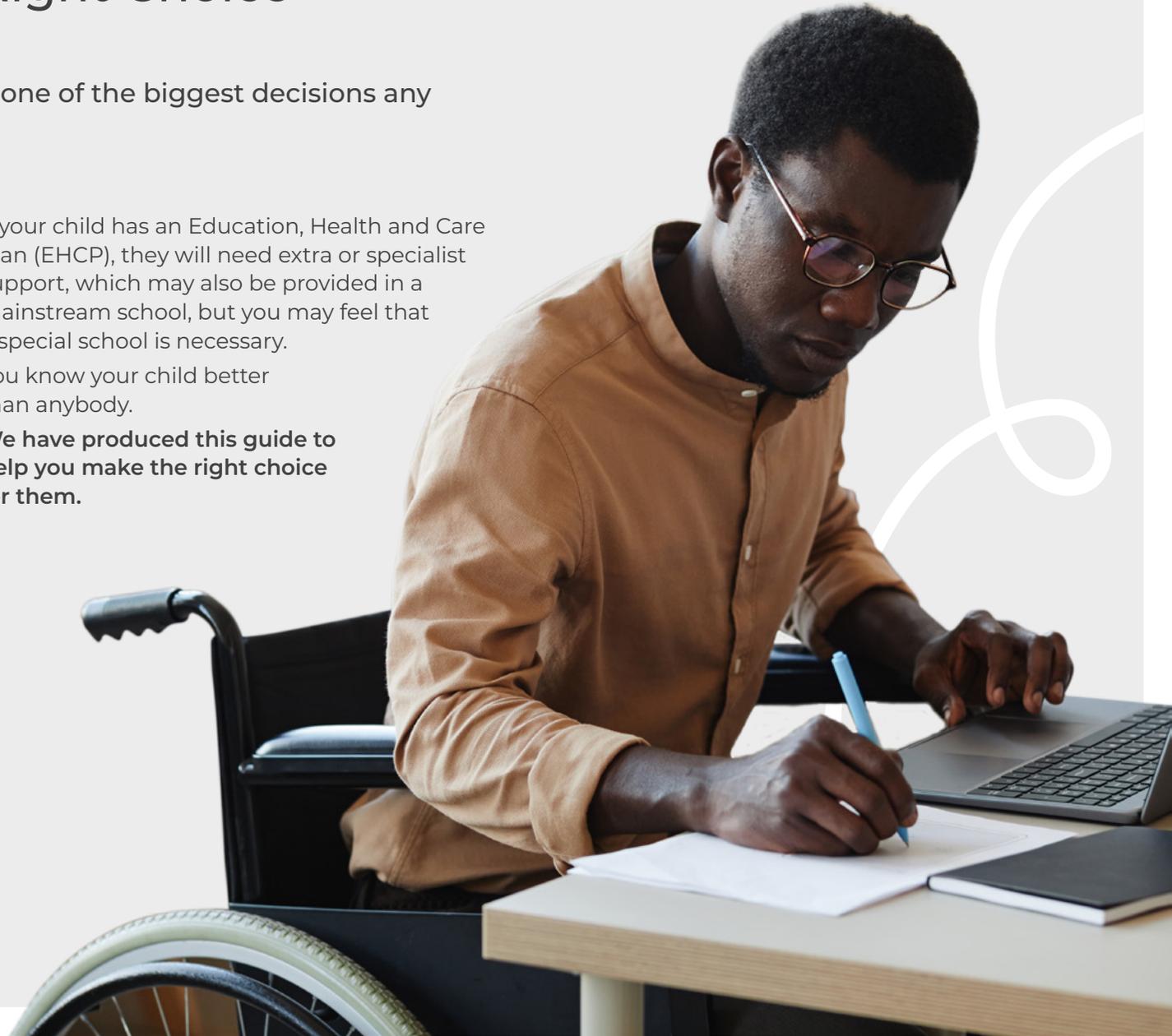
There are various types of educational institution to consider: mainstream and special; those maintained by the local authority and non-maintained ones.

Except in limited circumstances, all children with SEN have the right to attend a mainstream nursery, school or college, and arrangements must be put in place to support your child's individual needs.

If your child has an Education, Health and Care Plan (EHCP), they will need extra or specialist support, which may also be provided in a mainstream school, but you may feel that a special school is necessary.

You know your child better than anybody.

**We have produced this guide to help you make the right choice for them.**



## Types of School: Mainstream or special

A special school or college caters especially for students with SEN

Mainstream means a nursery, school or college that is not 'special' and is part of the general education system

Both special and mainstream education institutions fall into these categories:



### Maintained

These are controlled by a local authority (LA) and include:

- Mainstream schools
- Special schools
- Mainstream nurseries (stand-alone or part of a community primary school)
- Further education and sixth form colleges
- Alternative schools eg. pupil referral units

**Note:** Mainstream places of learning must follow statutory guidance, which sets out what schools and local authorities have to do to comply with the law.

### Non-maintained

These are not maintained by an LA but are controlled and funded directly by the Government's Secretary of State for Education. They include:

- Mainstream academies
- Academy special schools
- Alternative provision academies
- Academy boarding schools
- Free schools – run by charities and non-profit groups
- University technical college (UTC) schools – with a science, technology, engineering and maths focus
- Studio schools – teaching mainstream qualifications through project-based learning

**Note:** An academy trust that has a funding agreement with the Secretary of State. They must follow most (but not all) of the law and guidance for maintained schools.

## Types of School: Others (not controlled by LA or Secretary of State)

### Independent

These are mostly controlled by charities but there are some private 'for-profit' owners. These include:

- Prep schools – private primary schools
- Public schools – private secondary schools
- Private nurseries

### Non-maintained special schools

These are run by charitable foundations (not-for-profit) as schools for children with SEN – either with or without an EHCP.

### Section 41 schools

These are independent schools approved by the Secretary of State that can be named in an EHCP (as well as maintained and non-maintained schools). Private post-16 institutions can opt for Section 41 status.



# The Right to a Mainstream Education

With only a few exceptions, if a child or young person has SEN, they have the right by law to learn in a mainstream place of learning.

## Without an EHCP

A child or young person without an EHCP must be educated in a mainstream setting. There are few exceptions to this – for instance, if the parents prefer to pay for an independent school or home-school.

### Note:

An LA must not place a child without a plan in a special institution except in a few circumstances (and usually only with a parent or young person's permission).

## With an EHCP

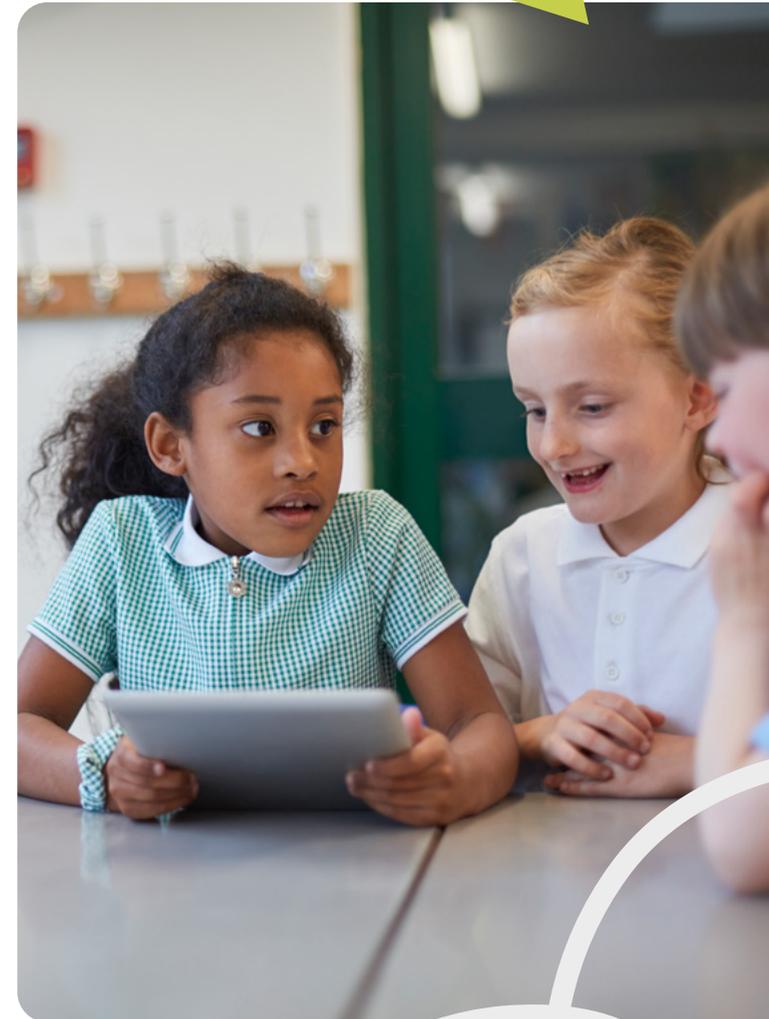
A parent or young person with an EHCP, who wants to attend a mainstream place of learning, must be given that right. Please note that they are entitled to mainstream education, but not to attend a particular school.

The LA can only refuse if:

- It would affect its ability to educate other students efficiently and
- There are no reasonable steps it can take to avoid this

### Note:

If a nursery, school or college is named on a child or young person's EHCP, it must admit them.



## Choosing a Nursery, School Or College: Without an EHCP

By law, your child must not be refused a mainstream place because the school does not feel able to cater for their SEN.

- A child or young person with SEN but no EHCP must receive SEN support from the school.
- A SEN Information Report (SIR) must be prepared by maintained nurseries and schools, and academy schools
- The SIR, which details the institution's SEN policy and how it implements it, must be published on its website

### Note:

Sixth form and further education colleges do not have to produce an official SIR, but they should have information available on the SEN support they provide.

### Exceptions

Sometimes, a place in a special school can be secured without an EHCP, but only in limited situations, for example, if:

- It is necessary while an EHC assessment is carried out
- There has been a change in circumstances (if all parties agree to this)
- A special school is established in a hospital, and is either a community or foundation special school, or an academy school.
- A special school or college is an academy that allows children with SEN who do not have an EHCP



# Choosing a Nursery, School Or College: With an EHCP

As a parent or carer, you have the right to request a place of learning or type of place of learning to be named in an EHCP.

You can ask for a named nursery, school or college either at the draft plan stage or when any amendment is being made to the EHCP (for example, following a review or reassessment).

## You are entitled to ask for:

- A maintained school or nursery – mainstream or special
- An academy – mainstream or special
- A non-maintained special school
- A Section 41 school
- A further education college

## An LA can only refuse a particular school if it is either:

- Unsuitable for a child or young person's age, ability, aptitude or SEN
- Incompatible with providing efficient education of other students or
- Incompatible with the efficient use of resources

Before naming a school, the LA must consult with the governing body, owner or principal or, if the school is in another local authority area, the relevant LA. Even if receives an objection, the LA issuing the EHCP can still name the school.

### Note:

You have the legal right to ask for one of the education settings listed above, but if you prefer an independent school or college for your child, you can ask and argue your case for a place. You will need an offer of a place from the independent setting you are asking for.

## EHCP: A named nursery, school or college

- Once a place of learning is named in an EHCP, it must admit a child or young person
- If a final plan does not include a name (only type), it means no nursery, school or college has a duty to admit your child.
- You can appeal to the SENDIST if you receive an EHCP with no named school or you disagree with the choice of school or type of school made by the local authority.

## Phase Transfers

By law, an LA must review and amend an EHCP when a child or young person transfers between stages of education.

### By 15 February in the year of transfer:

- Nursery to school
- Infant to junior school
- Primary to middle school
- Primary to secondary school
- Middle to secondary school

### By 31 March in the year of transfer:

Secondary school to further education

### At least 5 months before:

College to another college



## Disagree With The School, College or Other Setting Named in an EHCP?

If you request a particular school, college or other setting during the EHC needs assessment process or during an annual review and the LA does not agree to your request and names a different setting, you can appeal to the SEND Tribunal.

An appeal form, along with reasons of appeal, must be sent to the Tribunal within two months of the LA's decision letter, or one month from the date you obtain a mediation certificate, whichever is the later.

Ready to get the support your child needs?

**Our team is here to help.**

[Email Thomas](#)

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