

Appealing because the LA has not named the secondary school you want in your child's amended statement

At this time of year IPSEA gets many calls from parents who have just received the amended statement naming the secondary school their child will attend in September. If you are unhappy with the school named in your child's amended statement the following information should be of use. First, though, you must be clear whether the school you want named is a maintained school (a 'state' school) or a non-maintained (independent school).

1 If you want a particular maintained school and the local authority (LA) have named another maintained school

In an appeal of this kind it is up to the LA to show why they can't name the school you have asked for.

What the law says:–

Paragraph 3(3) of Schedule 27 of the Education Act 1996 requires LAs to name a parent's preferred school unless:

- (a) the school is unsuitable to the child's age, ability or aptitude or to his special educational needs, or
- (b) the attendance of the child at the school would be incompatible with the provision of efficient education for the children with whom he would be educated or the efficient use of resources.

So the only reasons the LA can use to refuse to name the school are:

- The school is *unsuitable*.
- Your child's attendance would mean that educating the other children in his/her class would be impossible or very difficult.
- Your child's attendance would cost the local authority too much.

To help you prepare your appeal you will need to know which of the above reasons the LA is relying on in refusing to name the school you have told them you want. If you can't tell which reason it is, write to the LA and ask them.

If the LA says that the school you have asked for is not suitable for your child you will need to:

- gather evidence about the type of children who **are** admitted by the school you want. Look at the OFSTED report and prospectus of the school.
- look at the evidence that you have about your child's needs and, if necessary, consider seeking evidence from elsewhere.

If the LA says that the attendance of your child at the school you want will be incompatible with the provision of efficient education for the other children in your child's class, you will need:

- evidence of exactly what the incompatibility will be – the 'incompatibility' has to be a real concrete thing that stops the other children being educated, for instance a behavioural problem that can't be dealt with and which is constantly interfering with others' learning. It's not something trivial or avoidable. If your child has a behavioural problem, is it still a problem if he or she gets the right support (see how to improve Part 3 below)? Find out if the school is over-subscribed, if so by how many children? Has the school exceeded the stated number of children in the past
- Is there any flexibility in terms of which class your child would go into? Exactly how many adults and children will be in that class?

If the LA says the attendance of your child at the school you want would be incompatible with the efficient use of resources, you will need:

- exact details of the additional cost the LA say they will incur at the school of your choice, including transport.
- exact details of the cost of a place at the school the LA have named, including transport. Often LAs say it will not cost them anything to send a child to a particular school but investigations can prove otherwise.

Consider including Parts 2 and 3 in your appeal!

In most cases it will be important to appeal against Parts 2 and 3 of your child's amended statement, as well as Part 4. This is because the school named in Part 4 of a statement should be a logical conclusion to what Parts 2 and 3 say. Part 2 of a statement should fully describe your child's difficulties and Part 3 should specify the provision he or she needs.

It might help to illustrate this with an example:

Jack is a child with a diagnosis of Asperger's syndrome. In addition he has balance problems as a result of mild hemiplegia. He is a vulnerable child both emotionally and physically. His parents believe he needs to attend the smallest mainstream secondary school in the area which has a good track record of supporting children with SEN and where the support he receives from an LSA would be provided by only one or two people. The school has a 'safe haven' within the SEN department that children can go to during break time if they don't feel they can cope with the main playground. This school is all on one level so Jack will not be put in danger by using stairs along with hundreds of other students between lessons.

The LA, however, have named the mainstream secondary school that is nearest to Jack's home. This happens to be the biggest school and the way they support students with SEN is very different. For one thing they have subject based LSAs which means Jack will have to cope with being supported by as many as 8 different people. This school does not have an area that students can go to at break. This school is on 3 levels and Jack will have to move between classes on all floors.

In this situation Jack's parents need to look at his statement in the following way:

Part 2 needs to fully describe Jack's physical and emotional vulnerability. If it does not his parents need to look at the evidence that exists and draw out comments that will help illustrate these difficulties. They need to appeal against this part of the statement, arguing for amendments that make it more accurate.

Part 3 needs to fully describe the provision and environment that Jack needs because of his difficulties. The statement should specify that the school Jack attends is able to offer support from a limited number of adults. It should state that the school should be on one level. It should state that the school has a safe area that can be used by students at break time. If Part 3 of the statement does not specify these things, the parents should appeal against it, arguing that it be amended accordingly. In order to justify amendments like this the parents will have to look for comments and recommendations in the reports they already have **and** consider asking professionals to write reports to that effect.

Important note about mainstream education

What the law says:–

Section 316 (3)(b) of the Education Act 1996 says that if you want your child to attend a mainstream school the LA can only refuse if they can show that your child’s presence would be incompatible with the provision of efficient education for other children. If there is a particular school concerned the LA will have to show that they have taken reasonable steps to remove the incompatibility and failed.

2 If you want a non-maintained school and the LA have named a maintained school

In an appeal of this kind you are in a weaker position and it is up to you to show:

- (a) that the school named by the LA is not suitable and that there is no other maintained school that could meet your child’s needs.
- (b) or that your preferred school is not very much more costly.

What the law says:-

Section 9 of the Education Act 1996 states that LAs

“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.***”

This means that, regardless of how much better the independent school you have identified is, if the LA’s maintained school can meet your child’s needs, the Tribunal will have to name it (unless the difference in cost between the schools is very little).

The task, therefore, is to show that the LA maintained school cannot meet your child’s needs. This will almost definitely involve you appealing Parts 2 and 3 of the statement, as well as Part 4. Please see the explanation of this above. In appeals for non-maintained schools parents very often have to resort to commissioning independent reports from, for example, educational psychologists, speech therapists, or occupational therapists. These reports are needed so that you have the evidence to argue for more detail about difficulties in Part 2 and provision in Part 3.