

Haringey Children's Services



To: Headteachers of primary, secondary schools and post 16 provision
Date: Monday 29 November 2021
Author: Mary Jarrett – Head of Service: SEND
Carlo Kodsi – Head of Service: Admissions and School Organisation
Contact: (E) mary.jarrett@haringey.gov.uk carlo.kodsi@haringey.gov.uk
Re: Admission for pupils with SEND into mainstream schools and post 16 provision

- 1.1 In response to a number of concerns and queries raised by schools regarding the admission of children and young people with SEND needs to mainstream education, this briefing seeks to clarify the respective legislation, which we hope you will find useful. We know that all Haringey schools are committed to supporting children with SEND and providing top quality education and great opportunities for them. We remain one of the top boroughs in the country for Ofsted ratings at both primary and secondary. All Haringey schools support and are able to support children with a wide range of abilities, special needs, disabilities and learning difficulties, from able, gifted and talented pupils to those with multiple and significant disabilities, medical conditions and learning difficulties.
- 1.2 Mary Jarrett, Head of Service for SEND and Carlo Kodsi, Head of Service for Admissions and School Organisation will be coming to a future Headteachers meeting to go through this in more detail and answer any questions you have.
- 1.3 For children and young people with SEND but no EHCP, it is unlawful for an admission authority to refuse admission to a child who has SEN, but has no Statement or EHCP:
 - a) on the grounds of the child's challenging behaviour (except in very limited circumstances);
or
 - b) because it believes the child requires a statutory assessment or requires additional support.
- 1.4 In line with the **Equality Act 2010**, children with disabilities must not be treated less favourably than others in the admission process. A school should make 'reasonable adjustments' to prevent discrimination. We would advise you to seek advice from the Education Psychologist allocated to your school to offer support, advice and guidance for admission of children and young people with SEN and to plan for their provision needs.
- 1.5 If a child has an EHCP, the Local Authority has a statutory duty to consult with the school of parental preference. Schools have 15 days to respond to consultations and can refuse on the following grounds:
 - a) it would be unsuitable for the age, ability, aptitude or SEN of the child or young person, or
 - b) the attendance of the child or young person there would be incompatible with the efficient education of others or
 - c) it would be an inefficient use of resources
- 1.6 The law recognises the child's right to a mainstream education, section 33 CAFA 2014 says that a child or young person with an EHC plan **must** be educated in a mainstream setting unless:
 - a) it is against the wishes of the child's parent or the young person; or
 - b) it is incompatible with the provision of efficient education for others and the LA shows that there are no reasonable steps that it could take to prevent the incompatibility.

- 1.7 Even if the LA successfully argued that a mainstream school was unsuitable for the ability, aptitude or SEN of the child or young person (one of the lawful reasons for refusing a school, detailed above under 'Requesting a nursery, school or college'), if the LA wanted to name a special school against the parent or young person's wishes, they would **also** have to demonstrate that it was incompatible with the provision of efficient education for others.
- 1.8 Accordingly, under **section 43 Children and Families Act 2014**, the school named in an Education, Health and Care Plan (EHCP) **must** admit the child. This is not an oversubscription criterion – schools *must* admit such children regardless of whether they have places available. Admission authorities must not imply in their published admission arrangements that they have discretion over the admission of children with Statements of SEN or an EHCP.
- 1.9 Where the Local Authority considers that schools are acting unlawfully in refusing to admit a young person, they can direct admission. In Haringey, whilst we would always seek to resolve matters before making a direction, we will remind schools that this is a course of action we can pursue, if required. The direction process set out in para. 1.10 and 1.11 below does not apply for children with an EHCP (it does apply, however, to all other children, including children in care and with SEND). As explained above, under section 43 of the Children and Families Act 2014, the school named in an EHCP **must** admit the child. This is legally binding, and schools **must** admit such children regardless of whether they have places available unless an exception is granted by the Secretary of State.
- 1.10 In line with the para. 3.23 of the School Admissions Code 2021 ('the Code'), in relation to maintained schools, before deciding to give a direction, the local authority must consult the governing body of the school, the parent of the child and the child if they are over compulsory school age. If, following consultation, the local authority decides to direct, it must inform the governing body and headteacher of the school. The governing body can appeal by referring the case to the Schools Adjudicator within 15 days. If it does this, the governing body must tell the local authority. If the case is referred to the Schools Adjudicator, the Schools Adjudicator may either uphold the direction, determine that another maintained school must admit the child or decide not to issue a direction. The Adjudicator's decision is binding.
- 1.11 Where a local authority considers that an Academy will best meet the needs of any child, it can ask the Academy to admit that child but has no power to direct it to do so. The local authority and the Academy will usually come to an agreement, but if the Academy refuses to admit the child, the local authority can ask the Secretary of State to intervene. The Secretary of State has the power under an Academy's Funding Agreement to direct the Academy to admit a child and can seek advice from the Schools Adjudicator in reaching a decision.
- 1.12 In line with para. 3.14 of the Code, each local authority must have a fair access protocol to ensure that unplaced and vulnerable children, and those who are having difficulty in securing a school place in-year, are allocated a school place as quickly as possible. Children with special educational needs (but without an Education, Health and Care plan), disabilities or medical conditions fall under the scheme of Haringey's fair access protocol. It is a mandatory requirement for Local Authorities to include this group as part of their fair access criteria.
- 1.13 In Haringey a panel of headteachers or their designated representative meet as required to implement the fair access protocol. Eligibility for the fair access protocol does not limit a parent's right to make an in-year application to any school for their child. In line with the Code, applications for children and young people with SEND but no EHCP for example, must still be processed in accordance with the usual in-year admissions procedure and admission authorities must not refuse to admit such children on the basis that they may be eligible to be placed via the fair access protocol.