



Children's  
Rights Alliance  
for England

## FAQ - Full Answer



**“My nine year old son attends an autistic school but I don’t think he is either happy or making much progress. I would like him to go to an ordinary school: is that not possible?”**

### **Law on Inclusive Education and Admissions**

Whether your son has a statement of SEN, SEN but no statement and/or is disabled, general admissions law and policy will be relevant to any decision regarding your son’s admission to a mainstream school of your choice.

### **School Standards and Framework Act 1998**

Chapter 1 of Part 3 of the School Standards and Framework Act 1998 contains the key provisions regarding schools admissions. It provides that the admission authority for a maintained school (with the exception of those that select wholly by ability) must comply with any preference expressed by a parent except where to do so would prejudice the provision of efficient education or the efficient use of resources (section 86).

You may appeal against a decision to refuse your son admission to your preferred school (section 94).

There is a range of Regulations dealing with school admissions, the most relevant being:-

- The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012;
- The School Admissions (Appeals) (England) Regulations 2012; and
- The School Information (England) Regulations 2008.

These provisions are largely included in the School Admissions Code, which is referred to here for ease.



Children's  
Rights Alliance  
for England

# FAQ - Full Answer



## The School Admissions Code

The Code applies to admissions to all maintained schools in England and has the force of law (para 12). It imposes certain requirements on admissions authorities (the LEA or school's governing body depending on the type of school).

The purpose of the Code is to ensure that school places are allocated and offered in an open and fair way (para 12).

The provisions are very detailed but the following are particularly of note in relation to admission of children with SEN and/or disabilities:

- All children with a statement of SEN that names that school must be admitted (para 1.6);
- In drawing up their admission arrangements, admission authorities must ensure the practices and criteria used to decide allocation of school places are procedurally fair for all groups of children (including those with SEN and disabilities) (para 1.71(c));
- In setting oversubscription criteria admission authorities must ensure their admission arrangements are fair and do not unfairly disadvantage, either directly or indirectly, a child with a disability or SEN. They must ensure their arrangements comply with all relevant equalities legislation (para 1.8);
- It is for admission authorities to formulate their admission arrangements, but they must not discriminate against or disadvantage disabled children or those with SEN (para 1.9(h));
- Admission authorities must not refuse to admit children in the normal admissions round on the basis of their challenging/poor behaviour elsewhere (para 3.8);



Children's  
Rights Alliance  
for England

## FAQ - Full Answer



- Each local authority must have a Fair Access Protocol, agreed with the majority of schools in its area to ensure that - outside the normal admissions round - unplaced children, especially the most vulnerable, are offered a place at a suitable school as quickly as possible. This must include children with SEN, disabilities or medical conditions (but without a statement). In agreeing a protocol, the local authority must ensure that no school - including those with available places - is asked to take a disproportionate number of children who have been excluded from other schools, or who have challenging behaviour (para 3.9).

In addition to the general rules relating to admissions described above, there are specific rules protecting your son's right to be educated at a mainstream school, which depend on whether he has SEN but no statement, a statement of SEN and/or is disabled.

The main provisions are in [the Education Act 1996](#) (as a result of the Special Educational Needs and Disability Act 2001).

### Does your son have a SEN?

Your son will be considered as having a SEN under the Education Act 1996 if he has a learning difficulty which calls for special educational provision to be made for him ([section 312\(1\)](#)). He will be considered to have a "learning difficulty" if:-

- he has a significantly greater difficulty in learning than the majority of children his age; or
- he has a disability which either prevents or hinders him from making use of educational facilities of a kind generally provided for children of his age in schools within the LEA's area.



Children's  
Rights Alliance  
for England

## FAQ - Full Answer



**There are general rules governing the broad approach of parents, schools and LEAs to ensuring that the needs of children with SEN are properly met:**

- Parents must make their children receive full-time education suitable to their age, ability, aptitude and any SEN they may have. This means you must consider what type of provision is most appropriate for your son's needs (section 7 Education Act 1996).

You can get help with this from parent partnership services which are designed to ensure that as a parent of a child with SEN you are given accurate and impartial information on the range of options available so you can make informed decisions.

- Local education authorities must have regard to the general principle that pupils must be educated according to their parents' wishes, so far as it is compatible with providing efficient instruction and training and avoiding unreasonable public expenditure (section 9 Education Act 1996).

The SEN Code of Practice underlines it is essential that all professionals actively seek to work with parents and value the contribution they make, especially when deciding where children with SEN should be educated (para 2.2).

- LEAs must make sure enough schools are available for their area and have regard to the need to secure SEN provision. Each year authorities must submit a plan for approval setting out how they will secure sufficient provision including for children with SEN and must take account of parental preferences for particular styles of provision or education settings (section 14; and section 26 of the School Standards and Framework Act 1998).
- Governing bodies of maintained schools (and LEAs of maintained nursery schools), must use their best endeavours to secure any pupil with SEN gets the special educational provision their learning difficulty calls for. This includes ensuring teachers are aware of the importance of identifying and providing for pupils with SEN (section 317 Education Act 1996).



Children's  
Rights Alliance  
for England

## FAQ - Full Answer



- The Secretary of State for Education and Skills can intervene where LEAs or maintained schools are acting unreasonably or failing to fulfil a statutory duty, or where LEAs are failing to perform their functions to an adequate standard (sections 496, 497 and 497A Education Act 1996).
- Although children have no independent right to choose their school, the individual needs of a child with SEN must be taken into account in deciding whether to name a parent's choice of maintained school in a statement (schedule 27, para 3, Education Act 1996 and the SEN Code of Practice).

Importantly, the legislation allows and supports the appropriate use of dual placements - to allow a child to attend both a mainstream and a special school simultaneously (The Education (Pupils Registration) Regulations 2006). This can help prepare pupils for mainstream education and prepare schools to meet the child's needs and/or allow children time away from their mainstream school for specialist or catch up support. A pupil will be seen to be being educated at a mainstream school once they spend 51% or more of their time at a mainstream school.

### **Your Son's Right to a Mainstream Education: If he has a SEN statement**

If your son is considered to have SEN, then rules about entitlement to mainstream education differ depending on whether or not your son has a SEN statement. The LEA will have to make and maintain a statement for your son if (in short) he has significant SEN and there is evidence that he is or will be making insufficient progress without additional support through a statement. A refusal to assess a child for a statement or a refusal to make and maintain a statement after an assessment can be appealed to the Tribunal.



Children's  
Rights Alliance  
for England

# FAQ - Full Answer



## The Law

As noted earlier, the starting point is always that children with statements of SEN will receive mainstream education unless this would be incompatible with either your wishes as his parent or the provision of efficient education of other children (section 316(3) of the Education Act 1996).

These are the only reasons why mainstream education can be refused outright (para 22, statutory guidance *Inclusive Schooling: Children with Special Educational Needs*), to which maintained schools and LEAs must have regard (under section 316A(8) of the Education Act 1996).

As you want your child to go to a mainstream school, your LEA and the maintained school you chose would only be allowed to refuse your child mainstream education against your wishes on the basis it would be incompatible with “the efficient education of other children”.

What this means is that the other children your child would be likely to come into contact with on a regular day to day basis could not be provided with a suitable and appropriate education in terms of their age, ability, aptitude and any special educational needs they may or may not have (para 40 of the *Inclusive Schooling Guidance*).

However, a LEA will only be able to rely on this ground if there are no reasonable steps it, or a school, could take to prevent the incompatibility in a particular school or across its mainstream schools. An important reason for this is that schools have duties to make reasonable adjustments for disabled pupils under the Equality Act 2010.



Children's  
Rights Alliance  
for England

## FAQ - Full Answer



Education law does not set out what should be taken into account in deciding if a step is reasonable; this will depend on all the circumstances of the individual case (para 51, *Inclusive Schooling* guidance). However, the guidance (para 45) does set out a non-exhaustive list of factors which might be taken into account when considering what is reasonable:

- whether the step would be effective in overcoming the incompatibility;
- the extent to which it is practical for the maintained school or local authority to take the step;
- the extent to which steps have already been taken to facilitate the child's inclusion and their effectiveness;
- the financial and other resource implications of taking the step; and
- the extent of any disruption taking the step would cause.

The *Inclusive Schooling* guidance stresses a decision not to educate a pupil in a mainstream school – against their parent's wishes – should not be taken lightly. The Government's view is that with the right strategies and support most SEN children can be included successfully at a mainstream school (para 24).

The guidance stresses that trivial and inappropriate reasons should not be used to deny children who should and could benefit from a mainstream education from gaining one (para 44). There may however be genuine and justifiable reasons why reasonable steps cannot be taken. The guidance gives as examples where a child's behaviour systematically, persistently and significantly either threatens other pupils' safety or impedes other pupils' learning or where a child's inclusion might mean that even with other support – for example from a teaching assistant – the teacher had to spend a greatly disproportionate amount of time with the child, in relation to the rest of the class (para 51).



Children's  
Rights Alliance  
for England

# FAQ - Full Answer



## The Procedure

The LEA must explain to you the arrangements that allow you to express a preference for a particular maintained school (mainstream or special) (set out in [schedule 1](#) and [regulations 14 & 15](#) of The Education (Special Educational Needs) (England) (Consolidation) Regulations 2001).

If you have a preferred choice of maintained school then the LEA must name your preferred choice of school in your son's SEN statement unless:

- the school is unsuitable to your son's age, ability, aptitude, or special educational needs; or
- your son's attendance at the school would be incompatible with the efficient education of other pupils or the efficient use of resources. ([Para 3\(3\) of Schedule 27 of the Education Act 1996](#))

Before naming a maintained school in the statement the LEA must consult the school, including sending them a copy of the draft statement. If the school is outside its area the LEA must also consult the LEA responsible for the school.

The Government's guidance is that whilst reasonable to expect a LEA to be able to provide mainstream education for nearly all children with SEN, it is not reasonable or practical to expect all schools to provide for every possible type of SEN. When making decisions about individual schools the Government believes it is right to consider: what you as a parent want; an individual school's suitability to provide for your son's needs; the impact your son's inclusion would have on resources and the efficient education of other pupils (*Inclusive Schooling*, para 29).

If after considering these factors a maintained school is named in the statement then the school will be under an obligation to admit your son ([section 324\(5\)\(b\) of the Education Act 1996](#)).

All governing bodies must admit to the school a child with a statement of SEN that names the school (section 324). Schools must admit such children whether they have places or not (The School Admissions Code).



Children's  
Rights Alliance  
for England

## FAQ - Full Answer



A similar process and the same considerations apply if your son's SEN statement already names a school and you are asking for the named school to be changed (Schedule 27, para 8 of the Education Act 1996). If the statement currently specifies a special school, as you would now be asking for a different type of school to be named, you would need to ask your local authority either to reassess your child or amend the statement following an annual review and then appeal to the Tribunal if they refused that reassessment or amendment.

If you do not express a choice of school or your preferred choice is not named in your son's SEN statement, the LEA must decide which mainstream school to name in it (section 316 Education Act 1996).

In choosing whether to move your son and to which school, it is important that your son's views are sought and taken into account (*Inclusive Schooling*, para 25 and UNCRC, Article 12).

### Mainstream Education: Children who do not have a SEN statement

If your son has SEN but does not have a statement then he must, except in certain specific circumstances, be educated in a mainstream school (section 316 Education Act 1996).

The exceptional circumstances (section 316A(2) of the Education Act 1996) where it may be right for your son to attend a special school are:

- where he is being assessed to determine whether a statement of SEN should be made and is admitted to a special school for the purposes of the assessment. He would have to stay in that special school until a statement is made (at which point he/she must then be educated in accordance with the statement) or until ten school days after the LEA informs you that they do not propose to make a statement;
- where your son's circumstances have changed. This would have to be with your agreement, that of the LEA and the head teacher of the special school; and
- if your son was in hospital and had therefore been admitted to a hospital special school.



Children's  
Rights Alliance  
for England

## FAQ - Full Answer



The Government's *Inclusive Schooling* guidance emphasises that these exceptional circumstances will only be appropriate in a small minority of cases (para 4.25).

The *School Admissions Code* underlines that children with SEN but no statement must be treated as fairly as other applicants:-

- admission authorities must not refuse to admit them because they feel unable to cater for their SEN.
- admission authorities must consider applications from their parents on the basis of the school's published admission criteria. Such children should be considered as part of the normal admissions procedures.
- admission authorities cannot refuse to admit a child because he/she does not have a statement of SEN or the child is currently being assessed for one.

### If your son is disabled: the Equality Act 2010

Whether or not your son has SEN, as a child with a diagnosis of autism he will almost certainly be "disabled" for the purposes of the Equality Act 2010.

The Act defines a disability as a physical or mental impairment which has a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities (section 6(1)). Whilst this needs to be judged on a case by case basis, autism could be considered a disability under the Act ([para A6, Equality Act 2010 Guidance](#)).

[Part 6 of the Equality Act 2010](#) provides protection for disabled pupils and students by preventing discrimination against them at school (or in post-16 education) because of, or for a reason related to, their disability.

The Act makes it unlawful for all schools to discriminate against a pupil with a disability in relation to admissions and more specifically (under [section 85\(1\)](#)):

- in the arrangements it makes for deciding who is offered a place;
- in the terms on which it offers a prospective pupil a place;
- by not offering a place because of a disability.



Children's  
Rights Alliance  
for England

## FAQ - Full Answer



Schools are also under a duty to make reasonable adjustments ([section 20](#) and [section 85\(6\)](#)):

- Where the school's policies or physical features put a disabled pupil at a disadvantage compared to other pupils the school must take reasonable steps to try and avoid that disadvantage.
- Schools are expected to provide an auxiliary aid or service for a disabled pupil when it is reasonable to do so and if such an aid would alleviate any substantial disadvantage the pupil faces in comparison to non-disabled pupils.

These aids or services may be provided in the school under the SEN route (see below), but where a disabled child does not have a SEN statement or where the statement does not provide for the auxiliary aid or service, schools will have to consider whether to provide auxiliary aids as a reasonable adjustment under this legislation.

A failure to make a reasonable adjustment cannot be justified, but it should not be assumed, if an auxiliary aid is not provided under the SEN regime, that it must be provided as a reasonable adjustment (paras 4.14 to 4.16 and 4.21 [Equality Act 2010 Guidance](#)). Cost is likely to be a relevant consideration in deciding whether an adjustment is "reasonable" – unlike in relation to statements where there is an absolute duty (under [section 324\(5\)\(a\)\(i\) Education Act 1996](#)) to provide all the provision set out in Part 3 of the child's statement regardless of costs.



Children's  
Rights Alliance  
for England

## FAQ - Full Answer



### What to do if not happy with an LEA's or school's decision?

There is a right to challenge decisions relating to admissions, both under general admissions legislation and under the SEN and the disability discrimination provisions. Who the appeal is made to, and accordingly the procedure in each case, vary according to whether the school is local authority/state funded or independent (i.e. private) and whether your child has a statement or a statement is being sought for him.

You would need to talk to a [lawyer](#) or specialist education adviser about the best way to proceed in the particular circumstances of the case. Legal aid is only available in very limited circumstances for education appeals, which is why advice lines run by charities may be very important for you.

If you want to place your son in an independent or non-maintained school and he has a statement, you can appeal to the Tribunal on the basis of the parental preference enshrined in section 9 of the Education Act 1996. The key question is likely to be whether the independent placement constitutes "unreasonable public expenditure", in other words whether there is a significantly less expensive maintained placement which the Tribunal accepts could meet your son's needs.

In other cases, you can appeal to the same Tribunal on disability discrimination grounds. If satisfied there has been discrimination, the tribunal could order the responsible body to do anything reasonable to put right the effects of the discrimination, other than paying financial compensation. This could include requiring the school to admit your son and to provide extra tuition to make up for any lost learning. If the school does not carry out what the Tribunal has ordered within the relevant timeframe, and they cannot satisfactorily explain why, there is a right of complaint to the Department for Education. Similarly, if you consider the decision the Tribunal makes to be wrong in law there is the right to appeal to a higher tribunal, after first applying to the higher tribunal for permission to appeal.



Children's  
Rights Alliance  
for England

## FAQ - Full Answer



If you want to place your son in a maintained school, then:

- If your son already has a SEN statement, the First-tier Tribunal can hear appeals against local authority decisions about many aspects of your son's SEN. This would include appealing against the choice of school named by the LEA in the statement, or the fact that no school has been named.

If you are seeking a mainstream school and your son's statement currently names a special school, you would be asking for a different type of school to be named. In these specific circumstances, there is no right of appeal to the Tribunal should the local authority refuse to name the mainstream school you are asking for. You would first need to ask your local authority to reassess your son or amend the statement following an annual review and then appeal to the Tribunal if they refused that reassessment or amendment.

- If your son does not have a SEN statement, any appeal against a refusal to admit him (whether he is SEN, disabled or even neither) would be heard by an Independent Admissions Appeal Panel. This is an independent panel established by the LEA or the school governing body but members will have no connection with your preferred school. The appeal panel would have to act in accordance with a range of legislation including the Schools Admission Appeals Code and the School Admissions (Appeal Arrangements) (England) Regulations 2012.

There are limited circumstances in which you would not have the right to appeal. Firstly, if your son has been permanently excluded from two or more schools; in this case, the right is suspended for two years after the most recent exclusion. Also, you would not have a right to a second appeal for the same school in the same academic year unless there has been a significant change in circumstances.

The Appeal Panel can either refuse or allow your appeal. It has no other power and so could not for example order the admitting authority to change your position on the waiting list for your preferred school or hear objections on wider aspects of admission policy and practice (e.g. changes to the admission number or designated area of a particular school). It does however consider whether the admission arrangements comply with legislation and the mandatory requirements of the School Admissions Code and whether they were properly implemented. If the Panel were to find your son would have been offered a place if they had been properly applied, your appeal would normally be allowed.



Children's  
Rights Alliance  
for England

## FAQ - Full Answer



The decision of the appeal panel would be final and binding on the admission authority. If you felt that your appeal hearing had not been fairly conducted, you could complain to the Local Government Ombudsman; they would not look at whether the panel's decision was right or wrong, but whether procedure was followed correctly. If the appeal panel's decision was wrong in law, you would have grounds make an application to the High Court for [judicial review](#). If the High Court found the panel's decision to be unlawful or unreasonable, it could overturn the decision, order the local authority to set up a fresh appeal hearing with new panel members or in exceptional cases (where there was only one lawful outcome) order the school to admit the child.