

Case Study 2: Decision - Naming an education provider

This case study raises several issues that we see in practice:

- 1. Admissions procedure** - as Carl has an EHC plan his parents do not have to (and cannot be required to) participate in the LA's general schools admission process.
- 2. Annual Review** - as Carl is moving to secondary school in September 2019 the LA should have completed the annual review process and issued an amended EHC plan by 15 February 2019 naming the school Carl is to attend from September.

For the amended EHC plan to have been issued by 15 February 2019, the LA would have to:

- have concluded the annual review process. That involves:
 - obtaining relevant information and advice – Reg 20(2) Send Regs 2014
 - providing at least 2 weeks' notice of the meeting to those attending – Reg 20(3)
 - holding the meeting
 - sending out the annual review report – within 2 weeks of the meeting – Regs 7 to 9 SEND Regs 2014
 - making the decision to amend within 4 weeks of the annual review meeting
- have sent Carl's parents the amendment notice 'without delay' and
 - given Carl's parents at least 15 days to (i) make representations about the content of the draft plan, (ii) request that a particular school or other institution be named in the plan and (iii) request a meeting with an officer of the LA, if they wish to make representations in person (Reg 22 SEND Regs 2014)
 - sent Carl's parents the final amended EHC plan within 8 weeks of the amendment notice

To meet the deadline of 15 February 2019, the amendment notice would need to have been sent by 21 December 2018.

This means the latest date the annual review meeting could have taken place is 23 November 2018. If this is the case, by 21 December 2018, the LA must have notified Carl's parents of the decision to amend and sent its amendment notice at the same time. If the amendment notice wasn't sent with the LA's decision, then the annual review meeting will have had to have taken place even earlier.

The LA might also have failed to comply with the 12 months requirement for annual reviews – we don't know when Carl's last annual review took place.

3. Naming an education provider

As The Medium School is an academy special school, Carl's parents can request that school to be named in Carl's plan in accordance with s.38(3) CFA 2014.

The LA must have consulted The Medium School in accordance with s.39(2) CFA 2014.

The fact that The Medium school is full is not a lawful reason for refusing to name the school. The only basis on which the LA can refuse to name The Medium School is if it can establish that The Medium School is:

- unsuitable to Carl's age, ability, aptitude or SEN, or
- incompatible with the provision of:
 - efficient education of others, or
 - efficient use of resources

as this is the requirement under s.39(4) CFA 2014. The burden of proof will be on the LA to prove which of the above reasons it relies on.

- In view of the high level of support Carl requires at primary school there is nothing to suggest that a special school would be unsuitable for him.
- The LA may argue that his admission would be incompatible with the provision of efficient education of others because it's oversubscribed, but this is a high threshold – see [NA v London Borough of Barnet \(SEN\) \[2010\] UKUT 180 \(AAC\)](#).
- The LA might use transport as evidence of the inefficient use of resources. If the LA named The Big School, Carl may be eligible for transport under different criteria, in any event.
- It is only where the extra cost is significant or disproportionate that the parents' choice is displaced – [Essex CC v SENDIST \[2006\] EWHC 1105 \(Admin\)](#).
- S.9 Education Act 1996 is also relevant – see [O v \(1\) Lewisham LBC \(2\) SENDIST \[2007\] EWHC 2092 \(Admin\)](#).