

EOTISC Law and Case Law

There are a lot of misunderstandings about the legal test surrounding EOTISC, so we've shared it below, alongside the case law that defines it. This might be useful when you are demonstrating that your young person has already met the legal test, or to show that not all schools need to be consulted with/tried first.

Legal Test

Section 61 CAFA 2014

“(1) A Local Authority in England may arrange for any special educational provision that it has decided is necessary for a child or young person for whom it is responsible to be made otherwise than in a school or post-16 institution or a place at which relevant early years education is provided.

(2) An authority may do so only if satisfied that it would be inappropriate for the provision to be made in a school or post-16 institution or at such a place.

(3) Before doing so, the authority must consult the child's parents or the young person.”

Related Case Law

TM v Hounslow [2009] EWCA Civ 859

#26: To answer the question whether or not it would be “inappropriate” for provision to be made in a school, it is not enough to ask whether the school “can” make the Special Educational Provision set out in section F. One must ask if the school “would not be suitable” or “would not be proper”. That requires the Local Authority to take account of the circumstances of the case which would include the child's background and medical history, the particular educational needs of the child, facilities that can be provided by a school and otherwise than at a school, the comparative costs of alternative provisions, the child's reaction to the provisions, the parents' wishes and any other particular circumstances that might apply.

M v Hertfordshire County Council [2019] UKUT 37 (AAC)

#45: A child's anxiety may lead for it to be “inappropriate” for provision to be made at school.

NN -v- Cheshire East Council (SEN) [2021] UKUT 220 (AAC) - 24th August 2021

Referring to this case, in *Derbyshire County Council v EM and DM (SEN)* [2021] UKUT 240 (AAC), Upper Tribunal Judge Wright said that:

#20 An EHC Plan need only name a school or specify a type of school (or other institution) if the child is actually going to attend the relevant school or type of school (or other institution). But where the child is to receive all of her education by way of ‘education otherwise than in school’ that would not be the case.”

#17 First, there might be a case where, although it is hoped that the child will at some point in the future be able to attend a school, it is impossible to predict what type of school would eventually be appropriate for the child. Secondly, there might be a case where everyone is agreed that the child will never be able to attend school. It would be at the very least pointless to name a school or a type of school in section I of a child’s EHCP in circumstances where no one knows whether that school or type of school will ever be appropriate for him or her, and it would be absurd to name a school or type of school when everyone agrees that the child will never be able to attend it or any other school. Parliament cannot have intended such pointless or absurd outcomes, particularly as such outcomes would risk EHCPs becoming divorced from reality.