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| **PART 4 / SECTION I – PLACEMENT – GENERAL**  |
| page21image3783539984**Relationship between Part 3 and Part 4**  | “.... part 4 cannot influence part 3. It is not a matter of fitting part 3 to part 4, but of considering the fitness of part 4 to meet the provision in part 3”: **R v Kingston upon Thames and Hunter [1997] ELR 223** p233C*.* Recall, after all, that a consultation draft statement contains the LA’s proposals for Parts 2 and 3 but must be silent on type and name of placement: **EA1996 Schedule 27 para 2**.  |
| **EHCP**  | It remains the case that provision (Section F) is a prior consideration to placement (Section I). Where the draft EHC Plan is sent to the child’s parent or young person, it must not name the school or institution, or specify a type of school or  |

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|  | institution: **CFA2014 s38(5)**.  |
| **Evidence to support a placement**  | The decision to name a particular school must be based on proper evidence. Before naming a particular school, the Tribunal should normally have *at the very least* the prospectus, or oral evidence or a written statement from a member of the school’s staff. Neither the fact of registration of an independent school nor the fact that other LAs place children there is evidence of its suitability for children in general let alone for the particular child in question: “a Tribunal may draw reassurance or comfort from those facts, but no more...”: **LB Southwark v Animashaun [2005] EWHC 1123, [2006] ELR 208**. The decision as to whether a particular child should be placed at a particular school must be based on the particular child and their particular needs. The fact that there are other children with greater SEN whose needs are being met by the school is irrelevant: **MMB v Hillingdon [2004] EWHC 513**.  |
| **EHCP**  | -  |
| **Must the school have the provision in place already?**  | The fact that a particular school does not have all the required facilities at the time of the Tribunal does not preclude it from being named provided that the Tribunal is properly satisfied by the assurances that it will do so by the time the child attends: **Lawrence v LB Southwark [2005] EWHC 1210**; and, of course, the provision specified in Part 3 can, in any event, be enforced by the child through judicial review proceedings: **R v Harrow ex parte M [1997] FCR 761***,* **VA v Cumbria [2003] EWHC 232**. In **N v North Tyneside Borough Council [2010] EWCA Civ 135, [2010] ELR 312** N sought to compel delivery of that SALT in her Statement by judicial review. The Administrative Court refused to compel delivery. The Court of Appeal held that to be wrong. The obligation under the Education Act 1996 s324(5) on an LA to arrange the SEP specified in a statement of SEN was absolute. It was not merely a “best endeavours” obligation which was satisfied where the LA had arranged most of the elements of Part 3 of the statement and considered that the child did not require the others (despite the Tribunal having decided to the contrary). A provision in a statement which purported to allow an LA to change provision without amending the statement was unlawful.  |
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| **PLACEMENT REQUEST GENERALLY**  |
| **EA1996**  | See **EA1996 Schedule 27 para 3**, **EA1996 s316**  |
| **CFA2014**  | See **CFA2014 s33** and **s39**, **COP2015 #9.78-9.94**  |
| **Where parents ask for a particular *maintained* [school] placement**  |
| **Parental request for a maintained school (mainstream or special)**  | If (per **EA1996 Schedule 27 para 3(3)**) the parent has requested that a particular *maintained* school should be named, then Part 4 *must* name that school as long as it is: * •  suitable to meet his or her needs; and
* •  his/her attendance would be compatible with the provision of efficient education for the children with whom

he/she would be educated and the efficient use of resources. As considered further below, that did not apply where a parent expressed a preference for an academy or free school, since they are independent schools and not maintained schools. Para 3(3) allows “a parent” to express a preference and therefore does not explicitly provide for where two parents disagree upon the choice of maintained school. When that happens, the Tribunal should determine which of the schools preferred would provide a better education. The Tribunal may not simply name a type of school, nor may it name two schools: **SG v Denbighshire CC [2016] UKUT 460 (AAC)**.  |
| **EHCP**  | When a draft EHCP is prepared, the child’s parents or young person may request the LA name a particular school or institution of the type listed: **COP2015 #9.78**. Those listed are set out at **CFA2014 s38(3)** and are wider than simply maintained schools:  |

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|  | “(a) a maintained school; (b) a maintained nursery school; (c) an Academy; (d) an institution within the further education sector in England; (e) a non-maintained special school; (f) an institution approved by the Secretary of State under section 41 (independent special schools and special post-16 institutions: approval).” That extension beyond “maintained schools” has the effect of putting academies/free schools on an equal footing with maintained schools for the first time. The addition of “institution approved by ...” under **CFA2014 s41** allows for individual independent schools to choose to be placed on that same footing, which creates a level playing field in terms of parent’s/young person’s preference in relation to such schools and maintained schools/academies/free schools while, of course, also bringing a level playing field for the purposes of admitting children (i.e. an independent school or specialist college which opts to be within that framework is considered equally alongside maintained schools by parents and young people, but must also, if then named by the LA, admit as would a maintained school). When a parent or young person has requested such a placement, the LA is then required to consult the school or institution (**CFA2014 s39(2)**), and must secure that the EHCP names the school or institution (**CFA2014 s39(3)**) unless (**CFA2014 s39(4)**): “(a) the school or other institution requested is unsuitable for the age, ability, aptitude or special educational needs of the child or young person concerned, or (b) the attendance of the child or young person at the requested school or other institution would be incompatible with— (i) the provision of efficient education for others, or (ii) the efficient use of resources.”See also **COP2015 #9.79** Where parents disagree on the named school, **SG v Denbighshire CC [2016] UKUT 460 (AAC)** is likely to apply (see above for commentary). Like the 1996 Act, the right to request a school in section 38(2)(b) of the 2014 Act is given to “the parent” and does not therefore cater for any disagreement between parents.  |

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| **Efficient use of resources**  | The mere fact that the parentally-preferred provision is a bit more expensive is *not* an automatic barrier under **EA1996 Schedule 27 para 3(3)** as above to placement in respect of efficient use of resources. The LA/Tribunal must balance the statutory weight given to the parental preference against the extra cost in deciding whether the extra cost is “inefficient”, and even if it is found to be “inefficient” the Tribunal must still then, as a second stage, balance the extra cost against any extra benefit it is claimed to bring for the child: **L v Essex, Gibbs J [2006] EWHC 1105 (Admin), [2006] ELR 452** (upholding a decision in which the Tribunal had held that £4,000 extra was *not* inefficient, and thus did not even need to go on to consider whether that extra cost was justified by extra benefits to the child). It is only if the extra cost is “significant” that the parentally preferred placement is displaced **Surrey CC v P [1997] ELR 516**. See also **C v Lancashire [1997] ELR 377**. The “efficient resources” are those of the LA responsible (not LAs generally): **B v Harrow (No 1) [2000] ELR 109** such that: the LA can take into account the cost of an out-of-area placement if that is requested; and the LA can take into account – in a special school funded on a place-led basis – the “wasted” cost of not placing the child at the school. But note that expenditure by a maintained school is by law LA expenditure such that increased (or reduced) school expenditure (i.e. depending on the child attending) is still taken into account in the resource balance even if the amount delegated to the school would not change the amount delegated to the school by the LA: **X City Council v SENDIST, AB, MB & GB [2007] EWHC 2278, [2008] ELR 1.**  |
| **EHCP**  | Given that the House of Lords’ reasoning in **B v Harrow (No 1) [2000] ELR 109** was premised on particular funding arrangements in place at the time for mainstream schools and for special schools (something which has now changed) and the (flawed even then) notion that all children with Statements were educated in special schools, it is unclear whether consideration of “efficient use of resources” for **CFA2014 s39(4)(b)(ii)** would focus only (as the House of Lords held to be the case in **EA1996**) on the resources of the particular LA.  |
| **Parents willing to pay transport costs**  | Where parents and LA both prefer maintained special schools, and the parental school incurs additional transport costs, the stages to consider are (1) the parental school should be named alone (pursuant to **EA1996 Sch 27 para 3(3)**) if the additional cost is not incompatible with the provision of efficient resources or such inefficiency is outweighed by educational benefit, (2) if there is no duty to name the parental school, the Tribunal should determine whether the extra transport costs are unreasonable public expenditure (**EA1996 s9**) – if not the parental choice of school should be named alone, (3) if the costs are unreasonable, is it still incompatible if the parents pay for transport – if not, then both schools can be named subject to parents paying travel costs to their preferred school: **Dudley MBC v S [2012] EWCA Civ 346,**  |

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|  | **[2012] ELR 206**.  |
| **ECHP**  | -  |
| **Incompatible with the efficient education of others**  | A preference under **EA1996 schedule 27 para 3(2)** was only displaced by a positive finding of “incompatibility with the efficient education of other children” and not merely by evidence of an impact on those other children: **Hampshire v R & SENDIST [2009] EWHC 626, (2009) ELR 371**. When considering the question (in **EA1996 schedule 27 para 3(3)**) whether “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” the Tribunal was entitled to consider the impact on all or any children at the school. When explaining its decision, however, it needed to give a clear identification of just what difference D’s admission (not the admission of all four children with appeals pending) would have, and on the efficient education of which children. Where a school is nominally full, admitting children over this number might be incompatible with the efficient education of others: **NA v LB Barnet [2010] UKUT 180 (AAC), [2010] ELR 617.** The test for incompatibility is not met by a test of “adverse effect” or “impact on” or “prejudicial to”: **\*\*M v LB Harrow HS/4850/2013.**  |
| **EHCP**  | -  |
| **EA 1996 s9 in play even where parent requests a maintained school**  | Even where the **EA1996 schedule 27 para 3(3)** *duty* to name the maintained school requested by parents has been displaced by (e.g.) “inefficient use of resources”, the **EA1996 s9** obligation (as below) is still in play; i.e. s9 does not only apply where an independent school is requested: **O v Lewisham [2007] EWHC 2130, [2007] ELR 633**; but note that the decision maker must consider para 3(3) and section 9 separately – they do not collapse into a single test: **Ealing v SENDIST & K [2008] EWHC 193 (Admin), [2008] ELR 183**. page28image3785082912 |
| **EHCP**  | **EA1996 s9** is not affected by the shift from Statements to EHCPs (but only applies to parental requests – i.e. not young people’s- and only to “pupils”, namely persons for whom education is being provided at a school, other than—(a) a person who has attained the age of 19 for whom further education is being provided, or (b) a person for whom part-  |

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|  | time education suitable to the requirements of persons of any age over compulsory school age is being provided).  |
| **Does EA1996 s9 apply to a request for change of name only?**  | **EA1996 s9** does apply to a request for a change of name pursuant to **EA1996 schedule 27 paragraph 8**: **Mulla v Hackney Learning Trust [2014] EWCA Civ 397, [2014] ELR 350**. This assists an applicant who seeks mainstream provision outside the authority’s area, as the calculation of “efficient use of public resources” is of the public purse generally rather than limited to the maintaining authority’s resources.  |
| **EHCP** page29image3774684656 | There is no equivalent in **CFA2014** to **EA1996 schedule 27 para 8**, however the latter remains in force.  |
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| **EHCP**  | Where (1) the maintained school requested by the parents is not named because of suitability or incompatibility with the efficient education of others, or (2) no school is requested by the parents, then the LA: “must secure that the plan provides for the child or young person to be educated in a maintained nursery school, mainstream school or mainstream post-16 institution, unless that is incompatible with— (a) the wishes of the child’s parent or the young person, or (b) the provision of efficient education for others”: **CFA2014 s33(2)**. In respect of not naming a mainstream placement generally, the LA “may rely on the exception in subsection (2)(b) [the exception for provision of the efficient education of others] in relation to maintained nursery schools, mainstream schools or mainstream post-16 institutions in its area taken as a whole only if it shows that there are no reasonable steps that it could take to prevent the incompatibility”: **CFA2014 s33(3)**. In respect of not naming a particular mainstream placement, the LA “may rely on the exception in subsection (2)(b) in relation to a particular maintained nursery school, mainstream school or mainstream post-16 institution only if it shows that there are no reasonable steps that it or the governing body, proprietor or principal could take to prevent the incompatibility” (**CFA2014 s33(4)**). See overall **COP2015 #9.88-9.90.** What constitutes a reasonable step will “depend on all the circumstances of the case”, and factors include whether taking the step would be effective in removing incompatibility, whether the step is practical, what steps have already been taken, financial implications, and disruption caused by the step: **COP2015 #9.91-9.94.**  |
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