

Guidance Associated with Admissions to Independent and Non-Maintained Schools for Pupils with education health care plans (EHCPs)

Readers are advised to read the guidance associated with placements in maintained schools (mainstream and special) before reading this guidance. These other documents set out the process of consultation and other elements of the Code of Practice that are relevant to this guidance.

Introduction

This guidance aims to help families, schools, early years settings, colleges, voluntary sector organisations that support families and other professionals understand the process and considerations that must take place when a preference for an independent or non-maintained school is received or when the Local Authority themselves is considering making a place in an independent or non-maintained school.

We encourage professionals to signpost families to this guidance.

What are independent and non-maintained schools?

Independent schools are usually privately run for profit (also described as private schools).

Non-maintained schools are usually managed by charitable organisations and are not profit-making.

Neither are maintained/overseen by local authorities.

Most children with an education health and care plan will be able to go to a local mainstream school or special school maintained by the local authority.

Local school placements will always be investigated as a matter of course, prior to the consideration of an independent, or non-maintained school.

However, the following sections of the special education needs (SEN) Code of Practice are important to share in this guidance:

Section 9.78 - The child's parent or the young person has the right to request a particular school, college or other institution of the following type to be named in their EHC plan:

- Maintained nursery school.
- Maintained school and any form of academy or free school (mainstream or special).
- Non-maintained special school.
- Further education or sixth form college.
- Independent school or independent specialist colleges, where they have been approved for this purpose by the Secretary of State and published in a list available to all parents and young people. This is called the Section 41 list and can be found on the [GOV.UK website](https://www.gov.uk).

Section 9.79 - If a child's parent or a young person makes a request for a particular nursery, school or post-16 institution in these groups the local authority must comply with that preference and name the school or college in the EHC plan unless:

- it would be unsuitable for the age, ability, aptitude or SEN of the child or young person, or
- the attendance of the child or young person there would be incompatible with the efficient education of others, or the efficient use of resources.

Section 9.80 - The local authority must consult the governing body, principal or proprietor of the school or college concerned and consider their comments very carefully before deciding whether to name it in the child or young person's EHC plan, sending the school or college a copy of the draft plan. If another local authority maintains the school, they too must be consulted.

Section 0.84 - The child's parent or the young person may also make representations for places in non-maintained early years provision or at independent schools or independent specialist colleges or other post-16 providers that are not on the list mentioned at 9.78 above and the local authority must consider their request. The local authority is not under the same conditional duty to name the provider but must have regard to the general principle in section 9 of the Education Act 1996 that children should be educated in accordance with their parents' wishes, so long as this is compatible with the provision of efficient instruction and training and does not mean unreasonable public expenditure. The local authority should be satisfied that the institution would admit the child or young person before naming it in a plan since these providers are not subject to the duty to admit a child or young person even if named in their plan.

What does this mean in West Sussex?

Locally maintained school placements will always be investigated as a matter of course, prior to the consideration of an independent, or non- maintained school.

This is because independent and non-maintained schools are fee-charging organisations and therefore the Local Authority is duty bound to consider the most efficient use of their resources (public money) in all their decision-making.

As maintained schools are already funded in part, and are often geographically nearer, they are usually less costly than non-maintained or independent schools.

If a parent/carers or young person expresses a preference for a non-maintained setting or an independent setting approved by the Secretary of State (often called Section 41 providers) the SEN Assessment Team will consult with that preference alongside the work they do to consider other maintained options.

If a parent/carers or young person expresses a preference for an independent school not approved by the Secretary of State, the SEN Assessment Team are not required to consult with them. They may decide to engage with them to learn about their offer and their ability to meet the child/young person's needs; but they are not required to.

Dynamic Placement System (DPS)

West Sussex County Council has established a dynamic placement system (DPS) that supports finding suitable placements for children with disabilities and special educational needs when a placement is required in an independent or non-maintained special school. Some of these schools will be physically outside of West Sussex.

Independent and non-maintained schools are invited to be part of this system which allows West Sussex to co-ordinate admissions and ensure appropriate contractual and other monitoring mechanisms are in place for these settings.

If the SEN Assessment Team considers that a non-maintained or independent school might be required, they will do a referral to the DPS. This involves sending anonymised information about the child or young person's needs to all the approved providers on the system.

Providers are asked to express an interest in meeting the child/young person's needs. Ideally, they will do this within 5 working days of the initial referral.

SENAT will then consider the responses and most likely refer the expressions of interest and all other work that has taken place to consider local placements to the SEN Panel for discussion.

If placement in an independent or non-maintained placement is agreed in principle by the SEN Panel a formal consultation will also take place (if it has not already) before the placement can be agreed/named in an EHCP.

Key Points

Most requests for independent or non-maintained schools will need to be discussed and agreed at SEN Panel.

Discussion at SEN Panel will require clear information associated with any local/maintained options, the costs of all the options and any other relevant information about the offer being made by any potential setting.

Consideration at SEN Panel will firstly focus on ability to meet the child/young person's needs (as set out in the EHCP) and then the cost.

The response from possible settings informs this consideration, alongside any further work undertaken by team members in SENAT.

The Planning Co-Ordinator in SENAT will most likely be the parent/carer or young person's key contact, so they will keep them updated regarding this process.