

## SEND pupils and the Continuum of provision and admission in Warwickshire

### The Children and Families Act 2014 continues the presumption in favour of mainstream schooling set out in the 1996 Education Act

In Warwickshire by far the majority of children with Special Educational Needs and Disabilities will attend a mainstream school or college near to home. The capacity of mainstream schools, in terms of experience and confidence, to meet the needs of children with special educational needs and disabilities has increased significantly in recent years. There are now more children than ever with complex and significant barriers to learning who, with carefully planned support, are making both expected and above expected academic and social progress in their local mainstream school. This has enabled children with additional needs to be educated alongside their siblings and other children who live in their community. Some parents (and indeed the young person themselves) express a preference for a school or college which is not the nearest one to home. Parents of children with special educational needs and disabilities have a right to express a preference for a setting which is not the nearest to home, and make an informed choice, in the way that all other parents do. The information that schools publish on their website about the arrangements that are in place for assessing and meeting the needs of children with additional needs will be key in helping parents make informed decisions, as will the welcome and reception they receive when they visit. **All schools, academies and colleges will recognise their duties in relation to the admission of children and young people and will not treat any child less favourably in this respect because of a reason associated with a special educational need or disability.** It is important that all schools reflect an inclusive and welcoming ethos to ensure that parents feel confident to send their children to their local school. Whilst there is a longstanding presumption in law in favour of mainstream education, Warwickshire County Council commissions a range of specialist provision for those children with significant need who fall into the following categories: the wishes of the child's parent, or the young person, is for an alternative to mainstream education and their needs are within the range of complexity and severity that makes inclusion within a mainstream Early Years setting, school or college unsuitable. There are a number of special schools and specialist centres within the boundaries of Warwickshire County Council, which are commissioned by the Local Authority to provide an agreed number of places for children with Education Health Care Plans where their plan specifies this as the school to be attended.

The Council has a long standing and ongoing commitment to provide high quality special school places for those children and young people who require or request it. The special schools in the area (some are Local Authority maintained and others are academies) form an integral and valued part of Warwickshire's family of schools. Our Vulnerable Learners Strategy is committed to further strengthening the partnership between Special Schools and mainstream in each area and the development of more local resourced SEND provision.

#### The following principles regarding admission are taken from the SEND Code of Practice March 2015.

*Relevant legislation: Sections 33 and 39 of the Children and Families Act 2014*

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)
- 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

Efficient education means providing for each child or young person a suitable, appropriate education in terms of their age, ability, aptitude and any special educational needs they may have. Where a local authority is considering the appropriateness of an individual institution, 'others' is intended to mean the children and young people with whom the child or young person with an EHC plan will directly come into contact on a regular day-to-day basis.

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.

9.83 The nursery, school or college and, where relevant, the other local authority, should respond within 15 days. Where a nursery, school or college identified at 9.78 above is named on an EHC plan they **must** admit the child or young person.

9.84 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.

9.85 Children with EHC plans can attend more than one school under a dual placement. Dual placements enable children to have support from a mainstream and a special school. This can help to prepare children for mainstream education and enable mainstream and special schools to share and develop their expertise in supporting children with different types of SEN.

9.86 Where appropriate, a young person with an EHC plan can attend a dual placement at an institution within the further education sector and a special post-16 institution. The local authority should work with the young person, post-16 provider and independent specialist college to commission such a placement where that will achieve the best possible outcome for the young person. To be deemed as being educated in a mainstream further education institution, young people should spend the majority of their time there.

9.87 The local authority should consider very carefully a request from a parent for a denominational school, but denominational considerations cannot override the requirements of the Children and Families Act 2014.

### **Where no request is made for a particular school or college or a request for a particular school or college has not been met**

*Relevant legislation: Sections 33 and 40 of the Children and Families Act 2014*

9.88 Where a parent or young person does not make a request for a particular nursery, school or college, or does so and their request is not met, the local authority **must** specify mainstream provision in the EHC plan unless it would be:

- against the wishes of the parent or young person, or
- incompatible with the efficient education of others

9.89 Mainstream education cannot be refused by a local authority on the grounds that it is not suitable. A local authority can rely on the exception of incompatibility with the efficient education of

others in relation to maintained nursery schools, mainstream schools or mainstream post-16 institutions taken as a whole only **if it can show that there are no reasonable steps it could take to prevent that incompatibility**. Where a parent's or young person's request for a particular mainstream school or mainstream post-16 institution has not been met, the school or post-16 institution in question becomes a possible candidate for consideration by the local authority according to the conditions in the above paragraph.

9.90 Where the local authority considers a particular mainstream place to be incompatible with the efficient education of others it **must** demonstrate, in relation to maintained nursery schools, mainstream schools or mainstream post-16 institutions in its area taken as a whole, that there are no reasonable steps that it, or the school or college, could take to prevent that incompatibility. Efficient education means providing for each child or young person a suitable, appropriate education in terms of their age, ability, aptitude and any special educational needs they may have. Where a local authority is considering whether mainstream education is appropriate (as opposed to considering the appropriateness of an individual institution) the term 'others' means the children or young people with whom the child or young person with an EHC plan would be likely to come into contact on a regular day-to-day basis. **Where a parent or young person wants mainstream education and it would not be incompatible with the efficient education of others, the local authority has a duty to secure that provision.**

### **Reasonable steps**

9.91 What constitutes a reasonable step will depend on all the circumstances of the individual case. The following are some of the factors that may be taken into account:

- Whether taking the step would be effective in removing the incompatibility
- The extent to which it is practical for the early years provider, school, college or local authority to take the step
- The extent to which steps have already been taken in relation to a particular child or young person and their effectiveness
- The financial and other resource implications of taking the step, and
- The extent of any disruption that taking the step would cause

9.92 The following are examples of reasonable steps that might be taken in different circumstances:

- **Reasonable steps to ensure that the inclusion of a child with challenging behaviour in a mainstream primary school setting is not incompatible with the efficient education of others may include:**
  - addressing factors within the class that may exacerbate the problem, for example using circle time to discuss difficult relationships and identify constructive responses
  - teaching the child alternative behaviour, for example by taking quiet time in a specially designated area at times of stress
  - providing the child with a channel of communication, for example use of peer support
  - using a carefully designed system of behaviour targets drawn up with the child and linked to a reward system which, wherever possible, involves parents or carers
  - ensuring that all staff coming into contact with the child are briefed on potential triggers for outbursts and effective ways of heading off trouble at an early stage
  - drawing up a contingency plan if there is an outburst in class, for example, identifying with the child a key helper who can be called to remove the child from the situation, and
  - ensuring that if there is any possibility that positive handling may need to be used to prevent injury to the child, young person or others or damage to property, relevant staff have had training in appropriate techniques, that these have been carefully explained to the child and that the circumstances in which they will be used are recorded in a written plan agreed with and signed by the child and their parents or carers
- Reasonable steps taken to ensure that the inclusion of a child with autistic spectrum disorder who is distracting and constantly moves around in a mainstream secondary school is not incompatible with the efficient education of others may include:

- ensuring all possible steps are taken to provide structure and predictability to the child's day, for example by the use of visual timetables, careful prior explanation of changes to routines and clear instructions for tasks
  - ensuring that the child is taught a means of communicating wants and needs using sign, symbol or spoken language
  - working with a member of staff on a structured programme of activities designed to prepare him or her for joining in class or group activities, for example by using 'social scripts' to rehearse appropriate behaviour
  - having an individual workstation within a teaching space where distractions can be kept to a minimum and everything needed for the work to be done can be organised in sequence, and
  - ensuring that all staff are briefed on the warning signs which may indicate potential behaviour challenge and on a range of activities which provide effective distraction if used sufficiently early
- **Reasonable steps taken to ensure that the inclusion of a young person with a learning disability who does not use verbal communication in a mainstream course at a further education college is not incompatible with the efficient education of others may include:**
    - the involvement of staff from the college's learning support team in the school-based transition reviews
    - an orientation period during the summer holidays, to enable the student to find his or her way around the college campus and meet the learning support staff
    - opportunities to practise travelling to and from college
    - the development of an individual learning programme outlining longer term outcomes covering all aspects of learning and development, with shorter term targets to meet the outcomes
    - supported access to taster sessions over a first year in college
    - a more detailed assessment of the young person's needs and wishes provided by learning support tutors during a 'taster' year
    - staff development to ensure an understanding of the student's particular method of communication
    - use of expertise in access technology to identify appropriate switches or communication boards to facilitate the student's involvement in an entry-level course, and
    - courses normally covered in one year planned over two years to meet the young person's learning needs

9.93 There may be a range of reasons why it may not always be possible to take reasonable steps to prevent a mainstream place from being incompatible with the efficient education of others – for example, where the child or young person's behaviour systematically, persistently or significantly threatens the safety and/or impedes the learning of others.

9.94 A decision not to educate a child or young person in a mainstream setting against the wishes of the child's parent or the young person should not be taken lightly. It is important that all decisions are taken on the basis of the circumstances of each case and in consultation with the parents or young person, taking account of the child or young person's views. **Local authorities should consider reasonable steps that can be taken for mainstream schools and mainstream post-16 institutions generally to provide for children and young people with SEN and disabled children and young people.**

## **Operational Guidance**

All children with EHC plans will have had as part of the assessment or review consideration of how the school provides provision at universal, SEN notional and higher needs element for that child. (SEND Education Matrix of Provision – School Aged)

The presumption is that the ability to meet need will be enhanced by an EHC plan and should not be used as a reason to decline a place.

The local authority will consult with schools chosen by the parent. It will assume where the EHC plan indicates mainstream that all Warwickshire schools can meet need

Where the local authority considers a particular mainstream place to be incompatible with the efficient education of others it **must** demonstrate, in relation to maintained nursery schools, mainstream schools or mainstream post-16 institutions in its area taken as a whole, that there are no reasonable steps that it, or the school or college, could take to prevent that incompatibility.

This requires evidence from the selected school that **there are no reasonable steps it could take to prevent that incompatibility.**

The LA will from (?) establish a data base to record schools consulted and responses.

This will include steps taken by the LA to support schools in making reasonable steps to support the inclusion of SEND children.

Please send any comments / feedback to [pattate@warwickshire.gov.uk](mailto:pattate@warwickshire.gov.uk) by October 26<sup>th</sup> 2015

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