



SEND CODE OF PRACTICE AND THE CHILDREN AND FAMILIES ACT 2014 FAQS FOR INDEPENDENT SCHOOLS

Which independent school settings have to have regard to the Code of Practice?

It is only those independent schools that are on the section 41 list or relevant early years providers that must have regard to the Code of Practice.

What about the general references to 'identifying SEN' and 'SEN support' - do these changes impact independent schools?

Independent schools should already have systems in place to identify SEN and provide SEN support. The change in emphasis in the Code should not therefore have an impact on them. The Code sets out good practice and independent schools may therefore want to look at this to help them review the systems they already have in place.

If an independent school that is not on the section 41 list admits a pupil on a statement or EHC plan, will they be required to have regard to the Code?

No. It will be useful for them to be familiar with the Code as when admitting a pupil with a statement or Education, Health and Care (EHC) plan, there will need to be annual reviews etc. However the requirements in the Code, for example the school being required to hold the annual review and send out reports to all parties, will not be a 'must' for independent schools. This is the case even if the school is named in Section I of the EHC plan.

Relevant early years providers must have regard to the Code and if they are not able to follow the advice in it they should explain this to the local authority. Only section 41 schools are required to adhere to all of the 'musts' in the Code. This is important given that some independent early years providers may be small and may not have the resources to comply with the requirements set out in the Code.

How will the changes impact pupils at independent schools that are currently on statements?

The requirements on local authorities to review statements annually apply. Local authorities are responsible for ensuring the transition from statements to EHC plans over the period from September 2014 to April 2018. Schools should be guided by the local authority as to when pupils should make this transition. The transitional arrangements guidance (statutory guidance for local authorities) will help schools in understanding what local authorities should be doing and when.

I am an early years provider that receives funding from the Local Authority. What do I do if a child with SEN and/or a disability has specific learning needs which are not a reasonable adjustment? The Code requires schools to prepare a targeted plan but we are a small school with limited resources.

You should contact the local authority and can request an assessment for an EHC plan.

Do independent schools have to participate in the local offer and should they be contacting local authorities?

Independent schools that are on the section 41 list and relevant early years providers must co-operate with the local authority and supply information to them. However, the local authority is responsible for putting the local offer together and schools do not have to approach them. That said, schools may wish to provide their details for the local offer promptly and there is nothing to stop them from contacting the local authority themselves. Schools that are not on the section 41 list or relevant early years providers can ask to be included in the local offer. However the local authority is under no obligation to include them.

Other independent schools (in particular those not on the section 41 list or relevant early years providers) can also consider providing details of their SEN provision to the impartial information, advice and support services that local authorities are required to make available to parents and young people. The DfE-funded national body, the National Parent Partnership Service, has now become the Information, Advice and Support Services (IASS) Network and schools can contact them or local IASS directly.

I am a relevant early years provider. Am I bound by the duty to admit?

No. Only independent schools on the section 41 list are bound by the duty to admit.

Why has SA and SA+ changed to SEN support?

DfE concluded, in light of evidence from Ofsted, the system of School Action and School Action Plus was not working well. The Ofsted review of SEN (2010) found that for children identified at School Action level the additional provision was often an inappropriate response due to inadequacies in whole-class teaching or pastoral support. It emphasised labelling children's need according to how support was to be provided, rather than the outcomes sought for the child and how to reach them. It also led to some children being unnecessarily labelled as having SEN, with little or inappropriate action taken to support them. The Lamb Inquiry (2009) also reported that the use of the SEN label itself could lead to lower expectations or less vigorous intervention.

DfE considers that *SEN Support* will focus the system on the impact of the support provided to that individual child, rather than how children access support according to the category they fit into. It will also challenge schools to improve the quality of teaching and learning for all pupils, rather than inappropriately and inaccurately labelling some pupils as having SEN.

SEN support is that which is provided for pupils that have significantly greater difficulty in learning than their peers and it is educational or training provision that is additional to or different from that made generally for others of the same age. If a pupil goes on to require an EHC plan, then they will no longer be categorised as receiving SEN support.

Can pupils at independent schools receive personal budgets and direct payments?

There are generally no restrictions; however personal budgets and direct payments cannot be used to pay for school fees. It is possible for them to be used to pay for some SEN provision and local authorities should be preparing guidance on the award and use of personal budgets and direct payments. The regulations provide for these to be agreed locally, and schools should therefore ensure that they are aware of the local criteria.

Are there any new duties introduced by the new Act that are relevant to independent schools not on the section 41 list?

No.

What are independent schools duties under the Equality Act?

It is unlawful for independent schools to discriminate on the grounds of race, sex, disability or sexual orientation in admissions, access to benefits, facilities or services,

exclusions, and in the employment of staff. There are some limited exceptions related to religion and belief. DfE has produced [departmental advice](#) to help schools understand how the Equality Act affects them and how to fulfil their duties under the Act.

What are independent schools duties towards pupils with statements of SEN or EHC plans under the Independent School Standards Regulations?

Under Part 1 of Schedule 1 schools must:

- Draw up and implement effectively a written policy on curriculum, supported by appropriate plans and schemes of work:
 - o which takes into account the ages, aptitudes and needs of pupils, including those with a statement/EHC plan
 - o where a pupil has a statement or EHC plan, education which fulfils its requirements
- Ensure that teaching:
 - o enables pupils to acquire new knowledge and make progress according to their ability so that they increase their understanding and develop their skills in the subjects taught
 - o shows a good understanding of the aptitudes, needs and prior attainment of the pupils, and ensures that these are taken into account in the planning of lessons

Under Part 6 of Schedule 1:

- Where a pupil with a statement or EHC plan wholly or partly funded by a local authority or other body through public funds is registered at the school, such information as may be reasonably required for the purpose of the annual review of the statement or EHC plan is provided to the responsible local authority.
- Particulars of educational and welfare provision for pupils with statements or EHC plans is made available to parents of pupils and parents of prospective pupils and, on request, to the Chief Inspector, the Secretary of State or an independent inspectorate.

What if a young person wants to exercise their statutory right to be consulted and have their views considered when an EHC plan is being drawn up or reviewed?

This will only occur if the pupil is 16 or over (over compulsory school age). The local authority must consult the young person as part of an assessment for an EHC plan and if,

following an assessment, it decides to make an EHC plan, the young person will be invited to request a particular education institution. Once a school is named on a young person's plan they will have a contract with the local authority and the local authority will then be paying the school's fees. In these circumstances the contract will be with the local authority and not the pupil's parents.

What Regulations have been made under the Children and Families Act? Do any of these have any impact on independent schools that are not on the section 41 list?

No. The new regulations are:

- The Special Educational Needs and Disability Regulations 2014
The Special Educational Needs (Personal Budgets) Regulations 2014
- The Special Educational Needs (Miscellaneous Amendments) Regulations 2014
- The Children and Families Act 2014 Special Educational Needs (Consequential Amendments to Subordinate Legislation) Order 2014
- The Children and Families Act 2014 (Transitional and Saving Provisions) (No. 2) Order 2014

Do independent schools have to publish a SEN information report on their website?

No. But it is helpful to parents, young people and local authorities if they do.

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