



# Children and Families Act 2014

## 2014 CHAPTER 6

### PART 3

#### CHILDREN AND YOUNG PEOPLE IN ENGLAND WITH SPECIAL EDUCATIONAL NEEDS OR DISABILITIES

##### *Mainstream education*

### **33 Children and young people with EHC plans**

- (1) This section applies where a local authority is securing the preparation of an EHC plan for a child or young person who is to be educated in a school or post-16 institution.
- (2) In a case within section 39(5) or 40(2), the local authority 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.
- (3) A local authority may rely on the exception in subsection (2)(b) 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.
- (4) A local authority 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.
- (5) The governing body, proprietor or principal of a maintained nursery school, mainstream school or mainstream post-16 institution may rely on the exception in subsection (2)(b) only if they show that there are no reasonable steps that they or the local authority could take to prevent the incompatibility.

- (6) Subsection (2) does not prevent the child or young person from being educated in an independent school, a non-maintained special school or a special post-16 institution, if the cost is not to be met by a local authority or the Secretary of State.
- (7) This section does not affect the operation of section 63 (fees payable by local authority for special educational provision at non-maintained schools and post-16 institutions).

### **34 Children and young people with special educational needs but no EHC plan**

- (1) This section applies to a child or young person in England who has special educational needs but for whom no EHC plan is maintained, if he or she is to be educated in a school or post-16 institution.
- (2) The child or young person must be educated in a maintained nursery school, mainstream school or mainstream post-16 institution, subject to subsections (3) and (4).
- (3) The child or young person may be educated in an independent school, a non-maintained special school or a special post-16 institution, if the cost is not to be met by a local authority or the Secretary of State.
- (4) The child or young person may be educated in a special school or special post-16 institution during any period in which any of subsections (5) to (9) applies.
- (5) This subsection applies while the child or young person is admitted to a special school or special post-16 institution for the purposes of an EHC needs assessment, if all the following have agreed to his or her admission to the school or post-16 institution—
  - (a) the local authority which is responsible for him or her;
  - (b) the head teacher of the school or the principal of the Academy or post-16 institution;
  - (c) the child’s parent or the young person;
  - (d) anyone else whose advice is required to be obtained in connection with the assessment by virtue of regulations under section 36(11).
- (6) This subsection applies while the child or young person remains admitted to a special school or special post-16 institution, in prescribed circumstances, following an EHC needs assessment at the school or post-16 institution.
- (7) This subsection applies while the child or young person is admitted to a special school or special post-16 institution, following a change in his or her circumstances, if all the following have agreed to his or her admission to the school or post-16 institution—
  - (a) the local authority which is responsible for him or her;
  - (b) the head teacher of the school or the principal of the Academy or post-16 institution;
  - (c) the child’s parent or the young person.
- (8) This subsection applies while the child or young person is admitted to a special school which is established in a hospital and is—
  - (a) a community or foundation special school, or
  - (b) an Academy school.
- (9) This subsection applies while the child is admitted to a special school or special post-16 institution that is an Academy, if the Academy arrangements made in respect

of the school or post-16 institution permit it to admit children and young people with special educational needs for whom no EHC plan is maintained.

- (10) This section does not affect the operation of section 63 (fees payable by local authority for special educational provision at non-maintained schools and post-16 institutions).

### **35 Children with SEN in maintained nurseries and mainstream schools**

- (1) This section applies where a child with special educational needs is being educated in a maintained nursery school or a mainstream school.
- (2) Those concerned with making special educational provision for the child must secure that the child engages in the activities of the school together with children who do not have special educational needs, subject to subsection (3).
- (3) Subsection (2) applies only so far as is reasonably practicable and is compatible with—
- (a) the child receiving the special educational provision called for by his or her special educational needs,
  - (b) the provision of efficient education for the children with whom he or she will be educated, and
  - (c) the efficient use of resources.