



SURREY
COUNTY COUNCIL



Guidance on Section 41 and Non-S41 Schools – Consultations and Naming in Education, Health and Care Plans (EHCPs)

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Guidance on Section 41 and Non-S41 Schools and Naming in Education, Health and Care Plans (EHCPs)

1.0 Introduction:

- 1.1 This document outlines Surrey County Council's (SCC) guidance regarding the consultation process and naming of Section 41 (S41) and non-section 41 schools in Education, Health and Care Plans (EHCPs).
- 1.2 It provides guidance for parents on the criteria and processes involved in consulting with and naming schools in EHCPs, particularly during key stage transfers and in-year placements.
- 1.3 This procedure adheres to the following legislation and guidance:
- 1.3.1 Children and Families Act 2014: This act includes provisions for the approval of independent special schools and special post-16 institutions under Section 41.
 - 1.3.2 Education Act 1996: Provides a legal framework for the education of children and young people
 - 1.3.3 Special Educational Needs and Disability Regulations 2014: Sets out the duties of local authorities and other bodies in relation to children and young people with special educational needs and disabilities.
 - 1.3.4 SEND Code of Practice: Provides statutory guidance on the duties of local authorities, health bodies, schools, and colleges to provide for those with special educational needs under part 3 of the Children and Families Act 2014.
- 1.4 Surrey County Council is committed to ensuring that educational placements for children and young people with SEND are appropriate, safe, and in line with national regulations. This document outlines the criteria and considerations for naming Section 41 and Non-Section 41 schools in EHCPs, with a focus on key stage transfers and in-year placements.

2.0 Parents' Rights to Request:

2.1 Section 38 of the Children and Families Act 2014 sets that a parent may require the LA to consult and name one of the following schools: :

- 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

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- 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) (S41)

2.2 and Section 39 states that the local authority must comply with that preference and name such a 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.

3 What is a Section 41 (S41) School?

3.1 Section 41 of the Children and Families Act 2014 allows certain independent special schools and special post-16 institutions to be approved by the Secretary of State for Education. These schools are recognised for their ability to cater to children and young people with special educational needs and disabilities (SEND).

3.2 If a school is approved under Section 41, it means that the school has met specific standards set by the government. These schools are regularly monitored to ensure they provide a high-quality education and support for children with SEND.

4 What is a Non-S41 School?

4.1 Non-S41 schools refers to an independent school which has not been approved under s.41. While they may still provide education for children with SEND, they do not have the same formal recognition and regulatory oversight as S41 schools.

4.2 If families make a preference for a non-S41 independent school for their child, it's important to know that these schools have not gone through the same approval process as S41 schools. SCC will consider your preference but is not obligated to consult with or name a non-S41 school in a child's EHCP.

5 Criteria for Consulting with/Naming non-S41 schools

5.1 Parental Preference: While parental preference is considered, SCC is not obligated to consult with or name a non-S41 independent school in an EHCP. Such schools do not come within Section 38 Children & Families Act., Parents may request an independent non s.41 school is named, but as set out at 9.84 of the SEN Code of Practice "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

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the provision of efficient instruction and training and does not mean unreasonable public expenditure.” Where a parent makes such a request the LA will consider:

5.2 Inspection Status: The current inspection status of the school will be reviewed. Schools that do not meet the required standards in leadership, governance, and safeguarding will not be named in EHCPs. As non-section 41 schools are not regulated in the way as Section 41 schools, SCC requires additional assurances that suitable mechanisms are in place to monitor suitability and quality,

5.3 Contractual Agreements: Schools must agree to appropriate contractual terms with SCC. Schools that refuse to sign the necessary contracts will not be considered for placement.

5.4 Efficient Use of Resources: The placement must be compatible with the efficient use of public resources. SCC will consider the cost-effectiveness of the placement in relation to the child's needs.

5.5 Efficient instruction and training: The placement must be compatible with the provision of efficient instruction and training.

6 Process for Key Stage Transfers and In-Year Placements:

6.1 Key Stage Transfers:

6.1.1 **Transition Review Meeting:** Held in the year preceding the transfer (e.g., Year 5 for secondary school transfer). At this meeting the child, parent, the school, Surrey representative, and other professionals (if attending) will discuss the EHCP and the type of setting the pupil would like to move to. Parents at this point may request a preferred placement.

6.1.2 Discuss the type of school provision that best suits the child's needs. This will be considered at Education Governance Board for type of provision recommended for Key Stage Transfer.

6.1.3 **Consultation with Schools:** If a non-S41 independent school is preferred by the family, SCC does not have a duty to consult with this school, however, there may be instances that we will consult, i.e. if there are no alternative schools to consider. SCC will assess its suitability based on the criteria outlined in section 5.0.

6.1.4 **Final Decision:** Parents are notified of the proposed school allocation via their allocated case officer.

6.2 In-Year Placements:

6.2.1 If a change of placement from a Mainstream School has been agreed and Families have requested a Non-S41 Independent School, like key stage transfers (section 6.1), SCC does not have a duty to consult with this school.

6.2.2 Final Decision: Based on the same criteria as key stage transfers. Parents are notified of the decision via their allocated case officer.

7 Handling Disputes Over Placements:

7.1.1 SCC will first discuss with the parents to understand the concerns and preferences.

7.1.2 If the dispute involves a Section 41 (S41) school, SCC has a legal duty to consult with the school to ensure it can meet the child's needs.

7.1.3 If the dispute involves a non-S41 independent school, SCC does not have a legal duty to consult with the school but may consider this in line with suitability.

8 Formal Complaint:

8.1.1 If a parent wishes to name a non-s41 school, and SCC is not in agreement that it meets the requirements as outlined in Section 5, it may be that a discussion with the case officer is required in the first instance. If concerns remain un-resolved, parents can use the formal complaints or disputes resolution process.

8.1.2 The complaint will be reviewed by SCC's Special Educational Needs (SEN) team, who will investigate and provide a response.

9 Mediation:

9.1.1 Mediation is part of the process followed once a formal decision has been made and a final/amended final EHCP issued.

9.1.2 If a formal decision is made and a final EHCP is issued or amended and the parent(s) disagree with contents of the plan, mediation can be considered

9.1.3 SCC encourages resolving disputes through mediation. This involves a neutral third party helping both sides reach an agreement.

9.1.4 Mediation is voluntary and can be a quicker, less formal way to resolve disagreements.

10 Tribunal

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10.1.1 the dispute remains unresolved, parents can appeal to the Special Educational Needs and Disability Tribunal (SENDIST).

10.1.2 The tribunal will review the case and make a legally binding decision on the placement.

11 Quality Assurance:

11.1.1 SCC conducts independent quality assurance visits to schools causing concern and requests action plans to address any issues identified

11.1.2 This ensures that schools meet the required standards and provide appropriate support for children with SEND.

12 Support and Guidance:

12.1.1 SCC provides support and guidance to parents throughout the dispute resolution process.

12.1.2 Parents can also seek advice from independent organisations and advocacy services.

13 General Enquiries:

13.1 Phone: 03456 009 009 (8am-6pm weekdays)

13.2 Email: contactcentre@surreycc.gov.uk

13.3 Children's, Schools & Learning:

13.4 Phone: 01483 519095

13.5 Email: families.feedback@surreycc.gov.uk

13.6 Address: Children's Rights Team, Customer Relations, Victoria Gate, Chobham Road, Woking, Surrey, GU21 6JD

13.7 Children's Free Phone Number: 08000 562 132 (not free from mobiles)

13.8 Children's Text Number: 07805 846 386

13.9 Children's Email: be.heard@surreycc.gov.uk

Example Case Study 1: Request for non-S41 school (agreement)

Sarah is a 10-year-old girl with special educational needs (SEN) who is currently in Year 5. Her parents, Mr. and Mrs. Smith, are preparing for her transition to secondary school. They have identified a non-S41 independent special school, School A, which they believe would be the best fit for Sarah's needs.

Mr. and Mrs. Smith request that School A be named in Sarah's Education, Health and Care Plan (EHCP). They believe that the school's specialised programs and smaller class sizes will provide the support Sarah needs to thrive.

Process:

Consultation:

- SCC receives the request and reviews the school's inspection status, ensuring it meets required standards.

Assessment:

- SCC evaluates whether School A can meet Sarah's specific educational needs.
- The school must agree to appropriate contractual terms with SCC.
- SCC considers the cost-effectiveness of the placement, ensuring it aligns with the efficient use of public resources.

Decision:

- Based on the assessment, SCC determines that School A is suitable for Sarah and agrees to name it in her EHCP.
- Mr. and Mrs. Smith are notified of the decision, and arrangements are made for Sarah's transition.

Outcome:

- Sarah successfully transitions to School A, receiving the specialised support she needs.

Example case study 2 – request for non-S41 school (no agreement)

Tom is an 11-year-old boy with special educational needs (SEN) who is currently in Year 6. His parents, Mr. and Mrs. Johnson, are preparing for his transition to secondary school. They have identified a non-S41 independent special school, School B, which they believe would be the best fit for Tom's needs due to its specialised programmes and smaller class sizes.

Mr. and Mrs. Johnson request that School B be named in Tom's Education, Health and Care Plan (EHCP). They believe that the school's environment and tailored support will help Tom thrive academically and socially.

Process:

Consultation:

- Surrey County Council (SCC) receives the request and reviews School B's inspection status and suitability.

Assessment:

- SCC evaluates whether School B meets the required standards in leadership, governance, and safeguarding and the cost-effectiveness of the placement, ensuring it aligns with the efficient use of public resources.
- SCC reviews the school's contractual terms and whether School B agrees to the necessary contracts with SCC.

Decision:

- SCC determines that while School B offers specialised programmes, it does not meet the required standards in safeguarding and governance.
- Additionally, the cost of placement at School B is deemed not to be a cost-effective use of public resources as the school's fees are significantly above that of comparable local settings.
- SCC decides that School B is not a suitable placement for Tom and does not name it in his EHCP.

Outcome

- Mr. and Mrs. Johnson are notified of the decision. SCC provides alternative options for schools that meet the required standards and are cost-effective.
- Tom is placed in a different school that is able to meet his needs and complies with SCC's criteria for suitability and resource efficiency.