

GUIDANCE: ADMISSIONS OF PUPILS WITH EDUCATION HEALTH AND CARE PLANS TO MAINSTREAM SCHOOLS.



Rationale

Plymouth Local Authority (LA) is committed to working with all settings to ensure all children and young people with Special Educational Needs and/or Disabilities (SEND) are supported to achieve the very best outcomes, through receiving the right support at the right time.

The purpose of this guidance is to ensure that Head Teachers and Governing Bodies understand the legislative framework that governs the admissions of pupils with SEND and how this legislative framework is applied in Plymouth. This guidance relates specifically to:

1. A pupil joining a school 'in year'
2. A pupil transferring to the city from another local authority

This policy should be read in conjunction with:

1. Special Educational Needs and Disability Code of Practice: 0-25 years
<https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>
2. 'School Admissions, Children and Young People with Disabilities or Special Educational Needs' (The Council for Disabled Children)
https://councilfordisabledchildren.org.uk/sites/default/files/field/attachemnt/School%20Admissions%20Briefing_0.pdf
3. 'Equality Act 2010: advice for schools'
<https://www.gov.uk/government/publications/equality-act-2010-advice-for-schools>
4. 'Supporting Pupils with Medical Conditions at School'
<https://www.gov.uk/government/publications/supporting-pupils-at-school-with-medical-conditions--3>

Key Legislation and guidance:

Both the 'Education Act' (1996) and the 'Children and Families Act' (2014) set out that all children should be able to be educated in a mainstream school with adjustments and individualised approaches where necessary. In particular, Section 33 of the 'Children and Families Act' places a duty on local authorities to ensure that a child or young person with an EHC plan is educated in a mainstream school.

In relation to this, the Equality Act (2010) describes the duty on schools to make reasonable adjustments for particular individual disabled pupils, as well as consider potential adjustments, which may be needed for disabled pupils generally: it is likely that any school will have a disabled pupil at some point.

This means that where a parent makes a request for a particular mainstream school, the LA, and therefore the school, must comply.

However, the 'Children and Families Act' recognises that for a small number of children, a particular school may not be appropriate. In these instances, the following two provisos are made in relation to a request for a child or young person to be placed in a particular mainstream school:

1. It would be unsuitable for the age, ability, aptitude or SEN of the child or young person.
2. 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 9.79 of the 'Special Educational Needs and Disability Code of Practice: 0 – 25 Years' (the Code) defines others as: 'the children and young people with whom the child or young person with an Education Health and Care (EHC) plan will directly come into contact on a regular day-to-day basis' and efficient use of resources to mean: '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'.

These are both high legal tests. For example, a local authority cannot use the *efficient education of other children* exception as a reason not to admit if there are reasonable steps that might make going to a mainstream school compatible with the efficient education of other children. The Code sets out a range of reasonable steps that might be taken in different circumstances and for different pupils, see sections 9.91-9.94.

Separate advice is provided to schools with regard to supporting pupils at school with medical conditions. The guidance makes it clear that, by law, no child can be denied admission to a school because of a medical condition. It also sets out that where a pupil has a medical need and a special educational need that the pupil's Individual Health Care plan should be linked to or become part of the pupil's EHC plan.

Key duties placed upon local authorities and schools

All schools must make *reasonable adjustments* for disabled children and young people in their admission arrangements, as in every other aspect of school life. Because this is an anticipatory duty, schools need to think ahead and plan to make adjustments to prevent any disadvantage that might arise at any stage of the admissions process.

Under wider Equality Act (2010) duties, admissions authorities must have due regard to the need to: *eliminate discrimination, advance equality of opportunity and foster good relations* between disabled pupils and pupils who are not disabled. This is known as the *Public Sector Equality Duty*, and schools must publish information every year to show that they are complying with these duties and objectives to show how they are going to achieve the aims of these duties.

All schools are required to publish an SEN Information Report on their website. In particular, schools must publish information about arrangements for:

- admissions arrangements for disabled pupils
- how the school prevents disabled pupils from being treated less favourably than others
- the facilities that help disabled pupils to access the school
- the school's *Accessibility Plan*. The Accessibility Plan must show how the school is improving:

1. The accessibility of the physical environment
2. Access to the curriculum
3. Access to information for disabled pupils.

In addition to this, the LA has duties relating to information that must be published on the Local Offer. The LA must publish:

1. How settings other than schools use funding for SEN children and young people that is delegated to them.
2. A description of the special educational and training provision it expects to be available in its area and outside its area for children and young people in its area who have SEN or disabilities across all settings. This document can be found at:

<https://www.plymouth.gov.uk/sites/default/files/Local%20area%20training%20and%20provision%2020180412.pdf>

This second document should be considered when considering which reasonable adjustments are required.

Partnership: families, schools and the local authority

LA SEND teams will work with all schools and families to support the inclusion of a child or young person in a mainstream school. Where a school has concerns, the LA will work with the school and the family to explore this; this may include considering the potential barriers to offering a school place as well as what reasonable adjustments can be made.

Where necessary the LA will provide additional funding support through the Single Multi-agency Panel (SMAP) which is targeted towards an individual's needs through an EHC plan. On-going advice and support is also available from relevant teams in the SEND service, for example, the Educational Psychology Service.

Admissions Process

Information about how admissions processes for pupils (including those with an EHC plan) works at entry to school and at Key stage transfers into mainstream schools can be found at

<https://www.plymouth.gov.uk/childrenandfamilies/schoolseducationskillsandemployability/schooladmissions/howweallocateschoolplaces>

In year admissions:

For pupils, with an EHC plan, transferring between schools 'in year' will be because of one of following reasons:

1. an in-year transfer as the result of an Annual Review that recommends a change of placement
2. a move into Plymouth
3. a change of parental preference following a new EHC plan assessment
4. a change of parental preference

In rare instances where the LA and a school do not share the same view regarding a child or young person's admission (usually where the school view is that reasonable adjustments cannot be made), the LA reserves the right to:

1. in the case of a maintained school - direct the school to admit a child. In these instances, directing a school to admit will be in line with the parents' preference of school
2. in the case of an academy - to contact the Department for Education (DfE) and let them know that an Academy has refused to admit a child or young person. In these instances the DfE will contact the Academy and, ultimately, can direct the Academy to admit the child.

Where it can be clearly demonstrated that reasonable adjustments cannot be made, the LA will support the school in its position, i.e. that reasonable adjustments cannot be made and therefore a place in a particular school will not be offered.

Appeals process

Parents can request placement at any school and make representation for an independent school. The LA cannot influence a parental request, more often referred to as parental preference. The LA must consider this request and apply to the school on the parents' behalf. This includes consideration of taking pupils over planned admission numbers.

Parents who wish to appeal about school admissions, do so to the independent Special Educational Needs and Disability Tribunal service run by Her Majesties' Courts and Tribunal Service and not to the Local Authority's School Appeal Service. At these Tribunals, the legal test for not admitting a child to a mainstream school is set very high and the Judge and expert panel robustly scrutinise what reasonable adjustments can be made to admit a child to a mainstream school of a parent's choice. The LA cannot support schools in defending these appeals without clear evidence of why reasonable adjustments cannot be made.

Where the LA accepts the school's position that reasonable adjustments cannot be made, the LA and school will need to work together to prepare the defence should the parent choose to appeal. Additionally, the school will need to support the LA in the appeal process and by sending a witness to the appeal.

Looked after children

When any child who is in the care of a local authority is being considered for a school admission, the Virtual Headteacher for the placing authority must be consulted by the child's social worker prior to an application being made. Statutory guidance requires that no application will be made to a school that is currently graded 'inadequate' by Ofsted, and there must be clear justification provided if a 'Requires Improvement' school is going to be requested. The Plymouth Virtual School Team are happy to provide support and local information to colleagues in other local authorities to support their applications.

Frequently made comments

'We cannot meet the child or young person's needs'

- As per the legislation and Code of Practice, this is not a reason a mainstream school can give for not admitting a child or young person. Schools need to consider the individual needs of each child and what can be done to remove barriers to inclusion. Included in this pack is the '**SEND Admissions Inclusion Matrix**' that we would encourage schools to use when considering admission requests. The '**SEND Admissions Inclusion Matrix**' helps schools consider the barriers to inclusion and what can be done to overcome any barriers; further detail can be added to the document as required.

'Our school does not deal with the type of need a particular child or young person has'

The nature of a child or young person's disability or special educational need is not a lawful basis for refusing admission. Rejecting a child on the basis of the nature of their needs may amount to discrimination.

‘We are/will be over PAN for that year group’

For Key Stage Transfer the 0-25 SEND team link closely with Admissions & Transport to arrange admissions. Places are allocated to SEND children and other priority admissions first. For in-year admissions, the legislation requires us to look at what effect placing one more child will have on the other children in the class. Schools are unable to refuse a place on the grounds that they are up to published pupil admission numbers (See **SEND Admissions Inclusion Matrix**).

‘We have a higher percentage or number of applications of children/young people with an EHC plan than other local schools’

We understand that this is an issue that can fluctuate year on year. The school must consider each individual child or young person’s needs and what reasonable adjustments can be made. Again you would need to consider what effect placing one more child will have on the other children in the class. The LA must apply for a school place based on parental preference, we cannot influence parental preference by suggesting they consider a school with spaces. (See **SEND Admissions Inclusion Matrix**).

‘This is not the parental preference of school’

Caseworkers work with families to ensure that we are aware of their parental preference. However, on the rare occasion that we are unaware, or where parents have not expressed a preference, the Local Authority has a duty to make provision and will nominate the closest mainstream school to the home address. The same application process will apply.

‘There is not enough support in the EHC plan’

As with any transition, the receiving school should meet with the current school in order to establish a comprehensive understanding of the pupil’s support needs. Where appropriate, the Local Authority will consider a request for additional resources.