

Unregistered Schools Information for Partners

Unregistered independent education provisions and the duty to safeguard children

*Everyone working with children has a duty to keep them safe.
This document serves to promote awareness and contribute to the protection of children in education settings.*

Information on registering an education provision with the Department for Education

1. When do providers need to register?

If an education provision is classified as an Independent Educational Institution (IEI), then it is required to register it with the Department for Education.

2. What happens if an education provision fails to register?

If a provider fails to register, the proprietor of the organisation may face a criminal prosecution, with the sentence on conviction being imprisonment for a maximum of 51 weeks, a fine, or both. It is therefore important to understand which education provisions are classified as an IEI, and so require registration.

3. What is an Independent Educational Institution?

An organisation will be classed as an Independent Educational Institution in either of the following situations:

If an education provision provides full-time education:

- a) to five or more pupils of compulsory school age, or,
- b) to one or more pupils with an Education, Health and Care Plan (EHCP), with a statement of special educational needs, or a pupil who is “looked after” by the County Council

It does not matter whether an education provision also provides education to pupils who are under or over compulsory school age. The key is that it provides full time education to five or more pupils of compulsory school age.

An education provision must not be maintained by the County Council, or be a special school maintained by the County Council.

Alternatively,

2. If an education provision provides part time education:

- a) to one or more children of compulsory school age; and,
- b) an education provision would be an independent school as detailed above, but for the fact that the education provided for the part-time student or students is part-time rather than full-time.

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If an education provision falls outside the categories given above, it cannot be registered as an independent school. However, the County Council will need to be satisfied that children of compulsory school age who are attending the provision are receiving full-time education suitable to their age, ability, aptitude and any special educational needs they may have, including any education provision being made in parallel.

4. What is full time education?

There is no definition of full time education in the legislation; however, the Department for Education have stated they consider an institution to be providing full-time education if it is intended to provide, or does provide all, or substantially all, of a pupil's education.

Relevant factors in determining whether education is full-time include:

- a) the number of hours per week that is provided - including breaks and independent study time
- b) the number of weeks in the academic term/year the education is provided;
- c) the time of day it is provided;
- d) whether the education provision in practice precludes the possibility that full-time education could be provided elsewhere.

Generally, it is considered that any provider that is operating during the day, for more than 18 hours per week, to be providing full-time education. This is because the education being provided is taking up the substantial part of the week in which it can be reasonably expected a pupil can be educated, therefore indicating that the education provided is the main source of education for the child.

5. What is part time education?

"Part-time" education is defined as education provided to a pupil:

- a) where the pupil is under the age of 12 at the end of the academic year, for at least 12.5 hours a week, for at least 28 weeks; or,
- b) where the pupil is over the age of 12 at the end of the academic year, for at least 15 hours a week, for at least 28 weeks.

Examples:

1. An education provision provides full-time education to seven pupils. Six pupils are of compulsory school age and one is not of compulsory school age. None of the children have a statement of special educational needs.

The education provision would need to be registered as it meets the definition of an independent school. This is regardless of the fact that one of the pupil's is not of compulsory school age.

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2. In the example above, say that the provision only has four pupils of compulsory school age; however, one of the pupils had a statement of special educational needs. Would the provision still need to be registered?

In this situation, yes, the provision would also still need to be registered as it meets the definition of an independent school. Although it only provides full time education to four pupils, one of the pupils has a statement of special educational needs, and as per the definition of an independent school, this means the school needs to be registered.

Equally, in example 2, if the pupil which had a statement of special educational needs instead had an EHC plan, or was a Looked After Child, the provision would also still need to be registered.

However, say the provision is funded by the County Council as a maintained school. In this case, regardless of how many pupils attend the school full time, as the provider is funded by the County Council, it cannot be registered as an independent school.

3. Returning to the first example, say that the education provided to all the pupils was part time instead of full time. The part time education was given at the level of 13 hours over 29 weeks. The provision is still not maintained by the County Council.

In this case, the provision would again be classified as an IEI and so requires registration. However, if the education was only provided for 10 hours a week, over 25 weeks, then the provision would fall outside the second definition of an IEI and so would not require registration. Equally, if only one of the requirements for part time education was met e.g. the numbers of hours per week, but not the number of weeks or vice versa, then this would also not need the definition of an IEI and so would not require registration.

6. What are the safeguarding responsibilities of education providers?

The key safeguarding responsibilities are set out in Department for Education statutory guidance:

Working Together to Safeguard Children 2018

Keeping Children Safe in Education September 2018

7. What arrangements are there for Special Educational Needs or Disability (SEND) and independent special schools and colleges?

There are many schools which are broadly referred to as independent schools, these often have provision available for children and young people with SEND.

These are:

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- Independent schools – these are mostly controlled by charities (and therefore, “not for profit”) but there are some private “for-profit” proprietors. The provision is not standardised across the sector as it is for the state sector. They include prep schools, public schools, and private nurseries (early years provision). Some private schools are registered as *specially organised to make provision with pupils for SEN*. However, for legal purposes independent schools are neither special nor mainstream, but all simply *independent*.
- Non-maintained special schools – all charitable foundations and “not for profit”. This type of school will take both children and young people with and without Education, Health and Care Plans but in practice almost 100% of their pupils are publicly funded through Education, Health and Care Plans;
- Section 41 schools – These are independent special schools which have been approved by the Secretary of State under section 41 of the Children and Families Act (“**CAFA**”) 2014 as schools which a parent or young person can request to be named in an Education, Health and Care Plans.

The Department for Education publishes online lists of all independent schools and colleges for children with special educational needs or disability (SEND), including:

- schools and colleges approved under [section 41 of the Children and Families Act 2014](#) in England and Wales
- independent special schools in England, including non-maintained special schools (NMSS)

NMSS are schools that the Secretary of State for Education has approved under [section 342 of the Education Act 1996](#).

8. Further advice and information:

[DfE Registration of independent schools.pdf](#)

Link: [Surrey County Council Education Safeguarding Team website](#)

Email: education.safeguarding@surreycc.gov.uk

Surrey Children Single Point of Access (CSPA) Information:

Please use email when sending a [Children’s Services Request for Support Form](#) to make a referral regarding concerns for a child or young person: If you do not have a Request for Support Form and are concerned about the safety of a child contact the CSPA on 0300 470 9100. In an emergency dial 999.

Local Authority Designated Officer contact information:

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Telephone: 0300 123 1650 option 3 *LADO*

Email: LADO@surreycc.gov.uk