



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 Councils (SCC) policy 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 policy adheres to the following national regulations

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 the legal framework for the education of children and young people up to 19 years old.

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 policy outlines the criteria and considerations for naming S41 schools in EHCPs, with a focus on key stage transfers and in-year placements.

## 2.0 Parents Rights to Request:

2.0 The Code of Practice (9.78) states the following:

2.0.1 The child's parent or the young person has the right to request a particular school, college, or other institution of the following type to be named in their EHC plan:

- 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)

2.1 If a child's parent or a young person makes a request for a particular nursery, school, or post-16 institution in these groups, the local authority must comply with that preference and name the 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.

### **3.0 What is a Section 41 (S41) School?**

3.0 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).

3.1 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.

### **4.0 What is a Non-S41 School?**

4.0 Non-S41 schools are independent special schools and special post-16 institutions that have not been approved under Section 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.

4.1 If families make a preference for a non-S41 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.

### **5.0 Criteria for Consulting with/Naming non-S41 schools**

5.0 Parental Preference: While parental preference is considered, SCC is not obligated to consult with or name a non-S41 school in an EHCP. Non-S41 schools do not come under point 9.78 of the Code of Practice, in which a request by family can be made. Parents may request a particular school, but the final decision will be based on the suitability and regulatory status of the school.

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- 5.1 In accordance with Section 39 of the Children and Families Act 2014, SCC is required to ensure that the Education, Health and Care (EHC) plan names the school or other institution specified in the request, unless certain exceptions apply. This legal framework underpins the Code of Practice and ensures that the rights and needs of children and families are upheld. When consulting with or naming non-S41 schools, these criteria must be considered to ensure compliance with the Act.
- 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.
- 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.

### **6.0 Process for Key Stage Transfers and In-Year Placements:**

#### **6.0 Key Stage Transfers:**

- 6.0.1 Transition Review Meeting: Held in the year preceding the transfer (e.g., Year 5 for secondary school transfer). 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.
- 6.0.2 Consultation with Schools: If a non-S41 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.
- 6.0.3 Final Decision: Based on the suitability, regulatory status, and cost-effectiveness of the school. Parents are notified of the proposed school allocation.

#### **6.1 In-Year Placements:**

- 6.1.1 If a change of placement from a Mainstream School has been agreed and Families have requested a Non-S41 School, similar to key stage transfers (section 6.1), SCC does not have a duty to consult with this school.
- 6.1.2 Final Decision: Based on the same criteria as key stage transfers. Parents are notified of the decision.

## **7.0 Handling Disputes Over Placements:**

### 7.0 Initial Consultation:

- 7.0.1 SCC will first consult with the parents and the preferred school to understand the concerns and preferences.
- 7.0.2 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.
- 7.0.3 If the dispute involved a Non-S41 school, SCC does not have a legal duty to consult with the school, but may consider this in line with suitability.

### 7.1 Mediation:

- 7.1.1 SCC encourages resolving disputes through mediation. This involves a neutral third party helping both sides reach an agreement.
- 7.1.2 Mediation is voluntary and can be a quicker, less formal way to resolve disagreements.

### 7.2 Formal Complaint:

- 7.2.1 If mediation does not resolve the issue, parents can file a formal complaint with SCC.
- 7.2.2 The complaint will be reviewed by SCC's Special Educational Needs (SEN) team, who will investigate and provide a response.

### 7.3 Tribunal:

- 7.3.1 If the dispute remains unresolved, parents can appeal to the Special Educational Needs and Disability Tribunal (SENDIST).
- 7.3.2 The tribunal will review the case and make a legally binding decision on the placement.

### 7.4 Quality Assurance:

- 7.4.1 SCC conducts independent quality assurance visits to schools causing concern and requests action plans to address any issues identified.
- 7.4.2 This ensures that schools meet the required standards and provide appropriate support for children with SEND.

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7.5 Support and Guidance:

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

7.7 Parents can also seek advice from independent organizations and advocacy services.

### **8.0 General Enquiries:**

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

8.1 Email: [contactcentre@surreycc.gov.uk](mailto:contactcentre@surreycc.gov.uk)

8.2 Children's, Schools & Learning:

8.3 Phone: 01483 519095

8.4 Email: [families.feedback@surreycc.gov.uk](mailto:families.feedback@surreycc.gov.uk)

8.5 Address: Children's Rights Team, Customer Relations, 3rd Floor Quadrant Court, 35 Guildford Road, Woking, Surrey GU22 7QQ

8.6 Childrens Free Phone Number: 08000 562 132 (not free from mobiles)

8.7 Childrens Text Number: 07805 846 386

8.8 Childrens Email: [be.heard@surreycc.gov.uk](mailto:be.heard@surreycc.gov.uk)

### **Example Case Study: Request for non-S41 school**

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, Greenfield Academy, which they believe would be the best fit for Sarah's needs.

Mr. and Mrs. Smith request that Greenfield Academy 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 consults with Greenfield Academy to assess its suitability and willingness to accept Sarah.
- SCC reviews the school's inspection status, ensuring it meets required standards.

##### **Assessment:**

- SCC evaluates whether Greenfield Academy 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 Greenfield Academy 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 Greenfield Academy, receiving the specialised support she needs.