# **Place factor commissioning for special school and enhanced resource provision within mainstream schools - standard operating procedure**

## Introduction

This document sets out the operational procedure within Derbyshire Local Authority for the commissioning of the number of places within specialist provision in Derbyshire, in accordance with the High Needs Funding Operational Guidance published annually by the DfE. The process applies equally to maintained and academy special schools, mainstream schools with specialist enhanced resource (‘ERS’) provision and Support Centres, sited within the geographical area covered by Derbyshire Local Authority.

For special schools and mainstream schools with ERS provision, the process is pertinent to the numbers of pupils who have been issued with an Education, Health, and Care Plan (‘EHCP’), as admission to all such schools is determined through the naming of that school in Section I of an EHCP. For Support Centres this protocol concerns all pupils admitted.

Local authorities in their commissioning activity and strategic planning placements in special schools and ERS are required to follow the processes and procedures as set out in the [Department for Education’s (‘DfE’) *High Needs Funding Operational Guidance*](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/865166/High_needs_operational_guide_-_2020_to_2021.pdf)which is published in September in advance of the financial year to which it pertains.

## Responsible Officers

The decisions on how many places to commission each school year in each special school and enhanced resource provision is made, in consultation with schools, by the following officers:

* SEND Commissioning Manager, SEND Service, Children’s Services
* Finance Officer, School Funding Team, Children’s Services

(together referred to hereafter as ‘*Designated Officers’*)

The Designated Officers are required to seek approval of the planned commissioned places with:

* Assistant Director, Learning Access and Inclusion, Children’s Services
* Head of Service Finance (Schools), Finance, Children’s Services

## Net Capacity of Special Schools

The net capacity of a Special School is governed by the guidance – [‘Area guidelines for SEND and alternative provision’](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/905693/BB104.pdf)which is Building Bulletin 104 dated December 2015.

In a Special School, the assessment of capacity is dependent on the needs of the children attending that school.  The focus should be on assessing the total capacity of the school, with supporting information on the capacity of each teaching space and the methodology used (ambulant/non ambulant etc). The school itself is best placed to assess the capacity and to review it on a regular basis as the pupils on roll change and then for the special school to inform SEND Commissioning Manager of any changes to that capacity that impact on the place planning decisions through the consultation process for establishing the commissioned number of places for the following year.

This information will inform the number of places available, identify accommodation requirements for the future and ensure that the pupils are taught in a safe environment.

The information on capacity will then be considered within the Operational Procedure, described below.

## Operational Procedure

**Stage 1**

Early October – SEND Commissioning Manager and Finance Officer meet to review the current commissioned places for the current academic year and the likely requirements for the next academic year, commencing in the September to follow.

The Designated Officers will consider:

1. The current number of pupils formally commissioned in the current academic year in each setting.
2. The current position of places occupied in each setting.
3. The variation of numbers between the two (in-year changes).
4. The import and export balance, i.e. those pupils living in Derbyshire but educated in specialist state-funded special and enhanced resource mainstream schools and Support Centres sited in the geographical areas of other Local Authorities (export) and those living in other Local Authority areas educated in a Derbyshire-sited state-funded special and enhanced resource mainstream schools and Support Centres;
5. The projected numbers of leavers in each setting in the following July.
6. Any information available about numbers of any pre-agreed admissions for the following September.
7. The current allocation of High Needs Places from the DfE.
8. The net capacity of the school, as informed by the schools’ audit
9. Any other information on trends over time, including demographic, policy, or legal changes.

**Stage 2**

The Designated Officers will determine from the above considerations a proposal for all settings of the number of places that the LA intends to commission for the following academic year.

**Stage 3**

Each setting is individually consulted by the SEND Commissioning Manager as to the proposed number and invited to make comments on the proposal and any considerations that have led to the proposal or might affect it.

The consultation is carried out in the form of a standardised letter, individualised for each school, that contains details of the previously commissioned numbers, the current occupancy, and the proposed number of commissioned places for the following September. The letters are sent by email direct to the Headteacher of each school and the setting will have an opportunity to respond to the proposal put forward.

**Stage 4**

Early-mid November: The Designated Officers will meet to discuss the consultation response from the setting and finalise the proposed numbers in the light of them. If there is disagreement with the school over the commissioned numbers, then the schools reasons and concerns, together with their own proposals as to the number of commissioned places, will need to be submitted alongside the LA’s proposed commissioned figures for senior management consideration at Assistant Director and Director level.

**Stage 5**

The proposals are submitted to the Assistant Director, Learning Access, and Inclusion (*NB this is a proposed change that does not presently occur)* and Head of Service Finance (Schools), Finance for approval.

**Stage 6**

The approved proposals are submitted by School Finance to the Education Skills and Funding Agency (‘ESFA’) by their stipulated date in November for academies only. In January the ESFA will publish the outcomes of the proposals and their approval status. A two weeks’ window follows where settings and LAs can raise any significant issues in accordance with the process as set out in the DfE *High Needs Funding Operational Guidance*. The ESFA do not require the information for maintained schools as the LA has local flexibility to change their place numbers. However, the information is submitted via the Authority Proforma Tool as required under section 251 of the Apprenticeships, Skills, Children and Learning 2009 where local authorities are required to prepare and submit to the Secretary of State for Education a section 251 budget return, which is an education and children and young people’s services budget statement for a prescribed period.

**Stage 7**

The submitted numbers are discussed and ratified by the Schools Forum and formally notified by School Finance to each setting to inform their delegated budgets for the coming financial year, which will include a 5/12 and 7/12 allocation to capture any variance in commissioned numbers across the academic years.

# **Pupils resident in other Local Authority areas and Derbyshire pupils attending special schools in other LA areas.**

This section sets out Derbyshire Local Authority’s position on the responsibility for funding high needs places whether agreed in advance through the Authority’s annual place return or agreed as in addition to that number or otherwise.

The Council’s position matches the [ESFA guidance](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/865166/High_needs_operational_guide_-_2020_to_2021.pdf) which can be found on the GOV.UK website.

In short, there remain two elements to the funding of high needs students:

- the place element, and

- the pupil element.

This is an important distinction as they are funded in different ways.

According to ESFA guidance (page 20-24), the commissioning Authority (the Authority in which the pupil resides) is not responsible for the payment of place funding for additional places at a school in another provider Authority’s area (the area in which the school is located). All places are adjusted for via the “Import / Export Adjustment”. This is a document released by the ESFA in June each year that summarises all the pupils from each local authority attending a particular school. It results in a net adjustment to local authority funding for that academic year. This does not match financial years so there is a lag.

It uses Census Data and ILR records from January to establish which pupils are in respective settings and the local authority they are resident in. Funding for places is deducted from the commissioning authority and passed through to the provider Authority.

Therefore, a school’s own Local Authority, as the provider Authority, should discuss and agree with a school how much they will fund for the additional places, to avoid making payment twice by the Local Authority in which the child or young person is resident.

The provider Local Authority should not automatically be charged an additional £10,000 per pupil or student. The amount should reflect the actual costs of making additional special provision available, which may only be marginal, and an agreement between Derbyshire Local Authority and the setting on how those costs are to be met.

The commissioning Local Authority should therefore reject any funding requests which include funding for additional places from a school and ask that they contact its own local provider Authority to arrange payment for all commissioned places.

# **Maintained schools or academies acting in isolation**

Should a specialist academy or a mainstream academy with an enhanced resource unit decide to operate in isolation, or operate in such a way which requires a significant change, then the academy should follow the process as set out in the DfE’s guidance; ‘*Maintaining significant to an open academy and closure by mutual agreement: Departmental guidance for all academy trusts* (November 2019) and also liaise with the Regional Schools Commissioner’s office to confirm the full process and whether any other aspects have been updated, amended or whether new guidance exists. The DfE is the deciding body as to whether the business case is sufficiently strong to commission additional places or close provision. The DfE is highly likely to consult with Derbyshire County Council before making their decision.

Should a maintained or foundation specialist school or a maintained mainstream school with an enhanced resource facility decide to operate in isolation or operate in such a way that requires a ‘prescribed change’under the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013, and the procedures and processes of which are as set out in the DfE guidance ‘*Maintaining significant changes (prescribed alterations) to maintained school: statutory guidance for proposers and decision makers’* (October 2018).

A setting considering increasing their placements are strongly encouraged to approach the Council as early as possible in the academic year to discuss their needs. Paragraph 57 of the [DfE’s *High Needs Funding Operational Guidance*](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/865166/High_needs_operational_guide_-_2020_to_2021.pdf)  advises; ‘*An institution should approach the provider local authority if the number of pupils or students, agreed as having high needs by the relevant local authority, exceeds the number of funded places to an extent that results in the institution incurring additional costs of special provision not met through the top-up funding amount normally paid. We expect the provider local authority to engage with the institution and agree how the costs of the additional special provision required are to be met, and these conversations should take place as early as possible in the academic year.’*

If a setting increases its numbers of commissioned placement outside of the above procedures and processes, then this will may result in significant and health and safety implications. In the interests of the health and safety of Derbyshire County Council can direct the governing body and the head teacher of a community, or voluntary controlled, or community special school to comply with any directions concerning the health and safety of persons on the school’s premises or taking part in any school activities elsewhere. Furthermore, under Schedule 13 of the School Standards and Framework Act 1998 the Council may give such directions as to the occupation and use of the premises of a community or community special school as it thinks fit. For academies, local authorities can report health and safety matters to the Secretary of State.

Version 3 August 2021