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Special Needs in New Guidance 2

THIS PAGE WAS WRITTEN IN 2023. IT WAS ARCHIVED AT THE END OF MARCH 2026 [LINK]

This page is a continuation of <https://edyourself.org/special-educational-needs-in-new-guidance/> and looks at paragraphs 9.6 – 9.13 of the SEND chapter in [the new draft home education guidance](#). Legal references are to [Part 3 of the Children and Families Act 2014](#). [Extracts from the SEND Code of Practice are in blue](#). The SEND Code is statutory guidance.

The new guidance is not ready to be used. It is still at the draft stage. The consultation closed 18.1.24. The current guidance remains in force until such time as a final new version is published. The current guidance can be found here <https://www.gov.uk/government/publications/elective-home-education>

Draft 9.6 is about EOTAS. It is very repetitive and has the same misleading introductory remarks about parents' feelings as current 8.5. It does not quote from the actual law (section 61) and also misses an opportunity to clarify [10.31 and 10.32 in the SEND Code of Practice](#). It does not signpost to recent case law providing guidance on when it may be “inappropriate” for provision to be made in a school.

EOTAS Case Law Leaving Section I Blank

NN V Cheshire East is a case I won at the Upper Tribunal in 2021. It provides guidance on section 61 of the Children and Families Act 2014 related to Education Otherwise Than At School [EOTAS] arranged by the local authority where it is inappropriate for provision to be made in a school. (In this particular case it was ... [Continue reading](#))



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SEND Code of Practice

Education of children with special needs and disabilities otherwise than at school is covered in paragraphs 10.30 – 10.38 of the SEND Code of Practice which are reproduced below. EOTAS (although that term is not used) is explained at paragraph 10.31 [“where local authorities and parents agree that home education is the right provision”] while ... [Continue reading](#)



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Draft 9.7 covers deregistration from special school and from mainstream school. It expresses at greater length information contained in paragraph [10.33 of the SEND Code of Practice](#) but i/ leaves out “*There is no provision in law for a ‘trial period’ of home education*” and ii/ is **less clear** than the Code about deregistration from mainstream ie that the school **must** delete the pupil’s name on receipt of written notification (this requirement is set out in the Pupil Registration Regulations 2006 Regulation 8 (1))

”

For comparison this is what the SEND Code of Practice says “10.33 Where a child or young person is a registered pupil and the parent decides to home educate, the parent must notify the school in writing that the child or young person is receiving education otherwise than at school and the school must then remove the pupil’s name from the admission register. If the school is a special school, the local authority must give consent for the child’s name to be removed, but this should not be a lengthy or complex process. There is no provision in law for a ‘trial period’ of home education.”

Deregistration

The rules for taking a child out of school are set out in The School Attendance Pupil Registration Regulations 2024 [LINK] which came into force on August 19th 2024 replacing the Pupil Registration Regulations 2006. Scroll down to see quotes from the 2024 Regulations. This page was updated on February 1st 2026. In most cases ...

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Taking Child Out Of Special School

Update February 2026 – the law on taking a child out of special school for home education looks set to change through the Children’s Wellbeing and Schools Bill, read more here <https://edyourself.org/childrens-wellbeing-schools-bill/> (The “child’s best interests” test outlined in the bill is not current law) Parents wishing to remove their child from a special school ... [Continue reading](#)



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Draft 9.8 is about access to the home and covers the same material as **10.35 of the SEND Code of Practice**. It is broadly the same as current 8.7 but leaves out “*may only enter the home at the invitation of the parents*” and “*rather than an attempt to undermine the parents’ right to home educate*” from the **10.35 SEND Code of Practice**.

Draft 9.9 and **9.10** and are broadly the same as current 8.8. In practice LAs do **not** provide support for children with EHCPs because parents who home educate are deemed to have opted out. Indeed LAs may oppose parents wanting to home educate children with SEND for this very reason ie that the LA will withdraw access to services.

Draft 9.11 is about enforcement powers and the School Attendance Order process. It is almost the same as current 8.9 and still leaves out points about **support** and **last resort** in the **SEND Code of Practice**. **The SEND chapter should not be considered in isolation when considering the impact of new guidance on SEND families** because the new draft guidance has already suggested detailed “*suitability assessments*” amounting to annual monitoring as well as using the School Attendance Order process backed up with child protection enquiries if the LA feels it has insufficient information about educational provision.



For comparison purposes the SEND Code says “10.36 In some cases a local authority will conclude that, even after considering its power to provide support to home educating parents, the provision that is or could be made for a child or young person with an EHC plan does not meet the child or young person’s needs. The local authority is required to intervene through the school attendance order framework ‘if it appears...that a child of compulsory school age is not receiving suitable education’. The serving of a school attendance order is a last resort if all attempts to improve provision are unsuccessful. ‘Suitable education’ means efficient full-time education suitable to the child or young person’s age, ability and aptitude and to any SEN he or she may have.”

Draft 9.12 deals with the situation where a school is named on the EHCP (outside the School Attendance Order process although this is not specified) and correctly and helpfully says that the child does not automatically become a registered pupil. **Draft 9.12** is virtually the same as current 8.10 but leaves out “*local authorities should ensure that both schools and their own staff know that*”. **Draft 9.13** covers EHC needs assessments and is the same as current **8.11** except it leaves out “*the right to appeal*” [ie SEND tribunal].



EHCP Introduction

Current Guidance



Guidance