

Special Educational Needs and Disability (SEND) – Education Other Than At School (EOTAS) / Education Other Than In School or College (EOTISC) Position Statement

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Contents

1	What is Education Other Than At School (EOTAS) & Education Other Than In School or College (EOTISC)?	2
2	How does the SEN Service determine if someone should receive their special educational provision otherwise than in a early years setting, school or post-16 institution?	3
3	What does EOTAS/EOTISC mean in terms of practical day to day provision?	5
4	How is EOTAS/EOTISC Reviewed?	6
Appendix A -	Document Control	7

1 What is Education Other Than At School (EOTAS) & Education Other Than In School or College (EOTISC)?

Most children and young people who hold an Education, Health and Care (EHC) Plan, attend an education setting. This could be an early years setting/nursery, school or college. Additionally, a small number of children and young people are Electively Home Educated (EHE) where their parent/carer chooses to educate at home.

In some circumstances, despite the best endeavours of the parents/carers, the SEN Service, education settings and other practitioners, it is determined that education in an early years setting, school or post-16 setting would be inappropriate. In these circumstances, Section 61 of the Children and Families Act 2014 states:

“Special educational provision otherwise than in schools, post-16 institutions etc

(1) A local authority in England may arrange for any special educational provision that it has decided is necessary for a child or young person for whom it is responsible to be made otherwise than in a school or post-16 institution or a place at which relevant early years education is provided.

(2) An authority may do so only if satisfied that it would be inappropriate for the provision to be made in a school or post-16 institution or at such a place.

(3) Before doing so, the authority must consult the child’s parent or the young person.”

It should be noted, that EOTAS/EOTISC is a form of special educational provision, and therefore would be contained within Section F on an EHC Plan, it is not an education setting therefore it cannot be “named” within Section I of an EHC Plan.

In January 2023 approximately 1% of all 14,500 children with an EHC Plan in Hampshire were receiving their EHC Plan provision via EOTAS/EOTISC.

How does the SEN Service determine if someone should receive their special educational provision otherwise than in an early years setting, school or post-16 institution?

There is no statutory guidance that sets out how to determine whether it would be inappropriate for the special educational provision which a child or young person's special educational needs require, to be made within an education setting. The most recent process is set out in case law¹. This case law sets out what a SEND Tribunal ought to do/consider in reaching a decision to order EOTAS/EOTISC into Section F of an EHC Plan. It is therefore appropriate for the local authority SEN Service to use the same process. The wording below is from the Upper Tier SEN Tribunal. For our decision making, where it reads "tribunal," below we (the local authority) would replace that with Local Authority when applying this process to our own decision making.

- a) The tribunal must consider section 61 CFA 2014². It must separately ask whether it is satisfied that it would be inappropriate for (i) any special educational provision that it has decided is necessary for the child to be made in any school and (ii) any part of the provision to be made in any school.
- b) In considering these questions, the tribunal must ask if a school would 'not be suitable' or would 'not be proper'. To do that, it has to take into account all the circumstances of the case.

Without being an exhaustive list, those circumstances might include:

- a. the child's background and medical history;
 - b. the particular educational needs of the child;
 - c. the facilities that can be provided by a school;
 - d. the facilities that could be provided other than in a school;
 - e. the comparative cost of the possible alternatives to the child's educational provisions, either at school or elsewhere;
 - f. the parents' wishes (although they are not generally determinative);
 - g. any other particular circumstances that apply to a particular child (TM v London Borough of Hounslow (above)).
- c) If the tribunal is satisfied that it would be inappropriate for any such special educational provision to be made in any school, then Section I must be left blank.
- d) Conversely, if the tribunal is not satisfied that it would be inappropriate for any such special educational provision to be made in any school, it follows that a particular school or type of school would be appropriate for the child (Derbyshire County Council v EM and DM (SEN) (above)) in relation to at least part of the provision to be made. This will lead to consideration of what should be specified in Section I of the EHC plan. That, in turn, will involve consideration of regulation 12 of the 2014 Regulations³.

¹ Case law is when a SENDIST appeal decision is appealed to the Upper Tier Tribunal (UTT). UTT decisions are published, and set legal precedent, meaning they can be applied to other cases, not just the one the appeal was about

² Children and Families Act 2014

³ SEND Regulations 2014

- e) If a particular educational institution is proposed, and if it is in issue as to whether or not that institution is a 'school', the tribunal must consider whether it falls within the definition of a 'school' as set out section 4 of the Education Act 1996. This is a question of fact to be determined in the light of all the evidence including, where relevant, matters such as regulation governance, financing and administration (MA v Borough of Kensington and Chelsea (SEN) (above), TB v Essex County Council (SEN) (above)).
- f) If it is in issue, the tribunal must consider whether the school or type of school will be 'attended by' the child. If it is satisfied that the child will be present at a school or type of school for at least part of the time, that is sufficient and so the school or type of school must be specified in Section I. Attending provision provided by the school as part of a bespoke package outside a conventional classroom setting will nonetheless mean that the school is to be attended by the child within the meaning of regulation 12(1)(i).
- g) What is specified in Section I must be strictly limited to the of name the school and type of school to be attended by the child, or where the name of the school is not specified, the type of school to be attended by the child. No more and no less.
- h) For the avoidance of doubt, education in a child's home cannot be named in Section I (East Sussex County Council v TW (above)).
- i) Any special educational provision which will be made otherwise than in a school or type of school will be set out in Section F.⁴

⁴ <https://www.gov.uk/administrative-appeals-tribunal-decisions/nn-v-cheshire-east-council-sen-2021-ukut-220-aac>

3 What does EOTAS/EOTISC mean in terms of practical day to day provision?

If someone is receiving all or part of their support via EOTAS/EOTISC, this will require the special educational provision set out in Section F of the EHC Plan to be delivered through services that are not registered early years settings, schools or post-16 settings/colleges.

This might include (but is not limited to) tuition providers, sport/activity clubs, therapists and online services.

This position statement is not designed to provide a list of services or suggested providers, this would be something determined in partnership with the SEN Service on a case-by-case basis.

How is EOTAS/EOTISC Reviewed?

Where a child or young person is receiving all or part of their education via EOTAS/EOTISC, this will be reviewed as a minimum, once per year, as part of the annual review of their EHC Plan. The local authority may review this arrangement more frequently at its discretion.

Some examples of situations that might warrant more frequent review include (but are not limited to);

- A child or young person who has recently begun to receive support through EOTAS/EOTISC. Their support will likely require implementation review meeting(s) to ensure the right support is put in place.
- A child or young person who is about to transition from receiving support through EOTAS/EOTISC, to returning to a registered education setting. Transition planning between services supporting the child or young person and the new education setting
- Following a SENDIST appeal that relates to EOTAS/EOTISC and requires a change in the services supporting the child or young person.

If a child or young person is in receipt of a personal budget, this may have its own review arrangements in place which may require more frequent review of arrangements also.

Appendix A - Document Control

Document Ownership

Governance	Owner	Process
SEN Service	Jan Bailey – SEN Service Manager	

Version Control

Version	Date of Change	Changed by	Brief Description
V1.0	05/10/2023	SEN Service	Initial version of position statement