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NEWSLETTER

Issue 26 for Parents, Guardians and Carers of Children with SEND



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Education Otherwise Than In School (EOTIS)

- What If We Don't Want It?

By Nicole Lee, Head of Legal

With the consultation on the SEND White Paper now closed, there are understandably thousands of families across England concerned about what changes, if any, may be made to their children's education.

Unfortunately, it is not currently possible to advise on what future legislative changes may mean for children receiving Education Otherwise Than in School (EOTIS), as EOTIS was not addressed in the White Paper.

What we can say is that, at present, parents and young people should not expect any changes to their EOTIS provision as a result of the White Paper. Misinformation is widespread, and we continue to hear reports of local authorities attempting to justify decisions by stating that EOTIS "wasn't included in the White Paper" or that they "cannot agree to EOTIS until the new legislation is known".

It is important for families to understand that the law has not changed. The **Children and Families Act 2014** remains in force and local authorities must continue to comply with their statutory duties.

What is EOTIS?

As the name suggests, EOTIS involves the delivery of special educational provision outside a school or educational institution.

Section 61 of the **Children and Families Act 2014** provides:

"(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."

Most enquiries received by this practice concern how parents can secure EOTIS provision for children who are unable to attend a school setting.

However, there is another side to the issue. We increasingly encounter families who have EOTIS imposed upon them against their wishes.

This most commonly arises where a child has highly complex special educational needs requiring a specialist and often costly educational placement. Rather than identifying and funding an appropriate placement, some local authorities seek to deliver provision through an EOTIS package.

Whether EOTIS can lawfully be imposed through an EHCP will depend on the facts of each case. However, there are several important legal considerations.

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The Duty to Consult

Section 61(3) requires that, before deciding that provision should be delivered otherwise than in school, the local authority must consult the child's parent or the young person. This requirement is mandatory. Parliament's use of the word "must" leaves no discretion.

In practice, however, consultation often either does not occur at all or is carried out inadequately.

The well-established 'Gunning' principles set out the requirements for lawful consultation:

- 1** - Consultation must take place while proposals remain at a formative stage.
- 2** - Sufficient reasons must be provided to permit intelligent consideration and response.
- 3** - Those being consulted must be made aware of the proposal and its implications.
- 4** - The results of the consultation must be conscientiously taken into account when the final decision is made.

Where these principles are not followed, consultation is unlikely to be lawful.

The recent case of **Hampshire County Council v GC & Anor [2026] EWCA Civ 20** considered the consequences of failing to comply with a statutory consultation requirement. Whilst that case concerned consultation regarding the cessation of an EHCP rather than EOTIS, the underlying principle is equally relevant.

At paragraph 63, Lord Justice Bean held that a decision taken in breach of a mandatory requirement to consult "will be liable to be held invalid and set aside by the FTT".

Accordingly, where a local authority has failed to consult properly before imposing EOTIS provision, there may be grounds to challenge that decision before the SEND Tribunal.

"It is important for families to understand that the law has not changed. The Children and Families Act 2014 remains in force and local authorities must continue to comply with their statutory duties"

The Substantive Test for EOTIS

A failure to consult is only one aspect of any challenge to EOTIS.

The starting point in law is that special educational provision should be delivered within a school or educational institution wherever possible.

Section 61(2) provides that EOTIS can only be used where the local authority is satisfied that it would be inappropriate for the provision to be delivered in a school.

The same test is applied by the SEND Tribunal.

Any appeal against EOTIS should therefore focus on demonstrating that it is appropriate for the child's special educational provision to be delivered within a school setting.

The Upper Tribunal's decision in **NN v Cheshire East Council (SEN) [2021] UKUT 220 (AAC)** identifies a number of relevant considerations, including:

- i. The child's background and medical history;
- ii. The child's particular educational needs;
- iii. The facilities available within a school setting;
- iv. The facilities available outside a school setting;
- v. The comparative costs of the available options;
- vi. The wishes of the parents (although these are not determinative); and
- vii. Any other circumstances specific to the child.

The Tribunal in **NN** confirmed that if it is not satisfied that school-based provision would be inappropriate, it follows that a school placement remains the appropriate option.

Parents should therefore seek to address each of these considerations when presenting their case.

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“Any School” Means Any School

One of the most important principles established by the case law is that the test is not whether a particular school is suitable.

The question is whether it would be inappropriate for provision to be delivered in any school.

Both *Derbyshire County Council v EM and DM [2019] UKUT 240 (AAC)* and *NN v Cheshire East Council [2021] UKUT 220 (AAC)* confirm that local authorities must consider whether provision could be delivered in any school capable of meeting need.

It is therefore insufficient for a local authority to argue that there is no suitable school within a limited geographical area or among a restricted group of schools.

Unless there is evidence that a child’s needs require such restrictions, the search must be wider.

Where a suitable school exists and can meet the child’s needs, the law is clear that the child should ordinarily receive their education within a school setting.

What About Residential Schools?

In some cases, the only suitable placement may be a residential school located some distance from the family home. That does not automatically justify EOTIS.

Section 63(5) of the Children and Families Act 2014 requires local authorities to fund boarding and lodging where this is necessary in order for the child to access the special educational provision available at the school.

A placement at a residential school should in our view still be the default position, if it is a suitable setting, even if that child does not otherwise require residential provision in order for their needs to be met.

The imposition of EOTIS provision is a complex legal issue. If this is something that is impacting you, and you require tailored advice, we would be happy to help.

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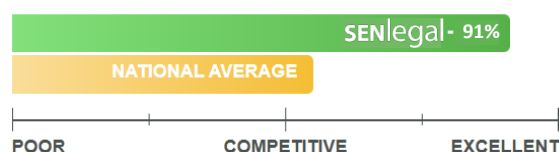


Richard Nettleton
Associate Solicitor & Director

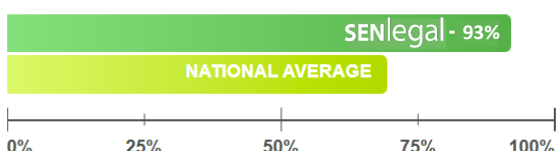


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**Figures correct as at 10th June 2026*

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New Exclusions Guidance 2026: Important Changes That Parents Should Know About

By James Brown, Senior Solicitor

All schools (other than independent schools) must have regard to the statutory guidance on suspensions & permanent exclusions when considering whether to exclude a child. The Government has recently published an updated version of this guidance, which comes into force on 26 July 2026.

Whilst much of the existing framework remains unchanged, there are several important developments that parents of children with Special Educational Needs and Disabilities (SEND) should be aware of, particularly given the continuing disproportionate representation of those children in exclusion statistics.

The issues addressed within the updated guidance are those that many families encounter on a daily basis, including exclusions, reduced timetables, placements in alternative provision and pressure to leave a school placement.

There are three key areas of change within the guidance:

1 - Safeguarding Separation Protocol

The updated guidance confirms that schools have the power to temporarily prevent a child from attending school where there are safeguarding concerns.

For example, where an allegation of harm has been made by one pupil against another and the school requires time to investigate, it may determine that the pupils need to be separated because of the level of safeguarding concern.

In such circumstances, the school may require a pupil not to attend school for a temporary period. Importantly, this must not be treated as an exclusion on disciplinary grounds.

The guidance makes clear that this power should only be used in exceptional circumstances and only where separation is essential and cannot reasonably be achieved whilst allowing one or more of the pupils to remain on the school premises.

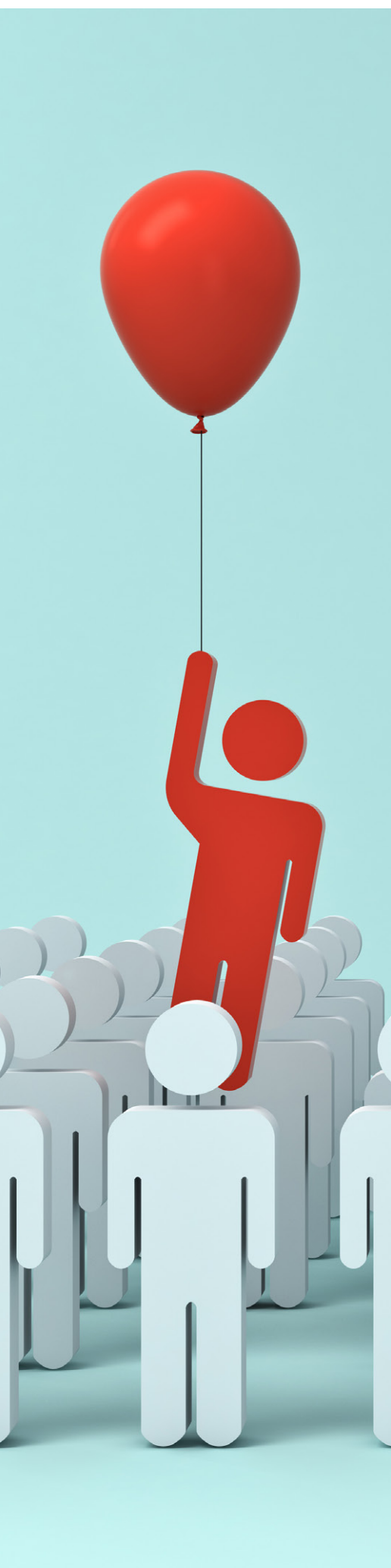
For children with SEND, schools must continue to have regard to their obligations under the Equality Act 2010 and, where applicable, the child's Education, Health and Care Plan (EHCP). Schools cannot use this power simply because they consider a child's needs to be too complex or challenging to meet within the school environment.

Where a school seeks to rely upon this power, parents should ask important questions, including:

- What specific safeguarding risk has been identified?
- Why can't the risk be managed within the school?
- What alternative measures have been considered?
- What reasonable adjustments have been explored before preventing attendance?

If a school uses this protocol, responsibility for arranging suitable education during the period of absence falls to the Local Authority under Section 19 of the Education Act 1996. Please refer to our previous newsletter (March 2026) for further information regarding the Section 19 duty.

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2 - Managed Moves - The End of Trial Periods

The updated guidance also provides further clarification regarding managed moves. The most significant development is the confirmation that “trial” managed moves are not permitted. Paragraph 60 of the guidance states:

“The law does not allow for a ‘trial admission’ or ‘trial managed move’. If a temporary move needs to occur to improve a pupil’s behaviour, then off-site direction should be used.”

This is a welcome clarification. We frequently advise parents who have been asked to agree to a managed move on a trial basis, often without any clear explanation of what constitutes a successful trial or what a child must do to “pass” the arrangement.

The revised guidance provides greater certainty and protection for children and families. A managed move is intended to be a permanent transfer and cannot simply be brought to an end because a child has failed to meet undefined expectations. Once the move has taken place, the receiving school must follow its own behaviour and exclusion procedures should concerns arise, rather than simply being able to end a trial period.

Whether this clarification results in some schools becoming more reluctant to accept managed moves remains to be seen.

For children with EHCPs, the guidance also confirms that any managed move must be accompanied by the appropriate statutory process for amending the EHCP. In practice, this is likely to require an emergency annual review meeting and agreement from the Local Authority to amend Section I of the plan to name the proposed new school.

3 - What Constitutes Off-Rolling?

The previous version of the guidance, published in 2024, addressed off-rolling and unlawful exclusions and reiterated that such practices are unlawful. The July 2026 guidance goes further by providing additional examples of what may amount to off-rolling.

Paragraph 21 now includes the following examples:

- Exercising undue influence over a parent to remove their child from school under the threat of permanent exclusion and encouraging them to choose Elective Home Education or another school place.
- Moving a pupil to alternative provision where this is not in the child’s best interests.
- Encouraging a post-16 student not to continue their course of study where doing so is not in their best interests.
- Sending a pupil home without a formal suspension, regardless of whether parents agree to the arrangement.
- Placing a pupil on a part-time timetable for behavioural reasons.
- Intentionally removing a pupil from the school roll without following the relevant statutory regulations.

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These are all examples of situations that parents regularly report experiencing. It is therefore encouraging to see these practices expressly identified within statutory guidance. By clearly setting out examples of unlawful off-rolling, the guidance provides parents with a stronger basis upon which to challenge inappropriate practices and remind schools of their legal obligations.

Final Thoughts

The 2026 guidance does not fundamentally change the law on exclusions. However, it provides greater clarity in several areas that frequently affect children with SEND and their families.

The strengthened guidance on off-rolling, the clarification regarding managed moves and the introduction of the safeguarding separation protocol are all likely to have significant practical implications for schools and parents alike.

Families should remain vigilant where schools seek to remove children from education outside the formal exclusion process and should seek advice where there are concerns that a child's rights, educational provision or SEND-related needs are not being properly considered.



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- ✓ Your draft/ final EHCP and appendices will be read by one of our specialist solicitors.
- ✓ Our solicitors will make recommendations on amendments or additions based on the law and available evidence, and advise whether there is sufficient evidence to achieve changes to your EHCP.
- ✓ Our solicitors will discuss their recommendations with you via a **30 minute telephone call**.
- ✓ We will schedule your telephone call with us **within 7 days** of us receiving all necessary paperwork and confirming your instructions.

GOLD health check £650 (+VAT)

- ✓ Your draft/ final EHCP and appendices will be read by one of our specialist solicitors.
- ✓ Our solicitors will make recommendations on amendments or additions based on the law and available evidence, and advise whether there is sufficient evidence to achieve changes to your EHCP.
- ✓ Our solicitors will advise you of their recommendations **via email, so you have a written record** of our recommendations.
- ✓ We will send your report to you **within 7 days** of us receiving all necessary paperwork and confirming your instructions.

PLATINUM health check £950 (+VAT)

- ✓ Your draft/ final EHCP and appendices will be read by one of our specialist solicitors.
- ✓ Our solicitors will make recommendations on amendments or additions based on the law and available evidence, and advise whether there is sufficient evidence to achieve changes to your EHCP.
- ✓ Our solicitors will advise you of their recommendations **via email, so you have a written record** of our recommendations.
- ✓ We will send your report to you **within 7 days** of us receiving all necessary paperwork and confirming your instructions.
- ✓ In addition, you will have a **one hour meeting** with one of our specialist solicitors to discuss the EHCP, evidence, and the options available to you to challenge your local authority (if required). This meeting will be **within 7 days** of us sending our report to you and can be either in person at one of our offices (Bury St Edmunds or Cambridge) or virtual, via Microsoft Teams or Zoom.

SENlegal To book your EHCP health check today, call our team on **01284 723952**.