



Education  
Funding  
Agency

# **High needs funding: alternative provision**

**Additional guidance 2016 to 2017**

**September 2015**

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## Introduction

1. The information in this guide is primarily for local authorities, institutions offering alternative provision (AP) and schools commissioning AP.
2. The document provides additional guidance on how AP funding works for children of compulsory school age<sup>1</sup>. We do not wish to be prescriptive and we are deliberately keeping the funding arrangements for AP flexible. Local authorities and schools can use different models to make appropriate educational provision for pupils who can't receive their education at school or who need specialist support from outside the school.

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<sup>1</sup> PRUs can provide post-16 education if this does not change their legal nature, as defined by section 19(2) of the Education Act 1996. AP academies and AP free schools can provide post-16 education if this is permitted by their funding agreements. Normal post-16 funding arrangements apply to these pupils unless they are identified in the schools census as retaking a year of pre-16 education e.g. in Year 11.

## Alternative provision: context

3. The general principle is that children should be educated in a mainstream setting unless that would not provide them with a suitable education i.e. education suitable to the age, ability and aptitude of the child, and to any special educational needs he or she may have. Where a child of compulsory school age is not receiving suitable education, the local authority has a duty to arrange it (under Section 19 of the Education Act 1996).
4. There will be occasions where a mainstream school is not reasonably able to provide suitable education for a child and AP would be in the child's best interests. For example, as a result of a temporary or permanent exclusion or where pupils have medical needs that mean they are unable to attend a mainstream school full-time.
5. Many schools are making increased use of AP before the need for exclusion arises. In the majority of cases the intention is for these children to return to their mainstream school and the length of the placement should be determined by the needs of the pupil. Where a pupil remains on the roll of a mainstream school, then they are effectively acting as a commissioner of AP and retain accountability for the child's education.
6. Local authorities should take account of the needs of local schools in determining the demand for AP and how it is delivered. This will help avoid the need for longer and potentially less successful AP placements in the future.
7. It is in the interests of the local authority, its schools and academies and institutions offering AP, to agree the referral process and process for resolving concerns about admissions. If the local authority is unable to place a particular pupil because they are not suited to the type of provision offered by a pupil referral unit (PRU), AP academy or AP free school, they would need to make other arrangements.
8. The Department acknowledges there are different ways local authorities and schools/academies can discharge their responsibilities. It is important that we encourage good quality AP that helps pupils and students achieve their full potential and not sustain poor quality AP.
9. The schools forum regulations are intended to ensure that the arrangements for AP funding are properly discussed at local level – with engagement not only from the local authority, which carries the overall legal responsibility for securing suitable education for all children and young people in its area, but also from the mainstream schools and academies, pupil referral units (PRUs) and AP in academies and free schools. This is explained in the [schools forums operational and good practice guide](#).

## Place funding for PRUs, AP academies and AP free schools

10. Funding for PRUs, AP academies and AP free schools requires the identification of places. We have not defined a place in the regulations, but we expect that a place will generally be available for occupation by a full-time equivalent (FTE) pupil or student. We accept that in AP settings places may not be filled by the same individual throughout the year. Identification of places is not determined by pupils' registration status. Where pupils are dual registered with a mainstream school, the time they spend attending a PRU, AP academy or AP free school should be accounted for in the number of places identified. It is important that AP settings are not overfunded where places are not required, but there will be occasions when places remain unoccupied, for example to accommodate unpredictable fluctuations in demand. There will also be places that are occupied by more than one individual attending on a part-time basis (for example a place may be filled by a child who attends for 2 days a week from one school, and another child who attends for 2 days from another school, with no child present for one day a week).

11. It may not be appropriate for place funding to be provided for some AP services where pupils are receiving their education off-site e.g. a home tuition service, or an outreach service provided by teachers whose base is the PRU or AP academy/free school. These services should be funded through a service level agreement with the commissioning local authority or school (see paragraphs [37-41](#)).

12. Each PRU, AP academy or free school usually has a number of places to offer pupils and students permanently excluded by schools or can't get a school place for other reasons. In this case the commissioner would normally be the local authority. Many AP institutions will also have places for pupils and students who are on part-time or shorter term placements. In many cases local schools and academies would be the commissioner for these places.

13. Each commissioned place is funded at a rate of £10,000 per annum.

14. Place funding provides some certainty for institutions, but a stable income and financial viability will continue to depend on:

- developing strong relationships with local authorities and schools that commission places
- working out with commissioners top-up funding rates that reflect the costs, including (for example) the costs of under-occupancy when places aren't filled
- where appropriate, developing commissioned services that can provide an income from authorities and schools on a longer term basis (e.g. through a 2 or 3 year contract)

## **Place funding for PRUs**

15. The number of AP places to be funded in PRUs and the place funding each PRU therefore gets, are a matter for agreement between the PRU and the local authority, in consultation with the schools and academies in its area that intend to commission places. There may also need to be consultation with other local authorities and their schools if the PRU accepts placements from them. The funded places should include all places, including those to be commissioned by schools and academies, other local authorities, and the schools and academies in those authorities. This requirement will continue to be explicit in the regulations.

16. When the number of places has been determined, the funding for those places should be calculated in accordance with the regulations. This place funding then forms the budget share for that PRU. All PRUs' budget shares have to be calculated and notified to the PRU by 31 March 2016.

## **Place funding for AP academies**

17. A similar process is used for AP academies that were PRUs previously maintained by a local authority. In this case, the academies' place funding is paid directly by the EFA. The default for AP academy funding in the academic year 2016 to 2017 is that the number of places funded will be the same as in the current year 2015 to 2016. The local authority will notify the EFA where exceptions have been agreed with the academy. These exceptions are handled through the same place change process as other high needs places in academies. When the AP place funding allocations for academies have been finalised, the EFA will deduct the appropriate amount from the high needs element of each local authority's dedicated schools grant (DSG), so that it is paid direct to the academies.

## **Place funding for AP free schools**

18. The EFA decides on the number of places to be funded each year based on the free school's plans and the number of pupils attending the free school once open. The EFA provide funding for AP free schools directly. DSG deductions will not normally be made for the first two academic years that the free school is open. These schools do not have the same default assumption, that 2015 to 2016 place numbers will be used as the basis for 2016 to 2017 allocations, because different numbers may have been indicated by the free school for planning purposes, and there may have been a growth assumption in its initial opening period.

19. We recognise that some AP free schools routinely accept pupils from local authorities other than the one in which they are located, or from schools and academies in other local authority areas. In such cases, from the third year of the AP free school's operation, the EFA will start to deduct an appropriate proportion of the place funding from

the DSG of the local authorities who commission, or whose schools or academies commission, places at the AP free school. There may be situations where the funding deducted from the DSG of the relevant local authorities does not constitute the total place funding which the EFA determines to pay to the free school.

20. The EFA will collect data relating to open AP free schools to determine the appropriate level of place funding and (for those open before September 2015) how much should be deducted from local authorities, including any apportionment across more than one authority. The EFA will contact the relevant local authorities before finalising the 2016 to 2017 DSG deductions. The EFA will also notify AP free schools of their final allocations in accordance with the normal grant notification timescales.

21. The process for deciding AP free school and academy place funding from 2017 to 2018 onwards and any consequent DSG adjustments, has not yet been decided.

## **The need for local discussion and transparency in place funding decisions**

22. Funding for places to be commissioned by the local authority and its schools and academies will need to be found from the authority's DSG (this does not apply to place funding for places in AP free schools until the third year of their operation – see [paragraph 19](#) above). It is important that the schools forum is engaged in discussions about where the funding comes from. Any increase in places would create a cost that would have to be funded out of the authority's DSG. There may need to be a discussion with schools and academies about whether such a cost should be met by reductions in the schools' budget shares, or by transfers from other central budgets. This will require schools and academies to think collectively about their use of AP, and how the full cost of provision, including the place funding, is to be met. Such considerations would also be needed where adjustments are required to comply with the regulations, since funded places must include those commissioned by schools and academies as well as local authorities.

23. The regulations do not permit local authorities to make a differential charge on schools' and academies' budget shares according to their use or intended use of AP. It is possible, however, to use funds relating to pupils leaving the school roll, which have been deducted from schools' budget shares under regulation 23 of the [School and Early Years Finance \(England Regulations\) 2014](#), or under the similar arrangements with academies, to offset some of the cost of places (see [paragraphs 42-47](#) below). These regulations will be updated for 2016 to 2017.

24. It is also possible for the local authority to charge for any funding that it has devolved to schools and academies for AP, outside their budget share. Devolved funding remains as a central budget under the authority's central control and the terms of its use by schools and academies should be covered by a service level agreement with those

schools/academies. We are aware that a number of authorities have closed their PRUs and now channel most AP funding through behaviour partnerships or clusters. As with other elements of high needs funding held centrally, under the conditions of grant associated with the DSG, the local authority must treat maintained schools and academies on an equivalent basis and make sure that any distribution of such funds is fair and reasonable. As an example, it would not be permissible for local authorities to levy a charge on schools commissioning AP free school places if they did not levy a similar charge for places commissioned with a PRU. Local authorities are therefore encouraged to seek the agreement of the schools forum and to consult all relevant schools and academies before deciding such matters.

25. A local authority may need to transfer funds from its mainstream schools budget to its high needs budget, to ensure that it is meeting the requirement to fund all PRU places, including those commissioned by schools in the PRUs' budget shares. The same principle applies to AP academies and to AP free schools (from year 3 onwards), except that the EFA funds places directly after deducting the place funding from the authority's DSG. Transfers between schools and high needs blocks are excluded from the minimum funding guarantee calculations where there is a transfer of responsibility.

## Top-up funding

26. The Department does not wish to be prescriptive about the top-up funding relating to individual pupils, but there are some principles set out in the conditions of grant attached to the DSG:

- top-up funding rates should be determined fairly and local authority maintained schools, academies, free schools and independent schools should be treated on a fair and equivalent basis
- top-up funding should be paid monthly unless otherwise agreed with institutions
- The Department also reserves the right to impose specific conditions of grant on individual local authorities, in relation to the use of DSG for top-up funding for pupils and students with high needs, when it believes that the actions of the local authority are unreasonable

27. Top-up funding for AP institutions is not usually related to an assessment of special educational needs. A standard top-up funding rate is often set for each PRU, AP academy or AP free school, which reflects the overall budget needed to deliver the service for pupils and students attending.

28. Cost transparency is an important feature of the new high needs funding arrangements. Local authorities, schools and academies should be aware of the full cost of AP in different institutions and be able to make placement decisions on the basis of the cost and quality of what is on offer. It is therefore important that schools forum discussions about how AP is funded should include information about top-up funding rates for institutions and where the top-up funding and place funding for AP comes from.

29. Top-up funding paid by local authorities, for example for a pupil who is permanently excluded, would come from a local authority high needs budget. For places commissioned by schools, the school would pay the agreed top-up funding for the individual pupil, either from its delegated budget share, or from funds devolved to schools, in a fair and transparent way.

30. There are ways in which administration of top-up funding can be minimised, recognising that there is often a very fluid movement of pupils and students in and out of AP during the course of a year. The extent of this movement can also create uncertainty and volatility in an AP institution's budget planning.

31. One way of overcoming these issues would be for the AP institution to agree an estimate of the take up of places at the beginning of the year with its main commissioning local authorities and schools/academies. Top-up funding could then be paid on account every month throughout the year; and a termly or year-end reconciliation could take place to reflect actual take up of places by individual students during the year, and the difference between estimated and actual take up. This would give the AP institution more

certainty over its in-year cash flow, enabling it to employ the staff needed to provide a high quality service throughout the year, and to adjust the quality and nature of provision over time to meet local authorities' and schools' demand.

32. It is important that top-up funding relates to pupils actually occupying places. The aim of the system of place funding and top-up funding is to give a proper balance between sustainable income for the AP institution, and flexibility to commission AP that meets the needs of individual pupils. Funding based solely on places, which may or may not be occupied, risks wasting money on places that are needed neither by local authorities nor by schools and academies. It also ties up funding that prevents decisions being taken about the most appropriate AP for an individual pupil.

33. We are not prescriptive about how the calculation of top-up funding reflects the period that a child or young person occupies a place. Some AP institutions operate on the basis of a daily rate, but in many cases it would be more straightforward to calculate the top-up funding using longer periods, for example weekly, monthly or even termly rates.

34. Commissioning local authorities and schools will want to carefully consider the top-up funding arrangements to make sure that there are no perverse incentives and that the funding achieves the intended outcomes.

35. It would also be possible to develop a top-up funding system that more closely reflects the achievement of desired outcomes, as a way of encouraging high quality AP. The AP institution could receive an enhanced rate of top-up funding after the end of the placement if the intended outcome for the pupil or student had been achieved. For example, a mainstream school could be seeking a particular intervention for a year 11 student which would enable him or her to successfully complete their GCSE exams; it could agree a short term placement for the student at a local PRU and an additional amount of top-up funding that would be paid after the student's exam results are known, and if the expected grades had been achieved. Similarly, a local authority may wish to agree that an additional amount of top-up funding is payable if a Year 11 pupil is in education, employment or training in the year after leaving AP.

36. We are aware that such arrangements might be difficult to negotiate and they are not mandatory, but we would be interested in hearing of examples where they are being used to secure better outcomes and improve the quality of AP.

## Funding for commissioned services

37. In many cases the services offered by a PRU or AP academy or free school will not be appropriately funded through the combination of place and top-up funding. Teachers at the AP setting may be involved in outreach work with local schools and academies, or may be employed by them on a consultancy basis to advise on behaviour management. The local authority may use a PRU's staff to provide home tuition to pupils with medical needs or to provide a service to pregnant teenagers or young mothers who cannot easily attend school. These are examples of services that would normally be funded by the commissioning local authority or school/academy, or group of schools/academies, under a service level agreement or contract that specifies what is required and the price.

38. Where the local authority commissions the service, the funding would come from a central high needs budget.

39. Where a school/academy or group of schools commissions the service, the funding would come either from those schools' delegated budget share, or from centrally held high needs funding that has been devolved to schools. Any distribution of devolved AP funding should be fair and treat maintained schools and academies in the same way.

40. As with other centrally held AP budgets, the local authority should make sure that there is consultation with the schools forum on the amount retained and how it is used and distributed.

41. Some commissioned services may be funded through the budget for services relating to the education of children with behavioural difficulties and on other activities to avoid the exclusion of pupils from schools. This funding has to be included in schools' and academies' budget shares, but maintained schools can decide if the local authority should retain central control of the funding. Academies receive this money in their grant from the EFA but may buy into services that the authority provides centrally for its maintained schools (where those schools have chosen de-delegation).

## Permanent exclusions – funding adjustments

42. The local authority cannot require a maintained school or academy to make any additional payments following a permanent exclusion, other than those set out in regulations<sup>2</sup>.

43. Local authorities will be responsible for adjusting the budget shares of mainstream maintained schools if a pupil is permanently excluded so that funding follows the pupil.

- The local authority must recalculate the excluding school's budget share and reduce it by an amount calculated according to a formula set out in regulations. This also applies to any pupil premium payable in respect of the excluded pupil.
- If the pupil is admitted to another mainstream maintained school ("the admitting school"), the local authority must recalculate the admitting school's budget share and increase it by an amount calculated according to a formula set out in regulations. This also applies to any pupil premium payable in respect of the pupil.
- If the admitting school is maintained by a different local authority from the one that maintains the excluding school, a transfer must also be made between authorities<sup>3</sup>.
- If the pupil is subsequently reinstated at the excluding school, the local authority must also carry out re-calculations according to a formula set out in regulations.

44. A local authority may ask an academy trust to enter into an arrangement for the transfer of funding for pupils who have been permanently excluded on the same basis as a maintained school. The academy trust may be obliged under its funding agreement to comply with such a request.

45. Different funding arrangements apply in relation to PRUs, AP academies, maintained special schools, special academies and children in designated special units or resourced places at mainstream schools. These schools receive base funding for each place, which is not linked to individual pupils and not withdrawn following a permanent exclusion. They also receive top-up funding that is linked to individual pupils. When commissioning places at one of these types of school, local authorities and schools should formally agree with the providing school what proportion of this top-up funding will be returned if a pupil leaves the school (for any reason). The only exception to this is where pupil premium is payable in respect of a pupil attending a PRU or special school maintained by the local authority. In this situation local authorities must adjust the

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<sup>2</sup> This does not include circumstances where a school has voluntarily entered into a separate legally binding agreement with the local authority.

<sup>3</sup> The requirements for the transfer of funding between local authorities are set out in Section 494 of the Education Act 1996 and the Education (Amount to Follow Permanently Excluded Pupil) Regulations 1999.

school's budget in accordance with the same formula that applies to mainstream schools. In the case of AP and special academies, local authorities should claim from the academy an amount equivalent to the pupil premium (as calculated according to the formula in the regulations), or pay the academy the relevant amount when a previously excluded pupil joins the academy.

46. All types of schools are required to make an additional payment of £4,000 following an order from a review panel. If the school is maintained by the local authority then the local authority will be responsible for reducing the budget share for the excluding school by a further £4,000. If the excluding school is an academy, the academy trust must pay £4,000 to the local authority in response to an order from a review panel.

47. If a review panel has made a financial adjustment order and the excluded pupil is given a place at another school ("the admitting school"), the local authority may, if it chooses, pass any or all of the amount of the financial adjustment (i.e. up to £4,000) to the admitting school, in addition to any funding that would usually follow the pupil.



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