


New alternative provision guidance

12 March 2025  Trish D'Souza

In February 2025 the Department for Education published a substantive re-write of the *Arranging Alternative Provision: A Guide for Local Authorities and Schools*. This new guidance replaces the previous January 2013 version and includes updates to reflect changes in policy and legislation.

Legal obligation relating to AP

Under section 19 of the Education Act 1996, local authorities (**LAs**) must arrange suitable full-time alternative provision (**AP**) education for children of compulsory school age who cannot attend mainstream provision due to various reasons such as exclusion, illness, or other circumstances. LAs should have a policy in place to guide schools and academies on how to arrange AP.

Often AP is provided as an alternative to exclusion so that a pupil has a chance to seek support and guidance elsewhere to reduce the risk of a permanent exclusion decision.

Different Funding mechanisms for AP

Both LAs and schools need to ensure high-quality AP is made available to children/young people according to their age, ability, aptitude and any special educational needs (**SEN**) they may have. It is often unclear, in practice, how AP is funded. Some would assume that as an LA is under a duty to arrange suitable AP, that it is an LA that is under an obligation to fund this, however that may not be the case.

AP settings in England, such as Pupil Referral Units (**PRUs**), AP academies and free schools, receive funding through various methods:

- 1. Core Funding:** This is the annual allocation based on a set amount per high needs place provided to a child/young person. The number of places is determined annually by a LA or the Education and Skills Funding Agency (**ESFA**) in collaboration with the setting. The funding for:
 - a. PRUs maintained by LAs comes directly from the LA, based on the financial year.
 - b. AP academies and free schools comes from the ESFA, based on the academic year.
- 2. Top-up Funding:** This covers additional costs beyond the core funding to support the educational provision. It is usually provided by the LA or the school that commissions each placement. The amount is often part of the LA's high needs budget and is based on the overall budget needed for the children attending.
- 3. Locally Negotiated Funding:** This includes funding for services like outreach provided by AP settings. It is negotiated locally, based on service level agreements between LAs or schools and the AP setting.

Has there been a change in funding mechanism?

Previous versions of the AP guidance suggested that a school/academy which commissioned the AP was required to fund this. However, whoever is responsible may, in practice, come down to the wording of LA policies, negotiations with the relevant LAs and whether it can be argued that the LA is commissioning the AP rather than a school or academy.

Can in-school support be AP?

The answer is yes. Mainstream schools are increasingly using in-school pupil support units to provide targeted interventions aimed at improving pupil behaviour and engagement. They are designed to provide planned interventions for behavioural or pastoral challenges and act as a preventive strategy to avoid exclusion. Whilst units tend to primarily support pupils already registered at the school, some support pupils from other schools within the same multi-academy trust (**MAT**) or local area. Such arrangements are governed by the off-site direction under section 29A of the Education Act 2002, ensuring a structured approach to AP.

The establishment of a unit should be undertaken collaboratively with LAs to ensure alignment with broader local strategies for AP. There should also be consultation with parents, strict adherence to legal responsibilities and the maintenance of clear accountability and oversight of AP. This is particularly significant for safeguarding practice and managing the attendance of pupils between the home and host schools.

Special education needs

Moreover, in-school units are not intended solely for pupils with Education, Health and Care plans (**EHCPs**) or SEN. Therefore, schools, MATs, or LAs are encouraged to consider establishing dedicated SEN units or resourced provisions separately.

In cases where pupils with EHCPs are placed in units outside their home school, both the home school and the LA are mandated to respect the rights of parents, including the potential amendment of EHCPs to reflect the new AP setting. This structured approach should ensure tailored educational pathways are provided to meet the diverse needs of all pupils.

What about home schooling?

The January 2025 Policy Notes to the Children Wellbeing and Schools Bill, which was published in December 2024, has suggested that each local authority should have a compulsory Children Not in School register. Such a register may identify those pupils who are not currently in school or those who are registered at a school/academy but do not attend full time, as it has been agreed they can be flexi-schooled or receive AP. The Government wants to ensure that children are not forgotten and receiving AP does not place them at increased risk of harm as a result of not being at school on a full-time basis.

Further information

- [Alternative Provision to be a 'first resort'](#)
- [Children's Wellbeing and Schools Bill - policy summary notes](#)
- [Arranging Alternative Provision - guide for LAs and schools](#)

Key contact



Trish D'Souza

Legal Director

trish.d'souza@brownejacobson.com

+44 (0)330 045 2193

Related expertise

Services

Child protection and safeguarding
in schools

Education law

Special educational needs and
disability matters