

# **LEICESTERSHIRE SECONDARY EDUCATION AND INCLUSION PARTNERSHIPS**

## **Partnership Interpretation of the regulations surrounding Unregistered Schools – Advice to Alternative Providers**

### **Introduction**

There is a national concern about illegal schools. These are schools that are not registered and therefore escape any inspection. Their proprietors are in breach of the criminal law. Ofsted have some limited powers to enter and inspect any establishment that they suspect are operating illegally.

Ofsted, DFE, LAs, schools and Partnerships all know how valuable the work of APs are in supporting and often turning around the lives of some of our most vulnerable young people.

Most of the concern has been about religious schools rather than Alternative Providers. However Ofsted and the DFE have growing concerns about:

1. Children who may be home educated but who are placed by parents in APs
2. Children still on roll at a school where the school has commissioned such a large chunk of AP that the child is being educated at the AP rather than at the school.

Leicestershire SEIPS have taken advice from Ofsted on this issue. The SEIPS are using public money so need to be careful that they are not commissioning from illegal schools.

### **What the rules say**

If a Provider has:

- Four or more pupils for the substantial part of their education provision
- One or more LAC\* or pupils with an EHCP\*\* for the substantial part of their education provision

then the law considers them to be a school and they must be registered.

The guidance from the DFE says “substantial” = 18 hours per week

However Ofsted regards “substantial” as meaning the “main part” or the core of the child’s education provision. So the 18 hours is guidance not law!

### **In practice – some examples**

If a pupil attends an AP for a total of 15 hours per week (including breaks and lunchtimes) but spends 10 hours per week with one of the Secondary Partnerships, as part of a programme planned and monitored by the Partnership, the AP is not acting as a school and does not need to register.

If a pupil attends an AP for a total of 15 hours per week as above but has less than 10 hours elsewhere this has the effect of making that AP the “substantial” provider. It might then be operating as an unregistered school.

If a pupil attends an AP for a total of 15 hours per week and the AP staff also provide support to the pupil by keeping an overview of all the other parts of the pupil’s provision, the AP is acting as the pupil’s school. If the pupil has an EHCP or there are four other pupils looked after in the same way at the AP, it should be registered.

If an AP takes a group of 4 + pupils for a full time (25hours) programme from a school or a partnership for half a term, perhaps intending to “get them back on track” and then returning them to their school this does not make the AP a school and it does not need to register. This is because over the whole year this half term of full time provision is not considered as “substantial”

#### Advice to APs

You only need to worry about this issue if:

You provide large chunks of time to individual pupils – three or more days per week usually over the long term

Or

You act to build a programme for a pupil at your own provision and keep an overview/co-ordinate the rest of the programme or subcontract elsewhere. (You should not subcontract in any event.)

Or

You are providing the substantial part of the pupil’s educational programme as a result of them having a less than full time package of provision.

And

One pupil is a Looked After Child or has an EHCP

Or

Four or more pupils have this level of provision

#### Risks to guard against

1. A school or a Partnership and yourselves, acting in the best interests of a pupil may agree that it makes sense for the pupil to have a significant chunk of time with you to the extent that you are providing the substantial part of his or her education. This is ok provided the pupil does not have an EHCP.

But perhaps some other partnerships and schools have made similar arrangements with you for the best of reasons. Or perhaps you have agreed to help out a home education parent by taking on their rebellious teenager. You may find that you have five pupils in this category in which case you have unknowingly become an illegal school.

2. A School, Partnership or Parent commissions you to provide for a pupil and leaves you to it – resulting in you becoming the main education provider for the child and the one organisation taking responsibility. If the commissioner is not doing their job in monitoring and planning the pupil’s programme , balancing a range of provision in order to build an effective programme for the pupil, they are putting you into jeopardy.

#### More information

If you have any concerns about this issue contact your local Partnership Co-ordinator

\*LAC Looked After Child – sometimes known as Child in Care

\*\* EHCP Education and Health Care Plan – a legal document describing the additional support a child with special needs is entitled to.

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