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of Special Schools

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SEND Reforms Consultation 2026

Independent Special Schools

Background

This paper forms part of NASS’s formal response to the SEND Reforms Consultation – ‘Putting Children and Young People First’. It should be read in conjunction with our overall online response and our additional responses on specific areas within the proposals.

The National Association of Special Schools is a membership organisation for all types of special schools in England and Wales. NASS has almost 500 member schools and organisations. A significant number of our members – close to 400 schools and organisations – are Independent Special Schools (ISS).

This paper largely represents an extended response to Question 29 within the consultation. Where wider issues might have specific implications for ISS, we have included them here and they are covered in more detail in our specific issue papers, e.g. Specialist Provision Packages and tailored lists.

Understanding the wider context – why have we seen a growth in the use of Independent Special Schools?

Government has problematised the significant increase in the use of ISS. We think it is right to explore why ISS are being used so much more frequently now than when the last SEND reforms were introduced in 2014. However, the current presented narrative is that the growth in ISS places is unwanted and unneeded, driven primarily by private-equity backed schools seeking an opportunity to make a profit. We believe this is a skewed and inaccurate narrative.

In 2014/15 there were 1032 state-funded special schools (LA-maintained schools and special academies) registered in England. In 2024/25 this had

grown to 1059 schools – a net increase of 27 schools and approximately 4050 (using a mean average of 150 students per school) places in 11 years. Over that same period, the number of children with EHCPs has grown from 240183 in 2015 to 638700 in 2025. Whilst state-funded special schools and mainstream have expanded their capacity to offer places to some of these children, Government estimates that there is a current deficit in special school places of 8,000 plus an estimated 44,000 children waiting for a school placement and a further 49,800 noted as being in Education Elsewhere and c18,000 identified as not ‘Not in Education or Employment’ (NEET).

It’s a valid conclusion that the growth of ISS has been driven by need and demand. It’s also valid to conclude that there is an ongoing need for ISS in the current and future SEND systems.

From 2014 up until 2025, the only way a new state-funded special school could be created was via the Free Schools route. Whilst a number of high-quality schools have been created, overall, the Free Schools programme was inefficient and at a very high cost to the public purse. In 2017, the National Audit Office concluded that 60% of land acquisitions for Free Schools had paid more than the market rate – on average 19% more. In contrast, a new ISS has no public purse capital costs and is built entirely at the cost and risk of the maintaining organisation. It is also a much quicker option for establishing new provision – 12-18 months for an ISS on average, compared to 3-4 years on average for a special free school, with some schools taking over 6 years. A free school in pre-opening incurs public purse costs across this time, e.g. for leadership staffing. NASS has seen no Government analysis that sets out the relative financial efficiency of different special school models, and we believe this is necessary ahead of making widespread policy decisions that will limit the capacity and specialism of ISS.

A set of homogenous policies for a heterogenous group of schools

Throughout the consultation, ISS are treated as a single group, with no differentiation in proposals between different types of ISS. This is despite both the consultation and Ministers’ media appearances making frequent mention of these measures being brought in to ‘curb profit’ in private equity backed ISS. We will cover the validity of targeting these schools later in this

paper but, using the Government's own quoted figures, private equity backed schools account for only 30% of the ISS 'market'.

ISS are a diverse group of schools which includes a significant number of charitable schools and proprietor owned and run schools. Government makes no case for whether the proposed approaches are fair, proportionate and necessary for all ISS. However, Government has taken the step of indicating that a specific category of ISS – Non-Maintained Special Schools (NMSS) – will sit outside these measures and some of the wider reforms, such as Specialist Support Packages. The case made for this does not convincingly demonstrate that NMSS are inherently different from all ISS and NASS believes that the Government is leaving itself open to a future Article 14 Human Rights Challenge by discriminating against ISS solely on the basis of their registration category.

In addition to treating ISS as a single group, proposed policies such as banded funding and Specialist Support Packages treat ISS as if they are no different from state-maintained provision in terms of levels of need and complexity served. This is an unevidenced hypothesis. NASS believes that ISS primarily exist to serve children and young people with the highest levels of complexity and vulnerability – be that through inherent need or their past experiences of systemic failure. To use a health analogy, one would not expect funding for a patient in primary care to be the same as a patient in intensive care and similarly, we do not believe it is reasonable to fund ISS using the same mechanism as generic state-funded special schools.

Pages 80-81 of the consultation set out the Government's attempt to 'bring ISS in line' with other special schools. At no point has Government set out a persuasive argument for why this is needed or even desirable. Government has already set out its intent to treat NMSS differently, noting that whilst their fees may be high, they work with children with high levels of complexity and do not generate a profit. These arguments would be equally valid of charitable ISS and we believe the complexity argument would legitimately apply to the majority of ISS.

If Government is hypothesising that ISS provide services identical to state-maintained special schools, it needs to first provide valid evidence that this is the case. If, as NASS asserts, ISS are a highly specialised resource, set-up to support those who require the most complex service responses, it makes no sense to treat them the same as other special schools. NASS believes

that Government must evidence that ISS are inherently similar to state-funded schools, in terms of the needs of the children they educate, their educational journeys and the services provided to support them before introducing policies that treat them as identical for the purpose of admissions and funding. Without this, proposed policies such as Specialist Support Packages and Tailored Lists will be formed on false premises.

Policy First – Evidence Second

The Secretary of State views ISS as so problematic that she felt compelled to make an announcement about ‘price capping’ ISS 3 days ahead of the main SEND Reforms were launched. These views have been repeated by the Schools Standards Minister in subsequent media appearances, with frequent mentions of the problem of private equity backed schools. With such strong assertions, you would expect Government to be able to persuasively demonstrate:

1. Profit margins across the ISS sector
2. Fee increases in recent years – do these evidence the ‘profiteering’ the sector has been accused of?
3. Dividends paid to investors over the past 5 years
4. ISS taking placements away from state-maintained schools
5. How fees are broken down in ISS
6. How the costs of ISS placements compare to similar packages of support in state-maintained settings
7. That there is a link between the price paid per placement and outcomes for children and young people. Government implies that ISS are poor value for money but has no evidence to support this.

Government is currently unable to answer any of these questions. We believe that the least we should be able to expect of Government is that policy is evidence-based. We challenge the Government to commit to pausing on any ISS reforms until these questions can be answered and, more importantly, the answers unequivocally support the proposed policies.

We have been concerned to note that the Department for Education has only just commissioned the Open Innovation Team to undertake a ‘market analysis’ of ISS – something that surely should have happened in advance of these policies being announced. This significantly weakens the credibility of

Government and gives the impression that these policies are grounded in political ideology ahead of evidence.

‘Price Capping of ISS’ – Specialist Support Packages and Banded Funding

The Government’s launch of the proposed banded funding policy on 20th February 2026 was divisive and misleading. It led many readers to believe that banded funding was being introduced only to ISS, when it was, in fact, signalling the introduction of wider Specialist Support Packages and the funding related to this. Many media sources indicated that ISS fees would be ‘capped’ at £60k. Whilst the Department for Education denies being the source of this figure, several journalists have indicated to NASS that they heard this figure in a DfE press briefing. For now, we will take DfE at its word that there is no upper cap pre-determined for fees, but we wish to be clear that a cap based on a mean average which includes significant distorting outliers would be unreasonable and unacceptable. As part of its market analysis of ISS, we call on Government to demonstrate the modal and median fees paid by local authorities for ISS, differentiating these between the type of need catered for and whether the provision offers day, termly boarding or 52-week residential provision.

We are not persuaded that seven categories of Specialist Support Package are sufficient to accurately reflect and address the wide range of needs of children who could be well-supported in a Specialist Base and also those who find themselves in an ISS with highly complex needs after multiple failed school placements. Whilst we appreciate that only a rough, indicative draft was included as part of the consultation, we are concerned that the level of detail set out is insufficient to understand how:

- Therapies will be factored in and funded, i.e. within package or as a separate payment from health
- Social care will be factored in and funded, i.e. within package or as a separate payment from social care
- The quantity of support to be provided. For example, does the inclusion of Speech and Language support in a SSP mean a child works alongside a Speech and Language therapist in class daily (a model used in many ISS) or has access to interventions taught by a

Speech and Language Therapist but delivered by a non-clinical member of school staff?

- Funding for ISS will be adjusted to reflect their inability to access central Government grant funding
- A level of surplus/profit will be built into SSPs to enable schools to sustain and develop their services.

Government is relying on the Institute of Fiscal Studies quoted comparison of £24k for a state-maintained special school placement versus a £61-63k placement in an ISS as ‘evidence’ of unreasonable, profit-driven pricing in ISS. This is a misleading and invalid comparison. It is based on a crude mean average which takes total allocated school spend for state-maintained special schools and compares it to the overall spend on ISS placements. This means you are comparing:

- Day placements in state-funded special schools with 52-week residential ISS. The latter inevitably distorts the mean average price per ISS placement.
- Funding for teaching and learning in state-funded special schools with whole organisation and service costs in ISS. The mean average for state-maintained does not contain figures for wider school grant funding, nor for other services required by a child which would be provided within fee for an ISS.
- A sector where pupil-level data is gathered on a termly basis with a sector where school data is gathered annually. The Government simply does not have data on how outcomes for ISS compare with children in state-maintained provision. Despite requests from NASS and Ofsted, the Department for Education has consistently refused to ask ISS to submit pupil-level census returns.
- An over-stretched and under-funded sector with one that can offer the specialism required to meet need. We know of no state-funded special school that believes it is currently well-enough resourced to meet the needs of all children with SEND. We have heard of state special schools that have seriously considered closing at Friday lunchtime each week because they do not have the resources needed to meet learners’ needs safely. We need to stop suggesting that the current financial position of state-maintained special schools is a desirable point of comparison for funding.

‘Fair’ and ‘Reasonable’ fees – who determines this and how?

On page 80 of the consultation, Government states, **“we will bring forward legislation at the earliest opportunity to ensure LAs can pay a reasonable price for placements in ISS”**. Again, the reason given for this is that placements in ISS are more expensive than the average teaching and learning costs for state-maintained special schools and the inference that this must be profit-driven. As we have already set out, Government holds no valid evidence to support this hypothesis. The evidence cited in the Reforms Proposals is from the Institute of Fiscal Studies and a 2023 report on social care providers. Neither produce the necessary and sufficient conditions to support the judgment that this legislative change is warranted. It would be irrational and unreasonable for Government to continue with these proposals without a relevant evidence base.

We understand that it is Government’s intent to repeal s63(2) of the Children and Families Act 2014 as part of any future SEND Bill and that this will be the vehicle used to ensure LAs pay a ‘reasonable’ fee in advance of the wider reforms coming into effect. Government has failed to set out how ‘reasonable’ fees will be defined, and we cannot see how such a task could be undertaken separate to the wider work on Specialist Support Packages and their attendant funding. Government has also failed to establish that fees paid to ISS are unreasonable, so we are currently unable to understand the proposed mechanism or rationale for introducing this piece of legislation. Again, we call on Government to set out its evidence that there is widespread practice of charging fees in excess of meeting stated needs across the ISS sector.

Furthermore, ISS hold valid, existing commercial contracts with LAs for placements and would be entitled to have use of these under Article 1 of the European Convention on Human Rights. These contracts contain provisions for the calculation and payment of fees and cannot simply be ignored within the Government’s plans.

Restricting the rights of ISS to expand existing provision or open new schools

On page 81 of the consultation, Government sets out its intention to give “the Secretary of State the power to refuse the expansion or opening of new ISS where there is limited evidence of demand from commissioning

LAs.” We cannot understand what Government means by this and how it proposes to make this a reality.

It is implied that ISS are setting up new schools in areas where they are not wanted by the host LA. This is not our experience, and we can evidence multiple occasions where a Local Authority has actively invited an ISS to set up in its area. At present, ISS represent the only realistic route to establishing new specialist provision at speed and, it should be noted, at no capital cost to the public purse. The vast majority of ISS are currently full, with many carrying significant waiting lists. Demand for specialist placements hugely outstrips supply. It is difficult to conceive of a local authority being able to make a persuasive argument for there being ‘low demand’. The meaning of ‘low demand’ will have to be defined very carefully, to ensure that ISS cannot have their trade restricted simply based on the opinion of a local authority.

ISS Powerful Prospective Partners and Missed Opportunities

Our ISS members are keen to be active partners in the SEND system. In addition to their role in providing high-quality education, health and social care to children whose needs require the most complex service responses, many already play an active role supporting local schools. They could play a powerful role in the Government’s ‘Experts at Hand’ programme, advising not just mainstream schools but also special schools offering more generic services.

The measures to enable special schools to offer expertise and support to mainstream schools set out in the SEND Reforms envision each secondary school receiving a set number of hours of specialist support each year. The funding attached to this is very limited and appears to only be aimed at state-funded special schools – the bit of the sector with least capacity to deliver. We would like to see this policy expanded to define a clearer role for special schools from all part of the sector.