

**1999 No. 2257**

**EDUCATION, ENGLAND AND WALES**

**The Education (Non-Maintained Special Schools) (England)  
Regulations 1999**

*Made - - - - 9th August 1999*

*Laid before Parliament 11th August 1999*

*Coming into force 1st September 1999*

In exercise of the powers conferred on the Secretary of State by sections 328(6), 339, 342(2), (4), (5) and (6), 568(5) and 569(4) of the Education Act 1996<sup>(a)</sup>, the Secretary of State for Education and Employment hereby makes the following regulations:

**Citation, commencement, extent and revocation**

1.—(1) These Regulations may be cited as the Education (Non-Maintained Special Schools) (England) Regulations 1999 and shall come into force on 1st September 1999.

(2) These Regulations apply to non-maintained special schools in England.

(3) The Education (Special Schools) Regulations 1994<sup>(b)</sup> are hereby revoked in relation to England.

**Interpretation**

2.—(1) In these Regulations—

“the 1996 Act” means the Education Act 1996;

“maintained special school” means a community or foundation special school;

“non-maintained special school” means a school which is not maintained by a local education authority and which has been approved as a special school under section 342 of the 1996 Act;

“registered pupil” means a pupil registered as such in the register kept in accordance with section 434 of the 1996 Act;

“relevant person” means, in relation to a non-maintained special school, the person or body of persons responsible for the management of the school.

“special school” has the meaning assigned to it by section 337 of the 1996 Act;

(2) Except where the context otherwise requires, any reference in these Regulations to a regulation or Schedule is a reference to a regulation contained therein or to the Schedule thereto, any reference to a paragraph is a reference to a paragraph of the regulation or Schedule in which the reference is made, and any reference to a sub-paragraph is a reference to a sub-paragraph of the paragraph in which the reference is made.

**Conditions of Approval**

3. The requirements set out in Part I of the Schedule shall be complied with by any non-maintained special school as a condition of its approval under section 342(1) of the 1996 Act.

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<sup>(a)</sup> 1996 c. 56. The powers conferred on the Secretary of State are exercisable only in relation to England as the functions in relation to Wales have been transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).

<sup>(b)</sup> S.I. 1994/652.

### Requirements to be complied with

4. The requirements set out in Parts I and II of the Schedule shall be complied with by any non-maintained special school while approved under section 342 of the 1996 Act (including approval treated as given under section 342(3) of that section).

### Withdrawal of approval

5.—(1) Subject to paragraph (2), the Secretary of State may withdraw his approval from a school on the ground that, in the case of that school, there has been a failure to comply with any requirement applicable to the school and contained in—

- (a) these Regulations;
- (b) Regulations from time to time in force under section 218 of the Education Reform Act 1988(a);
- (c) Regulations made under section 27 of the Education Act 1980(b) to the extent that they continue to have effect on the repeal of that section and the coming into force of section 218 of the Act of 1988 on 1st April 1989; or
- (d) Regulations from time to time in force under section 542(c) of the 1996 Act.

(2) Unless the Secretary of State is of the opinion that it is necessary or expedient so to do in the interests of the health, safety or welfare of pupils at a school, he shall not withdraw his approval of the school in pursuance of paragraph (1) without—

- (a) consulting the governing body thereof, and
- (b) if that governing body so request, affording the school a period specified by him within which to comply with the requirement which has not been complied with;

but, if he so directs, pending compliance with that requirement, the arrangements as respects the matter to which it relates shall be such as are temporarily approved by him.

(3) The Secretary of State shall withdraw his approval of a school if the relevant person requests him to do so in writing.

9th August 1999

*David Blunkett*  
Secretary of State for Education  
and Employment

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(a) 1988 c. 40. As at the date these Regulations are made the relevant Regulations are the Education (Schools and Further and Higher Education) Regulations 1989 (S.I. 1989/351) and the Education (Teachers) Regulations 1993 (S.I. 1993/543).  
(b) 1980 c. 20. As at the date these Regulations are made the relevant Regulations are the Education (Schools and Further Education) Regulations 1981 (S.I. 1981/1086).  
(c) as amended by paragraph 158 of Schedule 30 to the School Standards and Framework Act 1998 (s.31). As at the date these Regulations are made the relevant Regulations are the Education (School Premises) Regulations 1999 (S.I. 1999/2).

PART I

**CONDITIONS OF APPROVAL AND CONTINUING REQUIREMENTS**

*Special educational provision*

1.—(1) The arrangements as respects

(a) the pupils for whom provision is made categorised by reference to

(i) the number, age and sex of day and of boarding pupils, respectively, and

(ii) their respective special educational needs, and

(b) the special educational provision made for those pupils,  
shall be such as have been approved by the Secretary of State.

(2) An approval given for the purposes of this paragraph may be expressed to have effect for only a limited period and is subject to such conditions, if any, as are specified therein being observed.

*Governing body*

2. The arrangements as respects the governing body (including, in particular, the composition and functions of that body and the appointment or election of the members thereof) shall be such as have been approved by the Secretary of State.

*Welfare of pupils*

3. The governing body shall make such arrangements for safeguarding and promoting the health, safety and welfare of the pupils at the school as are approved by the Secretary of State, and shall secure so far as is practicable that such arrangements are carried out.

*School not to be conducted for profit*

4.—(1) The school shall not be conducted for profit.

(2) No member of the staff shall have a financial interest therein otherwise than by reason only of his being employed for the purposes thereof at a salary unrelated to the financial performance of the school.

*Premises*

5.—(1) The premises of the school shall, subject to sub-paragraph (2), conform to the standards prescribed by regulations from time to time in force under section 542 of the 1996 Act and applicable in the case of a maintained special school.

(2) If the Secretary of State is satisfied with respect to the school that it would be unreasonable to require conformity with a requirement of the said regulations as to any matter having regard to all the circumstances of the case, he may give a direction that the school premises shall, while the direction remains in force, be deemed to conform to the prescribed standards as respects matters with which the direction deals if such conditions, if any, as may be specified in the direction as respects those matters are observed.

PART II

**FURTHER CONTINUING REQUIREMENTS**

*Changes as respects special educational provision or governing body*

6.—(1) Where any change is proposed in the arrangements mentioned in paragraphs 1 or 2, the Secretary of State shall be given written notice of the proposed change by the relevant person and effect shall not be given to the proposal unless and until the changed arrangements have been approved by him for the purposes of the paragraph in question.

(2) If the arrangements mentioned in paragraph 2 do not provide for the governing body to include—

- (a) at least one member appointed by one or more local education authorities,
- (b) at least one member elected by teachers at the school from among their number, and
- (c) at least one member elected by, or appointed to represent, parents of children at the school,

then, at the request of the Secretary of State and by a date specified by him, changed arrangements shall be proposed (to take effect as soon as is reasonably practicable) which would result in the governing body including such members appointed or elected as aforesaid as are specified by the Secretary of State; and any steps necessary or expedient for the purpose of making such a change shall be taken.

(3) The person who is elected or appointed under paragraph 2(c) shall be—

- (a) a person who is the parent of a registered pupil at the school;
- (b) a person who is the parent of a child of compulsory school age with special educational needs;
- (c) a person who is the parent of a person of any age with special educational needs; or
- (d) a person who is the parent of a child of compulsory school age.

(4) A person referred to in sub-paragraph 3(b), (c) or (d) shall only be elected or appointed if it is not reasonably practicable to elect or appoint a person referred to in the provision of that sub-paragraph which immediately precedes it.

*Admissions and special educational provision*

7. No pupil shall be admitted to the school unless he falls within the category specified in the arrangements mentioned in paragraph 1 which are for the time being approved for the purposes thereof (“the approved arrangements”) and the special educational provision made in pursuance of those arrangements shall be suited to the pupils at the school (having regard to their different ages, abilities and aptitudes and, in particular, special educational needs) and shall be efficiently provided.

*Pupil numbers*

8. The number of pupils at the school shall at no time exceed the number specified in the approved arrangements referred to in paragraph 7.

*Health of pupils*

9.—(1) Provision shall be made by the relevant person—

- (a) for the care and supervision of the health of the pupils at the school by appropriately qualified persons with, in the case of a school providing for pupils with a particular type of disability, experience relevant thereto, and
- (b) for the maintenance of medical and dental records.

(2) Without prejudice to the generality of the foregoing, provision shall be made (by way of arrangements in pursuance of paragraph 1(b) of Schedule 1 to the National Health Service Act 1977<sup>(a)</sup> or otherwise) for the medical and dental inspection at appropriate intervals of the pupils and their medical and dental treatment.

*Collective worship and religious education*

10. Arrangements shall be made to secure that, so far as practicable, every pupil attending the school will attend daily collective worship and receive religious education, or will be withdrawn from attendance at such worship or from receiving such education, in accordance with the wishes of his parent.

*Sex education*

11.—(1) Arrangements shall be made to secure that every pupil who is provided with secondary education will receive sex education, or will be wholly or partly excused from such education (except in so far as it is comprised in the National Curriculum) if his parent so requests.

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(a) 1977 c. 49.

(2) The governing body shall, in relation to pupils who are provided with secondary education at the school—

- (a) make and keep up to date a separate written statement of their policy with regard to sex education, and
- (b) make copies of the statement available for inspection, at all reasonable times, by parents of pupils at the school and provide a copy of the statement free of charge to any such parent who asks for one.

(3) In this Schedule, “sex education” includes education about—

- (a) Acquired Immune Deficiency Syndrome and Human Immunodeficiency Virus, and
- (b) any other sexually transmitted disease.

#### *Milk, meals and refreshment*

**12.**—(1) The governing body—

- (a) shall provide such facilities as they consider appropriate for the consumption of any meals or refreshments brought to school by day pupils, and
- (b) on and after 1st April 2000, shall provide a school lunch where requested to do so by, or on behalf of a registered day pupil; but the governing body shall not be required to provide a school lunch—
  - (i) if, in the circumstances, it would be unreasonable for them to do so, or
  - (ii) where the pupil in question has not reached compulsory school age and is being provided with part-time education.

(2) Subject to sub-paragraph (3), the governing body must charge for anything provided by them to day pupils by way of milk, a meal or other refreshment and must charge every pupil the same price for the same quantity of every item.

(3) The governing body shall, in relation to any pupil whose parents are in receipt of income support or an income based jobseeker’s allowance (payable under the Jobseekers Act 1995**(a)**) or who is himself in receipt of it—

- (a) secure that a school lunch is provided for the pupil which shall be provided free of charge; and
- (b) if they provide the pupil with milk, provide it free of charge.

(4) No charge shall be made for the facilities provided in pursuance of sub-paragraph (1)(a).

(5) Nothing in this paragraph shall be construed as precluding the governing body of a school, when determining the tuition and other fees payment of which is a condition of attendance at the school, from taking into account the net cost to them of providing for day pupils—

- (a) such facilities as are mentioned in sub-paragraph (1)(a) and
- (b) milk, meals and other refreshment.

(6) School lunches provided by the governing body shall comply with the nutritional standards or other nutritional requirements prescribed by regulations from time to time in force under section 114 of the School Standards and Framework Act 1998**(b)**.

(7) In this paragraph “school lunch” in relation to a pupil, means food made available for consumption by the pupil as his midday meal on a school day, whether involving a set meal or the selection of items by him or otherwise.

#### *Incident and punishment books*

**13.**—(1) An incident book shall be kept in which there shall be recorded—

- (a) any incident, involving a person who either is a pupil or is employed or is a volunteer working at the school, which results in personal injury (to that or some other person) or damage to property, and

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**(a)** 1995 c. 18.

**(b)** 1998 c. 31.

(b) any loss of, theft of, or damage to, property (otherwise than as a result of such incident) where the property is that of such a person as aforesaid or school property, without prejudice to the recording therein of other incidents and matters.

(2) A punishment book shall be kept in which there shall be recorded disciplinary measures taken against pupils.

#### *Reports on pupils to local education authorities*

**14.** A report on each pupil in respect of whom a local education authority maintain a statement under section 324 of the 1996 Act shall be furnished to that authority at least once a year.

#### *Non-teaching staff*

**15.** In the case of a residential school, there shall be employed staff suitable and sufficient in number for the purposes of securing the proper care and supervision of the children accommodated thereat, including any children so accommodated during school holidays, and of attending to their welfare.

#### *Staff not to suffer discrimination on grounds of religion*

**16.—(1)** No person shall be disqualified, by reasons of his religious opinions or of his attending or omitting to attend religious worship (“reasons of religion”), from being appointed to any teaching or other post at the school: Provided that this sub-paragraph shall not apply—

- (a) if a majority of the governing body have been appointed to represent the interests of a particular religion or religious denomination or if the school has other such religious or denominational affiliations;
- (b) in relation to the appointment of a Chaplain.

(2) No person employed at the school shall, for reasons of religion or because he does or does not give religious education, receive any less emolument or be deprived of, or be disqualified for, promotion or other advantage.

#### *Accounts*

**17.—(1)** Proper accounts, and proper records in relation to those accounts, shall be kept by the relevant person.

(2) An annual statement of accounts shall be prepared by or on behalf of the relevant person.

(3) The accounts and annual statement shall be audited by an auditor eligible for appointment as a company auditor under section 25 of the Companies Act 1989(a).

(4) If the Secretary of State so directs, he shall be furnished with a copy of the annual statement of accounts for any year or years specified in his direction and the auditor’s report in respect of that or those years.

(5) A copy of the annual statement of accounts for the last year for which it is available shall, on request, be furnished to any local authority which arranges for pupils to attend the school.

#### *Reports and returns*

**18.—(1)** The relevant person shall furnish the Secretary of State with such reports, returns or information relating to the school as he may require.

(2) The death of any registered pupil shall be forthwith reported to the Secretary of State in writing by the relevant person.

#### *Access to school by local authorities and participation in annual reviews*

**19.—(1)** A person authorised by a local authority which arranges for pupils to attend the school shall be afforded access to the school at all reasonable times.

(2) At the request of the local education authority, the governing body, head teacher and staff shall participate in any review, conducted by the authority pursuant to section 328 of the 1996 Act, of a statement under section 324 of that Act which relates to any registered pupil at the school, making no charge to the authority for such participation.

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(a) 1989 c. 40.

*Prospectus*

20. The governing body—
- (a) shall prepare and publish in advance of each school year a prospectus giving information about the school in relation to the school year in question, including, in particular, the information specified in Part III of this Schedule; and
  - (b) shall send a copy of each year's prospectus to the Secretary of State and, on request, to any local authority which arranges for pupils to attend the school and to the parents of any registered pupil at the school or of any other child.

PART III

**INFORMATION TO BE PUBLISHED BY THE GOVERNING BODY**

21. The information referred to in paragraph 20 to be included in the prospectus is as follows:
- (1) The name, address and telephone number of the school and the names of the head teacher and of the chairman of the governing body.
  - (2) The classification of the school as a day or boarding school or a school taking both day and boarding pupils.
  - (3) The description of pupils for whom provision is made categorised by reference to—
    - (a) the number, age and sex of day and of boarding pupils, respectively, and
    - (b) their respective special educational needs.
  - (4) Where there are specific arrangements for parents of pupils at the school, or parents considering sending their child to the school, to visit it, particulars of those arrangements.
  - (5) Particulars of the school curriculum including, in particular—
    - (a) the curricula for different age groups;
    - (b) the subject choices, if any, available (including the arrangements for the making by parents and pupils of such choices);
    - (c) the manner and context in which sex education is given in accordance with paragraph 11 in Part II of this Schedule; and
    - (d) the careers education provided.
  - (6) Particulars relating to the school curriculum including, in particular—
    - (a) a list of the external qualifications for which courses of study are provided for pupils of compulsory school age at the school and which are for the time being approved by the Secretary of State or by a designated body under section 400 of the 1996 Act;
    - (b) the titles of the syllabuses associated with the qualifications referred to in sub-paragraph (a), or, where criteria for determining a syllabus have been so approved, a statement to that effect;
    - (c) a list of the external qualifications, and the names of the syllabuses associated with them, which are offered to pupils over compulsory school age; and
    - (d) the arrangements for the inspection and (where applicable) the obtaining of copies of any documents which are for the time being required to be made available by or under the Education (School Curriculum and Related Information) Regulations 1989<sup>(a)</sup>.
  - (7) The affiliation, if any, of the school with a particular religion or religious denomination.
  - (8) Without prejudice to sub-paragraphs (5) and (6), particulars of the religious education provided at the school and of any arrangements for the parent of a pupil to express his wish that the pupil be withdrawn from attendance at collective worship or religious education, as mentioned in paragraph 10 in Part II of this Schedule.
  - (9) Without prejudice to sub-paragraphs (5) and (6), particulars of special curricular and other arrangements made for particular classes or descriptions of pupil.

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(a) S.I. 1989/954.

(10) Particulars of the organisation of education at the school, in particular in respect of the teaching of children of different ages and abilities together or in separate groups (either generally or in particular subjects) and requirements as respects homework.

(11) Particulars of arrangements for pastoral care.

(12) General arrangements as to school discipline and the arrangements for bringing school rules to the attention of pupils and parents.

(13) The main societies and activities open to, and the facilities available to, pupils at the school otherwise than as part of the education provided therein.

(14) Particulars of the tuition and other fees payment of which is a condition of attendance at the school, including boarding fees in the case of a school which takes boarding pupils.



## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations revoke the Education (Special Schools) Regulations 1994 and replace them in respect of special schools which are not maintained by a local education authority (“non-maintained special schools”). Provisions relating to maintained special schools are contained in the Education (Maintained Special Schools) (England) Regulations 1999 (S.I. 1999/2212).

They make provision for the approval of non-maintained special schools by the Secretary of State. They prescribe the requirements which must be observed by such schools in order to be approved and while such approval is in force.

Provision is made for withdrawal of such approval.

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