

## Guidance

# Non-maintained special schools: intervention and accountability

Published 1 February 2016

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The Department for Education (DfE) needs to hold schools and colleges to account for their performance. This is so that all children and young people can attend good or outstanding schools and colleges.

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If a non-maintained special school (NMSS) is underperforming or failing, DfE will intervene. We can intervene:

- as the regulatory body for NMSS
- under the terms of the school's funding agreement with the Secretary of State for Education

The type and level of intervention will depend on:

- the individual circumstances
- the conditions in the school's funding agreement

A NMSS is a school for children with special educational needs, approved by the Secretary of State for Education under [section 342 of the Education Act 1996](#).

## Intervention: legal background

The [Non-Maintained Special Schools \(England\) Regulations 2015](#) set out the requirements that a NMSS must comply with to be approved by the Secretary of State for Education.

Read [guidance for NMSS on complying with the regulations](#).



## Causes for intervention

DfE will intervene if:

- Ofsted inspects a school (a 'section 5 inspection') and judges that it



either:

- requires special measures (the school is inadequate overall, including its leadership and management)
- has serious weaknesses (the school is inadequate overall and requires significant improvement, but the leadership and management are not inadequate)
- Ofsted inspects a school's residential provision and judges that it does not meet the [national minimum standards for a residential special school](#)
- we judge that a school's financial health is inadequate

In any cases where a child is at risk of significant harm, we can take emergency action to close the school.

Ofsted carries out inspections under [section 5 of the Education Act 2005](#) - read about [the process of and legal basis for inspection](#). Ofsted can combine residential and section 5 inspections.

Most NMSS are charities. If we decide to intervene in a NMSS that is a charity, we will let the Charity Commission know what action we plan to take and why.

## Intervention after an Ofsted section 5 inspection

DfE will intervene if Ofsted judges a NMSS to be in special measures or have serious weaknesses after a section 5 inspection.

## Monitoring visits and re-inspection

If a school is judged to be in special measures or have serious weaknesses, Ofsted will arrange monitoring visits and will reinspect the school.

After a monitoring visit, we will normally intervene if Ofsted judges that the school is one of the following:

- not making reasonable progress
- unlikely to achieve a judgement of at least 'requires improvement' when Ofsted reinspects it

We could intervene by:

- adding new obligations to the school's funding agreement
- preventing the school from recruiting more students, or capping student numbers
- terminating the funding agreement

Intervention could include withdrawing the school's approval, which means it will be required to close.

Read about what Ofsted inspectors assess and report on when they monitor [schools subject to special measures and schools that have serious weaknesses](#).

## Case conferences

Ofsted will let DfE know if they have judged a school to be in special measures or to have serious weaknesses. DfE will then contact the school to arrange a programme of 'case conferences'. These are meetings where representatives from DfE, the school and the local authority discuss:

- how DfE will intervene to help the school improve

- what the school must do to improve
- how DfE will monitor progress

## **Intervention after an Ofsted residential inspection**

### **Failure to meet national minimum standards**

DfE will always intervene if Ofsted finds that a school has failed to meet the [national minimum standards for residential schools](#).

In these cases, we will ask the school for a detailed action plan, with supporting evidence, to show how and when the school will correct the failures.

If the school does not provide this action plan, or if Ofsted judges that the school isn't making enough progress in implementing the action plan, we are likely to withdraw approval for the school. This means it will be required to close.

### **Inadequate residential provision**

DfE will also intervene if Ofsted judges that the school's residential provision is inadequate overall.

The action we take will depend on the individual circumstances but can include:

- adding extra obligations to the school's funding agreement
- terminating the school's funding agreement

## Intervention due to inadequate financial health

We assess the financial health of a NMSS regularly - see more detail about [financial health assessments](#).

We will use the school's latest audited financial statements to review its:

- solvency (ie whether the school has enough current assets to cover its current liabilities)
- sustainability (ie the school's surplus divided by its income)
- financial status (ie what percentage of the school's reserves is debt)

If we judge that a school's finances are inadequate, we will intervene. We could:

- add new obligations to the school's funding agreement
- prevent the school from recruiting more students, or cap student numbers
- terminate the funding agreement

If we judge that a school is not financially viable, we can withdraw the school's approval, which means it will be required to close.

## Intervention in children's homes registered as special schools

DfE will consider all safeguarding concerns and general complaints about a NMSS. This includes a NMSS that is also registered as a children's home.

All children's homes must meet the [Children's Home Regulations 2015](#) and the associated quality standards. Read guidance on the [children's homes regulations and the quality standards](#).

Ofsted inspects children's homes to check that they meet these standards. If they do not meet the standards, Ofsted can intervene or recommend action.

If the home is also registered as a NMSS, DfE can ask Ofsted to take further action. This could include asking Ofsted to carry out a section 5 inspection of the NMSS.



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