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Guidance

High needs funding: due diligence process for special post-16 institutions for academic year 2020 to 2021

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1. Introduction

Local authorities may choose to place young people with special educational needs (SEN) and disabilities (SEND) in special post-16 institutions where they consider that this provision will best meet the young person's needs. Such placements will generally be made following a statutory education, health and care (EHC) assessment and will be accompanied by a statutory EHC plan (made under the Children and Families Act 2014). Such provision can be funded solely by the local authority (LA) from their high needs budget. Special post-16 institutions, as defined below, can also receive some of their funding directly from the Education Skills and Funding Agency (ESFA).

This publication provides information for institutions on the requirements and process they must follow in order to be considered for funding for places by ESFA for high needs students, for the first time in 2020 to 2021.

These requirements are:

1. That the institution is a special post-16 institution as defined below.
2. That the institution has been included within their provider LA high needs place change notification workbook for 10 or more places. The provider LA is the LA in whose area the institution is located;
3. That the institution has been or will be named in an Education Health and Care (EHC) plan for 10 or more high needs students.
4. That the Institution has actively traded for a minimum of 12 months and is able to supply management accounts for that period.

Institutions that meet these requirements will then be subject to ESFA's due diligence process, which will determine eligibility for direct funding.

There are 3 stages to the due diligence process:

- stage 1 – legal status and background information, and LA confirmation of placements and reason for seeking direct ESFA funding for institution, including why provision isn't available elsewhere if the institution is new
- stage 2 – financial health assessment
- stage 3 – quality of provision

2. Definitions

For funding purposes and for this guidance, a high needs student is defined as:

1. A young person aged 16 to 18 who requires additional SEND support costing over £6,000 per annum; and
2. A young person aged 19 to 25 subject to an EHC plan who requires additional SEND support costing over £6,000 per annum.

High needs funding for 16 to 25 year olds consists of both place funding (sometimes known as elements 1 and 2), which is provided to the institution directly by ESFA, and top-up funding (element 3), which is provided to the institution by the LA. In all instances, element 3 has to be agreed between the LA and institution. If the LA does not agree to pay top-up funding for a student, then they are not counted as having high needs for funding purposes. [Further information](#) is available on GOV.UK.

For the purposes of Part 3 of the Children and Families Act 2014, which provides the legal framework for the provision of education to students with SEND, special post-16 institutions are defined in section 83 of that Act as 'a post-16 institution that is specially organised to make special educational provision for students with special educational needs'.

3. ESFA funding allocations

To be eligible for consideration for ESFA grant funding in academic year 2020 to 2021, new institutions must have been included within the high needs place change notification workbook returned by the LA in which the institution's main premises are situated (the "provider LA") to ESFA. If another LA requires places, it should liaise with the provider LA to ensure that those places are recorded on the provider LA return.

The deadline for return of the place change notification is 15 November 2019.

The provider LA should only include on their return institutions that have not previously been funded directly by ESFA, and that they and/or other LAs have identified in EHC plans as suitable for 2020 to 2021 placements in respect of at least 10 students. Institutions with fewer than 10 high needs students placed by LAs can receive all their funding from the LAs.

Following the closing date for return of the place change workbook ESFA will contact eligible institutions to begin the due diligence process, which must be completed by 31 March 2020 for consideration for ESFA funding for academic year 2020 to 2021.

In addition to the [high needs funding operational guidance](#), institutions should refer to the [Student Eligibility guidance](#) for more general student eligibility criteria, information on funding rates and formula, and other ESFA supporting documents. Where applicable, all institutions receiving funding direct from ESFA will also be required to administer the distribution of Student Support funds, including 16 to 19 Bursaries.

For data submission requirements, institutions should refer to the guidance on [submitting Individualised Learner Record \(ILR\) returns](#). ILR submissions in accordance with these requirements are mandatory for all ESFA funded institutions. Institutions must have systems in place to enable ILR submissions to be made.

4. Requirements

All ESFA funded institutions are required to be compliant with all clauses of the funding agreement between ESFA and the institution. Funding agreement requirements include assurance on the institution's financial health, use of funds, quality of the education and training provision, safeguarding including [keeping children safe in education](#) (KCSIE) and student outcomes.

Applicants are advised to read the current ESFA funding agreement attached at Annex 1, to assure themselves that they will be able to meet ESFA's requirements. The ESFA funding agreement is updated on an annual basis and clauses may be changed or added to each year.

There may be other statutory requirements that institutions providing services to young people must comply with. It is the responsibility of institutions to ensure that they are compliant with all relevant legal requirements. ESFA accepts no liability in respect of any failure by an institution in the event of non-compliance with such legal requirements.

Any institution that successfully completes all stages of the due diligence process will be considered for an ESFA academic year 2020 to 2021 funding agreement.

5. Timescales

This due diligence process must be completed by 31 March 2020.

At each stage of the process ESFA will acknowledge receipt of information supplied. Once complete information has been received for each stage, ESFA will review and respond with feedback where required. Where relevant this will include details of the requirements for progression to the next stage.

All stages must be successfully completed before ESFA will make an offer to enter into a funding agreement with an institution on behalf of the Secretary of State for Education. Failure to fully respond to questions posed during the process, and/or supply requested evidence/information may result in delays or failure to meet the due diligence required.

Institutions will be required to bear all their costs associated with completing the process.

6. A high needs student study programme

Special post-16 institutions educate young people with complex special educational needs, and so the majority of young people placed in such an institution will have an EHC plan. The EHC plan will note the young person's long-term aspirations, identify their special educational needs, specify measurable

outcomes including outcomes to prepare the young person for adult life, and set out provision. We expect the LA and an institution to work together to agree a suitable study programme for the young person, which must be tailored to their individual aspirations and support needs. Information on the latest [core aims study programmes](#) can be found on GOV.UK. The English and maths condition of funding applies. Further information on this [condition of funding](#) can be found on GOV.UK.

More information about preparing for adulthood is in Chapter 8 of the [SEND Code of Practice](#) and at the [Preparing for Adulthood](#) website.

The vast majority of young people with SEN, including those with complex needs, are capable of sustainable paid employment with the right preparation and support. A supported internship is one type of study programme specifically aimed at young people aged 16 to 24 who have an EHC plan, who want to move into employment and need extra support to do so. Published supported [internships advice](#) is available on GOV.UK.

7. Local authority funding

The LA and institution must agree a support package to enable the young person to participate effectively in the study programme. The first £6,000 per annum of the costs of the support package will be met through the funding from ESFA (although LAs bear most of these costs indirectly through the operation of the national funding formula through which their allocations of high needs funding are calculated). Any additional costs of support in excess of the £6,000 per annum directly funded by ESFA will be met through top-up funding from the LA, including contributions from health and social services where appropriate. LAs will need to secure agreement on how costs are to be shared between the relevant budget holders, those both within, and outside of the LA (such as, health).

8. Stage 1 – legal status & background information

The institution is required to complete Annex 2 to evidence:

- legal status – information as to the institution and the legal owner of the institution, for example whether the legal owner is an individual or company
- information relating to the student cohort and provision (either to be commissioned or already commissioned)
- confirmation of agreement to abide by the terms and conditions of ESFA funding agreement attached at Annex 1 or any future terms and conditions as amended by ESFA from time to time

- contact details to be used by ESFA to provide an update on the outcome of each of the stages of the process
- self-assessment of provision where available

The commissioning LA will be contacted by ESFA at this stage and will be asked to provide the following information:

- confirmation on the number of students that have been commissioned at the institution and how many of these students hold an EHC plan
- a statement to evidence their rationale for placing students at the institution, for example, if this is filling a gap in existing provision? In the case of new special post-16 institutions, LAs may be asked to explain why existing institutions can't make the required provision
- details on the amount of top-up funding per student they have agreed to allocate to the institution, and the number of students within the total student number they expect to be assessed as having high needs

9. Stage 2 – financial health assessment

Financial health of institutions is assessed using the ESFA's financial health assessment methodology. The formula based assessment categorises an institutions' financial health as either exempt, outstanding, good, satisfactory, or inadequate. These categories are based on a scoring of 3 ratios: solvency (current ratio); performance (profit after tax, minus dividend payments divided by income); and gearing (total debt as a percentage of reserves and debt).

Applicants that have produced formal financial statements must provide them to the Agency in support of their application. These must be the latest full financial statements (not abbreviated, not filleted, nor accounts for a micro entity), and audited, if appropriate. If full financial statements are not required for Companies House filing, organisations must still submit their full financial statements to us.

For an institution that has actively traded but not produced its first set of financial statements, it must supply its management accounts detailing actual trade to date, these must equate to a minimum of 12 months actively trading duration. As a minimum this information must consist of:

- profit and loss account (may be a combination of actual and forecast)
- cash flow statement (may be a combination of actual and forecast)
- end of period balance sheet (may be a combination of actual and forecast)
- full explanation of assumptions behind the figures provided, including relevant notes and a breakdown of all debtors / creditors and borrowings, both long and short term

Management accounts and forecast information cannot be submitted in place of

financial statements that are available. Any financial health grade awarded from the submission of management accounts will only remain valid until the first set of financial statements become available.

Institutions whose financial health is assessed as being inadequate or that have omitted to provide the financial information required will fail the application process and will not be offered an ESFA funding agreement. If an institution successfully completes the process, a recommended maximum ESFA funding limit may be applied. This funding restriction would be for ESFA funding and not inclusive of LA element 3 top-up funding or any other funding the institution receives.

Institutions which do not have the necessary financial expertise themselves are advised to seek professional financial advice to ensure that the correct financial information is submitted. If the information submitted is incomplete or incorrect, the institution will fail at that stage. There will be no opportunity to re-submit amended or additional financial information.

ESFA reserves the right to carry out further financial checks throughout the due diligence process if more up to date information becomes available. The ESFA also reserves the right to undertake further financial checks if you are successful with your application.

10. Stage 3 – quality of provision

Institutions are required to demonstrate the quality of their provision by submitting evidence:

- of the latest Ofsted inspection report (if available)
- of the latest Care Quality Commission (CQC) inspection (if available)
- of the study programmes available, including information about supported internships and other study programmes focused on preparation for adult life
- that the staff are suitably qualified to undertake the role for which they are employed
- their plans for ensuring that the provision will be distinctively post-16 in nature, with facilities appropriate for the age group

An institution with an inadequate overall, or in part, grade from Ofsted will be unsuccessful in securing an ESFA funding agreement. An institution that is not compliant with CQC standards will be unsuccessful.

Where an institution is newly established and has not yet been the subject of inspection by either Ofsted or CQC (see below), and is otherwise successful in securing an ESFA funding agreement, it will be inspected within 2 years of the ESFA funding agreement being in place. The outcome of any such inspection may affect the maximum value of the funding agreement.

11. Site visit

ESFA will request a DfE consultant to undertake a visit to the planned delivery site, as part of stage 3 of the process. This visit will focus on the quality and costs of provision, the proposed curriculum and study programmes, internal policies in place, qualifications and experience of management and teaching staff and governance arrangements. By commencing the due diligence process, the owners of the institution indicate their consent to allowing such a consultant access to the institution premises, staff and existing students in order to comply with the requirements of the due diligence process.

A representative from the main commissioning LA will be required to be present at this visit. The DfE consultant will seek information from the representative about the number of students being placed at the institution and the rationale behind the commissioning decisions. In the case of a new institution, the information requested may include the reasons why the LA is not able to use existing post-16 provision.

12. Outcome

An institution will not receive funding directly from ESFA if there is insufficient evidence for the following:

- one or more LAs are commissioning, or planning to commission, 10 or more high needs placements for students who are subject to an EHC plan, at the institution in the academic year 2020 to 2021
- staff are suitably qualified to undertake the role for which they are employed
- the institution has at least a satisfactory level of financial health

The final decision to issue a funding agreement will be taken by officials in ESFA on behalf of the Secretary of State for Education. The institution will be informed of the decision in writing including, where successful, any maximum ESFA funding limit. Institutions not considered suitable for funding by ESFA will be provided with feedback.

Receipt of funds in one academic year is not a guarantee that ESFA funding will be allocated in subsequent years. This will be dependent on a number of factors, including but not limited to individual LA commissioning decisions, confirmation that the institution can demonstrate it is fit for continued funding by remaining above the thresholds expected for quality, finance, departmental policy and available ESFA budget.

13. ESFA contact details

The documentation related to this process will be managed via a dedicated email address HNSDueDiligence.ESFA@education.gov.uk.

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