

School Funding and Special Educational Needs

This note is intended to give a brief overview of how funding is allocated to schools. School finance is a complex area of legislation; for specific advice please contact our School Support Service at schoolsupport@wslaw.co.uk

Legislation and Guidance relating to School Funding

The statutory basis for how funding is provided to Local Authorities and how that funding in turn is allocated to maintained schools through “individual school budget shares” is set out in the School Standards & Framework Act 1998 (which acknowledges the right of the Governing Body of a maintained school to receive a delegated budget) and The School and Early Years Finance (England) Regulations 2020 (the **School Finance Regulations**). Further guidance can be found in the “Schools Revenue Funding 2020 to 2021 Operational Guide” (the **Operational Guide**) published in February 2020 (and for the new financial year, the [2021-2022 Operational Guide](#), updated in December 2020). Although not statutory guidance, Local Authorities will be expected to comply with it and any decision which ignores applicable guidance or is selective about which aspects of guidance to follow is likely to be more vulnerable to a successful challenge by way of judicial review.

Whilst academies are funded directly by the ESFA, funding allocations are determined by reference to the relevant Schools Forum and principles applying to maintained schools apply equally to academies. Local Authorities, in determining funding allocations and applying funding factors, must consult with all maintained schools and academies in their area, through the Schools Forum or individually if necessary. Whilst Local Authorities are expected to obtain the agreement of Schools Forum to formula changes and funding allocations, the decision maker remains the Local Authority. Certain other decisions, such as movements between blocks (see below) and expenditure of the Central Schools Services Block, can be proposed by the Local Authority but must be decided by Schools Forum.

Decisions about applying funding factors will be made by the Local Authority with the ESFA’s role being limited to ensuring compliance with regulations.

The DSG and Funding Blocks

The current system of funding schools works on the basis that local authorities are provided with a pooled fund (the Dedicated Schools Grant or **DSG**) which is broken down into the “Schools Block” , the “Central Services Block”, the “Early Years Block” and the “High Needs Block”. Whilst the amount of the DSG is calculated by reference to individual school budget shares and nominally allocated to schools as a result of the national funding formula, it is still paid (and in the case of academies nominally allocated) to Local Authorities as a block. Local Authorities then decide how much of the block funding to allocate to schools having regard to Government guidance (e.g. the DfE’s High Needs Funding Operational

Guide 2020-21, and for the new financial year the High Needs Funding Operational Guide 2021-22, published in September 2020) and following the LA's own "Scheme for Financing Schools".

The Schools Block is generally ring fenced but there is some limited authority to transfer funds out of the Schools Block of up to 0.5% with the approval of Schools Forum (any request to transfer more would need to be a disapplication request i.e. require the consent of the Education & Skills Funding Agency (ESFA)). In recent years transfers from the Schools Block to the High Needs Block have been common as Local Authorities have sought to address significant shortfalls in the High Needs Block. Reductions in central Government funding allocations of the Central Schools Services Block (the element retained by Local Authorities to support schools and fulfil the Local Authorities' statutory functions) has increased pressure on Local Authorities with the consequent scaling back of some services and support, which in turn has put more pressure on schools as they are forced to do more with less. The Operational Guide notes that in 2020 to 2021 the High Needs Block of the DSG increased by an average of 12%, and in 2021 to 2022 it will increase by an average of 10%. Overall funding for schools and high needs, compared with 2019 to 2020, is increasing by £2.6bn in 2020 to 2021, £4.8bn in 2021 to 2022 and £7.1bn in 2022 to 2023.

The DfE is currently consulting on proposed changes to the High Needs National Funding Formula, which provides funding to Local Authorities for children and young people with SEND or who require alternative provision. The consultation closes on 24 March 2021. A copy of the consultation document can be found [here](#).

Schools Block

All schools will receive or be allocated funding from the Schools Block. This is determined each year by the Local Authority applying a number of "factors" some of which are compulsory (such as deprivation) and others optional (for example prior attainment).

There are two overriding requirements in respect of the Schools Block:

1. Local Authorities must allocate at least 80% of the delegated schools block funding through pupil-led factors (i.e. excluding premises factors such as PFI).
2. Local Authorities must ensure schools receive the minimum per-pupil funding set by the National Funding Formula and benefit from the "minimum funding guarantee" which local authorities must set within the required range, which is currently between +0.5% and +2% per pupil.

Regulation 21 of the School Finance Regulations stipulates that

*"In order to determine the budget shares for schools maintained by it (other than special schools, pupil referral units and nursery schools), a local authority—
(a) must comply with the requirement for minimum per pupil funding set out in regulation 22, and
(b) may take into account in its formula any or all of the requirements, factors or criteria mentioned in Part 1 of Schedule 3."*

So, provided the minimum requirements are met, a Local Authority has some discretion with regard to the non compulsory factors but will typically apply the same optional factors each year. By implication, if the minimum requirements are not met and the ESFA has not given any approval to a disapplication request, the Local Authority will be forced to adjust allocations under the optional factors (unless it is to operate with a deficit budget). However, there are no restrictions or guidance on which optional factors to prioritise, except to the extent that Schools Forum might have a view (given the obligation to consult) and the Local Authority would be expected to have due regard (i.e. to comply unless there is a very good reason not to) to any preference expressed.

Funding for pupils with SEN

Funding to schools for pupils with Special Educational Needs (with or without an Education, Health and Care Plan) is typically broken down into **Place Funding** (part of the core funding- the annual allocation that a school receives directly from the LA or from the ESFA), which is a notional £6,000 per pupil with SEN, and **Top Up Funding** which is pupil specific, or rather is designed to be calculated by reference to the provision that a pupil needs as identified in their EHCP. Once Place Funding is allocated it is not associated with or reserved for a specific student; it is for the setting to decide how best to apportion their total allocated core funding. There is no specific reference (or entitlement) to an amount of funding in the EHCP itself.

Note that schools have a duty to admit any pupil where the EHCP names the School/Academy, irrespective of whether the School/Academy considers that it can meet the required needs of the pupil¹ or is funded adequately to meet that need (s. 43 Children and Families Act 2014). Similarly, schools are not allowed to delay admission or make the continuation of a placement contingent on whether there is an agreement on the amount of Top Up Funding (see note 84 of the Operational Guide). It is the duty of the Local Authority to secure the special educational provision required for children for whom it maintains an EHCP which includes an implied duty to do all things necessary to meet that obligation including to make arrangements to fund the provision set out in section F of the pupil's EHCP (s.42 Children and Families Act 2014).

The DfE's Operational Guide makes it clear that Local Authorities bear the ultimate responsibility for decisions on Top Up Funding and there is no statutory or notional funding rate nor any specific entitlement to funding (see note 82 of the Operational Guide). Local Authorities are expected to work with institutions that have pupils or students with high needs to ensure there are clear processes for determining and allocating Top Up funding. **This should include agreeing what additional needs mainstream schools and colleges should meet from their own resource** (taking account of any additional support or funding provided centrally) and where Top Up funding might be provided. This information should be published as part of the Local Authority's local offer of special educational needs and disabilities (SEND) services and provision. Local Authorities are expected to make timely payments of Top Up Funding once an allocation is agreed. Schools are entitled to contact the ESFA if there is an issue agreeing an allocation or receiving payment (see note 85 of the Operational Guide). Whilst funding in theory follows need, in reality because funding is allocated based on formulae, it is possible that a funding allocation will not adequately cover the cost of provision. Schools are nevertheless expected to manage within their allocated budget. Local authorities can provide additional funding outside the main funding formula for mainstream schools and academies on a consistent and fair basis where the number of their pupils with SEND and/or high needs cannot be reflected adequately in the funding they receive through the local funding formula (see note 103 of the Operational Guide).

How we can help

We have experience advising individual schools, multi academy trusts and local authorities with SEN funding queries. We can also provide advice and training in relation to wider SEND issues, for example the EHCP process, annual reviews, and SEND tribunals. Please contact our School Support Service by email at schoolsupport@wslaw.co.uk or by phone on 0345 070 7437.

¹ We regularly provide advice on how schools can challenge being named in an EHCP. Please contact us for further information or to request a copy of our briefing note.