

# Access by External Professionals and Privately Commissioned Providers Policy

Be Pioneering, Be Altruistic, Be Ethical.

## 1. Purpose and scope

- 1.1 This policy explains how Schools for Every Child ("the Trust") decides whether individuals and organisations that are not employed, engaged or commissioned by the Trust, by a local authority or by the NHS may enter a school site in order to work with, teach, assess, observe or otherwise support a pupil.
- 1.2 The policy applies to Rayleigh Primary School, Wyburns Primary School and North Crescent Primary School. It applies to all requests of this kind, whoever makes them, including requests from parents and carers, their representatives, and practitioners engaged by them. It covers, without limitation, tutors, physiotherapists, occupational therapists, speech and language therapists, psychologists, specialist teachers, coaches, mentors, therapists of any discipline and advocates, however well qualified the individual may be.
- 1.3 This policy does not apply to: members of staff, supply staff, agency workers, volunteers and contractors engaged by the Trust under its own recruitment, vetting and management arrangements; professionals commissioned by a local authority or by the NHS and acting in that capacity, whose access is addressed at section 5; ordinary visitors received under the schools' visitor procedures; or community lettings outside the school day, which are governed by the Trust's lettings arrangements and which do not involve access to pupils during the school day.
- 1.4 Nothing in this policy removes, limits or qualifies any statutory duty owed by the Trust, by a local authority or by an NHS body. If anything in this policy conflicts with a statutory duty, the statutory duty prevails. The policy applies equally to all families across all of our schools.

## 2. Our position in summary

- 2.1 We warmly welcome professional input into children's lives, and we will always facilitate provision that a local authority or the NHS has commissioned for a child in one of our schools.
- 2.2 We do not, however, normally permit privately commissioned professionals, providers or tutors to deliver teaching, therapy or other ongoing services to pupils on our school sites during the school day. The Trust remains legally responsible for every child's safety, supervision, welfare and education throughout the school day. It cannot discharge those responsibilities in respect of adults it does not engage, vet to its own standards, manage, direct or insure.

- 2.3 We will consider reasonable requests for a time-limited independent assessment or observation visit, particularly where this is connected to a statutory process, under the supervised conditions set out in this policy.
- 2.4 We will always work constructively with families' private professionals in the ways described at section 11, including receiving and considering their reports and meeting them at mutually convenient times.

### **3. Legal framework**

- 3.1 This policy has been prepared with regard to the following legislation and guidance:

Children and Families Act 2014, Part 3 (including sections 31, 42, 43 and 66)  
Special Educational Needs and Disability Regulations 2014  
Special Educational Needs and Disability Code of Practice: 0 to 25 years (2015)  
Equality Act 2010, including the public sector equality duty under section 149  
Education Act 2002  
Education (Independent School Standards) Regulations 2014  
Education Act 1996, including section 547  
Keeping Children Safe in Education (current edition)  
Working Together to Safeguard Children (current edition)  
Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012  
Health and Safety at Work etc. Act 1974  
Occupiers' Liability Act 1957 and Occupiers' Liability Act 1984  
UK General Data Protection Regulation and Data Protection Act 2018  
Academy Trust Handbook and the Trust's funding agreements  
Department for Education guidance on controlling access to school premises

- 3.2 Access to a school site is by permission of the Trust as occupier of its premises. No person, however qualified, and regardless of any instruction they have received from a parent, carer or other party, has an automatic right of entry to a school site or a right to work with a pupil on it. Permission, where given, is a licence which may be subject to conditions and which may be withdrawn.
- 3.3 The Trust and its headteachers remain responsible in law for the safety, supervision, welfare and education of pupils throughout the school day. That responsibility cannot be delegated to, or shared with, persons who sit outside the Trust's employment, management, safeguarding and insurance arrangements.

### **4. Guiding principles**

- 4.1 The welfare and safety of all pupils takes precedence over every other consideration.
- 4.2 The Trust will always meet its statutory obligations, including its obligations in respect of provision secured by a local authority under an Education, Health and Care plan and provision ordered by the First-tier Tribunal (Special Educational Needs and Disability).

4.3 Every request is considered on its own merits. This policy establishes presumptions and a consistent framework; it is not an inflexible rule, and decision makers retain discretion in every case, exercised with due regard to the Trust's duties under the Equality Act 2010.

4.4 Decisions are given in writing, with reasons, within the timescales set out in this policy.

4.5 Where the Trust declines a request for on-site access, it will offer the forms of co-operation described at section 11.

## **5. Professionals commissioned by a local authority, the NHS or the Trust**

5.1 Where a local authority secures special educational provision for a pupil under section 42 of the Children and Families Act 2014, including provision specified in Section F of an Education, Health and Care plan, and the local authority arranges or commissions external professionals to deliver any part of that provision, the school will facilitate their work on site, subject to the school's standard visitor, identification and vetting assurance procedures.

5.2 The same applies to health care provision specified in Section G of an Education, Health and Care plan and commissioned by the responsible NHS body, and to professionals such as NHS therapists, school nursing services and community paediatric services acting in that capacity.

5.3 Where the First-tier Tribunal (Special Educational Needs and Disability) makes an order in respect of a pupil, the Trust will co-operate fully with the local authority in giving effect to that order.

5.4 The Trust itself commissions external specialists where it judges this necessary or desirable. Such specialists are engaged under contract with the Trust and are subject to its vetting, insurance, management and quality assurance arrangements.

5.5 A request that a local authority commission a particular practitioner or provider is a matter for that local authority in the exercise of its statutory functions. If a local authority decides to commission and arrange particular provision, paragraph 5.1 applies. For the avoidance of doubt, a local authority's awareness, approval or endorsement of a privately engaged practitioner does not of itself convert that practitioner into commissioned provision, and does not create any right of access to a school site.

## **6. Privately commissioned professionals and providers**

6.1 In this policy, a privately commissioned professional or provider means any individual or organisation engaged or paid, directly or indirectly, by a pupil's family or by a third party acting for the family, and not commissioned by the Trust, by a local authority or by the NHS.

6.2 The Trust will not normally permit privately commissioned professionals or providers to deliver teaching, tuition, therapy, interventions, mentoring, coaching or other ongoing services to a pupil on a school site, whether during lesson time or at any other point in the school day. This position reflects the Trust's legal responsibilities

and the reasons set out at paragraph 6.3, and it applies regardless of the qualifications, registration or professional standing of the individual concerned, which the Trust does not doubt in the general case.

6.3 The reasons for this position are as follows.

- (a) **Safeguarding and vetting.** Keeping Children Safe in Education requires the Trust to obtain assurance about the identity, vetting, suitability, training and conduct of adults who work with its pupils, and work of this kind will ordinarily amount to regulated activity within the meaning of the Safeguarding Vulnerable Groups Act 2006. The Trust's assurance regime, which includes enhanced Disclosure and Barring Service checks with children's barred list information, references, verification of qualifications, safer recruitment procedures, induction, supervision and ongoing monitoring, applies to people the Trust engages and manages. The Trust cannot obtain equivalent assurance, and cannot exercise equivalent ongoing oversight, in respect of personnel privately engaged by others. Sight of certificates alone is not equivalent to that regime.
- (b) **Supervision, direction and control.** Every adult working with pupils during the school day must work under the direction of the headteacher and within the school's policies, including its safeguarding, behaviour, health and safety and data protection policies, with safeguarding concerns reported through the designated safeguarding lead. A privately engaged practitioner owes their contractual and professional duties to the family who commissions them, not to the school. Divided lines of accountability in respect of children during the school day are neither safe nor operationally workable.
- (c) **Responsibility for education and provision.** The school is accountable to parents, to local authorities, to the Department for Education and to Ofsted for the education and provision it delivers. It cannot be accountable for provision delivered on its site by persons it does not manage, and the operation of parallel, privately directed provision within the school day fragments a pupil's curriculum, timetable and provision and undermines their coherence.
- (d) **Fairness, verification and records.** Where there is an actual or potential disagreement about a child's needs or provision, material gathered on a school site by practitioners instructed by one party to that disagreement, without the school's oversight of methodology, sampling or context, cannot be verified or quality assured by the school and creates a real risk of unfairness. The school's own records and assessments are produced by accountable professionals and are open to appropriate scrutiny through statutory processes.
- (e) **The rights of other pupils.** An external adult present in classrooms, corridors and playgrounds necessarily observes children other than the pupil concerned. This engages the privacy rights of those children and the Trust's obligations under the UK General Data Protection Regulation and the Data Protection Act 2018. The consent of other families can neither be assumed nor practicably obtained.

(f) **Insurance and liability.** The Trust owes duties as occupier of its premises and under health and safety legislation to everyone on site. Privately commissioned arrangements commonly involve unclear or unverifiable insurance, indemnity and liability positions, which exposes pupils, staff and the practitioner concerned to unacceptable risk.

(g) **Equity and operational capacity.** The Trust must be able to apply its decisions consistently and sustainably across all families in all of its schools. School sites cannot operate as venues for private practice, and the supervision of external adults diverts staff time and attention away from pupils.

6.4 The headteacher, with the approval of the Chief Executive Officer, retains a discretion to permit access in exceptional circumstances where satisfied that the conditions at sections 9 and 10 are met in full and that access is in the best interests of pupils. The exercise of that discretion in one case does not create a precedent or expectation in any other case.

## 7. Private tuition

7.1 The Trust does not permit privately engaged tutors to teach pupils on its school sites during the school day. Teaching during the school day is the responsibility of the school and is delivered by staff and providers engaged or commissioned by the Trust. Pupils will not be withdrawn from their curriculum entitlement to receive private tuition.

7.2 Families are of course free to arrange tuition privately, off site and outside school hours. Where a family asks, and where consent allows, the school will share appropriate information with a family's tutor in the manner described at section 11 to support consistency for the child.

## 8. Independent assessments and observations

8.1 The Trust recognises that families sometimes commission independent professional assessments of their child, for example from educational psychologists, occupational therapists, speech and language therapists, physiotherapists or specialist teachers, including in connection with a request for an education, health and care needs assessment, an annual review, mediation, or an appeal to the First-tier Tribunal (Special Educational Needs and Disability).

8.2 A request for a time-limited visit to assess or observe a pupil on site is different in character from the ongoing delivery of services and will be considered on its own merits. Such a request will not be unreasonably refused where: the purpose is connected to a statutory process or is otherwise clearly in the interests of the child; the request is made in accordance with section 9 and the evidence required by that section is provided; the visit takes place at a time agreed with the school so that disruption to the pupil, the class and the school is minimised; and the conditions at paragraph 8.3 are accepted in full and in writing before the visit takes place.

8.3 The following conditions apply to every visit under this section, in addition to the conditions at section 10.

- (a) **Supervision by a senior member of staff.** The practitioner will be accompanied and supervised throughout the visit by a senior member of staff designated by the headteacher, normally the special educational needs co-ordinator, the designated safeguarding lead or a member of the senior leadership team. Visits will be arranged for times at which such a member of staff can be released from their other responsibilities. Where a proposed time is not possible for this reason, the school will offer reasonable alternative dates.
- (b) **The school's record of the visit.** The accompanying member of staff will make a contemporaneous factual record of the visit, including who attended, the activities undertaken, the duration, and what was observed. That record is retained by the school and may be relied upon by the school in any subsequent discussion, review, mediation, appeal or other statutory process.
- (c) **No recording.** No photography, audio recording or video recording of any kind may take place.
- (d) **Other pupils.** No pupil other than the pupil concerned may be assessed, tested or evaluated, and no other pupil may be named or rendered identifiable in any resulting report (verbal or written) or advice. Section 12 applies to all data gathered during the visit.
- (e) **Provision of the report.** It is a condition of access that a copy of any report or written advice arising wholly or partly from the visit is provided to the school once it is finalised.
- (f) **Factual accuracy and the school's right of response.** The school does not approve, edit or endorse independent reports, and does not seek to do so. The school does, however, reserve the right to respond in writing to any factual inaccuracy concerning the visit, the school, its staff or its provision, and to place its own record of the visit alongside the report in any process in which the report is used.
- (g) **Duties of an expert.** Where an assessment is commissioned for use in mediation, in proceedings before the First-tier Tribunal (Special Educational Needs and Disability) or in any other formal process, the Trust expects the practitioner to comply with the duties of an expert, whose overriding duty is owed to the tribunal or decision maker and not to the party instructing or paying them.

8.4 Conversations between visiting assessors and members of staff are by prior arrangement, and the staff time committed will be reasonable and proportionate.

8.5 Where a request under this section is refused, the reasons will be given in writing.

## 9. Making a request

9.1 A request for access under section 6 or section 8 must be made in writing to the headteacher at least twenty school days before the proposed visit, or within such shorter period as the head of school/headteacher agrees. The request must state the purpose of the visit, the identity and role of the practitioner, the proposed dates, duration and frequency, and the activities proposed.

9.2 Before a request can be considered, the following must be provided in respect of each individual seeking access: photographic identification; a current enhanced Disclosure and Barring Service certificate with children's barred list information, together with, where the individual subscribes, consent to a DBS Update Service status check; evidence of registration with the relevant professional body, such as the Health and Care Professions Council, where applicable; evidence of relevant qualifications; evidence of public liability insurance with a limit of indemnity of not less than five million pounds and, where applicable, professional indemnity insurance; evidence of up-to-date safeguarding training; and a signed undertaking to comply with the school's safeguarding, behaviour, health and safety, data protection, confidentiality and acceptable use requirements.

9.3 The headteacher will normally give a decision in writing, with reasons, within ten school days of receiving a complete request, and will consult the special educational needs co-ordinator and the designated safeguarding lead as appropriate.

9.4 Incomplete requests will be returned with an explanation of what is missing.

## **10. Conditions attaching to any agreed access**

10.1 Where access is agreed under any part of this policy, the following conditions apply in every case. The visitor must sign in and out and wear the identification issued by the school. The visitor will be accompanied and supervised by a member of staff at all times and must not work alone with any pupil. The visit is confined to the locations, times and activities agreed in advance. Personal mobile devices must not be used in the presence of pupils, and no photography or recording of any kind may take place. The visitor must follow the instructions of staff at all times and must report any safeguarding concern immediately to the designated safeguarding lead.

10.2 Any breach of these conditions will result in the immediate termination of the visit and of the permission granted.

10.3 Permission under this policy is a revocable licence. It may be varied or withdrawn at any time where the headteacher considers it necessary, including on safeguarding, welfare or operational grounds.

## **11. Working with your professionals: what we will always do**

11.1 The Trust values external professional expertise. Whether or not on-site access is agreed, and subject to parental consent where consent is required, the school will: receive and carefully consider written reports, programmes and recommendations from a family's professionals; implement recommendations that are appropriate and feasible through its own staff and commissioned providers, and record what has been agreed; meet or speak with a family's professionals at mutually convenient times; share relevant information about the pupil, including timetable and provision information, to support consistency between home, school and external support; and contribute fully and punctually to statutory assessment, review, mediation and appeal processes.

11.2 Engagement of this kind secures the benefit of external expertise for the child while the school retains the legal responsibilities that it cannot transfer.

## **12. Data protection and confidentiality**

12.1 Visits under this policy involve the processing of personal data, and in some cases special category data, relating to the pupil concerned and potentially to other pupils and staff. The school will share personal data only where there is a lawful basis to do so and with consent where consent is required.

12.2 External practitioners granted access must not collect, record or otherwise process the personal data of any pupil other than the pupil they are attending, or of any member of staff. Reports must not name or render identifiable any other pupil. A breach of this paragraph may be reported to the Information Commissioner's Office and to affected families where the law requires.

## **13. Decisions and complaints**

13.1 All decisions under this policy are given in writing with reasons.

13.2 A parent or carer who is dissatisfied with a decision, or with the way in which this policy has been applied, may raise the matter under the Trust's Complaints Policy, which is published on the Trust's website.

13.3 Disagreements about the content of an Education, Health and Care plan, or about the provision a local authority secures, are matters for the local authority and, where applicable, for mediation or the First-tier Tribunal (Special Educational Needs and Disability). Nothing in this policy affects those rights, and nothing in this policy is intended to interfere with any statutory process.

## **14. Equality**

14.1 The Trust is subject to the public sector equality duty under section 149 of the Equality Act 2010 and gives due regard to it in every decision under this policy, including the duty to make reasonable adjustments for disabled pupils. This policy governs access to school sites by third parties. It does not reduce, remove or condition any provision to which a pupil is entitled, which is delivered through the school and through arrangements made by local authorities and the NHS as described at section 5.