
Inclusion, Exclusion and Segregation

What educational settings need to know about their legal obligations

A briefing for school leaders, SENCOs, governors and MAT trustees | Informed by DfE Inclusion Bases in Schools Guidance, June 2026

The DfE's new ***Inclusion Bases in Schools*** guidance (the "Guidance") arrives at a time when the way educational settings use dedicated provision is under scrutiny. Alongside the ongoing SEND reforms and the Children's Wellbeing and Schools Act 2026, it reinforces a clear desire by the Government to see most children educated in mainstream classes, with the right support around them.

For settings with an Inclusion Base (or considering one) the Guidance serves as a well-timed nudge to check that the provision is operating within the law.

The picture is sharpened further by the ***Restrictive Interventions, Including Use of Reasonable Force, in Schools*** guidance that came into force on 1 April 2026, replacing the 2013 guidance and introducing new statutory duties. Read alongside this latest Guidance, the two documents send a consistent message on the Government expectations: settings are expected to move away from reactive, restrictive responses and move forward towards planned, needs-led, transparent provision that families can see and scrutinise.

This briefing focuses on two specific areas where the legal risks are potentially highest and the consequences of getting things wrong serious: the use of bases as a means of exclusion or removal, and the risk of unintended segregation.

CDS SEND Inclusion wants to help settings be confident they are on the right side of the legal line.

1. The Legal Boundary: Inclusion Bases Are Not a Removal Tool

The guidance is unambiguous on this point. It says unequivocally:

DfE Inclusion Bases in Schools Guidance, June 2026 — direct quote

"Access to an inclusion base, even for behavioural or pastoral support, should never be used as a sanction or for removal from the classroom."

This is not simply a matter of good practice. Where a pupil is removed from mainstream classes without following the proper exclusion procedure, regardless of what that removal is called, it may be an unlawful exclusion. Whatever language is used to describe the arrangement, be it pastoral support, a nurture placement, time in the base, it does not change the legal character of what has happened.

Educational settings should be able to answer clearly “**on what basis is each child accessing the base?**” If the honest answer is to manage behaviour or reduce disruption to others rather than to meet that child's identified additional needs through planned provision, that is the point at which legal risk arises.

The Guidance says base access must be...	The following would raise legal concerns...
- Planned and needs-led from the outset. - Informed by assessment of the child's strengths and needs. - Agreed with parents and carers, not imposed. - Supported by clear entry criteria. - Reviewed regularly against those criteria. - Never used as a consequence for behaviour.	- A child routinely sent to the base when they are dysregulated. - Base access used as a step in a behaviour escalation process. - Placement decided without parental involvement or consent. - No documented assessment or entry criteria underpinning the decision. - A child spending increasing time in the base with no review. - Parents not told in writing where offsite direction powers are used.

2. The Risk of Inadvertent Segregation

The Guidance is equally clear that a base which physically or socially separates children from their mainstream peers without deliberate, reviewed, and needs-led justification is not inclusive. It introduces a continuum model, with settings asked to regularly review their provision and to actively prioritise movement towards mainstream access where appropriate.

Segregation does not have to be intentional to be problematic. It can occur gradually through timetabling decisions, through a base that expands in scope beyond its original purpose, or even through assumptions about what particular children need which fail to be reviewed and amended as needed.

Three questions every setting should be able to answer

- Can we demonstrate with evidence that the time each child spends in the base is regularly reviewed, and that mainstream access is maximised where appropriate for that individual?
- Do children accessing the base participate fully in whole-school activities, trips, assemblies, extracurricular provision and the wider life of the school?
- Are we actively monitoring whether any group of children by ethnicity, gender, or other characteristic is disproportionately represented in base access, and can we demonstrate that the Equality Act public sector equality duty is being met?

On that last point, the Guidance is specific. It notes that children from certain ethnic backgrounds, boys, and children affected by socioeconomic disadvantage are statistically more likely to be identified with SEND, excluded from mainstream classes, or placed in alternative provision. Settings are asked to review the profile of children accessing their base and to consider the intersecting factors that may be shaping those patterns.

It is an invitation to look at data that many settings do not routinely analyse in this way and to ask the right questions before an Ofsted inspection or a parental complaint forces you to.

3. Parental Involvement: A Statutory Requirement

Both the Guidance and the SEND Code of Practice are consistent: parents and carers must be involved in decisions about whether their child accesses an Inclusion Base, how much time they spend there, and the provision being put in place. This is not optional, and it is not satisfied by informing parents after a decision has been made.

What the law requires

- Parents must be involved in placement decisions, not just notified of them.
- Where a pupil is directed offsite for behavioural support, the governing board must provide written notification to parents.
- Where a child has an EHC plan, the mainstream school must be named in section I with the base provision described in section F.
- The child's voice must be sought and considered, including through specialist communication tools where needed.
- Decisions must be revisited regularly, and parents kept informed of progress and any changes to provision.

Failures in parental involvement in SEND provision are among the most common grounds for complaints to the Local Government and Social Care Ombudsman and for appeals to the SEND Tribunal. The reputational and legal consequences for settings can be significant. Getting this right is both the legally correct and the professionally sound approach.

What This Means in Practice: A Call to Action

The Guidance does not create new law and doesn't have a statutory footing, but it does bring together existing legal requirements in one place and signals clearly how they will be applied. For settings with Inclusion Bases, or considering them, now is a good time to review practice against these obligations.

Five actions to take now for settings with Inclusion Bases

1. Review every current base placement against documented entry criteria and assessment evidence. Can you show that each placement is needs-led and planned, not reactive?
2. Check that parents have been genuinely involved in each placement decision, and that this is recorded. A phone call after the fact is not the same as involvement in the decision.
3. Look at the data on who is accessing your Base. Are there patterns by ethnicity, gender or other characteristic that warrant further exploration?
4. Review how much time each child accessing the base spends in mainstream classes, assemblies and whole-school activities. Is this being tracked and regularly reviewed?
5. Ensure your governing board or trust board has oversight of the Base not just the mainstream provision (including through your SEN Information Report, quality assurance processes and any reports presented to governors).

CDS SEND Inclusion

If any of the questions in this briefing are ones your setting cannot yet answer with confidence, don't panic. CDS SEND Inclusion works with educational settings to understand what the law requires, identify where the risks are, and build inclusion practice that families can genuinely trust.

We offer:

- Inclusion Practice Audits - an external review of your inclusion practice against the legal and practical framework.
- Training on Legal Obligations around SEND Inclusion — for leaders, staff and governors.
- Policy Review and Development — checking your policies reflect current law.



- Reform Readiness Reviews — mapping your provision to the emerging national support tier framework.
- Ongoing Advisory Retainer — a critical friend on your SEND strategy when you need one

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Legal experience. Governance experience. Lived experience. Inclusion that holds up on both sides of the table.

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