

Kent County Council

ELECTIVE HOME EDUCATION POLICY

1. Introduction

Elective Home Education (“EHE”) is the term used by the Department for Education (“DfE”) to describe parents' decisions to provide education for their children at home instead of sending them to school. This is different to home tuition provided by a Local Authority or education provided by a Local Authority other than at a school. It is recognised that parents may choose home education for a variety of reasons.

Parents are responsible for ensuring that their children receive a suitable education. Kent County Council (“KCC”) recognises that parents have the right to choose to educate their child at home rather than at school. Where parents choose to home educate, KCC consider it to be desirable for parents and the LA to work together, recognising each other’s rights and responsibilities and establish and maintain a positive dialogue in the interests of the child to ensure that a high quality education is received and children are safeguarded. The LA supports positive engagement through identifying a range of opportunities for families to access via their website.

Many families make a pro-active decision to home educate. Such families usually provide an extremely high standard of education for their children. However, some families may feel that electing for home education is the only available option when it appears that school issues cannot be resolved or where personal circumstances mean that attending school regularly is problematic. The Local Authority EHE team aims to support families in these situations to ensure families understand the implications of the child no longer being on a school roll, for example having to take qualifications as an external candidate, and the lack of school places for young people during GCSEs. Families should also be aware that KCC has very little power of direction over the school, particularly for academies.

Where young people are entering EHE during Key Stage 4, particular attention will be given to ensuring appropriate learning pathways are discussed with relevant parties. There is an expectation that clear plans will be in place for achieving recognised qualifications at age 16 and securing progression to post 16 learning or employment with training, and, recognising the vulnerability of becoming NEET (“not in education, employment or training”) for young people who exit school at this late stage. This might include opportunities to continue to take examinations in school.

It is appropriate that parents and children choose a type of education that is right for them. It is equally important that EHE officers understand and are supportive of the many differing approaches or "ways of educating" which are all feasible and legally valid. The role of the EHE Team is to respond to

concerns that a child is not receiving suitable education for his or her age, ability and aptitude and, where appropriate, provide to support and information for parents. It is not the role of the EHE Team to tell parents how to educate their children.

2. Purpose

This document aims to clarify for schools, parents, carers, guardians and related agencies, the policy and procedures to be observed when a parent elects to home educate their child who is of compulsory school age. The policy sets out parents' rights to educate their children at home, together with the legal duties and responsibilities of Headteachers and KCC. It also sets out the arrangements KCC will make in order to carry out its legal duties.

3. Context

This policy has been drafted within the context of the following:

- The Children Act 1989
- The Education Act 1996
- The Education Act 2002
- The Children Act 2004
- The Localism Act 2011
- Elective Home Education Guidelines for Local Authorities (DCSF 2007)
- Working Together to Safeguard Children (DfE, March 2015)
- Information and Policies of other Local Authorities
- 'Support for Home Education', House of Commons Education Select Committee Report (Dec. 2012), Volumes I and II
- Kent Threshold Criteria for Children & Young People. (June 15)
http://www.kscb.org.uk/_data/assets/pdf_file/0005/41693/Kent-Threshold-Criteria-for-Children-and-Young-People-V8-June-2015.pdf

4. The Law Relating to Elective Home Education

Parents

The responsibility for a child's education rests with the parents. In England, education is compulsory, but school is not. Parents may decide to exercise their right to home educate their child from a very early age and so the child is never enrolled at school. Parents may also elect to home educate at any other stage up to the end of compulsory school age at 16 years.

Section 7 of the Education Act 1996 provides that:

"The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable –

(a) to his age, ability and aptitude, and

(b) to any special educational needs he may have,

either by regular attendance at school or otherwise."

An "efficient" and "suitable" education is not defined in the Education Act 1996 but "efficient" has been broadly described in case law as an education that "achieves that which it sets out to achieve", and a "suitable" education is one that "primarily equips a child for life within the community of which he is a member, rather than the way of life in the country as a whole, as long as it does not foreclose the child's options in later years to adopt some other form of life if he wishes to do so". It is appropriate for EHE practitioners to be mindful of this when planning education provision.

Article 2 of Protocol 1 of the European Convention on Human Rights states that:

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions."

Parents must comply with notices and orders served by KCC under Section 437 of The Education Act 1996, if it appears that parents are not providing a suitable education.

Schools

If parents inform schools they are considering home education, it is important that schools and parents are fully apprised of the expectations and implications of home educating before committing to making this important decision. KCC recommends that parents are given contact details and advised to seek advice from the KCC's EHE Team before formally asking the school to remove the child from the school roll. Schools must not seek to persuade parents to educate their child at home, nor would it be recommended for parents to elect to educate their children at home as a way of solving a perceived or ongoing problem for a school.

In these situations both the school and parents should be able to obtain advice and support from KCC's EHE Team. Support for the family may for example, be offered through the KCC's Early Help and Preventative Service where families are considering home education as means of addressing wider unmet needs or unresolved issues. KCC hopes that the schools will better explain to the family that delegated funding from the school may be used to pay for 'Alternative Provision' as long as the young person remained on roll, however there is no funding once a child or young person is removed from the school roll.

It should be noted that where there are places available at FE colleges for home educated 14-16 places; whilst these places are limited in number, they are funded directly by the Education Funding Agency therefore do not require funding from the school.

Where parents are acting to home educate due to a breakdown in relations at the school and the parents are acting to home educate for these reasons, there should be a presumption that mediation will be explored prior to a final decision being made on whether to remove the child from the school roll and that the LA can be engaged in that process.

The LA would expect all Kent schools to have had a discussion with parents, signposting them to support and guidance before making any formal decision.

When a school receives written notification from a parent of their intention to home educate their child, it is the responsibility of the school to:

- Invite the parents to discuss any issues or concerns that could be resolved to enable the child to continue to be educated at school in a way which meets the parents' expectations
- If the parents' decision is firmly to home educate, to acknowledge this in writing and delete the child's name from the school register. KCC requires the school to do this within 3 working days of receiving the parents' letter. However in the interests of the family, recommended good practice would be to allow a period of 10 school days after deletion of the name from the school register, for the parents to reflect on their decision having sought further advice and support and to change their mind if they so wish.
- Inform KCC immediately of removal of the child's name from the register following the above. (Regulation 12 (3) of the "The Education (Pupil Registration) Regulations 2006)
- Ensure that the pupil file is retained in accordance with usual procedures until requested by a receiving school. The parent may request a copy of the file.

KCC's role and duties

In December 2012 the House of Commons Education Select Committee produced a report, 'Support for Home Education'. It stated that:

"The role of the local authority is clear with regard to home education. They have two duties: to provide support for home educating families (at a level decided by local authorities themselves), and if families wish it; and to intervene with families if the local authority is given reason to believe that a child is not receiving a suitable education."

Local Authorities have a duty to try and identify children not receiving a suitable education. Section 436A of the Education Act 1996:

"A local education authority must make arrangements to enable them to establish (so far as it is possible to do so) the identities of children in their area who are of compulsory school age but —

(a) are not registered pupils at a school, and

(b) are not receiving suitable education otherwise than at a school."

Section 437 (1) Education Act 1996 provides that *“if it appears to a local authority that a child of compulsory school age in their area is not receiving suitable education, either by regular attendance at school or otherwise, they shall serve a notice in writing on the parent requiring him to satisfy them within the period specified in the notice (which must be no less than 15 days) that the child is receiving such education.”*

Case law (*Phillips v Brown*, 1980) established that an LA may make enquiries of parents who are educating their children at home to establish that a suitable education is being provided. DfE guidelines, to which the Council has had regard, state that parents are under no duty to respond to such enquiries, *“but it would be sensible for them to do so”*.

Section 437(3) Education Act 1996 provides that if a parent fails to satisfy the local authority within the specified period that their child is receiving a suitable education, it has the power to issue a “school attendance order” requiring that their child become a registered pupil at the school named in the order.

KCC has general duties to make arrangements to safeguard and promote the welfare of children (see section 175 of the Education Act 2002 and sections 10 and 11 of the Children Act 2004). EHE officers, along with all employees of KCC, have a responsibility to ensure all children are safeguarded and their welfare promoted throughout their work. Section 175 (1) provides:

“A local authority shall make arrangements for ensuring that their education functions are exercised with a view to safeguarding and promoting the welfare of children”.

Sections 17 and 47 of the Children Act 1989 provide KCC with a power to insist on seeing children in order to inquire about their welfare where there are grounds for concern, although such powers cannot be used in order to establish whether the child in question is receiving suitable education at home.

Officers must act upon any concerns that a child may be at risk of significant harm, in accordance with KCC’s child protection procedures, which can be accessed through the Kent Safeguarding Children Board website – www.kscb.org.uk.

5. KCC’s Policy

In order to comply with its duty to intervene if it appears that a child of compulsory school age is not receiving a suitable education and to adequately plan for support for families, KCC policy is to:

- Maintain a record of children known to KCC being educated at home. This is a list of the children known to KCC only and therefore not an exhaustive list of all children educated at home in Kent. Families who have children who have never been on roll may also register to access advice and support.

- Where one or more of the conditions set out below are met, expect every child whose parent(s) elect to home educate to participate in a meeting with an EHE officer and the child at a mutually convenient time and place in order to satisfy KCC of the suitability of the education provision proposed. From past experience the presence of one or more of these factors is a strong indication that the child in question may well not be engaging in a suitable education and may be seriously under-achieving.

To ensure that the critical voice of the child is heard and to establish education suitability KCC will request that both the child and evidence of learning are seen. Where one or more of the conditions set out below are met education will not be recorded as suitable if this meeting is not facilitated.

The conditions where this meeting would be required are:

- a) The child has a history of persistent unauthorised absence from school (by persistent absence, KCC mean absence of 15% or higher);
- b) The child has a record of poor attainment at school as measured by progression in performance using prior attainment and National Curriculum Test Results as the basis for assessment;
- c) The child has previously been permanently excluded from school(s) or has been subject to more than one fixed term exclusion whilst at school;
- d) The child has been referred to early help and/or to children's social care.

- Where none of the four conditions set out above are present, KCC would strongly encourage parents to participate in a meeting in order that they receive the full support available. However in these circumstances, unless there is any other matter which suggests that the child is not receiving a suitable education otherwise than at a school, there is no requirement for such a meeting and KCC will record such a child as receiving suitable education.
- Publish information about EHE arrangements for parents who wish to educate their child at home. The information will be posted on the County Council website and can be sent out on request to those enquiring about educating children at home.
- Employ EHE Officers who are available to liaise with parents. Officers can offer support and guidance relating to the parents' plans for their child's education.
- For the KCC EHE Team to explore the options for access/signposting to other Council services and facilities for parents, within available resources, and to also seek to ensure EHE children have appropriate access to services and facilities from other agencies that would generally be delivered via school.
- To comply with legal requirements, where a child has a statement of Special Educational Needs or an Educational Health Care Plan, the legal duty to ensure that the child's needs are met is fulfilled and annual reviews are undertaken for those children who have a statement of Special Educational Needs. (See SEN section below).
- KCC EHE team will advise and assist families who request support with returning children to school or with identifying a school place.
- Any Year 6 EHE registrations received in term 6, will not be processed until

the parent has confirmed that they will be home educating in year 7 and have advised the Secondary school that they no longer require the place offered for September allowing the school to offer the place to those on the waiting list.

- KCC has had careful regard, when drafting this policy, to the Elective Home Education Guidelines for Local Authorities.

6. Procedural Guidance

Parents and schools may contact the KCC EHE Team for advice at any stage in a child's education.

If a child is registered at a Maintained or Independent school, and the parents elect to home educate, they must inform the school in writing. Schools are advised to refer families to the KCC EHE Team to ensure they are fully informed of the process prior to receiving formal notification of intention to withdraw the child from school.

Schools are strongly advised to offer to meet with the parents to discuss and resolve any issues about school and the child's needs that might influence the parents' decision to continue with their child's attendance at school or to home educate.

KCC EHE officers will monitor data and highlight schools considered to have larger than average numbers of children leaving to EHE and report the findings of this data to the schools Adjudicator in the annual report.

It must be made clear to parents who choose to educate their children at home that they must be prepared to assume full financial responsibility for that education. This includes examination fees. Schools must then inform the KCC EHE Team immediately using the EHE 1 Form.

If KCC is made aware of a child being home educated within Kent, the child's details will be added to the central EHE database. An officer will make written contact with the parent and share information and guidance on a range of issues including the local offer of available services.

KCC will offer an early opportunity for parents to inform KCC if they believe they have been pressured by the school. In such situations, KCC will ask the school to reconsider and apply any influence it may have to encourage the school to take a pupil back. Where it transpires it is not parental choice to EHE, the case will be supported by a LA officer and presented the next In Year Fair Access (IYFA) Meeting, where according to IYFA protocol, the school will be expected to accept the children back on their roll, and potentially directed to do so.

Initial contact will be made with a family within two weeks of deregistration from school. Further contact may be arranged once education provision is established. Families may also be contacted by a LA Officer if a referral has been made to the Children Missing Education Team to establish that education is being provided at home in order to close that referral.

In order for KCC to establish the identities of children in their area who are of compulsory school age but who are neither registered pupils at a school nor receiving suitable education otherwise than at school an EHE Officer will request to meet with the family and the child to discuss the education provision. Evidence at this meeting could include a report about the education provided, an assessment by a qualified third party or by showing samples of their child's learning supported with input from the child. Parents would be expected to provide evidence of a suitable education that would, on the balance of probabilities, convince a reasonable person that a suitable education is being provided for the age and ability of the child.

Where one or more of the conditions listed above under 'KCC's Policy' are met, should the offer of a meeting be declined KCC will not be able to state that a suitable education is being offered. KCC will also record that there has been no opportunity to speak to the child regarding their education. In this case the child's name will be added to the Children Missing Education register until such time as it becomes possible to ascertain that they are receiving suitable education. This information will also be made available for the KCC Children's Social Services Teams.

When the EHE officer has no concerns that a parent is not complying with their Section 7 of the Education Act 1996 duty, the EHE officer and family will agree a date for the next annual review of educational provision. Parents may contact the EHE team during this period for advice and support.

Following contact with the parent and child the EHE officer will write to parents within two weeks summarising the matters discussed/presented and will provide any additional information or advice requested by parents.

If it appears that a child is not receiving a suitable education, the EHE officer will in the first instance address the situation informally by offering advice and support to help enhance the education being provided and seek to agree a follow up meeting to monitor progress.

If it then appears to the EHE officer that a child is still not receiving a 'suitable' education, the officer will write formally to the parent requiring them to satisfy KCC that their child is receiving a suitable education (see section 437 (1) Education Act 1996). This letter will state the reasons for KCC's opinion that the child is not receiving suitable education. Parents will be given 15 working days to reply. Their reply should address the question of whether they are providing a 'suitable education' with reference to their own philosophy, and/ or educational provision.

If it appears to KCC, after considering the parents response to its written notice, is of the view that the child is not receiving a suitable education and that it is expedient that the child should attend school, it shall issue a school attendance order in the form prescribed by the Education (School Attendance Order) Regulations 1995/2090. Before making such an order, KCC will comply with the procedural requirements detailed in section 438 Education

Act 1996. At any stage following the issuance of the Order, parents may present evidence to KCC that they are now providing a suitable education and apply to have the Order revoked.

KCC will always seek to discuss and engage and will only take legal action against the parent as a last resort, after all reasonable avenues have been explored to bring about a resolution of the situation.

If KCC prosecutes parents for not complying with the Order, then it will be for a court to decide whether the education being provided is suitable. The court can revoke the Order if it is satisfied that the parent is fulfilling their duty. It can also revoke the Order where it imposes an Education Supervision Order.

7. **Children with an Education, Health and Care Plan/ Statement of Special Educational Needs**

Parents' right to educate their child at home applies equally where a child has special educational needs (SEN). SEN law was revised significantly with effect from 1 September 2014 by the Children and Families Act 2014 which introduced integrated Education, Health and Care assessments dealing with SEN and other issues. There is a three year period for transition from Statements of SEN to Education, Health and Care ('EHC') Plans and this policy refers to both.

Parents of any child subject to the statutory provisions of an EHC Plan (or Statement) who are considering whether to make their own arrangements should discuss this with their child's named SEN Caseworker to ensure that they are fully aware of alternatives (amended provision and/or change of placement) and their SEN statutory rights of appeal.

Parents considering to Electively Home Educate may wish to familiarise themselves with paragraphs 0.32 10.33 and 10.36 of the SEND code of Practice January 2015:

- In cases where the EHC plan gives the name of a school or type of school where the child will be educated and the parents decide to educate at home, the local authority is not under a duty to make the special educational provision set out in the plan provided it is satisfied that the arrangements made by the parents are suitable. The local authority **must** review the plan annually to assure itself that the provision set out in it continues to be appropriate and that the child's SEN continue to be met (see Chapter 9). Where the local authority has decided that the provision is appropriate, it should amend the plan to name the type of school that would be suitable but state that parents have made their own arrangements under Section 7 of the Education Act 1996.
- Where a child or young person is a registered pupil and the parent decides to home educate, the parent **must** notify the school in writing that the child or young person is receiving education otherwise than at school and the school **must** then remove the pupil's name from the admission register. If the school is a special school, the local authority **must** give consent for the child's name

to be removed, but this should not be a lengthy or complex process. There is no provision in law for a 'trial period' of home education.

- In some cases a local authority will conclude that, even after considering its power to provide support to home-educating parents, the provision that is or could be made for a child or young person with an EHC plan does not meet the child or young person's needs. The local authority is required to intervene through the school attendance order framework 'if it appears...that a child of compulsory school age is not receiving suitable education'. The serving of a school attendance order is a last resort if all attempts to improve provision are unsuccessful. 'Suitable education' means efficient full-time education suitable to the child or young person's age, ability and aptitude and to any SEN he or she may have.

Parents can ask KCC to arrange home education (or part of it) for a child with a statement. The request will be considered against the relevant legislation (section 319 Education Act 1996):

(1) Where a local education authority are satisfied that it would be inappropriate for—

(a) the special educational provision which a learning difficulty of a child in their area calls for, or

(b) any part of any such provision,

to be made in a school, they may arrange for the provision (or, as the case may be, for that part of it) to be made otherwise than in a school.

(2) Before making an arrangement under this section, a local education authority shall consult the child's parent.

If the local authority agrees to arrange home education the child's statement will be amended to include the home education programme.

8. Reviewing procedures and practices

KCC will review this policy and practice in relation to EHE on a regular basis.

9 Contact details

For enquiries relating to this policy, please contact the Elective Home Education Team at educationathome@kent.gov.uk

Further information can be found on the Elective Home Education page of Kent County Council's website www.kent.gov.uk

August 2015