

Response to consultation on SEN Code of Practice

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Summary proposed changes to 8.6 regarding elective home education

1. Taking out references to ensuring the child's needs are met
2. Clarifying what it means to name home education on the plan
3. Adding Annual Reviews where a child is home educated
4. Taking out reference to the authority judging parents' provision
5. Taking out references to the local authority "satisfying itself" about the suitability of home education
6. Adding deregistration from special school
7. Adding no provision in law for "trial period"
8. Adding funding is available to local authorities
9. Adding requesting information from parents
10. Adding where parents are willing to receive help as stated by the Minister on October 30th [source 30 Oct 2013 : Column GC617 **Lord Nash**]
11. Taking out superfluous detail about children missing education
12. Changing balance of paragraph about getting assessment when school isn't meeting child's needs

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How local authorities interpret the current SEN code

At the beginning of 2013 I sent a survey to all local authorities in England, asking a series of questions about home education and SEN.

The following themes emerged from local authorities: parents are deemed to have opted out; the LA sees itself as having a monitoring role; parents have to convince the LA they are able to home educate; parents aren't allowed to home educate without permission; there has to be a trial period before home education is "allowed". Only one LA mentioned the use of personal budgets.

The questions can be found here <http://www.edyourself.org/2013foissenandlocationehe.pdf> via this page <http://edyourself.org/articles/2013foissenandlocationehe.php>

It is vitally important that the new SEN code of practice does not perpetuate the current confusion and injustice for home educated children. With this in mind, I have made a number of suggestions for how **8.6** could be modified. These suggestions can be found on **pages 5 to 8** of this consultation response

The survey will be repeated in September 2015 a year after the introduction of the new SEN system. In addition to questions about numbers, I will also be asking about vetting, monitoring, support, what happens at the Annual Review, and also whether the LA insists on a "trial period" .

The attitude of local authorities towards the Annual Review of the statement has prompted me to recommend that a new paragraph is added to 8.6. Readers will expect to find everything relevant to home education in 8.6, not have to look elsewhere in the code and try and work out what applies to home education and what doesn't.

The attitude of local authorities towards parents attempting to deregister children from special schools revealed in my survey has also persuaded me of the necessity to remind local authorities that they should not routinely withhold consent and make parents jump through all kinds of hoops before giving "permission" to home educate.

Just over 20,000 children were [listed as being home educated](#) in England in 2012. FOI responses suggest that [approximately a thousand home educated children](#) have a statement of SEN. The percentage of home educated children who have a statement of SEN varies among local authorities between zero and 20%, averaging at around 5%. For children in school the figure is lower, since only 3% have a statement.

28% of home educated children with a statement are primary age, while 68% are secondary age (age breakdown not always supplied) 14% of home educated children with a statement of SEN have moderate learning difficulties; 6% have physical disabilities; 14% have speech communication and language needs; 32% are on the autistic spectrum; 11% have severe or complex learning difficulties; 20% were previously educated in a special school; 34% began home education during the past year; 42% have been home educated for more than 2 years; 17% have been home educated for more than 5 years; while 18% ceased to be home educated last year and went into school.

Opt Out

"The Local Authority does not provide resources. The responsibility for providing educational resources for children who are educated at home is the responsibility of the parent." **Barking and Dagenham**

"Parents/guardians who elect to home educate their child are **effectively opting out** of the support available to their child through the school system." **Hackney**

"The LA does not make provision specified in Part 3 of the statement when they are EHE as the parents has then elected to make educational provision themselves." **Bolton**

Monitoring

"**Where home education has been agreed as part of the provision within the statement an officer from our department monitors the provision agreed within the statement.** In addition we would ask: Is there evidence that the child is receiving a broad and balanced curriculum? Is work dated, marked and filed/kept appropriately? Are the experiences offered and the available resources adequate and appropriate?" **Bracknell**

"The Statutory Review of a SEN Statement for an Electively Home Educated child is also to include an annual review of that child's Elective Home Education provision. The review will be called and administered by the SEN Assessment and Review Team. The **monitoring officer** should contribute to the review. Preferably the review will take place in the family home with the SEN Officer and Elective Home Education Team member in attendance. For any Local Authority support to be practicable, the parent will need to engage with officers and allow **monitoring activity**" **Hounslow**

"The Casework Officer(CO) will chair annual review meetings and will alert **Monitoring and Quality Assurance Officer** if concerned about educational progress, provision or safeguarding" **Leeds**

"In accordance with the SEN Code of Practice and Elective Home Education Guidelines for Local Authorities the LA retains a **monitoring role** to ensure the child's needs are being met by the parent(s)/guardian(s)" **Hackney**

"If a parent of a child with a Statement opts to electively home educate their child then **an initial monitoring visit** would be carried out by the Council Liaison Officer responsible for Elective Home Education. This initial visit may involve a colleague from the **Vulnerable Learners' Service**. Once the initial visit has been carried out a decision would be made as to whether or not suitable educational provision was in place. If it was determined that suitable provision was in place, then the Statement would be amended in Part 4 to state that parents had opted to electively home educate their child." **North Somerset**

"The LA will continue to **monitor** the education annually" **Peterborough**

We follow the guidance in the SEN Code of Practice whereby we ensure that the parents are making suitable arrangements for the education of their child. We do this through home visits, annual reviews and the request for information about programmes of work." **Richmond**

"We monitor and discuss annually." **Walsall**

"The authority ensures **robust monitoring** is carried out." **Wiltshire**

Convince LA

"The law states that, you, the parent/s need to be able to convince the Local Authority that you can make suitable provision for your child whether they have any special educational needs, or not". **Derbyshire**

"When any parent/carer gives the local authority **notice** of electively home educating a child with a statement of special educational needs, the local authority seeks to establish that parent/carer's capacity to make the provision in Part 3 of the statement. In the instance that the parent/carer could not make the provision, the local authority would encourage the parent/carer to **carefully consider**

their choice to electively home educate. Each case is considered individually and the local authority may sometimes support the parent/carer with resources to ensure that Part 3 of the statement is met but only so far in the local authority could continue to meet its duty to make an efficient use of local authority resources". **Portsmouth**

"For all EHE children with statements at point of notification, a review meeting is held, where an SEN Officer will work with professionals to clarify parents are able to make provision in part 3."
Sefton

Permission

"If a child has a statement of special educational needs, parents must write to the SEN Manager to seek consent to withdraw him/her from a school roll"**Middlesbrough**

"The policy is that within 20 days of the EHE **request** being submitted a home visit occurs. If the provision is **satisfactory** the next visit would occur on an Annual basis, and inform the Annual Review of the Statement of SEN". **Torbay**

Trial Period

"If parents **insist** on educating their child at home the following will apply: (1) If registered at a special school, the child's name must not be removed from the register until the home provision has been **monitored and deemed satisfactory**. (2) In order to assess whether home provision is satisfactory, there will be a **trial period**(usually 4 weeks) of home education during which the parents will be asked to provide **evidence** of suitable home provision. A decision will be made at the review as to whether the Local Authority is "**satisfied**" that the educational needs as stipulated in the statement are being met. In the event that the Local Authority is not satisfied **the monitor** will coordinate a second visit 15 days later to **collect agreed evidence**. If the evidence not be made available at the second meeting the Special Educational Needs Officer will then name an educational provision which can meet need and the parents will be informed of their duty to ensure the young person attends". **Oxfordshire**

"The child's name remains on the school roll but the LA **provisionally registers the child as receiving EHE**... initial visit to be made by the EHE officer...written evidence of the proposed programme... examples of the child's work...Should the suggestions and recommendations from the initial report not have been implemented and the education being provided remains not suitable or appropriate, the EHE officer will recommend, in the written report, that the child's name is not removed from the roll of the school and the **provisional registration for EHE** not confirmed. The Attendance Service will liaise with the SEN team over action to return the child to regular attendance." **Peterborough**

Only one local authority, **Southampton**, mentioned personal budgets.

Proposed changes to the SEN code of practice (home education)

8.6 Children and young people with SEN educated at home

Under section 7 of the Education Act 1996 parents have the right to educate children, including children with SEN, at home. Such education must be suitable to the child's age ability, aptitude and special educational needs. Local authorities should work in partnership with, and support, parents ~~to ensure that the special educational needs of these children are met~~ where the local authority already knows the children have SEN or the parents have drawn the children's special needs to the authority's attention.

***Strike through** "to ensure that the special educational needs of these children are met"*

Local authorities do not have a duty under section 22 of the Children and Families Act to assess every home educated child to see whether they have SEN or not. ~~Guidance is available to local authorities from the Department for Education on funding provision for home educated children.~~

***Strike through** "Guidance is available to local authorities from the Department for Education on funding provision for home educated children" and **replace with** "*Funding is available to local authorities who wish to fund provision for home educated children. See Guidance published by DfE.*"*

~~In cases where local authorities and parents agree that a child or young person with an EHC plan should be educated at home and home education is 'named' on the plan, the local authority is under a duty to arrange the special educational provision set out in the plan.~~

***Strike through** "In cases where local authorities and parents agree that a child or young person with an EHC plan should be educated at home and home education is 'named' on the plan, the local authority is under a duty to arrange the special educational provision set out in the plan" and **replace with** "*Under section 19 of the Children and Families Act, a local authority must have regard to the views, wishes and feelings of the child and his or her parent, or the young person. In cases where local authorities and parents agree that a child or young person with an EHC plan will be educated at home, home education should be 'named' on the plan. Under section 42 of the Children and Families Bill, the local authority is then under a duty to arrange the special educational provision set out in the plan.*"*

In cases where the EHC plan 'names' a school and the parents decide to take the child or young person out of school to educate at home, the local authority is not under a duty to make the special educational provision set out in the plan, ~~as long as parents are making alternative provided it is satisfied that the arrangements made by the parents to educate the child or young person at home are suitable.~~

***In the preceding sentence, strike through** "provided it is satisfied that the" and "made by the parents to educate the child or young person at

home are suitable"* *After "set out in the plan" **insert** "as long as parents are making alternative"* The preceding sentence **now reads as follows:** "In cases where the EHC plan 'names' a school and the parents decide to take the child or young person out of school to educate at home, the local authority is not under a duty to make the special educational provision set out in the plan, as long as parents are making alternative arrangements."

The local authority must review the plan annually to assure itself that the provision set out in the plan continues to be appropriate ~~and the child's SEN continue to be met.~~

*In the preceding sentence, **strike through** "and the child's SEN continue to be met." *

***Insert:** The conduct of review meetings when a child is electively home educated is different from reviews for pupils or for children and young people unable to attend school. The meeting should focus on whether any changes are needed to the plan and what support the authority can offer. A local authority SEN officer should be invited, and if parents agree a health service representative and a local authority social care representative may also be invited. Parents may request that other relevant individuals be invited. The local authority must seek advice and information about the child or young person from all parties invited and send this out to everyone who is invited at least two weeks before the meeting. All timescales for reviews set out elsewhere in the code and also in regulation apply equally to reviews where a child is electively home educated."*[NEW]

Where the local authority has decided that the provision is appropriate, it should ensure that the plan names the type of school that would be suitable, but states that the parents have made their own arrangements under section 7 of the Education Act 1996.

In the preceding sentence, strike through "Where the local authority has decided that the provision is appropriate, it..." **and replace with** "Where parents have made their own arrangements, the local authority...". **The sentence would then read as follows:** "Where parents have made their own arrangements, the local authority should ensure that the plan names the type of school that would be suitable, but states that the parents have made their own arrangements under section 7 of the Education Act 1996."*

***Insert** "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."* [NEW]

~~Local authorities do not have the right of entry to the family home to check that the provision being made by the parents is appropriate and may only enter the home at the invitation of the parents. If it is not possible to do this, the authority should discuss with the parents how else it can satisfy itself as to the suitability of the education, bearing in mind its obligations at the same time as the wishes of the parents and the child. Parents should be encouraged to see this process as part of the authority's overall approach to home education of pupils with SEN, including the provision of appropriate support, rather than an attempt to undermine parents' right to home educate.~~

***Strike through** the preceding paragraph in its entirety and **replace with** "Parents have a right to home educate and local authorities are encouraged to provide appropriate support. Local authorities do not have the right of entry to the family home to check the provision being made by parents."*

Local authorities should not assume, because the provision being made by parents is different from that which was being made or would have been made in school, **that the parents' arrangements are** provision is necessarily unsuitable.

***In the preceding sentence, strike through "provision is necessarily" and replace with "parents' arrangements are". The sentence would then read as follows:** "Local authorities should not assume, because the provision being made by parents is different from that which was being made or would have been made in school, **that the parents' arrangements are unsuitable.**"*

~~The local authority's duty is to ensure that the child or young person's SEN are being met and they should make an objective judgement about whether the methods adopted by parents achieve that end.~~

***Strike through** the preceding sentence and **replace with** "Local authorities may request information about the provision which is being made for the child's education but this is not intended to be burdensome or intrusive"*

Local authorities are encouraged to help parents exercise their right to home educate their children. ~~They should work with parents and consider using their power to make provision in the home to help parents make suitable provision.~~

***Strike through** the preceding sentence and **replace with** "They should also consider using their power to provide support."*

Add “where parents are willing to receive this help” [source 30 Oct 2013 :

Column GC617 Lord Nash] The paragraph would then read as follows:

*Local authorities are encouraged to help parents exercise their right to home educate their children. They should also consider using their power to provide support where parents are willing to receive this help.”**

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 a plan does not meet the child or young person’s needs.

~~Local authorities have a duty to ‘make arrangements to enable them to establish (so far as it is possible to do so) the identities of children and young people in their area who are of compulsory school age but are not registered pupils at a school and are not receiving suitable education otherwise than at school’. Once these children have been identified, local authorities have a duty to act.~~

Strike through the preceding paragraph

A 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, either by regular attendance at school or otherwise’.

Parents may also educate children or young people who have SEN but do not have EHC plans. ~~Where such children or young people are educated at home it may be because parents felt that the special educational support being provided in the school was insufficient to meet the child or young person’s needs. In such cases the local authority should consider whether a statutory assessment is required. As with children and young people with plans, local authorities should work with parents and consider whether to make provision in the home to help the parents make suitable provision.~~ *local authorities should give consideration to parents’ request for help with special educational provision.*

In the preceding paragraph strike through “Where such children or young people are educated at home it may be because parents felt that the special educational support being provided in the school was insufficient to meet the child or young person’s needs. In such cases the local authority should consider whether a statutory assessment is required.” *Strike through “local authorities should work with parents and consider whether to make provision in the home to help the parents make suitable provision” and replace with “local authorities should give consideration to parents’ request for help with special educational provision.”

Young people may also be educated at home in order to meet the requirement to participate in education and training until 18.

What the code would look like with the proposed changes

8.6 Children and young people with SEN educated at home

Under section 7 of the Education Act 1996 parents have the right to educate children, including children with SEN, at home. Such education must be suitable to the child's age ability, aptitude and special educational needs. Local authorities should work in partnership with, and support, parents where the local authority already knows the children have SEN or the parents have drawn the children's special needs to the authority's attention.

Local authorities do not have a duty under section 22 of the Children and Families Act to assess every home educated child to see whether they have SEN or not. Funding is available to local authorities who wish to fund provision for home educated children. See Guidance published by DfE.

Under section 19 of the Children and Families Act, a local authority must have regard to the views, wishes and feelings of the child and his or her parent, or the young person. In cases where local authorities and parents agree that a child or young person with an EHC plan will be educated at home, home education should be 'named' on the plan. Under section 42 of the Children and Families Bill, the local authority is then under a duty to arrange the special educational provision set out in the plan.

In cases where the EHC plan 'names' a school and the parents decide to take the child or young person out of school to educate at home, the local authority is not under a duty to make the special educational provision set out in the plan, as long as parents are making alternative arrangements.

The local authority must review the plan annually to assure itself that the provision set out in the plan continues to be appropriate.

The conduct of review meetings when a child is electively home educated is different from reviews for pupils or for children and young people unable to attend school. The meeting should focus on whether any changes are needed to the plan and what support the authority can offer. A local authority SEN officer should be invited, and if parents agree a health service representative and a local authority social care representative may also be invited. Parents may request that other relevant individuals be invited. The local authority must seek advice and information about the child or young person from all parties invited and send this out to everyone who is invited at least two weeks before the meeting. All timescales for reviews set out elsewhere in the code and also in regulation apply equally to reviews where a child is electively home educated.

Where parents have made their own arrangements, the local authority should ensure that the plan names the type of school that would be suitable, but states that the 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.

Parents have a right to home educate and local authorities are encouraged to provide appropriate

support. Local authorities do not have the right of entry to the family home to check the provision being made by parents.

Local authorities should not assume, because the provision being made by parents is different from that which was being made or would have been made in school, that the parents' arrangements are unsuitable.

Local authorities may request information about the provision which is being made for the child's education but this is not intended to be burdensome or intrusive.

Local authorities are encouraged to help parents exercise their right to home educate their children. They should also consider using their power to provide support where parents are willing to receive this help.

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 a plan does not meet the child or young person's needs.

A 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, either by regular attendance at school or otherwise'.

Parents may also educate children or young people who have SEN but do not have EHC plans. As with children and young people with plans, local authorities should give consideration to parents' request for help with special educational provision.

Young people may also be educated at home in order to meet the requirement to participate in education and training until 18.

Comments

- Saying that the LA has a duty to ensure the child's needs are met doesn't currently mean that home educated children with SEN get help. At present it just means the LA has a reason to criticise home education and say the child should be in school.
- The Annual Review should not be misused to monitor or inspect home educating families as it is at present. The purpose of the Annual Review should be to review the contents of the plan.
- The authority shouldn't be routinely monitoring home educating families as it is at present simply because the child has a statement of SEN.
- There should be a positive declaration to the effect that funding is available to local authorities which can be used to support home educated children with SEN. At present too many local authorities take the view that the parent has opted out.
- The code must state clearly what is meant by having home education "named" in the plan. This is necessary because at present the authority only has to help if the parent can prove that school is "inappropriate" which is interpreted by authorities and SEN tribunals as meaning the LA only has to provide access to services if school is impossible.
- Home educated children should not be judged against the "outcomes" at Annual Reviews of EHC Plans as they are currently judged against targets in Part 3 of the statement.
- Parents aren't "providers" in any legal sense and the authority is only required to "satisfy itself" if it appears that the children are NOT receiving education.
- There is nothing in the Children and Families Bill which says the LA has to ensure that a child's needs are met, so the code goes beyond the law.
- The law doesn't require local authorities to make a "judgement" about home education as they are doing at present.

Summary proposed changes to 8.6 regarding elective home education

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14. Clarifying what it means to name home education on the plan
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17. Taking out references to the local authority "satisfying itself" about the suitability of home education
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