Guidance on ensuring children with an Education Health Care Plan receive suitable education

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Rationale

The Child T Serious Case Review in 2010 identified areas for improvement in the Local Authority procedures for ensuring that

- children of compulsory school age, who have a Statement of Special Educational Needs (SEN)\(^1\), are admitted to school within the stated time frame;
- the Authority responds swiftly and appropriately to parents\(^2\) of children with an SEN Statement who do not ensure their children are enrolled and in regular attendance at a school; or are receiving suitable and efficient education otherwise than at school.

This guidance sets out the Local Authority’s approach in relation to both of these issues. Whilst this guidance applies specifically to children with SEN Statements and EHC Plans, its underlying principles apply to all children.

\(^{1}\) Throughout this document, the term *parent* is used but should be taken to include all those with parental responsibility for a child, including *guardians and those with day-to-day care.*
Purpose

This guidance will assist schools and the Local Authority in adhering to the

- Children and Families Act 2014 (the “2014 Act”);
- Special Education Needs and Disability Code of Practice: 0 to 25 years January 2015 (the “Code”) when naming schools in an EHC Plan;
- Education Act 1996;
- Education Pupil Registrations 2006.

Context

Parents of children with significant special educational needs and/or disabilities are rightly concerned to make the best decisions for their child’s educational development and care. All efforts will be made to ensure that the parents’ preference for a place in a particular school (whether special or mainstream) is, where possible, accommodated.

In accordance with Section 19 of the 2014 Act the Local Authority will have regard to the following when carrying out its functions:

- the views, wishes and feelings of the child or young person, and the child’s parents;
- the importance of the child or young person, and the child’s parents, participating, as fully as possible, in decisions, and being provided with the information and support necessary to enable participation in those decisions;
- the need to support the child or young person and the child’s parents, in order to facilitate the development of the child or young person and to help them achieve the best possible educational outcomes preparing them effectively for adulthood.

Children of compulsory school age must not be denied their legal right to an education. Staff must do all they can to ensure children receive suitable education whilst providing a sympathetic and professional response to any parental anxieties.

Difficulties in identifying, or agreeing on, a suitable placement must not unduly delay a child’s access to suitable education.

For children whom an EHC Plan has been issued, the document “names” a particular school. Usually, this will be with the parents’ agreement.

The following sections provide detailed guidance for particular circumstances.
New EHC Plans following statutory assessment

- Where statutory assessment and the issuing of an EHC Plan are required for a child who has not attained compulsory school age, every effort will be made to conclude the process, including the naming of a school to ensure that the child attends school no later than the term following his/her 5th birthday (when compulsory school age starts).
- Where a child is enrolled at school before a statutory assessment process commences, the child will be expected to continue to attend during the assessment period.
- The EHC Panel will consider, and if necessary issue, the proposed EHC Plan within 20 weeks of an initial request for statutory assessment.
- Should the Local Authority decide that it is necessary to issue an EHC Plan, parents or young people will be asked to express a preference for a school. If parents state a preference for a maintained school, this school will be consulted immediately. An EHC Co-ordinator will send the proposed draft EHC Plan to the school and all advice contributing to the statutory assessment.
- The governing body will be informed, by letter, that the Local Authority intends to name the school in the EHC Plan and will be invited to respond. The letter will state that the governing body can only raise concern about the placement on the grounds that it would be incompatible with the efficient education of others.
- This doesn’t happen so maybe remove. Consultation responses from head teachers are considered and responded to, in writing, by the EHC Team. The EHC Team will consider any concerns and outcomes of further discussion as soon as these are received. If concerns are accepted, a view will be taken on the nearest suitable school, bearing in mind the concerns which have been raised, and the EHC Co-ordinator will consult with the school now deemed to be the nearest suitable school.
- The EHC co-ordinator will check with the school and family that Admission procedures have been completed and that attendance has commenced.

Enrolling at the ‘named’ school

- A child should commence attendance at the school named in the EHC Plan as soon as possible after the plan is issued and in no circumstances later than 10 days after the plan is received by the school (to allow time for any required preparation prior to admitting the child). A letter accompanying the Plan will specify this.
- Within one week of issuing the EHC Plan for a child transferring to a different school, the EHC Co-ordinator will check to see if the pupil has been entered on the school roll. If not, the coordinator will telephone the school to check that the plan has been received and remind the head teacher of the need for the child to be put on roll as stipulated in the above bullet point.
- The EHC Co-ordinator will contact the parents by telephone to check that the EHC Plan has been received and discuss arrangements for the child to be admitted.
Failure to begin attendance at the ‘named’ school

- If the child fails to attend the school named in the EHC Plan (and is not, at that time, attending another school), the named school is expected initially to seek to resolve any difficulties that may be preventing attendance. If necessary, the involved Inclusion Officer will urgently liaise with the head teacher or SEND Co-ordinator.
- If non-attendance persists, the school should follow their processes for managing irregular school attendance and consider referring the matter to their allocated Attendance Officer.
- The EHC Co-ordinator must ensure that the non-attendance is addressed and must inform his or her manager if non-attendance persists.
- If regular attendance is not achieved the allocated Attendance Officer, or member of school staff responsible for attendance, must take the necessary action, including home visiting and checking with other agencies (especially Social Care).
- If the case is not resolved within one month, the Local Authority will consider instituting a School Attendance Order. Whether or not a decision is made to reconsider the school named in the EHC Plan, it remains the parents’ duty to ensure that their child receives a suitable education, either at school or otherwise than at school and this expectation should be made clear.
- If, through the investigation of the non-attendance, it is discovered that the child is attending another school, this should be discussed with the parents by the assigned EHC Co-ordinator. If the parents are unhappy with the school named in the EHC Plan, they may consider seeking formal mediation with the Local Authority. Following this the parents, or the child, may consider making an appeal to the First-tier Tribunal (Special Educational Needs and Disability). The parents would need to register their appeal and continue to send their child to the school they are attending, pending a tribunal decision or other agreement with the Local Authority.
- If the child is attending another school regularly and punctually, the parents are fulfilling their legal obligation to cause the child to receive education and no further action is required in relation to school attendance. However, if the parents refuse to send the child to school, pending an appeal to Tribunal, the Local Authority must decide whether to offer some alternative provision pending the outcome.

If a child with an EHC Plan does not attend school regularly

- Children with special educational needs and disabilities may require greater vigilance than others in relation to safeguarding. Some may be vulnerable to neglect and abuse and so any non-attendance at school must be taken seriously. Concerns will be raised where attendance is significantly irregular.
- The same standards for school attendance should be applied to pupils with EHC Plans as to all other children, i.e. a note from the parent, or documentary medical information, being provided when a child is too ill to attend school.

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4 If the school does not buy into the borough’s Attendance Service, it is expected to use its own resources to carry out this work. The EHC coordinator must check that this is being done and must report any lack of progress urgently to his or her manager.
On the first day of any unauthorised absence, the school should investigate the reason for absence and respond accordingly.

If the child’s lack of school attendance continues to be a concern, the school should liaise with the Attendance Service and agree a course of action. This will involve direct work with the family, with the aim of re-establishing regular school attendance. The Attendance Officer must liaise with the school’s SEN Coordinator, with the allocated EHC co-ordinator and with the Inclusion Officer.

If interventions are not successful, the allocated Attendance Officer must bring the case to the attention of his/her supervising officer. The case should be discussed with the allocated social worker, if there is one. Legal proceedings against the parents may also be considered.

If the cause(s) of absence are revealed to be associated with the quality or suitability of the provision, this information must be reported immediately to the EHC Co-ordinator, who will bring it to the attention of his/her manager for a strategy discussion. It may be necessary to reconsider the EHC Plan and associated short-term plans.

If interventions reveal the need for a different school to be named on the EHC Plan, the EHC Co-ordinator must be made aware and will need to take appropriate action.

**Change of school at key stage transfer**

Except for an all-age school, it will be necessary for children to transfer to a secondary school at the end of year 6. Transitions are particularly important for children with special educational needs and disabilities. They can also be a time of stress and worry for the child and parents. Statutory SEN guidance specifies the process for amending the EHC Plan to name the next school.

- As for all children, parents are asked to state their preference in the autumn term of the school year prior to the transfer.
- The consultation process is the same as for a new EHC Plan, but the amended document must be issued by 15 February for transfer on 1 September.
- The EHC Co-ordinator must confirm with the school and family that the correct admission procedures have been completed.

**Request for a change of school to be named on the EHC Plan**

Parents can request a change of school named on the EHC Plan at any time, with exceptions listed in the SEN Code of Practice. It is clear from the Code of Practice that a change of school should be agreed by the EHC Panel, planned and organised seamlessly and that there is no expectation that the change will disrupt education or cause non-attendance. The same legal obligation on parents to cause their child to receive suitable full-time education apply even if they are seeking a change to the school named in the child’s EHC Plan. A suitable school must be named in the EHC Plan within 20 weeks of a request for statutory assessment or within eight weeks of a parental request for a change of placement. It is the responsibility of the EHC Panel to ensure this timescale is adhered to.

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5 If the school has not subscribed to the Attendance Service, it is expected to use its own staff to intervene as described in footnote 5.
Elective Home Education for pupils with EHC Plans

This section complements the borough guidance document ‘Elective Home Education’ but focusses on children with an EHC Plan who are home educated.

- When parents of a child with an EHC Plan, who attends a mainstream school, decide to home educate the school will remove the child from the school roll and inform the borough’s Elective Home Education Officer (EHEO). The EHEO will then follow the borough procedures for home educated children.

- If parents of a child with an EHC Plan, who attends a special school, indicate their intention to home educate, the decision to agree to the child being removed from the school roll will be made by the SEN Panel. Prior to the panel’s decision, the EHC coordinator must consult with other agencies known to be involved with the family. If sufficient SEN information is unavailable, the EHC Co-ordinator will seek to hold a review meeting involving parents, child, school staff and any other involved practitioners. The purpose of the review is to ensure that the child’s educational needs are understood. The reason for the parents wishing to home educate must be explored.

- If the panel decides that the parents will not be able to provide a suitable and efficient education that meets the educational needs of the child, the child will remain on roll at the special school and will be expected to attend. The panel can review this decision, at any time, considering new information being provided by the parents which show that acceptable changes to the proposed home education provision have been made.

- If the panel agrees to the child being home educated, then the borough procedures for home educated children will be followed.

- The Education Adviser assigned to undertake informal enquiries of the home education provision must have background in SEN. The most recent SEN review and any other relevant information held by the Authority, must be read prior to meeting the family. The Adviser should attend annual reviews.

- Parents who elect to home educate sometimes ask the Local Authority to cease to maintain the child’s EHC Plan. This should be agreed only in exceptional circumstances and only if there is strong evidence that suitable and efficient home education has been provided consistently for at least a year. This will allow for the statutory annual review of the child’s progress, following detailed scrutiny of the home education programme and its achievements.

- For pupils with an EHC Plan, the EHC Co-ordinator will convene the annual review of the EHC Plan at the correct time each year. The Education Adviser and, where appropriate, an Educational Psychologist should visit the child prior to the annual review to gather information and then write reports. Parents should also be encouraged to provide their report describing the educational programme they have delivered and the child’s progress. Consideration should be given to, if possible, obtaining the child’s view.
Flow chart A

Procedures to be followed for a child with an EHC Plan who is not attending school

Child has EHC Plan with a named school but is not attending

Is child on roll at school named in Part 4 of his/her EHC Plan?

On roll
- Go to flowchart B

Not on roll
- Go to flowchart C
Child is on roll at the school named in an EHC Plan

How long has the child been absent from school?

1 to 5 days

- Named school to follow LA procedures for dealing with unauthorised absences

6 days or more

- After 6th day of continuous unauthorised absence (or of continuing irregular school attendance) school to escalate action

- Does school buy into LA Attendance Service?

  - No
    - Named school to follow their attendance procedures and liaise with the LA regarding legal proceedings
    - Attendance Officer will monitor the case and close after one month if there are no further issues
  
  - Yes
    - Attendance Officer undertakes work with parents in liaison with school; SENCo; EHC co-ordinator; Locality Inclusion Officer to ensure child attends school
    - Child returns to school
    - Child still not attending school

Borough Education Court Officer institutes legal action for poor / non-school attendance
Child has not actually attended the school named in the EHC Plan

Was the EHC Plan issued more than 10 days ago?

Yes

Have the parents appealed to SEND Tribunal regarding school named in EHC Plan?

Yes

Parents must
- temporarily ensure attendance at the named school, or
- ensure continued attendance at previous school;
- provide other suitable education provision

No

Is head teacher refusing to admit?

No

School informed of duty to admit the child within 10 school days
Parents have a duty to ensure their child’s attendance

EHC co-ordinator contacts school to confirm admission date and inform parents of arrangements

Yes

School puts on roll immediately and takes action to admit
School requests urgent advice regarding reasonable adjustments if necessary
LA will consider interim home tuition if justified

- Head teacher can complain to the Secretary of State for Education
- EHC Panel will consider offering a temporary (short-term) suitable alternative provision, to allow for reasonable adjustments, before directing the school to admit
- The LA may report the school to the Secretary of State for Education

No

Send Tribunal directs the LA to name a school and the LA must comply
Parents must ensure attendance at the named school or assume full responsibility for any suitable alternative provision
LA to consider legal proceedings if parents fail to ensure child receives suitable education.