

## **APPENDIX 3**

### **The law relating to Elective Home Education (EHE)**

The responsibility for a child's education rests with their parents. In England, education is compulsory, but school is not.

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 have a duty to secure an appropriate full-time education for their children. Some parents choose to do this by educating their child at home. They do it because they judge it to be the best way to carry out their duty.

*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<sup>1</sup> as an education that "achieves that which it sets out to".

<sup>1</sup>Mr Justice Woolf in the case of R v Secretary of State for Education and Science, ex parte Talmud Torah Machzikei Hadass School Trust (12<sup>th</sup> April 1985) "efficient", 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".

Full-time does not mean being bound by school hours and terms, as this measurement of contact time is not relevant to EHE where there is often almost continuous one-to-one contact.

### **Parental rights and responsibilities**

Parents may decide to exercise their right to EHE their child from a very early age and so the child may not have been previously enrolled at school. They may also choose to EHE at any other stage up to the end of compulsory school age. Parents are not required to register or seek approval from the local authority to EHE their children.

Where a child has been registered at school, parents are required to notify the school in writing when withdrawing a child for EHE. This is to confirm that provision is being made for the child's education otherwise than at school and requesting removal from the school's roll.

Consent of the local authority is required to de-register pupils placed at a special school under arrangements made by a local authority.

Where a child is registered at a school as a result of a school attendance order parents must ask the local authority to revoke the order.

Parents are required to provide an efficient, full-time education suitable to the age, ability and aptitude of the child. There is currently no legal definition of "full-time".

The type of educational activity can be varied and flexible. It is recognised that home educating parents are **not** required to:

- Teach the National Curriculum;
- Provide a broad and balanced curriculum;
- Have a timetable;
- Have premises equipped to any particular standard;
- Set hours during which education will take place;
- Have any specific qualifications;
- Make detailed plans in advance;
- Observe school hours, days or terms;
- Give formal lessons;
- Mark work done by their child;
- Formally assess progress or set development objectives;
- Reproduce school type peer group socialisation;
- Match school-based, age-specific standards.

In line with the most recent guidance from the government (DCSF, 2007) the Local Authority would expect parents' provision of education at home to include the following characteristics;

- Consistent involvement of parents or other significant carers;
- Recognition of the child's needs, attitudes and aspirations;
- Opportunities for the child to be stimulated by his or her learning experiences;
- Access to resources/materials required to provide home education for the child.

Parents who choose to educate their children at home must be prepared to assume full financial responsibility, including bearing the cost of any public examinations.

#### Local authority responsibilities and outline of procedures

Suffolk recognises that there are many, equally valid, approaches to educational provision. What is suitable for one child may not be for another, but all children should be involved in a learning process.

When the local authority first becomes aware that parents have elected for home education initial contact will be made in order to establish what provision is being made. Many people find a home visit helpful and may welcome the opportunity to discuss the provision that they are making for the child's education during such a

visit; however parents are not legally required to give the local authority access to their home. They may choose to meet a local authority representative at a mutually convenient and neutral location instead, with or without the child being present, or choose not to meet at all.

Where a parent elects not to allow access to their home or their child, this does not of itself constitute a ground for concern about the education provision being made. Where we are unable to visit homes, we should, in the vast majority of cases, be able to discuss and evaluate the parents' educational provision by alternative means. If they choose not to meet, parents may be asked to provide evidence that they are providing a suitable education. Parents might prefer, for example, to write a report, provide samples of work, have their educational provision endorsed by a third party (such as an independent home tutor) or provide evidence in some other appropriate form.

The local authority accepts that in the early stages, parents may not yet be in a position to respond fully to enquiries. In such cases a reasonable timescale for responding will be agreed with the parents.

Although the local authority has no statutory duty to monitor the quality of home education on a routine basis, contact will normally be made with parents once a year to ask for up-to-date information and to offer support. Parents are under no duty to respond to this request and a lack of response would not of itself trigger a concern. The local authority's Elective Home Education Consultants are available to provide more frequent support if required.

If it appears that a suitable education is not being provided, the local authority will seek to gather any relevant information that will assist reaching a properly informed judgement. This will include seeking from the parents any further information that they wish to provide which explains how they are providing a suitable education. Parents will be given the opportunity to address any specific concerns that the authority has. Children are welcome to attend any meetings and make contributions to the information provided. Whilst parents are under no duty to respond to such a request, DfE guidelines comment that:

".....it would be sensible for them to do so.";

And refers to the legal case *Phillips v Brown* (1980).

If it appears to the local authority that a child is not receiving a suitable education the local authority may wish to contact the parents to discuss the on-going educational provision. Contact will be made in writing to parents requesting further information, stating whether the authority has any concerns about the education provision, specifying what the concerns are and give the child's parents an opportunity to address them. Where concerns about the suitability of the education being provided have been identified, more frequent contact may be required while those concerns are being addressed. If there are concerns, parents will be given the information in a written format outlining what the local authority is concerned about and why. Wherever possible, parents will have been informed of this beforehand, and have been given guidance about ways in which suitable education that meets the needs of the child may be provided. The

authority may be able to suggest other services that may be useful or may suggest other contacts that can provide advice. The report will suggest timescales and arrangements for future contact to ensure progress has been made.

As stated, there are no statutory duties in relation to the routine monitoring of the quality of home education. However, under Section 437(1) of the Education Act 1996, local authorities shall intervene if it appears that parents are not providing a suitable education. This may happen when;

- The parent has chosen not to provide any information, and
- It appears on the balance of probabilities that no education is taking place, or
- The serious concerns discussed with the parents have not been addressed or begun to be addressed.

Section 437(1) of the Education Act 1996 states:

“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 that the child is receiving such education.”

Section 437(2) of the 1996 Act provides that the period shall not be less than 15 days beginning with the day on which the notice is served.

Section 437(3) of the 1996 Act provides for the serving of School Attendance Orders:

If.....

(a) a parent on whom a notice has been served under subsection (1) fails to satisfy the local authority, within the period specified in the notice, that the child is receiving suitable education, and

(b) in the opinion of the authority it is expedient that the child should attend school, the authority shall serve on the parent an order (referred to in this Act as a "school attendance order"), in such form as may be prescribed, requiring him to cause the child to become a registered pupil at a school named in the order.

Suffolk considers that the taking of the above measures shall be a last resort after all reasonable avenues have been explored to bring about a resolution of the situation. At any stage following the issue of the Order, parents may present evidence to Suffolk (or the court) that they are now providing a suitable and appropriate education and apply to have the Order revoked.

### Safeguarding

Local authorities also have a duty under section 175(1) of the Education Act 2002 to safeguard and promote the welfare of children. This section states:

“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.”

Section 175(1) does not extend local authorities' functions. It does not, for example, give local authorities powers to enter the homes of, or otherwise see, children for the purposes of monitoring the provision of elective home education.

#### Reviewing procedures and practices

Suffolk will review these guidelines and practice in relation to home education on a regular basis. The initial review will be within 12 months of the first date of publication, and thereafter at least every two years. Our intention is to involve Home education organisations and parents in the process of review in order to ensure the most effective practice and strengthen partnerships.

#### Caseload Summer Term 2014

559 current cases across the County - W Area 209, N Area 169, S Area 181;

29 cases have Statements of SEN;

120 cases we have some concern about;

439 cases where we have logged as “no concerns”;

182 new cases in the academic year 2013-14 – W Area 92, N Area 48, S Area 42;

125 cases were “closed”, e.g. 101 returned to school, 8 moved to another area, 1 moved to EOTAS provision, worryingly 15 were listed as Children Missing Education [CME]

#### The Suffolk EHE Team

The EHE team is a small team within Inclusive Services. This service is within Suffolk County Council's Directorate for Children and Young People.

Where possible, the EHE team will explore the options for access/signposting children and their parents/carers to other educational services and facilities, within our available resources.

EHE consultants understand that there is no one 'correct' educational system. All children learn in different ways and at varying rates. It is vital that parents/carers and children choose a type of education that is right for them, and it is important that EHE officers understand and are supportive of many differing approaches or "ways of educating" which are all feasible and legally valid.

The role of the EHE team is not to tell parents how to educate their children or to promote registration at school. It is to respond to concerns that a child is not receiving a full time education suitable to his or her age, ability and aptitude and, where appropriate, provide support and information for parents.

