



Education Inclusion Service

Elective Home Education

Guidance and Procedures

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Contents

Introduction - Page 3

The law relating to Elective Home Education – Page 3

Definitions – Page 3

Parental Rights, Responsibilities and Considerations – Page 4

Withdrawal from School to Elective Home Educate – Page 4

Bath & North East Somerset responsibilities – Page 5

Information Bath & North East Somerset will use to reach a legitimate conclusion that a suitable education is being provided – Page 6

Safeguarding Information – Page 8

Children with Special Educational Needs and Disability (SEND) – Page 8

Bath & North East Somerset Elective Home Education Support – Page 10

Bath & North East Somerset Elective Home Education Procedure – page 10

Introduction

Elective home education is the term used by the Department for Education and Bath & North East Somerset to describe the educational provision made for children whose parents decide to educate them 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. These guidelines are intended for use in relation to elective home education only. Throughout this guidance, 'parents' should be taken to include all those with parental responsibility, including guardians and carers.

Children whose parents elect to educate them at home are not registered at mainstream schools, special schools, independent schools, academies, free schools, Pupil Referral Units (PRUs), colleges, children's homes with education facilities or education facilities provided by independent fostering agencies. Some parents may choose to engage private tutors or other adults to assist them in providing a suitable education, but there is no requirement for them to do so. Learning may take place in a variety of locations, not just in the family home.

The purpose of this guidance is to set out how Bath & North East Somerset will fulfil its statutory responsibilities, setting out the legislative position, and the roles and responsibilities of the local authority and parents in relation to children who are educated at home.

The law relating to Elective Home Education

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 right to educate their children at home. 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."

Definitions

Efficient education - An efficient education, within the meaning of Section 7 of the Education Act 1996, is one which achieves what it sets out to achieve.

Suitable education - There is no definition of a 'suitable' education in English statute law. Case law has provided some clarity, a "suitable" education is one that:

- 1) "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". (R v Secretary of State for Education, ex parte Talmud Torah Machzikei Hadass School Trust. Judicial review 1985).

- 2) enables them to achieve their full potential. (Harrison & Harrison v Stevenson. Appeal 1981 Worcester Crown Court)

Full-time education - There is currently no legal definition of "full-time". Children normally attend school for between 22 and 25 hours a week for 38 weeks of the year, but this measurement of "contact time" is not relevant to elective home education where there is often almost continuous one-to-one contact and education may take place outside normal "school hours".

Parental Rights, Responsibilities and Considerations

The responsibility for a child's education rests with his or her parents. Parents may decide to exercise their right to home educate their child from a very early age and so the child may not have been previously enrolled at school. They may also elect to home educate at any other stage up to the end of compulsory school age. In the majority of cases parents are not required to register or seek approval from the local authority to educate their children at home. If the child attends a special school under arrangements made by the LA permission is required. The Special Educational Needs and Disability section of this document provides further information.

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. However, local authorities are encouraged to provide support where resources permit.

Parents must ensure their children receive efficient and suitable full-time education for as long as they are being educated at home.

Withdrawal from School to Elective Home Educate

The first contact between Bath & North East Somerset and home educators often occurs when parents decide to home educate and approach the school (at which the child is registered) and/or the local authority to seek guidance about withdrawing their child from school.

The Education (Pupil Registration) (England) Regulations 2006 state that a school must delete the child's name from their admissions register upon receipt of written notification from the parents that the pupil is receiving education otherwise than at school. In a few cases the parental decision to elective home educate is premature without proper consideration of the consequences of such an action. Maintained schools and academies could offer parents' 10 school days to review their decision to home educate before the child's name is deleted from the admission register. During this timeframe the Alternative Learning Team will contact the parent to offer advice about parental responsibilities for those who are, or who are considering, electively home educating their child.

Maintained schools and academies should not wait for parents to give written notification that they are withdrawing their child from school before advising their local authority of the intention to elective home educate.

Maintained schools and academies must make a return (giving the child's name, address and the ground upon which their name is to be deleted from the register) to the local authority as soon as the ground for deletion is met and no later than the date on which the pupil's name is deleted from the register. They should also copy parents into the notice to the local authority.

If a child is registered at a school as a result of a school attendance order the parents must get the order revoked by the local authority on the ground that arrangements have been made for the child to receive suitable education otherwise than at school, before the child can be deleted from the school's register and educated at home.

Bath & North East Somerset encourages parents to inform them directly of the withdrawal of a child from school but has no legal right to insist that parents do so. The only exception to this is where the child is attending a special school under arrangements made by the local authority, in which case additional permission is required from the local authority before the child's name can be removed from the register.

Schools must not seek to persuade parents to educate their children at home as a way of avoiding an exclusion or because the child has a poor attendance record. In the case of exclusion, they must follow the statutory guidance. If the pupil has a poor attendance record, the maintained school with the support of the local authority or the academy must address the issues behind the absenteeism and use the other remedies available to them.

Bath & North East Somerset responsibilities

Bath & North East Somerset has a statutory duty under section 436A of the Education Act 1996, inserted by the Education and Inspections Act 2006, to make arrangements to enable them to establish the identities, so far as it is possible to do so, of children in their area who are not receiving a suitable education. The duty applies in relation to children of compulsory school age who are not on a school roll, and who are not receiving a suitable education otherwise than being at school (for example, at home, privately, or in alternative provision).

Bath & North East Somerset has no statutory duties in relation to monitoring the quality of home education on a routine basis. 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 section states that:

"If it appears to a local education 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 Act provides that the period shall not be less than 15 days beginning with the day on which the notice is served.

Prior to serving a notice under section 437(1), Bath & North East Somerset will look to address the situation informally. Where the local authority has information that makes it appear that parents are not providing a suitable education, parents will be asked for further information about the education they are providing. Such a request is not the same

as a notice under section 437(1) and is not necessarily a precursor to formal procedures. Parents are under no duty to respond to such enquiries, but it would be sensible for them to do so.

Section 437(3) refers to 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 education 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.”

A school attendance order will only be served after all reasonable steps have been taken to try to resolve the situation informally. At any stage following the issue of the Order, parents may present evidence to the local authority that they are now providing an appropriate education and apply to have the Order revoked. If the local authority refuses to revoke the Order, parents can choose to refer the matter to the Secretary of State. If the local authority prosecutes the parents for not complying with the Order, then it will be for a court to decide whether or not the education being provided is suitable and efficient. The court can revoke the Order if it is satisfied that the parent is fulfilling his or her duty. It can also revoke the Order where it imposes an education supervision order.

Where the local authority imposes a time limit, every effort will be made to make sure that parents are not disadvantaged by the timing of the requirement. For instance, the time limit will not be set so that it expires during a school holiday period, when school and council staff may not be so available for advice and support.

As outlined under the Safeguarding Information section, Bath & North East Somerset has general duties to make arrangements to safeguard and promote the welfare of children (section 175 Education Act 2002 in relation to their functions as a local authority and for other functions in sections 10 and 11 of the Children Act 2004). These powers allow local authorities to insist on seeing children in order to enquire about their welfare where there are grounds for concern (section 47 of the Children Act 1989). However, such powers do not bestow on local authorities the ability to see and question children subject to elective home education in order to establish whether they are receiving a suitable education.

Section 53 of the 2004 Act sets out the duty on local authorities to, where reasonably practicable, take into account the child’s wishes and feelings with regard to the provision of services. Section 53 does not extend local authorities’ functions. It does not, for example, place an obligation on local authorities to ascertain the child’s wishes about elective home education as it is not a service provided by the local authority.

Information Bath & North East Somerset will use to reach a legitimate conclusion that a suitable education is being provided

In their consideration of parents’ provision of education at home, Bath & North East Somerset will expect the provision to include the following characteristics:

- consistent involvement of parents or other significant carers – it is expected that parents or significant carers would play a substantial role, although not necessarily constantly or actively involved in providing education
- recognition of the child’s needs, attitudes and aspirations
- opportunities for the child to be stimulated by their learning experiences
- access to resources/materials required to provide home education for the child – such as paper and pens, books and libraries, arts and crafts materials, physical activity, ICT and the opportunity for appropriate interaction with other children and other adults.

A home visit is the preferred way of engaging with parents, however any of the following may be appropriate ways of enabling Bath and North East Somerset to consider the parents’ provision of education at home:

- Meet with the EHE Co-ordinator, EHE Visitor or SEND Practitioner at their home with or without their child.
- Meet with the EHE Co-ordinator, EHE Visitor or SEND Practitioner at another venue with or without their child being present.
- A letter or a report from parents
- A letter or a report from a reputable third party, for example a provision, project, private tutor, or online provision acceptable to them and the local authority endorsing their educational plans.
- Samples of their child’s work
- A review of the child’s Education Health Care plan.

Information provided in letters or reports should include the following:

- educational plans outlining what is intended to be achieved
- the amount of time their child is being educated,
- the circumstances in which education is being delivered e.g. premises and available resources,
- access to social development opportunities,
- details of progress their child has made.

It is likely to be much easier for parents to show that the education provided is suitable if attention has been paid to the breadth of the curriculum and its content, and the concepts of progress and assessment in relation to their child’s ability.

Information provided by parents should demonstrate that the education actually being provided is suitable and address issues such as progression expected and achieved. It should not be simply a statement of intent about what will be provided, or a description of the pedagogical approach taken – this would not enable the local authority to reach a legitimate conclusion that a suitable education is actually being provided.

The local authority recognises that, in the early stages, parents’ plans may not be detailed and that they may not yet be in a position to demonstrate all the characteristics of an “efficient and suitable” educational provision. The EHE information pack, questionnaire and first visit will give parents the opportunity to develop their provision within a structured timescale.

Safeguarding Information

Home education is not, in itself, a safeguarding concern. The welfare and protection of all children, both those who are registered at a school and those who are educated at home, is of paramount concern and a shared responsibility. A situation in which a child receives unsuitable or inadequate education can impair a child's intellectual, emotional, social or behavioural development, and may therefore bring child protection duties into play.

Bath & North East Somerset 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 education authority shall make arrangements for ensuring that the functions conferred upon them in their capacity as a local education authority 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 the local authority powers to enter the homes of, or otherwise see, children for the purposes of monitoring the provision of elective home education.

The Children Act 2004 (“the 2004 Act”) provides the legislative framework for developing children's services as detailed in Every Child Matters: Change for Children.

Section 10 of the 2004 Act provides a statutory framework for cooperation arrangements to be made by local authorities with a view to improving the well-being of children in their area.

Section 11 of the 2004 Act sets out the arrangements to safeguard and promote the welfare of children. However, this section does not place any additional duties or responsibilities on local authorities over and above section 175(1) of the Education Act 2002.

The Alternative Learning Team will follow Bath and North East Somerset's safeguarding procedures at all times, working with relevant agencies and individuals to proactively safeguard and promote the welfare of children. In the event of any concerns about the welfare of a home educated child the ALT will initiate and follow established procedures. The EHE Co-ordinator, EHE Visitor and/or SEND Practitioner for EHE will explain the reasons for any welfare concerns to the parents in accordance with procedure.

The EHE Co-ordinator, EHE Visitor and SEND Practitioner for EHE will have up to date safeguarding training.

Children with Special Educational Needs and Disability (SEND)

Parents of children with Special Educational Needs have the same right to educate their child at home. This right is irrespective of whether the child has an Education, Health and Care Plan (EHC Plan) or not. Where a child has an EHC Plan and is home educated, it remains Bath & North East Somerset's duty to ensure that the child's needs are met.

Simply; where EHC plan sets out special educational provision that the child should receive at home, Bath & North East Somerset is under a duty to arrange that provision. Where the EHC plan names a school as the place where the child should receive his or

her education but the parent chooses to home educate their child, Bath & North East Somerset must assure itself that the provision being made by the parent is suitable to the child's special educational needs. In such cases Bath & North East Somerset must review the EHC Plan annually.

Local authorities must have regard to the *Special Educational Needs and Disability Code of Practice*. Although this document primarily covers special educational needs in the school and early years' settings, it does give information about SEN in relation to home education (paragraphs 10.30 – 10.38 of the Code). The Code of Practice emphasises the importance of local authorities and other providers working in partnership with parents. The Code of Practice is statutory guidance and schools, local authorities and others to whom it applies must have regard to it. This means that, apart from the references to the law, these bodies do not have to follow the Code to the letter, but they must be able to justify any departure from its guidance. The foreword states that the Code is designed to help these bodies to "make effective decisions but it does not – and could not – tell them what to do in each individual case".

If the parents' attempt to educate the child at home results in provision that falls short of meeting the child's needs, then the parents are not making "suitable arrangements", and the authority could not conclude that it were absolved of its responsibility to arrange the provision in the EHC Plan. Parents need only provide an efficient, full-time education suitable to the age, ability and aptitude and to any special educational needs the child may have as defined in Section 7 of the Education Act 1996. It is the authority's duty to arrange the provision specified in the EHC Plan, unless the child's parent has made suitable provision, for as long as an EHC Plan is maintained. In some cases a combination of provision by parents and LA may best meet the child's needs. Local authorities should consider, for example, providing access to additional resources or treatments where appropriate.

Even where Bath & North East Somerset is satisfied that parents are making suitable arrangements, it remains under a duty to maintain the EHC Plan and review it annually, following procedures set out in chapter 9 of the SEND Code of Practice. In some circumstances the child's special educational needs identified in the EHC Plan will have been related to the school setting and the child's needs may readily be met at home by the parents without LA supervision. It may be appropriate, once it is established that a child's special needs are being met without any additional support from the LA, to consider ceasing to maintain the EHC Plan. This may be done at the annual review or at any other time. Where the EHC Plan is reviewed it should be made clear to parents that they are welcome to attend, but they are not obliged to do so.

Where Bath & North East Somerset is satisfied that the child's parents have made suitable arrangements it does not have to name a school in the child's EHC Plan. There should be discussion between the authority and the parents and rather than the name of the school, the EHC Plan should mention the type of school the LA considers appropriate and that "parents have made their own arrangements under section 7 of the Education Act 1996".

The statement should also specify any provision that the local authority has agreed to make under section 319 of the Education Act 1996 to help parents to provide suitable education for their child at home.

If the school that the child is to be withdrawn from is a special school, the school must inform Bath & North East Somerset Council who must decide whether or not to give consent before the child's name can be deleted from the school admission register. Bath & North East Somerset will need to consider whether the elective home education is suitable before amending the child's EHC Plan.

A parent who is educating their child at home may ask Bath & North East Somerset to carry out a statutory assessment or reassessment of their child's special educational needs and Bath & North East Somerset must consider the request within the same statutory timescales and in the same way as for all other requests. Bath & North East Somerset will provide information to home educators detailing the process of assessment and both its and home educators' responsibilities with regard to provision should the child be given an EHC Plan. The views of the designated medical officer for SEN should be sought by Bath & North East Somerset where a child with an EHC Plan is educated at home because of difficulties related to health needs or a disability.

Bath & North East Somerset Elective Home Education Support

The EHE Co-ordinator, EHE Visitor and SEND Practitioner for EHE provides support in the form of:

- Signposting parents to resources and services
- Publishing written information about EHE that is clear, accurate and sets out the legal position, roles and responsibilities of both the local authority and parents;
- Discussing the implications of EHE with parents before they make the decision to leave or enter the school system;
- Seeks to mediate between schools and potential EHE families when the relationship has broken down and parents feel obliged to withdraw their child.
- Producing reports of contact with home educating parents and children;
- Promoting positive relationships with elective home education families based on mutual understanding, respect and trust in order to safeguard the educational interest of children.

Bath & North East Somerset Elective Home Education Procedure

The responsibility for Elective Home Education policy and procedure within Bath & North East Somerset lies with Education Inclusion Service. The named officer is Christopher Wilford, Head of Education Inclusion Service. The day to day operational management is by the Alternative Learning Team (ALT).

When the ALT becomes aware that a parent wishes to withdraw their child from school to educate them at home, the reasons for the decision is explored. Support, advice and mediation are provided to retain the child in school if this is the parents' true preference.

Following a parent's final decision to home educate, the child's details are added to the Elective Home Education EYES database. The EHE Co-ordinator requests the school complete an "exit from school form". In order to discharge its wider safeguarding duties the ALT seek the views of other Children's Services teams who may be working with an electively home educated child. Services that may be contacted include Social Care, School Nurse, Child Health and/or any other service or agency if known.

Parents are offered an initial visit from the EHE Co-ordinator or SEND Practitioner if the child has an EHC Plan, both are able to offer advice and guidance to help parents in their responsibilities to ensure that the education they provide meets the requirements of Section 7 of the Education Act 1996. Parents are provided with an EHE information pack and are invited to complete and return a questionnaire relating to the education they intend to provide for their child. If an initial visit is declined by parents, confirmation of this registration, an elective home education information pack and copy of the questionnaire will be sent to parents.

The ALT makes contact with the parents of all home educated children on at least an annual basis to reasonably inform itself of the current suitability of the education provided. Letters will state whether contact initiated by the authority is in response to specific concerns.

Following contact with parents, the EHE Co-ordinator, EHE Visitor or SEND Practitioner prepares a report to the home educator. This report will include one of the following:

- A statement that the education is satisfactory with recommendations as appropriate.
- A statement that there are concerns as stated in the report with recommendations for improvement and a review timeframe specified.
- A letter stating that the education is unsatisfactory for reasons stated in the report with recommendations or/and plans for support and a review timeframe specified.

Where the education provided is deemed to be satisfactory parents are offered further opportunities to meet with the EHE Visitor. Feedback received from home educators within Bath & North East Somerset suggest that satisfactory endorsement by way of a report is welcomed.

Where there are concerns about the education being provided the EHE Co-ordinator, EHE Visitor or SEND Practitioner discusses these with the parents and suggests areas for improvement and/or provides guidance about what other information is required to enable the authority to conclude the education is satisfactory. In these cases, follow up contact from the authority will occur more frequently. The authority will initially attempt to resolve concerns through informal contact and enquiries.

If on review the education remains unsatisfactory then the case will be referred to the Children Missing Education Service (CMES). The CMES will work with parents to return the child to school and may make use of provisions within Section 437 of the Education Act 1996 relating to School Attendance Orders.

Refusal by parents to provide any information in response to informal enquiries will in most cases mean that the authority has a duty to serve a notice under Section 437 of the Education Act 1996.

Any enquiries relating to this guidance should in the first instance be addressed to:

Christopher Wilford
Head of Education Inclusion Service

☒ Bath & North East Somerset Council
Lewis House
Manvers Street
Bath
BA1 1JG

☎ 01225 394454

✉ sam_lerway@bathnes.gov.uk

The Government's guidance to local authorities on Elective Home Education can be viewed at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791527/Elective_home_education_guidance_for_LAv2.0.pdf

The Government's guidance for parents on Elective Home Education can be viewed at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791528/EHE_guidance_for_parentsafterconsultationv2.2.pdf

Further advice is available through the Governments [DirectGov](#) website which also contains links to independent groups (HEAS & Education Otherwise) which support parents who educate their children at home.