

Elective Home Education (EHE)

An information leaflet for local authorities

Parental choice

Parents choose to educate their own children (elective home education) for various reasons. These include philosophical, religious, cultural or practical reasons, special needs not being met, the class size is too large, inability to obtain a place in the chosen school, a child is considered too young to begin formal education, anxiety or bullying issues or a combination of reasons.

Legal basis

According to the Education Act 1996, the statutory responsibility for a child's education rests with the parents, not with the Local Authority. In addition, Article 2 of Protocol 1 of the European Convention on Human Rights states:

'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.'

Sections 437 to 443 of the Education Act 1996 place a duty upon local authorities to take certain actions if it appears that a child is not being provided with a suitable education. The Department for Education EHE Guidelines for Local Authorities on Elective Home Education [EHEGLA] sets out these responsibilities and, while not perfect, Local Authorities must have regard to national guidance and give effect to it unless there is good reason to depart from it. The adoption of a local policy is not a good reason. This will ensure consistent dealings with all home educators nationally.

Section 1.3 of the EHEGLA guidance states:

'The purpose of these guidelines is to support local authorities in carrying out their statutory responsibilities and to encourage good practice by clearly setting out the legislative position, and the roles and responsibilities of local authorities and parents in relation to children who are educated at home.'

Section 2.6 states:

'Local authorities have 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). The guidance issued makes it clear that the duty does not apply to children who are being educated at home.'

This section makes it very clear that home educated children are not Children Missing Education.

Monitoring

Section 2.7 of EHEGLA4 states:

'Local authorities have no statutory duties in relation to monitoring the quality of home education on a routine basis.'

Parents are normally concerned to do the best for their children, and HE may be a lifeline after traumatic school experience; insistence on visits/monitoring could result in additional trauma.

In the apparent absence of a suitable education, there is the provision, under s 37(1) of the Education Act 1944 (now s 437(1) of the Education Act 1996), for local authorities to intervene *'if it appears that parents are not providing a suitable education'*. The guidance goes on to detail the procedures to be followed in such a case.

Enquiries as to Educational Provision

The local authority's legal duty is concerned solely with children who appear not to be receiving a suitable education. Case law has established that a local authority may initially ask parents who are educating their children at home for information in order to assess whether it appears to the local authority that no suitable education is being provided.

In *Phillips v. Brown*, Lord Donaldson said:

'Of course, such a request is not the same as a notice under s437(1) of the Education Act 1996 and the parents will be under no duty to comply. However, it would be sensible for them to do so. If parents give no information or adopt the course ... of merely stating that they are discharging their duty without giving any details of how they are doing so, the LEA will have to consider and decide whether it "appears" to it that the parents are in breach of s37 (now s7 of the Education Act 1996).'

This ruling is reflected in sections 3.4 & 3.5 of the EHEGLA, and more detailed guidance is given in section 3.6.

If the local authority chooses to approach a family and informally ask for information, parents may establish in a number of ways that a child is receiving an efficient and suitable education. Parents might, for example, prefer one of the following, all of which have been accepted as valid by different local authorities in England:

- a written report,
- samples of work,
- a meeting at their home, with or without the child being present,
- a meeting elsewhere, with or without the child,
- an endorsement of the educational provision by a recognised third party,
- or information in any other appropriate form.

Access to the home

LAs have no automatic right of access to children's homes. This has been supported in case law:

'...an education authority should not, as a matter of policy, insist on inspection in the home as the only method of satisfying themselves that children were receiving efficient full-time education'

Also,

'...the Act of 1944 (replaced by the 1996 Education Act) does not provide for or contemplate an intrusion of a parent's privacy by inspectors coming into the home and that it is quite wrong for a local authority to insist on such inspection'

Welfare

It needs to be emphasised that the primary function of local authority (LA) education personnel is to ascertain that education is being provided. Only where the LA has evidenced concerns that a home educated child appears not to be in receipt of a suitable education are they supported by legislation and government guidance obliging them to take action to address those concerns with parents.

Home education is not mentioned as a “risk factor” in the Children Act 2004 and although all professionals, under Section 11 of this Act, have a duty to safeguard children and to promote their welfare, which they will do in the course of their normal duties, this is not a primary function and unless there are concerns for the child’s welfare this issue should not arise.

Should education officers in the ordinary course of their duties have welfare concerns, these should be passed on to the appropriate LA service that already has powers to deal with such issues – i.e. Children’s Social Services. Clear separation of educational and safeguarding roles ensures that issues are dealt with by those with appropriate skills and avoids conflation of education and welfare issues. This point is covered in section 4.7 of the EHEGLA and adherence to it can ultimately increase trust of the EHE service provided by the LA.

As far as Education Otherwise is aware, there is no evidence that HE families are any more likely to abuse or neglect their children than those at school. We would be interested to know of any authoritative evidence to this effect, as we are aware of research that suggests the opposite.

Ways of encouraging co-operation with the Local Authority

- Local home educators could be encouraged to contact their LA voluntarily by the LA providing appropriate services, e.g. access to the School Library Service; provision of exam centres for GCSE etc. and help with entry fees for public examinations, as recommended in section 5.2 of the EHELG.
- Free or subsidised access to local facilities such as swimming pools, museums, music lessons, use of instruments and equipment, etc.
- The local authority could also encourage contact and support between home educators by providing venues for the use of Home Education groups for their own activities at little or no cost.
- It would be beneficial for both the LA and home educators if the LA were to gain more insight into the range and possibilities of home education by talking to local home educators in a non-judgemental setting (i.e. not as part of an assessment of suitability of provision).
- It would also be beneficial if the LA were to ensure that all officials concerned with EHE have appropriate training, to develop their awareness of the principles and practices of home-based education. Informal meetings with local home educators would go some way towards this, at little cost to the LA.
- In general, an accepting and understanding attitude towards the aims and practice of Elective Home Education, and respect for those parents who choose this method of fulfilling their statutory duty to provide a suitable education for their children, would enhance the relationship between home educating families and Local Authorities. The rationale for this is clearly stated in sections 4.1 & 4.2 of the EHEGLA.

This leaflet has been prepared by trustees of Education Otherwise in accordance with long experience of and understanding of the law relating to Elective Home Education in practice. However, it is intended as a guide, not an authoritative statement of law or procedures