

RESPONDENT INFORMATION QUESTIONS

Please tick the box that best describes you as a respondent

- Local Authority
- School/College
- Central Government Department
- Youth Justice Service
- Health/PCT/SHA
- Social Services
- Police
- Parent/Carer
- Voluntary/Community Sector
- Connexions
- Children's Trust
- Other

CONSULTATION QUESTIONS

1 Based on your experience of local authorities implementing this duty since it was introduced in 2007, does the guidance make clear the actions which local authorities are expected to take to help them comply with the duty?

- Yes
- No
- Not Sure
- No Response*

Answer/Comments

The draft guidance is confusing and in my opinion makes it less clear to local authorities how they should comply with the duty in s436A of the Education Act 1996.

My experience, as a member of the home education community in Brighton & Hove, is that our local authority's attempt to implement this duty so far has already resulted in unwarranted intrusions into the private lives of home educating families.

For example, one local family received officious letters and telephone calls from the Education Welfare Service after their home educated son had been involved in a serious accident requiring hospital treatment. At this worrying and stressful time for the family, this was the last thing they needed. The child in question was already known to be home educated by the Local Authority's EOTAS team, and the parents made it clear to hospital staff that he was home educated. There was therefore no question that he was 'missing education' and there was no need for this follow up work to be done.

Another family had the distressing experience of an Education Welfare Officer arriving unannounced on the doorstep, and asking inappropriate questions of the 14 year old child who answered the door. He was left with the impression that his younger brother was in hospital, even though the hospital admission being followed up had taken place some years previously. As this family was in fact home educating perfectly legally, there was no need for this heavy handed and incompetent approach. A polite letter would have been sufficient.

Despite our best efforts, we have been unable to engage the local authority in dialogue about how to implement the duty in such a way that home educators are treated with respect and not automatically suspected. The local authority's internal strategy document on Children Missing Education includes prejudiced statements about home education, and the procedural flowcharts within it do not provide for the perfectly legal outcome that a child is found to be home educated and no action is required.

The draft guidance as it stands would intensify all these problems and make the lives of law abiding home educators more difficult. It would make the process of meaningful dialogue between home educators and the local authority much more difficult, directly contradicting the stated aim of the Elective Home Education Guidelines issued in November 2007.

2 Does the guidance make clear the role that implementation of this duty has in the wider programme of work led by local authorities to improve outcomes for children and young people, including promoting their safety and well-being?

- Yes
- No
- Not Sure
- No Response*

Answer/Comments

I found the entire document to be extremely unclear, with many confusing statements about the relationships between education and other aspects of children's lives.

For example, paragraph 1.1.4 begins "Children not receiving a suitable education are clearly at risk of a range of negative outcomes that could have long term damaging consequences for their life chances."

After discussing qualifications, this paragraph then goes on: "They are also are more likely to be vulnerable in one way or another. They may be from disadvantaged families, (experiencing multiple risks such as poverty, substance misuse, mental ill-health and poor housing), travelling communities, immigrant families, be unaccompanied asylum seeking or trafficked children, or be at risk of neglect or abuse or disengaged from education."

This sentence is so poorly constructed that it is not at all clear what it means. Are the disadvantages of poverty and poor housing being presented here as causes of a lack of education, or consequences of it? Is being from a travelling community or an immigrant family to be viewed as inherently 'vulnerable'? I think it is offensive to lump together all members of these minority communities with those who would traffic, neglect or abuse children.

Many young people are 'disengaged' from the current education system, because it fails to meet their individual needs and because they know they are not safe from bullying in the school environment. This is not necessarily an indicator of increased risk outside of that environment.

3 Does the guidance accurately describe the range of circumstances that put children's safety at risk and puts them at risk of not receiving a suitable education?

- Yes
- No
- Not Sure
- No Response*

Answer/Comments

I think it is extremely unhelpful to conflate these two issues. The draft guidance repeatedly elides 'at risk of not receiving a suitable education' (already a highly subjective phrase) into 'at risk of not achieving the 5 Every Child Matters outcomes' or simply 'at risk' or 'vulnerable'.

Defining a wide range of circumstances as indicators of 'vulnerability' or 'risk' leads to the danger that all unorthodox choices will be viewed as suspicious or dangerous. Diversity in parenting and educational approaches is useful and valuable for society, and I do not agree with an approach that seeks to marginalise and stigmatise alternatives as this draft guidance does.

The five outcomes are not a test which children and parents will pass or fail. They are all open to wide ranging interpretation, and are only useful as a framework to support the development of services for families, not as a means of assessing parents.

In particular, I object to all home educators being subjected to additional investigations because of home education being mentioned as part of this list of people "more at risk of not receiving a suitable education" (para 3.3).

The mention of home education in this list is nonsensical. It says that "children whose parents withdraw them from school in order to home educate them but then fail to provide a suitable education;" are "more at risk of not receiving suitable education". Surely if it is already known that parents are not providing a suitable education, then these children are by definition not receiving a suitable education, not just at risk of this.

It seems likely to me that local authorities will interpret the inclusion of this point in the list as a green light to undertake an assessment of the education being provided by all home educating

parents, and to view all home educated children as "more at risk of not receiving a suitable education".

As a member of a thriving home education community, filled with parents who are dedicated to providing their children with a rich, individually tailored education, I find this idea ludicrously offensive.

The whole concept of a list of groups who are "more at risk of not receiving a suitable education" is misguided. It is likely to lead to the exercise of prejudices, rather than sensitive support for individual children.

4 Does the guidance show effectively what steps local authorities should take when children are living in difficult circumstances that put them at more risk of not receiving a suitable education?

Answer/Comments

No. The draft guidance hops about from one area to another with no coherent structure. Having included home educated children in the list of those living in "difficult circumstances" it makes no reference to how local authorities should treat home educating families in the subsequent section of the document. This will lead to local authority officers applying their own (often inexperienced and ignorant) judgment as to whether home education should be considered 'suitable'.

According to the November 2007 guidelines on Elective Home Education, Local Authorities should have a senior officer who is trained to understand and respect the wide diversity of educational philosophies applied by home educating families, and who is well versed in the law in this area. Officers dealing with Children Missing Education should be advised to pass on to that officer contact details of families not previously known to be home educating. CME policy does not need to include any procedure for assessing the suitability of home education provision - it should just be about identifying the place of education for each child.

5 What are the key challenges local authorities could face to implementing these guidelines effectively?

Answer/Comments

The relationship between Section 436A and Section 437 of the 1996 Education Act is not self-evident and needs to be explained clearly in guidance.

As this draft stands, it leaves Local Authorities without a clear understanding of this difficult relationship. This will lead to serious confusion and the risk of possible legal challenges if local authorities misinterpret their duties and overstep their legal powers.

Section 7 of the 1996 Education Act sets out a clear equivalence in law between education provided at school and otherwise. Since education otherwise than at school is provided by a small minority of parents and is therefore not widely understood, there is a danger that members of the public, teachers, health service staff, social workers and other local authority officers may mistake children who are being lawfully educated otherwise for children who are missing education, simply because the children are not at school. An important function of this guidance, therefore, is to safeguard the freedom of parents to choose the legal option of home education as a means of fulfilling their duty under Section 7.

Section 437 already gives local authorities powers to take action if a child does not appear to be receiving a suitable education. These powers apply whether or not the child is registered at a school.

Section 436A does not give additional powers to local authorities to assess the suitability of education being provided to children, either at school or by their parents. It is simply about identifying those children whose parents are not undertaking to provide an education at all.

Because of the danger of mistaken identity mentioned above, this process needs to be undertaken sensitively and with regard to the right to privacy of families who may well be perfectly lawfully home educating.

I think the guidance should emphasise that all enquiries of parents where it is not known whether a child is receiving an education otherwise than at school should be made politely, and on the basis of a presumption of innocence.

The current draft falls far short of this kind of clarity, and could lead to distressing and unnecessary problems both for local authorities and for home educated children.

6 Does the guidance make clear the duties and powers that local authorities have in relation to home educated children when parents are not providing them with a suitable education?

Yes

No

Not Sure

No Response

Answer/Comments

The draft guidance contradicts the guidelines on Elective Home Education issued by the DCSF in November 2007.

Paragraph 1.2.7 of the draft guidance states that "Local authorities have a duty to make arrangements to enable them to establish whether a child who is being educated at home (under section 7 of the Education Act 1997) is not receiving suitable education."

This appears to be an amalgamation of the duty to identify children missing education (s. 436A) and the duty to take action if it appears that a child is not receiving a suitable education (s. 437).

As such it is confusing and misleading. It will give local authorities the impression that they are required to assess the education being provided by all home educating parents.

As is made clear in the Elective Home Education Guidelines, there is no duty or power for local authorities to routinely monitor home educators. If it is not the intention of this guidance to introduce such a duty by the back door, then the references to home education need to be substantially redrafted.

The paragraphs that need to be changed are:

2.2, which suggests that local authorities should include "Date it was considered that home education provision was not suitable" as a data field in their database. This will have the effect of encouraging local authorities to believe that they have a duty to assess the education being provided by all home educating parents.

3.3, as mentioned above. There is no need to include home educators in this list, if the list is to be retained

5.1, which also encourages local authorities to assess the provision made by all home educating families.

6.17. If a child is receiving a suitable education at home, that child is not the target of this duty. This is not dependent on the local authority making an assessment and being satisfied that the education is suitable. Just as local authorities are not required to

investigate the suitability of the education being received by children who are registered at school, there is no need for them to routinely assess the education received by children at home. This paragraph also states that local authorities have the power to issue a school attendance order if it appears that a parent is not providing a suitable education. This is not accurate; authorities must first issue a notice requiring the parents to satisfy them that the child is receiving a suitable education. Only if the parents do not respond to this notice with satisfactory information may the authority issue a school attendance order.

6.27, which again includes home educated children (with the meaningless caveat about the local authority not considering the education provided to be suitable) in a list of "vulnerable" groups. This leads directly (para 6.8) to an increased likelihood of home educators being visited out of the blue when they have recently arrived in an area, especially if their previous LA had difficulty understanding or accepting their educational philosophy. This kind of intervention is disturbing for children and damaging to parents' provision of a suitable education; it is not harmless when inappropriately undertaken, and should not be encouraged without good reason.

6.31, which has been badly drafted, so that it doesn't make sense.

7 Does the guidance contain all the 'signposts' to other relevant guidance; sources of support and advice for local authorities that will enable them to implement this duty effectively?

- Yes
- No
- Not Sure
- No Response

Answer/Comments

As mentioned previously, the draft guidance refers to the DCSF guidelines on Elective Home Education, but effectively contradicts those guidelines by implying that local authorities have a duty to assess all home educators.

Given this approach of the draft guidance, it is especially unfortunate that there is no discussion of the legal definition of the term "suitable" in this context. While it is mentioned that "suitable

education" means efficient, full time education suitable to the child's age, aptitude and ability and any special needs the child may have, this is not prominent enough and there is no discussion of the case law definitions of "efficient" and "suitable" as there is in the EHE guidelines.

Local authorities should be encouraged (as they are in the EHE guidelines) to work with home education support organisations. Developing respectful relationships with the home education community is the most effective way to ensure that home educating families feel safe to use state services if they need to.

There is not enough information about Data Protection legislation and the question of consent for data to be shared.

8 Beyond the publication of the guidance, what would be the most effective means of communicating the importance of implementing the new duty, and the processes that will help its implementation, to professionals working with children?

Answer/Comments

As advised by the 2007 EHE guidelines, local authority officers should undertake training to ensure that they understand and respect the wide diversity of educational approaches used by home educating families.

Publication of the draft guidance as it stands would have a negative effect on the appropriate implementation of the duty by local authorities. The existing 2007 guidance on CME should be allowed to remain in force and given a chance to be fully understood and incorporated into local policies.

9 Have you any details of good practice that would be useful to include in the final version of the 'guidance'?

Yes

No

No Response

10 Did you find the draft guidance clear, unambiguous and easy to follow?

Yes

- No
- Not Sure
- No Response*

Answer/Comments

I found the guidance to be muddled, highly ambiguous, and incoherent.

11 a) We have developed standard data definitions at Appendix 1 of the guidance. These were developed in consultation with several local authorities. Do you agree with these definitions?

- Agree
- Disagree
- Not sure
- No Response*

Answer/Comments

I do not agree with the definition of children who are not receiving a suitable education. It is perfectly possible for a child not to be receiving an education suitable to his/her age, aptitude and ability while on the roll of a school. Given that education at school and otherwise are legally equivalent, there is no reason for this definition to include a specific statement about the education being provided at home not being "suitable" when this is not included for education being provided at school.

I also don't agree with the proposed 'subsets', as it seems to me that these could be understood to include children who are in fact lawfully educated at home. Children who are never registered at school or whose parents choose to home educate them at a point of transition between one school and another are not necessarily missing education, nor are they necessarily 'refusing' to attend school or accept a school place.

I think the references throughout the document, and in these data definitions, to "Elective home education that is unsuitable in accordance with Section 7 of the 1996 Education Act;" are confusing and unhelpful. Either somebody is being educated in accordance

with Section 7 or they are not. Whether or not they are registered at a school is irrelevant.

11 b) If not, what amendments would you suggest and why?

Answer/Comments

I think the first definition should say " "A compulsory school-age child who is not receiving 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."