

## **Question 1**

Do you agree that it is helpful for the DFES to issue guidelines to local authorities.

**answer.**

**YES**

There is a need to clarify the situation regarding children with statements who are withdrawn from school to be home educated, as there is some confusion over the meaning of the guidance issued in the Code of Practice for special needs.

The education act 1996 is very clear. In section 324 it states "where a local authority maintain a statement under this section then- unless the child's parent has made suitable arrangements, the authority shall (i) arrange that the special educational provision in the statement is made for the child. "

As in Section 7 of the same act, this places responsibility on parents to meet the child's special needs, and imposes no duty on Local Authorities to act unless the family are failing in their section 7 duty.

The Code of Practice for special educational needs states "if the child has a statement of special educational needs it remains the LEAs duty to ensure that the child's needs are met."

This is interpreted by some LAs to mean that their consent is needed for a child with a statement to be withdrawn from any school including mainstream, or that the parent must carry out what is in the statement and teach in the way that is prescribed by the statement. There is no justification for this interpretation of the law. Baroness Ashton of Upholland makes it clear (Hansard 29 Oct 2001: column 1261) that "We do not suggest that parents must carry out exactly what is written in the statement"

It is important that we have guidance that sets this situation out clearly and removes the extra burden placed upon families of children with special needs to convince a local Authority that they did not have to provide all that is written in the statement

## **Question 2**

## **Question 3**

Do you agree that the description of local authorities' responsibilities [paragraphs 2.5-2.11] is accurate and helpful?

**Answer:**

There is no requirement in law for a young person to make "reasonable progress" and this sentence should be removed. The legal requirement is set out in Section 7 of the

1996 Education Act, where it states that the education must be suitable to the age, ability and aptitude of the child and any special needs he may have. Introducing the idea of progress as a measure of a suitable education may put families of children with disabilities or special educational needs at a disadvantage. They may not make as much progress as other children, due to their disabilities, or may make progress in ways that are harder to measure, such as confidence, or willingness to encounter new experiences. Some children with profound physical and learning disabilities may not make the kind of progress that can be recognised by anyone who does not know them well. Others may even suffer from degenerative conditions. We are aware, too, that a number of children being home educated who show signs of having special needs have not yet had a formal diagnosis. It is possible that a parent who is providing a suitable education under section 7 of the 1996 Act may be unable to demonstrate progress in specific areas to an observer due to the child's disabilities and this could cause their education to be unfairly judged as inadequate when they are in fact fulfilling the requirements of the law.

We consider that it is important that families can respond to requests for information about their home education in a variety of ways, and not only through face to face contact with the local authority. Face to face contact with the LA can sometimes mean that the parents are presented with a number of questions based on how education is provided at school, that do not relate to the education provided at home. This sometimes makes it difficult for parents to present information about their own different but suitable education. Having alternative means of presenting information such as writing a report enables parents to describe their education in their own words and highlight aspects that may not be on the LAs checklist that make their education effective. This particularly benefits parents who feel intimidated by official visits and therefore don't do justice to the education they are providing. Visits can also be detrimental to the education of children on the autistic spectrum and children who have not yet developed confidence in their learning ability.

#### **Question 4**

#### **Question 5**

Do you agree that the section on providing a full time education [paragraphs 3.11 - 3.14]

and in particular, the characteristics of provision [paragraph 3.13] is accurate and helpful?

#### **Answer**

3.11 could include

"carry out exactly what is written in a child's statement."

in the list of things home educating parents are not required to do. Many parents are told by people within their local authority that they have to provide everything that is in the statement, or that they have to teach in the way prescribed. For some families home education provides an alternative means of meeting their child's needs when the approaches used in schools have not worked or are just not appropriate at home, and so it is important that they are not tied to approaches that are laid down in statements.

3.12 could include. There are also many valid ways to meet a child's special needs and parents may choose to do so in a way which differs from that outlined in the child's statement.

The list of resources in 3.13 could be read as a checklist with families being told their ed is not suitable if they do not visit the library. It should either be removed or a sentence included pointing out that the resources named are suggestions only, that different families will have different styles and therefore use different resources and therefore the lack of any of the individual items on the list should not be seen as a failure to provide a suitable education.

It is unfortunate that there is no question in the consultation form relating to the section on special education needs, as this section is likely to cause confusion and could be considerably improved to clarify the roles of parents and local authorities.

3.15 states " where a child has a statement of special educational needs and is home educated, it remains the local authorities duty to ensure that the child's needs are met"

This wording is used in code of practice for special needs, which, in our experience has been interpreted by LAs to mean that the law is different for children with a statement, when in fact there is no difference in law. Section 324 of the 1996 Education Act does not place new duties on parents, above those duties outlines in section 7 of the education act. Baroness Ashton of Upholland pointed this out on 29 October 2001 Column 1261, where she stated "The provision in sections 324(4A) of the Education Act does not place new duties on parents. The duties on parents who home educate their children are contained in section 7 of the Act. "

There is an opportunity with this guidance to remove the confusion that comes from the way in which the Code of Practice is interpreted. We have heard of families being told thta they cannot home educate a child with a statement , that a chld with a statement cannot be withdrawn from school to be home educated unless the LEA have approved the provision first, or that provision for a child with a statement must stick to the form described in the statment. There is no justification for these interpretations of the law. Baroness Ashton of Upholland (as above), makes it clear that "We do not suggest that parents must carry out exactly what is written in the statement"

It is important that we have guidance that sets this situation out clearly. Many families have difficulty convincing their local Authority that they do not have to carry out what is in the statement, whilst others believe that they are obliged to do so, against their better judgement.

In our experience home education enables parents of children with special needs to find a flexible way to interest their child in learning, to put past failures behind them, and be creative about finding ways to help the child progress. Sometimes a very successful or therapeutic education can look nothing like school, and can be very different from what was expected when the statement was written. Having to justify this at a statement review where progress against national curricula targets is being examined, can be very discouraging. It is important that all personnel involved in the review of a statement of a home educated person are aware that there is no need for

the family to follow what is in the statement.

The next sentence "The statement must remain in force and the authority must ensure that parents can make suitable provision including provision for the child's SEN"

This is also used in the Code of Practice and is taken by some LEAs to mean that the statement can not be ceased. However where a family is able to meet the needs of the child without any input from the LEA, it may be appropriate to cease the statement.

We agree with the EO submission that this paragraph should be altered to read

"Parent's right to educate their child at home applies equally where a child has special educational needs. Some children with Special Educational Needs are statemented but others are not. Where a child has a statement of special educational needs and is home educated, the parent has a duty to make suitable arrangements for the child's needs to be met. If they have not done so then the LEA must arrange for the provision specified in the statement. The Statement will continue to be reviewed once the child has become home educated. If the statement is deemed to be unnecessary then consideration should be given to making arrangements for it to be ceased.

3.16 the words "in a school, home or alternative setting" should be added. Again Baroness Ashton of Upholland said that "the LA could assist the parents to make their arrangements by providing help in some circumstances". Disabled children should not be denied the option of home education because certain services are only available if they attend school.

3.17

It should not be necessary to continue to maintain and review a statement where the parents are able to meet the needs of the child without any support from the LA, and consideration should be given to ceasing the statement in these circumstances.

3.18

"The statement can also specify any provision that the local authority has agreed to make under section 3.19 to help parents provide suitable education for their child at home."

It has come to our attention that some children with severe disabilities who are home educated are being denied essential equipment that would normally be provided at school. This seems to vary depending on local arrangements but for some families the lack of access to certain vital equipment outside of a school setting is restricting their parent's choice of educational provision. This includes items such as Brailers and Communication aids that are very expensive and beyond the means of many households, and are essential tools for that child to have full access to a suitable education. In some areas this also includes items such as power wheelchairs and standing frames, and access to speech or occupational therapists. Some of these families are unable to get charitable help with these items because the charity either only provides to schools or does not provide items that would be available in a school. It would be helpful if the guidance could address this matter.

The sentence dealing with deregistration from a special school is useful. We are aware that a number of special schools delay de registration, often because they are unsure of the exact procedure. This leaves some parents waiting many months for confirmation that the child's name has been removed from the register. A time limit would be helpful here.

#### **Question 6**

Do you agree that the section on developing relationships (section 4) is useful?

4.4 3rd sentence should be extended to read "parents are not required to have any qualifications or training to provide their children with an appropriate education, including qualifications in Special educational needs.

We are aware of some parents being told by children's services staff, and some head teachers, that they cannot home educate their child with special needs because they do not have specialist qualifications. This is particularly an issue when children come into contact with other professionals as a result of the child's disability

4.9 could have 'Home education of SEN children is not to be taken as welfare concern. And should we suggest that it says here that there are not extra requirements for the LA to look at welfare but only that which all people have to have regard to. We need to make sure that they don't add the 'well being' checks that some LAs have started.

In view of the problems in Gloucestershire ( see Eunice Spry serious case review )

<http://www.gscsb.org.uk/home/subcommittees/Documents/ES%20SCR%200105%20May07>.

I wonder if we should have something here saying that absence of a relationship does not mean that there should automatically be suspicions. I am thinking here of families with children on the Spectrum where the children become distressed by visits, children previously said to have school phobia, or which have been badly treated or bullied at school. These families would not necessarily want a relationship as it could be detrimental to the child's well-being, but in light of what Glos LA is saying that could be taken as meaning that the family are trying to hide abuse.

Something along the lines of : If home educators do not wish a relationship with the local authority, this does not automatically mean that the families motives should be taken as suspicious, If the family are fulfilling Section 7 then no further investigation or scrutiny should be undertaken.