



Personalised Education Now

Centre for Personalised Education

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Home Education Frequently Asked Questions (England and Wales)

(for Flexischooling questions, please refer to the flexischooling handbook).

CPE trustees frequently receive enquiries from parents about home education, often relating to how they should engage with their local authority. This has been particularly concerning for parents since the publication of the Elective Home Education Departmental Guidance for Local Authorities (EHEDGLA), in April 2019.

CPE, in conjunction with Education Otherwise charity, has obtained advice from Queen's Counsel (QC, which is a title given to a senior barrister) in order to help us to provide accurate advice to parents. The QC we instructed specialises in public law and education law, is a former part-time Chair of the Special Educational Needs and Disability Tribunal and a current 'A list' member of the Equality and Human Rights Commission's Panel of Preferred Counsel. The QC also trains lawyers and others, in education and public law.

This fact sheet is based on the advice that CPE received from the QC, but parents should of course obtain their own legal advice, if they have concerns over the issues that this fact sheet address.

Please note that 'him' is used throughout for ease of explanation, this advice applies equally to all children, regardless of gender.

Frequently asked questions

My child has never been to school, who do I notify that I want to home educate?

You are not required to notify any organisation, or individual that you intend to home educate your child.

If you are no longer living with the child's other parent, you should consult with him

over decisions about education. If the other parent does not agree, please refer to our fact sheet on separated parents.

My child is at a mainstream school, who do I notify that I want to home educate?

If your child is at a mainstream school (not a special school), you must notify the head teacher that the child is being home educated. This applies regardless of whether your child has an Education Health and Care Plan (EHCP). The notification need not be detailed, all that is required is to state:

'Dear (Head's name),

Ref: (Name of child and date of birth)

Please remove (child's name) from the school roll with immediate effect as (he/she) is now home educated in accordance with the 1996 Education Act s.(7).

Please confirm receipt of this letter and that (child's name) has been removed from the roll in accordance with the Education (Pupil Registration) (England)

Regulations 2006 s(8)(1)(d). (in Wales this should be: The Education (Pupil Registration) (Wales) Regulations 2010 s(8)(1)(d)'.

If you are no longer living with the child's other parent, you should consult with him over decisions about education. If the other parent does not agree, please refer to our fact sheet on separated parents.

Do I need to tell the school, or the Local Authority (LA) why I have decided to home educate?

No, you are not required to give a reason for choosing to home educate. Of course, if you wish to explain your reasons you are entitled to do so.

If you feel that a complaint is justified, it is better to do this separately and after seeking advice from CPE, Education Otherwise, or a reputable source of advice such as a solicitor.

My child is at a special school, who do I notify that I want to home educate?

If your child is at a special school under a private arrangement, you only have to notify the head teacher, as with a child at a mainstream school. However, if your child

is at a special school, under arrangements made by the LA, you may not remove the child from the roll without seeking consent from the LA to do so.

Consent may not be unreasonably withheld by the LA, but it is important that you include details of how you will meet your child's special needs in your application. The LA must give reasons for any refusal, which you can challenge if required.

I notified the school by letter that my child is now Home educated, but they are refusing to remove him from the roll. What can I do?

If a mainstream school, or a special school which your child attends under a private arrangement, refuses to remove your child from the school roll, they are acting unlawfully. Some schools suggest a 'cooling off period', but there is no basis in law to support that. Some LAs instruct schools to not remove the child from the roll, but again, that is not lawful. If the school does not remove your child's name from the roll, you are not in a difficulty in respect of prosecution for non-attendance (regardless of whether the school, or LA advise you otherwise), as your child ceases to be a pupil from the day that the school receives your written notification.

Should you need to remind the school or LA about the legal requirement you can remind the school of the relevant legislation given in the draft letter to remove the child.

I have never registered my child at a school, but the LA has done so, is that lawful?

Only a parent, or a person with parental responsibility, may register a child at school, regardless of whether the child has an EHCP, other than where a care or supervision order is in place.

The Elective Home Education Guidance for Local Authorities (EHEDGLA) confirms this:

'8.10 When a home-educated child's EHC plan names a school, some local authorities instruct the school to add the child's name to its admission register without the parent's agreement, with the result that the parent is committing an offence if the child does not attend the school. It is not lawful for a school to do this, and local authorities should ensure that both schools and their own staff know that'.

If the school, or LA register your child without your consent, you should remind them that it is not lawful for them to do so.

My LA wants me to fill forms which they have sent to me, do I have to do so?

You are not required at any stage, to complete forms sent to you by the LA. Of course, you are entitled to do so if you so wish.

If the LA writes to you sending forms, they are making an informal enquiry of you. There is no legislative requirement for you to respond, but precedent (case law) says that it is wise to do so. CPE advises likewise, as if you do not respond, the LA can assume that education is not suitable and commence the school attendance process.

In this situation, it is sensible to provide an outline of your home education provision including reference to your child's attainment. If you have very recently started home education, then you are not in a position to give details of attainment, but should give details about your child's current level of achievement, in order that you can refer back to his attainment further into the home education.

It is often useful to obtain your child's school records at the earliest opportunity, as these can provide evidence of the child's standard prior to starting home education.

You could simply ask for the records and the school may provide them, but if they do not do so, you can make a 'subject access request'. This is a letter asking for the material and stating that it is a subject access request. You should specify dates and the type of material you wish to have. Please note, if your child is ten or older, they should also sign the request.

It is important that you explain what your child is doing and how they are learning, as the LA is not required to accept a 'statement of intent'. What that means is that if you write 'we are going to do X', rather than explaining what you actually are doing, it will not be sufficient for the LA. It is also important that you include a list of resources you use and social opportunities that your child has.

I want my child to have some time before we start home education, people mention 'deschooling' can I do that?

Education must legally, be suitable from the first day. However, the law does recognise that things may take a while to settle into a routine. This does not mean that you can have a period of no education, what it means is that your LA should recognise that education may change significantly in the early stages.

Of course, you are entitled to take your child on holiday and if this coincides with the start of home education, that is perfectly acceptable.

What hours do I have to home educate for?

Home educating families do not have to work to set hours, set days, or any specific periods. What you do have to do is to ensure that the education is full time and that it is suitable to the child's age, ability and aptitude, together with any special needs they may have.

There is no definition of full time, but where the LA provides education at home for children who cannot attend school, that is usually no more than for five hours each week. Independent educational establishments have to register as schools, if they provide education for more than eighteen hours each week and schools generally provide about 4 ½ hours a day for 190 days a year. That would be the same as you home educating for 16 hours each week, if you home educate every week.

It would be difficult to provide full time education in only five hours a week (EOTAS provision), but if the LA is questioning how long you are educating for, it can sometimes be useful to explain that situation in order to show how favourably your provision compares.

It is important to remember that if your child is over sixteen years old then child benefit rules require that they are in receipt of at least 12 hours of directly supervised education each week.

What sort of home education can I choose?

It is entirely up to you how you decide to home educate your child and all approaches are equally valid, provided that the education is

‘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’.

The definition of ‘efficient’, which comes from precedent, is that the education ‘achieves what it sets out to achieve’. You should also refer to the commonly understood meaning, which is that the education is well organised and competent.

A 'suitable' education is an education which 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 option in later years to adopt some other form of life if he wishes to do so. The education should help your child to become an independent adult who is able to take part in everyday life, where he chooses to live. The education must be suited to your child, as an individual. It must be appropriate for his age, so if he is 15, you must not be working on basic reading with him, unless he has special needs.

The education must also be suitable for your child's aptitude and ability. These terms can be confusing, but in simple terms, aptitude is your child's potential, which is what he can achieve with the correct education. Ability is what he can do now. If your child has an aptitude for maths, he may be able to do mental arithmetic at five, but you would not ask him to multiply fractions. He has an aptitude for maths and with the correct education, he will achieve ability in maths.

If your child has special needs, the education you provide must be appropriate for those needs.

My LA has asked me to provide information, what should I do?

You should not ignore letters from your LA, as if you do so, they can assume that your education provision is not suitable. Of course, they should not jump to conclusions if you do not reply, but if there is no reasonable explanation for you not providing information, then this is an assumption they can make.

It is entirely up to you how you provide evidence and our general advice is to write an education report. Your report should explain how you educate your child, what resources you use and describe their attainment. It should refer to what you have done, or are doing and the information must not be a 'statement of intent'. What that means is that it should not simply describe your views about education and say what you intend to do.

If you are involved in Children Act proceedings with your child's other parent, it is often a good idea to accept a meeting with your LA officer. This is because the LA can provide independent evidence to the Court, or to your child's other parent, that the home education provision is suitable. Courts will often order a parent to obtain a report from their LA and pre-empting this will be viewed positively in most cases.

It is important to note that your LA must act reasonably and proportionately in their dealings with you. What that means is that the LA must not ask you for information that is not relevant to your child's home education and that they must only take the minimum action necessary to assess that your home education is suitable.

My LA is insisting that I accept a visit from them, provide a report by an educational professional, or provide samples of work. Do I have to do this?

The LA may not stipulate how you provide information and what form that information takes. A Local Authority insisting on applying a policy requiring a home visit, samples of work, or a professional report, would be acting unlawfully. If a parent refuses to comply with such an unlawful LA policy, this is not cause for legal action, such as serving a school attendance order. You are not required to:

- Meet the education officer;
- Allow the education officer to come to your home;
- Provide a professional report to the education department, including a report by a professional actively involved with the home education provision;
- Provide samples of your child's work;
- Or provide photographs of your child's work.

The EHEDGLA confirms this:

'6.12 In considering whether it is satisfied by the parent's response to the s.437(1) notice, it is open to the authority to consider any other relevant information available to it Of course, the local authority should give reasonable weight to information provided by parents, on its own merits. **For example, an authority should not dismiss information provided by parents simply because it is not in a particular form preferred by the authority (eg, a report by a qualified teacher)**'.

This has also been confirmed by the DfE;

'It is for the LA in each case to reach a conclusion as to suitability of education based on what information is actually available to it. It cannot reasonably

conclude that the education is not suitable simply on a general policy as to the format of reports, or a lack of work samples. It must consider what information it has on a case-by-case basis’.

The LA is insisting that I provide details of my home, or photographs of my home in order that they can check the ‘home education venue’. Do I have to provide this information?

You are not required to allow access to your home, provide details of your home, or to provide photographs of your home. This includes photographs of your child’s ‘work space’.

The DfE has confirmed that the EHEDGLA does not require inspection of the home and that where a parent does allow access to the home, the environment may form part of an assessment, but where the parent prefers not to allow access to their home, the LA may not insist upon such information.

My LA is stating that they do not have to follow the EHEDGLA, is this true?

LAs must consider, must properly understand, and should normally act in accordance with the EHEDGLA, unless there is a reason not to do so in the particular circumstances of the situation. The LA must be able to demonstrate that it has good reason to not follow the EHEDGLA and there is significant legal precedent to support that position. Unless the LA is able to demonstrate that there is good reason to depart from the EHEDGLA, it is acting unlawfully if they do not follow it.

My LA is stating that I have to comply with their local policy, is this true?

If the LA has a local policy which is consistent with the EHEDGLA then it is wise for you to comply with that policy.

If the LA has a policy which does not comply with the EHEDGLA, it cannot insist that you comply with the local policy. Some LAs try to enforce their local policy regardless of how clearly they are advised that it is not lawful to do so. If the LA does this, you can take legal action against them.

My LA has referred me to children’s social services, just because I home educate my child. Can they do this?

The first step to take in this situation, is to ask the allocated social worker to confirm in writing, the full reasons for his involvement.

If the LA has formed a view, after considering all of the evidence available to it, that your education is so unsuitable that it is causing your child to be neglected, they are required to refer you to children’s social services. If the social worker states this to be the case, then they are involved with your family and your home education entirely lawfully.

If the social worker confirms that the only reason for their involvement is that you home educate your child, or that you have declined to follow a LA policy which is itself unlawful, then they have no cause to be involved with your family. In that case, it is wise to make a formal complaint to children’s social services, about the social worker’s involvement.

If a complaint is made and not accepted, or acted upon, then you are entitled to raise a complaint with the Local Government Ombudsman (LGO), or to take legal action against the LA for failing to comply with the law.

I provided evidence to my LA, but they have told me that they are not satisfied, what should I do?

The first step is to write to your LA to ask for details of their specific concerns and that they explain why they have made that decision. You should make clear that you will provide information to answer any concerns, as soon as the details are provided.

The EHEDGLA makes clear that your LAs should try to resolve any problems informally:

6.4 The department’s advice is that in all cases where it is not clear as to whether home education is suitable (including situations where there is no information available at all), the authority should initially attempt to resolve those doubts through informal contact and enquiries. This is likely to be the most productive initial approach even when a child is not being suitably educated.

In order to resolve concerns informally, the LA should provide you with details of what those concerns are and why they are concerns. If the LA did not do so and went straight to formal measures (and particularly if it had a policy to act in that way) the LA would be acting unlawfully

Once you have the details of the LA's concerns, it is important that you provide information to demonstrate that the education is suitable, in the areas which are under question. It is up to you how you provide the information, but a clear and informative explanation should be accepted as sufficient.

My LA has sent me a notice under the Education Act 1996 s437, what should I do?

It is important to ask your LA to detail why they are still not satisfied, in order that you can respond appropriately to the notice. Make clear when you do so that you do intend to respond, as soon as you have that information.

Again, once you have the details of the LA's concerns, it is important that you provide information to demonstrate that the education is suitable, in the areas which are under question. It is up to you how you provide the information, but a clear and informative explanation should be accepted as sufficient.

The LA should explain to you what they are concerned about, provide you with a proper opportunity for response and conscientiously consider your response.

My LA has served a school attendance order on me, what should I do?

Again, you should take steps to answer the concerns the LA has and if the LA is satisfied at that point, they should revoke the school attendance order.

If the LA declines to revoke the school attendance order, you can ask the Secretary of State for education to consider revoking it. It is your right to make that request and your LA should not try to discourage you from doing so. What that means in practice, is writing to the relevant officer at the DfE to provide all of the evidence you have and to ask him to revoke the order.

Unfortunately, the DfE rarely revokes a school attendance order and it may be that at this stage the best solution is to allow the LA to prosecute you, in order that an

unbiased Court can look at your evidence and decide if the order should be revoked, or not.

The LA should explain to you what they are concerned about, provide you with a proper opportunity for response and conscientiously consider your response. This is because the EHEDGLA makes clear that the LA should try to resolve concerns informally and it cannot do so if it does not explain what those concerns are.

My LA has served court enforcement proceedings on me, what can I do?

Parents find it very frightening to have enforcement proceedings served on them and can sometimes panic. In fact, in many cases receiving enforcement proceedings is an opportunity for you, as you can demonstrate to the Court that your education is suitable and the Court will take an independent view of your evidence.

The first step to take is to contact a legal aid solicitor who deals with criminal cases. It is advisable to find one who is knowledgeable about home education, but they are unfortunately, quite rare. CPE may not recommend a solicitor to you, but we may be able to provide details of solicitors who parents have told us were helpful to them.

If you are on a low income, you should qualify for legal aid representation and your solicitor will help you. If you are not on a low enough income to qualify, you can instruct a suitable solicitor, but you would have to pay the cost yourself.

If you cannot afford a solicitor, or obtain legal aid, the first hearing should be straight forward for you. This is a 'plea' hearing. What is required at that hearing is that you attend on time, you dress smartly and when asked by the Court how do you plead you clearly state: 'not guilty'. Of course, if you have not provided a suitable education, you should not have reached that stage without taking steps to ensure that you do so.

It is a defence to an enforcement to show the Court that your education is suitable, so it is important that you give your evidence to the Court to examine. You may not do this at the plea hearing, but will be given an opportunity to do so at the next hearing.

If your education provision was not suitable previously, but it suitable at the time of the Court hearing, the suitability is still a defence to the school attendance order.

If you can afford some representation, this is the hearing for which you should use your funds, as it is the important one. If you are unable to be represented, you can take a friend into the court with you, but they may not speak on your behalf, without permission. They can discretely assist you. In a court hearing you should speak clearly and explain what you have done to show that your education is suitable, referring to the evidence.

Published data indicates that more than two thirds of enforcement cases are won by the parents, so please keep in mind that you can defend yourself.

I was on holiday and I just got home to find a school attendance order, or enforcement proceedings and I have not received any communication from the LA until today. What can I do?

The first thing to do is to send an urgent email to the LA explaining that you have not received any paperwork. You should follow this with a signed for letter. You should then ask the LA to treat the matter as an 'informal' enquiry and to give you some time to provide evidence.

Your LA should agree to that, as if they did not do so they would not be acting reasonably. In that case, you should clearly explain to the LA that you will be providing an education report within fifteen working days. It is important that you do provide the report.

If the LA does not act reasonably and proceeds with the enforcement, you should explain to the Court in writing that you have not received the documentation prior to that date and have been given no opportunity to respond. You should ask the Court to dismiss the case. Courts often do not dismiss cases, but they will usually adjourn the hearing to give you time to respond to the LA.

I am worried about how my LA might use my data, what can I do?

If you receive forms to fill in and decide that you are happy to do so, check carefully to see if there is a data protection statement on the forms. LAs often put a generalised statement and it is easy to sign it without much thought to the meaning. You do not have to sign such a statement and can write to your LA to tell them that you do not consent to your data being shared.

If you do not receive forms, you can choose to include a data protection reference in your response to your LA. It is enough to say:

'Please note your records that I do not consent to my data being processed, without my specific consent in each instance'.

Your LA should comply with that request, unless they can demonstrate that one of the exemptions to the GDPR applies.

Any data sharing by the LA has to comply with the GDPR, the Data Protection Act 2018 and human rights law. Your LA can not rely on its own local policy to share your data.

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