



# Access to Education Guidance Section 19 Education Act 1996

October 2023

## Contents

Introduction .....	2
Legal context.....	2
School and local authority responsibilities.....	3
1. Suspensions and permanent exclusions .....	3
2. Medical conditions .....	4
3. Children not in receipt of suitable education for other reasons.....	4
Section 19 - Decision Making Process.....	5
Access and Inclusion Panel.....	5
Gateway Panel .....	5
Review process .....	5
Appendix 1 .....	6
Links to documentation referred to in the policy .....	6
Documents referred to in the policy .....	6
Appendix 2 .....	7
Scenarios where remote education should be provided.....	7
Recording in the attendance register.....	7

# Introduction

Improving educational outcomes for Bromley's children and young people is a key priority for the council. Bromley Council's vision is to ensure children and young people, thrive and have the best life chances in families who flourish and are happy to call Bromley home. This includes ensuring that children and young people of compulsory school age receive a suitable education either at school or 'otherwise than at school'.

This guidance describes how Bromley Council ('the local authority') will achieve its commitment and meet its duties under relevant legislation and guidance.

## Legal context

Section 7 of the Education Act 1996 states that parents must ensure that children of compulsory school age receive efficient full-time education suitable to:

- their age, ability and aptitude
- to any special educational needs they may have,

either by regular attendance at school or otherwise.

Councils have a range of powers and duties under the Education Act 1996 where there is a failure by parents to meet this duty. This includes issuing penalty notices, attendance orders, education supervision orders and the power to take action to enforce a parent's legal duty.

Section 19 of the Education Act 1996 ('Section 19') requires local authorities to make arrangements to provide "suitable education at school, or otherwise than at school, for those children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them". 'Suitable education' is defined as "efficient education suitable to the age, ability, aptitude and to any special educational needs", the child (or young person) may have.

The education provided must be full time unless it is determined that it would not be in the best interests of the child or young person, for reasons that relate to their mental or physical health.

The Department for Education Alternative Provision statutory guidance (2013) states: 'Local authorities are responsible for arranging suitable education for permanently excluded pupils, and for other pupils who – because of illness or other reasons – would not receive suitable education without such arrangements being made.'

This applies to all children of compulsory school age resident in the local authority area, whether or not they are on the roll of a school, and whatever type of school they attend. Full-time education for suspended pupils must begin no later than the sixth day to be arranged by the pupil's school, or for permanently excluded pupils it must begin no later than the sixth day of the exclusion and be arranged by the Local Authority.

Suitable alternative provision is that which appropriately meets the needs of pupils which require its use and enables them to achieve good educational attainment on a par with their mainstream peers.

The Department for Education statutory guidance 'Ensuring a good education for children who cannot attend school because of health needs' (2013) requires local authorities to provide education for children who cannot attend education because of their medical condition.<sup>1</sup>

The Equality Act 2010 states: 'Some complex and/or long-term health issues may be considered disabilities under equality legislation. This legislation provides that local authorities must not discriminate against disabled children and are under a duty to eliminate discrimination, foster equality of opportunity for disabled children and foster good relations between disabled and non-disabled children.'

## **School and local authority responsibilities:**

### **1. Suspensions and permanent exclusions**

It is important that pupils continue to have access to learning during their suspension or permanent exclusion so that they continue to make progress and achieve.

For a suspension of more than five school days, the governing board (or local authority where a pupil is suspended from a Pupil Referral Unit) must arrange suitable full-time education for a young person of compulsory school age. This provision is commonly called 'Alternative Provision' (AP) and must begin no later than the sixth school day of the suspension.

For permanent exclusions, the local authority must arrange suitable full-time education for the pupil to begin from the sixth school day after the first day the permanent exclusion took place. The education arranged must be full-time or as close to full-time as is in the child's best interests because of their health and wellbeing needs.

When notifying parents about a suspension or permanent exclusion, the school should set out what arrangements have been made to enable the pupil to continue their education prior to the start of any alternative provision or the pupil's return to school, to accord with legal requirements and guidance.

It is important for schools to help minimise the disruption that suspension or permanent exclusion can cause to a pupil's education. Whilst the statutory duty on governing boards or local authorities is to arrange full-time education from the sixth day of a suspension or permanent exclusion, there is an obvious benefit to the pupil in starting this provision as soon as possible. Where it is not possible, or not appropriate, to arrange alternative provision during the first five school days of a suspension or permanent exclusion, the school should take reasonable steps to set and mark work for the pupil.

Parents and carers are responsible for ensuring that their children are supervised during school hours on these days and that they complete the work which has been set. This will ensure that they will have the best chance to keep up with their learning and be less at risk of becoming involved in anti-social activities.

If a pupil has been permanently excluded, they do not return to their school and, in line with the local authority's statutory duties, will receive their education from a Pupil Referral Unit (PRU). The PRUs provide access to a balanced curriculum, small group teaching,

<sup>1</sup> For the purpose of this guidance, the term 'medical condition' also refers to mental health conditions.

specialist assessment and reintegration support to ensure that, wherever possible, pupils return quickly to mainstream schools. For some pupils, the PRU will continue to provide education for a longer period of time and in exceptional circumstances something bespoke may be commissioned.

## **2. Medical conditions**

Schools must provide support for their pupils with medical needs under their statutory duties as set out in 'Supporting pupils with medical conditions at school' (Department for Education, 2015). Shorter term illnesses or chronic conditions are usually best met by school support and resources. Such conditions that might meet this definition include short term post-operative support and periods of reduced immunity.

Where a pupil is unable to attend school for medical reasons the local authority will work alongside schools, parents, health and other professionals to provide an alternative education provision to meet a pupil's individual needs to enable them to thrive and prosper in the education system.

Wherever possible the local authority will look at education provision being provided by school to ensure continuity for pupils. However, it is recognised that in some circumstances that may not be possible and provision for such cases may require additional advice and/or support from the local authority.

Schools are under a duty to make reasonable adjustments to allow the pupil to access a suitable full-time education (or as much as the child's health condition can manage) in line with statutory guidance. This may include arrangements for schoolwork being sent home for short periods of absence, a part-time timetable or remote/virtual learning. (Appendix 3).

Every effort will be made to minimise disruption to the child's education.

Where an absence is planned e.g. hospital admission or recurrent stay in hospital, educational provision should begin as soon as the child is well enough. Teachers in the hospital settings will liaise with the child's home school and work with them to minimise any disruption to their education.

Where a pupil is, or likely to be, absent for a period of 15 days due to a medical condition, schools are required to notify the local authority.

Once notified by schools that a child will be absent for 15 days or more, the local authority will work alongside schools, health, and other professionals (where appropriate) to ensure that suitable education is made available.

Please see the local authority's 'Medical Policy' for further information regarding the local authority's approach to meeting its statutory duties.

## **3. Children not in receipt of suitable education for other reasons**

Where children are unable to attend school for any other reason the local authority will consider the individual circumstances of each individual child, taking into account all available evidence, to inform its decision making and any action required by the local authority. This process is described below.

## **Section 19 - Decision Making Process**

### **Access and Inclusion Panel**

The local authority has established a process for making informed decisions as to whether Section 19 duties apply. The Access and Inclusion Panel ('A&I Panel') is the usual forum for the making and recording of such decisions. The Panel is made up of senior education officers from within the service and up to twice per week if required to avoid drift and delay in decision making. This ensures that agreed actions are implemented promptly.

The A&I Panel will determine if the case should be considered as part of the local authority Section 19 duty or whether a legal enforcement intervention route is recommended. If the A&I Panel determines that the Section 19 duty does apply, they arrange for suitable education provision to be put in place where appropriate. Officers will contact parents/carers to discuss the arrangements for the proposed educational provision, taking the parent/carer and child's views into account. Ordinarily, this contact will take place within three clear working days of the meeting of the A&I Panel, unless exceptional circumstances apply.

However, some cases may need to be referred by the A&I Panel to the local authority's Gateway Panel for consideration and determination. This is usually where there is a physical or mental health issue which is impacting on the child's attendance, and therefore requires specialist advice to inform the decision-making process in relation to the application of the Section 19 duty or wider intervention that may be required.

### **Gateway Panel**

The Gateway Panel includes senior officers from education, health and social care. It provides specialist advice in relation to medical evidence relating to a referral and performs a number of roles, including determining an appropriate approach to meeting educational needs. Where a Section 19 duty applies, following Gateway, officers will contact parents/carers to discuss the arrangements for the proposed educational provision, taking the parent/carer and child's views into account. Ordinarily, this contact will take place within three clear working days of the meeting of the Gateway Panel, unless exceptional circumstances apply.

### **Review process**

Regular reviews of education provided under Section 19 will take place with the parent/carer and school and/or the lead professional.

This guidance will be reviewed when there is a change in national guidance or every three years.

# Appendix 1

## Links to documentation referred to in the guidance

Department for Education (2013) [Ensuring a good education for children with health needs who cannot attend school](#)

Department for Education (2014, update 2017)

[Supporting children at school with medical conditions](#) (Also has templates for use by schools and links to other resources)

Department for Education (2013) [Alternative provision Statutory Guidance](#)  
[Equality Act](#) 2010

[Summary of responsibilities where a mental health issue is affecting attendance \(publishing.service.gov.uk\)](#)

[Summary table of responsibilities for school attendance \(publishing.service.gov.uk\)](#)

## Appendix 2

[Providing remote education: guidance for schools](#) March 2022

### Scenarios where remote education should be provided

Attendance is mandatory for all pupils of compulsory school age. Schools should consider providing remote education to pupils in circumstances when in-person attendance is either not possible or contrary to government guidance.

This might include:

- occasions when school leaders decide that it is not possible for their setting to open safely, or that opening would contradict guidance from local or central government
- occasions when individual pupils, for a limited duration, are unable to physically attend their school but are able to continue learning, for example pupils with an infectious illness

In these circumstances pupils should have access to remote education as soon as reasonably practicable, though in proportion to the length of absence and disruption to their learning.

Where needed, providing remote education equivalent in length to the core teaching pupils would receive in school should be considered, including recorded or live direct teaching time, as well as time for pupils to complete tasks and assignments independently.

Good practice is considered to be:

- 3 hours a day on average across the cohort for key stage 1, with less for younger children
- 4 hours a day for key stage 2
- 5 hours a day for key stages 3 and 4

### Recording in the attendance register

Schools should continue referring to the [school attendance guidance](#). They should continue to keep a record of, and monitor pupils' engagement with remote education, but this does not need to be tracked in the attendance register.