

LEWISHAM ELECTIVE HOME EDUCATION PROTOCOL

All schools in Lewisham will participate in the implementation of this protocol and will adhere to its requirements. It should be read in conjunction with the Fair Access and Managed Move protocols.

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1. DEFINITIONS

- 1.1 Elective home education is the term used by the Department for Education (DfE) to describe parents' decisions to provide education for their children at home or otherwise than by sending them to school. This is different to home tuition provided by a local authority or education provided by a local authority other than at a school.
- 1.2 Children whose parents elect to educate them at home or otherwise are not registered at mainstream schools, special schools, independent schools, academies, Pupil Referral Units (PRUs), colleges, children's homes with education facilities or education facilities provided by independent fostering agencies. Some parents may choose to engage private tutors or other adults to assist them in providing a suitable education, but there is no requirement for them to do so. Learning may take place in a variety of locations, not just in the family home.
- 1.3 Elective Home Education (EHE) is sometimes referred to as 'Education Otherwise' and is known as "Home schooling" in the USA.
- 1.4 For the purposes of this document, 'Parent' refers to the person with parental responsibility or the person who has the care of the child.
- 1.5 Children who are resident in other boroughs should be treated in the same way as Lewisham children with respect to these protocols.

2. THE LAW

- 2.1 Article 2 of Protocol 1 of the European Convention on Human Rights states that:
"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."
- 2.2 Parents have a right to educate their children at home. Section 7 of the Education Act 1996 provides that:

"The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable -

- o to his age, ability and aptitude, and*
- o to any special educational needs he may have, either by regular attendance at school or otherwise."*

- 2.3** The responsibility for a child's education rests with their parents. An "efficient" and "suitable" education is not defined in the Education Act 1996 but "efficient" has been broadly described in case law as an education that "achieves that which it sets out to achieve", and a "suitable" education is one that "primarily 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 options in later years to adopt some other form of life if he wishes to do so".
- 2.4** Section 436A of the Education Act 1996 states:
"A local education authority must make arrangements to enable them to establish (so far as it is possible to do so) the identities of children in their area who are of compulsory school age but — are not registered pupils at a school, and are not receiving suitable education otherwise than at a school."
- 2.5** Section 437 (1) of the same Act makes clear that local authorities must intervene if it appears that parents are not providing a suitable education. This section states that:
"If it appears to a local education authority that a child of compulsory school age in their area is not receiving suitable education, either by regular attendance at school or otherwise, they shall serve a notice in writing on the parent requiring him to satisfy them within the period specified in the notice that the child is receiving such education."
- 2.6** Government guidelines [*Elective Home Education: Guidelines for Local Authorities (2007)*], state:
"Prior to serving a notice under section 437(1), local authorities are encouraged to address the situation informally. The most obvious course of action if the local authority has information that makes it appear that parents are not providing a suitable education, would be to ask parents for further information about the education they are providing."
- 2.7** Additionally, the guidelines state:
"If it appears to a local authority that a child is not receiving a suitable education it may wish to contact the parents to discuss their ongoing home education provision. Contact should normally be made in writing to the parents to request further information."
- 2.8** Case law [*Philips vs. Brown* 20 June (unreported transcript 424/78 QB (DC) 1980)] established that an LA may make enquiries of parents who are educating their children at home to establish that a suitable education is being provided. The judge said in his ruling:
"Of course such a request is not the same as a notice under section 37(1) of the Education Act 1944 and the parents will be under no duty to comply. However it would be sensible for them to do so."
- 2.9** Section 437(3) Education Act 1996 provides that if a parent fails to satisfy the local authority within the specified period that their child is receiving a suitable education, the local authority has the power to issue a "school attendance order" requiring that the child become a registered pupil at the school named in the order.
- 2.10** Section 13A of the Education Act 1996 sets out duties for LA's in relation to high standards and the fulfilment of potential:
"(1). A local authority in England must ensure that their relevant education functions and their relevant training functions are (so far as they are capable of being so exercised) exercised by the authority with a view to—
(a) promoting high standards,
(b) ensuring fair access for education and training, and
(c) promoting the fulfilment of learning potential by every person to whom this subsection applies."

(2) Subsection 1 applies to the following:

(a) Persons under the age of 20;—

(b) Persons aged 20 or over and for whom an EHC Plan is maintained.”

- 2.11** Local authorities also have general duties to make arrangements to safeguard and promote the welfare of children (see section 175 of the Education Act 2002 and sections 10 and 11 of the Children Act 2004). EHE officers, along with all local authority employees, have a responsibility to ensure all children are safeguarded and their welfare promoted throughout their work. Section 175 (1) provides:
“A local authority shall make arrangements for ensuring that their education functions are exercised with a view to safeguarding and promoting the welfare of children”.
- 2.12** EHE Officers have no powers to visit children in their homes nor to insist upon seeing a child with regard to reviewing the provision being made for their education. Sections 17 and 47 of the Children Act 1989 provide local authorities with the power to insist on seeing children in order to inquire about their welfare where there are grounds for concern, although such powers cannot be used in order to establish whether the child in question is receiving suitable education at home.

3. LEWISHAM’S POSITION

- 3.1** Lewisham is committed to the fundamental right of every child to an effective education irrespective of where this is provided. Lewisham recognises that parents can elect to educate their children at home or otherwise than at school.
- 3.2** If there are concerns about whether the child is likely to receive an education and/or is possibly at risk of harm or neglect, the need to safeguard the child supersedes the parent’s right to educate otherwise than at school. We expect all professionals to work in partnership to ensure that all children and young people are protected and safeguarded and are able to maximise their life opportunities.

4. PURPOSE OF THE ELECTIVE HOME EDUCATION PROTOCOL

- 4.1** The Elective Home Education Protocol is designed, as far as is possible within the limitations of the law, to ensure that:
- No child is left without education provision as a result of being withdrawn from school following an EHE notification;
 - No child is left at risk of harm or neglect as a result of being withdrawn from school following an EHE notification;
 - EHE notifications are not used as a way to move a child from school to school (known as ‘school hopping’);
 - EHE notifications are not used by parents as a means to avoid prosecution for a child’s non-attendance at their registered school;
 - EHE notifications are not used by parents or school staff to avoid due process and compliance with other protocols;
 - EHE is not a ‘knee jerk’ response to a problem, crisis or dispute between the child, family and school;
 - EHE is not used in place of resolving ongoing issues or problems perceived by the child, family and/or school;
 - EHE is not used as a means to deregister a child presenting significant challenges or as an attempt to pass them on to another school or LA;
 - EHE is not used as an alternative to permanent exclusion;

- School staff and other professionals are clear about their roles and responsibilities when receiving an EHE notification and working with home educating families.

5. EXCEPTIONAL CASES

[See also **Section 8. Children with SEN** below]

- 5.1** The law provides that parents have a right to educate their children otherwise than at school. However, there are some circumstances in which it is clear that the child is possibly at risk of harm or neglect if they are withdrawn for EHE. In such a case, Lewisham's position is that the need to safeguard the child supersedes the parent's right to educate at home. The overriding consideration will be what is in the child's best interests.
- 5.2** These circumstances include where:
- the child is the subject of a section 47 investigation at the time of the EHE notification;
 - the child is the subject of a child protection plan;
 - the family is known to social care and the child is a Child in Need or otherwise potentially at risk;
 - the child has a history of fixed-term exclusions and/or is about to be permanently excluded;
 - the child has been referred to alternative provision;
 - there are concerns about the parent's capacity to provide education due to evidence of poor literacy, mental health concerns, etc.;
 - there have been expressions of concern about the welfare of the child/family from other services and/or members of the public supported by cogent evidence;
 - the child is in Y11;
 - it is clear that the decision to withdraw the child from school has been suggested as a way of solving a crisis, e.g. the parent faces prosecution for the child's non-attendance; as an alternative to a permanent exclusion; there is an unresolved dispute between the family and the school; the child is out of parental control;
 - it is clear that the family want a different school and do not genuinely wish to provide education for the child at home or otherwise.
- 5.3** In these cases, the expectation is that the child should remain on school roll and an action plan agreed between the school, EHE team and/or other LA Officers as appropriate (CSC, SEN, Inclusion and Reintegration, Attendance, Fair Access, etc.) in order to resolve the situation in the best interests of the child.
- 5.4** In all cases where a professional believes a child may be at risk of harm or neglect, a referral should be made to the Multi-Agency Safeguarding Hub (MASH): mashagency@lewisham.gov.uk; mashgcsx@lewisham.gcsx.gov.uk The MASH provides a single point of access for all professionals to report safeguarding concerns to children's social care. Professionals can also request commissioned targeted family support through the multi-agency early help panel.
- 5.5** In the majority of such cases, professionals from all agencies involved will work with the family to secure a solution in the best interests of the child and with which the parent will agree. In cases where agreement with the parent cannot be reached and there are significant safeguarding concerns, such that professionals from different agencies are agreed that the child would be at risk of harm or neglect if withdrawn for home education, the local authority may consider school attendance order proceedings (see also **5.7** below).
- 5.6** In these cases it is important to be clear that the challenge is on safeguarding grounds: the ongoing welfare of the child, which may or may not include concerns about education. The focus must be on establishing evidence that the child is safe from the risk of harm and/or neglect if withdrawn from

school. For these reasons a visit from the EHE Officer may not be appropriate at the point of withdrawal from school. If it is ultimately decided that the child can be withdrawn for EHE, EHE Officers will make a priority visit to establish the suitability of the education. This also gives the parent time to establish and sustain provision so that any review of education would provide a more accurate picture of the ongoing provision.

- 5.7** All professionals should be aware that parents may refuse to engage with EHE Officers or to provide evidence of the child's education. Although Lewisham LA takes the view that it is legal to make informal enquiries to establish that provision for a child is suitable, EHE Officers cannot insist upon a home visit nor on seeing the child.
- 5.8** If a solution cannot be found and a parent is determined to withdraw their child despite significant safeguarding concerns shared by a number of professionals, an action plan to address the issues should be agreed at a professionals meeting which considers the available evidence and risk. As a minimum, this meeting should include managers from the EHE, Children's Social Care (CSC) and Attendance teams. Addressing the safeguarding of the child is paramount.

6. THE ROLE OF THE EHE TEAM

6.1 EHE Officers will:

- assess each EHE referral from a school to consider whether it is appropriate and protocols have been followed;
- contact the parents of EHE children annually, with view to reviewing the education provision to establish that it is suitable;
- write reports of these reviews to record evidence and judgements;
- take action when children appear not to be in receipt of suitable education provision, which may include initiating proceedings towards issuing School Attendance Orders (SAO's) and will include working with other LA professionals;
- monitor and track children who are electively home educated, working across services and ensuring appropriate and timely interventions where there are concerns;
- advise and signpost resources and other sources of support to home educators;
- organise termly Lewisham EHE Network Meetings where home educating families can meet each other as well as the Lewisham EHE team and which include a presentation on a topic of interest to home educators, e.g. Maths, Music, SEN, Outdoor Learning, GCSE's, Post-16 Pathways, Health, etc.
- advise and work closely with other local authority agencies and departments, including schools, to ensure EHE policies and procedures are understood and carried out, ensuring regular communication of data and information;
- inform a child's GP, where the name of that GP is known, if a child is withdrawn from school to be home educated;
- track, monitor and analyse data about children who are electively home educated, identifying patterns, areas of strength or concern, and sharing these with managers and other agencies, including schools and the Lewisham Safeguarding Children Board, as appropriate;
- monitor any changes to EHE legislation and guidance and recommend amendments to EHE policies and procedures where necessary, in consultation with other stakeholders;
- develop effective relationships with and between home educating families.

6.2 EHE Officers cannot:

- insist upon home visits;
- insist upon seeing a child;
- monitor provision on a routine basis;
- require parents to teach the National Curriculum or any other defined programme;
- require parents to follow a set number of hours or follow a timetable;
- demand any health or safety specifications;
- expect any parental academic qualifications;
- expect home educated children to match school age-specific standards;
- require parents to mark or formally assess their child's work;

- require parents to keep formal records of the child's learning or progress.
- 6.3** Lewisham EHE Officers look for evidence that would convince a reasonable person that the child is being provided with an education that is suitable. This means the education must be full time and efficient; must achieve what it sets out to achieve; and must be suitable to the child's age, ability and any special educational needs they may have.
- 6.4** Many home educators argue that they do not have to engage with the local authority unless there is evidence that their provision is unsuitable. They argue that if they do not engage or provide any evidence of provision at all, there can be no evidence that provision is unsuitable. They therefore refuse to engage with the local authority. This position was tested in a court case, *Philips vs Brown*, 1980 when the judge ruled in favour of the local authority, establishing that an LA may make enquiries of parents who are educating their children at home to establish that a suitable education is being provided. Lewisham LA EHE Officers will contact the families of every child who is known to be home educated in Lewisham with a view to reviewing the education being provided to establish that the provision is suitable and efficient. Nevertheless, some families are difficult to engage and it may take some considerable effort and significant time before it can be established that a suitable education is being provided. **However see DfE guidance for local authorities on Elective home education (section 6.5)¹**
- 6.5** Whilst some families who refuse to engage do so for philosophical reasons (objecting to perceived state interference, etc.) but yet provide suitable education, there is clear evidence, both locally and nationally, that some parents apply the law around home education in order to 'hide' their child(ren) from the authorities and/or to avoid prosecution for their child(ren)'s non-attendance and who do not provide suitable (or any) education. This has been a feature of a number of serious case reviews nationally. EHE Officers and all professionals working with children who are home educated must be alert to the possibility of such abuse.
- 6.6** If it appears that a child's education provision may not be suitable, in most cases the parent will be given the opportunity to make improvements and signposted to sources of support to help them to do so. A follow-up review will be arranged to ensure that the child's provision has become suitable.
- 6.7** If it appears that a child's education provision may not be suitable, despite efforts to improve; or if it is clear that provision is not likely to improve given additional time, consideration will be given to initiating proceedings towards a School Attendance Order.
- 6.8** If the parent agrees that the provision is unsuitable and would like to apply for a school place, EHE Officers will advise and support the process of application in liaison with other LA Officers.
- 6.9** In line with the recommendations of the Lewisham Local Safeguarding Children Board (LSCB) in a Serious Case Review (2017), the protocols for EHE and the annual report on EHE should be presented to the LSCB main board.
- 6.10** EHE Officers will liaise with the school nursing team to ensure that children who are home educated have the same access to nursing services as their peers who are educated in schools.

7. SCHOOL RESPONSIBILITIES

- 7.1** School staff and other professionals should never suggest, recommend or encourage EHE as the solution to any problems with the child, their parent(s) and/or their education.

¹ The most obvious course of action is to ask parents for detailed information about the education they are providing. Parents are under no duty to respond to such enquiries, but if a parent does not respond, or responds without providing any information about the child's education, then it will normally be justifiable for the authority to conclude that the child does not appear to be receiving suitable education and it should not hesitate to do so and take the necessary consequence steps. This is confirmed by relevant case law in many cases, making such informal enquiries will allow the situation to be resolved, either by evidence being provided that the home education is suitable or by agreement on alternative approaches to educating the child based on the local authority's initial assessment (for example by catering for special needs in a different way).

- 7.2** If a parent suggests they are considering withdrawing a child for EHE, or if an EHE notification is received by a school, the expectation is that the school will engage and discuss with the parent this decision, establishing the reasons behind it and the likelihood of the child being educated and safe from the risk of harm or neglect should such a withdrawal go ahead. The school should also inform the local authority's EHE team at the outset.
- 7.3** Where possible, efforts should be made to ascertain for the record the wishes and views of the child(ren).
- 7.4** If the decision to withdraw the child is based on an issue or dispute, efforts should be made to resolve the matter. The school should consider whether to enlist the support of other professionals, such as Attendance Officers and/or EHE Officers, as part of this process.
- 7.5** If ultimately the parent wishes to send the child to a different school, either an in-year application can be made to a different school or, should the circumstances demand it, a Managed Move should be considered.
- 7.6** If the parent is determined to go ahead with the decision to withdraw their child, the school must inform them, **in writing**, of the following:
- If elective home education ceases for any reason, because of a change of mind or circumstances, or because the provision is found to be unsuitable, when a parent/carer later applies for a school place, the child will ordinarily be returned to the original school as part of Lewisham's Fair Access protocols. EHE is not an effective way to transfer school.
 - EHE is self-financing and there will be no funding made available from the LA or any other agency to support them. There is no central tuition service or a bank of tutors or resources that parents can access. Full responsibility for all aspects of educational provision, including any additional requirements for a child with SEN, now falls to the parent.
 - There is no automatic provision for young people to take public examinations – these would have to be researched, funded, organised and resourced by parents.
 - EHE is considered as provision, just as if the child is in school. It will not increase the child's priority on a school waiting list in this or any other borough.
 - Parents can contact the LA's EHE team for advice and support.
- 7.7** If the child falls into the category of 'Exceptional Cases' (as **Section 5** above), the school should immediately contact the EHE team for advice. Children's Social Care should also be informed if they already have active or previous involvement with the family. The EHE team can provide a template letter advising the parent that the child will remain on roll until it can be established that the child is likely to be educated and safe from the risk of harm or neglect.
- 7.8** In order to take a child off roll, it is a locally agreed requirement that the notification is received in writing (or email). An acceptable EHE notification should be addressed to the headteacher in the form of a scanned or paper letter and should have:
- the child's full name
 - the child's date of birth
 - the family address
 - an explicit statement of the intention to provide EHE and request to be removed from the school roll
 - (acceptable - *I wish to provide my child with home education; I wish to home educate my child; I'm going to educate her myself; I intend to provide education otherwise;*
 - unacceptable - *My child is not coming back to your school*)
 - a date from which EHE is to commence (cannot be backdated)
 - the signature of the person with parental responsibility
 - the current date
- 7.9** The school must inform the LA in which the child is resident immediately. An EHE Referral

and Notice of Deregistration (available on the Lewisham Council website and from the EHE team) should be completed and sent – along with a copy of the parent’s written notification – to the LA’s EHE team within 10 days. The child should be removed from the school roll after 10 days.

- 7.10** Children withdrawn by their parents to be educated otherwise whose parents later seek a school place will be referred to their previous school in the first instance. The school can either readmit or, if not appropriate, can arrange a Managed Move or make a referral to the FAP for an alternative school place. [See also Fair Access and Managed Move protocols]. The EHE team can provide advice and support.
- 7.11 FLEXI-SCHOOLING** - Flexi-schooling is a combination of attendance at school and home education. Schools may enter into flexi-schooling arrangements provided they correctly mark children as absent in attendance registers when they are being educated at home. The local authority is not part of such arrangements but the EHE team should be kept informed about them.

8. CHILDREN WITH SPECIAL EDUCATIONAL NEEDS (SEN)

- 8.1** Lewisham Local Authority would not normally expect a child with a Statement of SEN or Education, Health and Care Plan (EHCP) to be home educated. Careful consideration must be given as to whether the child’s educational needs will be met if s/he is withdrawn for home education.
- 8.2** If a school receives an EHE notification from a parent of a child with a Statement of SEN or EHCP, in addition to the EHE team, the child’s SEN caseworker must immediately be informed. The school must convene an emergency annual review so that the EHCP can be amended to reflect the change in provision and consider whether the plans for EHE are appropriate before the child leaves the school and is deregistered.
- 8.3** If the child attends a special school, Lewisham SEN must consent to the child’s withdrawal for EHE before deregistration. The school should follow the steps above (paragraph **8.2**) and then secure the consent of Lewisham SEN Panel before taking the child off roll. Government guidelines stipulate that “this should not be a lengthy or complex process”.
- 8.4** Schools must consider whether a child with SEN falls into the category of an Exceptional Case (see **Section 5** above) in addition to the above.
- 8.5** In line with the recommendations of the Lewisham Local Safeguarding Children Board in a Serious Case Review (2017), each child who has an SEN Statement or EHCP should be reviewed at least annually with colleagues from across the multi-agency network.

9. RESPONSIBILITIES OF OTHER PROFESSIONALS

- 9.1** It is expected that all professionals working for the local authority will work in partnership with the EHE team and other agencies in the best interests of the child. This includes sharing information and securing the agreement of other professionals where appropriate when working with EHE families. (See also **3.2** and **5.7** above).
- 9.2** No professional should ever suggest, recommend or encourage EHE as the solution to any problems with the child, their parent(s) and/or their education.
- 9.3** Parents are under no obligation to let anyone see their child once they decide to home educate. Home educating parents or carers are no more likely than others to abuse or neglect their children. There is a risk, however, that children who have been withdrawn for EHE can become invisible to the authorities. This has been a feature of a number of Serious Case Reviews nationally. EHE Officers do not have the right to insist on visiting the family in their home.
- 9.4** Professionals should always contact the EHE team if they come across a child who is home

educated. There is no legal duty upon parents to advise the local authority if they are providing home education. Thus children home educated from birth who have never been to school, and sometimes children who have only ever attended independent schools, may not be known to Lewisham EHE team. The local authority, however, has a legal duty to establish the identities of all children in their area who may not be in receipt of a suitable education. It is therefore incumbent upon professionals working with home educated children to inform the EHE team of their identities.

- 9.5** It is particularly important that any professional in Children’s Social Care (CSC) should contact the EHE team if they are working with a home educated child. Even if the family is known to Lewisham EHE, Officers may not be aware of CSC concerns or involvement, especially if it began after the child was withdrawn from school. Social workers should also make the EHE team aware of any meetings or conferences convened to discuss a home educated child.
- 9.6** Professionals working with home educating families should share any concerns with other agencies. It should not be assumed that anyone else knows anything about the child/family or is dealing with any issues. With regard to data protection, in a letter to the Chief Executives of local authorities, Directors of Children’s Services, Police and Crime Commissioners, Local Safeguarding Children’s Boards, Health and Wellbeing Boards and GPs, dated 3 March 2015 and signed by government ministers, there is the declaration: “There can be no justification for failing to share information that will allow action to be taken to protect children.”

10. EHE CONTACT LIST

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11. LIST OF EHE DOCUMENTS

The following documents are available in PDF format on the Lewisham Council website or from the EHE team in Word format:

1. EHE Info for Parents
2. EHE for Schools (summary of protocols on single A4 sheet)
3. Blank EHE Referral form
4. Template Letter to parent advising that the child will be kept on roll (see Section 5 above)
5. EHE for CSC (summary of protocols on single A4 sheet)
6. EHE for Health Professionals (summary of protocols on single A4 sheet)
7. Letter to GP
8. Flexi Schooling Registration Rules
9. Parent Questionnaire
10. Suggested Questions for Reviews
11. Departmental Guidance for local authorities, April 2019