

Section 19 of the education act 1996 (as amended): How the Local Authority discharges its duties

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Section 19: How the Local Authority discharges its duties

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Introduction, national context

East Sussex County Council will follow national legislation and guidance when determining how to discharge its duties.

Section 19 of the education act 1996 (as amended):

“Each local authority shall make arrangements for the provision of 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”. [Education Act 1996 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1996/56/section/19)

The section defines suitable education as an efficient education suitable to a child's age, ability and aptitude and to any special educational needs s/he may have.

Section 19 applies to any situation in which a child cannot attend school. Particular rules relating to excluded children and guidance relating to children with special educational needs and disabilities are covered below.

It is for a Local Authority to determine that a child will not receive a suitable education unless arrangements are made for them. Each Local Authority must also consider its wider duties and responsibilities, including those in the SEND Code of Practice 2015 and DfE Attendance Guidance.

The DfE Attendance Guidance:

“Improving attendance is everyone's business. The barriers to accessing education are wide and complex, both within and beyond the school gates, and are often specific to individual pupils and families. The foundation of securing good attendance is that school is a calm, orderly, safe, and supportive environment where all pupils want to be and are keen and ready to learn.

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Where parents decide to have their child registered at school, they have an additional legal duty to ensure their child attends that school regularly. This means their child must attend every day that the school is open, except in a small number of allowable circumstances such as being too ill to attend or being given permission for an absence in advance from the school”. [Working together to improve school attendance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/working-together-to-improve-school-attendance)

Where a child or young person is disengaged from learning or not attending, including for reasons related to their mental health and wellbeing, the Local Authority has a responsibility to ensure that reasonable adjustments and support are in place to address the underlying reasons before putting alternative provision in place.

Section 19: alternative provision by reason of illness

Children and young people who have additional health needs are, by the nature of their difficulties, at risk of failing to reach their true potential within an educational context. This is particularly the case for children and young people whose health needs prevent them from attending school for an extended period, or for those who are restricted by their health needs to attending school on a part-time or sporadic basis.

What provision is required for a child who is too ill to attend school is ultimately for the Local Authority to decide after considering medical advice and information provided by parents and schools.

Securing alternative provision for children who are too ill to attend school falls within the Section 19 duty. The Local Authority also has to consider the statutory guidance ‘Education for children with health needs who cannot attend school’; the Local Authority discharges its duty through the Teaching and Learning Provision (TLP) service.

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The Teaching and Learning Provision (TLP) Medical Needs policy outlines the support available within East Sussex from TLP for children and young people with additional health needs. This includes details of when and how provision may be arranged if required, and the respective roles and responsibilities of the local authority, schools, parent/carers, service providers and other agencies.

Section 19: alternative provision by reason of exclusion

If a pupil is considered to be at risk of exclusion, it is the East Sussex expectation that an Additional Needs Plan should be in place to enable a range of strategies and support to be implemented and reviewed. Suspension or Permanent Exclusion should, therefore, be used as a last resort and only as a protective consequence, in response to serious or persistent breaches of a school's behaviour policy and when allowing the pupil to remain in school would seriously harm the education or welfare of the pupil and others in the school.

For permanent exclusions, the local authority must arrange suitable full-time education for the pupil to begin no later than the sixth school day of the exclusion. This will be the pupil's 'home authority' in cases where the school is maintained by (or located within) a different local authority.

Arranging alternative provision for permanently excluded pupils falls within the Section 19 duty; the Local Authority discharges this duty through the East Sussex Pupil Referral Unit, run by the SABDEN Academy Trust. For fixed period exclusions, known as suspensions, this responsibility falls to the school's governing board in accordance with s.100 Education and Inspections Act 2006 (as amended).

Section 19: alternative provision by reason of otherwise i.e. for other reasons

Section 19 includes the word ‘otherwise’ twice. Firstly, to describe where alternative provision can be made by a Local Authority (“at school or otherwise”) and secondly to explain that there are other situations in which a child may need to have arrangements made for them by a Local Authority in order to receive a suitable education (“...who, by reason of illness, exclusion from school or otherwise...”).

Children and young people with an Education Health and Care Plan and Education Other Than at School (“EOTAS”)

The Special Educational Needs and Disability (“SEND”) Code of Practice sets out the presumption in law of mainstream education. “1.26 As part of its commitments under articles 7 and 24 of the United Nations Convention of the Rights of Persons with Disabilities, the UK Government is committed to inclusive education of disabled children and young people and the progressive removal of barriers to learning and participation in mainstream education. The Children and Families Act 2014 secures the general presumption in law of mainstream education in relation to decisions about where children and young people with SEN should be educated and the Equality Act 2010 provides protection from discrimination for disabled people”. [SEND code of practice: 0 to 25 years - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/68216/SEND_Code_of_Practice_0_to_25_years.pdf)

Where a child or young person with SEND is experiencing a barrier to learning or participation, including around their mental health and wellbeing, the Local Authority has a responsibility to ensure that reasonable adjustments and support are in place to overcome those barriers before putting alternative provision in place. However, section 61 of the Children and Families Act 2014 states:

1. A local authority in England may arrange for any special educational provision that it has decided is necessary for a child or young person for whom it is responsible to be made otherwise than in a school or post-16

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- institution or a place at which relevant early years education is provided.
2. An authority may do so only if satisfied that it would be inappropriate for the provision to be made in a school or post-16 institution or at such a place.
 3. Before doing so, the authority must consult the child's parent or the young person.

Considering EOTAS forms part of the Section 19 duty, and the Local Authority discharges this duty through the Assessment and Planning (A&P) service when determining the most appropriate provision for an individual child or young person.

Children and young people without an Education Health and Care Plan

In East Sussex, the local area is committed to inclusion. Providers and services believe in the importance of working together to overcome barriers to learning and attendance, to ensure children and young people can access their entitlement to go to their local school. We want all children and young people, regardless of their individual needs and circumstances, to be well supported, have their needs met, and be included in their local community:

“Our ambition is that every child and young person with Special Educational Needs and Disabilities in East Sussex receives an inclusive education, and accesses opportunities and support that enables them to achieve their full potential at home, in school, educational settings and in their communities. This includes being well-prepared for adult life”. [East Sussex SEND Strategy 2022-25](#)

Considering a request for alternative provision for other reasons is also part of the Local Authority's duty under Section 19. As this often involves a parent/carer concern that their child's needs are not being met, the Local Authority discharges this duty through the Education Support Services. These services work with the education setting, child or young person and their family to assess any underlying needs and recommend reasonable adjustments and provision to meet those needs.

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This includes the Team Around the School and Setting (TASS), the Communication, Learning and Autism Support Service (CLASS) and the Educational Psychology Service (EPS).

If a member of Education Services staff receives a request for alternative provision by 'for other reasons', the procedure in appendix 2 is followed.

Non-attendance related to safeguarding separation

Schools manage incidents of child on child harmful sexual behaviour following the [Protocol for managing child on child harmful sexual behaviour in schools January 2023](#). The school may choose to source alternative provision for alleged perpetrators or alleged victims. A school may also choose to arrange alternative provision to separate students following a violent incident or incidents in the community. Should a family not engage with this alternative provision, the Local Authority will consider whether there is a duty under Section 19.

If a member of Education Services staff receives a request for alternative provision for a child missing education related to safeguarding separation, the procedure for 'by other reasons' in appendix 2 is followed.

Appendix 1: Documentation referred to in the ESCC Section 19 policy

National guidance and resources

[Working together to improve school attendance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/working-together-to-improve-school-attendance)

[Education Act 1996 \(as amended\) \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1996/56)

[Education and Inspections Act 2006 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2006/25)

[Education for children with health needs who cannot attend school - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/education-for-children-with-health-needs-who-cannot-attend-school)

[School suspensions and permanent exclusions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/school-suspensions-and-permanent-exclusions)

[SEND code of practice: 0 to 25 years - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/send-code-of-practice-0-to-25-years)

ESCC Guidance

ESCC school attendance guidance Nov 2023:



ESCC School
Attendance Guidance

TLP medical needs policy October 2023@



TLP Medical Needs
Policy Final October 2

[East Sussex exclusions guidance Sept 2023](#)

[East Sussex SEND Strategies | East Sussex County Council Local Offer](#)

Appendix 2: Guidance for staff when a request is received



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Guidance when a request is received