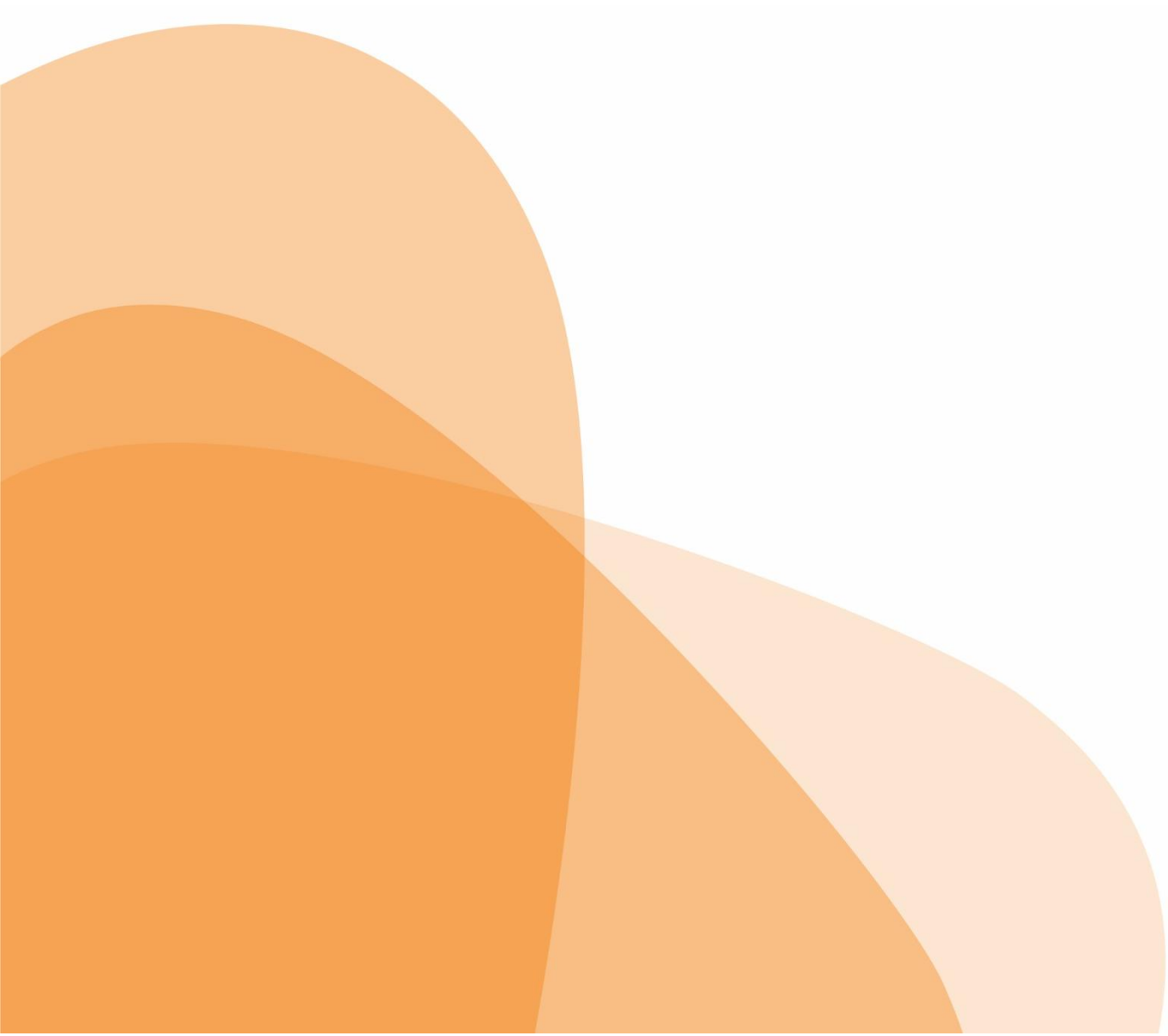


**Attendance and Section 19 of the
Education Act (1996)
Hampshire County Council's Policy
& Process**



1. Introduction

1.1. Section 19 (S19) of the Education Act 1996 places a duty on Local Authorities (LA) to '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 a suitable education unless such arrangements are made for them.'

'Local authorities are responsible for arranging suitable full-time education* for permanently excluded pupils, and for other pupils who – because of illness or other reasons – would not receive suitable education without such provision. This applies to all children of compulsory school age resident in the local authority area, whether they are on the roll of a school, and whatever type of school they attend.'

**Defined in 2023 Statutory Guidance as 'where possible, equivalent to the education they would receive in a mainstream school.'*

1.2. This policy and process sets out Hampshire's approach to meeting the needs of Children & Young People (CYP) for whom it has a legal responsibility to provide an education, but who for reasons relating to illness, exclusion or otherwise experience barriers to accessing a full and suitable education offer.

1.3. The Department for Education's (DfE) Alternative Provision Statutory guidance for local authorities' states 'The term 'suitable education' is defined as efficient education suitable to the child's age, ability, and aptitude, and to any special educational needs he or she may have. The education to be arranged by the LA should be on a full-time basis, unless, in the interests of the child, part time education is considered to be more suitable. This would be for reasons relating to the child's physical or mental health.' Education Act 1996 paraphrased by the Local Government Ombudsman.

1.4. It is important to recognise that Hampshire County Council's responsibilities in relation to their Section 19 offer differ slightly for those with an Education Health and Care Plan (EHCP) and for those without an EHCP. These differing responsibilities are detailed below:

Child without an Education Health and Care Plan:

- The LA where a child resides is responsible for S19.
- If the child resides between different addresses in a split family, the decision is made on where the child spends most of their time and this LA has the S19 responsibilities (clarified upon notification).
- If the child ordinarily resides 50/50 in 2 LAs, then both LAs can discuss and agree sharing the responsibilities for S19 provision. If an agreement cannot be reached, then the LAs can write to the Secretary of State for a decision.

Child with an Education Health and Care Plan:

- The LA who is responsible for maintaining the EHC plan is responsible for maintaining their provision; this includes Section 19 provision.
- Even if a school in another local authority is named, the LA responsible for maintaining the EHC plan is responsible for the Section 19 provision.

1.5. The Section 19 duty placed on Local Authorities' and detailed in this Policy relates to those of compulsory school age – CYP aged 5 – 16 (from school term after a child's 5th birthday, until last Friday in June of the school year they turn 16). The Out of School, out of sight Publication (2022) states: "*where a child cannot go to school, the local authority must find out why*".

1.6. To support the Local Authorities' duty (detailed in 1.5) The home school has a duty (regulation 12(1)(a) of the Education (Pupil Registration) (England) Regulations 2006 to provide to the local authority, at agreed intervals, the full name and address of any pupils of compulsory school age who are not attending school regularly (including due to their health needs).

1.7. The Education Act 1996 also places a duty on schools to provide education in the interim period while an assessment of need is undertaken to inform the LA's Section 19 offer, this can be provided through remote education provision as a soon as reasonably practicable.

1.8. Where the Local Authority offers (based on an assessment of need) an alternative education that it deems to be reasonably practicable for that CYP it is not under a duty to provide further alternative education because the child is not taking advantage of that facility. Parents should be aware that it is their duty under Section 7 of the Education Act 1996, to

secure an education for children of compulsory school age, which in this circumstance is available.

2. Section 19 Categories

2.1. This section provides an overview of CYP who require a section 19 response under the three identified categories:

- Permanent exclusion
- Illness
- Otherwise

Permanent Exclusion

2.2. 'If a child has been permanently excluded from school, the council must arrange alternative education from the sixth school day following the exclusion, although it may start sooner. Local Government and Social Care Ombudsman 'Out of School, Out of Sight?' 2022. Also referred to in DfE's Alternative Provision Statutory guidance for local authorities.'

Illness

2.3. Schools in Hampshire should read this policy alongside the statutory guidance for 'Supporting pupils at school with medical conditions' 2015, the Children and Families Act 2014 and the SEND Code of Practice 2015, which highlight their legal duty to 'support pupils with medical conditions'. Prior to requesting that Hampshire County council considers the need for Alternative Education Provision for a child with identified needs relating to illness, schools should refer to their own Medical Needs policy (as required by the statutory guidance) and consider seeking advice from health professionals.

2.4. 'If a child is unable to attend school because of illness, the council must make alternative arrangements once the child has been absent for 15 days, either consecutively or cumulatively. The council must consider the individual circumstances of each child and take account of any medical evidence or advice when deciding what arrangements to make.' Local Government and Social Care Ombudsman 'Out of School, Out of Sight?' 2022.

2.5. 'LAs do not follow an inflexible policy of requiring medical evidence before making their decision about alternative education. LAs must look at the evidence for each individual case, even when there is no medical evidence, and make their own decision about alternative education.' Responsibilities where mental health issue is affecting

attendance Feb 2023.

Otherwise

2.6. “Otherwise” is a broad category which covers circumstances other than illness or exclusion in which it is not reasonably possible for a child to take advantage of any existing suitable schooling. In all cases, councils must consider the individual circumstances of each particular child and be able to demonstrate how they made their decisions. They must take account of all available evidence and record the reasons for their decisions. They may need to make decisions in cases where they do not have all the evidence they would like.’ Local Government and Social Care Ombudsman ‘Out of School, Out of Sight?’ 2022

‘Otherwise’ (as opposed to illness or exclusion) is intended to cover any other situation in which it is not reasonably possible or reasonably practical for a child to access and take advantage of any existing suitable schooling. HCC will only provide education under the ‘Otherwise’ category if it assesses that it is not possible for a child to receive a suitable education at their current school. In these circumstances, it is expected that the host school would have provided support through a graduated response and that initial assessments will have taken place. ‘Otherwise’ consists of several scenarios; these include (in bold):

2.7. Scenario 1: When a pupil has had 10 or more continuous days of unauthorised absence -

Schools have a legal responsibility under Regulation 12 of the ‘Education (Pupil Registration) (England) Regulations 2006’ to make the local authority aware when a pupil has been absent for 10 or more continuous days of unauthorised absence, and it is anticipated that the absence will continue past 15 continuous days.

2.8. Scenario 2: Where a pupil has been absent for a continuous or cumulative period of 15 school days (authorised or unauthorised) and where the reason for absence connected -

Section 19 of the Education Act 1996 requires that the LA assess whether it needs to provide education for these authorised absences. A section 19 response for those CYP with unauthorised absence is only required where a school decides it is not appropriate to pursue a legal attendance route. For both authorised and unauthorised absences in scenario’s 1&2 HCC will assess whether S19 education provision should be arranged on a case-by-case basis and will communicate with the school their decision and reason.

2.9. For scenarios 1 & 2, HCC will check that a school has looked at and put in place all other reasonable alternatives for providing the pupil with a suitable and full-time education, which is likely to include reasonable adjustments and alternatives such as appropriate interventions, changes to the timetable (where appropriate), and/or the provision of an alternative curriculum. HCC will only arrange education under the 'Otherwise' category if we assess that it is not possible for a child to receive a suitable education at their current school, and where arrangements are made the host school will be required to keep the pupil on roll and retain safeguarding responsibilities.

2.10. Scenario 3: When a pupil is not on a school roll (or being Electively Home Educated (EHE)) after the 15th day -

The LA has responsibility for arranging suitable education after day 15 for children who are missing education (CME). This means they are not on roll of a school and are not Electively Home Educated.

2.11. If the LA does arrange and provide education under scenario's 1,2 & 3, it is doing so under the advice provided in the DfE guidance 2013 & 2023, and the provision should be short-term, with a view to the child being re-integrated at the earliest opportunity back into their home school, or for CYP Missing Education (scenario 3), being allocated a suitable and permanent school place.

3. Section 19 Assessment

3.1. The DfE's Alternative Provision: Statutory guidance for local authorities states: 'While there is no statutory requirement as to when suitable full-time education should begin for pupils placed in alternative provision for reasons other than exclusion, local authorities should ensure that such pupils are placed **as quickly as possible**.'

3.2. The Local Authority is responsible for assessing the needs of the child and young person and for determining and putting in place suitable education provision. In deciding what provision should be put in place the Local Authority will consider the child's needs based upon appropriate assessments and any evidence provided by the school and the family.

3.3. Where the child is at school, the school knows the child/ family, and their individual circumstances, well, so the information we require from the school is critical for the right decision to be made. Where the child is not at school, the LA will use evidence available, but

may require further assessment from a range of professionals to make a decision.

3.4. The assessment undertaken by HCC has to include the following:

- Is the child of compulsory school age?
- Would the child receive suitable education without alternative S19 provision?
- Is it reasonably possible or reasonably practicable for a child to attend school? If no, then alternative education must be arranged.
- What alternative educational provision is suitable, reasonably possible, and reasonably practicable for a child to access?
- If the child is a child with SEND, will the child not receive suitable education unless such alternative education arrangements are made for them? This is fact specific; the focus is on whether HCC has provided suitable education that it is reasonably possible or practicable for a student to access. This is an objective assessment, and the views of the parents are not determinative.
- Is the pupil unable to attend school but able to learn?
- What is their suitability for independent learning and what are the home circumstances?
- What are the child's needs? Age, ability, aptitude, and any special educational needs.
- What do these suggest a suitable and efficient education needs to involve?
- How are these needs best to be met?
- What assessments have been undertaken in school and what have these identified?
- Is there a medical opinion? What is the supporting medical evidence?
- What other evidence is available and what is this suggesting?
- What is the plan for reintegrating back into school?
- Are there reasons relating to the child's physical or mental health which would suggest that, in the interests of the child, part time education is more suitable than full time education?
- Would remote education adversely affect the pupil's return to school?
- Would pupils with long-term medical conditions or any other physical or mental health needs affecting attendance require additional support to continue their education?

Section 19 Frequently Asked Questions

What is Section 19?

Section 19 of the Education Act 1996 requires Local Authorities (LAs) to arrange suitable full-time education for children/Young People (YPs) of compulsory school age who cannot attend school due to illness, exclusion, or other reasons.

This means that if a child cannot attend school because of a physical or mental health need and cannot access suitable full-time education, the LA must arrange an appropriate alternative provision. This provision should offer quality education equivalent to that provided in mainstream schools, as far as the child's health allows.

Provision will differ from child to child, however there are some common elements that alternative provision should aim to achieve, including good academic attainment on par with mainstream schools.

The Section 19 duty applies to children aged 5 to 16, from the school term after their 5th birthday until the last Friday in June of the school year they turn 16. The legal duty does not apply to children and young people under and over compulsory school age. However, local authorities and schools should have clear policies in place to support these children and young people to access education and should follow the principles, set out in this document, as good practice. Individual situations under and over compulsory school age will be considered in years R and 11.

"In exercising or performing all their respective powers and duties under the Education Acts, local authorities shall have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents, as far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure."- Education Act 1996.

Section 19 is intended to cover situations where it is not reasonably possible for a child to take advantage of existing suitable schooling. Should parents have misconceived objections to their child attending a particular school, this does not mean the LA is obliged to make alternative arrangements. The duty is to make arrangements for what constitutes suitable education for each child. The resources of the LA should not be a relevant factor in determining what constitutes "suitable education." However, if there is more than one way of providing suitable education, the LA can consider its resources in choosing between different

options. Local authorities should always ensure that alternative provision is good value for money.

What constitutes accessible, suitable, full-time education?

Accessible, suitable, full-time education appropriate for the child's age, ability, aptitude, and any special educational needs they may have. The law does not define full-time education but children with health needs should have provision, where possible, which is equivalent to the education they would receive in a mainstream school.

If, for example, a child receives one-to-one tuition, the hours of face-to-face provision could be fewer as the education may be more intensive.

Where full-time education would not be in a child's best interests for reasons relating to their physical or mental health, LA's must arrange part-time education on whatever basis they consider to be in the child's best interests.

What are the differences for a child without an EHC Plan and for a child with an EHC Plan regarding Section 19?

Child without an Education Health and Care Plan:

- The LA where a child resides is responsible for S19.
- If the child resides between different addresses in a split family, the decision is made on where the child spends most of their time and this LA has the S19 responsibilities (clarified upon notification).
- If the child ordinarily resides 50/50 in 2 LAs, then both LAs can discuss and agree sharing the responsibilities for S19 provision. If an agreement cannot be reached, then the LAs can write to the Secretary of State for a decision.

Child with an Education Health and Care Plan:

- The LA who is responsible for maintaining the EHC plan is responsible for maintaining their provision; this includes Section 19 provision.
- Even if a school in another LA is named, the LA responsible for maintaining the EHC plan is responsible for the Section 19 provision*.

What reasons for absence come under Section 19?

Reasons for absence under Section 19 include illness, exclusion from school, and other circumstances that prevent the child from attending school for 15 days or over.

What does the 'or otherwise' reason cover?

"Otherwise" is a broad category which covers circumstances other than illness or exclusion in which it is not reasonably possible for a child to take advantage of any existing suitable schooling.

Whose decision is it whether Section 19 has been triggered?

The decision on whether or not Section 19 has been triggered rests with the Local Authority. The LA will consider all available evidence alongside the appropriate legislation in making this decision, and will follow a clear process. The process will involve communication to interested parties of any decisions made and any details of provision to be arranged.

In the event a child cannot attend school, an LA must decide if the current education arrangements are reasonably accessible by the child. If satisfied, the LA's Section 19 duty is not triggered. It is not under a duty to provide alternative education simply because, for one reason or another, the child is not taking advantage of it. In such circumstances, the child's parents are under a duty to ensure their attendance at school.

Who is responsible for arranging provision under Section 19?

The LA is responsible for arranging suitable alternative education for children who cannot attend school under Section 19. This may be led by the SEND Team, if the child has an EHC Plan, or the Inclusion Support Service, if the child does not have an EHC Plan.

In all cases, the LA will consider the individual circumstances of each particular child. They will take account of all available evidence and record the reasons for the decisions.

What happens when the extended absence is as a result of school transport cancellation?

If a child's extended absence is due to school transport cancellation, the LA must still ensure that the child receives suitable education. They may need to ensure alternative transport is arranged or education at home or another suitable location is provided.

How do we determine if a child is too unwell to attend school?

All medical evidence should be used to better understand the needs of the child and identify the most provision. Local authorities, working closely with the child's home school, medical practitioners (such as a GP or consultant) and the child's family, should make every effort to minimise the disruption to a child's education by identifying the most suitable provision.

Where specific medical evidence, such as that provided by a medical practitioner, is not readily available, the child's home school or the local authority should consider liaising with other medical practitioners and consider other evidence to ensure appropriate provision can be arranged as soon as possible. The local authority should review any additional evidence to help them identify the most suitable provision. Once a parent / carer has provided evidence from a medical practitioner, local authorities should not demand continuing evidence without good reason, even where a child has long-term health problems. Parents should always provide updated advice and evidence in such instances when possible. Where local authorities believe that a medical practitioner's ongoing opinion is necessary, they should give parents or carers a reasonable amount of time to contact them.

As part of this process, the LA will consider the individual circumstances of each child; including how the host school has provided support through a graduated response and what reasonable adjustments have been put in place to support the child to attend school.

Who do I make contact with if I think I have a child too unwell to attend school?

Parents should contact their child's school in the first instance. For children not on a school roll, the LA would ask that the Inclusion Support Service is contacted.

If the child does not have an EHC Plan, schools should contact the designated officer responsible for Inclusion who provide guidance on the process and the necessary documentation.

If a young person has an EHC Plan, schools should contact their assigned EHCCO or SNO.

Does having an EHCP change what support can be accessed?

Having an EHC Plan means that the Local Authority remains responsible for delivering the provision outlined in Section F of the EHC Plan under Section 42 of the Children and Families Act 2014, even if the child is unable to attend school.

The Section 19 duty outlined above does, however, still apply to all children of statutory school age who do not have an EHC Plan, if they are unable to attend school for reason of exclusion, illness or otherwise

What should I do if the reason for absence is an area of need already listed in the CYP's EHCP? Does this affect the Section 19 implementation?

If the area of need generating the absence is already listed in the EHCP, the LA will still be

ultimately responsible for ensuring appropriate alternative provision is in place. It may be that an Annual Review is required to ensure the EHC Plan is fully reflective of the child's current needs and provision required in order to meet the need, therefore it may not just mean an activation of Section 19.

Can a parent request that Section 19 be activated?

A parent can communicate to the school or the appropriate LA Service if the child is not on a school roll if that they believe their child is unable to attend school for one of the reasons outlined in Section 19. It will then be for the LA to consider all available evidence and make a decision on whether Section 19 is applicable.

Can I appeal an LA decision to not trigger Section 19?

No, there is no formal route of appeal for decisions regarding Section 19. If you disagree with a Local Authority decision regarding Section 19, the LA would encourage open communication with the relevant Service.

If, after further communication, you remain dissatisfied with the decision, you may wish to follow the Local Authority Complaints process here:

[Making a comment, suggestion or complaint | About the Council | Hampshire County Council](#)