

EXECUTIVE DECISION

From: Rory Love, Cabinet Member for Education and Skills
Sarah Hammond, Corporate Director of Children, Young People and Education

To: Children's, Young People and Education Cabinet Committee – 24 September 2024

Subject: Educational Health Needs Policy

Key decision: More that £1m expenditure and affects more than two Electoral Divisions

Classification: Unrestricted

Past Pathway of report: N/A

Future Pathway of report: N/A

Electoral Division: All

Summary: Following a public consultation on the Education Health Needs policy between 11 June 2024 and 28 July 2024, the Cabinet Member for Education and Skills will be asked to agree that this policy is adopted by Kent County Council (KCC). This will allow the Council to fulfil its statutory duties and responsibilities and meet the recommendations of the Ombudsman.

The policy explains, in summary:

- Procedures and stakeholder responsibilities regarding education provision for pupils with health/medical needs in Kent. This includes the responsibilities of KCC, schools, health services, parents, and children and young people themselves, as well as how stakeholders are expected to work together.
- The specific processes and procedures for making a health/medical needs referral to The Rosewood School (a pupil referral unit across three locations delivering the health needs provision on behalf of KCC, formerly known as Kent's Health Needs Education Service), how referrals will be handled and assessed, and how The Rosewood School will provide alternative education when it accepts a referral.
- Responsibilities and procedures for supporting children to remain within school, and for reintegration back into mainstream education.

Recommendation(s): The Children, Young People and Education Cabinet Committee is asked to comment and endorse or make recommendations to the Cabinet Member for Education and Skills on the proposed decision as set out within the PROD.

1. Introduction

- 1.1 Following an Ombudsman's case in 2022, it was recommended that the Local Authority (LA) review its Health Needs policy.
- 1.2 The aim of the policy 'Supporting Children Who Are Unable to Attend School Because of Medical/Health Needs' is to provide clarity on the arrangements which will apply when a school pupil in Kent is not able to attend school for health/medical reasons. In particular, the policy provides information for the local authority, schools, parents and pupils to work in collaboration. This will ensure that all pupils have access to suitable education and receive appropriate support in light of their health/medical needs.
- 1.3 In addition, from 18 August 2024, the Department of Education (DfE) 'Working together to improve school attendance' statutory guidance came into effect. Within the guidance, there is a requirement for schools to inform the LA when a pupil is absent from school due to illness for 15 days or more (consecutively or cumulatively throughout an academic year) or is due to be absent for 15 days due to illness. This, and other new elements of the guidance, link closely with the responsibilities of local authorities and schools concerning education arrangements for children who are unable to attend school due to illness. These responsibilities are addressed in the DfE's 2023 statutory guidance, [Arranging education for children who cannot attend school because of health needs \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/118222/arranging-education-for-children-who-cannot-attend-school-because-of-health-needs.pdf) and other relevant guidance.

2. Key Considerations

- 2.1 The policy needs to be fully adopted so that the Council can meet its statutory duties as well as meeting the recommendations from the Ombudsman.
- 2.2 A review of the arrangements with The Rosewood School is planned to make sure that it is delivering health needs provision to the expected standard and number of children as part of the Education Kent Commissioning Plan.

3. Background

- 3.1 In the academic year (2022-2023), 21,000 pupils in Kent were absent from school due to illness for at least 15 days. The vast majority of these pupils will continue to receive a suitable education from their school without intervention by KCC. However, in a minority of cases, it will be necessary for KCC to provide alternative education in accordance with its statutory responsibilities. This is further evidenced by a high number of parental requests/complaints linked to the local authorities Section 19 responsibilities.
- 3.2 The policy clarifies the responsibilities of all stakeholders which will apply when a school pupil in Kent is not able to attend school for health/medical reasons. These stakeholders include the local authority, schools, parents/carers, health organisations, The Rosewood School and pupils. For instance, schools'

responsibilities include having their own health/medical needs policy which will allow them to make reasonable adjustments to a pupil's education to support them due to their medical/health needs.

- 3.3 The public consultation identified that 57% of all respondents strongly agree/agree that the policy will benefit pupils and their families, whereas 29% strongly disagree/disagree. 14% of respondents did not answer either way (neither agree nor disagree, don't know or blank).
- 3.4 Ultimately, the policy will ensure that all pupils have access to suitable education and receive appropriate support in light of their health/medical needs from all stakeholders.
- 3.5 A recommendation from the public consultation is for operational guidance for health needs to be written, this should include:
 - Referral pathways – further information on the criteria and process for referrals to The Rosewood School.
 - The provision – further information on arrangements such as transport, the medical evidence required and the provision available.
 - School notification process – clearer guidance on the referral pathways for schools to notify the LA of a pupil who is likely to miss 15 days or has accumulated 15 days absence due to sickness (recorded as code I).
 - LA co-ordination – further information on how the LA will co-ordinate the health/medical needs provision.
- 3.6 This guidance will help ensure the LA fulfils its duties and responsibilities regarding health/medical needs and ensure a personalised and flexible educational provision for each pupil is provided. Resources will need to be scoped and where extra resources are required, it is expected this will be funded in the first instance from additional income from the changes to the national framework for penalty notices.
- 3.7 The LA uses The Rosewood School to provide educational provision in circumstances where the pupil's educational needs cannot be met at their school due to health/medical reasons. The Rosewood School is currently expected to deliver 150 places per academic year.
- 3.8 The arrangement with The Rosewood School (uniquely positioned as the maintained health/medical school provision across three sites in the County) requires review in terms of clearly setting out how this provision is used and complements other education provision across Kent. It is intended that the outcome of the review will require the establishment of a Service Level Agreement to formalise the arrangements, expectations and monitoring from the local authority. If this is the case, due to the cost of the provision, this would require a future, and separate, Key Decision.
- 3.9 Following the public consultation, the following recommendations will be considered as part of The Rosewood School review:

- Number of commissioned places.
- Equality of county provision, including catering for all key stages (1-4).
- Outreach support available to schools and family's pre-referral.
- Online support for pupils unable to travel due to medical need (including mental health).
- Referral criteria/process including medical evidence and referral panel protocols.
- Length of pupil placements.
- Confirmation of pupil transport arrangements.

4. Options considered and dismissed, and associated risk

- 4.1 To not create an effective policy to manage the health/medical needs of children in education - Pupils will not receive the support required to support their health/medical needs. In addition, this will be a reputational risk for KCC as the LA will not be meeting their statutory duties as highlighted in the new attendance guidance. Also, the Ombudsman will likely open a new complaint and issue a public interest report for non-compliance.
- 4.2 Not to review the arrangements with The Rosewood School and establish a clear monitoring plan – This would risk KCC not delivering statutory duties with regards to Section 19 of Education Act 1996 as there will be no education provision for pupils who meet the referral threshold. In addition, there is a large risk of The Rosewood School not delivering the requirement of the LA nor delivering best value.

5. Financial Implications

- 5.1 The policy is expected to support the current practice where schools provide suitable out of school education arrangements for eligible children, where possible, and will continue to fund these activities from their individual school's budget. The DfE guidance allows the LA to deduct a portion of the school budget where this is not the case.
- 5.2 For the minority of cases where school arrangements are not sufficient, the LA offer is currently provided by the KCC maintained pupil referral unit: The Rosewood school, with an annual revenue budget (£3.3m for 2024-2025) funded from the ring-fenced High Needs Block of the Dedicated Schools Grant (DSG) provided by the DfE. Any capital costs associated with the school are met from the Council's Capital budgets for Schools annual planned maintenance or, the High Needs Capital Budget (dependent on the requirement).
- 5.3 The DfE requirements in respect of the education of children not in school reiterates the Council's role in ensuring eligible children with health needs receive suitable alternative provision. The resource required to fulfil this role is currently being scoped. If additional resources are required, the statutory functions relating to attendance are funded from a combination of grant funding (Central Services Schools Block of the DSG) and income from the issuing of

Statutory Penalty Notices. Extra income from changes to the national framework for penalty notices will be expected to fund any additional resources required to fulfil our duties.

- 5.4 Financial implications of this policy will be reviewed further in light of both the review of The Rosewood School (see 3.5), and other resources required. Examples of additional costs could include both the revenue and capital costs if an expansion of The Rosewood School is required, or costs associated with online learning should this be considered.
- 5.5 There is a financial risk to the LA that the promotion of this policy may result in additional demand for a LA offer. Any associated revenue costs from either the review of Rosewood School or additional demand would need to be met from the High Needs Block of the DSG. This is in the context that that High Needs Block of DSG is currently overspent and therefore any extra revenue costs resulting from this policy will need to be matched with corresponding compensating savings. This is not expected to result in a General Fund pressure.

6. Legal implications

- 6.1 Section 19 of the Education Act 1996 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".
- 6.2 The DfE '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.*"
- 6.3 The DfE's guidance 'Arranging education for children who cannot attend school because of health needs', 2023 requires local authorities to provide education for children who cannot attend education because of their physical or mental health needs.
- 6.4 Section 7 of the 1996 Education Act states that parents/carers must ensure that children of compulsory school age receive efficient full-time education suitable to a) their age, ability and aptitude, and b) to any special educational needs they may have, either by regular attendance at school or otherwise.
- 6.5 The Equality Act states: "*Some complex and/or long-term health issues may be considered disabilities under equality legislation. This legislation provides those 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.*"

- 6.6 Section 19 is intended to cover circumstances in which it is not reasonably possible for a child to take advantage of existing suitable schooling. This policy provides details about the provision of education for children in Kent who cannot attend school because of health needs.

7. Equalities implications

- 7.1 The policy is specifically about supporting particular individuals with protected characteristics, namely children and young people of compulsory school age with medical/health conditions which prevent them from attending school (some of whom may have the protected characteristic of disability).
- 7.2 No negative equality impacts have been identified for residents as a result of this policy.

8. Data Protection Implications

- 8.1 A Data Protection Impact Assessment screening was carried out and then a further full Data Protection Assessment was completed. This has now been signed off by the Data Protection Team and then sent to the IAO for approval.
- 8.2 No major data protection implications had been detected but there were recommendations to consider, these included guidance for schools regarding the submission of referrals to minimise data errors.
- 8.3 The DPIA will be kept under review and then resubmitted should there be any changes to the described processing procedures.

9. Other corporate implications

- 9.1 No corporate implications for other services or directorates have been identified result of this policy.

10. Governance

- 10.1 The Cabinet Member decision will be made in accordance with KCC's Constitution and via the Officer Scheme of Delegation, the Corporate Director for Children's Young people and Education will be granted delegated authority to implement the decision. This includes making sure that relevant staff are aware of its existence and adoption across the Service and the production of operation guidance.
- 10.2 The review of the arrangements of The Rosewood School will be led by the Director for Education and Special Educational Needs.

11. Conclusions

11.1 The outcome of public consultation clearly demonstrated that it is believed the policy will benefit pupils and their families (57% strongly agree/agree compared to 29% strongly disagree/disagree).

11.2 The adoption of the policy will enable stakeholders to have a clear understanding of their responsibilities regarding education provision for pupils with health/medical needs in Kent and highlight the expectations for stakeholders to work together to support pupils. This will be strengthened by the writing of operational guidance for stakeholders.

11.3 In addition, along with the recommended review of the arrangements for The Rosewood School, the adoption of the policy will provide clarity on the specific processes and procedures for making a medical referral to The Rosewood School.

12. Recommendation(s): The Children, Young People and Education Cabinet Committee is asked to comment and endorse or make recommendations to the Cabinet Member for Education and Skills on the proposed decision as set out in the PROD.

13. Appendices

- 1) Educational Health Needs Policy
- 2) Educational Health Needs PROD
- 3) Educational Health Needs Policy EQiA
- 4) Educational Health Needs Consultation Report

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