

KENT COUNTY COUNCIL – RECORD OF DECISION

DECISION TO BE TAKEN BY:

Rory Love, Cabinet Member for Education and Skills

DECISION NUMBER:

24/00084

For publication *[Do not include information which is exempt from publication under schedule 12a of the Local Government Act 1972]*

Key decision: YES

Key decision criteria. The decision will:

- a) result in savings or expenditure which is significant having regard to the budget for the service or function (currently defined by the Council as in excess of £1,000,000); or
- b) be significant in terms of its effects on a significant proportion of the community living or working within two or more electoral divisions – which will include those decisions that involve:
 - the adoption or significant amendment of major strategies or frameworks;
 - significant service developments, significant service reductions, or significant changes in the way that services are delivered, whether County-wide or in a particular locality.

Subject Matter / Title of Decision:

Educational Health Needs Policy Approval

Decision:

As Cabinet Member for Educational and Skills, I agree:

- a. Approve the Educational Health Needs Policy.
- b. Confirm Rosewood as the ongoing provider for services under the Policy.
- c. Delegate authority to the Corporate Director of Children's, Young People and Education, in consultation with the Cabinet Member for Education and Skills, to refresh and/or make revisions to the policy where changes do not require additional governance.
- d. Delegate authority to the Corporate Director of Children's, Young People and Education to take relevant actions, including but not limited to, entering into and finalising the terms of relevant contracts or other legal agreements, as necessary, to implement the above decision.

Reason(s) for decision:

Following an Ombudsman's case in 2022, it was recommended that the local authority (LA) review the Health Needs policy.

The aim of the draft 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.

In addition, from 18 August 2024, the Department of Education (DfE) 'Working together to improve

school attendance' became statutory guidance. Within the guidance, there is a requirement for schools to inform the local authority 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 regarding 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' [Arranging education for children who cannot attend school because of health needs \(publishing.service.gov.uk\)](https://publishing.service.gov.uk) and other relevant guidance.

Financial Implications

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.

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).

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.

Financial implications of this policy will be reviewed further in light of both the review of The Rosewood School and other resources required. Examples of additional costs could include both revenue and capital costs if an expansion of The Rosewood School is required or costs associated with online learning should this be considered.

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.

Legal implications

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".

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."*

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.

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.

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."*

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.

Equalities implications

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).

No negative equality impacts have been identified for residents as a result of this policy.

Data Protection Implications

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.

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.

The DPIA will be kept under review and then resubmitted should there be any changes to the described processing procedures.

Cabinet Committee recommendations and other consultation:

Children's, Young People and Education Cabinet Committee considered and endorsed this decision at its meeting on 24 September 2024.

Any alternatives considered and rejected:

- 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.

- 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.

Any interest declared when the decision was taken and any dispensation granted by the Proper Officer:

None



9/10/2024