

FlexiSchooling - the legal position

(November 2018)

Over the last couple of years we have been trying to clarify the exact legal position of flexischool arrangements as it is one of the areas of our approach which the Ofsted inspectorate, in particular, have struggled with. We have now received communications from the Department of Education which confirm that our understanding was exactly correct (and more so than that of the inspectors).

The communications are in two parts as follows (with my underlinings for emphasis):

“It is open to a school to accept pupils being registered on a flexi-schooled basis, doing as much of the week at school as you and their parents agree. When the children concerned are not in school but are being home educated, they should be marked on the attendance register as ‘authorised absence’ (NOT approved off-site activity or some similar code). If a child is removed from the roll after such a period the LA should be notified.

So far as safeguarding is concerned, the school is responsible for that only when the child is in school; it has no responsibility for safeguarding during other periods - that is the parents’ responsibility. Likewise, the school has no responsibility for what is being taught in periods outside school; that is for the parents.

It is for the local authority to determine - should there be any question as to the suitability of the child’s education in terms of the parents’ duty under s.7 of the Education Act 1996 to ensure that the child receives an efficient full-time education suitable to its age, ability and aptitude - whether the total education provision for the child including the home education and time spent at school, meets that requirement.”

We also sent some follow up questions which were answered as below:

1. If we have a pupil who comes in for a particular subject which starts at 10.30, as far as the register is concerned should we treat them as late?

“I don’t think there is any rule on this. If that is the agreed attendance pattern, it seems that the child is attending for the morning session - so it would seem rather unfair to mark him or her late.”

2. If a pupil finishes at midday do we need to phone the parents to check they have got home if they are travelling independently?

“No, the child is the parents’ responsibility immediately on leaving the school at the agreed time – unless you have come to some other definite arrangement with the parents.

Background

Parents in the UK have been legally responsible for the education of their children since the Education Act of 1944. But while 'education' is compulsory, 'schooling' is optional: education can be “either by regular attendance at school or otherwise”. Internationally the picture is different: homeschooling is illegal in Germany, the Netherlands, Greece, Turkey and Sweden, for example. The situation is unclear in many other countries, including China and Spain.

The latest legislation which applies is Section 7 of the Education Act 1996:

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

—
*(a) to his age, ability and aptitude, and
(b) to any special educational needs he may have,
either by regular attendance at school or otherwise.”*

None of the terms “efficient”, “full-time” or “suitable” are 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”.

There is as yet no legislation which directly covers flexischooling. The only official guidance, as far as I know, is in the various editions of the Elective Home Education Guidelines for Local Authorities. The 2007 version which was in force until 2013 was supportive:

5.6 “Flexi-schooling” or “flexible school attendance” is an arrangement between the parent and the school where the child is registered at school and attends the school only part time; the rest of the time the child is home educated (on authorised absence from school). This can be a long-term arrangement or a short-term measure for a particular reason. “Flexi-schooling” is a legal option provided that the head teacher at the school concerned agrees to the arrangement. The child will be required to follow the National Curriculum whilst at school but not whilst he or she is being educated at home. Local authorities should make sure that head teachers are made familiar with flexi-schooling and how it may work in practice.

The 2013 version was much less supportive (at least of schools in the maintained sector):

5.6 Flexi-schooling is normally an arrangement whereby a child is registered at a school but attends only part-time and is home educated at other times. The Government has looked at this issue and takes a different stance from that of the previous Government. It does not believe that a hybrid arrangement between home education and mainstream school is adequately provided for in law, or in the school funding system, for children of compulsory school age. Where parents decide to educate their child at a school, parents have a legal duty to ensure their child attends regularly. If they fail to do this they may be committing an offence. Schools are funded to provide full-time education for all pupils (age 5-16) on their register and therefore are accountable for the standard of education their pupils receive. A flexi-schooling arrangement means some schools would receive a full unit of funding for certain pupils for whom they do not provide full-time education, and in some cases, may provide very little.