

## Section 19 FAQ (advice for schools and professionals)

*This document has been created based on WCC Legal Advice; DFE Statutory Guidance, Legislation and other suggested good practice; Ombudsman decisions, outcomes and advice.*

### **What is Section 19 (s19)?**

Section 19 of the Education Act 1996 places a duty on LAs that they must arrange suitable education at school or elsewhere for pupils who are out of school because of exclusion, illness or for other reasons, if they would not receive suitable education without such arrangements.

In addition, the duty applies where a child has or is likely to be absent for 15 days or more (consecutively or not) [and the school is not providing educational support].

Schools should always continue to provide education to children with health needs who can attend school. Schools can also manage longer-term absences through the use of work-sheets, remote or online learning packages etc. The local authority does not need to become involved in such arrangements unless it is informed or has reason to believe that the education being provided by the school is unsuitable or unsustainable.

Arrangements made under s19 are by the LA and cannot be delegated to schools. DFE guidance recommends that although there is no statutory timeframe, the Council should attempt to arrange alternative provision as soon as it is clear that the child will be away from school for more than 15 school days and that this alternative education should be in place from the sixth day of absence.

### **Which children does the legal duty cover?**

The statutory guidance says the duty to provide a suitable education applies “to all children of compulsory school age resident in the council area, whether or not they are on the roll of a school, and whatever type of school they attend [including Independent schools]”.

### **Is there anyone the legal duty doesn't apply to?**

The legal duty does not apply to children and young people under and over compulsory school age.

### **How does this process work in Worcestershire?**

Worcestershire County Council (WCC) decide if a case meets the s19 duty for the LA and if it does will make provision and/or support available to enable the child to continue to receive a full-time and suitable education (unless otherwise agreed by the LA and in the child's best interests) until the child is able to return to school on a full-time basis and no longer requires such arrangements being made for them.

### **How is this decided in Worcestershire?**

WCC hold weekly term-time CCAS (Children who Can't Attend School) panel meetings to review cases that have been notified via the Absence Notification form on the CHS portal, or through other means. This panel decides if a case meets the LA's s19 duty and how provision/support should be made. Occasionally to minimise drift and delay, members of the panel (in consultation with one or more panel chairs) will make decisions on cases that can't wait until the next CCAS panel. For children with

EHCP's (or at the draft stage), these cases will be flagged to SEND to make the s19 decision directly or to raise at CCAS panel. Please note there is no direct referral to the CCAS panel, and the panel can and will signpost/advise schools/professionals when the case does not meet the s19 duty.

If a school/professional does not have access to the CHS portal, they need to email [cme@worcestershire.gov.uk](mailto:cme@worcestershire.gov.uk). Please note: any absence concerns should be flagged to the Absence Monitoring team (either through the CHS portal or via email) even if some signposting and support has been provided by another team. This will minimise the risk that the support offered/suggested accidentally ignores/delays the LA's s19 duties.

### **What might support in Worcestershire look like?**

This will be dependent on the needs of the pupil and circumstances of the case; however, the primary objective will be to ensure the child is receiving what they would get if they were able to attend school full-time – with particular focus on Maths, English and Science (core subjects).

This can be achieved through a variety of different approaches for example, Tuition in the home/Tuition in school/Bridging Tuition (either face to face or virtual), an AV1 robot, transport, specialist provision and/or assessments. Please note if the support is one-to-one tuition, the hours of face-to-face provision could be fewer than received in school as the provision is more concentrated (up to 15 hours being the usual offer).

When support is agreed, schools/professionals will need to complete the relevant forms so a provider can be identified either directly or through the LA's Dynamic Purchasing System (DPS).

In all cases the LA will work with the school, alongside relevant professionals, to ensure the curriculum needs are met having regard to the statutory requirements of the primary and secondary curriculum.

### **How is this funded?**

Alternative provision for children with medical needs is funded from local authorities' high needs budgets. However, where a child remains on the roll of their home school but requires a period of time in alternative provision due to their health needs, the local authority and home school may wish to consider the transfer of a portion of the school's funding associated with that child to the alternative provision. This would ensure that the funding follows the child.

The LA will also fund interim provision whilst awaiting a place at a PRU following a permanent exclusion or in other circumstances where the s19 duty applies e.g. awaiting a specialist education placement where a child has an EHCP. Funding will also cover transport and assessments if appropriate to do so and not superseded by other policies, guidance or legislature.

### **Should unregistered settings be used?**

Many alternative provision providers are classed as unregistered i.e. not registered with the DFE as a school. Unregistered settings can often provide children with unique experiences beyond the classroom; however, there are strict regulations underpinning the use of unregistered settings and therefore these will only be used to meet a specific need. Where an unregistered setting is used, they will be subject to Quality Assurance Arrangements and there should be a Service Level Agreement in place.

Please note unregistered settings are entirely legal unless they are considered to be acting as an Independent school – this occurs when they have five or more pupils of compulsory school age

attending full-time OR at least one pupil who has an education, health and care plan or a statement of needs, or who is [currently] looked after by a local authority.

### **How many hours/days a week can a child attend unregistered settings?**

This must be considered carefully due to the risks of unintentionally making an unregistered setting illegal as there is no legal definition of full-time education. The DFE has advised in the 'Registration of independent schools' (January 2016) guidance that full-time education is at least 18 hours or if a setting is 'intending to provide all or substantially all, of a child's education'. Due to this, s19 provision agreed by the LA will always try and be cautious and suggest a maximum of 12 hours a week (sometimes this will be extended to 15 hours). Very occasionally the package will be greater days/hours per week, but this needs to be considered on the understanding whether this could make an unregistered setting illegal and the best interests of the child (see above).

### **What about suitability of the education provided?**

As per above, the s19 duty means an LA must make arrangements for the provision of suitable alternative education. The LA defines suitability as the following:

- 1) Efficient education suitable to the age, ability, aptitude and to any special educational needs (having regard to the primary/secondary curriculum) - (Education Act 1996, section 19(6)).
- 2) Primarily equips a child for life within the community of which he/she 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 and to be capable of living on an autonomous basis as far as he or she chooses to do so - Judicial review 1985.

### **The package contains a part-time timetable – shouldn't it be a full-time education?**

A part-time timetable can be used in exceptional circumstances such as where a child is subject to a reintegration plan or in response to a child's specific needs. If by putting a part-time timetable in place has or is likely to cause the child to miss more than 15 days of school, consecutively or not, then the school must inform the local authority as they have a duty to identify if part-time is in the child's best interests and if not, how the child can continue to receive a suitable full-time provision

Regular reviews will ensure this provision remains suitable, continues to meet the pupil's needs, and does not become a long-term solution.

### **Is this likely to be an issue during an Ofsted Inspection?**

WCC are willing to discuss any CCAS/s19 package with Ofsted and explain why decisions have been made. All decisions (and this document) are based on WCC Legal Advice, Ombudsman decisions and outcomes, DFE Guidance and Legislation.

### **How does this relate to the MET (Medical Education Team)?**

The MET have strict entry requirements and if these are met, this is the LA's chosen provider to support pupils with medical needs. If entry requirements are not met, the CCAS panel has the authority to recommend a place anyway if in a child's best interests. Please note a child must be on a school roll to attend the MET and schools will need to pay for the placement, even if it has been arranged following a recommendation at CCAS Panel.

### **Who oversees the arrangements?**

The CCAS Panel (or the MET) will ensure the provision is suitable and meets the needs of the young person – this will then be reviewed regularly via the Absence Monitoring team (or the MET). The child's home school is expected to support with this to ensure arrangements support 'Keeping Children Safe In Education' (KCSIE) and they remain suitable. Where the child has an EHCP this will be supported by the relevant SEND Caseworker (see below regarding children applying for an EHCP).

### **Does that mean the child is now registered with the LA and school can de-roll?**

WCC are supporting school to provide a suitable education – this does not remove any of school's responsibilities and duties towards that child. Unless school can meet one of the Regulation 9 reasons to de-roll, the child **must** remain on roll with school.

### **But what about 8(1)(g)?**

8(1)(g) allowed a child to be de-rolled if they have been certified by medical professionals that they are not well enough to attend school from now and until they reach compulsory leaving age. Following an update in legislation, the School Attendance (Pupil Registration) (England) Regulations 2024 does not have an equivalent to 8(1)(g) so schools can no longer de-roll if a child has been certified by medical professionals that they are not well enough to attend school.

### **What about Safeguarding and/or Safe and Well checks?**

School's safeguarding responsibilities do not change. If school's wish to discuss safeguarding regarding the provision being arranged – please speak to the provision directly. Schools can and should liaise regularly with the provision to satisfy any of their other requirements. The Provision is also advised to initially contact school directly with any safeguarding concerns and to discuss a student's needs.

### **What about Register Coding?**

This will be a decision for the school and will very much depend on what the child is doing and the case itself; however, the coding can be discussed at the time the provision is arranged. As a rule, though, once CCAS/s19 is agreed, absences should be authorised if they are related to the reason CCAS/s19 support is being offered.

Please note: WCC would advise that the K code should be used when a child (physically) attends AP arranged by LA (with physical supervision present) – this can include tuition at home with a tutor physically present. The B code should be used when a child (physically) attends other approved educational provision arranged by the school (with physical supervision present) - this could be at home if a school approved tutor physically present. This will also include the MET.

How to decide between the above depends on who overall agrees for it to be arranged/paid for. For instance, provision agreed and funded by CCAS panel (or SEND as an interim provision) would be the K code (even if school have arranged on LA's behalf). If CCAS panel recommends school provide the provision and is not funding it – this would be a B code eg the MET. If a child has an EHCP and school has the funding to provide the education and chooses to arrange AP as part of this, this would be a B code etc.

Any online or remote learning (including any digital education or telepresence platform) taking place outside of school e.g. online tuition, MET online or AV1 robot can only be recorded as an absence - either the I or C code.

**Will these children count towards the school's statistics e.g. Progress 8?**

Where a DFE data collection is based on school roll, CCAS/s19 children will be counted as part of that. Many collections, including Progress 8, have had their methodology refined to try and reduce any disproportionate effect that a small number of extremely negative progress scores can have on a school's average, but WCC are not aware that individual data can be or has been removed.

**Will you contact the DFE to explain this or support with our request to change our data due s19?**

Unfortunately, WCC would not be able to support a request to the DFE to alter a collection cohort but if the DFE requested an LA provide written confirmation of support for a child via their s19 statutory duties then this could be provided but evidence of this request would need to be seen first.

**What happens regarding examinations?**

If the child can attend school to take exams this should happen otherwise other options should be explored, if necessary, for example exams in the home. All schools are expected to make exam arrangements for their students – the LA will only support with examinations in exceptional circumstances or when a child supported via CCAS/s19 is not on a school roll. Statutory assessments and examinations should always be discussed at the beginning of when the provision starts and reviewed regularly thereafter to ensure any access arrangements are planned for and in place.

**How long does support continue for?**

CCAS/s19 will support for as long as necessary or until there is no longer a duty to do so (see below for some examples of reasons for CCAS/s19 ceasing).

**What happens at the end of Compulsory Education?**

The s19 duty only applies to children in compulsory education so will end the last Friday in June of Year 11 latest (earlier if any public examinations or other assessments for which the child has been entered are completed or none have been entered for – up to six weeks before the last Friday in June). In some rare cases CCAS/s19 support may continue for a few further weeks if in the child's best interests.

**What happens if the child applies for an EHCP?**

CCAS/s19 support is separate to the EHCP process; however, the reasons for enacting s19 and the arrangements made should inform the assessment and where required the EHCP.

Where a child has been awarded a draft EHCP **all** s19 duties are transferred to the SEND team. Any changes or concerns regarding the arrangements being made for a child with a Draft/Final Plan must be escalated within the SEND team.

**What happens if the child becomes Looked After?**

If the child becomes looked after, CCAS/s19 support should continue irrespective of the responsible LA but this may transfer to a new residing authority. The responsible LA's Virtual School and Social Care team will possibly need to be involved in future review meetings.

It is essential that any arrangements being made under CCAS/s19 and plans for reintegration are taken into consideration when the child's Wider Care Plan is being written.

**What happens if the child is open to Social Care or Early Help?**

This has no impact on CCAS/s19 involvement, but representatives will likely need to be involved or contribute to the CCAS panel discussions or future review meetings.

**What happens if the child is resident out of the Local Authority area but on roll at a Worcestershire school or is resident in the Local Authority but attends a school outside the Local Authority area?**

S19 duties are based on residency of the child not where the school is. In the examples above, the resident LA is responsible for the s19 duty for the child on roll at a Worcestershire school but resident in another area and Worcestershire is responsible where the child lives in Worcestershire and attends a school outside of the LA area. This does not change even if a child is looked after or has an EHCP but these teams would need to be involved in s19 discussions irrespective of which LA these teams belong to. The Working Together to Improve Attendance Guidance provides useful guidance on working with cross border pupils – p40 onwards.

**What happens if the child moves out of the Local Authority area?**

S19 duties are based on residency of the child not where the school is. If a child moves out of the county, please advise the LA so the new LA can be notified (where possible). All other school processes for a child moving should be followed as normal.

**What if the move is temporary?**

A review meeting should be convened as CCAS/s19 support might be able to continue for a period of time, but this will be assessed on an individual case basis.

**What happens at transition points to another school?**

WCC recommend school holding a review meeting and invite WCC and the school transitioning to, so they are aware of what's in place. If this is not possible, please advise the new school that CCAS/s19 support is being provided.

**What happens if parents decide to Electively Home Educate?**

This is a parental decision and if made, CCAS/s19 support will usually cease at the point of de-rolling. Where possible, WCC would recommend convening a review meeting before this decision is made.

**Provision isn't working, can we stop or change it?**

If there are any major issues or changes, please convene a review meeting to discuss further. Otherwise please advise the LA. Only WCC (and ideally the team that has arranged) can decide to stop or change existing provision.

**Can provision continue during the school holidays?**

This is at the discretion of the LA (agreement will be sought from CCAS chairs or SEND if the child has an EHCP) and will usually only be considered if it will be in the best interests of the child.

**How often should the CCAS/s19 package be reviewed?**

We would recommend at least once every half term.

### **Who arranges reviews?**

School should arrange and hold reviews – these can be face-to-face or virtual. Where possible WCC will try and attend in person but due to staffing, virtual attendance may only be possible. WCC will also request updates based on these reviews to be submitted through the Children's Services Portal to maintain oversight.

### **Do WCC update school regarding the provision?**

Schools are expected to establish and maintain communication with and receive regular updates from CCAS/s19 provision eg Tuition Providers. WCC *may* also advise school.

### **What about absence and part time timetable notifications through the portal?**

If regular reviews are held it will not be necessary to continue to send absence notifications for a particular child unless to feedback the results of the review. If the situation changes and/or a review cannot be convened or there is an EHCP now in place and attendance issues remain, please advise via the portal notifications. Part-time Timetable notifications should continue to be sent to cover periods between reviews (unless advised not to do so).

### **School has a list of further children to refer to CCAS/s19 – how is this done?**

These children should firstly be submitted by an Absence Notification through the portal. This allows information to be gathered and presented to the CCAS panel and a decision to then be made. Please note s19 duties are based on residency of the child not where the school is and that absence notifications are dealt with in date received order.

### **What evidence could school provide to support a CCAS/s19 case?**

Providing as much information as possible with the original notification will help WCC to assess a case much quicker. Evidence can include (but is not limited to) an IHP, EHA, PSP, CAMHS documentation, GP documentation, UP documentation, SEN Support Services interventions, Costed Provision Map, other Professionals Reports, and any other evidence of school interventions and support.

### **How does school/professionals contact WCC regarding an open CCAS/s19 case or CCAS/s19 provision?**

Please email [CCAS@worcestershire.gov.uk](mailto:CCAS@worcestershire.gov.uk) regarding open CCAS/s19 cases or [alternativeprovision@worcestershire.gov.uk](mailto:alternativeprovision@worcestershire.gov.uk) regarding provision.

If a school wishes a new CCAS/s19 case to be flagged, they need to complete an absence notification through the CHS portal. If a school/professional does not have access to this, they need to email [cme@worcestershire.gov.uk](mailto:cme@worcestershire.gov.uk). Please note: any absence concerns should be flagged to the Absence Monitoring team (either through the CHS portal or via email) even if some signposting and support has been provided by another team. This will minimise the risk that the support offered/suggested accidentally ignores/delays the LA's s19 duties.

If the child has an EHCP and SEND have arranged the interim provision, the SEND caseworker will need to be contacted to discuss this further.

**Please be aware that at certain times there can be delays for tutors, teaching assistants, places, provision, and transport. We will always endeavour to implement a solution and/or respond to queries as soon as possible.**