

Subject: Self Managed Learning College (SMLC)
Date of Meeting: 14 October 2013
Report of: Executive Director of Children's Service
Contact Officer: Ellen Mulvihill (Head of Behaviour and Attendance)
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Ward(s) affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 This report provides information regarding the funding of pupils at the Self Managed Learning College (SMLC) in Brighton who have been home educated at parental request;
- 1.2 The report provides details of the consultation with parents and pupils who have been attending the SMLC;
- 1.3 It provides information on current and future funding arrangements for these children following advice received from the Department for Education (DfE) and informs members of the options to consider for future funding for these placements.

2. RECOMMENDATIONS:

- 2.1 It is recommended that:
 - (i) the committee notes the issues raised and the consultation with the affected parents and pupils;
 - (ii) a decision is made to cease the funding of placements at the SMLC;
 - (iii) the committee consider the proposals to support the SMLC to pursue routes to enable it to continue to provide current levels of provision;

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

Background

- 3.1 Part 2 of the DfE Elective Home Education Guidance, Parental Rights and Responsibilities (2007), states that parents may decide to exercise their right to

home educate their child from a very early age and so the child may not have been previously enrolled at school. They may also elect to home educate at any other stage up to the end of compulsory school age. Parents who choose to educate their children at home must be prepared to assume full financial responsibility, including bearing the cost of any public examinations. However, local authorities are encouraged to provide support where resources permit;

- 3.2 Part 5 of this same guidance entitled “Support and Resources”, states that local authorities do not receive funding to support home educating families, and the level and type of support will therefore vary between one local authority and another. However, it is recommended that all local authorities should adopt a consistent, reasonable and flexible approach in this respect, particularly where there are minimal resource implications. Some local authorities may be able to offer additional support to home educating parents, but this will vary depending on their resources. Example of additional support includes:
- Provision of a reading or lending library with resources for use with home educated children;
 - free, or discounted, admission into community programmes;
 - access to resource centres;
 - National curriculum materials and curricula offered by other educational institutions;
 - Information about educational visits and work experience;
 - Providing assistance with identifying exam centres willing to accept external candidates.
- 3.3 As the children and young people who attend the SMLC are not registered at a school and are not on a school roll, they are classified as “home educated” as parents have assumed responsibility for their educational provision, even if this is delegated to someone else;
- 3.4 In the previous funding system up to 2012-13, the Dedicated Schools Grant was calculated by totalling the number of pupils on various annual census forms and multiplying them by a guaranteed unit of funding. Home educated pupils for whom the local authority was providing significant financial support in respect of special needs could be entered on the Alternative Provision Census and therefore the LA could claim back the funding from the DfE. It was for this reason that there was an initial decision in 2012 to fund a small number of home educated pupils at the SMLC;
- 3.5 For the financial year 2013/14, various changes to the school and local authority funding system have come into effect and the DfE has provided revised guidance for local authorities on the funding of home educated children. This is the only change made to existing Government guidance on home education;
- 3.6 The new guidelines state that the LA is now no longer able to access funding through the Alternative Provision Census and that the provisions must apply directly to the DfE for funding. LAs are not able to do this on behalf of the provisions. The LA must instead give consideration to funding home educated pupils directly through the High Needs block within the Dedicated Schools Grant;

- 3.7 In the new funding system from 2013-14, all special educational needs funding, other than in mainstream schools, comes from the local authority's high needs block within the Dedicated Schools Grant. The high needs block is not based on pupil numbers but on the historic spend on high needs of each local authority: the Alternative Provision Census is no longer used for funding purposes. So while home educated pupils supported by the authority can still be entered on the census, this no longer triggers additional funding.
- 3.8 With effect from September 2013 FE and sixth form colleges can admit pupils aged 14 or 15 and receive funding for them direct from the Education Funding Agency. This includes not only specific provision for groups of pupils but also individual admissions of pupils who would otherwise be home educated, and who may well be educated with young people aged 16-18. Therefore LAs are not expected to pay fees to the colleges for these pupils;
- 3.9 Funding for pupils during 2012/13 to attend the SMLC was agreed on the basis that they had been withdrawn from school to be educated at home, or had always been home educated, and that the local authority were able to act as a conduit to central government funding. As the SMLC was not a registered school it was not able to access the funding directly and required the LA to fulfil this role on their behalf. Now that the LA cannot now access this funding, a consultation was necessary to determine whether the LA could assume these costs from within its own funds.

Consultation and Review Process

- 3.10 A consultation with parents of pupils currently attending the SMLC was started on 17 June 2013 and ended on 9 September 2013. In addition a meeting was held with pupils on 6 September 2013;
- 3.11 An extraordinary Children's Committee meeting was held on 16 July 2013 to brief members on the issues arising from the change in DfE funding;
- 3.12 At this meeting it was requested that information in respect of the educational provision, including safeguarding/child protection procedures at the SMLC was presented with this report. In order to provide this information officers undertook the following actions:
- Met with Professor Ian Cunningham to review educational provision;
 - Reviewed child protection/safeguarding procedures;
 - Contacted other local authorities who were known to have used the services of the SMLC in the past.
- 3.13 The Committee also requested that options were considered which might secure future funding for the SMLC. In order to consider this, officers also considered the profiles of the cohort of children accessing LA funding;
- 3.14 The outcome of the consultation and the enquiries made are set out in the body of this report.

Education offered by the SMLC

- 3.15 In order for the LA to consider future funds to be utilised it needs to be satisfied that the SMLC does provide an education which would be regarded as suitable and that there is some assurance regarding child protection procedures;
- 3.16 The SMLC is not a school under the law and does not hold itself out as such. It is an institution offering private education to children who are educated at home. It is not a DfE registered school and thus is not subject to Ofsted inspections. It describes itself as a college providing educational programmes for 7 – 16 year olds who choose not to be in school. It is a registered educational charity and forms part of the Centre for Self Managed Learning which promotes self managed learning within organisations;
- 3.17 The SMLC website states “we are not convinced that schooling, a relatively recent invention in human history, is the long term future for education” “On a simpler note, we are keen to maintain an approach to education which uses the legal right of parents to choose to use school or some other educational mode. The College is designed to support parents in carrying out their duty to provide education for their children. We do this without classrooms, lessons, imposed testing, imposed timetables and all the other formal features of a school, hence we are not a school”;
- 3.18 Unlike DfE registered schools, the SMLC is not required to deliver the national curriculum, there is no evaluation against key stages, students are only entered into examinations if they choose to be. The SMLC is not an examination centre. The SMLC does not offer full time provision and they have shorter terms than maintained schools;
- 3.19 The Children’s Committee requested that a report on the educational provision and safeguarding/child protection at the SMLC was presented with this report. This is attached as Appendix 1;
- 3.20 The report demonstrates that child protection and safeguarding policy and procedures seek to ensure that no child is unsafe;
- 3.21 In terms of educational provision it is important to note that this visit was not a formal inspection and that a further follow up visit be will undertaken at a later date;
- 3.22 The SMLC has been utilised by maintained schools as an alternative provider of education. Schools can choose to use this provision to support young people where it is felt appropriate. Schools would be responsible for funding the alternative provision and for ensuring that the provision is appropriate and that all safeguarding and child protection procedures are in place;
- 3.23 In terms of involvement with other LAs, the SMLC is registered as an ‘approved non commissioned training provider’ with East Sussex County Council. Under this arrangement schools in East Sussex can directly refer and fund their students to attend the college. East Sussex County Council report that they did directly commission 3-4 places in 2008/09 but they have not directly commissioned any since then.

- 3.24 The students who accessed the SMLC at that time were on roll at College Central, the pupil referral unit in East Sussex;
- 3.25 Submissions were received from the Headteacher of the Wroxham School and Guidance for Youth, a charity based in Dorset. These organisations have worked closely with Professor Cunningham, receiving training and support in recreating elements of the ethos, principles and framework of the SMLC within their own institutions. They report that this has been invaluable in their work.

The Current Cohort of LA funded pupils

- 3.26 All of the students whose parents are currently seeking funding for them to attend the SMLC are categorised as home educated. This means that in law the responsibility for the suitability of their education lies exclusively with their parents and there is no entitlement to a financial contribution to the cost of this;
- 3.27 Within officers' review of the current cohort of pupils it has been established that none have been assessed as requiring a Statement of Special Educational Needs.
- 3.28 Pupils currently attending the SMLC were removed from their maintained or independent schools or never registered with a maintained school in Brighton & Hove. The details of the circumstances for these pupils attending the SMLC together with further information from school and local authority records is attached as Appendix 2.

Outcome of the Consultation

- 3.29 The consultation document outlined a number of options that the authority would consider:
- 1) To continue funding all the current pupils currently financially supported by the Authority until they complete Key Stage 4 (ie until the end of Year 11);
 - 2) To continue funding the students who will begin Key Stage 4 (Year 10) in September 2013 for two years as it is accepted that these pupils would not have had an opportunity to select their GCSE options elsewhere;
 - 3) To cease funding all pupils currently financially supported by the Authority at the SMLC with effect from December 2013;
 - 4) In the interests of equity, to offer a commensurate level of funding to all pupils known to be home educated in Brighton and Hove would represent a current total cost in excess of £600,000 pa.
- 3.30 We received responses to the consultation from 7 parents and 8 pupils. Of those received 5 parents provided a positive response to the provision at the SMLC and asked for the funding to be continued. Key themes in the responses were:

- Parents felt that only 3 of the children currently funded are from home educated backgrounds;
- They felt most pupils were removed from their schools and placed at the SMLC due to bullying in their previous school;
- The SMLC had had a significantly positive effect on their child's education and well being;
- All rejected the four options outlined in the consultation document;
- The parents asked that funding be secured for approximately 18 places at the SMLC which would be adequate in terms of interest and need from across the city.

3.31 Responses from 2 parents were not supportive of the provision at the SMLC. They outlined the following reasons:

- One parent felt that the provision at the SMLC is fine for pupils who are motivated to learn but the provision failed their child;
- That there is no firm encouragement with learning goals;
- Lack of monitoring and assessment of pupil achievement ;
- One parent felt the Arts Award Scheme is beneficial but expressed concern about the large percentage of time that is given to it.

3.32 The 8 responses from children supported the continued funding for the SMLC. Key themes in these responses were:

- Allegations of bullying in their previous school
- Levels of anxiety when attending previous school

Funding Options

3.33 The cost of a part time place at the SMLC is currently £3,900 per academic year. During the academic year 2012/13 the LA funded 16 pupils at the SMLC who were identified as being home educated and had been able to access the central government grant for this provision;

3.34 If funding were to continue it would be necessary the LA to provide a clear criteria against which it were possible for parents to apply for the funding on an equal footing from across the city;

3.35 The LA is not legally required to fund these placements and should consider the effects of potential numbers of requests to fund alternative provision and not just for places at the SMLC. Since the end of the summer term 2013 the LA has received an additional 5 requests from parents who home educate their children for funding for a place at the SMLC;

3.36 It has been suggested that the LA continue to fund the original cohort of students regardless of whether other parents who choose to educate their children at home also wish to receive funding from the LA. Eleven pupils remained on roll of the SMLC from September 2013 and as a temporary measure it was agreed to continue to fund those students through the current academic term so as to allow the committee to make a decision on future funding and provide their parents the opportunity to make alternative provision.

- 3.37 The High Needs Block covers funding for education provision for high needs pupils and students from birth to 25, in line with the proposals set out in the Green paper on SEN and Disability. The funding for the High Needs Block has been calculated based on the LA's planned 2012/13 budget and updated for changes in planned provision for 2013/14. The High Needs Block is managed by the LA within the parameters set down by Government. For example, the types of provision included within this block include funding for special schools, top-up funding for high needs pupils in mainstream, education agency placements, Behaviour support, Autistic Spectrum Condition Support Service, all Special Education Needs related work and learning support services. All activity is linked to agreed priorities related to the Corporate Plan and Children's Services business planning overseen by the Departmental Management Team.
- 3.38 As part of this process officers, therefore, investigated the extent to which any of the current cohort meet the criteria for funding under the High Needs Block. In fact none of the pupils currently attending meet the criteria for this fund to be applied in this way;
- 3.39 As the High Needs Block cannot be applied for this purpose, funding has been utilised for the period September to December 2013 via the Dedicated Schools Grant (DSG). This DSG funding comes from a one off under spend for the previous financial year and is not a secure form of funding;
- 3.40 As part of the consultation specific options considered were:
- a) Continue to fund pupils currently in KS4 until the end of their statutory education (year 11). The cost for this assuming the fee remains £3,900 per academic year would be £19,500;
 - b) Continue to fund all pupils currently attending the SMLC until the end of their statutory education (year 11). The cost for this assuming the fee remains £3,900 per academic year would be £156,000;
 - c) Continue to fund any child whose parents want them to attend the SMLC. The cost of this cannot be predicted due to the uncertainty of how many pupils this would be, and the possible "floodgate" of requests from parents to fund other independent school places/provision;
 - d) Cease funding for all pupils with effect from January 2014;
- 3.41 It is recommended that the committee agree to cease funding for all pupils with effect from January 2014;
- 3.42 The reason for this recommendation is that the LA is under no legal obligation to fund educational provision for pupils who have been removed from schools and are identified as home educated;

- 3.43 There are significant financial implications in agreeing to fund children not on a school roll for whom the LA has no access to DfE funding. Once the principle has been agreed that parents have a right to access the equivalent of the Age Weighted Pupil Unit (AWPU) once they have removed their child from a school roll, there is no justification for refusing funding to other parents who want alternative education outside of the mainstream schools. It is inconceivable that the LA would support the principle of funding one provider to the exclusion of all others
- 3.44 Should the decision be made that the LA will no longer fund placements at the SMLC, the LA will have a statutory duty to support parents who wish to return their child to maintained mainstream schools. The LA will work with any parent who requests this and ensure that school placements are found in line with the schools admissions code. A clear re integration plan to support the pupil back into school can be negotiated and implemented.

Sustainability of the SMLC

- 3.45 Officers were asked to consider how the SMLC could be supported to enable it to continue on a firm financial footing to supply current levels of provision;
- 3.46 A number of options are available to the SMLC:
- a) The SMLC become an independent school with a fee structure that is self sustaining;
 - b) The SMLC applies for free school status with the LA's support, to enable them to access their funding directly from the DfE. Mainstream free schools are state funded schools that are independent of local authorities and are academies in law. They receive their funding directly from the Education Funding Agency (EFA) on a per pupil basis. Every free school must comply with the legal and policy framework which governs the development of the free schools programme. They would be required to comply with Independent School Standards legislation and relevant regulation and codes of practice specific to the type of school. For a mainstream free school this would include compliance with the School Admissions Code and the Code of Practice on Special Educational Needs, adherence to statutory assessment (ie testing) arrangements, and a requirement to provide a broad and balanced curriculum including the core subjects of English, mathematics, and science and make provision for the teaching of religious education and a daily act of collective worship;
 - c) A paper is submitted to the Secondary Schools Partnership describing the work of the SMLC and exploring ways that it might become "attached" to a DfE registered school;
 - d) The SMLC is added to the LA's directory of alternative providers, as is the case in East Sussex, and schools are made aware of the provision that they may refer to and fund for their pupils. As the SMLC only offers part-time education schools would need to offer other options in order to ensure that children receive a full time education.

(Information attached as appendix 3)

4. COMMUNITY ENGAGEMENT AND CONSULTATION

- 4.1 Consultation of those affected has started. A consultation was held with parents starting on 17 June 2013 and ending on 9 September 2013. A meeting was held with pupils from the SMLC on 6 September 2013. A document outlining the outcome of the consultation and the meeting with pupils is attached as Appendix 1.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 No budget has been allocated for this provision from the Dedicated Schools Grant in 2013/14. Consequently, if a decision is made to continue to fund KS4 pupils until the end of their statutory education there will be a requirement to find a minimum of £19,500. To continue to fund all pupils currently attending the SMLC until the end of their statutory education there will be a required to find a minimum of £156,000. There is also a risk that if the LA fund places at the SMLC there may be an issue of equitability for other home educated pupils, which would potentially have a significant budgetary impact. If there is no legal requirement to pay for the fees of pupils at the Self Managed Learning College, and parents no longer wished to home educate, a much more affordable resolution would be to re-integrate pupils back into maintained provision;
- 5.1.1 There is no legal requirement for the LA to pay the feed for pupils to attend the SMLC and no budget is available to make such a payment. Parents who choose to home educate their children are responsible for ensuring they receive an appropriate education

Finance Officer Consulted: Steve Williams

Date: 24 May 2014

Legal Implications:

- 5.2.1 In law the responsibility for a child's education rests with their parents. Parents have the right to choose to educate their child at home rather than at school, both under the European Convention on Human Rights, and as a matter of domestic law. Under the S7 Education Act 1996 the parent of every school age child shall cause them to receive "efficient full time education, suitable to their age and aptitude and any special educational needs they may have" – either by attendance at school, or by "education otherwise". The concept of "education otherwise" is more commonly described as home education.
- 5.2.2 The young people who are the subject of this report are regarded in law as being home educated. The SMLC is not a school. It is a provider of private education.
- 5.2.3 As indicated in the body of the report the relevant Guidance to local authorities ("Elective Home Education: Guidelines for Local Authorities") provides that when parents choose to electively home educate their children they assume financial responsibility for their children's education. Local Authorities do have the power to fund home educated children who are also considered to have special educational needs or who require alternative provision to that in schools from the

high needs block within the Dedicated Schools Grant, as the responsibilities of local authorities in respect of high needs will include those children who are home educated. Individual pupils would need however to satisfy the Authority that they have the high needs which would merit such funding.

- 5.2.4 Any scheme to be offered to the parents of pupils being educated otherwise than at school must have clear equitable criteria, which should include the suitability of the education to be provided. The authority's analysis of what is "suitable" to be funded by the LA, may of course differ from the approach of the parent to their child's education. The Guidelines for local authorities make clear that the type of education considered "suitable" where children are receiving "education otherwise" can be varied and flexible. Amongst other things, the Guidelines specifically lists a large number of areas which would be expected of any school, which are not applicable to children receiving education at home, including providing a broad or balanced curriculum, formal marking or evaluation of progress, matching school based age specific standards.
- 5.2.5 Since as indicated in the body of the report there is no obligation in law upon the LA to fund any such scheme, members should be satisfied that any proposals for the criteria for continuing funding for individual pupils fulfils the fiduciary duty of the local authority, and is equitable.
- 5.2.6 Any provider of private education to home educated pupils should be selected according to proper and open criteria.

Lawyer Consulted: Natasha Watson Date: 1 October 2013

Equalities Implications:

- 5.3 We have carried out an equality impact assessment and whilst individuals attending the SMLC may be in the first instance negatively impacted by this decision there is no evidence that this is related to them being a member of a protected group. The local authority can offer support to these young people to support transfer into other provision. Concern is that to continue funding would be inequitable to other home educating families, and also potentially divert funds away from the most vulnerable children and young people in the city; This is attached as Appendix 4.

Sustainability Implications:

- 5.4 N/A

Crime & Disorder Implications:

- 5.5 The risk implications are outlined in the body of the report. (Jackie Algar 24.5.13)

Risk and Opportunity Management Implications:

- 5.6 N/A

Public Health Implications:

5.7 N/A

Corporate / Citywide Implications:

5.8 N/A

Equalities Implications:

5.9 N/A

Risk and Opportunity Management Implications:

5.10 N/A

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

6.1 N/A

7. REASONS FOR REPORT RECOMMENDATIONS

7.1 N/A

SUPPORTING DOCUMENTATION

Appendices:

1. Appendix 1
2. Appendix 2
3. Appendix 3

