

Children and Young People Scrutiny Review Board

6 September 2021

Minute Extract

13/21 Special Needs Provision - request of the Chair of CYP Scrutiny

The Chair explained that she had requested this item be brought to the Board following publication in online media of an article relating to school placements for children with special educational needs and disabilities. The Cabinet member for CYP (CM) and Strategic Director (SD) had been invited to attend the meeting to give an explanation as to why the local authority had proposed that children were placed at a school that had yet to open or had not yet been approved.

The Strategic Director (SD) outlined the background to the two cases and explained that it was not possible to talk about individual cases or refer to children. It involved two tribunal cases where Jasmine Hall was proposed as a possible special school for children to attend, but that was never actually named in the Education Health Care Plans EHCPs.

The SD explained that as part of the usual EHCP process, several schools within Derby's framework would have been approached and asked to consider whether they could take the children and help with their needs, but none felt that they could. The Service had worked successfully in the past with Jasmine House, which was an established school for children with Special Education Needs and Disabilities (SEND). Outcomes at the school were good and the provider was planning to open another school in Derby, named "Jasmine Hall". During conversations with the parents as the EHCP document and process continued, Jasmine Hall was stated as the Local Authority preference, but ultimately during negotiation with parents as part of the Tribunal process, a different school was named.

The SD explained that it was not against the law to name unopened schools on an EHCP, however, it was unhelpful even if the provider had a track record of providing good provision for children with SEND which was relevant in this case. The SD confirmed that the practice in the team had been changed to make certain there would be no repetition of this situation.

The Chair was pleased to hear that changes had been made in the process. It was agreed that schools should not be named where no planning consent, which could lead to pre-emption of planning

processes, or statutory licences were in place and there should be processes put in place to ensure that this did not happen again. The Cabinet Member agreed that it was not acceptable practice, but it was not illegal, and the Board could be assured that the processes had been changed and staff had been trained to ensure this would not be repeated.

The SD highlighted that the Board would be aware that the Council had a SEND strategy and Vision which was co-produced with Partners and the Parent Carer Together Forum. Regular updates on the Strategy and Vision had been brought to the Board.

The Chair stated that children must not have long breaks in their education; should not wait for a school to open; and, they should be back in a school environment as soon as possible.

The Cabinet member reiterated that particular details of cases could not be discussed. It was stated that the Council always tried to ensure that children get to the right school, at the right time, with their needs being met, as soon as possible. It was emphasised that the Council would never keep children away from school on purpose: the Service tried to ensure that children and young people could get the best education and have their personal needs met.

A Councillor asked if a child gets an EHCP in February and the named school would not open until at least September, would the child not be in education until that school opened or would an alternative provision be given, even though it was not specified in the EHCP

The SD explained that it was one of the practical challenges in this particular context: whilst naming a school that was not yet open, schools that were planning to open could be in different phases of development. They could be almost at the point of registration by Ofsted, or they could be in the planning stage. When looking at the context in this case, opening was not likely to happen in the near future; this was part of the concern in understanding the impact on the child and the family, but there could be cases where the opening of a school was close. However, the Council's priority was to ensure that children were matched to the right school with right needs, which in some circumstances could lead to a period of time out of school.

The EHCP system was under significant pressure which could be seen from previous presentations to the Board and in the national press, however this context did not mitigate the concerns of the Chair. A child would not be in education, but this was partly why the Council needed to make practices as robust as they could be, even though what happened in these circumstances was not unlawful.

The Chair thanked both the Cabinet Member and Strategic Director for attending and proposed two recommendations: firstly, for Derby City Council to have a policy in place to ensure that any SEND school

placement proposed or offered to SEND children and young people has the appropriate planning consents, authorisations, and registrations in place, particularly from the Council, Department for Education and OFSTED. Secondly, that this matter should be referred to the Audit and Governance Committee for further consideration.

The Board agreed the two recommendations. The Cabinet member accepted the first recommendation, but asked what the intention of the second recommendation was. The Chair stated it was up to the Audit and Governance Committee to discuss and deliberate and declined to discuss the matter further.

The Board Resolved that:

- 1. Derby City Council should have a policy in place to ensure that any SEND school placement proposed or offered to SEND children and young people has the appropriate planning consents authorisations, and registrations in place, particularly from the Council, Department for Education and OFSTED.**
- 2. The matter is referred to the Audit and Governance Committee for further consideration.**