



[REDACTED]
Minister for School Standards

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Mr Richard Travers, HM Senior Coroner for Surrey
HM Coroner's Court
Station Approach
Woking
Surrey
GU22 7AP
[REDACTED]

14 February 2025

Dear Mr Travers,

I am writing on behalf of the Secretary of State for Education in response to the Regulation 28 Report to Prevent Future Deaths issued on 14 October 2024 concerning the tragic death of Jennifer Chalkley on 12 October 2021. I am responsible for the government's policy on special educational needs and safeguarding.

I was deeply saddened to learn of Jennifer's death. I would like to offer my heartfelt sympathy to her family.

Your report identified two key areas where action might prevent future deaths: potential delays in seeking and securing Education, Health and Care (EHC) plans because of misunderstandings of the law by schools and colleges, and issues with the timely transfer of safeguarding information between schools and colleges.

Schools and colleges have a fundamental responsibility to keep children and young people safe. Under section 3 of the Children Act 1989, any person with the care of a child who does not have parental responsibility for them is subject to a duty to do all that is reasonable in all the circumstances for the purposes of safeguarding or promoting the welfare of the child. Supporting children and young people with mental health needs is of the first importance. This government works closely with the further education sector to promote and support providers to embed a whole college approach to mental health and wellbeing. This includes supporting sign-up to the Association of Colleges mental health charter. Mental Health Support Teams (MHSTs), delivering evidence-based early support for mental health issues and supporting senior mental health leads, are being rolled out to

all schools and colleges.

Concern 1 – the test for an Education, Health and Care needs assessment

You are concerned that “misunderstanding by schools and colleges is delaying or preventing applications for statutory assessments being made in some cases and thereby acting as a barrier to ensuring all children and young people with additional needs are receiving effective support as soon as possible. I am concerned that this creates or increases the risk of avoidable suicidality developing.”

An EHC plan is intended to meet a child or young person’s special educational needs, together with any relevant health and care needs. In cases such as Jennifer’s, an EHC plan provides an opportunity to bring together the support provided by a child or young person’s school or college with that of other agencies such as health providers. The core purpose of an EHC plan is to meet special educational needs: children and young people frequently receive support for health or social care needs without an EHC plan. Indeed, a child or young person who has health and/or social care needs but no special educational needs, would not meet the criteria in the Children and Families Act 2014 to be issued with an EHC plan.

Section 36(1) of the Children and Families Act 2014 sets out that “A request for a local authority in England to secure an EHC needs assessment for a child or young person may be made to the authority by the child’s parent, the young person or a person acting on behalf of a school or post-16 institution”. The associated statutory guidance (the [SEND code of practice](#)) is clear that:

9.9 “In addition, anyone else can bring a child or young person who has (or may have) SEN to the attention of the local authority, particularly where they think an EHC needs assessment may be necessary. This could include, for example, foster carers, health and social care professionals, early years practitioners, youth offending teams or probation services, those responsible for education in custody, school or college staff or a family friend. Bringing a child or young person to the attention of the local authority will be undertaken on an individual basis where there are specific concerns. This should be done with the knowledge and, where possible, agreement of the child’s parent or the young person.”

Section 37(1) provides that the local authority must issue an EHC plan “Where, in the light of an EHC needs assessment, it is necessary for special educational provision to be made for a child or young person in accordance with an EHC plan”.

The [SEND Code of Practice](#) notes (at para 9.14) that, in deciding whether an EHC needs assessment is necessary, the local authority should consider a range of evidence, including “*evidence of the action already being taken by the early years provider, school or post-16 institution to meet the child or young person’s SEN*”. At para 9.55 the Code notes that a relevant factor in deciding whether to issue an EHC plan might be:

“whether the special educational provision required to meet the child or young person’s needs can reasonably be provided from within the resources normally available to mainstream early years providers, schools and post-16 institutions, or whether it may be necessary for the local authority to make special educational provision in accordance with an EHC plan”.

However, the Code states clearly at para 9.16 that:

*“Local authorities may develop criteria as guidelines to help them decide when it is necessary to carry out an EHC needs assessment (and following assessment, to decide whether it is necessary to issue an EHC plan). However, local authorities **must** be prepared to depart from those criteria where there is a compelling reason to do so in any particular case and demonstrate their willingness to do so where individual circumstances warrant such a departure. Local authorities **must not** apply a ‘blanket’ policy to particular groups of children or certain types of need, as this would prevent the consideration of a child’s or young person’s needs individually and on their merits.”*

The Children and Families Act 2014 and its statutory guidance are therefore clear that a request for an EHC needs assessment may be made at any time by a school or college, or by the child’s parents or the young person themselves. There is a further safeguard that, in the event a request for assessment is refused, the child’s parents (or, from age 16, the young person) have the right to appeal the decision to the First-tier Tribunal (Special Educational Needs and Disability).

The arrangements relating to funding are distinct from the statutory tests for an EHC needs assessment set out above. Regulation 11(3) of the [School and Early Years Finance and Childcare \(Provision of Information About Young Children\) \(Amendment\) \(England\) Regulations 2024](#) (and the predecessor regulations relating to previous years) require local authorities to identify for each mainstream school an amount within its overall budget, calculated by reference to relevant factors in the local schools funding formula, and using a threshold sum of £6,000 per pupil below which the school will be expected to meet the

additional costs of pupils with special educational needs (SEN). This amount is often referred to as the notional SEN budget. Guidance for local authorities on the purpose and calculation of this notional SEN budget is published here: [Pre-16 schools funding: local authority guidance for 2024 to 2025 - GOV.UK](#). This notional SEN budget amount is intended to assist mainstream schools in fulfilling their duty under section 66(2) of the Children and Families Act 2014 to “*use [their] best endeavours to secure that the special educational provision called for by the pupil’s or student’s special educational needs is made*”. This duty applies to all pupils with SEN in mainstream schools and all students in institutions within the further education (FE) sector – not just those with EHC plans. Although there is no notional SEN budget identified for FE institutions, the funding arrangements are similar to those for schools in that, for additional SEN support costs in excess of the £6,000 per student threshold, colleges can request access to high needs funding from the relevant local authority’s high needs budget.

Additional guidance concerns the way funding is allocated to support schools and colleges meet special educational needs, for example [High needs funding: 2025 to 2026 operational guide](#) and on the [notional SEN budget for mainstream schools: operational guidance 2025 to 2026](#). These documents are careful not to assume that children and young people who require top-up funding from a local authority’s high needs budget will automatically have an EHC plan. We will keep this point under review as the guidance documents are updated.

In the light of your concerns, we have reviewed the relevant guidance from the DfE and the Education, Skills and Funding Agency (ESF). We have not identified any ambiguity in that guidance, but in view of the concerns raised we have written to local authorities to remind them that the threshold to be considered for an EHC plan is as set out in the Children and Families Act 2014. The expectation on mainstream schools and colleges of meeting the costs of additional SEN support up to £6,000 does not prevent a child or young person being brought to the local authority’s attention as potentially having special educational needs which require provision according to an EHC plan, thereby requiring the local authority to decide whether to conduct an EHC needs assessment.

Concern 2 – transferring safeguarding information

I also note your concern that “*there is not a national system in place to require and facilitate the guaranteed transfer of safeguarding information in advance of a child or young person starting a new school or college... and that this exposes a suicidal child or young person to additional and avoidable risk*”.

As you are aware, the Department publishes statutory safeguarding guidance, [Keeping children safe in education](#) (KCSIE), which all schools and colleges must have regard to when safeguarding and promoting the welfare of children.

We take the view that KCSIE is very clear that where children leave the school or college, the designated safeguarding lead should ensure their child protection file is transferred to the new school or college as soon as possible, and within 5 days for an in-year transfer or within the first 5 days of the start of a new term to allow the new school or college to have support in place for when the child arrives. The guidance also makes clear that receiving schools and colleges should ensure key staff such as designated safeguarding leads and special educational needs co-ordinators (SENCOs) or the named persons with oversight for special educational needs and disabilities in a college, are aware as required.

Paragraph 122 makes it clear that in addition to the child protection file, the designated safeguarding lead should also consider if it would be appropriate to share any information with the new school or *college in advance* of a child leaving.

There is therefore a national process for sharing information between schools and colleges, and the guidance on the timing of the sharing of relevant information is clear. We are very saddened to hear that, in Jennifer's case, her new college had not received the information within the specified time to ensure continuity of support for Jennifer. This was not in line with the duties and responsibilities placed on schools and colleges. We do regularly review the statutory safeguarding guidance to see where it could be strengthened or further clarification is needed, which is subject to public consultation. In view of this very tragic case, we will keep this section under review.

SEND provision arranged by Surrey County Council

You may be aware that, in September 2023, Ofsted and CQC undertook a Local Area SEND inspection in Surrey under the new SEND inspection framework. The report, published on 24 November, found “***inconsistent experiences and outcomes for children and young people with SEND***” and identified four areas for improvement.

Following the inspection, in line with our SEND intervention approach for LAs with an inconsistent outcome, the Department began formal monitoring of the local area's SEND arrangements. The Department has also commissioned an independent SEND Advisor to provide expertise and challenge. We are monitoring Surrey CC's progress in improving its

SEND services, including through 6-month review meetings.

Thank you for bringing this important matter to my attention and giving me the opportunity to respond.

I am copying this letter to [REDACTED], Executive Director of Children, Families and Lifelong Learning at Surrey County Council.

Sincerely,

[REDACTED]

[REDACTED]
Minister for School Standards