

Special educational needs and disability



In 2011 the government produced its green paper on special educational needs and disability (SEND) which proposed significant changes to the way the system operated.

In general, the proposals were welcomed, but concern was expressed about implementation, particularly how cross-sector working (education, health and social care) could be made effective. Since then steady progress has been made towards implementing the changes. Pathfinder local authorities (LAs) were established to trial the various proposals and last summer the Children and Families bill, which will provide the legislative framework, began its passage through parliament.

The new framework will cover children and young people from 0-25 and will have a much clearer and sharper role for children, young people and parents in the decision making around SEND. It will change the system for formal assessments of children with SEND and introduce personal budgets.

There is a not unfamiliar element of cart before the horse here, not unusual for governments (of all political persuasions). The primary legislation, regulations and guidance are being put in place before the pathfinder evaluation has been

completed. The latest evaluations were published on 28 January.

The consultation on the new draft SEN code of practice closed in early December 2013 and concern has been expressed across the sector that it doesn't provide the level of guidance needed and lacks some of the clarity of the existing document. The consultation also included a myriad of regulations that will be needed to implement the changes to the SEN framework.

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Royal assent

At the time of writing the Children and Families bill (the SEND provisions are just one part of the bill) was still wending its way through parliament – with the House of Lords finalising its consideration of the bill after which it will return to the Commons for final ‘tinkering’ and eventual royal assent.

The legislation and regulations are expected to come into force with

effect from 1 September 2014 although it is intended that there will be a transitional period (probably of several years) during which children and young people with statements will be moved over to Education, Health and Care (EHC) plans.

WHAT IS A SPECIAL NEED?

The definition of a special need has not changed. A child or young person has a learning difficulty or disability if they have:

- significantly greater difficulty in learning than the majority of others of the same age; or
- a disability which prevents or hinders them from making use of educational facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions.

What will change for governors?

In terms of overarching responsibility, very little. The governing body has a statutory responsibility to use its best endeavours, in exercising its functions in relation to the school, to secure that, if any registered pupil has special educational needs, the special educational provision which his/her learning difficulty calls for is made. This will not change – what will change is the framework for assessment of SEN.

There are two main changes to the assessment framework. The first is that statements of SEND will be replaced by EHC plans; while in principle this is to be welcomed, there remains a degree of scepticism as to whether the joined-up working can be made a reality and that resources, particularly from health, will be forthcoming.

The latest evaluation document *Special Educational Needs and Disability Pathfinder Programme*

*Evaluation: Thematic Report: The Education, Health and Care (EHC) Planning Pathway for families that are new to the SEN system**, published in January 2014, notes that one of the main challenges to the new system is “ensuring sufficiency and consistency of multi-agency working” and that if this is not done well it will be difficult to create holistic EHC plans and indeed there will be variation in quality and comprehensiveness of EHC plans.

Pathfinders had used a number of solutions to overcome these barriers including provision of clear guidance to all professionals detailing expectations of how, when and why they should be involved. Having said that, the *Impact Evaluation of the SEND Pathfinder Process* published in October 2013 recorded that parents involved in the pathfinder process were far more likely than comparison parents to feel that the decisions made about their child’s support reflected their family’s views.

LAs will retain legal responsibility for carrying out statutory assessments.

The second major change is that School Action and School Action Plus will be abolished and replaced with SEN support. The draft code defines this as: “Where a child is not making ‘adequate’ progress schools should put in place strategies to address her/his weaknesses, where this does not have the desired effect then the teacher in conjunction with the special educational needs co-ordinator

THE NGA SPECIAL SCHOOLS ADVISORY GROUP

The NGA special school advisory group remains active and meets three times a year at the NGA offices in Birmingham. Minutes and papers from previous meetings can be found on the dedicated website page www.nga.org.uk/Members-Area/Special_Schools_Forum.aspx. The last meeting took place in February when we discussed transport and the SEN pathfinder evaluations among other things. The next meeting will be held in the summer term. If you are interested please contact Gillian Allcroft.

(SENCO) should assess whether the child has a significant learning difficulty and an agreement reached about the appropriate level of support needed.”

Local offer

In addition, all LAs will have to publish a ‘local offer’. The offer should include in broad terms the level of educational provision LAs expect schools to provide from within their existing budgets to support children and young people with SEND. The code says that the local offer should be: collaborative, accessible, comprehensive and transparent. In other words, it must be put together involving children, young people and parents and in co-operation with those providing services (including schools); it should be factual, easy to understand, make clear precisely what support is available and how it can be accessed, and well publicised. Finally it must

need. The DfE’s view is that behavioural difficulties are not necessarily symptomatic of a special need – and if there are concerns about behaviour then an assessment should be undertaken to establish the causal factors.

Personal budgets

Finally, there will be an option for personal budgets – an amount of money identified by the LA to deliver all or some of the provision set out in an EHC plan, including special education. Personal budgets were the cause of a degree of concern when put forward as part of the green paper – in particular schools were unclear where responsibility would lie if a parent commissioned ‘education’ services using a personal budget. The draft code of practice seems to suggest that schools will have a high degree of involvement in decisions about personal budgets for ‘education’

“The new framework will cover children and young people from 0-25”

make clear how decisions about support are made and who is responsible and accountable for them.

It will need to include not just the provision in schools/academies within the LA area but also those outside the LA’s boundaries if such provision is likely to be used by children from within the LA. It must also include details of the health and social care provision available. The code and regulations will set out the level of information which must be provided. Governing bodies will continue to have to ensure that information about the SEND provision at their school is published.

Another significant change in the document is in the way in which special needs are categorised. The DfE has proposed that there should be four areas: communication and interaction; cognition and learning; social, mental and emotional health; and sensory and/or physical. The big change here is ‘behavioural difficulties’ as an area of special

provision. Anything delegated to the school will be within the school’s control and not open for personal budgets. However, the NGA did not think that the draft code of practice provided the level of clarity needed on this issue and in our response to the consultation said that clearer guidance was required.

The NGA will keep members informed when the Children and Families bill becomes law and indeed when final versions of the code of practice and regulations are published along with guidance on the responsibilities for governing bodies in general and SEND governors in particular.

* Documents relating to the



pathfinder programme can be found on www.sendpathfinder.co.uk/

Gillian Allcroft,
NGA policy manager