

The SEND reforms: how they build on the Early Years Foundation Stage statutory framework - what the early years sector needs to know and what they need to do

Background

Through the Special Educational Needs and Disability reforms (SEND reforms), the government, is requiring Clinical Commissioning Groups and local authorities to work together to integrate services across the 0-25 age range. Under the new system there will be a much clearer emphasis on offering help at **the earliest possible point**, with children and young people with SEN and their parents or carers fully involved in decisions about their support and what they want to achieve. The reforms are set out in the Children and Families Act 2014, and the new SEND Code of Practice: 0-25 years.

Key principles in the Children and Families Act 2014 in relation to SEND **Participation:** the Act promotes the participation of parents, children and young people in decision-making about SEND

Outcomes: the Act focuses on outcomes and improving progress for children and young people with SEND

Integration: The Act requires a **joint approach** across all agencies:

- **education, health and social care** will be required to co-operate at a local level to meet children and young people's needs;
- local authorities and health commissioning groups will be required to commission services jointly for children and young people with SEND, and present that publicly as the local offer. This will help ensure that services are joined up around a common set of outcomes and that parents and young people are clear what support is available locally.

Changes in assessment and planning

- **The majority of children with SEN or disabilities will continue to have their needs met within mainstream early years settings.** Early Years Action and Early Years Action Plus will be replaced by **SEN Support:** a graduated approach to identifying and meeting SEN, with early years provision following the principles and commitments of the EYFS statutory framework in involving parents in identifying needs, deciding outcomes, planning provision and seeking expertise at whatever point it is needed.
- **Health services must** inform the parent and the local authority if they identify a child under compulsory school age as having SEN or disability (e.g. through the neo-natal screening programmes or the Healthy Child Programme two year old check).
- Early Years providers will work together with parents/ carers to agree ambitious outcomes for identified children and set clear progress targets, and be clear in their planning about how resources are going to support and reach the targets.
- Parents will be fully involved in discussions about their child's progress and reviews of the provision needed to achieve the agreed outcomes.
- Education health and care plans are intended for those with more complex needs. The education health and care plan assessment and planning process is much more joined up, outcome focused and delivered in partnership with parent carers. It will be delivered and agreed within a maximum of 20 weeks.
- A local authority should conduct an EHC needs assessment for children under compulsory school age when the special educational provision required to meet the child's needs cannot reasonably be provided from the resources normally available to the early education provider or school, or when it is likely the child will need an EHC plan in school.
- Where young children do need an EHC plan, the local authority **must** seek advice from the early years setting in making decisions about undertaking an EHC needs assessment and preparing an EHC plan. LAs should consider whether the child's current early years provider can support the child's SEN or whether they need to offer additional support through a plan.
- Families of children with an education health and care plan must be offered a personal budget.
- Statements will be transferred over to Education, Health and Care (EHC) assessments and plans from September 2014, usually during an annual review or at a key transition point such as preparing to go into reception.
- All children develop at their own pace. Where a child has a complicated and long term need which covers education, health and care, an EHC Plan may be appropriate. However, there are other issues, such as speech and language delay or behavioural problems, which are not necessarily caused by a special educational need or disability.

Local offer

From September 2014 every local authority will be required to have a “local offer” which informs parents, carers and young people with SEN or disabilities what education, health, care and other services such as transport and leisure are available in their local area. This includes childcare provision which is suitable for disabled children and those with SEN. It will also set out what information services are available locally, how parents and young people can request an EHC plan assessment, the arrangements to resolve disagreements, including through access to mediation. The Local Offer should also cover the support available to all children and young people with SEND from universal services such as GPs, targeted services for those who need additional short term support and specialist services for those needing specialized, longer term support.

The local authority must involve parents, young people and education settings such as childrens centres and early years settings in the local offer. It must also publicly consult on the local offer, and publish the results of that consultation, including what they have done as a result of the consultation feedback. The local offer must contain provision for children and young people with SEN or disabilities from across the 0-25 year old age range. The Code encourages LAs to consider commissioning services such as Portage, or peripatetic services for children with hearing or visual impairment.

From an early years point of view, this means:

- **all early years settings** - must continually monitor and support children to ensure that they develop and learn as appropriate, identifying any developmental issues, working with parents to address any identified problems, use their own best endeavours to support the child - using their own resources, drawing in extra help if needed (SEN Support), and if necessary encourage the parent to refer their child for an Education Health and Care Plan assessment. They must maintain a record of children under their care, which must be available to parents and must include how the setting supports children with SEN and disabilities.

All providers must co-operate with the local authority in reviewing the provision that is available locally and developing the local offer. The local authority must ensure that all providers they fund in the maintained, private, voluntary and independent sectors are aware of the requirement on them to have regard to the SEND Code of Practice, and should make sure funding arrangements for early education reflect the need to provide suitable support for settings in meeting their duties to support these children.

Maintained early years provision: these settings **must:**

- Use their best endeavours to make sure that a child with SEN gets the support they need;
- Ensure that children with SEN engage in the activities of school alongside those who do not have SEN;
- Ensure there is a qualified teacher designated as the SENCO who must ensure all practitioners in the setting understand their responsibilities to children with SEN, make sure parents are closely involved and that their insights inform action taken by the setting and liaising with professionals or agencies beyond the setting;
- Inform parents when they are making special educational provision for a child;
- Prepare a report on:
 - o The implementation of their SEN policy;
 - o Their arrangements for the admission of disabled children
 - o The steps being taken to prevent disabled children being treated less favourably than others;
 - o The facilities provided to enable access to the school for disabled children and
 - o Their accessibility plan showing how they plan to improve access over time.

This compliments existing duties under the EYFS statutory framework and the 2010 Equality Act.

Childminders and those in group provision on domestic premises are encouraged to identify a person to act as SENCO and childminders who are registered with a childminder agency or who are part of a network may wish to share that role between them.

PVI settings: only maintained settings are required to accommodate children with EHC plans. However, it is best practice for all PVI settings to have a SENCO, whether specific to the setting or as a group of settings. If a PVI setting has the infrastructure to be able to support a child with complex needs, they can do so.

For a “good or better” early years setting, this is well established practice. The Code sets out an approach set out around an “assess, plan, do, review” approach to supporting children with SEN or disabilities. This resonates strongly with the Early Years Foundation Stage, which all Ofsted registered settings must follow. As with the wider reforms to the EYFS, the government is not specifying how settings document the additional SEN support that is being offered, but emphasises the importance of agreeing clear outcomes, and monitoring how well the child is progressing in comparison to all the support they are receiving, and what they will do if the child is not improving.

Frequently Asked Questions

1) Is it appropriate to put in place an EHC plan for a child as young as two (or younger?)

The age-range for an EHC plan has been extended to include the birth to two years age range to recognise that there are some complex issues (e.g. cerebral palsy or Downs syndrome) which will become evident fairly early on in a child's life. Other issues will become apparent over time. LAs will want to make sensible decisions about how they respond to a child's SEN in the very early years, but where a child clearly has very complicated needs which will require special educational provision to be made when the child reaches school age, there is no need to wait until a child is two or older. Equally, Education Health and Care plans can be stopped if that is appropriate.

2) Every child in receipt of the two year old offer has SEN – should we be putting all of them forward for EHC plan assessments?

The two year offer is now for 40% of two year old children – not all of them will have SEN. For example, children could have behaviour issues or speech and language delay for a whole host of reasons which are unrelated to SEN. In these cases, settings will want to carefully monitor and support these children. If despite their support and the support of other professionals (such as an Education Psychologist), the problem persists, it may then be appropriate to talk to the parent about an EHC plan assessment. However, by way of illustration, under the current system only about 3% of children and young people have a statement.

3) What is the Code Of Practice?

The SEND Code of Practice is statutory guidance on the duties, policies and procedures relating to part 3 of the Children and Families Act 2014 and associated regulations. All early years settings must have regard to the Code of Practice under the law, and must fulfil their statutory duties towards children with SEN or disabilities in the light of the guidance set out in it. They must be able to demonstrate in their arrangements for these children that they are fulfilling their statutory duty to have regard to the Code.

The current draft of the Code of Practice is available from (INSERT) and is still subject to Parliamentary approval, but is a sound basis for planning.

4) What should I do to prepare for the reforms?

As a minimum, read chapters one and five of the draft Code of Practice, which sets out in more detail the principles of what the SEND reforms will achieve, and what early years settings must do. It includes more information on the "assess, plan, do, review" cycle, and sets out more information about the four categories of need. Produce an action plan of how you will make sure your provision is legally compliant, by September 2014, and your longer term plans to make sure your provision continues to improve over time.

Contact your local authority both to help shape the local offer, and ensure your provision is reflected in that offer, and also identify what support is available to you locally.

At national level, look at the nasen gateway (link), and look at the materials being produced by 4Children, on www.foundationyears.org.uk such as the podcast that Ann Gross the Department for Education's Director for SEN has recorded.

Organisations funded by DfE to provide information, resources and support to the SEN reform:

<http://www.councilfordisabledchildren.org.uk/getting-involved/sen-and-disability-reform-support-organisations>