

SEND Review – right support, right place, right time – implications for local authorities

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The Department for Education's (DfE) Green Paper was published on 29 March 2022 and signals the start of another period of reform for all those involved with supporting children and young people with special educational needs and disabilities (SEND). The Green Paper sets out some broad principles for reform and asks questions as part of the consultation process whether the approach being proposed is appropriate. Further details as part of the Government's response to the consultation and a SEND Delivery Plan are not expected until later in 2022 and therefore any further legislation or guidance will be much further down the line.

At this stage, and assuming the direction of travel is broadly appropriate, there could be significant implications for local authorities in their responsibilities around SEND arising from:

- The introduction of national standards for SEND and alternative provision. These standards are being considered to provide greater consistency in decision making across education, health and social care and at every stage of education from early years provision to further education. The standards will cover identification and assessment, provision for SEND, accessing and reviewing special educational needs (SEN) support, communication with children, young people and parents and how transitions are handled. It is proposed that the standards will set out what levels of support will be provided in mainstream schools, when an Education and Health Care Plans (EHCP) will be required and when specialist provision will be required. Those latter standards will impact directly on local authority decision making in respect of requests for EHC needs assessments, the need to issue an EHCP or the type of placement that would be suitable for a child.
- The national standards will impact on how local authorities work at a strategic level. It is proposed that local authorities will convene SEND partnerships comprised of partners in SEND provision (schools, colleges, health, social care) as well as parents to assess local needs and the availability of appropriate provision. That review will result in a Local Inclusion Plan which will inform the local offer and be the basis of commissioning decisions for services. This approach builds on, and potentially replaces, the approach in the current SEND Code of Practice based on the need for a Joint Strategic Needs Assessment and joint commissioning arrangements between local authorities and health bodies and will result in a wider multi-agency approach.
- A greater use of multi-agency working. Whilst the current system was built on co-operation between relevant partners working with the local authority, the proposals widen the scope of that panel approach to bring it further into local authority decision making processes. There are proposals for the multi-agency panel to have a role in making recommendations on whether EHC needs assessments are required; whether EHCPs should be issued and even the type of placements that should be considered. It would be necessary for the local authority to consider those recommendations. It is not clear whether the timescales involved in the assessment of SEND or the production of an EHCP will be amended to allow the involvement of these panels. A further role for the panel is also in relation to disputes arising from the SEND framework and it has been proposed that the panel may become a second layer of dispute resolution, after compulsory mediation, prior to a parent being allowed to register an appeal with the SEND tribunal. A question is posed in the Green Paper as to whether the panel would be given powers to make binding decisions if the proposal was implemented.
- There are changes proposed to the EHCP – it will become digital and there will be a greater focus on provision, potentially dictated by the national standards.

- The greater involvement of social care in the production of assessments and EHCPs is proposed to ensure the EHCP is the holistic document that was originally proposed prior to the Children and Families Act 2014 and the Green Paper proposes the need for a lead social care officer for SEND in the same manner as health already has a designated officer for SEND.
- The annual review process may be subject to amendment around timescales to deal with the recent High Court decision involving Devon County Council – to ensure the right decisions are taken and are not rushed just to comply with timescales.
- Placement decisions will be informed by the local inclusion plan. There appears to be a presumption towards local solutions with parents being presented with a number of local options suitable to the child's SEND and for the local authority to make a decision based on the first available school preferred by the parent. Where there are disputes between local authorities and schools over placements, the local authority will be given the power to direct any school to admit a child with an EHCP. Schools will have a right of appeal to the Schools Adjudicator (which may be a novel experience for adjudicators who will have greater experience of dealing with mainstream admission issues under the School Admissions Code).
- Alternative provision will be brought with the SEND framework and will need to form part of the local inclusion plan. The local authority will need to work with the SEND partnerships to ensure alternative provision providers are properly funded and are able to appropriately support children in their care.
- High needs funding will be subject to greater regulation by the DfE with proposals being brought forward for a national banding system matched to different types of needs and provision. The notional SEND budget which forms part of the core funding for schools will also be subject to a national formula. Local authorities will be held to account for the use of their high needs funding and will be expected to deliver appropriate outcomes for the children in their area. This will form part of the local area inspections going forward.

The Green Paper proposes a role for local authorities as champion for children and young people. In addition to the current SEND responsibilities, the local authority will be expected to:

- be responsible for the effective use of funding; and
- lead the local delivery of provision to implement the local inclusion plan and deliver the national standards.

It is envisaged that legislation will provide local authorities with further powers (such as the power of direction) to make this role possible. Obviously, all these proposals do depend on the responses given to the current consultation and, as with many government proposals, the devil will be in the detail when further information is released in the coming months or years.

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