


Changes to the SEND and Alternative Provision framework

10 March 2023  Richard freeth

The DfE has published its Special Educational Needs and Disabilities (SEND) and Alternative Provision (AP) Improvement Plan, having considered the consultation responses to the SEND Green Paper published in 2022.

The plan is substantial and contains a myriad of proposals to change, but it currently only contains high-level proposals. It's not yet clear how these proposals will be implemented and whether the proposals will require a full-scale revision of the current SEND framework set out in the Children & Families Act 2014 and the SEND Code of Practice 2015 or, instead, whether amendments to that framework will be proposed and implemented (following further consultation).

Given that the plan suggests implementation over a number of years, it's hoped that further clarification on this key point will be forthcoming, as the devil will be in the detail of the proposed changes.

What is being proposed?

In broad terms, the DfE want to revise the SEND and AP systems so that they meet some broad aims:

- To ensure children and young people with SEND fulfil their potential in education and beyond
- To build parental trust in the system to ensure parents feel their children will be able to access the right support at the right time
- To ensure the SEND/AP system is financially sustainable – to meet the needs of children and young people whilst allowing local authorities to maintain a stable financial footing.

The main DfE proposal to achieve this is the creation of a consistent set of National Standards around SEND and AP. These standards should *“improve early identification of needs and intervention and set out clear expectations for the types of support that should be ordinarily available in mainstream settings”*.

The standards will be supported by the creation of a system of banding and tariffs to provide consistency in funding, setting out:

- What types of support should be made available, based on evidence of what works
- Whose job it is to make different types of provision available
- Which budgets should be used to pay for support.

Whilst the standards are the focal point of the plan, there are a number of other proposals that will impact on others in the education sector. These include:

- The creation of local SEND and AP partnerships to plan and commission provision to deliver the Standards and to create local inclusion plans to set out how the needs of children and young people are being met in accordance with the Standards. The partnership approach is similar to the multi-agency approach suggested in the current SEND Code of Practice with the local authority and health bodies working together to assess need (through a joint strategic need assessment) to inform commissioning activities to meet the needs of individual children and young people.
- The creation of standard and digitised Education, Health and Care plans (EHCPs) to provide greater consistency nationally. EHCPs currently have to meet certain requirements under the SEND framework and it appears that the proposal is to provide further detail on the approach to be taken in relation to the contents of individual sections of the EHCP.

- Greater signposting by the local authority of information to support and assist parents. This will include setting out details of support which will be made available under the local inclusion plan.
- A revised and structured alternative provision system which provides targeted support within mainstream schools; time limited placements in an AP setting or longer-term placements always with the intention of a return to mainstream
- Improvements to SENCO qualifications and teacher training alongside a greater number of education psychologists and greater expertise of SEND/AP in partner bodies such as health and social care
- Increased accountability for delivery with the creation of inclusion dashboards, further focused SEND Area inspections, wider powers of intervention for local areas and through the Standards, greater clarity on who is responsible for delivery of provision
- Further clarity on the movement of pupils between institutions and also into AP and ensure that it is transparent and effective. This builds on the comments in the response to the recent exclusions consultation that further work was required in relation to the movement of all pupils as the current legislation and guidance requires updating.

Potential Implications

The current proposals are high-level so we'll need to see the details of any proposed legislation and guidance to fully understand the implications on all bodies within the education sector. There are a number of initial thoughts arising from the plan:

- The Standards appear to be an attempt to clarify and formalise a three-stage approach to meeting the needs of all children. The starting point is the provision that should be "ordinarily available" in all schools, colleges or early years providers. If that provision is not meeting the child's needs, the next step would appear to be SEN Support and only where the child's needs are not being met would there be a need for an EHCP. What is less clear is whether the Standards will be general or whether they will detail the expectations of what is expected of schools for a child with autism or ADHD or a mobility issue for example.
- It is not clear whether the Standards will have points of escalation, i.e. when it would be appropriate to move to SEN Support or applying for an EHCP. This will be important for schools as it will link to expectations over responsibility for provision and funding. There is also a wider issue for schools in that the plan also refers to the Equality Act 2010 and issues around disability discrimination in schools. There may be an argument that a school will only be able to make reasonable adjustments for a child if it acts in accordance with the Standards. This may have implications in terms of complaints about SEND provision in schools and also an increase in the number of disability discrimination complaints made to the SEND Tribunal. Given that the Plan also references consideration being given to looking at the remedies available to the Tribunal, this could have significant implications if the Tribunal was permitted to make financial awards in disability discrimination claims.
- It is not clear how the Standards will work in terms of Local Authority decision-making. When requests are made for a needs assessment or when the Local Authority has to make a decision on whether to issue an EHCP for a child, that decision is based on whether the assessment, and subsequently the EHCP, is necessary. How are the Standards going to interact with that decision-making? Will it be expected that where a school has not acted in accordance with the Standards, the request for assessment or EHCP will be refused? How will that be dealt with by the Tribunal if the parent appeals? Clearly, there will need to be further guidance issued on these points as the new framework develops.
- Where there are disputes about provision and whether the Standards are being met in a local area, who will enforce the Standards? The plan does not answer this point clearly within the accountability section. There is high level accountability to the DfE, Department of Health, Ofsted and the CQC, but it is not clear whether the expectation would be on the local authority or the local SEND partnership to take action to enforce the operation of the Standards. There is reference within the Plan to the creation of Academy Standards through the separate review being undertaken by the DfE and it will be interesting to see if these two pieces of work at DfE will be sufficiently joined-up to provide accountability for all bodies within the education sector.
- The plan mentions the operation of the Standards across the sector and that could include independent schools, including those which are not approved under section 41 Children & Families Act 2014. Given that the Standards may be linked to financial requirements through national banding and tariff requirements, it is possible that independent schools may not be able to charge differing amounts for a place compared to state-funded schools. This could impact on the availability of places available, even for the more complex cases. The plan does refer to the need for ongoing bespoke packages, but at present it is not clear how the standards or funding system will deal with such matters whilst providing financial stability for local authorities.

This is the start of a long-term process of change for the SEND and AP sector. These initial thoughts highlight some of the key issues and we look forward to gaining greater clarity and insight as the process continues in the months and years to come.

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