

# Children and Young People Overview & Scrutiny Committee

6 November 2012

## Progress of the SEN Green Paper 'Support and Aspiration' Disability and Special Educational Needs Reform

### Recommendations

For the Committee to scrutinise the requested report on the progress of the legislative changes for disability and special educational needs and make any recommendations, as appropriate.

### 1.0 Key Issues - Context

- 1.1 The Government's policy reforms for special educational needs are set out in the Green Paper, *Support and Aspiration: A new approach to Special Educational Needs and Disability (March 2011)* and the follow up *Progress and Next Steps* publication (May 2012).
- 1.2 The Government published draft clauses for its disability and special educational needs reform in a Command paper (Cm 8438) on 3 September 2012. These clauses set out the statutory provisions to support those proposed reforms.

### 1.3 The key messages from the clauses include:

- **The legal definition of special educational needs will remain the same:** the school budget reform from April 2013 means schools are responsible for low level, high incidence needs up to a financial threshold of £600. It is important that the eligibility criteria for High Needs Funding are transparent, and the system robustly implemented.
- **Local Authorities and clinical commissioning groups must make arrangements for jointly commissioning services for children with SEN in their area:** the impact will be determined by the financial commitment from health partners, the health and well Being Board is the initial mechanism. The risk is that health thresholds restrict health funded intervention for those pupils who do meet the legal definition of special educational needs and the provision costs will have to be met by the Local Authority in order to discharge the statutory duty of the Statement e.g. speech and language therapy, occupational therapy.
- **Local Authorities must produce their 'local offer' of available education, health and care services:** this is being developed partly via the outcomes of the Strategic Commissioning Review currently underway, and will be informed by the detail in the SEN White Paper outlining the expectations of the process for single assessment and a Single Plan. It will rely on the resourcing available from partners in health and social care.
- **A Single Plan for Education, Health and Care 0 – 25 years (EHC) will replace Statements of SEN:** the SEN Pathfinders are exploring the process. It is clear that every pupil with a Statement will be entitled to a Single Plan, the Select Education Committee is exploring transition arrangements. The SEN White Paper will clarify expectations.
- **Section 139A assessment (Learning Difficulty Assessments – from aged 14 years) cease to apply and is replaced by a re-assessment/ annual review of the Single EHC Plan:** this will support an integrated approach, by avoiding parallel systems for assessment. It will support the expectation of SEN provision from 0- 25 years, and help with improving transitions experiences since the post 14 years assessment will be integral to the Single Plan.
- **All of the provisions of the Bill will apply to all schools including Academies and Free Schools:** this clarity establishes local authority opportunity for commissioning specialist provision across the sector.
- **Schools retain the responsibility to nominate a SEN Coordinator:** this is a matter for school governors, it supports the Local Authority in so far as having a lead professional function.
- **Individual rights to a mainstream education remain the same:** this means that pupils with high level needs have a choice of provision, it offers capacity for the Local Authority in discharging the duty of provision named in a Statement.

- **Local Authorities must prepare a personal budget in relation to a Single EHC Plan where a request has been made by the parent or young person:** this is being trialled in the SEN Pathfinder local authorities, legislation was passed in order to allow the trials for those under 16 years. The Pathfinder information available to date has been very limited, so it is an area that it seems practical to wait for the clarity of legislative guidance in the SEN White Paper. Warwickshire County Council does have existing expertise with personal budgets both for adults and for children and young people in relation to disability social care which will be useful resources to inform the implementation of legalisation.
- **There will be a compulsory requirement for a parent or young person to participate in mediation before they can appeal to the Tribunal:** there is the commissioning option to revise existing arrangements to reflect the enhanced offer.
- **There will be a revised Code of Practice:** workshops have already been facilitated with schools and academies regarding the budget reform, which will be linked to the expected Single School based SEN Category, rather than the current School action and School Action Plus categories. Once the Code has been fully revised, the implications will be considered and appropriate activities planned.

1.4 The Education Select Committee is currently conducting pre-legislative scrutiny of the Government's proposed reform of provision for children and young people with Special Educational Needs (SEN). The White Paper is expected in January 2013.

1.5 The Committee has invited written submissions to address the following:

- To determine whether or not the draft Bill meets the Government's policy objective to improve provision for disabled children and children with special educational needs;
- To determine whether the draft provisions do succeed in cutting red tape and delays in giving early specialist support for children and young people with SEN and/or disabilities;
- To consider the cost implications;
- To consider the impact the draft Bill will have on current institutional structures;

- To consider the transitional arrangements necessary in moving from the existing system;
- To establish what can be learned from the current pilot schemes and how can these lessons be applied to the provisions of the draft Bill;
- To identify whether or not there anything missing from the draft Bill.

1.6 There was a separate invitation to establish a Young People's Advisory Group to help shape this next stage of reform and drive forward young people's participation. It is intended that the group will be part of a broader National Advisory Group which supports implementation of the legislation.

In Warwickshire, details of this offer were promoted via officers working with young people with a disability and/or special educational needs (via the Integrated Disability Service).

1.7 Although the SEN White Paper is still to be published, there are clear implications from the current budget reform, being implemented in April 2013. The implementation is reported on separately. There are however consistent messages between the SEN Green Paper and the draft clauses that provide clear direction for preparing for change. In Warwickshire, some of this preparation is already underway.

1.8 The implications of budget reform are significant for both whole school and special educational needs provision within mainstream. Special Schools face similarly significant changes although the detail of change differs from the mainstream sector. In both instances, officers leading in Schools Finance and in Special Educational Needs have been working together since March 2012 to ensure a coherent response to the Guidance on School Budget Reform issued by the Department for Education. To date, this has ensured jointly facilitated workshops for head teachers and governors outlining the new funding model ; in addition, workshops for coordinators of special educational needs identifying the implications for their role and responsibilities. A Task and Finish Group, comprising officers and school representatives, will work during November and December to set out the new system for schools and Academies to access High Needs Funding from April 2013. The Special Educational Needs Service manager is working with Special School head teachers to interpret the reformed funding model and develop appropriate systems for implementing it. The Local Authority will ensure that the funding changes will be clearly communicated to parents via a variety of Council media, it will also provide schools with a commentary that governors may choose to include in their own correspondence with parents. It is hoped that schools and Academies will engage with the proposed system for multi professional governance of the High Needs Funding allocation.

1.9 The timescale for responding to the funding changes has been limited. The priority has been to engage schools and Academies in understanding the nature of the changes and providing the opportunity to start considering the implications. This discourse has contributed to the evolving systems that will

support the new funding model. In January 2013 it will be important to progress an Equality Impact Assessment prior to verifying the new systems and criteria. It will be informed by the decisions being made during Autumn 2012 about the systems being proposed.

## **2.0 (Options and Proposal) Implications**

2.1 There is clear emphasis in the Green Paper and its follow up on early and accurate identification of children and young people with special educational needs, assessing their needs and making appropriate joined up provision for them. The Principal Educational Psychologist is leading a review of the current process of statutory assessment. The initial work is being facilitated by officers, in conjunction with some stakeholders, e.g., Parent Partnership Services. The aim is to provide Warwickshire with an assessment process that conforms to the current and planned legislation and Department for Education (DfE) policy including:

- SEN Code of Practice 2001 + SEN Toolkit
- Management of SEN Expenditure (2004)
- Improving the quality of Statements (2010)
- The introduction of a Single Plan (Education, Health and Care Plan, likely to be statutory from 2014),
- School funding reform, effective from April 2013
- Personal Budgets for families with children with a statement of SEN / Education, Health and Care plan
- Local Authority's local offer of service

This task and finish group is working to complete its initial draft by January 2013. The principles underpinning its work are informed by the SEN Green Paper and aim to ensure that the revised process:

- Reflects the meaningful participation of parents and children / young people,
- Guides and facilitates the work of professionals, strengthening multi-professional planning and accountability,
- Is clear and transparent for all; including school staff, parents and other professionals,
- Where appropriate, increases the use of mediation,
- Can be developed into a single assessment informing a single plan focussed on outcomes,
- Enables pooled and aligned budgets,
- Will support children and young people from birth to 25 years.

- 2.2 The draft revised process for statutory assessment will then be circulated to a wider group of stakeholders between January - April 2013 for consultation prior to implementation, including parent representative groups (local and national), schools and Academies.
- 2.3 It is intended to be a first step toward providing a meaningful and relevant process to contribute to the development of a single assessment process, with partners in health and social care. This will support the personalisation agenda, as it directly informs the Single Plan.
- 2.4 It is important to ensure that the revised process for statutory assessment is robust and is consistently applied. The revised Ofsted framework has increased the focus on progress and achievement of vulnerable pupils; this reflects the intended SEN legislative reform of establishing a Single School based SEN category, rather than the existing 2001 SEN Code of Practice stages of School Action and Action Plus prior to moving to statutory assessment where appropriate. The Department for Education has been clear that every pupil with a Statement will be entitled to a Single Plan for Education, Health and Care – the transfer arrangements have yet to be set out in the SEN White Paper in Spring 2013.
- 2.5 There has been an increase in requests for statutory assessment received by the Local Authority. Requests for assessments are scrutinised against the Local Authority policy:

Referral Received	2009/10	2010/11	2011/12
Nuneaton/North	131	166	189
All Areas	326	404	443
New statements issued: total number	192	201	245
New statements issued: % of requests received	59%	50%	55%

- 2.6 The nature of this increase in requests for statutory assessment is being analysed. School provision for pupils with behavioural, emotional and social difficulties has been enhanced by the delegation of funding to Area Partnerships of the monies previously designated for the Pupil Referral Unit. £2.4m has been devolved to Secondary Area Behaviour Partnerships to prevent permanent exclusion and commission alternative provision where appropriate. A further £0.4m has been devolved to prevent exclusion in the primary phase. Permanent Exclusions of pupils have reduced from 88 in 2010/11 to 31 in 2011/12. A temporary Local Authority post has been developed, Lead Improvement Manager for Vulnerable Children; the purpose of the role is to oversee how effectively funding is used and to monitor the overall quality of alternative provision. This will involve working closely with the four Area Partnership Co-ordinators, who will be overseeing day-to-day

matters in each area. The post holder is also working closely with the Interim Manager for the Assessment, Statementing and Review Service in relation to the determining the nature of increased requests for statutory assessment. This increased understanding will help identify additional and appropriate provision alternatives.

- 2.7 The imminent Department for Education reform to school / Academy budgets in April 2013 is both a challenge and opportunity to address any inequalities in school-based provision for low-level special educational needs. The expectation of each provider is to demonstrate its individual pupil provision up to a financial threshold of £6,000 before it is appropriate to request High Needs Funding into the Main School Fund. There is no precise definition of 'high level needs'. There have been a total of 8 workshops (4 for head teachers and Governors, 4 for special educational needs coordinators) to discuss the reformed funding model, and to identify the implications for providers. These workshops promoted personalisation, explicitly linking assessment of individual needs to evaluation of outcomes; the challenge within the Ofsted framework for Inspection and to be included within the eligibility criteria of High Needs Funding, is that planning relevant provision is based on individual nature and level of special educational needs. The next stage during November and December 2012 is to define the eligibility criteria for High Needs Funding and develop supporting administrative systems within the Local Authority. It is intended to take this forward with a multi-professional group and school representatives have already nominated themselves to be involved.
- 2.8 The High Needs Funding criteria and application process will be aligned with the revised statutory assessment process, and contribute to the development of wider Single Assessment and Single Plan approach. It also provides the opportunity to challenge provision for low-level needs that may previously have been presented for consideration of statutory assessment possibly attracting additional funding. It is positive that all of the provisions of the Bill will apply to all schools including Academies and Free Schools. The changes in school funding require a change in practice both for providers (schools, Academies) and the Local Authority. The round of workshops, mentioned above, for head teachers, governors and special educational needs coordinators aimed to support local decision making about the budget formula options. It has been overseen by a Project Board which reports separately on budget reform. The offer to schools is to develop this partnership for special educational needs practice by subsequent summer workshops and a multi-professional group to moderate the decisions made for allocating High Needs funding.
- 2.9 There are significant implications for providers (schools, Academies, special schools) in relation to high-needs Statemented pupils placed with them by other Local Authorities. The Department for Education expects appropriate High Needs Funding to be negotiated between the placing Local Authority and the provider establishment. Currently, a regional group of SEN Commissioners and associated financial officers are working to draft a voluntary Framework that supports this process. The aim is to clarify a shared assessment of need

with associated High Needs Funding to manage the administrative burden and maintain consistency across the geographical boundaries of provision charging.

- 2.10 The draft clauses set out the statutory framework for identifying, and assessing the needs of children and young people who require support beyond that which is normally available. They are intended to extend the rights (to express a preference for the school they wish their child to attend) of parents of children with Statements of special educational needs to young people themselves, and to include Academies, further education colleges and sixth form colleges within the institutions for which they can express a preference. They are also intended to give them greater control over the way their support is provided. The clauses introduce a requirement for mediation before appeals can be made to the First-tier Tribunal. This is to help resolve disagreements without the need for Tribunal appeals wherever possible. The clauses also include a power to pilot giving children the right to make appeals to the Tribunal themselves, rather than it having to be through their parent. The review of the statutory assessment process mentioned above will take into account this anticipated change requiring mediation.
- 2.11 The draft clauses indicate a requirement that Local Authorities keep local provision under review: each system adjustment being proposed will automatically be informed by the revised Ofsted School Inspection Handbook, September 2012, e.g., statutory assessment that directs individual Statement objectives and subsequent Annual Reviews; drafting the process for requesting High Needs Funding that will rely in part on evidence on pupil progress and achievement. The SEN Green Paper highlights the imperative to improve outcomes for pupils with special educational needs so it is most likely that the SEN White Paper will expect coherence with Ofsted progress criteria. Clearly, once the SEN White Paper is published this will be verified.

The pupil-level data will contribute to the on-going strategic review of individual resource allocation; it will also provide headline information on providers regarding the quality of provision and the appropriateness of re-commissioning services. In addition, this year the Educational Psychology Service has been commissioned to sample outcomes for children and young people with Statements, this provides an additional layer of quality assurance beyond the individual tracking processes. The Service Level Agreement commissioning Integrated Disability Service for specialist educational provision for high-needs pupils has been revised in accordance with the revised Ofsted Framework, September 2012.

- 2.12 A significant clause is that which requires Local Authorities to cooperate with their partners to plan and commission provision and publish clear information on services available. An awareness-raising session with the Health and Well Being Board is planned at the time of drafting this report.

The SEN Service Manager has had an early meeting with regional West Midlands colleagues to discuss the most likely format for this information. They are scheduled to meet again in November 2012. There will be a need to



collaborate with partners in agencies, as well as the community and voluntary sector to develop the final version. There will be ICT implications, making the final version electronically available as well as via other media. It is expected that the requirements for publication will be informed by Pathfinder reporting and the detail of the White Paper.

- 2.13 The SEN reform papers (March 2011, 2012) have indicated from the outset that the expected changes will be available from 0-25 years. It is difficult to predict the impact until the detail of a single assessment process and expectations of a Single Plan are confirmed. Concerns have been flagged with the Education Funding Agency regarding the increased administrative duties for Local Authorities from April 2013 when budget reform is implemented; this is a national issue. The draft provisions are clear that no additional funding will be available for health or social care provision, so it is anticipated that the task will be to align existing thresholds for intervention alongside the educational responsibilities. It is clear that effective transition between services for children and young people with those for adults remains crucial and will be a driving force in delivering the duties set out in the SEN Green Paper 0 – 25 years. There is already an officer group from across children's and adult services identifying the strengths and weaknesses in our current systems and early steps have been taken to address the issues highlighted, e.g., team leaders will share current eligibility criteria and assessment processes.
- 2.14 The Single Plan will provide the means by which the change in duties regarding Learning Difficulties Assessment (aged 14 years) will be addressed. A robust process for annual Single Plan reviews will include consideration of on-going needs for education, health and health. The current project to refine transition between services for children and adults does include a sharp focus on assessment criteria for young people at 19 years and older. This aims to build coherence in the provision offers from 14 years onwards and thereby improve experience and outcomes for young people and their families.
- 2.15 The national SEN Pathfinders are reporting to the Select Committee on their experience of developing personal budgets. Currently, legislation only allows for the Pathfinders to practice. It is expected that the White Paper will set out expectations for all Local Authorities.

### **3.0 Timescales associated with the decision and next steps**

- 3.1 High Needs Funding is introduced in April 2013 – the task and finish group is a continuation of the September / October 2012 workshops for head teachers, governors and special educational needs coordinators. It is working during November and December 2012. Although this is in advance of the SEN White Paper, there are clear implications for SEN provision as a result of budget reform which can be aligned with the draft clauses of the SEN White Paper to ensure coherence in planning.

The first stage of the review of statutory assessment processes will be complete by December 2012; the opportunity for stakeholder consultation is therefore following in January – March 2013.

- 3.2 Final school budgets for 2013 / 2014 will be available at the end of January 2013. In line with the Corporate Marketing and Communication Strategy (August 2012), the County Council's implementation of Budget Reform needs to be clearly communicated to parents/carers; additional information can be shared with schools and Academies to support their communication with parents. Service users need to be clear about the respective responsibilities of the County Council and educational providers (schools, Academies, special schools). This information-sharing needs to be undertaken between January and March 2013.
- 3.3 The voluntary West Midlands Framework for High Needs Funding will be developed in advance of April 2013 to be implemented thereafter. This will offer guidance for commissioning provision across local authority boundaries.
- 3.4 The SEN White paper is expected early in 2013, implementation is likely to be in 2014 or thereafter. The change planning for young people's participation is to commence following the issue of the White Paper. It may be that procurement of relevant services for this advocacy can be aligned with the contract specification for enhanced mediation, the detail of which will be clarified by the SEN White Paper.

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