

# Draft special educational needs (SEN) code of practice: for 0 to 25

## SUMMARY



## Nasen's Guide to Draft Special Educational Needs (SEN) Code of Practice for 0 to 25 years

### Chapter 1: Introduction

- The Code of Practice is statutory guidance on duties, policies and procedures relating to Part 3 of the Children and Families Bill and associated regulations.
- All organisations listed within the code (1.4) must have regard to it and must be able to demonstrate that they are fulfilling their statutory duty to have regard to this code.
- The Code of Practice sits alongside a number of associated regulations:
  - The Special Educational Needs (Local Offer) Regulations, Clause 30
  - Remaining in special school or post-16 institution without an EHC plan Regulations, Clause 34
  - Education (Special Educational Needs) (Assessment and plan), Clauses 36, 37, 44 and 45
  - The Approval of Independent Educational Institutions and Special Post-16 Institutions Regulations, Clause 41
  - The Special Educational Needs (Personal Budgets and Direct Payments) Regulations, Clause 49
  - The Special Educational Needs (Appeal) Regulations, Clause 51
  - The Special Education Needs (Mediation) Regulations, Clause 52
  - The Special Educational Needs (Children's Rights to Appeal Pilot scheme) Order, Clause 54
  - The Special Educational Needs (SEN co-ordinators) Regulations, Clause 63
  - The Special Educational Needs (Information) Regulations, Clause 65
  - Policy statement on regulations (Transitional arrangements), Clause 109.
- Changes from the SEN Code of Practice 2001
  - The Code of Practice (2014) covers the 0-25 age range
  - There is a clearer focus on the views of children and young people and on their role in decision-making
  - It includes guidance on the joint planning and commissioning of services to ensure close co-operation between education, health services and social care
  - For children and young people with more complex needs a co-ordinated assessment process and the new 0-25 Education, Health and Care Plan (EHC plan) replace statements and Learning Difficulty Assessments (LDAs)
  - There is new guidance on the support pupils and students should receive in education and training settings
  - There is a greater focus on support that enables those with SEN to succeed in their education and make a successful transition to adulthood.
- From 1 September 2014 the provisions of the Children and Families Bill, its associated regulations and the Code of Practice will be in force. Transitional arrangements will be in place to support the changeover from the current system to the new system in an orderly way.
- The definitions of special educational needs remain the same.

- Disabled children and young people without SEN are not covered by the Bill or this Code of Practice but are covered by provisions elsewhere in legislation, including in the Children Act 1989, the Equality Act 2010 and the Health and Social Care Act 2012.

## Chapter 2: Summary

- Principles underpinning the Code of Practice
  - the views, wishes and feelings of the child or young person, and their parents
  - the importance of the child or young person, and their parents, participating as fully as possible in decisions; and being provided with the information and support necessary to enable participation in those decisions
  - the need to support the child or young person, and their parents, in order to facilitate the development of the child or young person and to help them achieve the best possible educational and other outcomes, preparing them effectively for adulthood.
- Involving children, parents and young people in decision making
  - Parents have statutory rights to contribute to the decision making process about their child's education
  - Children have a right to be involved in making decisions and exercising choices.
- Identifying children and young people's needs
  - Local authorities must carry out their functions with a view to identifying all those who may have SEN
  - Local authorities, CCGs and other partners must work together to assess the health needs of local people, including those with SEN.
- Greater choice and control for parents and young people over their support
  - All available services should be reflected in the Local Offer
  - Parents of children who have an Education, Health and Care plan and young people who have an Education, Health and Care plan have a right to ask for a particular school or college to be named in the Plan and for a personal budget for their support.
- Collaboration between education, health and social care services to provide support
  - Education, health and social care must work together to support children, young people and their families.
- High quality provision to meet the needs of children and young people with SEN
  - High quality teaching which is differentiated and personalised should be available for all pupils

- Special educational provision is that which is additional to or different from what is provided to all
- Early year's settings, schools and colleges should have an embedded culture of high expectations.
- Supporting successful preparation for adulthood
  - High aspirations are key to preparing young people for life beyond school.

### **Chapter 3: A family-centred system**

- Introduction
  - Local authorities must ensure that parents, children and young people are involved in discussions and decisions about every aspect of SEN.
- Involving children, young people and parents in decision making
  - Planning should start with individuals and take account of their wishes and aspirations
  - 'Person –centred planning' ensures that everyone is involved in all aspects of planning and decision making.
- Impartial information, advice and support
  - Local authorities must provide all parents, children and young people with clear and accurate information, advice and support in relation to SEN, including the statutory assessment process and EHC plans
  - Parent Partnership Services provide impartial advice, information and support to parents in relation to SEN
  - Information, advice and support should be available through a single point of access.
- Parent carer forums
  - Parent Carer Forums are local groups of parents and carers of children with SEND who work alongside local authorities, education and health services to ensure the services they provide meet the needs of children and their families.

### **Chapter 4: Working together across education, health and care**

- Education, Health and Social Care- working together for positive outcomes
  - Children and young people with SEN need integrated services - well coordinated, coherent support across education, health and social care which helps them achieve their agreed outcomes
  - The local offer must set out the range of services available locally to children with SEN and the support that children, young people and their families may access outside the local area.

- Roles and responsibilities
  - Children’s social care services should designate an officer or officers to support their social care teams in undertaking their duty to co-operate in commissioning and devising the local offer, and to act as the central point of reference for the local authority’s SEN teams on matters related to social care
  - The Care Bill will create a single statute for adult care and support, and makes clear that children’s and adults’ services must work closely together
  - Health bodies must co-operate with the local authority in commissioning integrated, personalised services and designing the local offer (including ensuring relevant contracts with providers reflect the needs of the local population)
  - A Designated Health Officer (DHO) should be identified whose role is to ensure that the CCG is meeting its statutory responsibilities for SEN.
  
- Developing a joint understanding of local needs
  - Each local area has a health and wellbeing board which includes representatives from the local Healthwatch, each local CCG and the local authority directors for adult social services, children’s services and public health
  - The Joint Strategic Needs Assessment (JSNA) is the means by which the board works together to understand and agree the needs of all local people and is the basis for the joint health and wellbeing strategy that sets the priorities for joint action.
  
- Joint Planning
  - All partners should agree local priorities and how planning and commissioning should help to meet them
  - Local services should identify needs and offer effective support as soon as possible for children and young people who need it
  - Joint commissioning requires an understanding of which services are currently delivered and which resources are devolved to them
  - Partners should actively consider the economies of scale and other benefits that come with information sharing, strategic planning and commissioning across groups of authorities, or at a regional level.
  
- Joint Delivery
  - As health service commissioners, CCGs are under a duty under section 3 of the NHS Act 2006, to arrange health care provision for the people for whom they are responsible, to meet their reasonable health needs.

## Chapter 5: The Local Offer

- The local offer
  - Local authorities must produce a local offer, setting out in one place information about provision they expect to be available for children and young people in their area who have SEN, including those who do not have EHC plans
  - The local offer must include provision in the local authority's area. It must also include provision outside the local area that the local authority expects is likely to be used by children and young people with SEN for whom they are responsible
  - The 'Special Educational Needs(Local Offer) Regulations' provide a common framework for the local offer
  - The local offer should be collaborative, accessible, comprehensive and transparent.
- What must be included in the local offer?
  - Support available to all children and young people with SEN from universal services such as schools
  - Targeted services for children and young people with SEN who require additional short term support over and above that provided routinely as part of universal service
  - Specialist services for children and young people with SEN who require specialised, longer term support
  - Mainstream schools and colleges, including academies and free schools, must use their best endeavours to secure the special educational provision called for by a child's or young person's needs
  - The local authority must set out in their local offer a description in broad terms of the special educational provision early years providers, schools, and the full range of post-16 providers and other institutions are expected to provide from their own budgets to support children and young people with SEN
  - The local authorities arrangements for providing top-up funding for children and young people
  - Information about how to request an EHC assessment for an EHC plan.
- Publishing the local offer
  - Local authorities must make the local offer widely accessible and on a website.

## Chapter 6: Early Years, schools, colleges and other education and training providers

- Improving outcomes for all – high expectations for children and young people with SEN
  - The majority of children and young people with SEN have their needs met through mainstream education providers and will not need Education, Health and Care plans
  - Maintained nursery schools, mainstream schools (maintained schools and academies and free schools that are not special schools), 16 – 19 academies, further education institutions, pupil referral units and alternative provision academies must use their best endeavours to ensure that the necessary provision is made for any individual who has SEN

- Maintained nursery schools and mainstream schools, including academies and free schools, must also designate an appropriate member of staff (the SEN co-ordinator, or SENCO) as having responsibility for co-ordinating provision for children with SEN, ensure that children with SEN take part in the activities of the school together with children who do not have SEN as far as possible and publish information on the school or nursery's SEN policy, and the measures and facilities put in place to assist access for disabled children
- Support for children and young people with SEN
  - Special educational provision is educational or training provision that is additional to or different from that made generally for others of the same age. This means provision that goes beyond the differentiated approaches and learning arrangements normally provided as part of high quality, personalised teaching
  - Where a SEN is identified, early years providers, schools and colleges should put appropriate evidence-based interventions in place. These should be provided as part of a graduated approach, which includes regular review of the progress made and adaptations to the support provided as required
  - Plans for the use of support should relate to a clear set of expected outcomes, which should include stretching and relevant academic and developmental targets
  - In schools, support should be planned and reviewed by the class or subject teacher, in collaboration with parents, SENCOs, and, where appropriate, the pupil themselves
  - Where a maintained school, maintained nursery school, academy or Pupil Referral Unit begins to make special educational provision for a child or young person without an EHC plan they must tell the child's parent or the young person that such provision is being made.
- The four areas of special educational needs
  - Special educational needs and provision can be considered as falling under four broad areas
    - Communication and interaction
    - Cognition and learning
    - Social, mental and emotional health
    - Sensory and/or physical
  - In all circumstances, schools, colleges, early years and other providers should ensure that they are providing good teaching. The quality and appropriateness of the overall provision should be kept under regular review and its impact on the number of children or young people identified with SEN should be monitored
  - Behavioural difficulties do not necessarily mean that a child or young person has a SEN and should not automatically lead to a pupil being registered as having SEN.
- Early Years
  - When a child is aged between two and three, early years practitioners must review progress, and provide parents and/or carers with a short written summary of their child's development, focusing in particular on: communication and language; physical development; personal, social and emotional development

- Early years settings should adopt a graduated approach: a cycle of assessment, planning and reviewing their actions in increasing detail and with increasing frequency, to identify the best way of securing good progress
- All settings are expected to have a member of staff who acts as special educational needs co-ordinator (SENCO). A maintained nursery must ensure that there is a qualified teacher designated SENCO in order to ensure the detailed implementation of support for children with SEN.
- Schools
  - Teachers are responsible and accountable for the progress and development of the pupils in their class, even where pupils access support from teaching assistants or specialist staff
  - High quality teaching, differentiated for individual pupils, is the first step in responding to pupils who have or may have SEN. Additional intervention and support cannot compensate for a lack of good quality teaching
  - The quality of teaching for pupils with SEN, and the progress made by pupils, should be a core part of the school's performance management arrangements and its approach to professional development for all teaching and support staff
  - The identification of SEN should be built into the overall approach to monitoring the progress and development of all pupils
  - Class and subject teachers, supported by the senior leadership team, should make regular assessments of progress for all pupils. Where pupils are falling behind or making inadequate progress given their age and starting point they should be given extra support
  - Where pupils continue to make inadequate progress, despite high-quality teaching targeted at their areas of weakness, the class teacher, working with the SENCO, should assess whether the child has a significant learning difficulty. Where this is the case, then there should be agreement about the SEN support that is required to support the child
  - Teachers should set high expectations for every pupil and aim to teach them the full curriculum, whatever their prior attainment
  - Once a potential special educational need is identified, four types of action should be taken to put effective support in place – Assess, Plan, Do Review – this is the graduated approach called SEN Support
  - Where a child continues to make little or no progress, despite well-founded support that is matched to the child's area of need, the school should consider involving specialists, including those from outside agencies
  - Where a pupil is receiving SEN support, schools should meet parents at least termly to set clear goals, discuss the activities and support that will help achieve them, review progress and identify the responsibilities of the parent, the pupil and the school
  - It is for schools to determine their own approach to record keeping. But the provision made for pupils with SEN should be accurately recorded and kept up to date. Ofsted will expect to see evidence of the support that is in place for pupils and the impact of that support on their progress as part of any school inspection

- All schools have a legal duty to publish information on their websites about the implementation of the governing body's or the proprietor's policy for pupils with SEN
  - All schools must ensure that there is a qualified teacher designated as Special Educational Needs (SEN) co-ordinator (SENCO)
  - The SENCO has an important role to play with the head teacher and governing body, in determining the strategic development of SEN policy and provision in the school
  - Schools are responsible for deciding what external support to seek and for setting their own priorities for the continuous professional development of their staff
  - The school should ensure that the SENCO has sufficient time and resources to carry out their role. This should include providing the SENCO with sufficient administrative support and time away from teaching to enable them to fulfil their responsibilities in a similar way to other important strategic roles within a school.
- Further Education
    - The further education sector offers provision for both young people and adults, studying full and part-time, across a wide range of academic and vocational courses
    - Colleges should make sure that students are on an appropriate course
    - There is no legal duty on colleges to have a SENCO, but colleges should ensure there is a named person in the college with oversight of SEN provision to ensure co-ordination of support.
- Funding for SEN Support
    - All mainstream schools and colleges are provided with resources that they can use to support those with additional needs, including children and young people with SEN and disabilities
    - Schools have an amount identified within their overall budget, called the notional SEN budget. This is not a ring-fenced amount, and it is for the school to provide, high quality appropriate support from the whole of its budget
    - Schools and colleges, however, are not expected to meet the costs of the more expensive support from their core funding. They are expected to provide additional support which costs up to a nationally prescribed threshold per pupil/student per year.
- Admissions and inclusion
    - With the right staff training, strategies and support in place the majority of children and young people with SEN are already successfully included in mainstream education
    - Special schools and specialist colleges all have an important role in providing for children and young people with SEN and in developing and working collaboratively with mainstream and special settings to develop and share expertise and approaches

- External support in educational settings
  - Joint commissioning arrangements should seek to ensure that there are sufficient services to meet the likely need in an area

## **Chapter 7: Assessments and Education, Health and Care plans**

- Introduction
  - The majority of children and young people with SEN will have their needs met within local mainstream early years providers, schools or colleges
  - A local authority must conduct an assessment of education, health and care needs and prepare an Education, Health and Care (EHC) plan when it considers that it may be necessary for special educational provision to be made for the child or young person through an EHC plan.
- Requesting an assessment
  - An assessment can be requested by a child's parent, a young person over the age of 16 or a person acting on behalf of a school or post 16 institution.
- Considering whether an assessment is necessary
  - Following a request for assessment or the child or young person having otherwise been brought to its attention, the local authority must determine whether a statutory education, health and care assessment is necessary, make a decision, and communicate its decision to the child's parent or young person.
- Co-ordinated assessment and planning
  - Children, young people and families should experience well-co-ordinated assessment and planning leading to timely, well-informed decisions.
- Timescales
  - The whole assessment and planning process, from the point an assessment is requested or that a child or young person is brought to the LA's attention until the final EHC plan is issued, must take no more than 20 weeks.
- Advice and information for education, health and care assessments
  - When making an education, health and care assessment local authorities must consult the child and his or her parent, or the young person, and take into account their views, wishes and feelings and any information provided by them or at their request
  - Local authorities must also gather advice from relevant professionals.

- Decision not to issue an EHC plan
  - Following assessment, if the local authority decides that a statutory EHC plan is not necessary, it must notify the relevant parties and give the reasons for its decision. This notification must take place within 16 weeks of the initial request or of the child or young person having otherwise been brought to the local authority's attention.
  
- Writing an EHC plan
  - Local authorities should have regard to a number of principles and requirements when preparing an EHC plan
  - The format of an EHC plan will be agreed locally but must contain certain elements.
  
- The draft plan
  - The local authority must send the draft EHC plan (including the appendices containing the advice and information gathered during the assessment) to the child's parents or the young person and give them at least 15 days to give views and make representations on the content.
  
- Requests for a particular school, college or other institution
  - Parents and young people have the right to request a particular school, college or other institution to be named in the EHC plan
  - If a parent or young person makes a request for a particular institution the local authority must comply with that preference and name the school or college on the EHC plan (with limited exceptions)
  - The local authority must consult the governing body, principal or proprietor of the school or college concerned and consider their comments very carefully before deciding whether to name them on the child or young person's Education, Health and Care Plan
  - Where a parent or young person does not make a request for a particular nursery, school or college, or does so and their request is not met, the local authority has a duty to provide for a mainstream setting to be specified in the EHC plan (with limited exceptions).
  
- Requesting a personal budget
  - A personal budget is an amount of money identified by the local authority to deliver all or some of the provision set out in an EHC plan
  - Young people and parents of children have a right to ask the local authority to prepare a personal budget once the authority has completed the assessment and confirmed that it will prepare an EHC plan
  - Personal budgets should reflect the holistic nature of an EHC plan and cover the special education, health and care services specified in the plan as appropriate
  - The provision to be delivered through a personal budget will be set out as part the provision specified in the EHC plan
  - The personal budget can include funding from education, health and social care.

- Finalising and maintaining the EHC Plan
  - When changes are suggested to the draft plan and agreed by the local authority and the parents or young person, the draft plan should be amended and issued as the final plan as quickly as possible.
  
- Specific age ranges
  - A local authority should conduct EHC assessments for children under compulsory school age when it considers that the special educational provision required to meet the child's needs cannot reasonably be provided from within the resources normally available to mainstream early years providers, or when it seems likely that the child will need an EHC plan in school
  - Where young children are attending an early years setting, the local authority must seek advice from the setting in making decisions about undertaking an EHC assessment and preparing an EHC plan, as they would for older children
  - Young people aged 19-25 have the right to request an assessment of their SEN at any point
  - Where a young person is of compulsory participation age, an EHC plan should be maintained for them if they are excluded from an education or training setting or leave voluntarily.
  
- Transfer of EHC plans
  - When the responsibility for a child or young person with SEN changes from the local authority maintaining the EHC plan (the old authority) to another local authority (the new authority), the old authority must transfer the EHC plan to the new authority
  - Where the child or young person's move between local authorities also results in a new CCG becoming responsible for the child or young person, the old CCG must notify the new CCG within 15 working days of becoming aware of the move
  - EHC plans can be used for on-going monitoring of progress and can be reviewed regularly in whole or in part – particularly where agreed dates for specific outcomes to be achieved have been reached before an annual review is due
  - As part of the review, local authorities and the school or post-16 institution attended by the child or young person must co-operate to ensure a review meeting takes place
  - A plan must be reviewed and amended in sufficient time prior to a child or young person moving between key phases of education, to allow for planning for and, where necessary, commissioning of support and provision at the new institution
  - All reviews taking place from year 9 at the latest and onwards must include a focus on preparing for adulthood, including employment, independent living and participation in society.
  
- Re-assessments
  - The review process will enable changes to be made to an EHC plan so it remains relevant to the needs and outcomes desired for the child or young person.

- Amending an existing plan
  - Where the local authority proposes to amend a plan, it must send the parent or young person a copy of the existing (non-amended) plan and an accompanying notice providing details of the proposed amendments, including copies of any evidence to support the proposed changes
  - The parent or young person must be given at least 15 days to comment and make representations on the proposed changes.
  
- Preparing for adulthood
  - Local authorities should ensure that early transition planning is in place for all young people with an EHC plan focusing on outcomes and their transition to adulthood and how to achieve them.
  
- Ceasing an EHC plan
  - A local authority may cease to maintain an EHC plan when any of the following conditions apply:
    - The local authority is no longer responsible for the child or young person, for example if they have moved to another local authority area
    - It decides that special educational provision is no longer needed
    - A young person aged 16 or over takes up paid employment (including employment with training but excluding Apprenticeships)
    - The young person enters Higher Education
    - A young person aged 18 or over leaves education and no longer wishes to engage in further learning.
  
- Disclosure of an EHC plan
  - A plan must not be disclosed without the consent of the child's parents or, where the young person is over 16, the young person, except for statutory purposes or in the interests of the child or young person.
  
- Transport costs for children and young people with EHC plans
  - Transport should only be recorded in the EHC plan in exceptional cases where the child has particular transport needs
  - In most cases local authorities must have clear general policies relating to transport for children and young people with SEN that must be made available to parents and young people, and these should be included in the local offer.

## **Chapter 8: Children and young people in specific circumstances**

- Introduction
  - There are particular groups of children and young people whose specific circumstances require additional consideration by those who work with and support their SEN.

- Looked after Children
  - Local authorities will have particular responsibilities for these children and will act as a 'corporate parent', which means that everyone working for the local authority has a shared responsibility for safeguarding and promoting their welfare
  - All maintained schools and academies and Free Schools must appoint a Designated Teacher for looked after children.
  
- SEN and social care needs, including children in need
  - There is a statutory duty, under section 17 of the Children Act 1989, for local authorities to provide services to meet the needs of 'children in need' in their area, including disabled children.
  
- Children and young people educated out of area
  - Where a child or young person being educated out of the local authority's area is brought to the local authority's attention as potentially having SEN, the local authority should decide whether to assess the child or young person and decide whether an EHC plan is required.
  
- Children and young people with SEN educated at home
  - Local authorities should work in partnership with, and support, parents to ensure that the special educational needs of these children are met where the local authority already knows the children have SEN or the parents have drawn the children's special needs to the authority's attention.
  
- Children with SEN in alternative provision
  - Alternative provision is education arranged by local authorities or schools for children and young people who, because of behaviour, illness or other reasons, would not otherwise receive suitable education
  - Alternative providers must ensure that the education children receive is of good quality, as defined in the statutory guidance Alternative Provision (2013), allows them to take appropriate qualifications, prevents them from slipping behind their peers in school and enables them to reintegrate successfully back into school as soon as possible.
  
- Young offenders in custody
  - Where children and young people with identified SEN are detained in custody it is important that information about their SEN is shared with those who are responsible for education in custody at the earliest opportunity.
  
- Children of service personnel
  - The Children's Education Advisory Service (CEAS) within the Ministry of Defence provides advice and guidance to Service parents, educational establishments and local authorities on educational issues relating to Service children, including issues relating to SEN. Service Children's Education (SCE) provides education to Service children in schools overseas and draws up the equivalent of EHC plans.