

Legal Update: defining your legal obligations within the Act and Code of Practice

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Children & Families Act 2014

- September 2012 - Children and Families Bill
- 13 March 2014 - Received Royal Assent
- Children & Families Act 2014
- Part 3 - “biggest reforms for 30 years” for children and young people with SEN
- Part 3 - Sections 19 - 83 and Schedule 3 consequential amendments
- Brought into force 1 September 2014 (except sections 70 - 75)

Secondary legislation

Part 3 supported by:

- Special Educational Needs & Disability Regulations 2014 (2014/1652)
- Special Educational Needs (Code of Practice) (Appointed Day) Order 2014/2254
- Special Educational Needs (Personal Budgets) Regulations (2014/1652)

Code of Practice

- March 2013 - Indicative Draft Code of Practice - just an outline of thinking - 86 pages
- 4th October 2013 - Draft Code - weightier and more detailed - 173 pages
- Final Code - July 2014 - 281 pages
- New regime launched 1 September but, not a ‘Big Bang’

Guidance

- Implementing a new 0 to 25 special needs system: LAs and partners (July 2014)
- Transition to the new 0 to 25 special educational needs and disability system (August 2014)
- Special educational needs and disability code of practice: 0 to 25 years (August 2014)
- Children with special educational and complex Needs - Guidance for Health and Wellbeing Boards (September 2014)
- Supporting pupils at school with medical conditions (September 2014)

Principles

Section 19 of Act make it clear LAs must have regard to “the need to support the child or young person, and the child’s parents, in order to achieve the **best possible** educational and other outcomes”

Definitions - SEN

- The reforms do not change the definition of SEN
- A child and young person has SEN if they have learning difficulty or disability which calls for special educational provision to be made.
- A child of compulsory school age or a young person has a learning difficulty or disability if they have significantly greater difficulty in learning than the majority of others of the same age or has a disability which prevents or hinders them from making use of facilities of a kind generally provided for others of the same age in mainstream schools.

Section 20

Definitions - SEP

Special educational provision means educational or training provision that is additional to, or different from, that made generally for others of the same age.

Section 21

Definitions - disability

- Definition of disability is as per the Equality Act 2010
- Section 6 - “a physical or mental impairment which has a substantial and long-term adverse effect on his/her ability to carry out normal day-to-day activities”
- Significant overlap between disabled children and young people and those with SEN, but some disabled children do not meet SEN definition
- However, where a child or young person requires special educational provision over and above the adjustments, aids and services required by the Equality Act, they will be covered by the SEN definition.

Strategic Duties on Local Authorities

- Duty to identify on LAs duty to notify on Health
- Promoting integration and duties to co-operate
- Joint commissioning
- Duty to review education and care provision
- Duty to publish ‘local offer’
- Duty to provide advice and information

Duties on Schools

- Identify and address the SEN of the pupils they support
- Use their best endeavours to make sure a child with SEN gets the support they need
- Prepare an SEN Information Report
- Make arrangements to support pupils with medical conditions
- Make reasonable adjustments including provision of auxiliary aids and services

Identifying SEN (1)

- Ofsted Review of SEN - 2010
- SEN numbers have been declining since, from 21%: in 2010 to 18% in 2013
- Code tightens up SEN criteria via four new categories:
 - Communication & interaction needs
 - Cognition & learning needs
 - Sensory and/or physical
 - Social, mental or emotional health (currently ‘Behavioural, emotional and social needs’)

Identifying SEN (2)

- Reference to “behaviour” removed, putting greater empathy on underlying needs

“Behavioural difficulties do not necessarily mean that a child or young person has SEN and should not automatically lead to a pupil being registered as having SEN”.

- Schools will have a clear process for identifying SEN and not conflating it with poor progression.

Best Endeavours

- CoP requires that schools must use their “best endeavours to secure the SEP called for by a child or young person’s SEN”
- “steps which a prudent, determined and reasonable person, acting in his own interests and desiring to achieve that result, would take”

SEN Support (1)

- Embedded in the CoP is a key message that every teacher is a teacher of every pupil and therefore have responsibility for identifying and supporting pupils with SEN - SENCOs only have a supporting role
- Higher expectations of classroom teachers
- Schools should “regularly and carefully” review the quality of teaching including teachers’ knowledge of the SEN most frequently encountered
- Quality of teaching for pupils with SEN and pupils progress should be a “core part” of a school’s performance management arrangements
- Wide implications for schools who will have to offer high quality CPD to ensure whole workforce has the knowledge, skills and expertise
- PRP implications?

SEN Support (2)

- Single school based category of support - School Action and School Action Plus abolished
- Majority of children & young people with SEN will have their needs met through mainstream education providers and will not need a EHC Plan
- A whole chapter in CoP providing information on how mainstream providers and specialists can ensure that they improve attainment for children and secure good outcomes (without Plan)

SEN Information Report (1)

Schools must publish information on their websites about the implementation of the governing body's or the proprietor's policy for pupils with SEN. This **must** include:

- the kinds of special educational needs that are provided for
- policies for identifying children and young people with SEN and assessing their needs, including the name and contact details of the SENCO (mainstream schools)
- arrangements for consulting parents of children with SEN
arrangements for assessing and reviewing children and young people's progress towards outcomes
- arrangements for supporting children and young people in moving between phases of education and in preparing for adulthood.

SEN Information Report (2)

- the approach to teaching children and young people with SEN
- how adaptations are made to the curriculum and the learning environment of children and young people with SEN
- the expertise and training of staff to support children and young people with SEN

Medical Conditions

- Children with a medical condition who do not have SEN or a disability
- A duty on governing bodies to ensure that arrangements are in place in schools to support pupils at school with medical conditions; these arrangements should show an understanding of how medical conditions impact on a child's ability to learn, as well as increase their confidence and promote self-care
- Governing bodies should ensure that school leaders consult health and social care professionals, pupils and parents to ensure that the needs of children with medical conditions are effectively supported; staff should be properly trained to provide the support that their pupils need.

Equality Act 2010

- Duties under Equality Act dovetail with Children and Families Act as part of the promotion of principles of “inclusive practice and removing barriers to learning”
- Reasonable adjustments duty
- Where a school’s policies or physical features put a disabled pupil at a disadvantage compared to other pupils, the school must take reasonable steps to try and avoid that disadvantage.

Reasonable Adjustments

Equality Act

Section 20(5) 0 duty to make adjustments.

Where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in comparison to persons who are not disabled, there is a requirement to take such steps as are reasonable to provide the auxiliary aid.

Auxiliary Aids/Services

Schools are expected to provide an auxiliary aid or service for a disabled pupil when it is reasonable to do so and if such an aid would alleviate any substantial disadvantage the pupil faces in comparison to non-disabled pupils.

These aids or services may be provided in the school under SEN Statement/Plan route, but where a disabled child does not have a SEN Statement, or where the Statement does not provide for auxiliary aid or service, schools will have to consider whether to provide auxiliary aids as a reasonable adjustment.

Questions?

Please note

The information contained in these notes is based on the position at October 2014. It does, of course, only represent a summary of the subject matter covered and is not intended to be a substitute for detailed advice. If you would like to discuss any of the matters covered in further detail, our team would be happy to do so.

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