

Department for Education

Draft special educational needs and disability code of practice: 0 to 25 years. Statutory guidance for organisations who work with and support children and young people with special educational needs and disabilities.

6 May 2014

1. The NASUWT welcomes the opportunity to comment on *Draft special educational needs and disability code of practice: 0 to 25 years*.
2. The NASUWT is the largest teachers' union representing teachers and school leaders in the UK.

GENERAL COMMENTS

3. The NASUWT notes that this consultation is restricted to addressing specific issues raised in the main consultation and, in particular, amendments resulting from the Children and Families Bill. Irrespective of the fact that this is a focused consultation, the timescale for responding to the consultation is ridiculously short. The three-week consultation period runs over the Easter holiday, meaning that few staff in schools and colleges will be in a position to carefully consider and respond to the consultation. Further, while the Department for Education (DfE) states that it is keen to seek views from key organisations including teacher unions, the consultation is being run during the union conference season. This is a time when unions are especially busy. The critical question has to be: is it necessary to consult over such a short period of time? If the prime concern is to listen to and take account of the needs and views of children, young

people, their families and staff working in schools, colleges and local authorities and to get things right, then the short timescale cannot be justified. The short timescale simply serves to illustrate that the programme for SEND reforms is being driven by political interests rather than the needs and interests of children and young people with SEND.

4. The NASUWT regards both the nature and process of the special educational needs and disability (SEND) reforms to be deeply problematic. The NASUWT believes that the SEND Code of Practice will not improve provision and support for children and young people with SEND. Instead, many children and young people with SEND are likely to encounter profound difficulties in accessing the support that they need to thrive and achieve.
5. The timescale for the reforms is ridiculously short. The final code of practice is unlikely to be published before late June. This will give SENCOs, school leaders and teachers little time to review the Code and no time to plan for and make changes to SEND provision before the end of the academic year. This has massive implications for workload and is completely unacceptable.
6. The SEND pathfinders were established to trial and test elements of the planned SEND reforms. However, legislation, regulations and related guidance, including the Code of Practice, are being finalised before the pathfinder programme has concluded and before the SEND pathfinders have been evaluated fully. The Code of Practice does not address some of the issues identified by pathfinders. For example, some pathfinders are raising concerns about the scalability of what they are testing and the time needed to establish the guiding principles, frameworks and processes to implement the reforms.
7. The NASUWT has serious concerns about the costs of funding the planned SEND reforms. The reforms will raise expectations. However, there is no additional money to fund the reforms. Many local authority

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services are so stretched that they are 'fire fighting' rather than focusing on strategic planning. Teachers are already experiencing significant difficulties in accessing appropriate support for pupils with SEND. Some teachers report that they are unable to access therapeutic services for pupils and that some pupils with statements of SEND are no longer receiving external support. The pressure on schools and colleges to increase their funding of provision for SEND from existing budgets has significant and adverse implications for mainstream education and for teachers and students in schools and colleges.

8. The planned reforms raise significant concerns about equality and inclusion. The NASUWT is receiving an increasing number of reports from teachers and school leaders working in 'inclusive' schools about other schools seeking to discourage certain types of pupils from gaining admission to their school. They report that some neighbouring schools are telling prospective parents that the school cannot meet their child's needs and they should consider applying to the school down the road. The reforms, combined with cuts to budgets and services, are likely to compound the difficulties that inclusive schools, and staff and pupils in those schools, experience.
9. The SEND reforms have massive implications for teachers' training and continuing professional development (CPD). The Code of Practice increases the expectation that classroom teachers will support pupils and students with SEND. Evidence from teachers indicates that classroom teachers are being expected to provide more support to pupils with SEND. They report that, increasingly, they are not able to access support from within the school or college and that external support is not available. Also, schools and colleges are not providing classroom teachers with appropriate SEND-related training or CPD. In part, this appears to be because many education reforms will be introduced in September 2014 and SEND is competing for time for training and development. However, cuts to budgets and services are also having a major impact on opportunities for CPD.

SPECIFIC COMMENTS

Does the Code reflect amendments to the Children and Families Bill to include disabled children and young people in provisions on identifying children and young people, integrating education, health and care provision, joint commissioning, the local offer and providing information and advice?

10. The NASUWT welcomes the explicit references to children and young people with disabilities alongside the references to SEN. This encourages schools, colleges, local authorities and commissioners and providers of education, health and care services to interpret SEN more broadly and to consider the needs of children and young people across a spectrum of needs. However, the Union believes that the definition of SEN and disability needs to be reconceptualised.

11. The NASUWT is particularly concerned that the SEND Code of Practice defines SEN and disability within a framework that promotes a medical model of need. The Union believes that the definition should be amended to promote a social model of need. The NASUWT believes that this would emphasise the importance of meeting a learner's needs, rather than focusing on how needs are labelled. It would also help to locate needs linked to SEN and disability within a framework of additional educational needs.

12. The NASUWT is extremely worried about the omission of 'behaviour' and 'behavioural difficulties' from the definition of SEND. Independent research on SEN and inclusion commissioned by the NASUWT highlights the problems that may arise as a result of the approach.¹ The report of the research says that 'regardless of designation, pupils who experience [behavioural difficulties] will continue to require appropriate resourcing.'²

¹ Ellis, Simon; Tod, Janet; and Graham-Matheson, Lynne. Op. cit., chapter 5.

² Ibid, page 110.

However, the funding constraints and cuts to services are likely mean that the focus will be on statutory provision. Evidence from SENCOs already indicates that there has been a decline in local provision relating to behaviour. As a result, classroom teachers are expected to identify and meet the needs of children and young people with behavioural difficulties, without access to support and additional provision to help identify and meet those needs.

13. The failure to include behaviour in the revised definition of SEND poses significant risks for staff and pupils/students in schools and colleges. These risks relate to health, safety, wellbeing, education standards and workload. The NASUWT believes that draft Code of Practice must be amended to include explicit references to identifying and meeting the needs of children and young people with behavioural difficulties.

Does the draft Code take account of amendments to the Children and Families Bill to include young people in the local authority duties to provide information and advice?

14. The revised draft Code of Practice sets out clearly the steps that local authorities must take to provide information, advice and support about SEND to children and young people with SEND, and the parents of children with SEND. It also sets out what the information, advice and support should cover. However, requiring local authorities to provide information, advice and support will not mean that children, their parents, and young people with SEND receive high-quality, appropriate support and provision. Other factors, including those outside of local authority control, will influence or determine the quality and appropriateness of support and provision.

15. The issue of who receives information, advice and support is critical. SEND pathfinders have concentrated on those children and young people who are likely to have an education health and care (EHC) plan. However, information, advice and support must also be available to children and

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young people with SEND who do not require an EHC plan. The NASUWT is extremely concerned that cuts to local authority services and limited funding for SEND in schools, colleges and other provision will mean that many local authorities will only be in a position to provide information, advice and support to meet statutory needs (i.e. those needs covered by an EHC plan).

16. The draft Code of Practice says that local authorities must include information, advice and support on the take-up and management of Personal Budgets. This is given particular prominence in the Code of Practice and appears to serve political interests rather than the educational, health and care needs of children and young people with SEND.

17. The Code of Practice makes it clear that local authorities and clinical commissioning groups (CCGs) must have joint arrangements for commissioning health and care provision. It is also clear that they must consider and agree what information and advice about education, health and care provision is to be provided, by whom, and how it will be provided. This is welcome. However, requiring local authorities and CCGs to consider and agree what information and advice is provided will not mean that high quality provision is available across services. There are significant challenges involved in establishing effective cross agency working. Evidence from the reforms linked to the former Every Child Matters and extended services in schools programmes indicates that establishing an effective framework to support and enable inter-agency working takes time and needs to be resourced adequately and appropriately. The Code of Practice and the SEND reform programme more generally do not pay sufficient attention to this issue.

Does the draft Code take account of amendments to the Children and Families Bill to provide for local authorities to set out what action they intend to take in response to comments from children, young people and parents on the local offer?

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18. It is helpful that the Code of Practice identifies two purposes of the Local Offer: 1) to provide clear, comprehensive and accessible information about provision and how to access it; and 2) to make provision responsive to local needs and aspirations. However, the Code could do more to explain this second purpose. Specifically, the NASUWT believes that the Code of Practice should explain that the Local Offer should seek to identify and anticipate needs with a view to commissioning appropriate, high quality provision. This is critical. However, the Union also believes that delivering a Local Offer that achieves this will be a significant challenge for many local authorities, especially non-SEND pathfinder authorities, as they will not have had the time and resources to establish the principles, networks and arrangements to support effective commissioning.
19. Paragraph 4.3 says 'The Local Offer should simply be a directory of existing services'. In light of the points made above, the NASUWT believes that it is inappropriate to refer to the Local Offer as a directory of existing services. It would be helpful if the Code of Practice or supporting guidance provided examples to illustrate what a Local Offer might look like and significantly the principles that underpinned its development and the processes that are critical to its implementation.
20. It is helpful that the Code of Practice says that local authorities must engage young people with a range of SEND and use a variety of methods to do this. However, the Code needs to be more explicit and make it clear that local authorities should engage young people who have SEND but will not have an EHC plan as well as those who will have an EHC plan. The Local Offer must address the needs of children and young people that do not have a statutory entitlement to provision.
21. The Code of Practice makes it clear that local authorities and their partner bodies must co-operate with each other in the development and review of the Local Offer. While this is critical, the NASUWT believes that cooperation will present significant challenges. For example, feedback

from SENCOs, school leaders and teachers indicates that some schools are reluctant to admit pupils who have SEND or who might be perceived to be 'challenging'. Prospective parents may be told that the school is unable to meet a child's needs or that the school 'down the road' would be better placed to cater for their child's needs. This means that schools that are inclusive may have a disproportionate number of children and young people with SEND. In the context of the Local Offer, a local authority may well state that all schools should provide a certain level of provision for pupils with SEND. While this may be set out in the Local Offer, it is likely to be difficult, if not impossible, to secure in practice.

Does the draft Code take account of amendments to the Children and Families Bill to clarify when health and social care is to be treated as special educational provision?

22. The draft Code of Practice sets out the areas of health and social care that should be treated as special education provision. While this may be helpful to local authorities and their partners, the NASUWT is concerned about what happens when there is disagreement between the local authority and partners in health and social care about exactly what will be provided. This is particularly significant in respect of provision that is designed to meet SEN within mainstream provision and support. There appears to be little that the local authority can do to challenge partners and ensure that health and social care provision is made available to children and young people, especially those who do not have an EHC plan.

23. The NASUWT is concerned that ultimate responsibility for ensuring adequate SEND provision rests with the local authority. Local authorities do not have the resources to provide such services and do not have the power to insist that a health or care service offers specific provision.

Does the draft Code take account of amendments to the Children and Families Bill to clarify duties on local authorities in respect of children over 18 with SEN?

24. The NASUWT welcomes the statement that local authorities must set out in their Local Offer the support and provision that 19-25 year olds with SEN can access regardless of whether they have an EHC plan (paragraph 8.52). However, this focuses on the content of the plan and not on young people's entitlement to support and provision. The Union is concerned that many 19-25 year olds will not be able to access appropriate provision. Feedback from teachers in schools and colleges indicates that provision for young people over the age of 18 is very patchy. This means that some local authorities would need to make a strategic decision to extend and improve provision. However, feedback also indicates that some providers offer very little provision for adults with SEND. For example, teachers report that some colleges are cutting support staff posts which, in practice, means that some young people with SEND are unable to study at the college.

25. The NASUWT believes that the DfE should monitor the nature and extent of provision for young people over the age of 18 who have SEND, including access to and take up of mainstream provision and provision that is specifically targeted at students with SEND.

Does the draft Code take account of amendments to the Children and Families Bill to include young offenders in assessment and planning duties that are broadly similar to those for other children and young people?

26. The correlations between offending, reoffending and low attainment are well documented, as is the risk of not being in education, employment or training (NEET). For example, a Youth Justice Board (YJB) report showed that more than 33% of young offenders above school leaving age were not engaged in education, training or employment (NEET) compared with 11%

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of their peers.³ Other data shows that young people excluded from school are likely to commit twice as many crimes as their peers in mainstream education. Evidence also shows that, compared to their peers, young offenders are much more likely to be identified as having SEN.⁴ It is clear, therefore, that education has a key role to play in preventing offending and reoffending and it is essential that children and young people in custody receive high quality education.

27. The NASUWT is extremely concerned about the education of young offenders. Many problems relating to a child or young person's education in custody occur because information about their educational attainment, progress and needs is not available within the first few days of them entering custody. It is vital that this information is available to education staff in young offender institutions. This must include information about a young offender's educational attainment and their educational, health and care needs, including special educational needs. While the NASUWT is pleased that the Code of Practice includes explicit guidance that relates to children and young people with SEN who are in youth custody, the Union believes that the guidance needs strengthening to ensure that issues are identified and addressed promptly. The Code of Practice should include timescales for the sharing of information.

28. The NASUWT strongly recommends that the Code of Practice is amended to require education providers to share education information about a young offender with the young offender institution, including their attainment and progress, irrespective of whether or not they have been identified as having SEN. The Union believes that evidence about young offenders' educational attainment and the greater likelihood of them being identified as having SEN, or being NEET, justifies this approach.

³ Youth Justice Board (2006), *Barriers to Engagement*.

⁴ Prison Reform Trust (2010), *Seen and Heard: supporting vulnerable children in the youth justice system*.

Does the draft Code take account of amendments to the Children and Families Bill to extend disagreement resolution arrangements and mediation to health and social care as well as education? (C11)

29. The draft Code of Practice sets out the various options available to resolve disputes that relate to education, health and social care. The information provided is complex and could be organised better to enable readers to gain a quick overview of the various routes that must or could be followed. The diagrams on pages 212 and 213 provide some oversight of the options and routes available. However, they need to be made clearer.

30. It would be helpful to explain very simply and perhaps in diagram form the various options for resolving disagreements, including mediation. Such an explanation/diagram would need to show/explain the options available for education, health and social care and whether steps are compulsory or voluntary. It would be most helpful if the diagram formed the centre piece of the advice in the Code of Practice and that additional guidance linked back to this diagram.

31. The guidance in the draft Code of Practice needs to set out very clearly the deadlines for making applications to tribunals and mediation/resolution services. It also needs to set out the timescales for dealing with complaints. Again, it would be best if this was set out in diagram or table format.

Do changes to the Code, and plans to produce supplementary materials, address responses to the main consultation on clarity, layout and accessibility?

32. It will be extremely important to produce supplementary materials that address particular aspects of the Code of Practice. It will be especially important to prepare material for parents, children and young people with SEND, and classroom teachers and support staff in schools and colleges.

These materials are important because they are for people who are unlikely to read the whole Code of Practice.

33. Diagrams that explain the various steps that must, should or could be followed will be very helpful. It will be important for diagrams to show where there is overlap between processes that relate to complaints about education and those relating to health and social care. It will also be important for diagrams to illustrate where complaints processes are joint processes and where they are distinct.

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