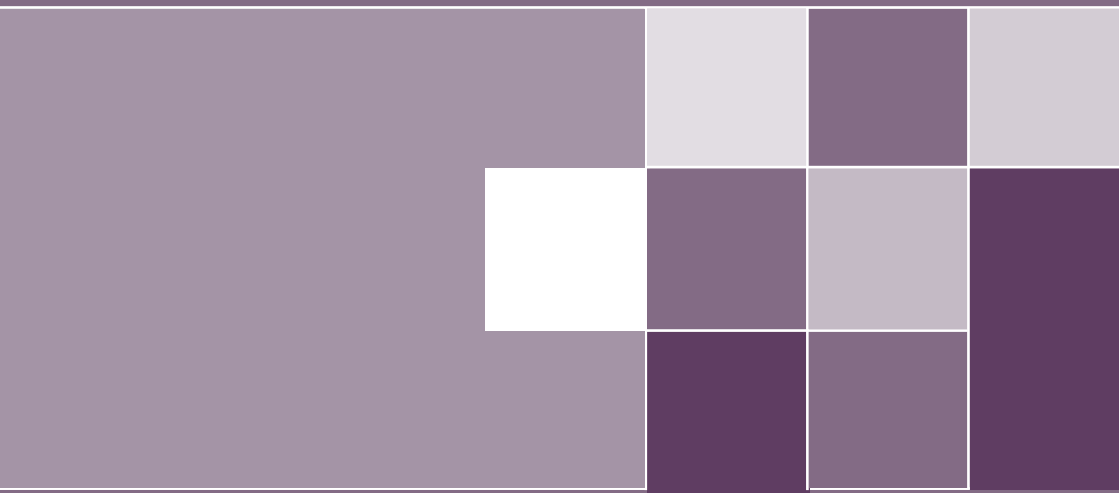




SPECIAL EDUCATIONAL NEEDS AND DISABILITY

advice for school leaders

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Introduction

This guidance summarises advice set out in the Special Educational Needs and Disability (SEND) Code of Practice.

The guidance:

- provides an overview of the advice in the Code of Practice and explains what schools need to do to meet the needs of children and young people who have special educational needs (SEN) and/or a disability;
- explains the roles and responsibilities of teachers, special educational needs co-ordinators (SENCOs), school leaders, and governors or proprietors; and
- outlines the funding arrangements for SEN and the arrangements for paying teachers who have SEN-related responsibilities.

Additional briefing materials that complement this guidance can be downloaded from the NASUWT website: www.nasuwt.org.uk.

Status of the SEND Code of Practice

The Code of Practice provides statutory guidance about what schools, colleges, local authorities and other providers **must do** and **should do** to identify, assess and make provision for children who have SEN or a disability. The Code of Practice cannot be ignored. This means that local authorities and providers **must** be able to demonstrate either that they have followed the guidance in the Code or be able to justify why they have departed from the advice given.

The First Tier Tribunal (SEN and Disability) deals with appeals from parents regarding SEN provision. Tribunals **must** take account of what the Code says in arriving at a decision about an appeal.

Transitional arrangements from September 2014 until 2017

The Code of Practice comes into force from September 2014. However, transitional arrangements will be in place to support the change to the new system. During the transition period, elements of the Education Act 1996 (in relation to children with statements of SEN) and the Learning and Skills Act 2000 (in relation to young people who have a learning difficulty assessment (LDA)) will continue to apply.

From September 2014, any child or young person newly assessed will be assessed for an Education, Health and Care (EHC) plan.

The transition period for young people with an LDA is until September 2015. After this date, all young people with an LDA who continue to need support should have transferred to an EHC plan.

The transition period for children with a statement of SEN lasts until 2017. However, a child or young person who has a statement of SEN or an LDA may be considered for an EHC plan at their next review if they (or their parent) request it. Also children and young people who are moving from primary to secondary or secondary to post-16 provision, must be assessed for an EHC plan before transition.

Section 1: Definitions and Key Legislation

Definition of special educational needs (SEN)

The Children and Families Act (2014) defines children as having special educational needs (SEN) or a disability if they have a learning difficulty which calls for special educational provision to be made for them.¹

A child of compulsory school age has a learning difficulty if they:

- have significantly greater difficulty in learning than the majority of children of the same age;
- have a disability which prevents or hinders them from making use of educational facilities of a kind generally provided for children of the same age in mainstream schools or mainstream post-16 institutions.

A child under compulsory school age has a learning difficulty or disability if he or she is likely to fall into the categories above when he or she is of school age, or if he or she would fall into the category if special educational provision was not made.

Post-16 institutions use the term learning difficulties and disabilities (LDD). The Code of Practice uses the term SEN across the 0 to 25 age range and the definition of SEN includes LDD.

Special educational provision means:

1. for children aged two or more, educational provision which is additional to, or otherwise different from, the educational provision made generally for children of the same age in maintained schools, maintained nursery schools, mainstream post-16 institutions, or by relevant early years providers;
2. for children under two, educational provision of any kind.

¹ Part 20, Children and Families Act 2014.

Broad areas of need

The SEND Code of Practice identifies four broad areas of need:

- **communication and interaction** (this covers difficulty with different aspects of speech, language or social communication);
- **cognition and learning** (this is where children and young people learn at a slower pace than their peers, even with appropriate differentiation, and covers moderate learning difficulties (MLD), severe learning difficulties (SLD) and profound and multiple learning difficulties (PMLD). It also includes specific learning difficulties such as dyslexia, dyscalculia and dyspraxia);
- **social, emotional and mental health difficulties** (this covers difficulties such as anxiety or depression, self-harming, substance misuse, eating disorders or physical symptoms that are medically unexplained. These difficulties may manifest themselves in many ways including challenging, disruptive or disturbing behaviour); and
- **sensory and/or physical needs.**

Disability and the Equality Act 2010

The Equality Act 2010 states that a person has a disability if he or she has a physical or mental impairment that has a substantial or long-term adverse effect on his or her ability to carry out normal day-to-day activities.²

‘Long term’ is defined as ‘a year or more’ and ‘substantial’ is defined as ‘more than minor and trivial’. The definition includes sensory impairments such as those affecting sight or hearing, and long-term health conditions such as epilepsy, asthma, diabetes and cancer. A child does not need to have a medically diagnosed cause for their impairment; what matters is the effect of the impairment, not the cause.

A child who has a disability may or may not have SEN. However, there is considerable overlap between children and young people with disabilities and those with SEN.

The Equality Act places planning legal duties on schools, early years providers, post-16 institutions, local authorities and others.³ They must not harass, victimise or discriminate, directly or indirectly,

² The Equality Act 2010.

³ Equality Act 2010, Section 88, Schedule 10.

against disabled children and young people. They must make reasonable adjustments to ensure that disabled children and young people are not at substantial disadvantage compared to their peers. This duty is anticipatory which means that schools and other providers must think in advance about what disabled children and young people might require or what adjustments might be needed to prevent disadvantage.

Accessibility Plan

School governing bodies and proprietors are required to prepare and publish an Accessibility Plan (and local authorities are required to prepare and publish an Accessibility Strategy) setting out the planned improvements that will be taken in relation to disability access. The Plan must address three distinct elements of planned improvements in access for disabled pupils:

- improvements in access to the curriculum;
- physical improvements to increase access to education and associated services; and
- improvements in the provision of information, in a range of formats, for disabled pupils.

The Plan must be kept under review and revised, if necessary. The Plan must be implemented and it must be updated on a regular basis.

Whilst a school must address the areas set out in legislation, it is more likely to deal with disability equality issues effectively if addressing disability equality is an integral part of mainstream planning and decision making. Therefore, the Accessibility Plan should be clearly linked to the School Improvement Plan.

Race Equality and SEN/SEND

Schools and colleges need to pay particular attention to distinguishing between the needs of pupils with SEN and pupils for whom English is an additional language. A school or college that fails to make an appropriate distinction between SEN and English as an additional language (EAL) could find itself subject to a claim of discrimination under relevant provisions of the Equality Act.

The Equality Act places a duty on schools, colleges and other public authorities, including local authorities, to have due regard to the need to eliminate unlawful racial discrimination, advance equality of

opportunity and foster good relations between people who share a protected characteristic and those who do not.

Schools and local authorities should monitor by ethnic background all stages of the process for identifying, assessing and making provision for pupils with SEN. They should use the results of monitoring to assess how the various SEN policies and procedures impact on pupils by ethnic background.

Pupils with medical conditions

The Children and Families Act 2014 places a duty on maintained schools and academies to support pupils with medical conditions. Individual healthcare plans will normally specify the type and level of support required to meet the pupil's need. If the pupil also has SEN, their provision should be planned and delivered in a co-ordinated way with the healthcare plan.

Schools are required to have regard to the statutory guidance, *Supporting pupils at school with medical conditions*: www.gov.uk/government/publications/supporting-pupils-at-school-with-medical-conditions.

NASUWT comment

The SEN reforms are being introduced at the same time as many other education reforms. The speed with which these reforms are being introduced and the fact that the Code of Practice was agreed a few weeks before the reforms are to be implemented means that many schools will not be able to plan properly for the changes. In the long term, schools will benefit from reviewing and revising policies and procedures relating to SEN, disability and medical conditions in a strategic way so that policies, procedures, support and training can be integrated where appropriate.

Section 2: Key Principles and Ways of Working

Inclusion

The Code of Practice says that the majority of pupils with SEN should be educated in mainstream provision. The Code also states the Coalition Government's commitment to the inclusive education of children and young people with disabilities and the progressive removal of barriers to learning and participation in mainstream education.⁴

Children and young people who have SEN but who do not have an Education, Health and Care (EHC) plan must be educated in a mainstream setting except in specific circumstances. They can be placed in special schools or special post-16 provision if:

- they are admitted to a special school or special post-16 institution to be assessed for an EHC plan;⁵
- there is a change in their circumstances;⁶
- they are in hospital and admitted to a special school which is established in a hospital; or
- they are admitted to a special academy whose academy arrangements allow it to admit children and young people who do not have an EHC plan.

Engaging children, young people, and parents in decision making

The Children and Families Act 2014 requires local authorities in carrying out their functions under the Act to have regard to:

- the views, wishes and feelings of the child or young person, and the child's parents;
- the importance of the child or young person and the child's parents participating in decisions and being provided with information and support so that they can participate in decision making; and
- the need to help the child, young person and the child's parents so that they can achieve the best possible educational and other outcomes.⁷

⁴ Paragraph 1.26, *Special Educational Needs and Disability Code of Practice: 0 to 25 years*, June 2014.

⁵ The young person, or the parent, the local authority and the head of the special school/institution must agree to this.

⁶ Again, the young person or parent, the local authority and head of the special school/institution must agree to this.

⁷ Paragraph 1.1, *Special Educational Needs and Disability Code of Practice: 0 to 25 years*, June 2014.

The Code of Practice says that schools and colleges should take steps to ensure that young people and parents are actively supported in contributing to needs assessments, and developing and reviewing EHC plans.

Working together across education, health and care to achieve joint outcomes

Local authorities have a duty to ensure integration between educational provision, training provision and health and social care provision where this would promote wellbeing and improve the quality of provision for children and young people with SEN and/or disabilities.⁸

Local authorities and clinical commissioning groups (CCGs) must make joint commissioning arrangements for EHC provision for children and young people with SEN or disabilities.⁹

The arrangements made by a local authority (and CCG) for joint commissioning and the steps taken to ensure integration of provision will have implications for schools and colleges.

Schools and post-16 settings can be commissioners in their own right. Schools have a notional SEN budget within the dedicated schools grant (DSG) and many schools commission provision to support pupils. Schools must work with the local authority in developing the Local Offer (see below). School governing bodies must ensure that arrangements are in place to support pupils with medical conditions and should ensure that school leaders consult health and social care professionals, pupils and parents to ensure that children with medical conditions are effectively supported.¹⁰

Local Offer

Local authorities have a duty to develop and publish a Local Offer. The governing bodies or proprietors of schools and colleges, including academies and free schools in the local authority area, must co-operate with the local authority in the development and review of the Local Offer.

The Local Offer sets out an authority-wide description of special educational and training provision that the local authority expects to

⁸ Section 25, Children and Families Act 2014.

⁹ Section 26, Children and Families Act 2014.

¹⁰ Paragraph 3.66, *Special Educational Needs and Disability Code of Practice: 0 to 25 years*, June 2014.

be available for children and young people with SEND in maintained schools, including academies and free schools, pupil referral units, and the full range of post-16 provision. This includes information about the arrangements for funding children and young people with SEN, including any agreements about how providers will use any budget that has been delegated to them. It also includes details about approaches to teaching and adaptations to the curriculum, how facilities will be made accessible by disabled children and young people and those with SEN, arrangements for assessing pupils' and students' progress towards outcomes, and arrangements for developing teachers' SEN and disability-related awareness and expertise, including specialist expertise.

The Local Offer must be clear, comprehensive, accessible and up to date about the provision available and how to access it.

The Local Offer must be widely accessible and published on the local authority's website.

School Information Report

The governing bodies of maintained schools and maintained nursery schools and the proprietors of academies must publish information on their websites about their policy for pupils with SEN.¹¹ This information should be updated annually and any changes to the information that occur during the year should be updated as soon as possible. The School Information Report must include information about:

- i. the SEN provision at the school;
- ii. the name and contact details of the SENCO;
- iii. the school's policies for the identification and assessment of pupils with SEN and making provision for pupils with SEN (including those without an EHC plan);
- iv. arrangements for assessing and reviewing children and young people's progress towards outcomes, including the opportunities to work with parents and young people as part of the assessment and review;
- v. how adaptations are made to the curriculum and learning environment of children and young people with SEN;

¹¹ Special Educational Needs and Disability Regulations 2014.

- vi. how children and young people with SEN are enabled to engage in activities available to children and young people who do not have SEN;
- vii. support for improving the emotional and social development, including extra pastoral support arrangements for children and young people with SEN and measures to prevent bullying;
- viii. the approach to evaluating the effectiveness of the provision made for children and young people with SEN;
- ix. the expertise and training of staff, including how specialist expertise will be secured;
- x. how equipment and facilities to support pupils with SEN will be secured;
- xi. the arrangements for consulting parents of children with SEN and young people with SEN and involving them in decisions about their/their child's education;
- xii. arrangements made by the governing body or proprietor for dealing with complaints from parents of children with SEN about provision made at the school;
- xiii. how the governing body involves other bodies, including health and social care bodies, local authority support services and voluntary sector organisations, in meeting the needs of children and young people with SEN;
- xiv. the contact details of support services for parents of pupils with SEN;
- xv. the arrangements for supporting pupils' transfer between phases of education or preparation for adulthood and independent living; and
- xvi. the school's contribution to the local authority's Local Offer and where the Local Offer is published.

Personal Budgets

A child's parent or a young person has the right to request a Personal Budget where it is confirmed that they will have an EHC plan. A Personal Budget is the amount of money identified to deliver provision set out in an EHC plan and can include funding for special educational, health and social care provision.

A Personal Budget can take the form of:

- direct payment – where individuals receive the cash to contract, purchase and manage services themselves;
- a notional budget – an arrangement where the local authority, school or college holds the funds and commissions the support specified in the plan;
- third-party arrangements – where funds are paid to and managed by an individual or organisation on behalf of the child or young person; and
- a combination of the above.

Where a direct payment for special educational provision is proposed, the local authority must secure the agreement of the school, college or setting if any of the provision is to be delivered on the institution's premises. Where agreement cannot be reached, the local authority must not go ahead with the direct payment. The local authority must set out in writing the reasons for refusing a request, and notify the parent or young person of their right to request a formal review of the decision.

Direct payments must not be used for the purposes of funding a school place or Post-16 institution.

Special educational provision specified in a plan can be funded from the school's budget share. More specialist funding can be funded wholly or partly from the local authority's high-needs funding. The Code of Practice says that schools and colleges should be encouraged to personalise the support they provide and can contribute their own funding to a Personal Budget.¹²

Local authorities must provide information on Personal Budgets as part of the Local Offer. This should include a policy on Personal Budgets that sets out a description of the services across education, health and social care that are covered by Personal Budgets, how funding will be made available, and a clear and simple outline of the eligibility criteria and decision-making processes.

¹² Paragraph 9.112, *Special Educational Needs and Disability Code of Practice: 0 to 25 years*, June 2014.

NASUWT comment

The reforms place significant demands on schools. For example, the school information report requires schools to provide a wide range of detailed information. Schools may also come under pressure from local authorities to undertake additional work such as preparing a 'School Offer' to mirror the Local Offer. It is important that schools resist such pressures.

If a school does not have all of the information needed for the school information report, it will be important to indicate that the information will be provided in the future.

The Code of Practice stresses the importance of agencies working together to meet the needs of children and young people with SEN. Whilst there is an assumption that professionals working within the relevant agencies will establish and maintain links with other relevant professionals, in practice schools may come under substantial pressure to take on the key worker or co-ordination role across services. This is likely to be extremely time-consuming and bureaucratic. School leaders should contact the NASUWT if they believe that the school is being asked to take on the key worker role and either that this is not appropriate or taking on the role will create unacceptable workload burdens on staff.

The reforms place great emphasis on parental choice and engaging the parents of children with SEN and young people with SEN in decision making. Personal Budgets are an example of this. Whilst this might be welcome in principle, Personal Budgets and, in particular, Direct Payments could present significant problems for schools. For instance, a parent may seek to use the Direct Payment to employ somebody to work directly with their child. They may want to direct how that person works with their child in the classroom. This has the potential to undermine the headteacher's authority and the class teacher's professional judgement and could lead to situations where the parent instructs the worker to work in ways that do not serve the best interests of the child, or other pupils at the school. It is vital that schools refuse inappropriate requests for Direct Payments.

Section 3: SEND Processes

Identification of SEN

The Code of Practice says that all schools should have a clear approach to identifying and responding to SEN. The Code says that *‘making higher quality teaching normally available to the whole class is more likely to mean that fewer pupils will require such support. Such improvements in whole-class provision tend to be more cost effective and sustainable.’*¹³

Schools should assess each pupil’s current skills and levels of attainment on entry. This should build on information from previous settings, where appropriate. The Code of Practice says that class and subject teachers, supported by the senior leadership team, should make regular assessments of the progress of all pupils and seek to identify those making less than expected progress, e.g. in terms of their attainment or their social development. Where issues are identified, the Code of Practice says that the first response should be *‘higher quality teaching targeted at [the pupil’s] areas of weakness.’*¹⁴ Where weakness continues to be less than expected, *‘the class or subject teacher, working with the SENCO, should assess whether the child has SEN’.*¹⁵

The Code refers to the four broad areas of need (communication and interaction; cognition and learning; social, emotional and mental health difficulties; and sensory and/or physical needs) and says that these provide an overview of the range of needs that should be planned for. It stresses that *‘the purpose of identification is to work out what action the school needs to take, not to fit a pupil into a category.’*¹⁶ This means that the range of an individual’s needs should be identified and not simply the primary need.

‘Graduated’ approach – assess, plan, do, review

The Code of Practice describes a four-part process to meeting the needs of pupils identified as having SEN. This is referred to as a ‘graduated approach’, but actually sets out four processes involved in taking action to remove barriers to learning and put effective special

¹³ Paragraph 6.15, *Special Educational Needs and Disability Code of Practice: 0 to 25 years*, June 2014.

¹⁴ Paragraph 6.19, *Special Educational Needs and Disability Code of Practice: 0 to 25 years*, June 2014.

¹⁵ Ibid.

¹⁶ Paragraph 6.27, *Special Educational Needs and Disability Code of Practice: 0 to 25 years*, June 2014.

education provision in place. Class and subject teachers have a central role to play in all four stages.

Assess – The Code of Practice says that the class or subject teacher, working with the SENCO, should carry out a clear analysis of the pupil's needs. This should draw on the teacher's assessment and experience of the pupil, their previous progress and attainment, and information from the school's core approach to pupil progress, attainment and behaviour. The assessment should also draw on other subject teachers' assessments, where relevant, the individual's development in comparison to their peers and national data, the views and experiences of parents, the pupil's own views and, if relevant, advice from external support services.

Plan – If a decision is made to provide a pupil with SEN support, the parents must be notified formally. The teacher and the SENCO, in consultation with the parent and the pupil, should agree the adjustments, interventions and support to be put in place, as well as the expected impact on progress, development or behaviour, along with a clear date for review.

All teachers and support staff who work with a pupil should be made aware of the pupil's needs, the outcomes sought, the support provided and any teaching strategies or approaches that are required. This information should be recorded on the school's information system.

Do – The class or subject teacher remains responsible for working with the child on a daily basis. Where interventions involve group or one-to-one teaching away from the main class or subject teacher, they still retain responsibility for the pupil.

Class or subject teachers should work closely with any teaching assistants or specialist staff involved, to plan and assess the impact of support and interventions and how they can be linked to classroom teaching.

The SENCO should support the class or subject teacher in further assessment of the child's particular strengths and weaknesses. They should also support the class or subject teacher to solve problems and advise on effective implementation of support.

Review – A date to review the effectiveness of the support and interventions and their impact should be agreed. The views of parents and the pupil should feed into the analysis of the pupil's needs.

The class or subject teacher, working with the SENCO, should revise the support in light of the pupil's progress and development, deciding on any changes to the support and outcomes in consultation with the parent and pupil.

If a pupil has an EHC plan, the local authority must review the plan at least every 12 months. Schools must co-operate with the local authority in the review process.

As part of the review, the local authority can require schools to convene and hold annual review meetings on its behalf.

Involving specialists

Where a pupil continues to make less than expected progress, the Code of Practice says that the school should consider involving specialists from within or outside the school. Specialists may advise on early identification of SEN and effective support and interventions. The Code of Practice says that specialists should always be involved where a pupil continues to make little or no progress or where they continue to work at levels substantially below those expected of pupils of a similar age despite receiving evidence-based SEN support delivered by appropriately trained staff.

Education, Health and Care Plans

Where the school has taken relevant action to identify, assess and meet the SEN of a child or young person but that child or young person has not made expected progress, it may be appropriate to request an Education, Health and Care (EHC) needs assessment. A child's parent, a young person over the age of 16 but under the age of 25, or a person acting on behalf of a school or post-16 institution have a specific right to ask the local authority to conduct an EHC needs assessment.

The local authority must notify the child's parents or the young person that it is considering whether an EHC assessment is necessary. It must also consult them as soon as practicable following a request for an assessment and arrange for them to be provided with relevant advice and information. The local authority must determine whether an assessment is necessary, make a decision and communicate that decision to the child's parent or the young person within six weeks of receiving the request.¹⁷

¹⁷ The local authority does not need to consider a request if it has undertaken an EHC assessment within the previous 6 months.

If the local authority decides not to conduct an EHC assessment, it must inform the child's parents or young person of their right to appeal against the decision and the time limit for making an appeal.

If the local authority decides to make an EHC assessment, it must include the child's parent or the young person from the start of the process. The parent or the young person should be able to express their view, wishes and feelings and be part of the decision-making process.

Local authorities are responsible for ensuring that the assessment and development of an EHC plan is effectively co-ordinated.

The Code of Practice says that this should include:

- planning the meeting to meet the needs of children, parents and young people;
- timing meetings to minimise family disruption;
- keeping the child's parent or young person informed through a single point of contact; and
- ensuring, wherever possible, that relevant professionals have sufficient notice to be able to contribute to the process.¹⁸

The whole process of an EHC needs assessment and EHC plan development should take no more than 20 weeks.

The format of an EHC plan is agreed locally. However, as a statutory minimum, it must include the following sections which must be separately labelled:

- the views, interests and aspirations of the child and his/her parents, or the young person;
- the child or young person's SEN;
- the child or young person's health needs which are related to their SEN;
- the child or young person's social care needs which are related to their SEN or to a disability;
- the outcomes sought for the child or young person;
- the special educational provision required by the child or young person;

¹⁸ Paragraph 9.30, *Special Educational Needs and Disability Code of Practice: 0 to 25 years*, June 2014.

- any health provision reasonably required by the learning difficulties or disabilities which result in the child or young person having SEN;
- any social care provision which must be made under the Chronically Sick and Disabled Persons Act 1970 or any other social care provision reasonably required by the learning difficulties or disabilities which result in the child or young person having SEN;
- the name and type of the school or institution to be attended by the child or young person and the type of that institution;
- where there is a Personal Budget, details of how the budget will support particular outcomes, the provision it will be used for, including any flexibility in its usage and the arrangements for any direct payments for education, health and care. The SEN and outcomes that are to be met must be specified;
- the advice and information gathered during the EHC needs assessment must be attached; and
- for a child or young person in year 9 or beyond, the provision required to assist in the preparation of adulthood and independent living.

The child's parent or the young person has the right to request a particular school, college or other institution to be named in their EHC plan. This includes a maintained school or any form of academy or free school.

The local authority must comply with the parent or young person's preference unless:

- it would be unsuitable for the age, ability, aptitude or SEN of the child or young person; or
- the attendance of the child or young person would be incompatible with the efficient education of others, or the efficient use of resources.¹⁹

The local authority must consult the governing body, principal or proprietor of the school or college and consider their comments very carefully before deciding whether to name it in the child or young person's EHC plan. They must also send the school or college a copy of the draft plan.

¹⁹ Paragraph 9.79, *Special Educational Needs and Disability Code of Practice: 0 to 25 years*, June 2014.

The local authority must seek agreement of the school or post-16 institution where the draft plan sets out any provision to be delivered on their premises through a direct payment.

School-level processes

The Code of Practice does not specify in detail the approach that schools should take to identifying, assessing and monitoring the progress of pupils with SEN. It says that ‘the identification of SEN should be built into the overall approach to monitoring the progress and development of all pupils.’²⁰ It also says that a school’s arrangements for assessing and identifying pupils as having SEN should be agreed and set out as part of the Local Offer.

The Code of Practice makes it clear that schools need to have in place systems for communicating to all staff information about the needs of individual pupils with SEN.

NASUWT comment

Feedback from SEND pathfinders indicates that the processes of undertaking an EHC needs assessment and preparing an EHC plan are complex and time consuming. Whilst the Code of Practice suggests that all those eligible for a statement of SEN would be eligible for an EHC plan, there is considerable scope to interpret level of need. For example, under the previous reforms, local authorities adopted very different approaches to issuing statements. Some placed much greater emphasis on meeting needs through School Action Plus (SA+) rather than a statement of SEN. Under the new reforms, SA+ is subsumed into the single category of SEN. Critically, pupils with SEN who do not have an EHC plan have no statutory entitlement to support, although teachers will be expected to identify and meet their needs.

The Code of Practice makes it very clear that class and subject teachers and form tutors are expected to play a central role in identifying, assessing and supporting pupils with SEN. There are significant worries about what this will mean in practice. Cuts to local authority and other public services mean that, increasingly, schools are required to identify and fund support, including specialist support. In practice, this may mean that class and subject teachers are required to provide such support. The

²⁰ Paragraph 6.5, *Special Educational Needs and Disability Code of Practice: 0 to 25 years*, June 2014.

NASUWT is extremely concerned that teachers will not receive the necessary training and support to enable them to undertake such tasks. Further, teachers are already under enormous pressure to improve the outcomes of all of their pupils. The expectations not only add to these pressures, but enable teachers to be blamed if needs are not met and pupils do not achieve expected outcomes.

The Code of Practice says that schools should meet regularly with parents of children with SEN to 'set clear outcomes and review progress towards [these outcomes]'. Further, it says that 'schools should meet parents at least three times each year'.²¹ There is a danger that some schools will interpret this as meaning that they must hold individual meetings with the parents of every pupil with SEN once a term. This would be extremely burdensome and have serious consequences for teachers' workload. It is vital that parents have up-to-date information on their child's progress and the effectiveness of the support provided. It is also essential that parents are able to contribute information and views to evaluations and decisions. However, it may be possible to do this through a variety of media. Also meetings might be held with groups of parents and could, in some instances, take the form of information and support sessions for a number of parents.

It is vital that school leaders contact the NASUWT if problems occur in their school.

²¹ Paragraph 6.65, *Special Educational Needs and Disability Code of Practice: 0 to 25 years*, June 2014.

Section 4: Roles and responsibilities

The governing body

In a maintained school, ultimate responsibility for complying with the statutory duties towards pupils with SEN rests with the governing body. Under the provisions of the Academies Act 2010, the proprietor of an academy or free school is responsible for complying with statutory duties towards pupils with SEN. In the case of a pupil referral unit (PRU) or alternative provision that is not an academy or free school, the management committee is responsible for complying with statutory duties in respect of SEN.

The governing body, proprietor or management committee must appoint a member of the governing body or a sub-committee to have specific oversight of the school's arrangements for SEN and disability.²²

The school's governing body or equivalent is responsible for ensuring that the school has an appropriate SEN policy, that the policy is subject to regular monitoring, review and evaluation, and is linked to the School Improvement Plan.

The governing body or, where relevant a local authority or the proprietor of an academy or free school should, with the help of the headteacher and the SENCO, decide the school's policy and approach to meeting pupils' SEN. This should include examining how the school's ethos, policies and practice supports all pupils and meets the needs of pupils with SEN. The governing body or its equivalent body must set up appropriate staffing and funding arrangements to support pupils with SEN.

School leaders

Headteachers are responsible for advising the governing body, proprietor, or management committee about the school's SEN policy, including the effective implementation of the policy.

School leaders are responsible for ensuring that the SEN policy is implemented effectively. They should ensure that systems are in place to monitor and evaluate the impact and effectiveness of the SEN policy. The Code of Practice says that, as part of school improvement,

²² Paragraph 6.3, *Special Educational Needs and Disability Code of Practice: 0 to 25 years*, June 2014.

school leaders should regularly review expertise and resources used to address SEN and consider how these can be used to improve the quality of whole school provision.²³ The key point here is that schools are expected to establish approaches to meeting the needs of pupils with SEN that will also benefit all pupils. Another interpretation of this advice is that schools should adopt approaches to meeting the needs of all pupils that will help to meet the needs of pupils with SEN.

The Code of Practice says that senior leaders should support class and subject teachers to make regular assessments of children's progress. In the case of pupils with SEN, they should seek to identify pupils making less than expected progress given their age and individual circumstances. There are a number of other things that school leaders will need to do in order to support class and subject teachers, and SENCOs and ensure that pupils with SEN have their needs met. For example, they will need to ensure that all staff are trained and appropriately supported, including being able to draw on specialist support, so that they can identify and meeting the needs of pupils who have SEN. This is something that should be picked up through performance management.

In respect of the SENCO, school leaders must ensure that a SENCO who is newly appointed to the post of SENCO achieves a National Award in Special Educational Needs Co-ordination within three years of appointment. School leaders should ensure that the SENCO is able to access other specialist training and support. The NASUWT believes that this should include support from SEN specialists and networks outside the school.

The headteacher should ensure that the SENCO has sufficient time and resources to carry out their functions. This should include providing them with sufficient administrative support and time away from teaching in a similar way to other important strategic roles within a school.²⁴

The Code of Practice indicates that there is an overlap between schools' work to support pupils who have SEN, their work to meet the needs of children with medical conditions and their work to comply with equalities legislation. School leaders will need to ensure that there is a strategic and coherent approach to meeting these needs.

²³ Paragraph 6.3, *Special Educational Needs and Disability Code of Practice: 0 to 25 years*, June 2014.

²⁴ Paragraph 6.91, *Special Educational Needs and Disability Code of Practice: 0 to 25 years*, June 2014.

The headteacher and the governing body, proprietor or management committee must ensure that adequate funding is allocated to support the progress of pupils with SEN. Along with the SENCO, they should establish a clear picture of the resources that are available to the school. The Code of Practice says that schools should consider their strategic approach to meeting SEN in the context of the total resources available, including any resources targeted at particular groups, such as the pupil premium.²⁵

The Code of Practice emphasises the importance of the SENCO working with senior leaders and the governing body to develop and implement the school's SEN policy. School leaders need to ensure that the SENCO has the necessary authority to undertake this role. They should also ensure that the SENCO is appropriately remunerated.

School leaders must ensure that the school complies with statutory duties in relation to SEN. These include duties to co-operate with the local authority in relation to the development of the Local Offer, EHC needs assessments, and the preparation of an EHC plan.

The SENCO

The governing body of maintained mainstream schools and the proprietors of academies and free schools must ensure that a qualified teacher is designated as a SENCO. The SENCO must be a qualified teacher working at the school although they do not necessarily need to be employed directly by the school.²⁶

Where a newly appointed SENCO has not previously been the SENCO at the school or any other school for more than 12 months, they must achieve a National Award in Special Educational Needs Coordination within three years of appointment.²⁷

The SENCO has an important role to play in determining the strategic development of SEN policy and provision in the school. The SENCO should work closely with the headteacher and governing body to determine this policy. The Code of Practice states that the SENCO

²⁵ Paragraph 6.97, *Special Educational Needs and Disability Code of Practice: 0 to 25 years*, June 2014.

²⁶ For example, it is possible for a SENCO working as a teacher at a school to be 'centrally employed' by a local authority or other external organisation.

²⁷ A National Award must be a postgraduate course accredited by a recognised higher education provider. Any course selected must be equivalent to at least 60 credits and meet the learning outcomes established by the National College of Teaching and Leadership.

will be able to do this most effectively *'if they are part of the school leadership team'*.²⁸

The SENCO has day-to-day responsibility for the operation of the SEN policy and co-ordination of specific provision made to support individual pupils with SEN.

The SENCO provides professional guidance to colleagues and works closely with staff, parents and other agencies. This includes working with the class or subject teacher to carry out a clear analysis of a pupil's needs. It also includes supporting the class or subject teacher in the further assessment of a particular pupil's strengths and weaknesses, helping the class or subject teacher to solve problems and advising on the effective implementation of SEN support.

The Code of Practice says that the school should ensure that the SENCO has sufficient time and resources to carry out their functions. *'This includes providing the SENCO with sufficient administrative support and time away from teaching to enable them to fulfil their responsibilities in a similar way to their important strategic roles within a school.'*²⁹

The NASUWT is concerned that some SENCOs will be expected to take on additional responsibilities without receiving appropriate financial remuneration. The Union is also worried that some schools will appoint a school leader as SENCO but require a teacher to fulfil most of the responsibilities, without financial recompense for the work that they do. SENCOs should seek advice and support from the NASUWT if they encounter problems.

Class and subject teachers and form tutors

Class and subject teachers have a central role to play in ensuring that pupils who have or may have SEN make good progress and secure good outcomes. Class and subject teachers are expected to identify pupils who may have SEN and then work with the SENCO to assess the pupil's needs and plan support to meet those needs. Class and subject teachers should also work with the SENCO to implement support and review the effectiveness of support and interventions including their impact on the pupil's progress.

²⁸ Paragraph 6.87, *Special Educational Needs and Disability Code of Practice: 0 to 25 years*, June 2014.

²⁹ Paragraph 6.91, *Special Educational Needs and Disability Code of Practice: 0 to 25 years*, June 2014.

The Code of Practice places emphasis on engaging parents and young people with SEN in decisions about provision to meet their needs. Schools must provide regular reports to parents on how their child is progressing. In the case of children and young people with SEN, the Code says that schools should meet parents at least three times a year.³⁰ The Code says that these discussions should be led by a teacher *‘with good knowledge and understanding of the pupil who is aware of their needs and attainment. This will usually be the class teacher or form tutor, supported by the SENCO.’*³¹

The expectation that class and subject teachers play an important role in identifying and meeting the needs of pupils with SEN is not new. However, there is now much greater emphasis on them taking a lead role in identifying and meeting the needs of pupils with SEN. Further, the Code says that class teachers and form tutors should hold regular meetings with parents, something that previously may have been done by the SENCO. In part, this is intended to emphasise that the SENCO should fulfil a more strategic role.

The Code says that *‘a school should always involve a specialist where a pupil continues to make little or no progress or where they continue to work at levels substantially below those expected of pupils of a similar age despite evidence-based SEN support delivered by appropriately trained staff’*.³²

NASUWT comment

In some respects the requirements of schools are not new. However, the context within which schools operate has changed substantially and this will impact on the work that class and subject teachers, SENCOs and school leaders actually do. Cuts to local authority budgets and other services that support children and young people with SEN mean that schools may not be able to access appropriate external advice and support. Commercial services may be very expensive and it may be difficult to verify the quality of such services. Class and subject teachers are on the

³⁰ Paragraph 6.65, *Special Educational Needs and Disability Code of Practice: 0 to 25 years*, June 2014.

³¹ Paragraph 6.67, *Special Educational Needs and Disability Code of Practice: 0 to 25 years*, June 2014.

³² Department for Education and Department for Health (June 2014) *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*, paragraph 6.59.

frontline and will have to meet pupils' needs even if specialist advice and support is not available.

The reforms highlight the need for high quality SEN-related training and continuing professional development (CPD). Whilst school leaders may recognise the need for such training and CPD, they will have to balance the offer of any SEN-related training or CPD against training and CPD to address other reforms such as reforms to assessment and the curriculum.

Under the previous *Every Child Matters* reforms there was evidence of systematic pressure being placed on schools to take on the role of 'lead professional', a role similar to that of key worker. Cuts to services have intensified the pressure on staff in schools and the NASUWT believes that there is a considerable risk that the SENCO or a teacher will be asked to assume the role of key worker. Schools should resist such requests. School leader members should notify the Union if they come under pressure for somebody in their school to take on the role.

The Code of Practice says that the quality of teaching for pupils with SEN and the progress made by such pupils should be a core part of the school's performance management arrangements.

Whilst the NASUWT considers it appropriate for the achievements of pupils with SEN to be addressed within the performance management process, it is unacceptable to impose objectives on teachers based on crude, data-related progress and attainment targets. The Union has produced extensive advice and guidance on performance management and this can be downloaded from the NASUWT website.³³

³³ www.nasuwt.org.uk/PayPensionsandConditions/England/Pay/PerformanceManagement/index.htm.

Section 5: Funding for SEN and Remuneration of Teachers with Responsibility for Pupils with SEN

Funding for SEN

Funding for pupils with SEN in mainstream schools, academies and free schools consists of three elements:

- the age weighted pupil unit (AWPU) which is the basic per-pupil funding that a school receives;
- additional support funding (ASF) which is a notional amount of £6,000 within the school's main budget to fund provision for children with SEN. However, the amount that a school 'receives' may be higher or lower than this, depending on various criteria including the total number of pupils in a school and a social deprivation index; and
- 'top up' funding for individual pupils with high needs.

This means that schools are expected to contribute the first £6,000 of cost for additional education support by a high-needs pupil before accessing 'top up' funding. However, some schools have not received adequate funds to enable them to fund £6,000 of provision per annum per pupil with additional needs.³⁴

The majority of primary schools receive less than £4,000 AWPU. However, they will not receive top-up funding unless they exceed the notional funding threshold of £10,000 (£4,000 AWPU + £6,000 ASF).³⁵

NASUWT comment

Delegated SEN funds do not follow the child, which means that schools can spend their SEN money as they see fit. This makes it difficult for schools to demonstrate that they do not have sufficient funds to meet pupils' particular needs; for example, schools will spend the SEN budget across all children and young people with SEN. This may make it difficult to map spending to a particular pupil for the purpose of showing that the threshold has been reached. Also, the Code of Practice says that special educational provision specified in a plan can be funded from the school's budget share and schools and colleges can contribute their own funding to a Personal Budget.³⁶ Cuts to local authority services means that schools are under increasing pressure to fund specialist SEN support from their own budgets.

³⁴ IPSEA briefing: School funding reform: SEN Funding after April 2013, May 2013

³⁵ Ibid.

³⁶ Paragraph 9.112, *Special Educational Needs and Disability Code of Practice: 0 to 25 years*, June 2014.

The local authority Local Offer may set out expectations for provision in each local school but this cannot be enforced. The local authority and the school may not have sufficient funds to provide what is needed to enable a child or young person with SEND to access education and achieve their potential.

Schools are responsible for ensuring that they meet the needs of pupils with SEN and it is vital that resources for SEN provision are not diverted away from SEN to address other pressures on the school budget. Schools have a moral responsibility to ensure that they cater for the needs of pupils with SEN. The NASUWT is concerned that some schools will discourage more ‘challenging’ and ‘expensive’ pupils, including pupils with SEN, from applying for admission to the school. This is not only unfair on those children, it is also unfair on other schools locally. The NASUWT should be contacted if there is evidence that a school is employing such strategies.

Payments for teachers with SEN responsibilities

The Code of Practice is very clear that the SENCO should contribute to strategic decisions about the provision of SEN in a school. The Code says that the SENCO should work with the headteacher and governing body to decide the school’s SEN policy and approach to meeting the needs of pupils with SEN. For these reasons, the Code of Practice recommends that the SENCO is a member of the school’s leadership team. This should mean that the SENCO is appointed on the leadership scale. However, if the school does not appoint the SENCO on the leadership scale, the SENCO, at the very least, should receive a Teaching and Learning Responsibility (TLR) payment that reflects the demands of the job and the level of expertise required.

The School Teachers’ Pay and Conditions Document (STPCD) sets out information about SEN pay allowances. *‘The relevant body must award a SEN allowance to a classroom teacher:*

- (a) in any SEN post that requires a mandatory SEN qualification;*
- (b) in a special school;*
- (c) who teaches pupils in one or more designated special classes or units in a school or, in the case of an unattached teacher, in a local authority unit or service;*

(d) in any non-designated setting (including any Pupil Referral Unit (PRU)) that is analogous to a designated special class or unit, where the post:

- (i) involves a substantial element of working directly with children with SEN;*
- (ii) requires the exercise of a teacher's professional skills and judgement in the teaching of children with SEN; and*
- (iii) has a greater level of involvement in the teaching of children with special educational needs than is the normal requirement of teachers throughout the school or unit within the school or, in the case of an unattached teacher, the unit or service.'*³⁷

'Where a SEN allowance is to be paid, the school or relevant body must determine the spot value of the allowance, taking into account the structure of the school's SEN provision and the following factors:

- (a) whether any mandatory qualifications are required for the post;*
- (b) the qualifications or expertise of the teacher relevant to the post; and*
- (c) the relative demands of the post.'*³⁸

*'The school or relevant body must set out in its pay policy the arrangements for rewarding classroom teachers with SEN responsibilities'.*³⁹

NASUWT comment

Schools should follow the advice provided in the joint NASUWT/NUT Model School Pay Policy, using the checklist and associated guidance to ensure that the arrangements for remunerating teachers with SEN responsibilities are appropriate. Teachers should contact the NASUWT if their school does not follow the NASUWT guidance.⁴⁰

³⁷ Paragraph 21.2, *School Teachers' Pay and Conditions Document*, September 2014.

³⁸ Paragraph 21.3, *Ibid.*

³⁹ Paragraph 21.4, *Ibid.*

⁴⁰ www.nasuwt.org.uk/PayPensionsandConditions/England/Pay/PayPolicy/NASUWT_010923.

SECTION 6: Training and Support for Teachers

A teacher newly appointed to the role of SENCO who has not previously been a SENCO for more than 12 months must achieve a National Award for SENCO Co-ordination within three years of taking up post.⁴¹

The Teachers' Standards state that, in order to achieve Qualified Teacher Status (QTS), trainees must *'have a clear understanding of the needs of all pupils, including those with special educational needs'*. This means that initial teacher training (ITT) providers and partner schools must ensure that trainees are given sufficient opportunities to gain this knowledge and understanding.

Similarly, schools must ensure that newly qualified teachers are given appropriate training and support so that they meet the requirements of this standard.

NASUWT comment

It is essential that schools ensure that a SENCO who is undertaking training in order to gain accreditation is given release from work for such training and that the necessary supply cover is arranged. Requiring a SENCO to study in their own time could disadvantage those with family and caring responsibilities and may be discriminatory.

The Code of Practice places great emphasis on class and subject teachers and form tutors identifying, assessing and meeting the needs of most pupils with SEN. Therefore, it is vital that all teachers receive regular, up-to-date training on SEN-related issues. It is also essential that they have easy access to high-quality advice and support. Staff should not be expected to undertake training and development in their own time.

⁴¹ A National Award must be a postgraduate course which is accredited by a recognised higher education provider. The course must be equivalent to at least 60 credits and the learning outcomes established by the National College of Teaching and Leadership.

Further information

DfE (2014) *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.*

NASUWT (July 2014) *NASUWT briefing for school leaders on the special educational needs and disability (SEND) reforms.*

NASUWT (July 2014) *NASUWT briefing for SENCOs on the special educational needs and disability (SEND) reforms.*

NASUWT (July 2014) *NASUWT briefing for class and subject teachers on the special educational needs and disability (SEND) reforms.*

NASUWT website: www.nasuwt.org.uk.

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