


Health and Wellbeing Board 24 th March 2014	
Report of the London Borough of Tower Hamlets	Classification: Unrestricted
Reform of Special Educational Needs (SEN): The Children and Families Bill 2013 & the Draft SEN Code of Practice	

Lead Officer	Robert.McCulloch-Graham ESCW Corporate Director
Contact Officers	David Carroll SEN & Inclusion Lead Principal Educational Psychologist
Executive Key Decision?	No

Executive Summary

This report outlines the changes required in practice and development of new systems because of the reform to Special Educational Needs legislation. The project board overseeing the change programme is consulting with key stakeholders from health education social care the voluntary sector and in particular parents at each stage of development.

There are three distinctive area of development that LA parent representatives and its partners are undertaking.

1. Agreeing Joint Commissioning Arrangements with the CCG through a work plan that looks at integrated commissioning.
2. Defining designing and promoting the Local Offer in partnership in particular with parent representatives
3. Transforming the way services are delivered so that parents' experiences are qualitatively different and specialist teams across all agencies and schools deliver assessments and interventions through the SEN system which is person centred and outcomes focussed.

Recommendations:

The Health and Wellbeing Board is recommended to:

1. Support the work of the project board and the plans to ensure that the Local Offer is underpinned by local authority and clinical commissioning group agreeing on local provision in line with the priorities of this Health & Wellbeing

Board.

2. Support the implementation of the SEN Reforms by promoting the greater responsibilities on non-education services to participate.
3. Support the Joint Commissioning Plans between the Council and the CCG to secure and review the wide range of provision made across all agencies to meet the needs of children and young people with SEN.

1. REASONS FOR THE DECISIONS

- 1.1 The new statutory SEN framework which come into force in September 2014 includes a duty on local Health and Well Being Boards to have oversight of arrangements to implement changes.

2. ALTERNATIVE OPTIONS

2.1

3. DETAILS OF REPORT

- 3.1 The scope of the Bill
The Bill covers a wide range of areas listed below; however the vast majority of the Bill's clauses refer to SEN changes and developments:

- Adoption
- Family Justice
- SEN
- Childminder Agencies
- Children's Commissioner
- Statutory Rights to Leave & Pay
- Time off Work
- Rights to request Flexible Working

- 3.2 This paper sets out to provide the board with:

- An outline of the key SEN changes to be introduced by the Children and Families Bill, the new SEN code of Practice and the timescales for introducing phased changes
- A broad outline of key areas for development that the LA is making in partnership with other stakeholders
- An assessment of what might be the implications for the LA as it implements changes
- A set of recommendations showing how the stage of developments might be taken forward

- 3.3 What's different to the present SEN system?

The approach; the child or young person is at the centre of the assessment of need and the Single Plan. All professionals working together carry out their role in a way which reflects the learning and culture of person planning approaches. Parents and carers have an active partnership role in identifying, developing and evaluating the support plan. Parents can have an increased choice through access to a personal budget. There is transparency and openness in regard to all parts of the process. Plans are outcome focussed with clear and accountable resource allocations.

- 3.4 To implement this different way of working and relating to children young people (CYP) and their families it will require a change in culture and behaviour of staff both within the Local Authority and amongst key partners especially in health. They will need to relate differently to services users, sharing power and information with them. Staff will need to develop and use new skills to engage with families so that the Single Plan is owned by the service user.
- 3.5 **The Transformation Journey**
In March 2011 the Government published its Green Paper Support and Aspiration - A new approach to special educational needs and disability which set out a vision for children with SEN. The principles outlined in the Green Paper have been reiterated with every subsequent publication.
- 3.6 In September 2011, 31 LAs combined with their local PCTs to work together on 20 SEN Pathfinder projects funded by the DFE. Their common objectives have been to deliver a new system that adheres to the Green Paper's vision.
- 3.7 These projects were originally expected to finish in April 2013 and provide direction for future legislation. All projects have been extended until August 2014 with 10 selected as Champions to support developments with other LAs. The SEN Champions programme will now extend into 2015.
- 3.8 September 2012 draft legislation on reform of provision for children and young people with SEN was published. It confirmed the intention for changes in seven key areas;
- Streamlined assessment process, which integrates education, health and care services, and involves children and young people and their parents.
 - New 0-25 Education, Health and Care Plan, replacing Statements and Learning Difficulty Assessments, which reflects the child or young person's aspirations for the future, as well as current needs.
 - New requirement for LA, health and care services to commission services jointly re meeting the needs of CYP with SEN & disabilities.
 - LAs to publish a clear, transparent 'local offer' of services for all CYP with additional needs, so parents can understand what is available.
 - New statutory protections for young people aged 16-25 in FE and a stronger focus on preparing for adulthood.
 - Offer of a personal budget for families and young people with a Plan, extending choice and control over their support.

- Academies, Free Schools, Further Education and Sixth Form colleges to have the same SEN duties as maintained schools
- 3.9 December 2012 Education Select Committee published its report 'Education Committee - Sixth Report Pre-legislative scrutiny: Special Educational Needs.' Most prominent of the committees conclusions were that the forthcoming regulations commit Health providers to specific timetables when conducting SEN assessments and that responsibilities for Health and Local Authorities in providing certain therapy services are substantially clarified. They also called for all current protections afforded by a Statement of SEN to be maintained in the new legislation and for a more coherent means of appeal/redress for parents dealing with a variety of agencies in Health and Education.
- 3.10 Early 2013 the revised Bill was introduced into Parliament. In October the DFE published its consultation documents on a draft for the new 0 to 25 SEN Code of Practice which will become statutory guidance from September 2014. They also consulted on associated draft regulations. The consultation closed 9th December 2013. The timetable for the next stages is in spring 2014 the Bill will receive Royal Assent (subject to Parliamentary process) and in September 2014 the reforms go live.
- 3.11 The main elements of the draft SEN Code of Practice
The draft Code has seven chapters some of which build upon the present arrangements and practice albeit with the expectation of changes in how the process is delivered and experienced by families and introducing new responsibilities and requirements. The definitions are clear this will be a statutory process including Education/Health/Care assessments but child must be shown to firstly have Special Educational Needs. The definition of SEN remains exactly as in the current Code of Practice. It defines disability as when a child or person has a physical or mental impairment which has a substantial and long term adverse effect on their ability to carry out normal day to day activities. So a child may be disabled and not have SEN, a child may have SEN and not be disabled and a child with significant care needs (requiring high levels of intervention) may or may not have SEN.
- 3.12 The new system
The Code sets out how the new systems must have children & young people to be at the heart of the system. There must be close co-operation between all of the services that support children & families. The system must be built on the early identification of children and young people with SEN. It must be clear & easy to understand and include Local Offers of education, health & social care services. For the most complex needs, a co-ordinated assessment and 0-25 EHC Plan will be necessary. The EHC Plan must have a clear focus on outcomes anticipating the support the child or young person may need for a clear pathway through education to adulthood, paid employment and independent living. The system must increase choice, opportunity & control for parents and young people and the offer of a personal budget for those with an EHC plan.
- 3.13 Parental Involvement

The Code expects parents children and young people to be more actively engaged in both the system and how assessments and decisions take place that affect them. Local Authorities will be given some additional duties and expected to redesign if necessary their systems so that parental engagement is at the heart of how SEN delivers services.

3.14 Some of the specific ways in which Local Authorities must ensure parental involvements have already been identified these include:

- Planning and reviewing the Local Offer
- Reviewing special educational and social care provision
- Drawing up individual EHC plans, in reviews and reassessments
- Person centred approaches adopted universally
- Tailoring support and personal budgets around the person's plan

3.15 The Local Offer

The SEN Bill and Code introduce a new concept of the Local Offer. Local authorities must publish, in one place, information about provision they expect to be available in their area for children and young people from 0-25 who have SEN. The Local Offer must be underpinned by local authorities and clinical commissioning groups agreeing on local provision & the priorities of the local Health & Wellbeing boards. Children, young people & families should be involved by local authorities in:

- Planning the content
- Deciding how to publish the local offer
- Providing feedback on services in the local offer

The Local Offer should have 2 key purposes:

1. To provide clear, comprehensive information about support and opportunities available
2. To make provision more responsive to local needs and aspirations by directly involving children & YP with SEN and parents & carers in its development

The Local Offer should be constructed so that it is engaging, accessible, transparent and comprehensive. It must include:

- Education, health and care provision for children & YP with SEN,
- Arrangements for identifying and assessing children & YP with SEN.
- Other education provision (outside schools & colleges)
- Training provision including apprenticeships
- Arrangements for travel to and from schools, post 16 provision and early years providers
- Support for children and young people moving between phases
- Supported preparation for adulthood including preparation for employment, independent living & community participation

- Information, advice & support from the LA about support for families with children with SEN
- Information about making complaints and being supported in conflict resolution

3.16 Settings Early Years/Schools/Colleges

This Code builds on recent changes especially in relation to the Ofsted inspection framework for schools and the new funding arrangements for schools which were implemented in April 2013. Improving outcomes for all and setting high expectations for children and young people with SEN and all teachers are teachers of children with SEN are two cornerstones upon which good practice is based in schools. This section reiterates that the majority of children with SEN should have the choice of being included in mainstream education and the majority will be seen as having Additional Educational Needs (AEN) and be supported from within the school's own delegated resources. As is the case now a minority will have a specialist assessment and be provided through an Education Health & Care Plan.

3.17 Assessments that lead to Education Health & Care Plans

Statutory assessments of education, health and care needs will take place for those few children and young people with complex SEN. Most (but not all) will then lead to an Education, Health & Care Plan (EHC). Timescales for the whole process will be reduced to a maximum of 20 working weeks (currently it is 26 weeks). There are time scales for elements throughout the process. There are no requirements for national reporting on separate aspects but if not met parents and carers have the right to complain. Therefore our systems must be able to track progress in the same manner that operates for the present SEN IT work flow.

3.18 The Code proposes giving the right to professionals from outside of education in partnership with parents to request an assessment. It also intends to allow young adults who are competent to make such requests themselves too. However the criteria the LA must consider when deciding whether an assessment is necessary is similar to the present Code with the addition of considering the circumstances for a young person of 18 years + and whether staying in education would help them make a successful transition into adult life.

3.19 The Code proposes that LA must seek advice for an EHC assessment from the same range of services as currently however it puts greater responsibilities on non-education services to participate.

3.20 For young people aged 16-25 the Code states that they may request an assessment. It acknowledges that some may not need this as it is not in their interest to continue their education. It also makes clear that some young adults with complex needs which are primarily health or social care may not need an EHC assessment and are best provided by continuing Adult Health or Social Care provision.

- 3.21 Reference is also made to transport and personal budgets. Transport should only be included in the EHC plan in those exceptional cases where the child has specific transport needs as LAs will have transport policies applying to all children with SEN and should not be used to limit parental choice of school. Transport costs may be provided as part of a personalised budget.
- 3.22 A personal budget is the amount of money identified by each commissioner to deliver all or some of the provisions set out in the EHC plan covering health, care and educational provision. Parents & YP can request a personal budget once an EHC plan is established. Personal budgets may include funding from health, social care and education sources either pooled generally or case specific.
- 3.23 A personal social care budget:
This refers to the budget that will be made available if it is clear that a young person or child is assessed as needing additional and individual support at home and when out and about in the local and wider community.
- 3.24 A personal health budget:
This refers to the budget that will be made available should a young person or child have complex, long-term and/or a life-limiting condition/s. A personal health budget may also be made available to help with equipment costs or other health services. Children, who are supported through 'Continuing Care' funding, will have the right to request a personal health budget from April 2014. From August 2013, the NHS has the legal power to give direct payments.
- 3.25 A personal SEN budget:
This is a sum of money made available by a local authority because it is clear that without this additional (*top-up*) funding it will not be possible to meet the child's learning support needs. The school/college involved will already have funding for learning support across the school; only pupils or students with more complex learning support needs are likely to need a personal SEN budget. In some circumstances the head teacher /principal and school or college/learning provider may choose to offer some funding towards a personal SEN budget; this will always be the decision of the head teacher. Personal budgets must not be used to fund a school place.
- 3.26 Resolving Disputes
The emphasis is on early resolution. The LA & CCG are expected to work together to resolve disputes. At the moment when this fails parents or young people can appeal to SEND Tribunals. In future there is a possibility that CYP or their families could appeal against **health offers or provisions to SEND Tribunals**. It will also be mandatory for the LA to make an offer of independent mediation which it must commission from Disagreement resolution services (DRS). The LA must make sure the service and the way it works available to parents, operatives are suitably qualified and aware of the SEN process.

3.24 At present the national frameworks mean Health Education and Social Care appeals systems are separate. Where they relate to SEN they are likely to be aligned so that wherever possible they are simpler and clearer for families.

3.26 Joint Commissioning

Local governance arrangements **must** be established which ensure clear ownership and accountability across SEN commissioning. They **must** be robust enough to ensure that all partners are clear about who is responsible for delivering what, who the decision makers are in education, health and social care, and how partners will hold each other to account in the event of a dispute. It is important for elected members and chief executives across education, health and social care to demonstrate leadership for integrated working. Arrangements for children and young people with SEN should be specifically accountable to councillors and senior commissioners. It should be clear who can make decisions both operationally (e.g. deciding what provision should be put in an EHC plan) and strategically (e.g. what provision will be commissioned locally, exercising statutory duties).

3.27 While the details of which services should be commissioned should be agreed locally, the local authority and its partner CCGs **must** make arrangements for agreeing key issues outline above. These include;

The range of provision reasonably required by local children and young people with SEN;

- How provision will be secured and by whom; what advice and information is to be provided about provision and by whom and to whom it is to be provided;
- How complaints about education, health and social care provision can be made and are dealt with; and
- Procedures for ensuring that disputes between local authorities and CCGs are resolved as quickly as possible.
- Partners should also consider how they will respond to children and young people who need to access services swiftly.

3.28 Joint commissioning arrangements **must** include all education, health and care provision which has been assessed as being needed to support children and young people with SEN in the area. The services covered will include specialist support and therapies, such as clinical treatments and delivery of medications, speech and language therapy, occupational therapy, physiotherapy, a range of nursing support, specialist equipment, wheelchairs and continence supplies. They could include highly specialist services needed by only a small number of children which are commissioned centrally by NHS England (for example augmentative and alternative communication systems, or provision for young offenders in the secure estate). They can also include provision delivered by the private or voluntary sectors: voluntary organisations often offer services which are more responsive and locally acceptable to the people who use them. CCGs must work with their local authority partners to

ensure that the right services are in place locally to meet the needs of the population. These services will be included in the local offer.

- 3.29 For social care, services will include any support assessed as being reasonably required by the learning difficulties and disabilities which result in the child or young person having special educational needs. This can include any services assessed under an early help assessment and/ or under section 17 or section 47 of the Children Act 1989 or assessments under adult care provisions. It can also include services for parents and carers which will support the child's outcomes such as mental health support.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 The SEN Reforms will have resource implications, much of which will involve reprioritising available resources. The Department for Education has, however, acknowledged that there will be implementation costs and to assist with those costs, they have provided a one-off grant in 2014/14 of £0.579m, which can be used to recognise the programmes of change underway in SEN or to best meet local need.
- 4.2 The project board will identify any on-going implications of reforms. Most of the direct costs of providing support for pupils with Special Educational Needs are funded from the Schools Budget (Dedicated Schools Grant). The new ways of working would be factored into budget and service planning cycles for the Schools Budget and Authority's General Fund budget (ie as part of the Medium Term Financial Plan) for future years.

5. LEGAL COMMENTS

- 5.1 The Children and Families Bill 2013 ("the Bill") (which will become the Children and Families Act 2014) will replace the existing SEN legislation. A new SEN Code of Practice together with a number of statutory Regulations will also be introduced to support the legislative changes. The report outlines the changes required in practice and development of new systems in order to implement the changes, including joint commissioning. Though it should be noted that many of the provisions replicate the current system, the Bill is due to receive Royal Assent (in Spring) and implementation of the proposed changes will commence from September 2014 with a transitional programme of implementation dates. As the Bill may still be altered the numbering of sections referred to below may change.
- 5.2 Part 3 of the Bill introduces a new single system from birth to 25 for all children and young people with SEN and their families. The new arrangements combine the current separate arrangements for children in schools and young people in post-16 institutions and training up to the age of 25 and provides for an integrated Education, Health and Care (EHC) Plan to replace the statement of Special Educational Needs (SEN). The Bill also

removes the separate treatment of local authority maintained schools and academies under SEN legislation.

- 5.3 The Bill retains the central role of the local authority in identifying, assessing, and securing the educational provision for children and young people with SEN. Under section 19 the local authority must follow four guiding principles.

These are that the local authority must:

- Listen to the views, wishes and feelings of children, young people and parents;
- Ensure children, young people and parents participate in decision-making;
- Provide the necessary information and support to help children, young people and their parents participate in those decisions; and
- Support children, young people and parents to help children and young people can achieve the best possible educational and other outcomes preparing them effectively for adulthood.

- 5.4 The Bill introduces a new requirement for local authorities and health services to commission education, health and social care services jointly. This includes arrangements for considering and agreeing what advice and information is to be provided about education, health and care provision, and by whom, to whom and how such advice and information is to be provided. Clinical Commissioning Groups (CCGs) must comply with the health service requirements in EHC plans.

- 5.5 The current definitions of SEN and special educational provision are broadly retained and extended to include young persons in education or training under the age of 25 (s.20). A child or young person has special educational needs if he or she has a learning difficulty or disability which calls for special educational provision to be made for him or her. Under what is currently section 21 of the Bill health and social care provision which educates or trains a child or young person is to be treated as special educational provision. Children with disabilities are not included automatically in the definition of special educational needs although they may also have SEN (see s.37).

- 5.6 A local authority must exercise its functions with a view to securing that it identifies all children and young people in its area who have or may have SEN or a disability (s.22), and is “responsible” for them when the authority has identified them or they have been brought to the authority’s attention by a health service body if below compulsory school age (s.23). A local authority is responsible for all children or young person who it has identified as having SEN, or have been brought to the local authority’s attention as may be having special educational needs (s.24).

- 5.7 The local authority must work with health and social care services to ensure ‘the integration of educational provision and training provision’ where this promotes the well-being of children with SEN or a disability and improves the quality of special educational provision for them (s.25). The local authority and its partner commissioning bodies (the local CCGs and where relevant the NHS Commissioning Board) must make joint commissioning arrangements about education, health and care provision to be secured for children and young people with special educational needs and those who have a disability (s.26).
- 5.8 Joint Commissioning Arrangements ‘must include arrangements for considering and agreeing’ (although there is no duty to agree) EHC provision ‘reasonably required’ by the learning difficulties and disabilities of children and young people having SEN. Joint Commissioning Arrangements must include the EHC provision for children and young people with disabilities in the local authority area who do not have special educational needs. The arrangements must include what, and by whom, EHC provision is to be secured, what advice and information is to be provided and by whom, how complaints are to be dealt with, and how disputes between the commissioning partners are to be resolved. The parties to the commissioning arrangements must have regard to the arrangements and keep the arrangements under review. The local authority and NHS commissioning bodies must have regard to the Joint Strategic Needs Analysis prepared by the local authority and the Health and Wellbeing Strategy agreed by the Health and Wellbeing Board.
- 5.9 A local authority must keep under review the local special educational provision and consider the extent that it is meeting the needs of the children and young people for whom it is responsible (s.27). The local authority must work with schools and other education providers to keep this provision under review. In carrying out these and other functions, the local authority must co-operate with a range of local partners including maintained schools and academies, further education bodies, shire districts (for County Councils), and CCGs, and in turn, they must co-operate with the local authority in the exercise of the local authority’s functions (s.28). Local authorities must ensure their officers co-operate with each other (including those who work in children’s social care). Similarly, each educational institution must cooperate with the local authority in the exercise of the educational institution’s functions (s.29).
- 5.10 A local authority must publish a “local offer” of services it expects to be available for children and young people with special educational needs (s.30). The details of what must be included as part of the local offer is explained in the body of the report. The new provisions require greater co-operation between local authorities and a wide range of partners, including schools, Academies, colleges, other local authorities and services responsible for providing health and social care.
- 5.11 The Bill requires local authorities to involve parents, children and young people in reviewing and developing provision for those with SEN; and introduces a more streamlined assessment process for those with more

severe and complex needs, integrating education, health and care services and involving children, young people and their parents.

- 5.12 The provisions on EHC plans are based on the current legislation for statements of special educational needs (s.33) including the assumption that a child with a Plan is educated in a mainstream school. If following an EHC assessment (s.36), the local authority decides to secure EHC provision using a plan (s.37 onwards) then the local authority must secure provision in a mainstream institution 'unless it is incompatible with (a) the wishes of the children's parent or the young person, or (b) the provision of efficient education for others'. In determining whether mainstream education for a child with an EHC Plan is 'incompatible' with the provision of efficient education, the local authority will need to demonstrate that 'no reasonable steps' can be taken 'to prevent the incompatibility'. An EHC needs assessment may be requested by a child's parents, a young person or an educational institution (s.36). The local authority may carry out an EHC needs assessment when it is responsible for a child who has, or may have, SEN under s.24. Details of the specific requirements are set out in the report. If required by the EHC needs assessment, the LA must secure that an EHC Plan is prepared and subsequently maintained (s.37). As under the current provisions, a claim for judicial review will lie if this duty is not complied with.
- 5.13 Section 49 sets out the provisions on personal budgets and direct payments. The local authority must prepare a 'personal budget' if requested by a child's parents or young person. The personal budget is the amount specified or proposed to be specified in the EHC plan with the money being paid to the parents or young person. Provision is made for 'direct payments' where the local authority pays any fees etc. with the consent of the parents or young person. Details of how personal budgets will operate will be set out in Regulations.
- 5.14 The new provisions promote mediation to resolve disagreements. As under the current regime, parents may appeal to the First-tier Tribunal against certain matters including decision not to do an EHC needs assessment, a decision not to secure an EHC plan following an assessment, and once a plan is finalised about the content of the plan, re-assessment, amendment and ceasing (s.51). Regulations may set out other grounds of appeal to the Tribunal. It is a criminal offence not to comply with a decision of the Tribunal. A right to mediation is provided in s.52. Although, participation in mediation will not be a requirement of appealing to the Tribunal, the local authority must inform the parent or young person of their right to mediation, and there are different routes for health care mediation (s.53) and educational and social care mediation (s.54). If mediation is sought on health care issues, the local authority must be informed about the health care provision the parent wishes to see in the plan. The rules about how mediation operates are found in s.56 and the mediation will be conducted by a mediation adviser (s.55).
- 5.15 The local authority must put in place arrangements for avoiding or resolving disputes between the local authority or school or other educational institution

and a child's parents or young person with an EHC plan (s.57). An independent person must be appointed to resolve the dispute. Health service bodies are included in the dispute resolution procedure.

- 5.16 Details of the new SEN Code of Practice (currently in draft) are set out in the report. In carrying out its functions under the new Act the Local Authority must have regard to the Code.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1. By implementing fully the SEN framework the Council will be ensuring that a particular vulnerable group of children and young adults have their needs identified and addressed.

6.2.

7. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 7.1 The report has no direct impact on environmental factors. However the Council's policy of providing a range of appropriate provision locally to meet the complex needs of children with SEN means few young people transported regularly out of the borough.

8. RISK MANAGEMENT IMPLICATIONS

- 8.1. The project board overseeing the implementation of the SEN reforms has identified risks and the actions needed to ensure that they are addressed.

9. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 9.1 The proposals in the report do not contribute to the reduction of crime and disorder. However the widening of the duties under the new SEN framework mean that the Council will be responsible for monitoring the delivery of appropriate education health and care provision of those in custody or secure accommodation if they have EHC Plans.

10. EFFICIENCY STATEMENT

- 10.1 [Reports concerned with proposed expenditure, reviewing or changing service delivery or the use of resources must incorporate an Efficiency Statement. Please refer to the relevant section of the report writing guide.]

Appendices and Background Documents

Appendices

- None

Background Documents

If your report is a decision making report, please list any background documents not already in the public domain including officer contact information.

- None