



SPECIAL EDUCATIONAL NEEDS AND DISABILITY
guidance for teachers

Contents

Introduction	4
Section 1	
Definitions and Key Legislation	7
Section 2	
Key Principles and Ways of Working	11
Section 3	
SEND Processes	17
Section 4	
Roles and Responsibilities	24
Section 5	
Funding for SEN and remuneration of teachers with responsibility for pupils with SEN	30
Section 6	
Training and Support for Teachers	33
Further Information	34

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 and/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 that they can 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 1 September 2014 until 31 March 2018

The Code of Practice came into force on 1 September 2014. However, transitional arrangements are also in place. 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 and disability assessment (LDA)) will continue to apply.

By 1 April 2018, local authorities must have transferred all children and young people with statements of SEN to the new SEND system.

A young person who receives support as a result of an LDA and who will continue in education or training beyond 1 September 2016 must have an Education, Health and Care (EHC) plan before that date.

Children and young people who move from primary to secondary, or secondary to post-16 provision, must be assessed for an EHC plan before they transfer.

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.

Since 1 September 2014, any child or young person who is newly assessed must be assessed under the new arrangements.

Local authorities are required to develop and publish a local transition plan. Local authorities should have consulted with parents, young people and relevant professionals to develop the plan. Local authorities should have published the first version of their transition plan by 1 September 2014. They should publish a revised transition plan and progress against the transition at least annually.

Local transition plans should include:

- details of the groups that were consulted in developing the plan;
- the total number of children and young people with statements of SEN or LDAs that the local authority plans to transfer to the new system in each year of the transition period;
- the order in which children and young people with statements of SEN will be transferred to the new system;
- how and when parents, young people and their educational institution will be made aware of the arrangements for a child or young person's transfer;
- the arrangements for transfer of young people with an LDA;
- sources of impartial SEN information and support;
- who parents and young people can contact if they have queries or concerns about the transition system or process.

NASUWT comment

Local authorities have the scope to determine how quickly children and young people with statements of SEN or LDAs are moved to the new system. There are concerns that some local authorities are seeking to move to the new system very quickly, creating significant workload burdens for staff in schools.

The NASUWT has also received reports that some local authorities are asking schools to undertake much of the organisation and administration associated with transition reviews. Whilst schools have an important role to play in facilitating transition review meetings, school staff should not be leading these meetings. Sole responsibility for the transfer process rests with the local authority.

Teachers and school leaders should contact the NASUWT if they have concerns that their local authority is creating workload burdens for, or placing unreasonable expectations on, staff within the school.

Section 1: Definitions and Key Legislation

Definition of special educational needs

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 categories 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 relevant early years providers;
2. for children under two, educational provision of any kind.

Broad areas of need

The Code of Practice identifies four broad areas of need:²

- **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),

¹ Children and Families Act 2014, Part 3, Section 20.

² *Special Educational Needs and Disability Code of Practice: 0 to 25 years*, January 2015, Paragraphs 6.28 to 6.35.

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.³

‘Long term’ is defined as ‘a year or more’ and ‘substantial’ is defined as ‘more than minor and trivial’. The definition of disability 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 2010 places legal duties on schools, early years providers, post-16 institutions, local authorities and others.⁴ They:

- must not harass, victimise or discriminate, directly or indirectly, against disabled children and young people;
- must not discriminate for a reason arising in consequence of a child or young person’s disability;
- must make reasonable adjustments to ensure that disabled children and young people are not at a substantial disadvantage compared to their peers.

³ Equality Act 2010.

⁴ Equality Act 2010, Section 88, Schedule 10.

The duty to make reasonable adjustments is anticipatory. This 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.

Public bodies and bodies that carry out public functions are covered by the public sector equality duty (PSED).⁵ The general duty requires providers to have due regard, when carrying out their functions, to the need to:

- eliminate discrimination;
- advance equality of opportunity; and
- foster good relations between disabled and non-disabled children and young people.

Public bodies, including maintained schools, academies, free schools, further education institutions and maintained nurseries, must also comply with specific duties under the PSED. They must:

- publish information to demonstrate that they are complying with the general duty; and
- prepare and publish objectives to achieve the core aims of the general duty. These objectives must be specific and measurable.

Accessibility plan and publishing information

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:

- the curriculum;
- the physical environment; and
- information.

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.

School governing bodies and proprietors must also publish information about the arrangements for the admission of disabled children, the steps taken to prevent disabled children from being

⁵ Equality Act 2010, Section 149.

treated less favourably than others, and the facilities provided to assist access of disabled children.

Race equality and SEN

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 (EAL). A school or college that fails to make an appropriate distinction between SEN and EAL could find itself subject to a claim of discrimination under relevant provisions of the Equality Act.

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 must 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-3.⁶

NASUWT comment

The SEN reforms were introduced at the same time as many other education reforms. The speed of reforms and the fact that the Code of Practice was only published a few weeks before it came into force has meant that schools have not been able to plan properly for the changes. Schools should plan to review and revise policies and procedures relating to SEN, disability and medical conditions in a strategic way so that SEN-related matters are addressed through the school improvement plan, and policies, procedures, support and training as appropriate.

⁶ Department for Education (September 2014), *Supporting pupils at school with medical conditions: Statutory guidance for governing bodies on maintained schools and proprietors of academies in England*.

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.⁷

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;⁸
- there is a change in their circumstances;⁹
- 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 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.¹⁰

⁷ *Special Educational Needs and Disability Code of Practice*, Paragraph 1.26.

⁸ The young person, or the parent, the local authority and the head of the special school/institution must agree to this.

⁹ Again, the young person or parent, the local authority and head of the special school/institution must agree to this.

¹⁰ *Special Educational Needs and Disability Code of Practice*, Paragraph 1.1.

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.¹¹

Local authorities and clinical commissioning groups (CCGs) must make joint commissioning arrangements for EHC provision for children and young people with SEN or disabilities.¹²

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). The school's governing body 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.¹³

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 cooperate 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

¹¹ Children and Families Act 2014, Section 25.

¹² Children and Families Act 2014, Section 26.

¹³ *Special Educational Needs and Disability Code of Practice*, Paragraph 3.66.

be available for children and young people with SEND in maintained schools, including academies and free schools, pupil referral units (PRUs) 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. Local authorities must involve parents, children and young people in developing and reviewing the Local Offer. The must also co-operate with those providing services. Further, the Local Offer should be clear about how decisions are made and who is accountable and responsible for those decisions.

The Local Offer must be 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 on their school's websites information about their policy for pupils with SEN.¹⁴ This information should be updated annually. 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 kinds of SEN that are provided for;
- ii. the name and contact details of the SENCO (mainstream schools);
- iii. the school's policies for identifying children and young people with SEN and assessing their needs (mainstream schools);
- 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;

¹⁴ Special Educational Needs and Disability Regulations 2014.

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

Personal Budgets

A Personal Budget is the amount of money identified by the local authority to deliver provision set out in the EHC plan where the parent or young person is involved in securing that provision. A Personal Budget can include funding for special educational, health and social care provision.

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. Local authorities must consider each request for a Personal Budget on its merits. They must prepare a Personal Budget unless the sum is part of a larger amount and disaggregation of the funds would have an adverse impact on services provided or arranged by the local authority or other EHC plan holders, or unless it would not be an efficient use of the local authority's resources.

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; or
- 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 choose to contribute their own funding to a Personal Budget.¹⁵

Local authorities must provide information on Personal Budgets as part of the Local Offer. This should include the local policy for Personal Budgets that describes the services across education,

¹⁵ *Special Educational Needs and Disability Code of Practice*, Paragraph 9.112.

health and social care that are covered by Personal Budgets. It should explain how funding will be made available and provide a clear and simple explanation of the eligibility criteria and decision-making processes that underpin the eligibility criteria.

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. Teachers 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 for 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 examples 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 with their child in the classroom. They may want to direct how that person works with their child. This has the potential to undermine 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.'*¹⁶

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 *'high quality teaching targeted at [the pupil's] areas of weakness.'*¹⁷ Where weakness continues to be less than expected, *'the class or subject teacher, working with the SENCO, should assess whether the child has SEN.'*¹⁸

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.'*¹⁹ 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 education provision in place. Class and subject teachers have a central role to play in all four stages.

¹⁶ *Special Educational Needs and Disability Code of Practice*, Paragraph 6.15.

¹⁷ *Special Educational Needs and Disability Code of Practice*, Paragraph 6.19.

¹⁸ *Ibid.*

¹⁹ *Special Educational Needs and Disability Code of Practice*, Paragraph 6.27.

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 a school should consider involving specialists from within or outside the school.²⁰ Specialists may advise on early identification of SEN and effective support and interventions. The Code of Practice says that schools *'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 receiving evidence-based SEN support delivered by appropriately trained staff'*.²¹

Education, Health and Care plans

Where the school has taken relevant action to identify, assess and the 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.^{22,23}

²⁰ *Special Educational Needs and Disability Code of Practice*, Paragraph 6.58.

²¹ *Special Educational Needs and Disability Code of Practice*, Paragraph 6.59.

²² *Special Educational Needs and Disability Code of Practice*, Paragraph 9.11.

²³ The local authority does not need to consider a request if it has undertaken an EHC assessment within the previous six 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 views, 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.²⁴

Unless there are specific exemptions, the whole process of EHC needs assessment and EHC plan development should take no more than 20 weeks.²⁵

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;

²⁴ *Special Educational Needs and Disability Code of Practice*, Paragraph 9.30.

²⁵ *Special Educational Needs and Disability Code of Practice*, Paragraph 9.40.

- 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;
- where there is a Personal Budget, details of how the budget will support particular outcomes and 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 there would be incompatible with the efficient education of others, or the efficient use of resources.²⁶

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.

²⁶ *Special Educational Needs and Disability Code of Practice*, Paragraph 9.79.

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 in 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’*.²⁷ 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

²⁷ *Special Educational Needs and Disability Code of Practice*, Paragraph 6.5.

subject teachers are required to provide such support. The 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*'.²⁸ 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 teachers, school leaders and NASUWT Representatives contact the NASUWT if they have evidence of such problems occurring in their schools.

²⁸ *Special Educational Needs and Disability Code of Practice*, Paragraph 6.65.

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.²⁹

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 that it 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, school leaders should regularly review expertise and resources used

²⁹ *Special Educational Needs and Disability Code of Practice*, Paragraph 6.3.

to address SEN and consider how these can be used to improve the quality of whole-school provision.³⁰ 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 meet 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 a 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.³¹

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.

³⁰ *Special Educational Needs and Disability Code of Practice*, Paragraph 6.3.

³¹ *Special Educational Needs and Disability Code of Practice*, Paragraph 6.91.

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.³²

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 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.³³

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 Education Needs Co-ordination within three years of appointment.³⁴

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

³² *Special Educational Needs and Disability Code of Practice*, Paragraph 6.97.

³³ 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.

³⁴ 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’.³⁵

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 should include providing the SENCO with sufficient administrative support and time away from teaching to enable them to fulfil their responsibilities in a similar way to their important strategic roles within a school.’*³⁶

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 and form tutors 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.

³⁵ *Special Educational Needs and Disability Code of Practice*, Paragraph 6.87.

³⁶ *Special Educational Needs and Disability Code of Practice*, Paragraph 6.91.

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.³⁷ 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.’*³⁸

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’.*³⁹

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 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

³⁷ *Special Educational Needs and Disability Code of Practice*, Paragraph 6.65.

³⁸ *Special Educational Needs and Disability Code of Practice*, Paragraph 6.67.

³⁹ *Special Educational Needs and Disability Code of Practice*, Paragraph 6.59.

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. NASUWT Representatives and teacher and school-leader members should notify the Union if they come under pressure 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.⁴⁰

⁴⁰ 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. The amount of money in this budget depends on a funding formula. The amount that a school 'receives' will depend 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.

Most pupils with SEN require SEN provision that comes to less than £6,000.

Schools are expected to contribute the first £6,000 of cost for additional education support before accessing 'top up' funding.

Some schools have not received adequate funds to enable them to fund £6,000 of provision per annum per pupil with additional needs.⁴¹

The AWPU is assumed to be £4,000. Primary aged pupils attract less money than secondary aged pupils and the majority of primary schools receive less than £4,000 AWPU. However, primary schools will not receive top-up funding unless they exceed the notional funding threshold of £10,000 (£4,000 AWPU + £6,000 ASF).⁴²

NASUWT comment

Delegated SEN funds do not follow the child, which means that schools can spend their SEN money as they see fit. Also, schools will spend the SEN budget across all children and young people with SEN. This can make it difficult to map spending to a particular pupil for the purpose of showing that the threshold has been reached.

⁴¹ IPSEA briefing: School funding reform: SEN Funding after April 2013, May 2013

⁴² Ibid.

The Code of Practice says that special educational provision specified in an EHC plan can be funded from the school's budget share and schools and colleges can contribute their own funding to a Personal Budget.⁴³ Cuts to local authority services mean that schools are under increasing pressure to fund specialist SEN support from their own budgets.

The 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, but it is also unfair on other schools locally. Teachers and school leaders should contact the NASUWT if there is evidence that a school is employing such strategies.

Payments for teachers with SEN responsibilities

The SEND 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.

⁴³ *Special Educational Needs and Disability Code of Practice*, Paragraph 9.112.

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.⁴⁴*

'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.⁴⁵*

'The school or relevant body must set out in its pay policy the arrangements for rewarding classroom teachers with SEN responsibilities'.⁴⁶

NASUWT comment

Schools should follow the advice provided in the NASUWT 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.⁴⁷

⁴⁴ School Teachers' Pay and Conditions Document, Paragraph 21.2.

⁴⁵ School Teachers' Pay and Conditions Document, Paragraph 21.3.

⁴⁶ School Teachers' Pay and Conditions Document, Paragraph 21.4.

⁴⁷ 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 the post.⁴⁸

The Teachers' Standards state that, in order to achieve Qualified Teacher Status, trainees must *'have a clear understanding of the needs of all pupils, including those with special educational needs'*.⁴⁹ 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.

⁴⁸ 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.

⁴⁹ *Teachers' Standards: Effective from 1 September 2012*. Standard 5, point 4.

Further information

Department for Education (January 2015), *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.*

Department for Education (March 2015), *Transition to the New 0 to 25 Special Educational Needs and Disability System: Advice for local authorities and their partners.*

Department for Education (February 2015), *Factsheet for schools on the new special educational needs and disability reforms.*

NASUWT (October 2016) *NASUWT briefing for school leaders on the special educational needs and disability (SEND) reforms.*

NASUWT (October 2016) *NASUWT briefing for SENCOs on the special educational needs and disability (SEND) reforms.*

NASUWT (October 2016) *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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