

SEND Update newsletter: October 2014

Introduction:

At the time of writing, the SEN and disability provisions contained within the Children and Families Act 2014 have been in effect for seven weeks. We know how incredibly hard local authorities and their partners across education, health and social care have been working to prepare to deliver the reforms. It is still very early days, and we do not underestimate the challenge for local authorities and their partners. And yet, even at this early stage, there is a good deal of good practice to celebrate.

A lot of information about the reforms has been published recently.

This monthly update is intended to:

- Draw together some of the recent highlights;
- Give you early knowledge of forthcoming announcements, where possible;
- Help provide answers to some of the questions local authorities and their partners are asking us.

This month, we are focusing on transitional arrangements – if you have questions you want to raise with the Department for Education you can e-mail us on SEN.IMPLEMENTATION@education.gsi.gov.uk.

We propose to issue this by e-mail approximately once a month. If you don't want to receive this e-mail, or you have a colleague who you think would benefit, please e-mail us on: SEN.IMPLEMENTATION@education.gsi.gov.uk.

The email is intended for those working to implement the SEND reforms locally, particularly (but not limited to) local authorities. However, the information is in the public domain, and you can share this e-mail and the resources included in it with others including families. Please let us know if you find it useful.

Communications update:

Over the summer DfE and partners issued a wide range of resources and letters to support delivery of the SEND reforms. The following is **not** a comprehensive list – every month we will issue a further selection of resources:

Resources and Letters	Link
A series of brief guides to the Code of Practice aimed at: <ul style="list-style-type: none">• Parents;• health partners;• social care;• early years settings;• schools; and• FE colleges	https://www.gov.uk/government/publications/send-code-of-practice-0-to-25);

The final Transitional Arrangements Guidance	<u>0-25 SEN Code of practice</u>
A summary of the SEND reforms for Children and Young People:	<u>SEN and disability support changes</u>
DfE and Association of Colleges (AOC): Implementation resources for FE Colleges:	<u>Teaching and learning reforms</u>
NHS England and CDC: A training resource for health professionals on the SEND reforms:	<u>Training modules</u>
A review of EHC plans and templates, including the use out outcomes. This short letter sets out some of the key findings:	<u>Review of EHC plans</u>
A PowerPoint presentation about writing quality plans:	<u>EHC plan slide pack</u>
A letter about the link between social care and the SEND reforms - confirms that the introduction of the EHC plan does not affect a local authority's duties to provide social care services to disabled children and young people:	<u>Letter on Social Care and SEN requirements</u>
A document setting out how local authorities can access the Independent Supporter (IS) training to gain a clear understanding of the IS Role. The document also covers information about the broader legal workshops available through Early Support Regional Facilitators:	<u>Independent support training</u>
We have asked LAs' SEND leads to complete a survey of progress in	<u>LA Implementation Survey - Oct 2014</u>

implementing the SEND reforms. We intend to close the survey on Tuesday 28 October.	
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Announcements are expected shortly on:

A consultation on draft regulations and guidance for the section of the SEND Code of Practice which gives advice on Children and Families Act duties towards young offenders, prior to those duties commencing in April 2015

(<https://www.education.gov.uk/consultations/index.cfm?action=Respond&consultationId=1993>)

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- A review of disagreement resolution arrangements;
- The outcome of the Ofsted study on local preparations for the SEND reforms.
- Funding for 2015-16 – indicative funding of £31.7m for the implementation of the reforms was announced earlier this year. We envisage using the same basis for allocating funds to local authorities as this year.

Ask DfE

This month, we are focusing on questions we've had from local authorities and others on the transitional arrangements and the transfers of Statements and Learning Disability Assessments (LDAs) to Education Health and Care plans. If you have questions to raise with us please do so through our e-mail account:

SEN.IMPLEMENTATION@education.gsi.gov.uk.

Overview:

- The experience of the Transition Process for children, young people and families should be in line with the intended key cultural features of the reform such as engagement, co-production.
- It must be clear that the transition review process is part of a EHC needs assessment
- The requirements for a EHC needs assessment are clear that existing advice for the statement can be used where parents, LA and professional agree. Otherwise new advice must be sought.
- LAs cannot delegate responsibility for producing an EHCP – but they can ask key bodies to make an important contribution to its preparation.
- LAs must invite parents to a meeting as part of the 14 weeks.
- 14 weeks starts when the LA writes to the parent advising them of the transition review meeting

What should be covered in the local authority's Local Transition Plan?

The local authority's published transition plan *should* include the following information:

- which groups were consulted;

- numbers of statements and numbers of LDAs planned for transfer in each year of the transition period;
- the order in which children and young people will be transferred;
- how and when parents and young people, and their educational institution, will be made aware of the arrangements;
- details of the transfer review process;
- sources of impartial SEN information and advice;
- who parents and young people can contact with queries.

Who is responsible for the transfer review?

The responsibility for the transfer review and for producing the final EHC plan rests with the local authority and this cannot be delegated to schools or colleges. Local authorities can reasonably ask education providers to make a significant contribution to the preparation of an EHC plan as part of the transfer process, including providing new advice as part of the assessment, and where the transfer review meeting takes the place of the annual review meeting for a child's statement by arranging and holding it.

What does the 'transfer review' process entail?

The transfer review requires the local authority to carry out an EHC needs assessment in accordance with Regulation 6 of the Special Educational Needs and Disability Regulations 2014. Each child or young person's needs must be considered individually and advice sought as prescribed in the Regulations; these include advice in relation to health and social care where the child or young person may need it. New assessment advice will not be needed in all cases. The Regulations for an EHC needs assessment are clear that advice previously provided for any purpose will be sufficient for the assessment where the parents, the professional who gave the advice and the local authority agree. In those circumstances the local authority must not seek new advice.

Parents or the young person must be invited to a meeting with an officer of the local authority to contribute to the review, in particular to focus on the proposed outcomes in the new plan, and this must take place in advance of the EHC plan being finalised. It could take place at a transfer review meeting or at another time. Throughout the process the local authority must have regard to the principles set out in section 19 of the Children and Families Act.

What is the timescale for completing a transfer review?

To transfer a child or young person from a statement to an EHC plan the local authority must undertake a 'transfer review' (EHC needs assessment). The parents must be given at least two weeks' formal notice that the review is to be undertaken and a clear date for when it will begin. The EHC plan must be completed in 14 weeks from the date of that formal notice [Article 21]. The notice should ideally also state when the transfer review meeting will be held

We have asked our schools to plan dates and times for the transfer review for the whole of this year and to let parents know now. Does this mean the clock has started ticking on the 14 week timescale for finalising EHC plans for all these children?

Responsibility for the transfer review rests with the local authority. Where schools are hosting the transfer review meeting and making practical arrangements, advising parents of the likely date of a transfer review meeting as far ahead as possible is good practice. It gives families plenty of opportunity to make arrangements to attend and to plan their contribution.

In terms of the 14 week timescale, the clock starts ticking when the local authority writes to the parent providing notice that the EHC assessment (transfer review) has commenced.

What happens if parents of children who are not deemed to be a high priority insist on being prioritised to conversion from statements over and above priorities we have identified in the transitional order?

Local authorities have until April 2018 to transfer children from statements to EHC plans. A child with a statement remains in the old system until they reach a mandatory transition point or until the local authority decides to transfer them to an EHC plan. Local authorities can set their own priorities preferably in consultation with parents and professionals within the national parameters set out in the transitional order.

Parents of children with statements seeking a reassessment of their child's needs do not have a right to request an EHC needs assessment and their request will be considered as a reassessment in relation to a statement unless the local authority decides to conduct an EHC needs assessment. A local authority does not have to agree to an EHC needs assessment but it should consider the request carefully.

What can local authorities do to make young people with LDAs aware of the transfer arrangements?

Local authorities should take all reasonable steps to inform young people in further education or training who receive support as a result of an LDA that they can request an EHC needs assessment to transfer to an EHC plan. Local authorities will wish to consider writing to all young people who are receiving support following an LDA. Local authorities should publish details of their transition plan in their local offer and make that information available through the local Information, Advice and Support Service. Local further education colleges and training providers should support local authorities by making sure their students are aware of their right to request an EHC needs assessment for an EHC plan.

What is the role of colleges in the transfer review process from an LDA?

Local authorities should involve colleges as they would for an EHC needs assessment for a new entrant as set out in the Code, for example colleges:

- could contribute information to local authorities to inform consideration of whether an EHC plan might be needed for a young person;
- could contribute to the development of an EHC plan where one is needed (responding to a request for information within 6 weeks);
- contribute to the transfer review
- should respond within 15 days to local authorities consulting them about being named in a draft EHC plan.

Could those with statements and LDAs lose their statements as a result of the SEND reforms?

No child or young person should lose their statement and not have it replaced with an EHC plan simply because the system is changing. The legal test of when a child or young person requires an EHC plan remains the same as that for a statement under the Education Act 1996. Therefore, it is expected that all children and young people who have a statement and who would have continued to have one under the old system, will be transferred to an EHC plan under the new system.

Similarly, local authorities have undertaken LDAs for young people either because they had a statement at school or because, in the opinion of the local authority, they are likely to need additional support as part of their further education or training and would benefit from a LDA to identify their learning needs and the provision required to meet those needs. The expectation is that young people who are currently receiving support as a result of a LDA and remain in further education or training during the transition period, who request and need an EHC plan, will be issued with one.

If a local authority decides to cease a statement and not replace it with an EHC plan or not issue an EHC plan to a young person who receives support as a result of an LDA the parent or young person has the right to appeal to the First-tier Tribunal. Local disagreement resolution arrangements can be considered and the parent or young person will need to consider mediation before an appeal.

What is the position on the transfer from SEN Statements to EHC Plans for those with support needs under £6k?

The statutory definition of SEN has not changed, nor has the guidance in the Code of Practice on when to assess and when to issue a statutory plan. £6k is not a threshold for access to EHC needs assessments or to EHC plans. Decisions about provision must be made on an individual basis. Under the new system, as much as the old, there cannot be a blanket policy regarding eligibility. Local authorities need to work with schools, young people and parents to determine how best to transfer SEN statements to EHC Plans. It is recommended that a transparent and phased approach is developed with parents and schools.