

Young People's Education and Skills Board

Support and aspiration: A new approach to special educational needs and disability – Progress and next steps

Item no: 6

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Summary

In March 2011 a Green Paper on special educational needs and disability, [Support and aspiration: A new approach to special educational needs and disability](#) was published. The Green Paper marked the start of a four month period of consultation and a period of testing proposals in local areas from September 2011. On 15 May a [Progress and next steps](#) report was published, which provides a summary of the responses Government received to the Green Paper, progress made since it was published, and proposed next steps.

The Progress and next steps report details plans to implement commitments made through the Green Paper, in particular:

- a single assessment process;
- an Education, Health and Care Plan;
- a 'local offer' of services;
- joint commissioning between local authorities and health services;
- the option of a personal budget for families with a Plan;
- extending educational statutory rights up to 25 years of age;
- replacing school action and school action plus with a single category

Legislation will be introduced through a Children and Families Bill in 2013 to implement the changes to the law required for these reforms. It is proposed that this new legislation will build on reforms to the health services and will include provision to ensure that services for disabled children and young people and those with special educational needs are planned as well as commissioned jointly and that there are clear duties on all of the agencies involved.

A draft Bill will be published in summer 2012 for consultation and pre-legislative scrutiny.

Recommendations For information and discussion.

1 Background

- 1.1 On 15 May the Department for Education published [Support and aspiration: A new approach to special educational needs and disability – progress and next steps](#), which sets out a summary of the key responses to the consultation questions in the Green Paper published in March 2011, progress made since it was published, and proposed next steps.
- 1.2 The Green Paper made commitments that by 2014 Government would introduce:
- a single assessment process which is more streamlined, better involves children, young people and families and is completed quickly;
 - an Education, Health and Care Plan which brings services together and is focused on improving outcomes; and
 - an offer of a personal budget for families with an Education, Health and Care Plan.
- 1.3 The Green Paper also set out three core features of the local authority's role within a reformed special educational needs (SEN) system:
- strategic planning for services that meet the needs of local communities;
 - securing a range of high quality provision for children and young people with SEN or who are disabled;
 - enabling families to make informed choices and exercise greater control over services.
- 1.4 Respondents to the consultation strongly agreed that these were the right core features of the local authority's role within a reformed system.
- 1.5 Legislation will be introduced through a Children and Families Bill in this session of Parliament to implement the changes to the law required for these reforms. It is proposed that this new legislation will build on the reforms to the health services and draw on the recommendations of the Children and Young People's Health Outcomes Forum, and will include provision to ensure that services for disabled children and young people and those with special educational needs are planned and commissioned jointly and that there are clear duties on all of the agencies involved.
- 1.6 A draft Bill will be published in summer 2012 for consultation and pre-legislative scrutiny.

2 Summary of key proposals

- 2.1 The progress and next steps document sets out plans for reforming the SEN and disabilities system, in particular:
- early identification and assessment;
 - giving parents control;
 - learning and achieving;
 - preparing for adulthood; and
 - services working together for families.
- 2.2 The proposed next steps have been informed by some 2,400 responses to last year's Green Paper consultation from a wide range of individuals and organisations. Responses indicate that there is:
- support for the Green Paper's analysis of problems and issues;

- support for proposals, with people keen to know more detail; and
 - recognition of the tight financial climate and significant reform elsewhere.
- 2.3 Responses also indicated some misconceptions about the proposals contained in the Green Paper, which the next step document dispels:
- parents will not lose the legal protections offered by the current statement of SEN in the new system; the intention is to extend those protections to young people over 16 in further education;
 - families of children with an Education, Health and Care Plan will have the option of a personal budget for their support but will not be forced to take up that option (the support in the Plan will be provided regardless of how families choose to receive it);
 - plans to move from two school-based categories of SEN (School Action and School Action Plus) to one will not reduce the funds for schools to support children with SEN.
- 2.4 The length of time taken to publish the next steps document is in part an indication of the complexity and sensitivity associated with reforming the current system. There are a number of proposed next steps within the document; the following paragraphs set out the key proposals.
- 2.5 ***A single statutory assessment process***
- 2.5.1 The Children and Families Bill will propose to replace statutory assessments for statements and Learning Difficulty Assessments with a single birth to 25 assessment process from 2014.
- 2.6 ***The Education, Health and Care Plan***
- 2.6.1 The Children and Families Bill will propose to replace statements of SEN and Learning Difficulty Assessments with a single birth to 25 Education, Health and Care Plan from 2014. As noted above parents will not lose the legal protections offered by the current statement of SEN in the new system.
- 2.7 ***The local offer***
- 2.7.1 Legislation will be introduced that will require every local area to have a local offer; this will be supported by a broad national framework that sets out what this offer should look like. Within this national framework, local areas will have discretion over the shape, scope and content of their local offer in collaboration with local parents and families and local services.
- 2.8 ***Joint commissioning***
- 2.8.1 Legislation will ensure that services for disabled children and young people and those with SEN are planned and commissioned jointly between local authorities and health e.g. clinical commissioning groups.
- 2.9 ***Personal budgets***
- 2.9.1 Legislation will ensure the offer of a personal budget for families with an Education, Health and Care Plan by 2014.
- 2.10 ***Extending statutory rights attached to statements to further education***
- 2.10.1 The Education, Health and Care Plan will be developed so that it provides statutory protections comparable to those currently associated with a statement of SEN to young people aged 16 to 25 while they are in school or further education.

2.11 *Replacing the categories of School Action and School Action Plus*

- 2.11.1 During 2012 Government proposes to work with experts in the education sector, on replacing the current categories of School Action and School Action Plus with a single category. The new category will focus on outcomes rather than process. The Special Educational Needs Code of Practice will be revised to give clear guidance on identifying children who have SEN and on the operation of a new single category of SEN.

3 **Implications for local authorities**

- 3.1 There are clearly a number of implications for local authorities in managing and implementing the reforms set out in Progress and next steps. Importantly the local SEN and disabilities Green Paper Pathfinders provide us with opportunities to test out the operational reality of some of these proposals¹, and also provide us with some local controls.
- 3.2 The pathfinders will be testing out much of the detail about how the proposals will work, for example:
- 3.2.1 **Assessment:** who should have a single assessment and how this will work alongside a local offer; the timetable for completing the assessment.
 - 3.2.2 **The Education, Health and Care Plan:** the details of what the new plan should look like; when the plan should be reviewed and who should be involved; how to determine accountability arrangements across the range of services included in the plan.
 - 3.2.3 **The local offer:** what should the shape, scope and content of the local offer be; how best to collaborate with local parents and families and local services to shape the offer; how to manage a single source of information that makes it clear to parents and young people what is available to them: how to identify all the services available to support children and young people from birth to 25; what provision is normally made available in an area, including in schools and colleges; how eligibility for more specialist services is determined, including eligibility for a single plan; how the local offer might be used by the First-Tier (SEND) Tribunal and others considering redress to identify what provision can reasonably be expected in local schools and colleges and from local health and social care services.
 - 3.2.4 **Joint commissioning:** how resources can be pooled/aligned to best effect to improve services, service delivery times and bring greater value for money; the implications of personal budgets on planning and joint commissioning; how to determine accountability arrangements across the range of services included in joint commissioning; what mediation across multiple services might look like.
 - 3.2.5 **Personal budgets:** the implications of Individual Budgets and Direct Payments for education, health and social care support on strategic planning of services.
 - 3.2.6 **Extending statutory rights linked with statements to further education:** the state of readiness of post-16/post-19 education providers; how to align children's and adult's health and care services to support further education; how to manage eligibility changes between children and adult services.

¹ The three pathfinders in London are: Bexley and Bromley, Greenwich, Lewisham

- 3.2.7 **Replacing the categories of School Action and School Action Plus:** who should have a single plan and what arrangements should be in place for those that may not need a comprehensive plan.
- 3.3 Findings from the Pathfinders activities will feed into the draft Bill that will be published in summer 2012 for consultation and pre-legislative scrutiny, so they offer an important 'reality check' in the process of fully implementing the changes that are proposed in Progress and next steps.
- 3.4 There are however many questions that still require clarification and the Pathfinders cannot address all these areas without support from Government and other agencies, for example:
- 3.4.1 How will the Children and Families Bill ensure that disabled children who have significant and complex health or social care needs, but not special educational needs, have access to a single assessment process?
 - 3.4.2 How will the Bill ensure children and young people who may not be in education but have health or social care needs, for example many of the young people who are over 18, have access to assessments?
 - 3.4.3 How will the Bill strengthen the duty on health and social care services to deliver what is set out in the single plan?
 - 3.4.4 Government has announced plans to legislate on a single plan before the Pathfinders have had an opportunity to test out whether the plan will deliver better outcomes than a statement. Should the Government slow this process down until the evaluation of the pathfinders has demonstrated improved outcomes?
 - 3.4.5 How will local authorities, schools and academies be held accountable for the delivery of the local offer and how can parents challenge services if they fail to deliver?
 - 3.4.6 How will agencies be held accountable for joint commissioning?
 - 3.4.7 Local authorities are no longer the default provider of education and there has been a huge surge in academy numbers. How will new types of education providers be supported to feed into strategic planning and commissioning?
 - 3.4.8 What should the future of Children's Trusts be in the new system, and what relationship should they have with Health and Wellbeing Boards?
 - 3.4.9 How closely can we replicate the statutory protections in a statement in further education, particularly in reference to adults?
- 3.5 There was considerable consensus over the role of local authorities in providing and supporting SEN services (the core features of the local authority's role within a reformed SEN system area set out at paragraph 1.3). There is no question that local authorities accept responsibility for vulnerable young people, but councils need to have the right levers and tools to do the job effectively. The broader educational reforms that have been implemented are blurring the lines of accountability for educational provision (and its quality) and are effectively removing the planning levers that local authorities need for strategic, long term place-planning.
- 3.6 Extending the right to appeal to the First-Tier Tribunal to young people aged 16 to 25 and imposing the requirement for mediation prior to tribunal is logical, but work needs to be done to identify any additional burdens this may place on local authorities to ensure that these changes do not lead to an increase in litigation.
- 3.7 The next steps document sets out how Health and Wellbeing Boards' Strategic Needs Assessments will address concerns about health partners' legal commitments to the

Education, Health and Care Plan. Local authorities will need to give careful consideration to the draft Bill this summer to ensure that legislation is adequate to hold health partners to account, particularly when a Plan is under legal challenge.

- 3.8 The next steps document is clear that young people and families will have greater choice within the reformed system, but this choice will not be entirely unrestricted as local authorities will retain powers to refuse a request on the grounds of suitability, ability, compatibility or inefficient use of resources. Additionally the document is clear that parents will have the right to seek a place at any *state-funded* school. Any plans to extend this right to independent and non-maintained schools bring enormous financial risks as unrestricted choice is only possible with an unlimited budget.
- 3.9 Whilst local authorities will be responsible for publishing a local offer of services, the offer itself will be the responsibility of many organisations including autonomous Academies and self-governing colleges. The roles and *legal* responsibilities of all parties that contribute to the offer need to be explicit, particularly in relation to the local offer supporting the First Tier Tribunal. If local authorities are expected to be responsible for the services of other providers they will need the legal means to hold them to account.

4 Commentary

- 4.1 Implementing the system transformation set out in Progress and next steps has significant implications for a number of organisations (e.g. health services, further education colleges, the voluntary and community sector), but particularly local authorities as identified above. These changes will also be taking place a year after a system-wide change to the funding of education for children and young people with SEN or disabilities aged birth to 25 that has enormous resource ramifications for local authorities and wide ranging impacts on schools and post-16 institutions, in particular specialist institutions (see [School funding reform - the 'Place-Plus' approach](#)).
- 4.2 Education, the health sector, welfare, housing, local government finance are all going through unprecedented change during a period of equally unprecedented financial restraint. Remaining abreast of the legislative and practical changes envisaged for the next several years is highly challenging, as is the ability to pull together a global view of how all of these changes impact on each other and collectively impact the individual and the family.
- 4.3 Local authorities are at the sharp end of accountability for many of the reforms currently taking place, not just those in relation to young people with SEN and disabilities and their families. We are in the challenging position of being unable to do anything other than get it right if we are to ensure that our most vulnerable young people and families do not end up at the deep end of these changes.

5 Next steps

- 5.1 The Young People's Education and Skills team will be undertaking a number of activities over the next few months in preparation for legislative changes that will take effect in 2014:
- sharing emerging practice and lessons learned from the London Green Paper Pathfinders through the London Councils' Learners with Learning Difficulties and Disabilities Working Group;
 - accessing emerging practice and lessons learned from the non-London Pathfinders through membership of the Local Government Association Additional Needs Expert Group;

- contributing to the consultation and pre-legislative scrutiny of the draft Children and Families Bill;
- meeting with the Chief Executive of the Education Funding Agency to discuss and agree management arrangements for the transfer of post-16 Additional Learning Support funds to local authorities in April 2013;
- exploring current sub-regional commissioning arrangements for education and support services for young people with SEN and disabilities;
- working with the Transitions task and finish group (chaired by Sean McLaughlin, Director of Adult Social Services, Islington) to identify local solutions to improving commissioning and support arrangements, particularly at the point of transition from children to adult services.

6 Recommendations

6.1 For information and discussion.