

Decision Maker: EDUCATION POLICY DEVELOPMENT AND SCRUTINY COMMITTEE

Date: Thursday 30 January 2014

Decision Type: Non-Urgent Non-Executive Non-Key

Title: UPDATE ON THE SEN PATHFINDER PROJECT AND CHILDREN AND FAMILIES BILL

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Chief Officer: Executive Director of Education, Care & Health Services

Ward: (All Wards);

1. Reason for report

The Children & Families Bill is currently proceeding through Parliament and is on track for a September 2014 implementation. To update this Committee on the potential impact of the whole system reform anticipated by the introduction of the Children & Families Bill. Now that the Code of Practice (CoP) has been released for consultation to highlight potential risks and issues presented by the changes in legislation.

This report is also on the agenda for the next scheduled Care Services Policy Development and Scrutiny Committee

2. **RECOMMENDATION(S)**

This Committee is asked to:

- (i) Consider the content of the report;
- (ii) Note the implications of the new legislation and that further reports will be presented on specific changes arising from the legislation

Corporate Policy

1. Policy Status: Not Applicable:
 2. BBB Priority: Children and Young People Supporting Independence:
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Financial

1. Cost of proposal: Not Applicable:
 2. Ongoing costs: Not Applicable:
 3. Budget head/performance centre: SEND budget
 4. Total current budget for this head: £9,395k (SEND – Revenue Support Grant), £23,480k (SEND – Dedicated Schools Grant);
 5. Source of funding: RSG and DSG
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Staff

1. Number of staff (current and additional): N/A
 2. If from existing staff resources, number of staff hours:
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Legal

1. Legal Requirement: Statutory Requirement: Pending implementation of the new legislation.
 2. Call-in: Not Applicable:
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): 2,000 children and young people, together with their parents/carers
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments:

3. COMMENTARY

3.1 The Children and Families Bill, currently before Parliament, includes measures to:

- give young people with special educational needs in further education and training aged 16-25 rights and protections comparable to those in school;
- require local authorities and local health services to plan and commission education, health and social care services jointly;
- require local authorities to publish in one place a clear and easy to understand 'local offer' of education, health and social care services to support children and young people with Special Educational Needs and Disability (SEND) and their families;
- require co-operation between local authorities and a wide range of partners, including schools, academies, colleges, other local authorities and services responsible for providing health and social care;
- require local authorities to consult children and young people with SEND and their parents in reviewing special educational provision and social care provision;
- introduce a more streamlined process for assessing the needs of those with more severe and complex needs, integrating education, health and care services and involving children, young people and their parents;
- replace statements and Learning Difficulty Assessments with a new 0-25 Education, Health and Care Plan, which will co-ordinate the support for children and young people and focus on desired outcomes including, as they get older, preparation for adulthood;
- encourage parents and young people to consider mediation to resolve disagreements before they register a Tribunal appeal; and
- give parents and young people with an Education, Health and Care Plan the right to a personal budget for their support.

3.2 Since September 2011 Bromley has been a joint Pathfinder with London Borough of Bexley testing the Special Educational Needs & Disability (SEND) Green Paper proposals, described as the most radical reform in this field in more than 30 years.

3.3 The context of Bromley's Pathfinder work and the new national agenda was around the rising numbers of disabled children. The general increase in population and the result of medical advances has led to a large increase in the number of children and young people with more severe SEND, coupled with greatly increased health needs and complex family circumstances.

3.4 Bromley's role as a Pathfinder has enabled it to test the principles of the new legislation and assess the impact of the proposed requirements set out in the draft Code of Practice.

3.5 The Code of Practice has been reviewed and an analysis of the statutory requirements conducted (see Appendix 1 – CoP Review). The new or changed statutory requirements have been benchmarked against our current position and the gaps/risks identified. The Bill is still progressing through Parliament therefore amendments, refinements and clarifications are likely to arise.

3.6 Although the new statutory requirements will commence from September 2014 the Government is consulting on a 'transition' period of up to three years in order to give local authorities the time

to implement the reforms required. This will have the effect of two pieces of legislation running concurrently with each other

- 3.7 There is still a lack of clarity on how many children and young people will be eligible for an Education, Health and Care (EHC) plan. If the threshold is set at those pupils outside mainstream education then that equates to approximately 850 children and young people. If, as the current consultation suggests that all those children and young people currently with SEND Statements are eligible then in Bromley then the figure would be approximately 1900. Given that the new EHC plan is a multi agency assessment and planning process required to be delivered in 20 weeks then the resource implications for the authority are considerable. Clarification on this issue is being sought from the Department of Education (DfE).
- 3.8 There is a requirement to put in place a new independent mediation service that parents and young people can use if they have a disagreement with the local authority. The stated aim of this service is to reduce the number of tribunal applications, but there is no requirement on parents and young people to use the service prior to a tribunal application. There were 48 registered Tribunals in the academic year 2012/13; this figure is expected to rise when the new legislation is in place as it is tested through the judicial process. Each tribunal has a significant cost implication to the authority in terms of officer time and associated costs.
- 3.9 A completely new function required by the CoP is that of an Information, Advice and Support (IAS) service. The requirements as currently expressed are prescriptive and will represent a significant financial cost to this authority. It is within the IAS service that the concept of an Independent Supporter is raised that would essentially act as a keyworker for the family and young person as they progressed through the statutory process. This function is currently stated as 'subject to availability' in the CoP but could represent a further financial pressure if the requirement were to become statutory.
- 3.10 In line with current legislation the Children & Families Bill strengthens the requirement on local authorities and Clinical Commissioning Groups (CCG's) to develop joint commissioning arrangements, clear responsibilities, ownership and accountability across SEN commissioning. The bill introduces a new duty on Health to have arrangements in place to secure any health provision named within an EHC plan. CCG commissioners are currently reviewing the CoP to assess the impact on them as a commissioning authority. The Health and Well Being Board is noted within the CoP as having a role in assessing the health needs of those children and young people with SEN and promoting the integration of services.
- 3.11 Local authorities must publish a local offer, setting out in one place information about provision they expect to be available for children and young people in their area who have SEND, including those who do not have EHC plans. The local offer has two key purposes:
- To provide clear, comprehensive and accessible information about the provision available and;
 - To make provision more responsive to local needs and aspirations by directly involving children and young people with SEND, parents and carers, and service providers in its development and review.

The regulations provide a common framework for the local offer specifying the requirements that all local authorities must meet in developing, publishing and reviewing their local offer:

- The information to be included;
- How the local offer is to be published;
- Who is to be consulted about the local offer;

- How children and young people with SEND and parents will be involved in the preparation and review of the local offer; and
- The publication of comments on the local offer and the local authority's response.

The Bromley MyLife portal is currently being developed to host the local offer. As much of the site will be updated by providers as is possible but the overall management, oversight and development will remain this authority's statutory and financial responsibility.

3.12 Under the proposed Bill schools and colleges must use their best endeavours to ensure that SEN provision is made for those who need it. Parents may only state their preference for an educational establishment through the auspices of an EHC plan. The local authority must, after consulting the governing body, principal or proprietor of the school or college concerned, comply with that preference and name the school or college on the EHC plan unless it would:

- Be unsuitable for the age, ability, aptitude or SEND 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.

Whilst the Bill ensures that academies are not treated materially differently from their maintained equivalents there have been a number of legal challenges to academies refusing to admit SEN students and officers continue to monitor developments in this area.

3.13 The introduction of the reforms under the Children & Families represents the greatest changes to the provision of education, care & health for those with SEND for over 30 years. The DfE have reinforced the message that this is not a 'statement by any other name'. In order to meet the demands of the new processes, responsibilities and need for transparency a systematic approach to reengineering current business processes and structures is required.

4. POLICY IMPLICATIONS

Delivery of the overarching 'Improving Lives – Supporting Families: Disability Strategy for Children and Young People in Bromley' will be supported by implementation of the Children & Families Bill.

5. FINANCIAL IMPLICATIONS

The DfE has stated that in line with government policy, any new burdens on local authorities created by implementation of the SEND provisions within the Children and Families Bill will be properly assessed and the government will meet the costs in the agreed assessment.

Current processes and working arrangements may have to be reviewed to accommodate any changes made by legislation. A more detailed financial appraisal will come back to this committee in due course

See Appendix 1 (CoP Review) for implications of the new statutory requirements.

6. LEGAL IMPLICATIONS

The proposed timeline is that this Bill will receive Royal Assent in April 2014 with, subject to Parliament, implementation in September 2014.

Non-Applicable Sections:	7. PERSONNEL IMPLICATIONS
Background Documents: (Access via Contact Officer)	<p>Appendix 1: CoP Review</p> <p>Draft Code of Practice:</p> <p>https://www.gov.uk/government/consultations/special-educational-needs-sen-code-of-practice-and-regulations</p> <p>Children & Families Bill</p> <p>http://services.parliament.uk/bills/2012-13/childrenandfamilies.html</p>