

**Decision Maker:** EDUCATION POLICY DEVELOPMENT AND SCRUTINY COMMITTEE

**Date:** Tuesday 17 September 2013

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

**Title:** SEND PUPILS IN MAINSTREAM EDUCATION

**Contact Officer:** Dr Tessa Moore, Assistant Director Education  
Mary Cava, Head of SEN & Disability Services  
E-mail: Tessa.Moore@bromley.gov.uk Mary.cava@bromley.gov.uk

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

**Ward:** Boroughwide

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1. Reason for report

The purpose of this report is to provide Council Members with information regarding the changes relating to Special Educational Needs, Education Funding Reform and the Academies agenda. It highlights the changes in each area and identifies potential risks for the Council if pupils' special educational needs cannot be met by local mainstream schools. It provides data on officers' progress to reduce the need for costly out-borough placements and the measures put in place to manage spend effectively.

Whilst data does not currently appear to be suggesting an increase in placement of pupils in independent settings it is very difficult to assess the full impact of the Academy agenda on Special Educational Needs (SEN). Data does suggest the need to strategically plan for extra capacity in Bromley schools for pupils with ASD, secondary Speech and Language and Behavioural difficulties to ensure there is cost effective provision for pupils to remain local for their education, within their family unit and within their community.

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2. **RECOMMENDATION(S)**

Council Member to note the report and consider next steps.

### Corporate Policy

1. Policy Status: Existing policy
  2. BBB Priority: Children and Young People:
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### Financial

1. Cost of proposal: Information document, further analysis to be undertaken as academy conversions progress.
  2. Ongoing costs: Recurring Cost:
  3. Budget head/performance centre: SEN & Disability Services
  4. Total current budget for this head: £
  5. Source of funding: DSG/RSG
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### Staff

1. Number of staff (current and additional): not applicable
  2. If from existing staff resources, number of staff hours:
- 

### Legal

1. Legal Requirement: Statutory Requirement: Education Act 1996
  2. Call-in: Not Applicable:
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### Customer Impact

1. Estimated number of users/beneficiaries (current and projected): 2,500
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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 Historically Bromley has been a low funding delegation and high statementing local authority. Whenever delegation has been discussed with schools, the schools have argued to maintain the resource centrally. The National Education Funding Reform was enacted from April 1<sup>st</sup> 2013 for maintained mainstream schools and is enacted for mainstream Academies from September 1<sup>st</sup> 2013 and this has resulted in fluctuation in amounts of resource delegated into schools.
- 3.2 A considerable number of Bromley schools are either converting or have achieved Academy status. Resources will now be situated within the schools to a greater extent to enable schools to make their own decisions about their priorities. The Local Authority has the role of championing special educational needs within the schools in the authority but has limited power in how schools spend their resources.
- 3.3 With the considerable increase in school population in general, both national and local data highlights many more children with SEN and Disability entering the school system over the next five to ten years. Bromley has outstanding specialist provision in the borough. It is of very good quality and it is also very cost effective, both in terms of monetary value and also in ensuring young people live and learn in their home environments with their family and peers surrounding them.
- 3.4 The SEN Reforms will be the most major changes seen in SEN for over forty years. It is envisaged that the most complex children will be in receipt of an Education, Health and Care Plan. Other pupils will access interventions and support in a more flexible manner through local Pupil Resource Agreements.
- 3.5 In summary, the major national changes that have taken place over the last two years are as follows:-
- The Education Funding Reform
  - School conversions to Academy status
  - Increase in school population and of children with complex and enduring special educational needs and disabilities
  - The SEN Reforms

#### **The National Education Funding Reform**

- 3.6 A new national funding formula was introduced from April 2013 for maintained schools and September 2013 for Academies. This results in the funding of SEN school action, action plus and lower level statements (resourced below £6k) and for higher resourced statements in mainstream schools, the first £6k of this resource is now provided within schools budgets. This money is not ring-fenced and schools are expected to identify this resource in their budgets and use accordingly.
- 3.7 This new system, whilst allowing schools to respond more immediately to meeting additional needs also puts the onus on all schools to identify and plan to use SEN monies appropriately. Notional SEN budgets have been formulated and sent out to schools for guidance. Using a different national formula has meant that some schools have gained from this new formula and some have lost. To combat excessive budget change/fluctuation a 1.5% safeguard has been introduced by DfE. Therefore, whilst some schools may have a reduced budget or an increased budget the fluctuation would not be more or less than 1.5% of the total school budget. The SEN element of schools' budgets are based on identified pupils at the yearly census and also adjusted termly to take account of newly identified pupils with SEN.

- 3.8 A risk identified is that some schools may be reluctant to take pupils with a Statement of SEN due to the first £6k being expected to be funded by the school.
- 3.9 The Local Authority has a duty to consult with the (maintained or academy) school of parental preference for a pupil with a statement of SEN. If a maintained mainstream school or an academy decides they cannot meet needs and state this in their response to the Local Authority statutory consultation, the Local Authority has two choices: (1) to name the school against the will of that school, or (2) to explore alternative provision.
- 3.10 If parents seek independent specialist school at this time this can add to the evidence base that local mainstream school cannot meet needs. If LA does not have specialist provision that meets needs, then as the LA has a duty to provide education, it must look at alternatives (sometimes outside the maintained sector).

### **Legal Position - Parents' right to state a preference**

- 3.11 Section 9 of the Education Act 1996 states that LAs *“Shall have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents, so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure.”*
- 3.12 If a pupil has a statement of SEN parents can “state a preference” for a maintained or academy school. The Local Authority has a duty to consult with the school for which parents have stated a preference if the school is a maintained school or an academy. The school is sent the consultation papers, the statement and the appendices attached to the statement (these are the professional documents/reports that have informed the writing of the statement) and the school has 15 working days to respond to the consultation.
- 3.13 Paragraph 3(3) of Schedule 27 of the Education Act 1996 requires Local Authorities to name a parent’s preferred school unless:
- (a) The school is unsuitable to the child's age, ability or aptitude or to his special educational needs, or
  - (b) The attendance of the child at the school would be incompatible with the provision of efficient education for the children with whom he would be educated or the efficient use of resources.
- 3.14 So, the only reasons the LA can use to refuse to name the school are:
- The school is unsuitable.
  - The child’s attendance would mean that educating the other children in his/her class would be impossible or very difficult.
  - The child’s attendance would cost the local authority too much.
- 3.15 This would appear to be very robust but often parents become very anxious at transition periods of school for their children. Schools need to be welcoming and inclusive of pupils with SEN and disabilities. When they are not, parents reflect on this and some look elsewhere, sometimes in the independent sector. They gather evidence about suitable schools and may request for the LA to name an alternative. If professional advice is that the pupil moves to specialist provision at this point, if there is space at a Bromley special school and the school can meet needs then this can progress. However all our special schools and most of the

specialist provisions are currently oversubscribed and, in particular, on secondary transfer. This then can set parents on track for exploring independent provision. The local authority then has the option of agreeing a specific school to meet needs or refusing. The parents then have a right to appeal to the SENDIST Tribunal.

- 3.16 The law says: - if the LA has a suitable school that can meet a child's needs the Tribunal would have to name it (unless the difference in cost between the schools is very little). The task, for the parents, is to show that the LA maintained school cannot meet their child's needs. At this point, many parents engage independent professionals (educational psychologists, speech and language therapist, psychiatrists) to put their case forward.
- 3.17 An Academy is a state funded independent school and so the position is similar to when parents want independent school – and the same arguments will apply when parents appeal.
- 3.18 One difference is that parents can appeal to the Special Educational Needs and Disability Tribunal for an Academy even if the Academy has not consented to give their child a place.
- 3.19 Basically if a child has a statement of SEN and, after consultation, a Bromley mainstream school states it cannot meet needs then the local authority can name the school. However, at this stage often parents are very reluctant to accept a school which has stated it cannot meet needs and vis a vis parents consider that other mainstream schools may not be able to meet needs. This can set the track for parents to explore alternative specialist provision.
- 3.20 **Risk:-** As schools convert to academy status they become more independent of local authority and decide on their individual priorities. How does the Local Authority ensure meeting SEN remains a priority and relevant SEN training and appropriately trained and skilled staff are prioritised in all schools and particularly in Academies as independent institutions?

**Children in Independent Out-Borough Provision - Current Situation and Trends**

3.21 The data in the columns below gives numbers of pupils actually placed in independent boarding and independent day placement over the last 4 years on educational grounds.

Table a

Year	Type of Provision	
	Independent Boarding	Independent Day
2010	23	49
2011	12	37
2012	4	31
2013	2	31

3.22 Table a. shows a significant decrease over time in pupils being placed in independent boarding provision, from 23 pupils in 2010 down to 4 pupils in 2012. This has been achieved through robust Officer action, auditing independent specialist schools, making robust arguments internally and at Tribunals when appeals are made by parents, enabling short breaks to be accessed to prevent escalation of requests for boarding provision, etc.. The independent day placement trend is decreasing in numbers but on a much slower trajectory. This is predicted to change as increased local provision opens in Bromley Specialist Schools in September 2013 and September 2014.

3.23 Table b. shows the total number of pupils attending independent day and boarding placements by year group. It shows that peaks in the movement of pupils into higher cost placements are at transition from key stage 2 – 3, from primary to secondary school and later in pupils' secondary school career at year 10 when there is greater emphasis on conformity and academic work. Further data suggests that movement at primary secondary transition is where sufficient provision is not available in borough (such as provision for complex autism, high functioning autism, and specialist speech and language provision). These areas are currently being addressed to expand capacity in future years.

Table b. Pupils in Independent School according to Year Group

National Curriculum Year	Independent Boarding School	Independent Day School	Total
Total Number of Children by year			
Year 0	0	0	0
Year 1	0	0	0
Year 2	0	0	0
Year 3	0	0	0
Year 4	0	0	0
Year 5	0	1	1
Year 6	0	6	6
Year 7	2	15	17
Year 8	3	21	24
Year 9	3	12	15
Year 10	7	36	43
Year 11	15	16	31
Year 12	11	13	24
Year 13	5	5	10
Year 14	10	4	14
	<b>56</b>	<b>129</b>	<b>185</b>

Table c. Primary needs of pupils in out borough independent schools

		Independent Boarding	Independent Day
Primary Needs			
Speech, Language and Communication Needs	SLCN	18	52
Behavioural, Emotional and Social Difficulties	BESD	15	34
Autistic Spectrum Disorder	ASD	7	33
Severe Learning Difficulty	SLD	5	3
Specific Learning Difficulty (Dyslexia)	SPLD	5	3
Physical Disability	PD	0	2

		Independent Boarding	Independent Day
Profound and Multiple Learning Difficulty	PMLD	2	0
Hearing Impairment	HI	3	2
Visual Impairment	VI		0
Other		1	

Table c. highlights the primary needs of pupils who are currently in out-borough provision. The most significant are those pupils with Speech, Language & Communication needs, Autism and those with social, emotional and behavioural difficulties.

### **Activity to Support and include SEN pupils in mainstream provision and in local specialist provision**

- It is essential that strong working relationships continue between the local authority and Bromley schools. Officers are working closely with the Special Educational Needs Co-ordinators, providing regular meetings and offering training opportunities to ensure schools have a comprehensive understanding of the Education Funding Reform implications. Meetings have also been held with the Head Teachers and Head Teacher forum meetings to ensure they have relevant information. Communication will be key in ensuring that roles and responsibilities are clearly established and maintained.
- Robust gatekeeping at every SEN stage ensures that the Local Authority challenges schools to meet needs. A small number of Specialist Teachers currently visit schools where there is disagreement as to whether a school can meet needs and the level of resources required to meet needs. These specialists ensure consistency of thresholds/resource across schools.
- Individualised/personalised packages of support are developed for those children who require very specialised packages to safeguard their learning, health and care. These packages enable the child to remain within the home environment, their surrounding community and enable a more cost efficient package to be planned and implemented. This is aimed at preventing escalation to alternative provision.
- Increase in high quality specialist day provision in borough will enable more pupils to remain in local, high quality and more cost effective provision. Complex Autism specific provision will open in Riverside School in September 2013. This will provide an 8 place class per year group, commencing in year 7. Glebe will expand in September 2014 to take 2 extra classes per year group for complex autism.
- Strategic planning will provide further ASD specific provision, secondary speech and language provision, alternative behaviour support programmes in mainstream primary and secondary to ensure pupils' needs are met within Bromley.

- Robust monitoring of data on a yearly basis will inform the Council of the progress of academies in meeting SEN.

**4. POLICY IMPLICATIONS**

The Children & Families Bill is currently progressing through Parliament. SEN policy and practice will change to deliver the Education, health and Care Plans for the most complex children. Ensure Compact with Academies factor SEN into the agreement.

**5. FINANCIAL IMPLICATIONS**

Potential risk of increase in numbers of parents seeking costly placements if needs are not met. Robust forward monitoring is in place to inform Portfolio Holder on a regular basis.

**6. LEGAL IMPLICATIONS**

The Local Authority has a duty to provide education for children and young people with SEN and Disability.

<b>Non-Applicable Sections:</b>	<b>PERSONNEL IMPLICATIONS</b>
Background Documents: (Access via Contact Officer)	SEN Code of Practice 2001 Education Funding Reforms 2013-14 Education Act 1996