

Draft Children & Families Bill Code of Practice (2013)

Definitions:

In the Code of Practice where the text uses the word **must** this refers to a statutory requirement under primary legislation or regulations. Where the text uses the word **should** it refers to best practice contained in the Code.

The Code of Practice is statutory guidance for organisations who work with and support children and young people with SEN and their parents. These organisations include:

- local authorities (education, social care and relevant housing and employment and other services)
- early years providers
- schools
- further education colleges
- sixth form colleges
- academies (including free schools)
- independent special schools and independent specialist providers
- pupil referral units and alternative providers
- NHS England
- clinical commissioning groups (CCGs)
- NHS trusts
- NHS Foundation Trusts
- Local Health Boards
- SEND Tribunal

The Tribunal will expect local authorities, early education settings, schools and colleges to be able to explain any departure from the Code, where it is relevant to the case it is considering.

Changes from the SEN Code of Practice 2001

The main changes from the SEN Code of Practice (2001), to reflect the new legislation, are:

- The Code of Practice (2014) covers the 0-25 age range;
- There is a clearer focus on the views of children and young people and on their role in decision-making;
- It includes guidance on the joint planning and commissioning of services to ensure close co-operation between education, health services and social care;
- For children and young people with more complex needs a co-ordinated assessment process and the new 0-25 Education, Health and Care Plan (EHC plan) replace statements and Learning Difficulty Assessments (LDAs);
- There is new guidance on the support pupils and students should receive in education and training settings;
- There is a greater focus on support that enables those with SEN to succeed in their education and make a successful transition to adulthood.

From 1 September 2014 all the organisations listed above must have regard to the Code of Practice.

Subject to any transitional arrangements made, from that date the following guidance will cease to have effect:

- SEN Code of Practice (2001)
- Inclusive Schooling (2001)
- Section 139A Learning Difficulty Assessments Statutory Guidance (2013)

ref	Topic	Where we must be, proscribed by statute	Where we are now	Gap/Risk
1	Transitional Arrangements	“Our expectation is that the overwhelming majority of children and young people with statements and LDAs will require EHC plans, unless local or individual circumstances have changed.”	We currently have c.1900 SEN Statements active. See End Note for breakdown.	Significant resource implications for the LA given the complexity of the new combined process. Analysis indicates a case load of 10 active EHC plans per 3 months per coordinator – extrapolating out to 1900 EHC plans would require 50 FTE coordinators. (Note: due to the academic timetable there are only 38 weeks in a year).
2		The guidance states that future EHC plans will only be for those children whose needs cannot be reasonably provided for in mainstream education.	There is significant lack of clarity around any threshold for an EHC Plan.	<p>If the threshold is set at the specialist placement level then approx. 850 EHC plans would be required, this is still a significant resource impact. Data analysis is required to assess the future demand likely to come through the system in coming years. The eligibility threshold for pre-school children is requiring careful consideration as DfE will only give Two Year Old Funding to plan eligible children. The implications of this are being reviewed and representation is being made to the DfE re clarifying this point.</p> <p>An EHC Plan is the only mechanism by which a family can express their preference for a school.</p> <p>For those children below the specialist placement threshold a Pupil Resource Agreement (PRA) process is preferred and is currently being trialled. Secondary Heads have also expressed this as a preferred route due to the decrease in</p>

ref	Topic	Where we must be, proscribed by statute	Where we are now	Gap/Risk
				bureaucracy.
3		Transfer of all children and young people with existing statements to EHC plans is to be completed within three years; and young people with existing Learning Disability Assessments (LDA) is completed within two years.	This would be a new process for the local authority to implement	Assuming 1900 statements then this equates to 633 transfers per year – 16 per week. 7 per week if 850 EHC Plans. Significant resource implications.
4		On 1 September 2016 legislation and guidance relating to LDAs would be repealed and LDAs would cease to have effect; and on 1 September 2017, legislation and the current Code of Practice relating to statements would be repealed and they would cease to have effect.	This would be a new process for the local authority to implement	The complexity of two legislative processes and duties running parallel raises significant concerns. The emphasis would therefore be on transferring to EHC plan processes as quickly as possible in order to mitigate this risk. The impact of the new Care Bill in April 2015 also needs to be factored in for those YP over 18 – particularly with reference to the Carers Assessment obligation.
5		Propose to require local authorities to work with children, young people, parents, providers and other local partners to agree the order in which children and young people transfer from statements/LDAs to EHC plans, and to publish a local transition plan which is then updated at least annually during the period.	This would be a new process for the local authority to implement	Anticipate a multi agency programme board that ensures the engagement of key stakeholders in the implementation of the new process. Put in place once the CoP is finalised.
6		Local authorities must carry out their functions with a view to identifying all the children and young people in their area who have or may have SEND.	SEN audit identifies the educational categories of children. There is less visibility of social care & health needs. Oxleas are looking at the data capture within provider data bases; already identified that getting the various IT systems across E, H & C to share data is possible	There are potential IT development costs attached to this.
7	EHC Plans	A local authority must conduct an assessment of education, health and care needs and prepare an Education, Health and Care (EHC) plan when it considers that it may be necessary for special educational provision to be made for the child or young person through an EHC plan. This is likely to be where the special educational	Considerable work has been carried out under the Pathfinder Programme in developing the new EHC Plan. This has also drawn on national guidance developed by Pathfinder support organisations.	See risks re Transition process. The new EHC process will require a business process reengineering review to ensure that the functions & processes in place to support this new requirement are robust &

ref	Topic	Where we must be, proscribed by statute	Where we are now	Gap/Risk
		provision required to meet the child or young person's needs cannot reasonably be provided from within the resources normally available to mainstream early years providers, schools and post 16 institutions.		efficient enough to implement and manage effectively. Failings in any new process would expose the authority to increased challenge & tribunals. This BPR will be required across all service areas (E,H &C) as there is an implicit requirement that all processes and decision making functions are transparent across all 3 domains. Proposed market testing of services will require reflection of the new duties within the specifications.
8		EHC plans must be focused on the outcomes the child or young person seeks to achieve across education, health and care.	Current provision is historically service led.	This will require a culture change within all three domains as person centred outcome orientated provision will be essential to meet needs. Workforce development & training issue.
9		Local authorities must provide all parents, children and young people with impartial information, advice and support in relation to SEN, including the statutory assessment process, EHC plans and personal budgets. This should include key working and, as appropriate, an Independent Supporter.	This would be a new process for the local authority to implement	See 36 re role of Independent Supporter.
10		The local authority must provide information, advice and support in understanding what a personal budget entails and how it can be used.	This would be a new process for the local authority to implement	Significant work required to bring documentation & advice up to date.
11		The whole assessment and planning process, from the point an assessment is requested or that a child or young person is brought to the LA's attention until the final EHC plan is issued, must take no more than 20 weeks	Current SEN statementing process is 26 weeks	Not only in this a reduction in the time allowed but the new integrated multi agency assessment requires a significantly increased level of input & coordination. Dependant on the number of EHC Plans active this has

ref	Topic	Where we must be, proscribed by statute	Where we are now	Gap/Risk
				a significant direct & indirect resource implication.
12		EHC plans must be evidence-based and focus on how best to achieve outcomes (both short term outcomes and longer term aspirations for children and young people) sought. They must refer to the professional evidence received as part of the assessment.	This would be a new process for the local authority to implement	
13		Where a young person or parent is seeking an unusual or alternative way to receive their support services – particularly through a personal budget, but not exclusively so – then the planning process must include consideration of those solutions.	This would be a new process for the local authority to implement	Will be integrated into the EHC Plan.
14		where the child or young person is in or beyond year 9, the EHC plan must include the provision required by the child or young person to assist in preparation for adulthood and independent living, for example, support for finding employment, housing or for participation in society	This would be a new process for the local authority to implement	
15		As EHC plans can be maintained to the age of 25 there will be occasions, when the young person is over 18, that the care provision specified in an EHC plan will be provided by adult services [including the proposals set out in the Care Bill, subject to Parliamentary approval. The Care Bill provides for a single national eligibility criteria and requires that the local authority must meet eligible needs	This would be a new process for the local authority to implement	If eligibility thresholds for EHC Plans are not dovetailed with FACS/national eligibility thresholds then there is a risk of YP with EHC plans not being eligible for social care support thus creating a 'transition' tension within the process.
16		CCGs must agree the health services in the plan, even though decisions may be made by a health professional, such as the designated health officer.	This would be a new process for the CCG to implement	See Joint Commissioning.
17		Health or social care provision made wholly or mainly for the purposes of education or training must be treated as special educational provision.	This is as per current legislation	With the increase in complex needs there are significant cost implications as children enter the education system (e.g. the current cohort of ventilated children). More accurate data analysis is required to quantify the risk in change to need &

ref	Topic	Where we must be, proscribed by statute	Where we are now	Gap/Risk
				complexity coming through.
18		Formal reviews of the EHC plan must take place at least annually.	SEN statements are currently reviewed annually	No change in requirement but resources to support multi agency reviews are increased.
19		Partners must set out their arrangements for agreeing personal budgets and should develop and agree a formal approach to making fair and equitable allocations of funding.	Direct payments are currently offered in to families.	Review current policies & procedures
20		The decision making process to establish and agree a budget should be clear and must be open to challenge with parents able to request a review of decisions in relation to direct payments.	Direct payments are currently offered in to families	Review current policies & procedures
21		Direct payments must be set at a level that will deliver the provision specified in the plan. Local authorities must offer direct payments for social care services.	Direct payments are currently offered in to families	Review current policies & procedures
22		In every case, the local authority must make a judgement, in close consultation with the young person and their parents on whether agreed outcomes have been met and whether the young person has been prepared and enabled to make a successful transition into adult life.	This would be a new process for the local authority to implement	<i>agreed outcomes have been met</i> – requires the clear setting of SMART outcomes during the planning process.
23		EHC support can continue up until the end of the academic year in which they turn 25. But the local authority must take into account whether it is in the best interests of an individual to stay in education or training.	This is as per current legislation...	But – the new Bill makes this more explicit and potentially raises the expectation of continued free Education to the age of 25.
24		However, where there is provision which has been agreed in the health element of the EHC plan, health commissioners must have arrangements in place to secure that provision.	This is a new duty placed on Health	The CCG are reviewing the CoP to assess the impact,
25		Reviews must focus on the child or young person's progress towards achieving the outcomes specified in the EHC plan and whether the outcomes remain appropriate. Reviews must be undertaken in partnership with the child and their parent or the young person, and must take account of their views, wishes and feelings. Reviews		

ref	Topic	Where we must be, proscribed by statute	Where we are now	Gap/Risk
		must be undertaken in full consultation with the school or other institution attended by the child or young person.		
26		Local authorities should consider reviewing a plan for a child under five at least every three to six months to ensure that the provision continues to be appropriate.	Not a legal requirement but....	Potential resource implication dependant on threshold for EHC plan.
27	Disagreement resolution arrangements	Local authorities must make disagreement resolution services available to parents and young people.	We currently have a Disagreement Resolution service in place. Approx cost per annum <5k	A new service, given the changed requirements, will need to be commissioned and tendered. Whilst cross Borough commissioning could help reduce costs the new service will be significantly more involved than currently.
28		The service, while commissioned by it, must be independent of the local authority. No one who is directly employed by a local authority can provide information about mediation or act as a mediator.	Service currently provided by an external contractor	No change.
29		Parents and young people must consider mediation before registering an appeal and if they want to go to mediation local authorities must attend.	This would be a new process for the local authority to implement	No requirement for parents to use the mediation service prior to going to Tribunal. A senior officer from the authority will need to be present at any mediation meeting as a decision maker is required – potential for significant resource impact.
30		Parents and young people can appeal to the Tribunal about: <ul style="list-style-type: none"> • a decision by a local authority not to carry out an EHC needs assessment or re-assessment; • a decision by a local authority that it is not necessary to issue an EHC plan following an assessment; • the description of a child or young person's SEN specified in a plan, the special educational provision specified, the school or other institution or type of school or other institution (such as mainstream school/college) specified in the plan or that no school or other institution is specified; 	In the 12/13 academic year there were 48 registered tribunals.	It is anticipated that the number of mediations & tribunals will increase post September 2014. Unable to quantify at this time as dependant on risk issues contained with transition to new processes. It is interesting to note that there will be no single place to appeal all the contents of the EHC plan. The SEND Tribunal will still only be able to consider a child's educational needs – they will not be able to decide issues across the whole child i.e. residential

ref	Topic	Where we must be, proscribed by statute	Where we are now	Gap/Risk
		<ul style="list-style-type: none"> • an amendment to these elements of the plan; • a decision by a local authority not to amend an EHC plan following a review or re-assessment; • a decision by a local authority to cease to maintain a plan. 		placements needed because of both educational and social care needs.
31	Information, Advice & Support	All local authorities must have an impartial Information, Advice and Support (IAS) service and should ensure that advice and guidance for young people is tailored appropriately for them.	This would be a new service requiring commissioning.	No additional funding provided with the Bill has been identified at this time. Based on previous IAS services commissioned and the scale envisaged under the CoP annual cost could be in the region of £100k+. Opportunity for joint funding with the CCG?
32		Local authorities must provide all parents, children and young people with clear and accurate information, advice and support in relation to SEND, health and social care, including the statutory assessment process and EHC plans. And is confidential and free for young people aged 0-25 and their parents.	This would be a new process for the local authority to implement	Source of information would be the Local Offer site on MyLife.
33		Preferably be located in easily accessible premises that are independent of the local authority and CCGs	A new requirement	This requirement will have a potential significant cost implication.
34		The single point of access should provide information and advice on all matters relating to SEN including: <ul style="list-style-type: none"> • local policy and practice; • the local offer; • personalisation and personal budgets; and • education law on SEN and related law on disability, health and social care, through suitably independently trained staff. 	This would be a new process for the local authority to implement	Majority of this will be provided via the Local Offer. The requirement for trained staff will have a cost impact on the IAS service.
35		should include: <ul style="list-style-type: none"> • key working support such as: <ul style="list-style-type: none"> - individual casework and informal advocacy; - support in attending meetings, contributing to 	This would be a new process for the local authority to implement	The extensive roles identified will have a commensurate impact on the cost of the service.

ref	Topic	Where we must be, proscribed by statute	Where we are now	Gap/Risk
		assessments and reviews, and participating in decisions about outcomes for the child or young person;		
36		Where requested by parents or young people seeking an EHC plan, and subject to availability , the offer of an Independent Supporter - a trained, independent individual from the voluntary or private sector, to help them through the statutory process, from requesting an assessment through to the agreement of the EHC plan and any associated personal budget;	This would be a new process for the local authority to implement	Not a legal requirement...but flagged as a risk. This element is currently out for consultation.
37	Joint Commissioning	all local authorities and their partner CCGs must make arrangements for agreeing: <ul style="list-style-type: none"> • The education, health and social care provision reasonably required by local children and young people with SEN; • Which education, health and social care provision will be secured and by whom; • What advice and information is to be provided about education, health and care provision and by whom and to whom it is to be provided; • How complaints about education, health and social care provision can be made and are dealt with; and Procedures for ensuring that disputes between local authorities and CCGs are resolved as quickly as possible. 	This would be a new process for the local authority and CCG to implement	Meetings with CCG Commissioners are ongoing to discuss the implications of these requirements and identify routes of conforming with statutory requirements.
38		Joint commissioning arrangements must include all education, health and care provision which has been assessed as being needed to support children and young people with SEN in the area.	This would be a new process for the local authority and CCG to implement	
39		The joint commissioning must also include arrangements and responsibilities for securing outcomes and personalised services, specifically: <ul style="list-style-type: none"> • securing Education, Health and Care assessments; • securing the education, health and care provision specified in EHC plans; and 	Currently only 9 children & young people are receiving Continuing Health Care funding.	

ref	Topic	Where we must be, proscribed by statute	Where we are now	Gap/Risk
		<ul style="list-style-type: none"> agreeing personal budgets 		
40		Local authorities, CCGs and other partners must work together in local Health and Wellbeing Boards to assess the health needs of local people, including those with SEND.	Health and Wellbeing Board in place.	Reiteration of Boards responsibility towards SEND
41		When carrying out their statutory SEND duties, local authorities must do so with a view to making sure that services work together where this promotes children and young people's wellbeing or improves the quality of special educational provision.		
42		Local governance arrangements must be established which ensure clear ownership and accountability across SEN commissioning. They must be robust enough to ensure that all partners are clear about who is responsible for delivering what, who the decision makers are in education, health and social care, and how partners will hold each other to account in the event of a dispute	This would be a new process for the local authority and CCG to implement	
43		A Designated Health Officer (DHO) should be identified whose role is to ensure that the CCG is meeting its statutory responsibilities for SEN.	This would be a new designated role for the CCG	
44		Under Section 10 of the Children Act 2004 and Sections 14Z1 and 75 of the National Health Service Act 2006, local authorities and CCGs have a statutory duty to consider the extent to which children and young people's needs could be more effectively met through integrating services.	As per current legislation.	
45	Local Offer	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 SEN, including those who do not have EHC plans.	The MyLife portal is currently being developed and populated with the required information	Management & oversight of the portal will be required. As much will be made provider updated as possible, but the statutory requirement remains with the LA.
46		Local authorities must involve children and young people with SEN and the parents of children with SEN in the	BPV & the Young Advisers are engrained in the development of the	

ref	Topic	Where we must be, proscribed by statute	Where we are now	Gap/Risk
		development and review of their local offer.	Local Offer	
47		Local authorities must provide a range of short breaks for disabled children, young people and their families, and prepare a short breaks duty statement giving details of the local range of services and how they can be accessed, including any eligibility criteria	We are currently compliant with this duty. Short breaks review is currently out for consultation	No additional risk – but contracts likely to be disaggregated in order to comply with Direct Payments regulation.
48		Local authorities must seek and publish comments about their local offer on an annual and anonymised basis. also publish their response to those comments and should publish an explanation of the action they are taking to respond to them	This would be a new process for the local authority to implement	Will require an assessment on how/who this will be managed.
49	Education Provision	...schools and colleges must use their best endeavours to ensure that provision is made for those who need it.		See comment under 73.
50		Colleges should be ambitious for young people with SEN and must use their best endeavours so that young people with SEN have access to a wide range of study programmes and support at all levels to enable them to achieve good life outcomes.	The enhancement of SEND provision at Bromley College supports the delivery of this requirement.	No additional risk.
51		Parents of children under compulsory school age can ask for a particular maintained nursery school to be named in their child's plan. The local authority must name the school unless it would be unsuitable for the age, ability, aptitude or SEN of the child; or the attendance of the child there would be incompatible with the efficient education of others; or the efficient use of resources.		
52		mainstream schools, maintained nursery schools, pupil referral units (PRU) and institutions within the further education sector must use their 'best endeavours' to secure the special educational provision called for by a child or young person's SEN.	Impact of the Academy programme	Clarity has been requested on 'best endeavours' There is a risk that SEND children will be discouraged/excluded from certain schools due to low academic attainment.
53		Two year old funding issue	This would be a new process for the	1. From 2015 all LA's will be

ref	Topic	Where we must be, proscribed by statute	Where we are now	Gap/Risk
			local authority to implement	<p>funded on a take up basis for all eligible 2 year olds. One of the criteria from 2014 will be 2 year olds who have an EHC plan. In Bromley we do not intend to start EHC plans until school -1. We have checked with DfE and they have advised that from 2015, when take up funding is introduced, if a child does not have a plan the LA will be unable to draw down funding for that child which will have a potentially negative impact on DSG.</p> <p>2. The other criteria for accessing 2 year old funding will be ; parents in receipt of workless benefits, parents on low income, LAC children or those previously LAC. There will inevitably be children with SEND in amongst this cohort. The funding for all SEND is within the high needs block of DSG, this means we shall have to ensure funding is available to support children to be able to access their statutory entitlement.</p>
54		In Further Education, the High Needs funding structure dictates that for a college to access 'top-up' funding from a local authority for a young person, they have to have either a Learning Difficulty Assessment or and EHC Plan.		If we are proposing PRAs for those young people who are over £6k and under £12k and then EHC Plans for those above, when they leave school and go to college the college won't be able to access HNS funding for them. We need to consider the impact of this as young people move from schools to college. It's possible that there will be a high risk of EHC

ref	Topic	Where we must be, proscribed by statute	Where we are now	Gap/Risk
				Plan requests on entering FE.

Timescale for legislation:

The bill is referred to as the Children & Families Bill 2014. Obviously, timescales for implementation will depend on its speed of progression through the Lords & the Commons, but Royal Assent is timetabled for Spring 2014 and an implementation date of September 2014.

Progress of the Bill can be tracked here:

[Bill Progress](#)

End note:

There are 1941 active SEN statements in Bromley with a further 63 new statements under assessment. This figure has remained stable over the past year with little sign of reducing prior to the new processes coming into force.

The table below details those C&YP who are in specialist provision. This is based on desk top analysis of current placements and as such is subject to variance (e.g. there may be children & young people within mainstream provision who would be eligible for an EHC plan etc.)

Placement	Number
Maintained Special School	488
Non Maintained Special School	44
Independent Special School	75
Other Independents	88
Post 19 education provision	102
Current Total	797