



**SPECIAL EDUCATIONAL NEEDS AND DISABILITY
CODE OF PRACTICE**

guidance for SENCOs and school leaders

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Introduction

This guidance explains what schools should do in order to meet the needs of pupils with special educational needs and disabilities (SEND).

The guidance outlines:

- the statutory guidance, *Special Educational Needs and Disability (SEND) Code of Practice: 0 to 25 years*;
- what schools need to do to identify and support children and young people who have special educational needs (SEN) or a disability;
- the roles and responsibilities of teachers, special educational needs co-ordinators (SENCOs), school leaders, governors or proprietors, and local authorities;
- the arrangements for remunerating teachers who have SEN-related responsibilities;
- arrangements for joint commissioning and the Local Offer;
- the funding arrangements for SEN; and
- the NASUWT's main concerns about areas of SEND policy and practice and provides advice to teachers and school leaders.

The guidance also includes details of the principles that underpin SEND policy and the arrangements for making complaints about SEN.

Section 1: Key Legislation, Terms and Documents

The key legislation that applies in respect of disability and special educational needs (SEN) are: the Equality Act 2010 and the Children and Families Act 2014.

The Equality Act 2010 applies to the provision of goods, services and facilities, including education, as well as to employment. The Equality Act 2010 also places a public sector equality duty on public bodies, including schools and colleges.

The Children and Families Act 2014 brings together the legal duties for disabled children and young people and those with special educational needs (SEN). The duties are set out in the *Special Educational Needs and Disability Code of Practice: 0 to 25 years*.¹

This section:

1. explains the status of the *SEND Code of Practice*;
2. defines SEN, including broad areas of need, and the graduated approach used in the Code of Practice;
3. defines disability under the Equality Act 2010 and summarises the public sector equality duty (PSED);
4. explains the requirements of schools in relation to preparing and publishing an accessibility plan; and
5. summarises the requirements of schools in relation to pupils with medical conditions.

The *SEND Code of Practice*

The *SEND Code of Practice* provides statutory guidance about what schools, colleges, local authorities and other providers **must do** and **should do** to identify, assess and make provision for children who have SEN or a disability. The Code of Practice cannot be ignored. In the case of things that schools should do, a school must be able to demonstrate either that they have followed the guidance in the Code, or be able to justify why they have departed from the guidance given.

The First-tier Tribunal (SEN and Disability) deals with appeals from parents regarding SEN provision. Tribunals must take account of what the Code says in arriving at a decision about an appeal.

¹ This guidance refers to the Code as the *SEND Code of Practice*.

Definition of special educational needs (SEN)

A child or young person has special educational needs (SEN) or a disability if they have a learning difficulty which calls for special educational provision to be made for them.²

A child/young person of compulsory school age has a learning difficulty if they:

- have significantly greater difficulty in learning than the majority of children of the same age;
- have a disability which prevents or hinders them from making use of educational facilities of a kind generally provided for children of the same age in mainstream schools or mainstream post-16 institutions.³

A child under compulsory school age has a learning difficulty or disability if he or she is likely to fall into the categories above when he or she is of school age, or if he or she would fall into the category if special educational provision was not made.

Special educational provision means:

- a. for children aged two or more, educational provision which is additional to, or otherwise different from, the educational provision made generally for children of the same age in maintained schools, maintained nursery schools, mainstream post-16 institutions, or by relevant early years providers;
- b. for children under two, educational provision of any kind.

Areas of need

The Code of Practice identifies four broad areas of need:⁴

- **communication and interaction** (this covers difficulty with different aspects of speech, language or social communication);
- **cognition and learning** (this includes moderate learning difficulties (MLD), severe learning difficulties (SLD), profound and multiple learning difficulties (PMLD) and specific learning difficulties such as dyslexia, dyscalculia and dyspraxia);
- **social, emotional and mental health difficulties** (this includes difficulties such as anxiety or depression, self-harming, substance misuse, eating disorders or physical symptoms that are medically unexplained); and
- **sensory and/or physical needs.**

² Children and Families Act 2014, Part 3, paragraph 20.

³ Department for Education, *SEND Code of Practice*, Introduction, xiv.

⁴ Ibid, paragraphs 6.28 to 6.35.

Graduated approach

The graduated approach is a four-stage cycle (assess-plan-do-review) that should be used to revisit, refine and review decisions about a pupil's needs. The approach should be used to remove barriers to learning and put effective provision in place. The intention is that this should enable a school to draw on more detailed approaches to support or specialist expertise when needed.

Schools should consider involving specialists from within or outside the school if a pupil continues to make less progress than expected.⁵ The Code of Practice says that a specialist **should** always be involved where a pupil continues to make little or no progress, or where they continue to work at levels substantially below those expected of pupils of a similar age despite receiving evidence-based SEN support delivered by appropriately trained staff.⁶

SEN Support and Education, Health and Care (EHC) plans

If a pupil is identified as having SEN, they may be classed as needing **SEN support**. This is where the school has identified that they need to put special educational provision in place.⁷

Where the school has taken purposeful action to identify, assess and meet the needs of the pupil and they still do not make expected progress, an EHC assessment may be requested.⁸ This may result in the local authority deciding to issue an EHC plan. The EHC plan is a statutory document which sets out how the pupil's needs will be met. See Section 3 for more information.

Independent research commissioned by the NASUWT reveals that 'SEN' is open to interpretation and the point at which external and specialist support might be needed depends on context and local approaches to managing and supporting SEN.⁹

Evidence from an NASUWT survey of teachers and school leaders reveals that cuts to local authority and specialist services have resulted in thresholds for accessing support being raised and increasing pressures on class/subject teachers and SENCOs to meet the needs of pupils with considerable SEN.¹⁰

⁵ Ibid, paragraph 6.58.

⁶ Ibid, paragraph 6.59.

⁷ Ibid, paragraph 6.44.

⁸ Ibid, paragraph 6.63.

⁹ Ellis, Simon; Tod, Janet; and Graham-Matheson, Lynne, *Special Educational Needs and Inclusion: Reflection and Renewal*. NASUWT, Rednal (2008).

¹⁰ NASUWT, *Special Educational Needs (SEN), Additional Learning Needs (ALN) and Additional Support Needs (ASN): Survey report* (April 2018).

It is important to note that the Code of Practice requires schools, local authorities and other services to respond to the needs of the child or young person and not to base decisions about support on available funds. The local authority also has a legal responsibility to ensure that a child receives the education, health and social care support that they need. Therefore, SENCOs and school leaders should challenge the local authority if thresholds for support have been raised and/or support is being rationed and this prevents a pupil from accessing the external support that they need.

SENCOs and school leaders should contact the NASUWT if this is part of systematic practice locally.

The Equality Act 2010

Definition of disability

The Equality Act 2010 states that a person has a disability if he or she has a physical or mental impairment that has a substantial or long-term adverse effect on his or her ability to carry out normal day-to-day activities.¹¹

'Long term' is defined as 'a year or more' and 'substantial' is defined as 'more than minor and trivial'. The definition of disability includes sensory impairments such as those affecting sight or hearing, and long-term health conditions such as epilepsy, asthma, diabetes and cancer. A child does not need to have a medically diagnosed cause for their impairment; what matters is the effect of the impairment, not the cause.

A child who has a disability may or may not have SEN. However, there is considerable overlap between children and young people with disabilities and those with SEN.¹²

The Equality Act places legal duties on schools, early years providers, post-16 institutions, local authorities and others.¹³ They:

- **must not** harass, victimise, or discriminate, directly or indirectly, against disabled children and young people;
- **must not** discriminate for a reason arising as a consequence of a child or young person's disability;
- **must** make reasonable adjustments to ensure that disabled children and young people are not at substantial disadvantage compared to their peers.¹⁴

¹¹ The Equality Act 2010.

¹² DfE, *SEND Code of Practice*, Introduction, paragraph xviii.

¹³ Equality Act 2010, Section 88, Schedule 10.

¹⁴ DfE, *SEND Code of Practice*, Introduction, paragraph xix.

The duty to make reasonable adjustments is anticipatory. This means that schools and other providers must think in advance about what disabled children and young people might require or what adjustments might be needed to prevent disadvantage.¹⁵

Public sector equality duty (PSED)

Public bodies and bodies that carry out public functions are covered by the PSED.¹⁶ The general duty requires providers to have due regard when carrying out their functions of the need to:

- eliminate discrimination;
- advance equality of opportunity; and
- foster good relations between disabled and non-disabled children and young people.

Public bodies, including maintained schools, academies, free schools, further education institutions and maintained nurseries, must also comply with specific duties under the PSED. They **must**:

- publish information to demonstrate that they are complying with the general duty; and
- prepare and publish objectives to achieve the core aims of the general duty. These objectives **must** be specific and measurable.¹⁷

Schools and colleges need to pay particular attention to distinguishing between the needs of pupils with SEN and pupils for whom English is an additional language. A school or college that fails to make an appropriate distinction between SEN and English as an additional language (EAL) could find itself subject to a claim of discrimination under relevant provisions of the Equality Act.

Schools and local authorities should monitor by ethnic background all stages of the process for identifying, assessing and making provision for pupils with SEN. They should use the results of monitoring to assess how the various SEN policies and procedures impact on pupils by ethnic background.

¹⁵ Ibid, Introduction, paragraph xix.

¹⁶ Equality Act 2010, Section 149.

¹⁷ DfE, *SEND Code of Practice*, Introduction, paragraph xix.

Accessibility plan

School governing bodies and proprietors must prepare and publish an accessibility plan setting out the planned improvements that will be taken in relation to disability access. The plan must address three distinct elements of planned improvements in access for disabled pupils:

- the curriculum;
- the physical environment; and
- information.¹⁸

The plan should be implemented and updated on a regular basis.

School governing bodies and proprietors must also publish information about the arrangements for the admission of disabled children, the steps taken to prevent disabled children from being treated less favourably than others, and the facilities provided to assist access of disabled children.¹⁹

Pupils with medical conditions

The Children and Families Act 2014 places a duty on maintained schools and academies to support pupils with medical conditions. Individual healthcare plans will normally specify the type and level of support required to meet the pupil's need. If the pupil also has SEN, their provision should be planned and delivered in a co-ordinated way with the healthcare plan.²⁰

Schools **must** have regard to the statutory guidance, *Supporting pupils at school with medical conditions*.²¹

¹⁸ Ibid, Introduction, paragraph xx.

¹⁹ Ibid, Introduction, paragraph xxi.

²⁰ Ibid, paragraph 6.11.

²¹ Available from: www.gov.uk/government/publications/supporting-pupils-at-school-with-medical-conditions--3. (accessed 18/7/2018).

Section 2: Identifying and Meeting the Needs of Pupils with SEN

This section applies to mainstream schools.²²

Schools **should** use the graduated approach (assess, plan, do and review) to support pupils with SEN.²³

Assess

The Code of Practice says that class and subject teachers, supported by the senior leadership team, **should** make regular assessments of the progress of all pupils and seek to identify those making less than expected progress, e.g. in terms of their attainment or their social development. Where issues are identified, the Code of Practice says that the first response **should** be *'higher quality teaching targeted at [the pupil's] areas of weakness.'*²⁴

Where progress continues to be less than expected, *'the class or subject teacher, working with the SENCO, should assess whether the child has SEN.'*²⁵ This should draw on the teacher's assessment and experience of the pupil, their previous progress and attainment, and information from the school's core approach to pupil progress, attainment and behaviour. The assessment **should** also draw on other subject teachers' assessments, where relevant, the individual's development in comparison to their peers and national data, the views and experiences of parents, the pupil's own views and, if relevant, advice from external support services.²⁶

The Code of Practice makes it clear that the role of the SENCO is strategic and that the SENCO should focus on supporting the class or subject teacher to meet the needs of pupils with SEN. This means that the SENCO needs time to carry out the role. It also means that class and subject teachers are expected to develop the knowledge and skills to support pupils with SEN appropriately. School leaders will need to ensure that all teachers have access, and time, to undertake SEN-related training/continuing professional development (CPD).

²² DfE, *SEND Code of Practice*, Introduction to chapter 6, page 91.

²³ *Ibid*, paragraph 6.44.

²⁴ *Ibid*, paragraph 6.19.

²⁵ *Ibid*, paragraph 6.19.

²⁶ *Ibid*, paragraph 6.45.

Plan

If a decision is made to provide a pupil with **SEN support**, the parents **must** be notified formally.²⁷ The teacher and the SENCO, in consultation with the parent and the pupil, should agree the adjustments, interventions and support to be put in place, as well as the expected impact on progress, development or behaviour, along with a clear date for review.²⁸

All teachers and support staff who work with a pupil **should** be made aware of the pupil's needs, the outcomes sought, the support provided and any teaching strategies or approaches that are required. This information **should** be recorded on the school's information system.²⁹

Many schools use provision mapping to map and manage support for pupils with SEND. Provision mapping tools allow the school to use information strategically, for example, to identify staff development needs, and/or to keep details of the costs of providing additional or different provision to an individual pupil – this information is essential for establishing that the school should apply for top-up funding from the high-needs budget. Provision mapping is also an effective means of managing some of the workload demands associated with school-related record keeping.

Do

The class or subject teacher remains responsible for working with the pupil on a daily basis. Where interventions involve group or one-to-one teaching away from the main class or subject teacher, they still retain responsibility for the pupil.³⁰

Class or subject teachers should work closely with any teaching assistants (TAs) or specialist staff involved, to plan and assess the impact of support and interventions and how they can be linked to classroom teaching.³¹

School leaders will need to consider how class and subject teachers can be supported to make the most effective use of TAs. The Education Endowment Foundation (EEF) has published guidance for schools on making effective use of TAs.³² The self-assessment guide identifies a range of things that are key to establishing effective practice, including teachers and TAs having time to plan and review lessons and feedback on pupils' learning in structured interventions.

²⁷ Ibid, paragraph 6.48.

²⁸ Ibid, paragraph 6.48.

²⁹ Ibid, paragraph 6.49.

³⁰ Ibid, paragraph 6.52.

³¹ Ibid, paragraph 6.52.

³² For example, Jonathan Sharples, Rob Webster and Peter Blatchford (2015), *Making Best Use of Teaching Assistants: Guidance Report and Making Best Use of Teaching Assistants: A Self-Assessment Guide*. Downloadable from: https://educationendowmentfoundation.org.uk/public/files/Publications/Campaigns/TA_RAG_SelfAssessmentGuide.pdf.

The SENCO **should** support the class or subject teacher in further assessment of the child's particular strengths and weaknesses. They **should** also support the class or subject teacher to solve problems and advise on effective implementation of support.³³

Review

A date to review the effectiveness of the support and interventions and their impact **should** be agreed. The views of parents and the pupil **should** feed into the analysis of the pupil's needs.³⁴

The class or subject teacher, working with the SENCO, **should** revise the support in light of the pupil's progress and development, deciding on any changes to the support and outcomes in consultation with the parent and pupil.³⁵

The Code of Practice says that schools **should** meet regularly with parents of children with SEN to 'set clear outcomes and review progress towards [these outcomes]'. Further, it says that 'schools should meet parents at least three times each year'.³⁶

This has the potential to create considerable workload and bureaucratic burdens for teachers. Parents should have up-to-date information about their child's progress and the effectiveness of the support that is being provided. However, this should not mean that the teacher needs to hold termly meetings with individual parents. Schools are required to hold an annual parent/teacher consultation session for all pupils.³⁷ This consultation event can count towards the three-meeting requirement. Schools might also identify different ways in which information can be shared with parents of pupils with SEN, e.g. it may be appropriate to hold information and support sessions for groups of parents.

If a pupil has an EHC plan, the local authority **must** review the plan at least every 12 months. Schools **must** co-operate with the local authority in the review process. As part of the review, the local authority **can require** schools to convene and hold annual review meetings on its behalf.³⁸

³³ DfE, *SEND Code of Practice*, paragraph 6.52.

³⁴ *Ibid*, paragraph 6.53-6.54.

³⁵ *Ibid*, paragraph 6.54.

³⁶ *Ibid*, paragraph 6.65.

³⁷ Education (Pupil Information) (England) Regulations 2005.

³⁸ DfE, *SEND Code of Practice*, paragraph 6.56.

While the local authority can require a school to convene and hold annual review meetings, the school should not be expected to undertake time-consuming and burdensome tasks such as chasing staff from other organisations and agencies to secure meeting dates. Further, schools should not be expected to bear the costs of hosting meetings or pay external agencies for staff to attend those meetings. SENCOs and school leaders should contact the NASUWT for advice if they believe that the demands being placed on the school are unreasonable.

Section 3: Education, Health and Care (EHC) Needs Assessments and EHC Plans

This section outlines the process of requesting an EHC needs assessment, the arrangements for developing and maintaining a plan, and the scope of personal budgets.

EHC needs assessment

Where the school has taken relevant action to identify, assess and meet the SEN of a child or young person but that child or young person has not made expected progress, it may be appropriate to request an **Education, Health and Care (EHC) needs assessment**.³⁹ A child's parent, a young person over the age of 16 but under the age of 25, or a person acting on behalf of a school or post-16 institution has a specific right to ask the local authority to conduct an EHC needs assessment.⁴⁰

The local authority must determine whether an assessment is necessary, make a decision and communicate that decision to the child's parent or the young person within six weeks of receiving the request.^{41 42}

If the local authority decides not to conduct an EHC assessment, it must inform the child's parents or young person of their right to appeal against the decision and the time limit for making an appeal.⁴³

If the local authority decides to make an EHC assessment, it **must** include the child's parent or the young person from the start of the process. The parent or the young person should be able to express their views, wishes and feelings and be part of the decision-making process.⁴⁴

The local authority must gather advice from relevant professionals about the child or young person's education, health and care needs, desired outcomes and special education, health and care provision that may be required to meet the identified needs and achieve desired outcomes.⁴⁵

The local authority must not seek further advice if such advice has already been provided and the person providing the advice, the local authority and the child's parent or the young person are all satisfied that it is sufficient for the assessment process.

³⁹ Ibid, paragraph 6.63.

⁴⁰ Ibid, paragraph 9.8.

⁴¹ Ibid, paragraph 9.12.

⁴² The local authority does not need to consider a request if it has undertaken an EHC assessment within the previous six months.

⁴³ DfE, *SEND Code of Practice*, paragraph 9.17.

⁴⁴ Ibid, paragraph 9.18.

⁴⁵ Ibid, paragraph 9.46.

EHC plans

The Code of Practice says, *'Where in light of an EHC needs assessment, it is necessary for special educational provision to be made in accordance with an EHC plan, the local authority must prepare a plan.'*⁴⁶

The Code makes reference to *'where a local authority decides it is necessary to issue an EHC plan...'*. This appears to give the local authority scope to interpret what is 'necessary'. Evidence from the NASUWT's SEN survey indicates that some local authorities have raised the thresholds for accessing support and strategies to control or limit the number of pupils who receive support.⁴⁷

However, the Code of Practice requires the focus to always be on identifying and meeting the needs of the child or young person. This means that support must be determined by what the pupil needs, not by the resources available to the local authority or other services.

It is not acceptable for schools to be left trying to meet a pupil's needs because other services are rationing resources and/or support. School leaders and SENCOs should challenge the local authority if it is using strategies for controlling or limiting access to EHC needs assessments and subsequent support.

If the local authority fails to take appropriate action, school leaders and SENCOs should contact the NASUWT for advice. It will be particularly helpful to provide the NASUWT with evidence about the local authority's practices.

It may be appropriate for schools to share evidence about poor and inappropriate practices with Ofsted and CQC inspectors as part of SEND area inspections.

The process of EHC needs assessment and EHC plan development must be carried out in a timely manner.⁴⁸ Unless there are specific exemptions, the whole process of EHC needs assessment and EHC plan development should take no more than 20 weeks.⁴⁹

Local authorities are responsible for ensuring that the assessment and development process for an EHC plan is effectively co-ordinated. The Code of Practice says that this should include:

⁴⁶ Ibid, paragraph 9.53.

⁴⁷ NASUWT, *Special Educational Needs (SEN), Additional Learning Needs (ALN) and Additional Support Needs (ASN): Survey report* (April 2018).

⁴⁸ DfE, *SEND Code of Practice*, paragraph 9.39.

⁴⁹ Ibid, paragraph 9.40.

- planning the meeting to meet the needs of children, parents and young people;
- timing meetings to minimise family disruption;
- keeping the child's parent or young person informed through a single point of contact; and
- ensuring, wherever possible, that relevant professionals have sufficient notice to be able to contribute to the process.⁵⁰

SENCOs and school leaders report that some local authorities are asking schools to write EHC plans. While school staff may be asked to contribute to the development of the EHC plan, **it is not appropriate for school staff to write the plan, even if the school receives some form of financial recompense. If a school takes on responsibility for writing the EHC plan, including writing the outcomes section of the plan, the school may be liable in law for securing the provision set out in the plan.**

Schools leader and SENCOs should contact the NASUWT for advice if their local authority is pressurising the school to write EHC plans.

The local authority has legal responsibilities to secure the special education provision identified in an EHC plan. The local authority is also responsible for challenging health and social care services where the health and social care element of the plan is not detailed and specific, or where services set out in the EHC plan to support these outcomes are not being delivered. Therefore, the local authority should write the EHC plan.

The format of an EHC plan is agreed locally. However, it must include the following sections which **must** be separately labelled:

- a. the views, interests and aspirations of the child and his/her parents, or the young person;
- b. the child or young person's SEN;
- c. the child or young person's health needs which are related to their SEN;
- d. the child or young person's social care needs which are related to their SEN or to a disability;
- e. the outcomes sought for the child or young person;
- f. the special educational provision required by the child or young person;
- g. any health provision reasonably required by the learning difficulties or disabilities which result in the child or young person having SEN;

⁵⁰ Ibid, paragraph 9.30.

- h. any social care provision which must be made under the Chronically Sick and Disabled Persons Act 1970 or any other social care provision reasonably required by the learning difficulties or disabilities which result in the child or young person having SEN;
- i. the name and type of the school or institution to be attended by the child or young person;
- j. where there is a Personal Budget, details of how the budget will support particular outcomes, the provision it will be used for, including any flexibility in its usage, and the arrangements for any direct payments for education, health and care. The SEN and outcomes that are to be met must be specified;
- k. the advice and information gathered during the EHC needs assessment must be attached; and
- l. for a child or young person in Year 9 or beyond, the provision required to assist in the preparation of adulthood and independent living.⁵¹

There is no nationally prescribed format for EHC plans. As a result, areas have developed their own formats and systems. Schools that draw pupils from more than one local authority area report significant difficulties, including workload burdens associated with responding to different procedures and information requirements.

The NASUWT would welcome examples of where areas have worked together to adopt consistent systems and practices. SENCOs and school leaders should also contact the NASUWT with evidence about the difficulties that arise because areas have different EHC systems and formats.

The NASUWT has concerns about the quality of many EHC plans and the legality of some EHC plans. Feedback indicates that pressure from the Department for Education (DfE) to complete the transition from statements of SEN to EHC plans has resulted in many plans being rushed and of poor quality. Further, feedback indicates that some plans do not specify the special educational provision that will be provided and so are illegal.

The NASUWT would welcome examples of poor quality and illegal EHC plans.

⁵¹ Ibid, paragraph 9.62.

The child's parent or the young person has the right to request a particular school, college or other institution to be named in their EHC plan. This includes a maintained school or any form of academy or free school. The local authority must comply with the parent or young person's preference unless:

- it would be unsuitable for the age, ability, aptitude or SEN 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.⁵²

The local authority must consult the governing body, principal or proprietor of the school or college and consider their comments very carefully before deciding whether to name it in the child or young person's EHC plan. They must also send the school or college a copy of the draft plan.⁵³

The local authority must seek agreement of the school or post-16 institution where the draft plan sets out any provision which is to be delivered on their premises through a direct payment.⁵⁴

Personal Budgets, including direct payments

A child's parent or a young person has the right to request a Personal Budget where it is confirmed that they will have an EHC plan.⁵⁵ The Personal Budget is an amount of money identified by the local authority to deliver education, health and/or social care provision set out in the EHC plan where the parent or young person is involved in securing that provision.⁵⁶

A Personal Budget can take the form of:

- direct payment – where individuals receive the cash to contract, purchase and manage services themselves;
- a notional budget – an arrangement where the local authority, school or college holds the funds and commissions the support specified in the plan;
- third party arrangements – where funds are paid to and managed by an individual or organisation on behalf of the child or young person;
- a combination of the above.⁵⁷

⁵² Ibid, paragraph 9.79.

⁵³ Ibid, paragraph 9.80.

⁵⁴ Ibid, paragraph 9.81.

⁵⁵ Ibid, paragraph 9.98.

⁵⁶ Ibid, paragraph 9.95.

⁵⁷ Ibid, paragraph 9.101.

Where a direct payment for special educational provision is proposed, the local authority must secure the agreement of the school or setting if any of the provision is to be delivered on the institution's premises.⁵⁸ Where agreement cannot be reached, the local authority must not go ahead with the direct payment.⁵⁹ The local authority must set out in writing the reasons for refusing a request, and notify the parent or young person of their right to request a formal review of the decision.⁶⁰

Direct payments could present particular problems for schools if parents seek to use the money in ways that undermine the professional judgement of the class or subject teacher, the SENCO or the headteacher. For example, a parent might seek to use a direct payment to employ a TA to work directly with their child in ways that do not serve the best interests of the child or other pupils at the school. It is vital that schools refuse inappropriate requests for direct payments. The local authority must not go ahead with the request and will notify the parent of the reason for refusing the request.

Local authorities **must** consider each request for a Personal Budget on its merits. They **must** prepare a Personal Budget unless the sum is part of a larger amount and disaggregation of the funds would have an adverse impact on services provided or arranged by the local authority or other EHC plan holders; or it would not be an efficient use of the local authority's resources.⁶¹

The Code of Practice says that schools and colleges should be encouraged to personalise the support they provide and can choose to contribute their own funding to a Personal Budget.⁶²

⁵⁸ Ibid, paragraph 9.104.

⁵⁹ Ibid, paragraph 9.105.

⁶⁰ Ibid, paragraph 9.107.

⁶¹ Ibid, paragraph 9.106.

⁶² Ibid, paragraph 9.112.

Section 4: Roles and Responsibilities

This section applies to mainstream schools.

Mainstream schools **must**:

- use their best endeavours to make sure that a child with SEN gets the support they need;
- ensure that children and young people with SEN engage in the activities of the school alongside pupils who do not have SEN;
- designate a teacher to be responsible for co-ordinating SEN provision;
- inform parents when they are making special educational provision for a child;
- prepare an SEN information report and their arrangements for the admission of disabled children, including:
 - the steps taken to prevent disabled children from being treated less favourably than others;
 - the facilities provided to enable disabled children to have access to the school; and
 - their accessibility plan showing how they plan to improve access over time.⁶³

School leaders should ensure that all staff are aware of the roles and responsibilities of different staff in identifying and supporting pupils with SEN. It will be particularly important to ensure that staff understand the role of the SENCO, including that the SENCO is expected to support class and subject teachers to identify and meet the needs of pupils with SEN (rather than to provide direct support to pupils with SEN).

School leaders will need to ensure that class and subject teachers understand how support staff should be deployed to work effectively in the classrooms (see EEF guidance on the effective use of TAs)⁶⁴ and ensure that teachers and support staff have sufficient time to fulfil their roles effectively.

⁶³ Ibid, paragraph 6.2.

⁶⁴ Education Endowment Foundation, *Making Best Use of Teaching Assistants: a Self-Assessment Guide*. Available from: https://educationendowmentfoundation.org.uk/public/files/Publications/Campaigns/TA_RAG_SelfAssessment_Guide.pdf. (Accessed 6 August 2018)

Governing body or proprietor

Ultimate responsibility for complying with the statutory duties towards pupils with SEN rests with the governing body of a maintained school, or the proprietor of an academy or free school.

The governing body or proprietor **should** appoint a member of the governing body or a sub-committee to have specific oversight of the school's arrangements for SEN and disability.⁶⁵

The governing body of a mainstream school or the proprietor of a mainstream academy **must** ensure that there is a qualified teacher designated as SENCO for the school.⁶⁶

The governing body or proprietor is responsible for ensuring that the school complies with equalities legislation. They **must** ensure that the school has due regard to general duties to promote equality, including disability equality,⁶⁷ and they **must** ensure that appropriate arrangements are in place to support pupils with medical conditions.⁶⁸

The governing body of a maintained school or the proprietor of an academy **must** publish on their school's website information about their policy for pupils with SEN.⁶⁹ This information should be updated annually. Any changes to the information that occur during the year should be updated as soon as possible. Details about the SEN information that must be reported is covered in Section 8 of this guidance.

Headteacher and school leaders

The headteacher should ensure that the SENCO has sufficient time and resources to carry out their functions. This should include providing them with sufficient administrative support and time away from teaching in a similar way to other important strategic roles within a school.⁷⁰

The headteacher, SENCO and governing body or proprietor should establish a clear picture of the resources that are available to the school.⁷¹ The Code of Practice says that they **should** consider their strategic approach to meeting SEN in the context of the total resources available, including any resources targeted at particular groups, such as the pupil premium.⁷²

⁶⁵ DfE, *SEND Code of Practice*, paragraph 6.3.

⁶⁶ *Ibid*, paragraph 6.84.

⁶⁷ *Ibid*, paragraph 6.8.

⁶⁸ *Ibid*, paragraph 3.66.

⁶⁹ *Ibid*, paragraph 6.79.

⁷⁰ *Ibid*, paragraph 6.91.

⁷¹ *Ibid*, paragraph 6.97.

⁷² *Ibid*, paragraph 6.97.

The headteacher should ensure that the SENCO has the necessary authority to fulfil the strategic role set out in the Code of Practice. They should also ensure that the SENCO is appropriately remunerated.

As part of their approach to school improvement, school leaders should regularly review expertise and resources used to address SEN and consider how these can be used to improve the quality of whole school provision.⁷³

School leaders are responsible for ensuring that the SEN policy is implemented effectively.

This includes ensuring that the school complies with statutory duties to cooperate with the local authority in relation to the development of the Local Offer, EHC needs assessments, and the preparation of an EHC plan.

Senior leaders should support class and subject teachers to make regular assessments of children's progress. In the case of pupils with SEN, they should seek to identify pupils making less than expected progress given their age and individual circumstances.⁷⁴

Senior leaders will need to ensure that all staff are trained and appropriately supported. This includes ensuring that class and subject teachers can draw on specialist support in order to identify and meet the needs of pupils who have SEN. It also includes ensuring that class and subject teachers receive regular SEN-related training and CPD.

Training and development needs should be picked up in performance management.

SENCO

The governing body of maintained mainstream schools and the proprietors of mainstream academies and free schools **must** ensure that a qualified teacher is designated as the SENCO.⁷⁵ The SENCO **must** be a qualified teacher working at the school although they do not necessarily need to be employed directly by the school.⁷⁶

Where a newly appointed SENCO has not previously been the SENCO at the school or any other relevant school for a total period of more than 12

⁷³ Ibid, paragraph 6.3.

⁷⁴ Ibid, paragraph 6.17.

⁷⁵ Ibid, paragraph 6.85.

⁷⁶ For example, the Code of Practice says that it may be appropriate for a number of small primary schools to share a SENCO to work across the schools (paragraph, 6.92).

months, they **must** achieve the National Award for Special Education Needs Co-ordination within three years of appointment.⁷⁷ A National Award must be a postgraduate course accredited by a recognised higher education provider.⁷⁸

The school should pay for the SENCO to undertake the National Award. School leaders should ensure that the SENCO is able to access other specialist training and support. The NASUWT believes that this should include support from SEN specialists and networks outside the school.

The SENCO has an important role to play in determining the strategic development of SEN policy and provision in the school. The SENCO should work closely with the headteacher and governing body to determine this policy. The Code of Practice states that the SENCO will be able to do this most effectively *‘if they are part of the school leadership team’*.⁷⁹

The NASUWT is concerned that some SENCOs will be expected to take on additional responsibilities without receiving appropriate financial remuneration. The Union is also worried that some schools will appoint a school leader as SENCO but require a teacher to fulfil most of the responsibilities, without financial recompense for the work that they do. SENCOs should seek advice and support from the NASUWT if they encounter problems.

The SENCO has day-to-day responsibility for the operation of the SEN policy and co-ordination of specific provision made to support individual pupils with SEN, including those who have EHC plans.⁸⁰

The SENCO provides professional guidance to colleagues and works closely with staff, parents and other agencies.⁸¹

Key SENCO responsibilities may include: overseeing day-to-day operation of the school’s SEN policy; co-ordinating provision for children with SEN; advising on the graduated approach to providing SEN support; advising on the deployment of the school’s delegated budget and other resources to meet pupils’ needs effectively; and working with the headteacher and school governors to ensure that the school meets its responsibilities under the Equality Act 2010 with regard to reasonable adjustments and access arrangements.⁸²

⁷⁷ A National Award must be a postgraduate course accredited by a recognised higher education provider. Any course selected must be equivalent to at least 60 credits and meet the learning outcomes established by the National College of Teaching and Leadership.

⁷⁸ DfE, *SEND Code of Practice*, paragraph 6.86.

⁷⁹ *Ibid*, paragraph 6.87.

⁸⁰ *Ibid*, paragraph 6.88.

⁸¹ *Ibid*, paragraph 6.89.

⁸² *Ibid*, paragraph 6.90.

The school should ensure that the SENCO has sufficient time and resources to carry out their functions. *'This should include providing the SENCO with sufficient administrative support and time away from teaching to enable them to fulfil their responsibilities in a similar way to their important strategic roles within a school.'*⁸³

It is vital that the SENCO has the time and the authority to provide professional guidance and support to colleagues, including class and subject teachers. Evidence from the NASUWT's SEN survey indicates that some schools expect the SENCO to undertake the role in addition to carrying out substantial class and subject teaching responsibilities.⁸⁴

SENCOs should contact their NASUWT Representative if the school does not provide them with sufficient time to carry out their SEN responsibilities.

Class and subject teachers

The Code of Practice identifies high-quality teaching as key to meeting the needs of all pupils, including pupils with SEN.⁸⁵ The Code of Practice also makes it clear that class and subject teachers have a central role to play in identifying and supporting pupils with SEN through the graduated approach of assess-plan-do-review:

Assess

Class and subject teachers, supported by the senior leadership team, are expected to make regular assessments of the progress of all pupils and seek to identify those making less than the expected level of progress. Where issues are identified, the class/subject teacher's first response should be *'higher quality teaching targeted at areas of weakness.'*⁸⁶

Where progress continues to be less than expected, *'the class or subject teacher, working with the SENCO, should carry out a clear analysis of the pupil's needs.'*⁸⁷

Plan

Where it is decided to provide a pupil with SEN support, the teacher and the SENCO, in consultation with the parent and the pupil, should agree the adjustments, interventions and support to be put in place and the expected impact on progress, development or behaviour.⁸⁸

⁸³ Ibid, paragraph 6.91.

⁸⁴ NASUWT (April 2018), *Special Educational Needs (SEN), Additional Learning Needs (ALN) and Additional Support Needs (ASN): survey report.*

⁸⁵ DfE, *SEND Code of Practice*, paragraph 6.19.

⁸⁶ Ibid, paragraph 6.19.

⁸⁷ Ibid, paragraph 6.45.

⁸⁸ Ibid, paragraph 6.48.

Do

The class or subject teacher should remain responsible for working with the child on a daily basis. Where interventions involve group work or one-to-one teaching away from the main class or subject teacher, the class or subject teacher retains responsibility for the pupil. The SENCO is expected to support the class or subject teacher in further assessment of the child's strengths and weaknesses, in problem solving and advising on the effective implementation of support.⁸⁹

Review

The class teacher, working with the SENCO, should revise the support in light of the pupil's progress and development, deciding on any changes to the support and outcomes in consultation with the parent and the pupil.⁹⁰

The Code of Practice says that schools should meet parents at least three times a year.⁹¹ The Code says that these discussions *'should be led by a teacher with good knowledge and understanding of the pupil who is aware of their needs and attainment. This will usually be the class teacher or form tutor, supported by the SENCO.'*⁹²

The NASUWT is concerned that cuts to local authority budgets and other services that support children and young people with SEN mean that schools are often unable to access appropriate external advice and support. Class and subject teachers are on the frontline and have to meet pupils' needs where specialist advice and support is not available. School leaders and SENCOs should challenge the local authority if external specialist support is not being provided, particularly where this is specified in a pupil's EHC plan. School leaders and SENCOs should contact the NASUWT where the local authority does not respond appropriately or where there is evidence of widespread failure to provide appropriate specialist support.

⁸⁹ Ibid, paragraph 6.52.

⁹⁰ Ibid, paragraph 6.54.

⁹¹ Ibid, paragraph 6.65.

⁹² Ibid, paragraph 6.67.

Section 5: Remuneration for SENCOs and for Teachers with Responsibility for Pupils with SEN

The SEND Code of Practice says that the SENCO has an important role to play with the headteacher and governing body in determining the strategic development of SEN policy and provision at the school and that the SENCO will be most effective in this role if they are a member of the school's leadership team.⁹³

This should mean that the SENCO is appointed on the leadership scale. However, if the school does not appoint the SENCO on the leadership scale, the SENCO, at the very least, should receive a teaching and learning responsibility (TLR) payment that reflects the demands of the job and the level of expertise required.

SENCOs should contact their NASUWT Representative if they are not remunerated appropriately.

The School Teachers' Pay and Conditions Document (STPCD) sets out information about SEN pay allowances. *'The relevant body must award a SEN allowance to a classroom teacher:*

- (a) in any SEN post that requires a mandatory SEN qualification and involves teaching pupils with SEN;*
- (b) in a special school;*
- (c) who teaches pupils in one or more designated special classes or units in a school or, in the case of an unattached teacher, in a local authority unit or service;*
- (d) in any non-designated setting (including any Pupil Referral Unit (PRU)) that is analogous to a designated special class or unit, where the post:*
 - (i) involves a substantial element of working directly with children with SEN;*
 - (ii) requires the exercise of a teacher's professional skills and judgement in the teaching of children with SEN; and*
 - (iii) has a greater level of involvement in the teaching of children with special educational needs than is the normal requirement of teachers throughout the school or unit within the school or, in the case of an unattached teacher, the unit or service.⁹⁴*

'Where a SEN allowance is to be paid, the school or relevant body must determine the spot value of the allowance, taking into account the structure of the school's SEN provision and the following factors:

⁹³ Ibid, paragraph 6.87.

⁹⁴ DfE, *School Teachers' Pay and Conditions Document* (September 2017), paragraph 21.2.

- (a) whether any mandatory qualifications are required for the post;
- (b) the qualifications or expertise of the teacher relevant to the post; and
- (c) the relative demands of the post.⁹⁵

*'The school or relevant body must set out in its pay policy the arrangements for rewarding classroom teachers with SEN responsibilities.'*⁹⁶

Section 3 Guidance within the STPCD states that:

'SEN allowances may be held at the same time as TLRs. However, relevant bodies should, when keeping their staffing structures under review:

- a) ensure that holders of SEN allowances are not carrying out tasks that would be more appropriately undertaken by support staff;*
- b) consider whether, if teachers have responsibilities that meet all the criteria for the award of TLR payments, it would be more appropriate to award a TLR payment instead of a SEN allowance of a lower value;*
- c) not award new SEN payments solely for the purposes of recruitment and retention; and*
- d) ensure that any SEN responsibilities are clearly specified in individual teachers' job descriptions.'*⁹⁷

The STPCD is statutory in maintained schools and it, or provisions similar to it, continue to apply in the majority of academies and free schools. Members are advised to check their employers' pay policy to confirm their contractual rights. Members should contact the NASUWT if they have concerns about the policy or how it is being implemented.

Further, the guidance says: *'Where the criteria for the payment of a SEN allowance are met, the relevant body must award an allowance and the teacher's written notification given at the time of the award should specify the amount, and the reason for the award.'*⁹⁸

Schools should follow the advice provided in the NASUWT's School Pay Policies Checklist and associated guidance to ensure that the arrangements for remunerating teachers with SEN responsibilities are appropriate. Teachers should contact the NASUWT if their school does not follow the NASUWT guidance.⁹⁹

⁹⁵ Ibid, paragraph 21.3.

⁹⁶ Ibid, paragraph 21.4.

⁹⁷ DfE, STPCD, 'Section 3 Guidance for Local Authorities, School Leaders, School Teachers and Governing Bodies of Maintained Schools', paragraph 55 (September 2017).

⁹⁸ Ibid, paragraph 55.

⁹⁹ www.nasuwat.org.uk/advice/pay-pensions/pay-policies-checklists.html.

Section 6: Training, Continuing Professional Development (CPD) and Support

This section summarises the SEN-related training requirements for SENCOs and the training and support that should be provided to SENCOs and to class and subject teachers.

SENCOs

A teacher newly appointed to the role of SENCO who has not previously been a SENCO for more than 12 months must achieve a National Award for SENCO Co-ordination within three years of taking up post.¹⁰⁰ A National Award must be a postgraduate course accredited by a recognised higher education provider.¹⁰¹

It is essential that schools ensure that a SENCO who is undertaking training in order to gain accreditation is given release from work for such training and that the necessary supply cover is arranged. Requiring a SENCO to study in their own time is not appropriate, could disadvantage those with family and caring responsibilities, and may be discriminatory.

The school should ensure that the SENCO has sufficient time and resources to carry out the role. This includes providing the SENCO with administrative support and time away from teaching to enable them to fulfil their responsibilities in a similar way to other strategic roles within a school.¹⁰²

SENCOs need time for SEN-related training/CPD so that they can keep up to date, including evidence about high-quality teaching and SEND. They may benefit from opportunities to network with SENCOs in other schools locally.

SENCOs also need time to provide support to class and subject teachers.

Class and subject teachers

The Teachers' Standards state that, in order to achieve Qualified Teacher Status (QTS), trainees must *'have a clear understanding of the needs of all pupils, including those with special educational needs.'*¹⁰³

¹⁰⁰ A National Award must be a postgraduate course which is accredited by a recognised higher education provider. The course must be equivalent to at least 60 credits and the learning outcomes established by the National College of Teaching and Leadership.

¹⁰¹ DfE, *SEND Code of Practice*, paragraph 6.85.

¹⁰² *Ibid*, paragraph 6.91.

¹⁰³ DfE, *Teachers' Standards: Effective from 1 September 2012*, Standard 5, point 4.

Initial teacher training (ITT) providers and partner schools should provide trainees with sufficient opportunities to gain this knowledge and understanding. Similarly, schools should ensure that newly qualified teachers are given appropriate training and support so that they meet the requirements of this standard.

The Code of Practice states that: *‘the quality of teaching for pupils with SEN, and the progress made by pupils, should be a core part of the school’s performance management arrangements and its approach to professional development for all teaching and support staff.’*¹⁰⁴

The focus of performance management should be on development and meeting the support needs of the teacher. It is unacceptable to set performance targets based on pupil performance data, particularly inappropriate for pupils with SEN. The Union has produced extensive advice and guidance on performance management and this can be downloaded from the NASUWT website.¹⁰⁵

The Code of Practice refers to provision maps as an efficient way of showing all of the provision that is additional to and different from that which is offered through the school’s curriculum.¹⁰⁶ It says that provision management can be used strategically and contribute to school improvement by identifying potential areas of development for teaching staff.¹⁰⁷

This highlights the importance of the school adopting a strategic approach to SEN and of including teachers’ CPD needs within school improvement. Performance management should focus on support and development needs, including those relating to SEN.

Annex 2 of the Code of Practice includes information about improving practice and staff training in education settings.¹⁰⁸ It says that schools are responsible for deciding what external support should be sought and for setting priorities for staff CPD, but outlines the benefits of a structured and strategic approach and emphasises the benefits of all staff having a good level of the different types of SEN and suitable teaching approaches and interventions. It also stresses the important role played by the SENCO in advising on, and contributing to, the support and professional development of teachers and other staff.¹⁰⁹

¹⁰⁴ DfE, *SEND Code of Practice*, paragraph 6.4.

¹⁰⁵ www.nasuw.org.uk/PayPensionsandConditions/England/Pay/PerformanceManagement/index.htm.

¹⁰⁶ DfE, *SEND Code of Practice*, paragraph 6.76.

¹⁰⁷ *Ibid*, paragraph 6.77.

¹⁰⁸ *Ibid*, page 276-277.

¹⁰⁹ *Ibid*, page 276.

School leaders need to establish how class and subject teachers will be supported to gain the knowledge and skills that they need to identify and meet the needs of pupils with SEN. This includes ensuring that they have easy access to high-quality advice and support.

Staff should not be expected to undertake training and development in their own time.

Section 7: Working Together for Joint Outcomes

Particular duties are placed on the local authority and Clinical Commissioning Groups (CCGs) in respect of joint commissioning. The local authority also has specific duties to establish and maintain a Local Offer. Schools must co-operate with the local authority in relation to the development and review of the Local Offer.¹¹⁰

This section sets out requirements in respect of:

- joint commissioning;
- the Local Offer.

Joint commissioning

The local authority and the Clinical Commissioning Group (CCG) **must** make joint commissioning arrangements for education, health and social care provision for children and young people with SEN or disabilities.¹¹¹ Joint commissioning arrangements should enable partners to make the best use of all the resources available in an area in the most efficient, effective, equitable and sustainable way.¹¹²

Joint commissioning **must** cover the services for 0-25 year old children and young people with SEN or disabilities with and without EHC plans.¹¹³

Local authorities, NHS England and their partner CCGs **must** make arrangements for agreeing the education, health and social care provision reasonably required by local children and young people with SEN or disabilities.¹¹⁴ This should take account of provision commissioned by other agencies such as schools and colleges.¹¹⁵

Joint commissioning **must** include:

- arrangements for securing EHC needs assessments;
- securing the education, health and care provision specified in EHC plans;
- agreeing Personal Budgets.¹¹⁶

Local joint commissioning arrangements **must** consider:

- what advice and information is to be provided about education, health and care provision for those with SEN or a disability and who is to provide that provision;

¹¹⁰ DfE, *SEND Code of Practice*, paragraph 4.15.

¹¹¹ *Ibid*, paragraph 3.3.

¹¹² *Ibid*, paragraph 3.7.

¹¹³ *Ibid*, paragraph 3.9.

¹¹⁴ *Ibid*, paragraph 3.10

¹¹⁵ *Ibid*, paragraph 3.10.

¹¹⁶ *Ibid*, paragraph 3.1.

- how complaints about provision can be made and are dealt with; and
- procedures for ensuring that disagreements between local authorities and CCGs (and NHS England, where relevant) are resolved as quickly as possible.¹¹⁷

The outputs from this work **must** be presented publicly in the Local Offer.¹¹⁸

The Code of Practice stresses the importance of agencies working together to meet the needs of children and young people with SEN. Whilst there is an assumption that professionals working within the relevant agencies will establish and maintain links with other relevant professionals, in practice schools may come under substantial pressure to take on the key worker or co-ordination role across services. This is likely to be extremely time-consuming and bureaucratic. School leaders should contact the NASUWT if they believe that the school is being asked to take on the key worker role and either that this is not appropriate or taking on the role will create unacceptable workload burdens for staff.

Local Offer

Local authorities must develop and publish a Local Offer setting out in one place information about provision they **expect to be available** across education, health and social care for children and young people in the area who have SEN or are disabled.¹¹⁹ The Local Offer should also include provision that the local authority believes will actually be available.¹²⁰

The Code of Practice sets out what information must be included in the Local Offer.¹²¹ The Local Offer **must** include provision in the local authority's area and provision outside the area that is likely to be used by children and young people with SEN or a disability for whom they are responsible.¹²²

The Local Offer may set out expectations for provision in each local school but this cannot be enforced. School leaders should raise their concerns with the local authority if the Local Offer sets unrealistic or inappropriate expectations. School leaders and NASUWT Representatives should contact the NASUWT for advice where problems persist.

¹¹⁷ Ibid, paragraph 3.12.

¹¹⁸ Ibid, paragraph 3.12.

¹¹⁹ Ibid, paragraph 4.1.

¹²⁰ Ibid, paragraph 4.1.

¹²¹ Ibid, paragraphs 4.29-4.62.

¹²² Ibid, paragraph 4.4.

The governing bodies or proprietors of schools and colleges, including academies and free schools in the local authority area, **must** cooperate with the local authority in the development and review of the Local Offer.¹²³ A mainstream school's arrangements for assessing and identifying pupils as having SEN should be agreed and set out as part of the Local Offer.¹²⁴

The Local Offer should be: collaborative; accessible; comprehensive; up-to-date; and transparent.¹²⁵

The Code of Practice pays particular attention to the need to engage the parents of children with SEN and young people with SEN in planning and decision-making processes about local provision. However, it is also essential that schools are able to contribute to and influence decisions about the Local Offer. This will help to ensure that the Local Offer will support schools to meet the needs of children and young people with SEN.

The Local Offer **must** be widely accessible and published on a website.¹²⁶ The local authority **must** also publish comments at least annually about their Local Offer, including the content of the Offer, the accessibility of information in the Local Offer and how the Offer has been developed and reviewed.¹²⁷ Further, local authorities must publish their response to comments within the Local Offer and details of action they intend to take.¹²⁸

Schools may come under pressure from local authorities to provide detailed information for the Local Offer or to undertake additional work such as preparing a 'School Offer' to mirror the Local Offer. Schools are required to prepare, publish and maintain an SEN information report. They are not required to prepare a School Offer. Schools should challenge the local authority if they are asked to prepare a School Offer or if the request for information is unnecessarily burdensome and bureaucratic. School leaders and NASUWT Representatives should report particular concerns to the NASUWT.

¹²³ Ibid, paragraph 4.14.

¹²⁴ Ibid, paragraph 6.6.

¹²⁵ Ibid, paragraph 4.7.

¹²⁶ Ibid, paragraph 4.62.

¹²⁷ Ibid, paragraphs 4.21-4.22.

¹²⁸ Ibid, paragraph 4.26.

Section 8: SEN Information Report

The governing body of maintained schools and the proprietors of academies **must** publish information on their website about the implementation of the governing body or proprietor's policy for SEN. The information should be updated annually and changes to information occurring in the year should be updated as soon as possible.¹²⁹

The information **must** include the following:¹³⁰

- i. the kinds of SEN that are provided for;
- ii. the name and contact details of the SENCO (mainstream schools);
- iii. the school's policies for identifying children and young people with SEN and assessing their needs (mainstream schools);
- iv. the arrangements for consulting parents of children with SEN and involving them in decisions about their child's education;
- v. the arrangements for consulting young people with SEN and involving them in decisions about their education;
- vi. the arrangements for assessing and reviewing children and young people's progress towards outcomes, including the opportunities to work with parents and young people as part of the assessment and review;
- vii. the arrangements for supporting pupils' transfer between phases of education or preparation for adulthood and independent living;
- viii. the approach to teaching children and young people with SEN;
- ix. how adaptations are made to the curriculum and learning environment of children and young people with SEN;
- x. the expertise and training of staff, including how specialist expertise will be secured;
- xi. the approach to evaluating the effectiveness of the provision made for children and young people with SEN;
- xii. how children and young people with SEN are enabled to engage in activities available to children and young people who do not have SEN;
- xiii. support for improving the emotional and social development, including extra pastoral support arrangements, for children and young people with SEN and measures to prevent bullying;
- xiv. how the governing body involves other bodies, including health and social care bodies, local authority support services and voluntary sector organisations, in meeting the needs of children and young people with SEN; and

¹²⁹ Ibid, paragraph 6.79.

¹³⁰ Ibid, paragraph 6.79.

- xv. arrangements made by the governing body or proprietor for dealing with complaints from parents of children with SEN about provision made at the school.¹³¹

The school should provide information about the school's SEN policy and named contacts for situations where young people or parents have concerns. The information report should give details of the school's contribution to the local authority's Local Offer. It must include information about where the local authority's Local Offer is published.¹³²

The SEN information report is distinct from the Local Offer. Schools do not need to produce a school-level Local Offer and should resist any pressure from local authority staff to produce one.

It will be helpful to engage parents of and pupils with SEN, staff and teacher unions in the development and review of the SEN information report. This will help to ensure that the report is accessible and relevant.

¹³¹ Ibid, paragraph 6.82.

¹³² Ibid, paragraph 6.81.

Section 9: SEND Funding

In mainstream maintained schools and mainstream academies and free schools, funding for pupils with SEN consists of core funding and ‘top-up’ funding for individual pupils with high needs.

There are differences in the way in which funding for SEN is allocated at local level. Further, school funding reforms mean that the way in which decisions about school funding are made will change in the future. This section provides a basic explanation of school funding and how SEN provision in mainstream schools is funded.¹³³

School funding is complex and it will be important to refer to information about the local authority’s Scheme of Delegation. Members and representatives who have concerns about school funding for SEN, including high-needs funding, should contact the NASUWT for advice once they have obtained information from their local authority.

Core funding

Core funding is determined using a formula and comprises an age-weighted pupil unit (AWPU) and additional support funding (ASF). The ASF element of core funding includes the notional budget for SEN.

The AWPU is the basic entitlement of per-pupil funding that a school will receive. The actual amount of AWPU that a school receives will depend on the age of the pupils and on the local authority area in which the school is located. Until 2021/22, the AWPU for each phase of school is determined by the local authority’s approach to implementing the National Funding Formula (NFF).¹³⁴

Until 2021/22, the NFF will be allocated in three blocks to local authorities: the Schools Block or dedicated schools grant (DSG); the High Needs Block; and the Central Services Block. Local authorities have flexibility on how funding in these blocks is allocated. However, this flexibility will end for the Schools Block in 2021/22 when schools will receive individual NFF allocations determined by the DfE. Local authorities will continue to allocate the High Needs Block and Central Services Block funding from 2021/22 onwards.

Until April 2021, local authorities have the flexibility to allocate Schools Block/DSG funding by either:

- continuing to use the local funding formula which has been agreed by the Schools Forum and approved by the DfE;

¹³³ Further information about school funding can be found at: <https://www.gov.uk/government/policies/school-and-college-funding>.

¹³⁴ DfE (July 2018), *The national funding formulae for schools and high needs: 2019 to 2020*, paragraph 6.

- ‘passporting’ the NFF through to individual schools (the ‘soft’ NFF); or
- following a transitional approach (e.g. treating 2018/19, 2019/20 and/or 2020/21 as transition year(s) to ‘hard’ NFF allocations to individual schools).

In 2019/20, the transitional NFF will provide local authorities with per-pupil funding of at least £3,500 for all primary schools and at least £4,800 for all secondary schools that have pupils in years 10 and 11.¹³⁵

There are huge challenges in moving from the current system of school funding to one that seeks to operate using a ‘hard’ formula for determining funding allocations to individual schools. It is possible that there will be further amendments to the proposed reforms. School leaders and NASUWT Representatives should refer to the school budgets and funding section of the NASUWT website for the latest information about school funding: www.nasuwt.org.uk/advice/leadership/budgets-funding.html.

If a local authority uses a local funding formula or if it passports the NFF through to individual schools, it will operate criteria for determining the Adoption Support Fund (ASF) that is allocated to individual schools within core funding. These include a compulsory deprivation indicator (e.g. free school meals or the incomes deprivation affecting children index (IDACI)) and optional indicators that may include prior attainment, looked after children, English as an additional language (EAL), pupil mobility and sparsity. Typically, prior attainment and deprivation serve as proxies for SEN, although a local authority may use other criteria.

In circumstances where a local authority continues to use its local funding formula, the authority should be asked to provide details of the formula that it uses to fund pupils with SEND in mainstream settings (this should be covered in the Scheme of Delegation).

High-needs funding

Schools are expected to contribute the first £6,000 of cost for additional education support before accessing ‘top-up’ funding from the high-needs budget. Under the existing funding arrangements, in determining eligibility for ‘top-up’ funding, the AWPU is assumed to be £4,000. This means that a school will not receive top-up funding unless it exceeds the notional funding threshold of £10,000 (£4,000 AWPU + £6,000 ASF).¹³⁶

¹³⁵ DfE, *Schools revenue funding 2018 to 2019: Operational guide*. Figures updated to reflect the Government announcement that transition will be extended to 2020/21 (December 2017).

¹³⁶ *IPSEA briefing: School funding reform: SEN Funding after April 2013*, May 2013.

In practice, the majority of primary schools receive less than £4,000 AWPJ. However, the criteria for accessing high-needs funding mean that a school must reach the £10,000 threshold before it can access top-up funding. This means that many primary schools will need to contribute more than £6,000 before they can access high-needs funding.

The SEN budget is not ring-fenced and it is for schools to determine their approach to using resources to support pupils with SEN as part of normal budget planning.¹³⁷

It is important that a school allocates funding to support pupils with SEN and is able to identify what money has been allocated, including the amount of money that has been allocated to support individual pupils. This is essential if the school is to adopt a strategic approach to supporting pupils with SEN. It will also be needed to map spending and demonstrate that a pupil with SEN needs 'top-up' funding from the high-needs budget.

High-needs funding is not just for pupils with an EHC plan; a school can seek top-up funding for a pupil on SEN support so long as it can show that it has contributed £10,000 to meeting the needs of the pupil and additional resources are needed to support the pupil. A mainstream school will also need to meet the first £10,000 of costs of supporting a pupil with an EHC plan before it can access top-up funding.

The NASUWT has received feedback from SENCOs and school leaders responding to an SEN survey which indicates that some schools do not receive sufficient funds to meet the needs of pupils with SEN.¹³⁸ In the first instance, SENCOs and school leaders should contact their local authority to raise concerns about particular pupils. The NASUWT would also like to receive evidence that illustrates the difficulties that schools are facing.¹³⁹

¹³⁷ DfE, *SEND Code of Practice*, Paragraph 6.97.

¹³⁸ NASUWT, *Special Educational Needs (SEN), Additional Learning Needs (ALN) and Additional Support Needs (ASN): Survey Report* (April 2018).

¹³⁹ Contact: education@mail.nasuwt.org.uk.

Further Information

NASUWT publications

NASUWT (April 2018), *Special Educational Needs (SEN), Additional Learning Needs (ALN) and Additional Support Needs (ASN): Survey Report*.

Ellis, Simon; Tod, Janet; and Graham-Matheson, Lynne (2008), *Special Educational Needs and Inclusion: Reflection and Renewal*.

NASUWT website: www.nasuwt.org.uk/advice/in-the-classroom/special-educational-needs.html.

Other publications

Department for Education (January 2015), *Special Educational Needs and Disability Code of Practice: 0 to 25 years. Statutory guidance for organisations who work with and support children and young people with special educational needs and disabilities*.

Department for Education (March 2018), *SEND Tribunal: single route of redress national trial: Guidance for local authorities, health commissioners, parents and young people*.

Department for Education (July 2011), *Teachers' Standards: Guidance for school leaders, school staff and governing bodies*.

Education Endowment Foundation (EEF), *Making Best Use of Teaching Assistants: a Self-Assessment Guide*. Available from: https://educationendowmentfoundation.org.uk/public/files/Publications/Campaigns/TA_RAG_SelfAssessmentGuide.pdf.

Sharples, Jonathan; Webster, Rob; and Blatchford, Peter (2015), *Making Best Use of Teaching Assistants: Guidance Report*.

Appendix 1: Principles that underpin SEND Policy

The Children and Families Act 2014 requires local authorities in carrying out their functions under the Act to have regard to:

- the views, wishes and feelings of the child or young person, and the child's parents;
- the importance of the child or young person and the child's parents participating in decisions and being provided with information and support so that they can participate in decision-making; and
- the need to help the child, young person and the child's parents so that they can achieve the best possible educational and other outcomes.¹⁴⁰

The principles are designed to support:

- children, their parents and young people to participate in decision-making;
- early identification of needs and early intervention to support needs;
- young people and their parents to have greater choice and control over support;
- collaboration between education health and social care services;
- high-quality provision to meet the needs of children and young people with SEN;
- inclusive practice and removing barriers to learning; and
- successful preparation for adulthood.

The principles have implications for how schools, colleges and other education providers organise SEN provision and support pupils with SEN.

Engaging children, young people, and parents in decision-making

Schools and colleges **should** take steps to ensure that young people and parents are actively supported in contributing to needs assessments, and developing and reviewing EHC plans.¹⁴¹

Collaboration between education, health and social care services

Local authorities and clinical commissioning groups (CCGs) **must** make joint commissioning arrangements for education, health and care provision for children and young people with SEN or disabilities.¹⁴²

Schools and post-16 settings can be commissioners in their own right. Schools have a notional SEN budget within the DSG and many schools commission provision to support pupils. Schools must work with the local

¹⁴⁰ DfE, *SEND Code of Practice*, January 2015, paragraph 1.1.

¹⁴¹ *Ibid*, paragraph 1.4.

¹⁴² Children and Families Act 2014, Section 26.

authority in developing the Local Offer (see below). The school's governing body must ensure that arrangements are in place to support pupils with medical conditions and should ensure that school leaders consult health and social care professionals, pupils and parents to ensure that children with medical conditions are effectively supported.¹⁴³

High-quality teaching to meet the needs of children and young people with SEN

The Code of Practice says that special educational provision is underpinned by high-quality teaching. It also says that while high-quality teaching that is differentiated and personalised will meet the needs of the majority of children and young people, schools and colleges **must** use their best endeavours to ensure that provision is made for those children and young people who need educational provision that is additional to or different from this.¹⁴⁴

The Code of Practice says that schools and colleges **should**:

- ensure that decisions are informed by the insights of parents, children and young people;
- have high ambitions and set stretching targets for the child or young person;
- track their progress towards these goals;
- keep under review the additional or different provision that is made for them;
- promote positive outcomes in the wider areas of personal and social development; and
- ensure that approaches used are based on the best possible evidence and are having the required impact on progress.¹⁴⁵

The Code says that *'making higher quality teaching normally available to the whole class is more likely to mean that fewer pupils will require such support. Such improvements in whole-class provision tend to be more cost effective and sustainable.'*¹⁴⁶

Inclusion

The Code of Practice outlines the Government's commitment to the inclusive education of children and young people with disabilities and the progressive removal of barriers to learning and participation in mainstream education.¹⁴⁷

¹⁴³ DfE, *SEND Code of Practice*, paragraph 3.66.

¹⁴⁴ *Ibid*, paragraph 1.24.

¹⁴⁵ *Ibid*, paragraph 1.25.

¹⁴⁶ *Ibid*, paragraph 6.15.

¹⁴⁷ *Ibid*, paragraph 1.26.

The Code says that the majority of pupils with SEN should be educated in mainstream provision.

Children and young people who have SEN but who do not have an EHC plan must be educated in a mainstream setting except in specific circumstances. They can be placed in special schools or special post-16 provision if:

- they are admitted to a special school or special post-16 institution to be assessed for an EHC plan;¹⁴⁸
- there is a change in their circumstances;¹⁴⁹
- they are in hospital and admitted to a special school which is established in a hospital; or
- they are admitted to a special academy whose academy arrangements allow it to admit children and young people who do not have an EHC plan.

The School Admissions Code of Practice requires children and young people with SEN to be treated fairly and states that admission authorities:

- **must** consider applications from parents of children who have SEN but do not have an EHC plan on the basis of the school's published admissions criteria as part of normal admissions procedures;
- **must not** refuse to admit a child who has SEN but does not have an EHC plan because they do not feel able to cater for those needs;
- **must not** refuse to admit a child on the grounds that they do not have an EHC plan.¹⁵⁰

¹⁴⁸ The young person or parent, the local authority and the head of the special school/institution must agree to this.

¹⁴⁹ Again, the young person or parent, the local authority and head of the special school/institution must agree to this.

¹⁵⁰ DfE, *SEND Code of Practice*, paragraph 1.27.

Appendix 2: Disagreements and Complaints

This section outlines the procedures for resolving disagreements between parents or young people and the school, local authority or health commissioners. It also outlines the options for taking a complaint further.

The section covers school complaints procedures, the role of the disagreement resolution service (DRS), mediation, the First-tier Tribunal, complaints about the NHS, and complaints to the Secretary of State for Education, the Education and Skills Funding Agency (ESFA), and the Local Government Ombudsman (LGO).

School complaints procedures

All state-funded schools **must** have a procedure to deal with complaints and publish details of their procedure.¹⁵¹ The proprietors of academies and free schools must draw up a procedure in writing and ensure that this is made available to parents. The procedure must allow for a complaint to be considered informally in the first instance.¹⁵²

Disagreement resolution service (DRS)

Local authorities **must** make DRSs available to parents and young people.¹⁵³ Disagreement resolution arrangements cover all children and young people with SEN and help to resolve four types of disagreement, between:

1. parent/young person and the local authority/governing body of a school/proprietor of an academy about how they are carrying out their education, health or care duties for children and young people with SEN. This includes disputes about:
 - a. duties on the local authority to keep a child or young person's education and care provision under review;
 - b. duties on the local authority to assess needs and draw up EHC plans; and
 - c. duties on school governing bodies and proprietors of academies to use their best endeavours to meet children and young people's SEN.

Point c. covers children and young people on SEN Support as well as those with EHC plans.

¹⁵¹ *Ibid*, paragraph 11.69.

¹⁵² *Ibid*, paragraph 11.71.

¹⁵³ *Ibid*, paragraph 11.6.

2. parent/young person and the school about the special educational provision made for the child or young person (whether or not they have an EHC plan);
3. parent/young person and CCG/local authority about health or social care provision during EHC needs assessment, while EHC plans are being drawn up or reviewed or when children and young people are being reassessed;
4. local authority and health commissioning bodies during EHC needs assessments or re-assessments, the drawing up of EHC plans or review of EHC plans. This includes the description of the child or young person's education, health and care needs and any education, health and care provision set out in the plan¹⁵⁴

Mediation

The Children and Families Act 2014 makes a distinction between disagreement resolution arrangements and mediation. Mediation arrangements are specifically linked to decisions about EHC needs assessments and plans.¹⁵⁵

Local authorities must make arrangements for parents and young people to receive information about mediation. The mediation service must be independent of the local authority. The arrangements for securing mediation information services must be set out in the Local Offer.¹⁵⁶

A parent or young person is not required to go to mediation before making an appeal to the Tribunal. However, they will need a certificate (confirming that information has been provided) from the mediation advisor before lodging the appeal.^{157 158}

First-tier Tribunal (SEN and Disability)

The Tribunal hears appeals against:

- decisions made by local authorities in England in relation to children and young people's EHC needs assessments and EHC plans; and
- disability discrimination claims against schools or against the local authority when it is the responsible body for a school.

¹⁵⁴ Ibid, paragraph 11.8.

¹⁵⁵ Ibid, paragraph 11.13.

¹⁵⁶ Ibid, paragraphs 11.14-11.16.

¹⁵⁷ Ibid, paragraph 11.23.

¹⁵⁸ Except where the appeal is solely about the name of the school or institution named on the plan, the type of school or institution named on the plan, or the fact that no school or other institution is named, paragraph 11.24.

In addition, from April 2018, a two-year national trial extends the power of the Tribunal to make non-binding recommendations on the health and social care aspects of EHC plans.¹⁵⁹

Note that the Tribunal can only make a recommendation where the appeal includes an education element, i.e. it cannot make a recommendation if the issue is only related to health or social care.¹⁶⁰

In relation to EHC needs assessments and EHC plans, a parent/young person can appeal to the Tribunal about:

- a decision by a local authority not to carry out an EHC needs assessment or reassessment;
- 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 the EHC plan and the special educational provision specified;
- the school or other institution specified in the plan or that no institution is specified;
- an amendment to these elements on the EHC plan;
- a decision by a local authority not to amend an EHC plan following a review of reassessment;
- a decision by a local authority to cease to maintain an EHC plan.¹⁶¹

An appeal must either be registered within two months from the date the local authority sent the notice containing a decision, or one month from the date a certificate is issued following the parent or young person being given mediation information – whichever is later.¹⁶²

Parents or the young person can appeal to the Tribunal about alleged disability discrimination by any school in the matters of:

- exclusions;
- the provision of education and associated services;
- making reasonable adjustments, including the provision of auxiliary aids and services; and
- admissions to independent and non-maintained special schools.^{163 164}

Disability discrimination claims against the policies that local authorities have adopted are made to the county courts.¹⁶⁵

¹⁵⁹ Department for Education (March 2018) *SEND Tribunal: single route of redress national trial: Guidance for local authorities, health commissioners, parents and young people*.

¹⁶⁰ Information from the Boyes Turner website: www.senexpertsolicitors.co.uk/site/news/the-new-send-pilot-recommendations (accessed 16 July 2018).

¹⁶¹ DfE, *SEND Code of Practice*, paragraph 11.45.

¹⁶² *Ibid*, paragraph 11.39.

¹⁶³ *Ibid*, paragraph 11.53.

¹⁶⁴ Appeals about admissions to state-funded schools are made to local admissions panels.

¹⁶⁵ DfE, *SEND Code of Practice*, paragraph 11.54.

NHS complaints

A complaint may be made to the clinical commissioning group (CCG) where there is a concern about the way in which a service is commissioned or provided, including, for example, concerns about the appropriateness of services in an EHC plan.¹⁶⁶

Complaints to the Secretary of State for Education

The Secretary of State for Education will not normally intervene if there is another avenue of redress, e.g. the Tribunal.¹⁶⁷

Complaints can be made to the Secretary of State that either the governing body of a maintained school or a local authority has acted unreasonably or has failed to carry out one of its duties under the Education Acts, including their SEN duties.¹⁶⁸

For complaints about SEN provision, this will be the final step for the parent of a child or a young person with SEN (on SEN Support or with an EHC plan) in a maintained school.

In the case of SEN Support, the parent or young person would need to have complained to the school and then to the local authority. They may have used the local authority DRS or have turned down the invitation to use that service.

Complaints to the Education and Skills Funding Agency (ESFA)¹⁶⁹

A parent may complain to the ESFA (acting on behalf of the Secretary of State) if the proprietor of their child's academy or free school has not resolved their complaint through the school's complaints procedure.¹⁷⁰

For complaints about SEN provision, this will be the final step for the parent of a child or a young person with SEN (on SEN Support or with an EHC plan) in an academy.

In the case of a child or young person on SEN Support, the parent or the young person will need to have complained to the school and have used the local authority DRS or turned down the offer to use the DRS.

In the case of SEN Support, the parent or young person would need to have complained to the school and then to the local authority. They may have used the local authority DRS or have turned down the invitation to use that service.

¹⁶⁶ Ibid, paragraph 11.101.

¹⁶⁷ Ibid, paragraph 11.75.

¹⁶⁸ Ibid, paragraph 11.73.

¹⁶⁹ The ESFA replaced the Education Funding Agency and the Skills Funding Agency.

¹⁷⁰ DfE, *SEND Code of Practice*, paragraph 11.71.

Complaints to the Local Government Ombudsman (LGO)

The LGO can investigate complaints against local authorities where the complaint has not been resolved by the local authority's complaints procedure. The LGO investigates the process by which local authority decisions were made and whether there has been maladministration, rather than examining the merits of a decision which has been properly taken. Maladministration can include delay or failure to take action or follow procedures.¹⁷¹

The LGO can investigate complaints that the special educational provision set out in EHC plans is not being delivered. This can include investigating what part the school played in the provision not being delivered. The LGO cannot otherwise investigate complaints about schools SEN provision and has no powers to make recommendations to a school.¹⁷²

Complaints to the Parliamentary and Health Service Ombudsman (PHSO)

The PHSO investigates complaints that individuals have been treated unfairly or have received a poor service from the NHS in England, or from government departments and public organisations in the UK. The PHSO can investigate complaints about the commissioning and provision of healthcare, including the delivery of health provision in EHC plans.¹⁷³

¹⁷¹ Ibid, paragraph 11.89.

¹⁷² Ibid, paragraph 11.90.

¹⁷³ Ibid, paragraphs 11.95-11.96.

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