

Special educational needs reform – England: Frequently Asked Questions

This document was last updated on: **12 February 2013.**

Contents

Introduction	1
Summary.....	1
Special Educational Needs (SEN) Code of Practice	2
Pathfinders.....	3
Education, Health and Care plans	4
Personal budgets	6
Local offer	7
Choosing a school	8
NDCS’s work on SEN reform	9

Introduction

This note has been prepared for parents of deaf children looking for more information about proposed changes to education laws in England for children with special educational needs (SEN).

Reforms are also taking place in Wales and Northern Ireland. Please contact the NDCS campaigns team at campaigns@ndcs.org.uk if you would like more information about these proposals.

This note is a broad summary of NDCS’s understanding of the main proposed changes. Many of the proposals will change as they are discussed by politicians. This note will be regularly updated so please keep checking back for the latest information. You can find the latest version of this document at www.ndcs.org.uk/sen. If you have any specific questions that are not answered in this document, please get in touch with the NDCS campaigns team.

Summary

What do the proposals involve?

The Department for Education are proposing a radical shake up of how children with SEN and disabilities and their families are supported. Some of the key proposals include:

- Replacing the statement of SEN with a broader Education, Health and Care Plan
- Allowing young people with SEN up to the age of 19 to have an Education, Health and Care Plan and, in some cases, up to 25
- Giving parents and young people the option of a personal budget to buy back specialist support
- Requiring local authorities to set out a ‘local offer’ of what support they normally provide to children with SEN and disabilities
- Changing the SEN Code of Practice.

To read the proposals in full, you can visit the Department for Education website at <http://www.education.gov.uk/childrenandfamiliesbill>. You can also visit the IPSEA (Independent Parental Special Education Advice) website for more detailed information about the proposed changes: <http://www.ipsea.org.uk/>

Until these reforms come into force, **existing protections and laws around SEN remain in place.**

For further information on statements, see our factsheet *A Guide to Statutory Assessments and Statements of Special Educational Needs for Deaf Children (England and Wales)*. For a copy, contact the NDCS Freephone Helpline or visit our website.

What happens next? (updated)

In March 2011, the Department for Education published their proposals for reform. Some of the proposals will require a change to the law. Following a series of consultations, in February 2013, the Department published their final proposals.

The final proposals are set out in part 3 of the Children and Families Bill. Politicians are now being asked to discuss and agree these proposals. This is likely to be a lengthy process, going through different stages and it is possible that further changes may be made.

Once politicians have finished scrutinising the Bill, it will become law. This is likely to be in spring 2014.

The changes are likely to come into effect from September 2014.

Unless you live in one of the 'pathfinder' areas (see later), you may not notice any major changes until then.

If you are interested in finding out more about the parliamentary process or to read the Bill in full, the Parliament website has more information at: <http://services.parliament.uk/bills/2012-13/childrenandfamilies.html>

Special Educational Needs (SEN) Code of Practice

Will the definition of SEN change? (updated)

There will be no significant changes to the definition of SEN. It will continue to be largely defined as those who:

- Have a greater difficulty in learning than the majority of other children
- Have a disability which prevents or hinders them from making use of the educational facilities generally provided in the area.

The main change is around terminology for young people over 16. Currently, they are described as having "learning difficulties and disabilities" and subject to a different framework. However, under the new proposals, they will be regarded as having "special educational needs" in the same way they would if they were under 16.

What will happen to the SEN Code of Practice?

The SEN Code of Practice sets out the current framework for how children with SEN will be supported. The Department for Education have said that they will review the Code of Practice and reduce the level of detail and content. However, it is not yet clear what impact this will have on deaf children.

The Department for Education have stated that any changes to the SEN Code of Practice will be subject to a further consultation. We understand this will take place later this year.

It is unlikely that any changes to the SEN Code of Practice will take effect until September 2014. Until then, **the existing SEN Code of Practice will remain in force.**

What will happen to the current categories of School Action and School Action Plus?

The Department have stated that they will abolish these categories and replace it with a single category. It is not yet clear what this new category will look like or what it will be called. Many people expect that it will be similar to the current 'School Action Plus' category whereby children are identified as needing external specialist support to meet their needs.

It is not yet clear what impact this will have on deaf children.

Pathfinders

What are the pathfinders and what are they doing? *(updated)*

There are 20 pathfinders, covering 31 local authorities. The pathfinders are 'testing' some of the Department for Education's proposals to find out what impact they will have on children with SEN and disabilities, and their families. The work of the pathfinders is being independently evaluated. The Department for Education have said that they will use these evaluations and review lessons learnt to make changes to their proposals, if needed.

The 20 pathfinders are located in the following areas:

East of England	Hertfordshire
East Midlands	Northamptonshire, Leicestershire and Nottinghamshire
London	Bexley, Bromley, Greenwich and Lewisham
North East	Gateshead, Hartlepool and Darlington
North West	Manchester, Rochdale, Oldham, Trafford and Wigan
South East	Brighton & Hove, East Sussex, Hampshire, Kent, Medway, Surrey, West Sussex and Southampton
South West	Devon, Cornwall & Isles of Scilly and Wiltshire
West Midlands	Solihull
Yorkshire and the Humber	Calderdale and North Yorkshire

The pathfinders are due to finish testing the proposals in September 2014.

I live in a pathfinder area and I have been asked to take part – should I?

If a pathfinder asks if you would like to be involved in their testing, you should ensure they provide you with clear and balanced information about what is involved and what taking part will mean.

Taking part should be **completely optional**. There should be no compulsion to participate. The pathfinder must make it clear that you can withdraw at any time.

If your child has a statement of SEN, these statutory rights will remain in force if you take part. Taking part does not mean that any existing rights can be ignored.

If you would like further information or support, contact the NDCS campaigns team.

If you decide to take part, please do keep in touch with the NDCS campaigns team. We're very keen to hear from families about their own experiences.

I live in a pathfinder area and want to get involved – can I?

All the pathfinders are looking at slightly different changes. It is likely that they will have different criteria for the kind of families they would like to work with. Some pathfinders are still recruiting families.

If you are interested in being involved, contact your local service for further information.

Again, if you would like further information or support, contact the NDCS campaigns team. And if you decide to take part, please do keep in touch with us in the campaigns team. We're very keen to hear from families about their own experiences.

Education, Health and Care plans

What is an Education, Health and Care Plan? *(updated)*

The proposed new Plans will replace the statement of SEN. The Plan will be a legal document, setting out the support that a child needs, in the same kind of way that a statement is.

It is intended that the new Plan will have a greater focus on how health and social care services can help to meet a child's educational needs. However, like a statement, the focus of the new Plans will be on education.

In many respects, the proposed framework for the Plan will not look all that different from a statement - with one key exception. Currently, beyond the age of 16 only children or young people can have a statement if they are in sixth form education. Under the new proposals, children or young people up to the age of 19 can have a Plan, providing they remain in education or training (including apprenticeships). In some cases, this can be extended up to 25.

If a young person with a Plan leaves education and is unemployed, they may still keep their Plan up to the age of 19. Again, in some cases, this can be extended up to 25.

Young people who are going to university will **not** be eligible for a Plan.

Who will get an Education, Health and Care Plan?

The Department for Education have said that any child or young person that currently has a statement will have a Plan. Beyond this, there is still some uncertainty over the eligibility criteria and whether this will change for new families. In other parts of the UK, reform has been undertaken with the intention of reducing the number of children with statutory rights. This is something that NDCS will be watching closely.

Department officials have indicated that the 'trigger' for the new Plan will be education. This suggests that if a young person has a health or social care need, they will not get a Plan unless these needs impact on their education.

Currently, only a quarter of deaf children have a statement of SEN.

How will the assessment work? *(updated)*

The Department for Education have said that they want to reduce the number of multiple assessments where professionals ask families the same questions.

Though the term 'single assessment' is sometimes used, it's unlikely that education, health and care professionals will do an assessment at the same time.

Pathfinders are currently testing out different approaches to assessment. NDCS has been working with the National Sensory Impairment Partnership (NatSIP) to produce guidance for professionals on what we think should be included in an assessment. This guidance is available on the NDCS website at: http://www.ndcs.org.uk/professional_support/news/better_plans.html

What will an Education, Health and Care Plan look like?

It is not yet clear what an Education, Health and Care Plan will look like. This is something the Pathfinders are currently testing out.

NDCS is keen to ensure that the Plan remains as rigorous as the statement currently is.

Who will prepare the Education, Health and Care Plans?

This is not yet clear. This is something the Pathfinders are also currently testing out.

Will the Education, Health and Care Plan be better or worse than a statement of special educational needs? *(updated)*

The Department have been clear that existing protections in the statements will be carried through to the new Education, Health and Care Plan. However, there are still some concerns over this.

The pathfinders are currently testing out how the Plans will work in practice. Some of the early draft Plans that NDCS has seen have not, in our view, been as good as a statement. It remains to be seen whether this will change as the pathfinders continue their work.

As yet, the Department have not set out their thinking on timescales. For example, it is not yet clear whether a local authority will have a duty to respond to a parent request for an assessment within a certain timescale.

NDCS strongly believes that the proposed Education, Health and Care Plans must be as good as a statement of SEN. We will continue to work with the Department for Education and the pathfinders to try and make sure this happens.

How will an Education, Health and Care Plan be enforced?

It appears that existing statutory rights will remain and in many respects, you will be able to challenge a Plan in the same way that you might challenge a statement.

However, existing statutory rights will **not** be extended to health and social care services. It is not yet clear what parents can do if they are unhappy with how health and social care needs are met within a Plan. NDCS is calling on the Department for Education to go further and extend existing statutory protections to health and social care services.

Will an Education, Health and Care Plan provide legal entitlements to speech and language therapy? *(new)*

Yes. Currently, speech and language therapy can be treated as educational provision even though it is often provided by health services. Judges have agreed that speech and language therapy is vital for children with SEN. This is legally set out in 'case law'.

Under the new proposals, this will continue to be the case. Where a health or social care service is "wholly or mainly" for the purpose of supporting children with SEN, it can be defined as an educational service. This means that local authorities must legally ensure this is provided if it is set out in an Education, Health and Care Plan.

More widely, there are no new direct powers against health services under the current proposals. However, the Department has set out a number of ways in which it expects health and education services to work together and "jointly commission" the services that children with SEN need. We are expecting a further announcement to be made on this topic soon.

How will the transition to the new system work?

The Department for Education are still consider how a child who currently has a statement will be 'migrated' over to the new system and have an Education, Health and Care Plan. It seems unlikely that there will be a single day when all families across England move over to the new system.

It seems likely that from a certain point, most likely September 2014, no 'new' statements will be issued and any children and young people being assessed for the first time will be provided with an Education, Health and Care Plan.

Personal budgets

What is a personal budget?

A personal budget is where parents or young people over the age of 16 are given funding to purchase the services or support that their statement / Plan says they need.

We understand that funding can be given as "direct payments" whereby parents and young people are given cash to spend. Or it can be given as a "notional budget" whereby parents and young people do not handle cash but can direct the local authority as to how they want the money spent.

Who can have a personal budget?

Under current proposals, only where an Education, Health and Care Plan is in place will a parent or young people be able to have a personal budget.

It is likely that certain safeguards will be in put into place to ensure that the personal budget is being used appropriately and that whoever takes control of the personal budget does not waste the money.

Will I have to have a personal budget?

No – it will be entirely optional.

What will I be able to buy with a personal budget?

This is an issue where there is considerable uncertainty. For example, it is not yet clear whether a parent could use a personal budget to purchase support from a Teaching Assistant in their child's school.

The pathfinders are currently exploring how families might use a personal budget.

Can my child have a personal budget?

If your child is over 16, in theory, yes, he/she could have a personal budget.

It is likely that certain safeguards will be in put into place to ensure that the personal budget is being used appropriately and that the young person is supported in making use of their personal budget.

We understand that a young person will need the consent of their college if they wish to use direct payments in this context.

Will I receive any help in spending a personal budget?

We understand that families will be supported by someone to help them decide what to spend with their personal budget. This person is sometimes known as a "key worker" or a "navigator". But it remains unclear who this person will be and whether it will be in addition to other responsibilities – for example, whether a Teacher of the Deaf could also be a 'key worker'. It is also unclear what their exact responsibilities will be.

The pathfinders are currently exploring how families might use a personal budget and what support families might receive.

Local offer

What is the local offer?

Under current proposals, a local offer will be a document provided by the local authority on the services they will 'normally' provide without a child or family having to seek an Education, Health and Care Plan. It has been described by some people as being a 'yellow pages' for SEN services.

What will the local offer include? *(updated)*

This is not yet clear. The Department for Education have not yet indicated if they will require the local offer to include certain information or to be set out in a certain way.

Local authorities are required to consult with parents and young people when setting up their local offer.

Is the local offer enforceable? What happens if something in the local offer is not actually provided? *(updated)*

This is not yet clear. It seems that local authorities will be required to provide a local offer, but it is uncertain what would happen next or if local authorities will be required to provide specific services as part of the local offer or what happens if something is promised, but not provided.

The Department for Education have indicated that SEN and Disability Tribunals can take the local offer “into account” but what this means in practice is uncertain.

The Department have also said that local authorities will be required to publish comments made by parents and young people about its local offer. Any comments must be published anonymously. This may give parents the opportunity to tell the local authority and other parents if they think something is missing from the local offer or is not being provided.

Choosing a school

What is being proposed? *(updated)*

Under current proposals, parents will have a right to name any state funded school (including academies and free schools) or Further Education college in the new Education, Health and Care Plan.

Parents will also have a right to name a non-maintained or independent special school in their Plan. The Department for Education will develop a list of independent special schools that can be named. Parents will **not** have a right to name an independent school that does not cater specifically for children with SEN.

If a young person has a Plan and is attending Further Education, it is unclear whether they can specify the course they wish to enrol on in their Plan.

In previous years, it has been unclear how the SEN Code of Practice applies to academies, which are independent, state-funded schools. Under the current proposals, all academies will have to follow all laws on SEN in the same way as other maintained schools.

What happens if my preference is not met or if I'm not happy? *(updated)*

It appears that the process will be largely similar to what happens now.

As now, local authorities will have to agree to a placement unless they feel it would be an inefficient use of their resources or if it would have a negative impact on other pupils at that school.

If you disagree with the local authority, you will be able to make a request for the case to be considered by a SEN and Disability Tribunal.

Initially, it looked as if parents would have to undergo 'mediation' with the local authority before a case could be taken to Tribunal. This proposal for 'mandatory mediation' has now been dropped. Instead, parents will be required to *consider* mediation. Once a parent has decided whether or not to undergo mediation, they can take a case to Tribunal.

The mediation or any discussions on it must be conducted with someone "independent" from the local authority. The Department have been clear that any disputes must still be resolved within the same timescales, even where mediation takes place.

NDCS's work on SEN reform

What is NDCS doing? *(new)*

Many of the current proposals are now being discussed by politicians who will decide whether the proposals will become law. NDCS will be setting out our views and concerns on the proposals and asking politicians to raise these issues. Key areas which we will be focusing on include:

- Making sure that the proposed new Education, Health and Care Plans are as good as a statement.
- Developing a 'national offer' so that parents can be confident their deaf child will have access to essential services, wherever they live.
- Asking Ofsted to inspect specialist SEN services for deaf children.
- Making sure that the proposal for personal budgets does not end up reducing choice for parents by reducing funding for existing services.

There are lots of ways you can support our campaign work in this area:

- Join our campaigns network. We will email you with details of any new campaign actions we run in this area. You can join online at www.ndcs.org.uk/network
- Let us know what you think about the proposals and your current experiences.
- If you live in one of the SEN pathfinder areas, let us know about your experiences to date and whether you have noticed any changes.

Will NDCS be publishing new information resources for parents and professionals? *(new)*

Yes, we intend to. However, because many of the proposals are still subject to change and still being finalised, it is likely that we will wait until 2014 before developing any new resources or updating our existing resources. The changes are not expected to come into force until September 2014.

In the meantime, we will continue to update parents on what the changes might mean for them in this FAQ document.

If you have any specific questions that are not answered in this document, please get in touch with the NDCS campaigns team at campaigns@ndcs.org.uk.