

## Special Educational Needs Code of Practice 2001

1. The 2001 SEN Code of Practice provides practical advice to Local Authorities, maintained schools, early years settings and others on carrying out their statutory duties to identify, assess and make provision for children's special educational needs (SEN).
2. The Education Act 1993 placed a duty on the Secretary of State to issue a Code of Practice and the power to revise it from time to time. The first Code of Practice came into effect in 1994. Since then the rights and duties contained in the 1993 Act have been consolidated into Part IV of the 1996 Education Act. The 2001 SEN Code of Practice came into effect in January 2002 and replaced the previous SEN Code of Practice.

### The Status of the 2001 SEN Code of Practice

3. Local Authorities, schools, early education settings and those that help them – including health and social care services – must have regard to the SEN Code of Practice. They must not ignore it. That means that whenever settings, schools and local authorities decide how to exercise their functions relating to children with special educational needs, and whenever the health and social services provide help to settings, schools and LA's in this, those bodies must consider what the code says. These bodies must fulfil their statutory duties towards children with special educational needs but it is up to them to decide how to do so – in the light of the guidance in the Code of Practice.
4. The SEN Code of Practice helps early education settings, schools and LA's meet their responsibilities for children with SEN.

### Definition of Special Educational Needs

The SEN Code of Practice sets out the following definition

Children have a **learning difficulty** if they:

*Have a significantly great difficulty in learning than the majority of children of the same age; or:*

*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 schools within the area of the local education authority*

*Are under compulsory school age and fall within the definition at (a) or (b) above or would do so if special educational provision was not made for them.*

5. Children must not be regarded as having a learning difficulty solely because the language or form of language of their home is different from the language or form of language in which they will be taught.

**Special educational provision** means:

*For children of two or over, educational provision which is additional to, or otherwise different from, the educational provision made generally for children of their age in schools maintained by the LEA, other than in special schools, in the area.*

*For children under two, educational provision of any kind.*

See Section 312, Education Act 1996

## Fundamental Principles of the 2001 SEN Code of Practice

- A child with SEN should have their needs met
- The SEN of children will normally be met in mainstream schools or early education settings
- The views of the child should be sought and taken into account
- Parents have a vital role to play in supporting their child's education
- Children with SEN should be offered full access to a broad, balanced and relevant education, including an appropriate curriculum for the Foundation Stage and the National Curriculum.

## Children with a Disability

### Definition in the Children Act 1989

*A child is disabled if he is blind, deaf or dumb or suffers from a mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed.*

Section 17(11) Children Act 1989

### Definition in the Disability Discrimination Act 1995

*A person has a disability for the purposes of this Act if he has a physical or mental impairment which has substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.*

Section 1(1), Disability Discrimination Act 1995

6. Part 2 of the Special Educational Needs and Disability Act 2001 amended the Disability Discrimination Act 1995 to prohibit all schools from discriminating against disabled children in their admission arrangements, in the education and associated services provided by the school for its pupils or in relation to exclusions from the school. From September 2002 schools were required not to treat pupils less favourably for a reason relating to their disability. Schools were required to take reasonable steps to ensure that children with a disability were not placed at a substantial disadvantage to those who were not disabled. LA's and schools were also required to plan strategically and make progress in improving accessibility for children with disabilities to schools' premises and to the curriculum, and to improve the delivery of written information in an accessible way.
7. Guidance relating to Part IV of the Disability Discrimination Act helps them meet their responsibilities for children with disabilities.

**NB. A child may fall within one or more of the SEN & Disability definitions**

### Other Relevant Guidance

8. Section 316A of the Education Act 1996 requires maintained schools and local authorities to '**have regard**' to guidance on the statutory Framework for Inclusion.

The separate guidance “Inclusive Schooling – Children with Special Educational Needs” provides advice on the practical operation of the Framework for Inclusion.

### **SEN Code of Practice -The Role of the Local Authority**

9. The School Relations Code of Practice expects LA's to work in partnership with schools, to place the highest priority on their statutory duty to promote high standards of education for all children, including those with SEN.

Effective arrangements for SEN ensure that:

- The needs of children and young people with SEN are identified and assessed quickly and matched by appropriate provision
- High quality support is provided for schools and early years settings – including, through educational psychology and other support services, and arrangements for sharing good practice in provision for children and young people with SEN
- Children and young people with SEN can benefit from co-ordinated provision – by developing close partnerships with parents, schools, health and social services and the voluntary sector
- Strategic planning for SEN is carried out in consultation with schools and others to develop systems for monitoring and accountability for SEN
- LA arrangements for SEN provision are kept under review as required under section 315 of the Education Act 1996
- As part of their role in ensuring that needs are matched by appropriate provision, LA's should work with schools to evaluate the effectiveness of their school funding arrangements in supporting and raising the achievement of children with SEN.

### **SEN Code of Practice -The Role of Governing Bodies**

10. School governing bodies have important statutory duties toward pupils with special educational needs. They must:

- Ensure that teachers in the school are aware of the importance of identifying and providing for, those pupils who have special educational needs.
- Do its best to ensure that the necessary provision is made for any pupil who has special educational needs
- Ensure that a pupil with special educational needs joins in the activities of the school together with pupils who do not have special educational needs, so far as is reasonably practical and compatible with the child receiving the special educational provision their learning needs call for and the efficient education of the pupils with whom they are educated and the efficient use of resources.
- Ensure that, where the ‘responsible person’ – the head teacher or the appropriate governor – has been informed by the LA that a pupil has special educational needs, those needs are made known to all who are likely to teach them
- Report to parents on the implementation of the school's policy for pupils with special educational needs.
- Consult the LA and the governing bodies of other schools, when it seems to be necessary or desirable in the interests of co-ordinated special educational provision in the area as a whole

See Section 317, Education Act 1996

- 'Have regard' to the SEN Code of Practice when carrying out its duties toward all pupils with special educational needs

See Section 313, Education Act 1996

- Ensure that parents are notified of a decision by the school that SEN provision is being made for their child

See Section 317A, Education Act 1996

11. Governors play a major part in school self-review and should establish mechanisms to ensure that they are fully informed about the school, including the systems for and the outcomes of in-school monitoring and evaluation. In relation to SEN, the governing body should make sure that:

- They are fully involved in developing and monitoring the school SEN Policy
- They are up-to-date and knowledgeable about the school's SEN provision, including how funding, equipment and personnel resources are deployed
- SEN provision is an integral part of the school development plan
- The quality of SEN provision in the school is continually monitored
- Provision for pupils with special educational needs is a matter for the school as a whole. In addition to the governing body, the school's head teacher, the Special Educational Needs Co-ordinator (SENCo) or SEN team and all other members of staff have important responsibilities.

### **School Admissions and Inclusion**

12. All schools should admit pupils with already identified special educational needs, as well as identifying and providing for pupils not previously identified as having SEN. Admission authorities may not refuse to admit a child because they feel unable to cater for their special educational needs. Pupils without statements of SEN must be treated fairly as all other applicants for admission. Such children should be considered as part of the normal admissions procedure. Admission authorities cannot refuse to admit children because they do not have a statement of special educational needs or because a statutory assessment is currently in progress.
13. There is a clear expectation within the Education Act 1996 that pupils with statements of special educational needs will be included in mainstream schools.
14. Where a child has a statement of SEN maintained by a Local Authority, that Authority is responsible for arranging the special educational provision and, in finalising the statement of SEN. Where a maintained school is named in a statement of SEN, the Governing Body of the school must admit the child to the school.

## Identification and Assessment of Special Educational Needs

15. The way in which a school meets the needs of **all** children has a direct bearing on the nature of the additional help required by children with special educational needs, and on the point at which additional help is required.
16. The SEN Code of Practice describes a **graduated approach** to the identification and assessment of special educational needs. This graduated response takes account of the fact that the majority of special educational needs should be capable of being met by schools through good practice in teaching, monitoring of individual progress and early responsive differentiation where children are not making expected progress.
17. The graduated approach recognises that there is a continuum of special educational needs.
18. Children with more significant special educational needs should have had those needs identified before entry to school as a consequence of early years and other agency duties under the SEN Code of Practice. Their successful entry to school and progress there requires good practice in partnership and liaison with parents and professionals involved with the child.
19. Other children's special educational needs may only be evident once they are in school.
20. The key to meeting the needs of **all** children lies in the teacher's knowledge of each child's skills and abilities and the teacher's ability to match this knowledge to finding ways of providing appropriate access to the curriculum for every child.
21. A schools system for observing and assessing the progress of individual children should provide information about areas where a child is not progressing satisfactorily even though the teaching style has been differentiated. These observations should be enhanced by knowledge built up over time of an individual child's strengths and weaknesses. Using this evidence, class teachers review of current strategies and further development may lead to the conclusion that the strategies they are currently using are not resulting in the child learning as effectively as possible and that the child may need help over and above that which is normally available. Liaison with the school's SENCO and parents may then result in consideration for helping the child through School Action.
22. The triggers for School Action interventions could be concerns, underpinned by evidence, about a child who despite receiving differentiated learning opportunities:
  - Makes little or no progress even when teaching approaches are targeted particularly in a child's identified area of weakness
  - Shows signs of difficulty in developing literacy or mathematics skills which result in poor attainment in some curriculum areas
  - Presents persistent emotional or behavioural difficulties which are not ameliorated by the behaviour management techniques usually employed in the school
  - Has sensory or physical problems, and continues to make little or no progress despite the provision of specialist equipment and appropriate access arrangements
  - Has communication and/or interaction difficulties and continues to make little or no progress despite the provision of a differentiated curriculum

### School Action

23. School Action involves the school in providing interventions that are additional to or

different from those provided as part of the schools usual differentiated curriculum offer and strategies.

24. Plans for School Action interventions should be additional to or different from usual curriculum differentiation and should be recorded and reviewed involving parent and child. The interventions will make use of SEN resources and expertise normally expected to be accessible within a school although the school may also seek advice from other sources of expertise.
25. In the majority of cases the interventions at School Action should be expected to meet the child's special educational needs and allow adequate progress to be made. The school should maintain such interventions in order to allow the child to continue to make suitable progress. Some children's special educational needs will be relatively short term and the improved interventions may well not need to be maintained. The child needs will therefore be met through the schools usual curriculum differentiation and individual monitoring processes.
26. For a small proportion of children in receipt of School Action interventions, close monitoring may suggest that despite receiving an individualised programme and/or concentrated support under School Action, a child is still not making expected progress.
27. Liaison with the school's SEN team, parents and any external advisors involved may then result in consideration for helping the child through School Action Plus.
28. The triggers for School Action Plus could be that despite receiving an individualised programme and/or concentrated support under School Action, the child:
  - Continues to makes little or no progress in specific areas over a long period
  - Continues working at national Curriculum levels substantially below that expected of children of a similar age
  - Continues to have difficulty in developing literacy or mathematics skills
  - Has emotional or behavioural difficulties which substantially and regularly interfere with the child's learning or that of the class group, despite having an individualised behaviour management programme
  - Has sensory or physical needs, and requires additional specialist equipment or regular advice or visits by a specialist service
  - Has an ongoing communication or interaction difficulties that impede the development of social relationships and cause substantial barriers to learning

### **School Action Plus**

29. School Action Plus involves the school in taking account of external advice and revising their interventions and strategies in light of the knowledge they have built up about the child's learning needs and progress. There are likely to be more specialist assessments carried out to inform the school's curriculum planning and advise on the types of further interventions and arrangements appropriate to help the child to make better progress and access curriculum opportunities.
30. Plans for School Action interventions should be substantially additional to or different from provision previously made, will require very comprehensive individualised plans that are recorded and regularly reviewed involving parent and child. The interventions will make use of SEN resources and expertise normally expected to be accessible within a school as well as that accessible from external sources.
31. In the majority of cases the interventions at School Action Plus should be sufficient to meet the child's special educational needs and allow adequate progress to be made.

The school should monitor and seek to maintain such interventions where there is evidence that they continue to be necessary in order to allow the child to continue to make suitable progress.

32. Some children's special educational needs at School Action Plus will be ameliorated over time and the more extensive interventions may well not need to be maintained at such a high level forever. The school should reduce arrangements to the level of School Action in such cases and monitor and review the child's continuing progress involving the parent and child.
33. For a small proportion of children in receipt of the highest level of support at School Action Plus, close monitoring may suggest that the Local Authority should consider carrying out a statutory assessment of special educational needs. Every Local Authority has developed criteria by which to judge whether it is necessary to conduct a statutory assessment when asked by a school or parent.
34. Parents have a right of appeal to the independent Special Educational Needs and Disability Tribunal (SENDIST) where a statutory assessment request is refused.

### **Statutory Assessment of Special Educational Needs under Section 323 of the 1996 Education Act**

35. A statutory assessment of special educational needs draws upon all the evidence gathered about a child's educational needs, any health or welfare needs and takes account of both parents and the child's views. It must be conducted by the LA in line with specific regulations and deadlines. There are two major deadlines
  - The conclusion of the advice gathering stage and a proposed decision by the LA on the appropriate outcome – 18 weeks from initial request or proposal to assess.
  - If a statement of SEN is the outcome then it must be confirmed as final - 26 weeks from the initial request or proposal to assess
36. The outcome of a statutory assessment may or may not result in a decision to issue a statement of special educational needs. Parents have a right of appeal within two months of a decision to the independent Special Educational Needs and Disability Tribunal (SENDIST) where a statement of SEN is not issued and also have an appeal concerning the contents of any statement of SEN that is issued.
37. SENDIST appeals are conducted in compliance with strict regulations and they normally take around 5 months from registration through to a hearing and a written decision. SENDIST decisions can be appealed by both parents and Local Authority if they believe that the Tribunal has erred in law.
38. Whether a statutory assessment or a resulting statement of SEN is necessary for a child is largely dependent on the quality of local authority mainstream school provision supported by the availability and partnership with schools on provision of funding, good quality external advice and active monitoring arrangements.
39. It is possible for an authority to meet its duties under the SEN Code of Practice in respect of children with children with the most significant special educational needs in a mainstream setting without the need for statements of SEN where these things are in place and where mainstream schools help parents to be confident in their special educational needs arrangements and expertise.
40. However the law states that a child must have a statement of special educational needs if they attend a school registered as a special school by DCSF.

### **Government Agenda for SEN since the 2001 Code of Practice**

41. In June 2002 the Audit Commission published a report entitled 'Statutory

Assessment and Statements of SEN – in need of review’ questioning the effectiveness of high numbers of statutory assessments and statements of SEN in local Authorities. The report highlighted a need for local Authorities to help schools to identify more needs at an earlier stage and intervene purposefully without the delays associated with statements of SEN. The bureaucracy associated with high levels of statutory assessment and statements of SEN absorbed inordinate amounts of school and authority time to often little positive effect. The conclusion was that there should be a conscious attempt within Authorities to reduce reliance on statements of SEN by finding ways to help mainstream schools to identify, assess and make appropriate school arrangements to manage the majority of children’s needs without them. The report suggested that LA’s should reduce the reliance on statutory assessment and statements of SEN for all but the most significant special educational needs.

42. In July 2002 Ofsted published a report entitled ‘LEA Strategy for the Inclusion of Pupils with SEN’. It reported that the very high numbers of statements of SEN maintained for pupils attending mainstream schools was a potential barrier to inclusion and better achievement. The reliance on statutory assessment and the production and maintenance of statements of SEN tended to be the focus of Authority support services to the detriment of working with schools preventatively. The reliance on statements of SEN did not encourage schools to focus on achieving or reporting positive pupil outcomes because of the funding through a statement.
43. The Government’s 2004 SEN Strategy ‘Removing Barriers to Achievement’ set out the Government’s vision on SEN and provided guidance to Local Authorities. The report drew upon the reports above and one aspect of the guidance was that Authorities should aim to **‘reduce reliance on statements of SEN’** and find ways of enabling earlier identification of SEN in schools and more inclusive practice.
44. The DfES also published Research Report RR508 in 2004 entitled ‘Reducing Reliance on Statements – an investigation into LA Practice and Outcomes’. The research reported on the efforts being made by LA’s to refocus assessment and provision for lower level special educational needs without high levels of statutory assessment and statements of SEN and the effects on outcomes for children.

### **Arrangements in Herefordshire Prior to Introduction of the Banded Funding Mechanism**

45. Herefordshire inherited 3 small special schools for children with Severe Learning and Profound and Multiple Learning Difficulties (SLD/PMLD) on becoming a Unitary Authority in 1997.
46. In addition to two primary schools with established specialist centres for severe language disorders and physical disabilities there was a network of Special Education Centres (SEC’s) in primary schools across the County. This provision was admitted to through a statement of SEN and in many cases gave a right to free transport to schools well outside their local home area.
47. The rights of parents to expect inclusive provision in any mainstream school were however noticeably reducing the viability of such provisions. Parents increasingly chose their local school rather than accepting provision in an SEC in another school at some distance from their home. There were costly vacant places in the SEC’s, high cost transport for those children that did attend SEC’s and increasing demand for costly funding in local schools as well.
48. The funding mechanism for statements of SEN outside of provision of a specialist centre place was not well developed or consistently applied. School Base Budgets had a notional 6% identified for additional needs, but records demonstrate a

widespread expectation by schools that all resources to support children's special educational needs should be provided in addition to base budgets.

49. There were no criteria to guide 'hours' allocations and the system of centrally funded support assistants did not encourage school responsibility, accountability or creativity in terms of planning and delivering effective SEN arrangements appropriate for an individual child.
50. The high number of statements and the very small size of the Authority SEN Team responsible for monitoring and managing demands on provision, together with a lack of any SEN database infrastructure capable of providing management data made it impossible to ensure proper performance, accountability and efficiency at the centre.

### **Introduction and Development of SEN Funding Mechanism since 2003**

51. The Herefordshire Banded Funding Scheme was introduced in late 2003 following a two-year period of development and consultation. The aim was to reduce reliance on statements of SEN and improve inclusive practice while continuing to maintain duties under the 2001 SEN Code of Practice. The scheme's principles aimed to:

- Provide a funding mechanism whereby schools duties to intervene purposefully at School Action and School Action Plus to achieve children's progress could better be supported and monitored.
- Reduce the bureaucracy and delays associated with statutory assessment and statements of SEN in mainstream schools while helping schools to focus on productive provision and reviews of progress.
- Enable schools with higher than general incidence of high incidence special educational needs e.g. general communication delays, generalised delays resulting in slow acquisition of literacy and numeracy skills, general socialisation and interactional delays, to develop group programmes designed to promote educational progress.
- Free support services from statutory assessment tasks to enable schools to benefit from greater access to preventative advice and support
- Increase opportunities for children with SEN to be included and to make progress in their schools through increasing access and sharing of good practice
- Promote schools self evaluation of their SEN provision and promoting parental confidence in schools ability to make provision for a child in their preferred mainstream school.
- Align the funding of statements with the principles of individualised and efficient use of resources and the criteria for band levels without statements of SEN to promote school responsibility and allow consistency and greater transparency across provision for the continuum of special educational need.
- Review and revise Herefordshire criteria for Statutory Assessment for SEN in light of new funding mechanisms. \*(See Herefordshire Criteria for Statutory Assessment of SEN 2005 )

### **Consistency and Accountability in SEN Provision**

52. Alongside the funding developments a bespoke SEN database was purchased, commissioned and populated. It initially could only be used to manage the statutory assessment and statement maintenance process and to provide management data for a variety of purposes in this area. The database was ready for use in mid 2004 and its continuing development and improved use has allowed better monitoring and provision of data for a variety of purposes.

53. The database was extended to include the banded funding process and case records without statements during 2005/06. The database and the associated staffing is now capable of producing extensive and accurate data on both statutory and non statutory funding allocations. The database has allowed a body of information indicating trends to be monitored over a three-year period.
54. It has not been possible to adapt the Tribal SEN Database to incorporate monitoring of pupil outcomes as a result of additional funding. A system has been developed using a different database system. There are current investigations into use of the Casper system that allows data on the progress of pupils functioning below level 1 of National Curriculum (at P Levels) to be compared with national data.
55. The effect of banded funding has been extensively monitored internally since its introduction and has also been subject to ongoing involvement of and monitoring by the Funding for Inclusion Group. This group includes Head Teachers and SEN Co-ordinators from schools of different sizes and locations across both secondary and primary phases. The group has been essential to the scheme's development, implementation and ongoing monitoring.
56. The Funding for Inclusion Group has extended its scope as a steering/reference group over time and now receives an Annual Statistical Report on all aspects of SEN Funding and approves a summary of this report for distribution to all Herefordshire Schools. The Funding for Inclusion Group also receives a report on Panel processes based on analysis of responses to a questionnaire completed by school Panel members and the SEN Team. The Funding for Inclusion Group decide whether there is the need to investigate and possibly change the scheme in light of feedback from those involved in decision-making and those involved in the administration of the current processes.
57. All reports to the Schools Forum concerning SEN funding are received in draft form by the Funding for Inclusion Group who provide comments for final reports to Schools Forum. The Schools Forum have increasingly referred key investigations and development issues to the Funding for Inclusion Group.