

Special Educational Needs and Disability

Purpose of report

For discussion.

Summary

This paper updates the Board on the reform of the Special Educational Needs and Disability (SEND) system and operational implications for local authorities of school and college funding reform.

At its meeting on 21 May, the Board considered a report outlining the provisions in the proposed Children and Families Bill. We had expected a draft bill to be published in July 2012, but this has been delayed and is now not expected until early September. An oral update on the draft bill will be provided at the Board meeting.

Recommendations

That members discuss the issues set out in the paper and comment on :

1. the current LGA position on SEND, and reputational issues (**paragraphs 4 – 6**)
2. operational implications of high needs funding (**paragraphs 7 - 15**)
3. sharing best practice from the SEND pathfinders (**paragraphs 16 –18**)

Action

Officers take forward in the light of the Board's comments.

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Special Educational Needs and Disability

Background

1. The Board has received regular updates on the proposed reforms to special educational needs and disability since the publication of the Government's green paper 'Support and aspiration: a new approach to special educational needs and disability' on 9 March 2011. The green paper proposed the biggest reform programme to improve the approach to special educational needs and disability (SEND) for over thirty years.
2. A short report to the Board in May 2012 outlined the expected provisions of a Children and Families Bill which was announced in the Queen's Speech on 9 May 2012. This was followed by the Government's detailed response to the formal public consultation on the SEND green paper setting out the next steps, which the LGA summarised in an 'On the day briefing' on 15 May. The Board has also been informed about the significant changes to the funding for SEND and high needs pupils and students. The July meeting of the Board received a report on the LGA and Department for Education's (DfE) action research into the evolving role of the council in education. This highlighted concerns about how the changes to the SEND system, including changes to funding, will impact on a system where schools have greater autonomy and responsibility.

Children and Families Bill

3. Michael Gove MP, Secretary of State for Education, confirmed the Government's intention in a written Ministerial statement on 15 May to publish a draft Bill 'in the summer' for consultation and pre-legislative scrutiny, and subject to Parliament's approval, to implement the reforms from 2014. Lessons learned from 20 local pathfinders involving 31 local authorities and their local pathfinders are expected to inform how the reforms are implemented. The draft Bill is now expected to be published in September and to include provision for:
 - 3.1. replacing SEN statements and Learning Difficulty Assessments (for 16- to 25-year-olds) with a single, simpler 0-25 assessment process and Education, Health and Care Plan;
 - 3.2. requiring local authorities to publish a local offer showing the support available to disabled children and young people and those with SEN, and their families;
 - 3.3. ensuring that services for special educational needs and disabilities are planned and commissioned jointly by local authorities and clinical commissioning groups with clear duties on all the agencies involved;
 - 3.4. offering parents of young people with Education, Health and Care Plans the right to a personal budget for their support;

- 3.5. giving parents the right to express a preference for any state funded school, including academies and free schools and have their preferences considered under the same criteria as for maintained schools; and
- 3.6. introducing mediation for disputes before they appeal to a SEND tribunal and giving children the right to appeal (on a trial basis) if they are unhappy with their support.

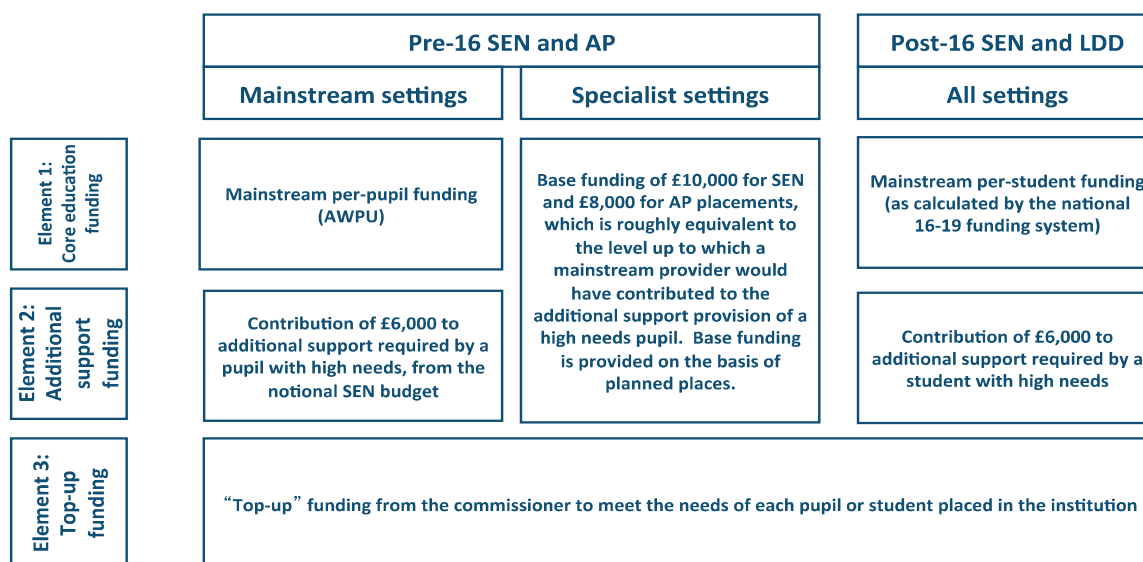
LGA position on SEND reforms and reputational issues

4. The LGA supports the principles outlined the Government's proposals for changes to the approach to SEND, in particular the role of local authorities in strategic planning for services to meet the needs of local communities, securing a range of high quality provision for children and young people aged up to 25, enabling families to make informed choices and exercise greater control over the services that they receive. Many councils have made significant progress in improving SEND support, and we have welcomed the recognition of the key role that councils play. But in a time of reduced budgets, we have continued to express concern that the detailed implementation of the reforms does not create unmanageable shifts in funding (see paragraphs 7– 11 below for more detail about funding reform).
5. There have also been a number of comments in the press and elsewhere that suggest that the consensus that followed the Government's publication of the SEND Green Paper is weakening, as parents, lobby groups and providers consider the detail of the Government's proposals. Anecdotal evidence from local councils shows that there seems to be a rise in the number of parents seeking SEN statements due to uncertainty over the funding changes and a subsequent rise in the number of cases being referred to the SEN Tribunal. Many local areas have established mediation services to deal with post-16 complaints, but it appears that the proposal to extend the right to seek redress through the tribunal system for those aged 16-25 has prompted a number of complaints to be referred to the Local Government Ombudsman for this age group for the first time. The challenge for councils is managing the expectations of young people and their parents in the current system whilst the new models are developed – and legislated for – at a time of financial constraint.
6. There are a number of key issues requiring legislative change and we will be looking in detail at the drafting of the clauses in the forthcoming draft Children and Families Bill in order to consider the implications for member councils. These are likely to include: the scope of the 'local offer' to provide information on the services that can be expected to support children and young people in each area; the rights of parents to appeal and challenge decisions; the legal duty of health services; and choice of education provider. An oral update will be provided on the draft Bill at the meeting and **Board members' views will be invited** on specific policy issues where an LGA position has to be agreed.

School and college funding reform

7. As reported to the July meeting of the Board, the DfE confirmed on 28 June 2012 that it is to proceed with reforms to school and college funding, including provision for

children and young people with high needs as outlined in the consultation document “School Funding Reform; Next Steps towards a Fairer System” which was issued in March. This approach defines high needs pupils and students as those who require provision costing more than c. £10,000 per year in total. This threshold will distinguish between needs that are expected to be met through mainstream funding, and the point at which additional high needs funding is provided. For post-16 provision there will be a transfer of responsibilities and funding from the Education Funding Agency for those aged 16 - 24. The new funding model is shown below:



This diagram appeared as Figure 1 (p.43) of *School funding reform: Next steps towards a fairer system*.

LGA officers have assisted local councils in understanding the proposed changes, through regional conferences and other events.

- In July the DfE wrote to councils informing them: a) how their dedicated schools grant will be changed to, amongst other things, create a high needs block; and b) the ways in which post-16 funding will be allocated to councils for high needs learners. Following returns from councils in August and September the DfE will finalise allocations later in the year.

Implications for Councils

- Councils welcome the integration of the pre and post-16 funding systems for children and young people with high levels of need. The pre-16 model builds on the existing SEN system but with significant changes in the ways special schools, including those in

the independent sector, receive their funding. Councils that benefitted from inter-authority recoupment for children with special schools have expressed concern about the possible loss of income. Many councils are concerned about the possible turbulence that the planning of places in special schools will cause to school budgets and that local councils' ability to respond to any unexpected consequences through using the Dedicated Schools Grant has been constrained.

10. Regarding post-16 funding, the Education Funding Agency (EFA) has provided each council with a list of the number of high needs learners aged up to 24 resident in their area and the institution they attend, whether a maintained school, academy, free school, further education college or independent school or college. The EFA will provide funding to local authorities for every agreed high needs learner aged over 16 and councils have been asked to provide their estimates of how many high needs learners they anticipate having to fund in 2013/14 by the end of September 2012. LGA officers have underlined the need for EFA and councils to identify the number of high needs learners accurately so that the EFA properly funds councils for this purpose.
11. The funding system for further education is changing significantly from 2013/14 and the impact of these changes upon local provision is not yet clear. In light of this, some providers may take a more cautious approach, reducing the availability of provision for high needs learners. In future these learners will be partly funded by local councils, not the Skills or Education Funding Agencies. Most councils are already working closely with their local further education colleges and with other councils on how the new system will work. All councils will need to consider how best to include post-16 providers in discussions with the Schools Forum around high needs learners.

Contracting and commissioning

12. As noted above, the new funding arrangements mean that the ways in which institutions are commissioned and contracted will change. The Education Funding Agency will provide funding based on the number pupils in academies, free schools, and independent colleges as at present. From 2013, individual placements in non-maintained special schools and independent special schools, currently directly contracted by local authorities, will be contracted by the EFA. All institutions will receive 'top up' funding for individuals with high needs from the council where the young person resides.
13. The DfE has convened a High Needs Implementation Group to consider the accreditation of organisations wishing to deliver education for those aged up to 24 with special needs and the subsequent contracting, audit and monitoring of these bodies. It is due to have its first meeting in September 2012 and LGA officers, together with senior council officers, will join the group, which needs to conclude its work by April 2013.

14. In the meantime, LGA officers are considering the potential need for additional support to review the current national contracts and the process for agreeing a model contract for councils to use in order to avoid duplication at local level. This would build on the existing arrangements in place for non-maintained special schools, where around 80 councils work to a nationally agreed model contract. Members will be kept informed of progress and invited to comment as appropriate.

Local council high needs funding ‘must do’ list

15. After requests from councils, the LGA has produced a list of key implementation tasks for councils to undertake before April 2013 issues local councils should address in the coming months. A copy is attached in **Appendix A**.

SEND Pathfinder projects

16. The Government has established 20 SEND pathfinder projects which involve 31 local councils and their local health partners and a number of them are working in partnerships of two or more (in one case up to seven) other councils. A list of the SEN pathfinders is attached at **Appendix B**. The LGA is represented on the DfE’s Pathfinder Advisory Group, which has recently been established. The DfE has appointed Mott Macdonald to provide support to the pathfinders and, the research group, SQW to evaluate the pathfinder programme. An evaluation of progress to March 2012 was published in August.
17. Understandably the more complex partnerships have taken longer to set up protocols and governance arrangements, but all are now established. Each project is working with a group of families, recruited through events and individual referral. The key issue for all pathfinders is creating new assessment structures to integrate education, health and care plans to replace SEN statements and Learning Difficulty Assessments. This is now underway in all pathfinders, initially by integrating various forms of assessment used by education, health and care agencies. The development of personal budgets for SEND is much less well developed, not least because of the uncertainty caused by changes to funding being introduced from April 2013. Some of the Pathfinder projects are focusing on post-16 learners, supported by the organisation *Preparing for Adulthood*. In these areas good links are being established between children’s services and adult social care. Given the legislative timescale, local councils involved in Pathfinder projects are seeking clarification from the Government regarding the continuation of project contracts and their role in sharing learning with other councils.
18. LGA officers are discussing with colleagues in the Association of Directors of Children’s Services and Children’s Improvement Board how best to provide support to all councils on SEND developments, including spreading the learning from the Pathfinder projects. This links with the wider issue of the council role in education and the potential role of sector-led improvement in sharing best practice which was discussed by the Board at the July meeting. The Children’s Improvement Board leads major sector led

improvement for councils. It will need to take a view as to where support for councils on SEND fits with its work programme. CIB meets on 13 September and will consider whether to support some preliminary work in this area during this year leading into more substantial support in 2013-14. Both Cllrs David Simmonds and Rita Krishna are members of CIB **and the views of the Children and Young People Board are invited to inform the LGA's input to CIB's discussions.**

Alternative Provision (AP)

19. Following a review by the Government's behaviour expert, Charlie Taylor, the arrangements for the placement of pupils from mainstream school in alternative provision (including pupil referral units) will be revised in the next year to ensure that pupils are able receive the appropriate challenge and support. In preparation for this change, revised statutory guidance is being published which will include the safeguards that commissioners are expected to put in place when commissioning AP for their pupils. These safeguards have been agreed by Ofsted, whose inspectors will use them when inspecting schools on their use of AP.
20. The Exclusion Trial, which sees schools, rather than local authorities, placing excluded pupils in alternative provision, has been set up and there are now 11 local authorities and 300 schools involved.
21. Funding for Alternative Provision is included in the High Needs Block but base funding for AP placements is £8,000 rather than £10,000 for SEND placements.

Financial implications

22. The focus on SEND reforms for is a key task for the Children and Young People team and this is reflected in the LGA business plan.