

4. Statements

The LEA's procedure is summarised on a flowchart ("7. Statementing Procedure") to be found in Appendix D to this document.

Guidance on writing a statement of SEN is also given in section 7 of the SEN Toolkit.

4.1 Criteria for Deciding to Draw up a Statement

Once all the advice requested for the statutory assessment has been received..... the LEA must decide whether to draw up a statement. The LEA may decide that the degree of the child's learning difficulty and the nature of the provision necessary to meet the child's special educational needs is such as to require the LEA to determine the child's special educational provision through a statement.

[Code 8:1]

The LEA will make this decision when it considers that the special educational provision necessary to meet the child's needs cannot reasonably be provided within the resources normally available to mainstream schools and early education settings in the area.

[Code 8:2]

- 4.2 In deciding whether to draw up a statement the LEA will consider all the information emerging from the statutory assessment in the light of the evidence put forward at the beginning of the assessment. The LEA will ask the questions listed in the Code (noting that 'schools' also refers to early education settings):

a. **the child's learning difficulties**

- does the information on the child's learning difficulties provided in the advice for the statutory assessment broadly accord with the original evidence presented by the school?
- if not, are there aspects of the child's learning difficulties which the school may have overlooked and which, with the benefit of advice, equipment or other provision, the school could effectively address through School Action or School Action Plus?

b. the child's special educational provision

- do the proposals for the child's special educational provision arising from any of the assessment advice indicate that the special educational provision being made by the school, including teaching strategies or other approaches, is appropriate to the child's learning difficulties?

- if not, are there approaches which, with the benefit of advice, equipment or other provision, the school could effectively adopt within its own resources through School Action or School Action Plus?

[Code 8:11]

- 4.3 If the statutory assessment confirms that the assessment and provision made by the school are appropriate, but the child is nonetheless not progressing, or not progressing sufficiently well, the LEA will consider what further provision may be needed and whether that provision can be made within the school's resources.

Each case will be considered on its own merits, although the LEA will consider the general guidelines laid down in their document entitled "Birmingham Criteria for Statutory Assessment". The LEA will also be mindful of the examples given in section 8:13 of the Code.

The Code suggests that the following provision may NOT require a statement:

- occasional or irregular advice to the school from an external specialist
- occasional or irregular support with personal care
- access to a particular piece of equipment such as a portable word-processing device, an electronic keyboard or a tape-recorder, or
- minor building alterations such as improving the acoustic environment

[Code 8:13]

The Code suggests that the following provision may require a statement:

- regular and frequent direct teaching by a specialist teacher
- daily individual support from a learning support assistant

- a significant piece of equipment such as closed circuit television or a computer or CD-ROM device with appropriate ancillaries and software
- the regular involvement of non-educational agencies

[Code 8:13]

4.4 Whatever decision is finally reached, it will be determined by the child's identifiable special educational needs in the context of arrangements for funding schools in the area. The LEA will always aim to ensure that the provision specified in the statement is made in a cost-effective manner. The efficient use of resources will also be taken into account when the LEA is considering the placement of a child with a statement, once the parents have had an opportunity to express a preference.

4.5 **Duty to Educate in Mainstream Schools**

The LEA is aware of its over-riding duty to educate children with special educational needs in mainstream schools –

.....unless this is incompatible with –

- (a) the wishes of the parent, or
- (b) the provision of efficient education for other children.

[section 316(3) of the Act as amended by the SEN & Disability Act 2001]

4.6 **Time Limits**

Whatever decision the LEA reaches - whether to make a statement or not - the LEA must complete their assessment within 10 weeks from the date on which the 'notice' (SEN9) was served on the parents which advised them of the LEA's decision to make an assessment. There are some exceptions to this requirement, and they have been detailed earlier, in section 3.10.

4.7 At the end of this assessment phase, the LEA must (Regulation 17(1)):

"within 2 weeks of the date on which the assessment was completed either" -

- (a) send the parents a copy of a proposed statement, or
- (b) give notice to the child's parents that the LEA have decided not to make a statement, or

- (c) send the parents a copy of a proposed amended statement (if one already exists), or
- (d) write to the parents advising them of the LEA's intention to cease to maintain an existing statement, or
- (e) write to the parents to advise them of the LEA's decision not to amend an existing statement.

(See chapter 6 of this document for more detailed information on amendment and cessation)

4.8 Where the LEA issues a proposed or proposed amended statement then, under the Regulations:

.....the authority shall within 8 weeks of the date on which the proposed statement or proposed amended statement was served a copy of the completed statement or completed amended statement and a written notice on the child's parent under paragraph 6(1) and 6(2) respectively of Schedule 27.

[Regulation 17(3)]

The Regulations say that the LEA need not comply with this 8-week time limit:

.....if it is impractical to do so because -

- (a) exceptional personal circumstances affect the child or his parent during the 8 week period.....;
- (b) the child or his parent are absent from the area of the authority for a continuous period of not less than 4 weeks during the 8 week period.....;
- (c) the child's parent indicates that he wishes to make representations to the authority about the content of the statement....after the expiry of the 15 day period for making such representations.....;
- (d) a meeting between the child's parent and an officer of the authority has been held....and the child's parent has either required that another such meeting be arranged or has required a meeting with the appropriate person.....; or
- (e) the authority have sent a written request to the Secretary of State seeking his consent....to the child being educated at an independent

school which is not approved by him and such consent has not been received by the authority within two weeks of the date on which the request was sent.

[Regulation 17(4)]

4.9 **Decision NOT to Issue a Statement**

Where a decision is made not to issue a statement, the LEA will, subject to the conditions in section 3.10 above, write (SEN23) to the parents within 12 weeks from the date of the notice to assess (SEN9 letter), to advise them of this decision. The parents will be advised of their right, under section 325 of the Act, to appeal to the Tribunal. Parents will also be advised of the availability of the Parent Partnership Service and the disagreement resolution service.

The LEA will always give their reasons for reaching this decision. However, the Code goes further than this and suggests (section 8:17) that the LEA should "consider issuing a note in lieu of a statement." In Birmingham, however, all parents will have received a copy of the formal Psychological Advice, whether or not a statement is finally issued. This, together with any discussions held with the parents, should go a long way to ensure that they are given a detailed picture of their child's needs and the reasons why the LEA has decided that these needs can reasonably be provided within the resources normally available at pre-school or to mainstream schools in the area.

Nevertheless, the LEA does wish to ensure that parents are given as full a picture as possible of the reasons why a statement has not been issued. As a result the LEA will normally issue a 'note in lieu of a statement'.

The Proposed Statement

- 4.10 Where a decision is made to issue a statement, the LEA will, subject to the conditions in section 3.10 above, write to the parents within 12 weeks from the date of the notice to assess (SEN9 letter), sending them a copy of the proposed statement. A copy will also be sent to the Psychological Service, the health authority, the headteacher or early years provider, and to anyone else who contributed written advice.

4.11 **Statement Format**

As required by Regulation 16, the statement will be in the form substantially corresponding to that set out in Schedule 2 to the Regulations. It will, therefore, consist of the following 6 parts (as summarised in paragraphs 8:29-8:48 of the Code):

1. Introduction

The child's name and address and date of birth. The child's home language and religion. The names and address(es) of the child's parents.

2. Special Educational Needs

Details of each and every one of the child's special educational needs as identified by the LEA during statutory assessment and of the advice received and attached as appendices to the statement.

3. Special Educational Provision

The special educational provision that the LEA consider necessary to meet the child's special educational needs.

- a. The objectives that the special educational provision should aim to meet. These should generally be of a longer-term nature than the more specific, short-term targets in the child's IEP.
- b. The special educational provision which the LEA consider appropriate to meet the needs set out in Part 2 and to meet the objectives. In particular (and as required in Schedule 2 of the Regulations), this will specify:
 - any appropriate facilities and equipment, staffing arrangements and curriculum,
 - any appropriate modifications to the application of the National Curriculum,
 - any appropriate exclusions from the application of the National Curriculum, in detail, and the provision which it is proposed to substitute for any such exclusions in order to maintain a balanced and broadly based curriculum; and
 - where residential accommodation is appropriate, that fact.
- c. The arrangements to be made for monitoring progress in meeting those objectives, particularly for setting short-term targets for the child's progress and for reviewing his or her progress on a regular basis. Any special arrangements for reviewing the statement must also be specified.

4. Placement

The type and name of school where the special educational provision set out in Part 3 is to be made or the LEA's arrangements for provision to be made otherwise than in school.

5. Non-Educational Needs

Any non-educational needs for which the LEA consider provision is appropriate if the child is to properly benefit from the special education provision specified in Part 3.

6. Non-Educational Provision

The non-educational provision which the authority propose to make available or which they are satisfied will be made available by the health authority, social services department or some other body, including the arrangements for its provision. Part 6 will also specify the objectives of the provision, and the arrangements for monitoring progress in meeting those objectives.

4.12 The Code notes that:

Provision should normally be quantified (e.g. in terms of hours or provision, staffing arrangements) although there will be cases where some flexibility should be retained in order to meet the changing special educational needs of the child concerned.

[Code 8:37]

The SEN Toolkit, Section 7, paragraphs 36-37 gives some examples of circumstances where quantification is likely to be necessary and also examples in which flexibility may be appropriate.

The Toolkit suggests that there might be times when

..... it would be inappropriate to provide further detail or quantify provision "when a child is placed in a special school or specially resources provision in a mainstream setting which is funded by the LEA but provided by the school. In such settings there is a wide range and availability of specialist help and facilities on site with specific support and equipment provided by the school and teaching and learning programmes that can be varied day-to-day as required by the individual pupil. Such resources can therefore be managed flexibly to meet the child's changing needs.

[SEN Toolkit, Section 7, paragraph 38]

- 4.13 The Code notes (paragraph 8:38) that it is not necessary to modify National Curriculum provisions to enable a child to study at a lower level than applies to most of the pupils working within the same key stage. Where pupils are educated at home by their parents there is no requirement to deliver the National Curriculum. Where pupils are at the foundation stage section 3(b) of the statement should set out how the special educational provision will enable the child to access the curriculum with reference to the early learning goals.

- 4.14 For pupils whose assessment is close to their preparation for GCSEs or vocational examinations, the Code notes (paragraph 8:39) that the LEA should indicate any special examination provision recommended to enable the pupil to have full access to the examination and demonstrate their attainment.
- 4.15 At this stage, the statement will not yet be formally signed, and part 4 will be left blank. All the advice obtained and taken into consideration during the assessment process will be attached as appendices to the statement.

Guidance on writing a statement of SEN is also given in section 7 of the SEN Toolkit.

4.16 **Notice Attached to Proposed Statement**

As required by Schedule 27(2)(b) of the Act, the LEA will also send the parents a 'notice' (letter SEN24). This will, as required in Regulation 15, contain the information as specified in Part B of Schedule 1 to these Regulations. This notice will set out, as required:

- the arrangements for the parents to make a choice of school
- the parents' right to make representations about the content of the statement
- the parents' right to require the LEA to arrange a meeting between them and an officer of the authority at which the statement can be discussed
- the parents' right to appeal to the SEN & Disability Tribunal against the contents of the final statement

4.17 **Naming a School**

Included in the Notice noted above, must be information about how the parents are to express a preference for a named school. As required by Regulation 15 and detailed in Part B of Schedule 1 to the Regulations, the LEA must provide the parents with a list of:

- all the maintained schools in the Birmingham area (primary or secondary, as relevant to the child's age)
- the non-maintained special schools which make special educational provision for pupils with special educational needs in England and Wales, and which are approved by the Secretary of State for Education or the Secretary of State for Wales, and
- the independent schools in England and Wales which are approved by the Secretary of State for Education or the Secretary of State for Wales as suitable for the admission of children for whom statements of special educational needs are maintained

4.18 As required [Act, Schedule 27(3)], parents will be invited to express a preference for a specific maintained school (using an SEN25 form included with the notice described in section 4:13 above). If they do wish to name a school, they will be asked to do so within 15 days from the date on which they receive the notice, or 15 days from the date on which they last attended a meeting.

4.19 Where the parents express a specific preference, the LEA

.....shall specify that name of the school in the statement unless -

- (a) the school is unsuitable to the child's age, ability or aptitude or to his special educational needs, or
- (b) the attendance of the child at the school would be incompatible with the provision of efficient education for the children with whom he would be educated or the efficient use of resources.

[Act Schedule 27, paragraph 3(3)]

4.20 Under section 316 of the Act, the LEA have a qualified duty

.....to educate children with special educational needs in mainstream schools

.....unless this is incompatible with –

- (a) the wishes of the parent, or
- (b) the provision of efficient education for other children.

[section 316(3) of the Act as amended by the SEN & Disability Act 2001]

An LEA may only rely on the exception in (b) “if they show that there are no reasonable steps that they could take to prevent the incompatibility”.

4:21 The parents may, of course express a preference for a maintained special school.

If they do so, the LEA no longer have a duty under section 316A to secure a mainstream education for the child. The LEA must comply with a parental preference for a particular maintained special school so long as the conditions in Schedule 27 apply.

[Code 8:67]

4.22 Parents may also make representations to the LEA for a placement in an independent or non-maintained school. If they do the LEA will comply with the

parents' wishes provided the school or institution can make the special educational provision necessary to meet the child's special educational needs and provided (as noted in section 9 of the Act) placement would be "compatible with the efficient education and training of the child and the avoidance of unreasonable public expenditure."

- 4.23 Where the LEA do not propose to name the school chosen by the parents (because it does not fulfil the requirements of 4.19 above), the LEA will write to them (letter XX6) to advise them of the decision, and asking them whether they wish to name any alternatives.
- 4.24 Before naming a maintained school in a statement, the LEA will, as required by the Act [Schedule 27 paragraph 3(4)], write (letter SEN27) to the governing body of the school and, if the school is maintained by another local education authority, that authority. The LEA will give due consideration to the views expressed by those consulted, but the final decision as to whether to name the school falls to the LEA.
- 4.25 Where the LEA wish to name an independent school not yet approved by the Secretary of State, the LEA will, as required by section 347(5)(b) of the Act, write (SEN41) to the Secretary of State requesting permission to name the school.

Where the Secretary of State takes longer than 2 weeks to reply, the LEA will no longer be bound by the 8 week time limit governing the issue of the final statement [Regulation 17(4)(e)]. Nor will the time limit apply if the Secretary of State declines to give consent to a proposed placement and a further request is made by the LEA for consent to a placement at another independent school which is not yet approved [Code 8:76].

It should be noted, however, that the requirement to have the Secretary of State's approval "does not apply to a local authority deciding for the purposes of section 324(5) whether a parent has made suitable arrangements."
[357(5A)]

4.26 **Parents' Right to Make Representations**

As noted in 4.16 above, the notice (SEN24) will inform the parents of their right to make representations (or further representations), as laid down in paragraph 4 of Schedule 27 to the Act. Any representations made by the parents must be made within 15 days:

- of the date the notice was 'served' on the parent, or
- the date of the last meeting held, at their request, with the LEA

4.27 Parents Right to Require Meetings

As noted in 4.16 above, and as laid down in paragraph 4 of Schedule 27 to the Act, the notice (SEN24) will inform the parents of their right to require the LEA to arrange a meeting between them and an officer of the authority at which the statement can be discussed.

Any such request for a meeting must be made by the parents within 15 days of the date on which the notice was 'served'.

- 4.28 Following this meeting, the LEA will write to the parent to advise him or her that if he or she disagrees with any part of the assessment, he or she may require the authority to arrange such meeting or meetings as they consider will enable him or her to discuss the "relevant advice" with the person who gave the advice or any other person who, in the opinion of the LEA, is the appropriate person to discuss it with the parent. This requirement must be made with 15 days from the date of the meeting with the LEA officer.

If the parents make such a request, the LEA will write to the 'appropriate person' requesting that a meeting be arranged with the parent to discuss the advice in question. The parents will be advised by the LEA that such a meeting has been requested and will name the 'appropriate person' concerned.

The Final Statement

4.29 As noted in section 4.8 above, where the LEA issues a proposed statement, Regulation 17(3) requires that the LEA issues the final statement within 8 weeks.

4.30 Service of Statement

Where a decision is made to issue a final statement, the LEA will, subject to the conditions in section 4.8 above, send this statement to the parents within 8 weeks from the date of the proposed statement.

The statement will be in the same form as was the proposed statement, and described in sections 4.11-4.15 above. Now, however, part 4 ('Placement') will be completed and the statement will be signed by the LEA's authorised officer (Principal Assessment Officer). The school will be named as outlined in sections 4.17-4.25 above unless the LEA is satisfied that the parents have made suitable arrangements themselves. In such a case, the LEA will not specify the name of the school in part 4 of the statement although the type of provision will be described.

As required by the Act,

.....the statement shall -

- (a) give details of the authority's assessment of the child's special educational needs, and
- (b) specify the special educational provision to be made for the purpose of meeting those needs, including the particulars required by subsection (4).

[Act, 324(3)]

The Act also requires that

.....the statement shall -

- (a) specify the type of school or other institution which the local education authority consider would be appropriate for the child,
- (b) if they are not required under Schedule 27 to this Act to specify the name of any school in the statement [by parents' right to name a school], specify the name of any school or institution (whether in the United Kingdom or elsewhere) which they consider would be appropriate for the child and should be specified in the statement, and

(c) specify any provision for the child for which they make arrangements under section 319 of this Act and which they consider should be specified in the statement [ie: special educational provision otherwise than at a school].

[Act, 324(4)]

4.31 Attached to this statement will be a 'notice' (SEN28), as required under paragraph 6 of Schedule 27 of the Act, advising the parents of their right, under section 326 of the Act, to appeal to the Tribunal, against the description in the statement of the authority's assessment of the child's special educational needs, the special educational provision specified in the statement or, if no school is named in the statement, that fact. Parents will also be advised of the availability of the Parent Partnership Service and the disagreement resolution service.

4.32 **Maintenance of a Statement**

When a statement is made, and unless the parents have made suitable arrangements, the LEA will, as required by section 324(5) of the Act, arrange that the special educational provision specified in the statement is made for the child. Any non-educational provision specified will be arranged as considered appropriate by the LEA.

The LEA will write (SEN29) to the named school requesting admission (if the child is not already there), informing the 'responsible person' (usually the headteacher) of the child's needs. A copy of the statement will be sent to the school. The 'responsible person' must then ensure that the child's special educational needs are made known to all those who will teach him.

4.33 **Newly Statemented Pupils in Year 9+**

As required by section 5(2) of the Disabled Persons (Services, Consultation and Representation) Act 1986, where a child is first statemented in year 9 or above then, when sending a copy of the statement to the Social Services Department, the LEA will require the appropriate officer of that Department to give to the authority his opinion as to whether the child is or is not a disabled person. This will be done using letter XX28.

4.34 **Disclosure of Statements**

The Regulation require that, subject to the provisions of the Act and of the Regulations:

-a statement in respect of a child shall not be disclosed without the child's consent except -
- (a) to persons to whom, in the opinion of the authority concerned, it is necessary to disclose the statement in the interests of the child;
 - (b) for the purpose of any appeal under the Act;
 - (c) for the purposes of educational research which, in the opinion of the authority, may advance the education of children with special educational needs, if, but only if, the person engaged in that research undertakes not to publish anything contained in , or derived from, a statement otherwise than in a form which does not identify any individual concerned including, in particular, the child concerned and his parent;
 - (d) on the order of any court for the purposes of any criminal proceedings;
 - (e) for the purposes of any investigation under Part III of the Local Government Act 1974 (investigation of maladministration);
 - (f) to the Secretary of State when he requests such disclosure for the purposes of deciding whether to give directions or make an order under section 496, 497 or 497A;;
 - (g) for the purposes of an assessment of the needs of the child with respect to the provision of any statutory services for him being carried out by officers of a social services authority by virtue of arrangements made under section 5(5) of the Disabled Persons (Services, Consultation and Representation) Act 1986;
 - (h) for the purposes of a local authority in the performance of their duties under sections 22(3)(a), 85(4)(a), 86(3)(a) and 87(3) of the Children Act 1989; or
 - (i) to Her Majesty's Chief Inspectors of Schools, one of Her Majesty's Inspectors of Schools, or to a registered inspector or a member of an inspection team, who requests the right to inspect or take copies of a statement in accordance with section 2(8) or 3(3) of or paragraph 7 of Schedule 3 to the School Inspections Act 1996 respectively;
 - (j) to the Connexions Service for the purposes of writing or amending a transition plan, or
 - (k) to a Young Offender Institution for the purposes of the performance of its duties under rule 38 of the Young Offender Institution Rules 2000.

[Regulation 24]

A child may consent to the disclosure of a statement if his age and understanding are sufficient to allow him to understand the nature of the consent – otherwise, his parent may consent on his behalf.

The arrangements for keeping statements within the LEA shall be as to ensure, so far as is reasonably practicable, that unauthorised persons do not have access to them.

4.35 **The Role of the Moderating Group**

The moderating group, set up by the LEA as suggested in paragraph 8:9 of the Code, may sample the LEA's statements. Such a group will not make decisions on individual cases but "through sampling and retrospective comparison, can also help make LEA practice become more robust and clearly understood by schools, early education settings and parents."

In cases where the referral does not follow the LEA's 'routine' referral procedure, the case may be discussed by the LEA's Moderating Group.

4.36 **The Role of the Placement Panel**

The LEA has set up a panel to consider all requests for placement in special schools or 'units' (resource bases). This includes both day and residential placements.

The Panel enables the LEA to make more consistent decisions about placement outside a mainstream setting and ensures that availability of overall places is carefully monitored.

School Placement

4.37 As noted in section 4.30, the LEA will not formally 'name' a school until the final statement is sent to the parents.

4.38 A Qualified Duty to Secure Education in Ordinary Schools

Under section 316 of the Act, the LEA have a qualified duty

.....to educate children with special educational needs in mainstream schools

.....unless this is incompatible with –

(a) the wishes of the parent, or

(b) the provision of efficient education for other children.

[section 316(3) of the Act as amended by the SEN & Disability Act 2001]

An LEA may only rely on the exception in (b) “if they show that there are no reasonable steps that they could take to prevent the incompatibility”.

4:39 The parents may, of course express a preference for a maintained special school.

If they do so, the LEA no longer have a duty under section 316A to secure a mainstream education for the child. The LEA must comply with a parental preference for a particular maintained special school so long as the conditions in Schedule 27 apply.

[Code 8:67]

All requests for placement in a special school or special 'unit' (or resource base) will considered by the LEA's Placement Panel

4.40 Provision of Education at an Independent or Non-Maintained School

Parents may make representations to the LEA for a placement in an independent or non-maintained school. If they do the LEA will comply with the parents' wishes provided the school or institution can make the special educational provision necessary to meet the child's special educational needs and provided (as noted in section 9 of the Act) placement would be “compatible with the efficient education and training of the child and the avoidance of unreasonable public expenditure.”

In the following circumstances, as listed in section 348 of the Act,

.....where -

- (a) special educational provision in respect of a child with special educational needs is made at a school which is not a maintained school, and
- (b) either the name of the school is specified in a statement in respect of the child under section 324 or the local education authority are satisfied-
 - (i) that his interests require the necessary special educational provision to be made for him at a school which is not a maintained school and
 - (ii) that it is appropriate for the child to be provided with education at the particular school,

[Act, 348(1)]

the LEA shall:

- (a) pay the whole of the fees payable in respect of the education provided for him at the school, and
- (b) if board and lodging are provided for the child at the school and the authority are satisfied that the necessary special educational provision cannot be provided for him at the school unless the board and lodging are also provided, pay the whole of the fees payable in respect of the board and lodging.

[Act, 348(2)]

- 4.41 As noted in paragraph 8:97-8:101 of the Code, parents (or Social Services acting as the child's parent) may choose to place a child in an independent school (whether approved or not) or a non-maintained special school at their own expense. If they do so, then the LEA will satisfy itself that the school is able to make appropriate special educational provision for the child.

Where the LEA is satisfied that the parents have made suitable arrangements, including the realistic possibility that they can fund those arrangements for a reasonable period of time, then the LEA will not specify the name of the school in Part 4 of the statement although the type of provision will be described. The Code suggests that Part 4 would then go on to say that "parents have made their own arrangements under section 7 of the Education Act 1996".

The LEA is then under no obligation to contribute towards the cost of educating the child at the school of the parents' choice. The LEA would, however, still maintain the statement and review it annually.

Where a child is 'looked after' by the local authority, and placed in a community home with education or other children's home that provides education, or with an independent fostering agency providing education, then the LEA may conclude that suitable arrangements have been made and the LEA is relieved of their duty to arrange the provision specified in the statement.

4.42 Residential Placements

The LEA will consider the special educational needs of all pupils in a careful and consistent manner. They will always be mindful of the wishes of the parents and the child, and the duty to place the child in an ordinary school wherever possible.

The LEA is particularly concerned to ensure that residential placements are rigorously challenged. This is in line with the requirements of the Children Act 1989, which state that:

Every local authority shall take such steps as are reasonably practicable, where any child within their area who is in need and whom they are not looking after is living apart from his family -

- (a) to enable him to live with his family; or
- (b) to promote contact between him and his family, if, in their opinion, it is necessary to do so in order to safeguard or promote his welfare.

[Children Act 1989, Schedule 2, Paragraph 10]

4.43 Further guidance, particularly in relation to the residential placement of children with emotional and behavioural difficulties is given in sections 73 - 101 of DFE Circular 9/94: 'The Education of Children with Emotional and Behavioural Difficulties'.

4.44 It is difficult to be precise about all the circumstances where a pupil may require residential placement. The LEA will continue to consider each request on its educational merits. Normally, one of the following circumstances must apply:

- where a child requires specialist educational provision which would not be available in a day school;
- when a combination of day care facilities (educational, health, therapeutic and care) cannot meet a child's needs to the extent that barriers to educational progress would exist unless a continuous education and care regime were provided;

- when the child's emotional needs require a consistent environment, providing a different lifestyle in a structured and predictable regime effectively for 24 hours a day, for the child to benefit from a suitable educational curriculum.
- 4.45 Generally speaking, residential education will be agreed to and funded by the LEA only when placement in a day school would not be suitable, and after the issuing of a statement of special educational needs specifying the need for boarding. The LEA will consider 'exceptional' requests for cases that have not completed full assessment, but full and detailed evidence must be provided. All such 'exceptional' requests would be discussed by the LEA's Placement Panel.
- 4.46 In all cases where residential education is under consideration the LEA requires the following additional information:
- (1) the written advice of a qualified social worker;
 - (2) where a Social Services social worker is not already involved, the LEA will request the advice of a social worker from the Child Advisory Social Work Service (CASWS);
 - (3) evidence of the steps that have been taken by the social worker to enable the child to remain within his or her family;
 - (4) details of the arrangements for the child's contact with his or her family and of any special help (e.g. transport) which may be needed to maintain home/school contact. Ultimately, this would be written into the statement, if one is made.
- 4.47 In cases where the LEA agrees to residential placement, they will endeavour to place the child at a school which is as near as possible to Birmingham, to allow for family contact to take place. This is, of course, subject to the school being appropriate to meet the identified special educational needs of the child. The LEA will liaise with the Social Services Department over joint funding of the placement - especially in cases where placement is being considered at a school not maintained by the LEA.
- 4.48 In all cases where a child is being considered for a residential school which is not maintained by the LEA, the case will be discussed by the LEA's Placement Panel.
- 4.49 As required (Code 8:70), whenever a child is placed in a residential school with the intention that it will be for longer than three months, the LEA will inform the social services department where the child lives. The LEA expects that this department will liaise, as necessary, with their counterpart in the area of the residential school.

The LEA must inform the SSD in the area where the child's family resides or the SSD in the area of the residential school.

[Children Act 1989, section 85]

4.50 **Education Otherwise than at School**

The Code notes (8:91-8:92) that children with statements may be educated otherwise than at school because:

- The LEA has made other arrangements, or
- The parents have made suitable arrangements of their own.

Section 319 of the Act empowers the LEA to arrange some or all of a child's special educational provision to be made otherwise than at school. Such arrangements would include education in a PRU, home tuition or education that reflected key stage 4 flexibilities.

4.51 **Provisional 'Emergency' Placements**

In exceptional circumstances, it may be necessary for the LEA to place a child in a special school or unit on a 'provisional' basis, pending the outcome of the statutory assessment. This would only be done when the LEA, parents, educational psychologist, headteacher, CASWS social worker (if residence is being considered), and any other relevant professionals who will be involved in the statutory assessment are all agreed that the child's needs are such that action must be taken immediately.

It is difficult to be definitive about all the circumstances that could result in such an 'emergency' placement. However, the following situations are given as examples:

- a sudden change in a child's medical circumstances, causing a rapid and serious deterioration in the child's health or development
- a marked change in a pupil's learning, personality, or physical needs as a result of a serious accident
- a child moving into Birmingham from outside the authority, with clearly identifiable special needs
- a marked and serious deterioration in a child's emotional development, where a delay in placement would work against the welfare of the child

4.52 In order to consider a request for an 'emergency' placement, the LEA requires a letter from the educational psychologist giving the reasons for this exceptional request. In addition, if residential provision is being requested, the LEA requires a supporting letter from a Social Worker. Each case would be

considered on its merits by the LEA, and on the basis of the 'interim' advice received. All such cases would be discussed by the LEA's Moderating Group.

Where the child is to be placed, the LEA will write (SEN22) to the headteacher, requesting placement, and providing such information on the child's needs as is available.

- 4.53 Section 316A(2) of the Act allows a child to be educated outside a mainstream school during any period in which he is admitted to a special school for the purposes of an assessment under section 323 of his educational needs and his admission to that school is with the agreement of all involved, including parents, LEA, school and any person whose advice has been sought as part of the assessment procedure.

4:54 **Children in Secure Placements**

Where a young person with a statement is detained under a court order (e.g. in secure accommodation) or an order of recall by the Secretary of State, then section 562(1) of the Act makes it clear that the LEA is no longer responsible for them and is under no duty to maintain the statement.

The Code, however, suggests (8:104) that LEAs may provide such young people with educational facilities and should ensure that the institutions receive information about their inmates' special educational needs including a copy of any statement and the last annual review report. The LEA should be involved in the young person's exit plan to ensure that careful consideration can be given to the pupil's educational placement.