

## 1. Introduction

### 1.1 New Legal Procedures

The purpose of this 'handbook' is to detail the local administrative procedures used to implement the statutory procedures specified in the following documents:

The Disabled Persons (Services, Consultation and Representation) Act 1986  
The Disability Discrimination Act 1995  
The Education Act 1996 (referred to as 'the Act')  
The School Standards and Framework Act 1998  
The Special Educational Needs & Disability Act 2001  
The Special Educational Needs Tribunal Regulations 2001  
The Education (Special Educational Needs)(England)(Consolidation) Regulations 2001 (referred to as 'the Regulations')  
The Special Educational Needs Code of Practice 2001 (referred to as 'the Code')

The Act (amended by the School Standards and Framework Act 1998 and the SEN & Disability Act 2001) replaces the previous procedures laid down in the Education Act 1993. The new legal requirements impose extensive duties on LEAs and on the governing bodies of community, foundation and voluntary schools. These duties do not extend to the 'managers' of Independent schools, although LEAs still have a duty to identify and assess pupils with special needs wherever they are.

### 1.2 Basic 'Educational' Definitions

The legal definitions of special educational needs, learning difficulties, and special educational provision are contained in the Act:

.....a child has '**special educational needs**' if he has a learning difficulty which calls for special educational provision to be made for him.

.....a child has a '**learning difficulty**' if -

- (a) he has a significantly greater difficulty in learning than the majority of children of his age,
- (b) he has a disability which either prevents or hinders him from making full use of educational facilities of a kind generally provided for children of his age in schools within the area of a local education authority, or

(c) he is under the age of five years and is, or would be if special educational provision were not made for him, likely to fall within paragraph (a) or (b) when over that age

**.....special educational provision means –**

(a) in relation to a child who has attained the age of two years, educational provision which is additional to, or otherwise different from, the educational provision made generally for children of his age in schools maintained by the local education authority (other than special schools), and

(b) in relation to a child under that age, educational provision of any kind.

[Act, 312 as amended by the School Standards & Framework Act 1998]

- 1.3 The term 'learning difficulty', therefore, encompasses much more than merely pupils whose difficulty arises from an actual learning problem. Some pupils may have a 'learning difficulty' because of problems ('disabilities') which prevent them from gaining full access to 'normal' educational facilities. This may include the bright pupil in a wheelchair as well as one with a severe emotional problem.

Throughout this present document, the term 'learning difficulty' is used to cover this broad spectrum of children.

- 1.4 The term 'disability' itself is referred to in the Code and is defined as follows:

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.

[Children Act 1989, section 17(11)]

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

[Disability Discrimination Act 1995, section 1(1)]

- 1.5 It is important to note that children may be defined as disabled but not as having special educational needs – and vice versa.

## 1.6 The Code of Practice

The Code identifies two levels of support in the early years or school stages – Early Years Action and Early Years Action Plus, or School Action and School Action Plus.

In many cases the action taken will mean that the child's needs are resolved. Only for those children whose progress continues to cause concern should additional action be taken.

[Code 5:21, and again in 6:23 with reference to 'pupils' rather than 'children']

The early years and school-based stages will not usually be steps on the way to statutory assessment. Nor, as noted in the Code (5:22 and 6:24), are they "hurdles to be crossed before a statutory assessment can be made." Instead, "they are the means of matching special educational provision to the child's needs, and are therefore part of the continuous and systematic cycle of planning, action and review within the school to enable all children to learn and progress."

## 1.7 Only a very small number of pupils, therefore, will require statutory assessment:

The special educational needs of the great majority of children should be met effectively within mainstream settings through the Early years Action and Early years Action Plus or School Action and School Action Plus, without the local education authority needing to make a statutory assessment.

[Code 7:1]

The explanatory notes to the Special Educational Needs and Disability Act 2001 states:

About 20% of children will have some form of SEN at some time..but around 3% of children will have severe or complex needs which will require the LEA to determine and arrange for the special educational provision for the child by means of a statutory statement of SEN."

[Explanatory Notes to the Special Educational Needs & Disability Act 2001, section 20]

The LEA's procedures, as outlined in subsequent paragraphs, set out the local arrangements for the statutory assessment of this small group of children. In all cases, the LEA will look to detailed evidence before deciding whether such an assessment is required.

## 1.8 Interpreting and Translation of Information

The Code stresses (e.g. 2:13, 2:21 and in Section 2 of the SEN Toolkit) that where children have different linguistic and cultural backgrounds, LEAs (and Parent Partnership Services) need to ensure that such parents and children are involved in all aspects of the statutory process. This may involve seeking advice from bilingual staff and support staff, and teachers of English as a second language, as well as using interpreters and translators and other local sources of advice as appropriate.

It is particularly important that information sent to parents should be in plain language and presented in a way that ensures equality of access. The Code and the SEN Toolkit suggest that such information should be available in the first language of the child's parents and LEAs may wish to consider Braille, taped or video-taped versions of the information for parents who may find the information more accessible in that form.

## 1.9 Responsibility within the LEA

Day-to-day responsibility for the statutory assessment, statementing and review of children with special educational needs rests with the SEN Assessment Service. The overall manager of this service is: David Galbraith, Strategic Manager, Parent & Learner Support

The SEN Assessment Service can be contacted as follows:  
Tel: 0121-303...3525 / ..4314 / ..2579 / or ..4728 (4 lines)  
Fax: 0121-303-2668

All general written queries should be addressed to the SEN  
Assessment Service at:  
The Education Service, Margaret Street, Birmingham, B3 3BU

## **Other Fundamental Definitions**

### **1.10 'Service' of Documents**

There are many points in the statutory procedures where a document or notice is required to be 'served' on the parents, or on others. The date when this happens is of considerable importance, as it will be from this point that a statutory time period is legally worked out. Regulation 5 says that a document which is 'served', 'sent' or 'given', must be properly addressed to the relevant last known address of the person concerned. Unless the contrary is shown the "document or notice shall be treated as served, sent or given" on the second working day after the date of posting (i.e. as postmarked) if first class post is used, and the fourth working day if second class is used.

### **1.11 Time Limits**

There are also many points when time limits are specified. Regulation 2(4) specifies that when calculating the days passed, the day on which the action was taken shall not be counted in the calculation of that period. In addition, if the last day of the time period is not a working day, then "the period shall be extended to include the following working day."

### **1.12 Definition of Parent**

This is described in Chapter 2 of the Code. A parent is defined in section 114(1D) of the Education Act 1944, as amended by the Children Act 1989. Unless the context otherwise requires, parent in relation to a child or young person includes any person:

- who is not a parent of the child but who has parental responsibility for him or her, or
- who has care of the child

Section 114(1F) of the 1944 Act states that for the purposes of sub-section (1D):

- parental responsibility has the same meaning as in the Children Act 1989, and
- in determining whether an individual has care of a child or young person any absence of the child or young person at a hospital or boarding school and any other temporary absence shall be disregarded

### **1.13 Parental Responsibility**

This is described in Chapter 2 of the Code. Under section 2 of the Children Act 1989, parental responsibility falls upon:

- all mothers and fathers who were married to each other at the time of the child's birth (including those who have since separated or divorced)

- mothers who were not married to the father at the time of the child's birth, and
- fathers who were not married to the mother at the time of the child's birth, but who have obtained parental responsibility either by agreement with the child's mother or through a court order.

- 1.14 Under section 12 of the Children Act 1989 where a court makes a residence order in favour of any person who is not the parent or guardian of the child that person has parental responsibility for the child while the residence order remains in force.

Under section 33(3) of the Children Act 1989, while a care order is in force with respect to the a child, the social services department (SSD) designated by the order will have parental responsibility for that child, and will have the power (subject to certain provisions) to determine the extent to which a parent or guardian of the child may meet his or her parental responsibility for the child. The SSD cannot have parental responsibility for a child unless that child is the subject of a care order, except for very limited purposes where an emergency protection Order is in force under Section 44 of the Children Act 1989.

It should be noted that the making of a care order does not remove parental responsibility from a parent. Instead, the responsibility is shared, by the Local Authority, with the parent. However, the Authority does have the responsibility of deciding the extent to which the parents can exercise their parental responsibility.

- 1.15 A person holding parental responsibility may make arrangements for another person to exercise that responsibility on his or her behalf - for example when the parent is on an extended visit abroad or during a time in hospital. This delegation does not remove the original parental responsibility.

The Children Act introduced a concept of enduring parental responsibility [section 2 (6)], which can only be removed through a court and which confers duties as well as rights on all those who have such responsibility.

- 1.16 Parental responsibility is defined under section 3(1) of the Children Act 1989 as covering all the duties, rights, powers, responsibilities and authority which parents have with respect to their children and their children's property.

## **Conventions Used In This Document**

### **1.17 References to Specific Pieces of Legislation**

The Education Act 1996  
The Education (Special Educational Needs)(England)(Consolidation)  
Regulations 2001  
The Special Educational Needs Code of Practice 2001

Throughout this document, the above pieces of legislation are referred to as the Act, the Regulations, and the Code. References to other legislation are given in full, Direct key quotes from any of these documents are shaded and printed in italics.

### **1.18 References to LEA Standard Letters**

In the text which follows and in the accompanying flowcharts in Appendix D, standard letters used by the SEN Assessment Service are referred to as SEN+a number (e.g. SEN9). Non-standard letters or letters which are currently being standardised are referred to as XX+a number.