



City of Westminster Cabinet Report

Decision Maker:	Cabinet
Date:	15 December 2014
Classification:	For General Release
Title:	Children and Families Act – Implementation Plan
Wards Affected:	All
Key Decision:	Yes
Financial Summary:	The implementation of the Children and Families Act will have resource implications within Children's Services and Adult Social Care. The government have provided Burdens Funding to support the period of implementation, but monitoring of impact will be required to ensure that any potential additional general fund expenditure is managed.
Report of:	Tri-borough Director of Schools

1. EXECUTIVE SUMMARY

- 1.1. This paper outlines the principles of the initial eligibility guidelines for young people with special educational needs. The guidelines have been developed and used as a working document following the implementation of the Children and Families Act, which came into effect from September 2014.
- 1.2. The paper recommends that Cabinet approves the initial eligibility guidelines to be formally implemented for the academic year 2014/15 and then reviewed with parents and other stakeholders throughout the first year of operation.

Why are we implementing these initial guidelines?

- 1.3. The Children and Families Act requires Education, Health and Social Care services to work more closely together and undertake a combined assessment process for young people with complex needs. This assessment process will result in a combined Education, Health and Care plan that will, in effect, replace current 'Statements' of special educational need.

What have we done?

- 1.4. As part of our preparation for the implementation of the Act, we have reviewed the systems and processes used within the Special Educational Needs Service. This process has required a review of the eligibility guidelines and the processes for assessment for Special Educational Needs to ensure that they meet the requirements of the new Act.
- 1.5. The initial guidelines (Appendix A) will be implemented in line with the Children and Families Act to guide our decision making process under the new system. However, each case will be judged on its merits on the basis of the child's / young person's needs.

Who do these guidelines apply to?

- 1.6. The government has stated that **all children and young people who currently have statements of SEN will be entitled to transfer to an Education Health and Care Plan**. There is four-year period of transition for this to take place and, during this period, statements of SEN will continue to have the same legal status as they do currently. This entitlement to transfer to and Education, Health and Care Plan means that **only children and young people who are new to the system will be subject to the revised eligibility guidelines**.

How will we review the effectiveness of these guidelines?

- 1.7. During the next 12 months we will work closely with parents and Parent Representative Groups to review the effectiveness of the initial guidelines and will consider amendments as required. This process will start following the implementation of the initial guidelines for a six month period.

2. RECOMMENDATIONS

- 2.1. that Cabinet approves the initial eligibility guidelines, for formal implementation during the academic year 2014/15.

3. CONTEXT

National Legislation and the SEN Service

- 3.1. The principles of the new legislation are based on working more closely with parents throughout the assessment process so that the final Education Health and Care Plan is a result of 'co-production' and that support is provided to achieve jointly developed and agreed outcomes for the young person.
- 3.2. As a result, where special educational needs assessment was previously considered a broadly administrative process, it will now require a more in depth and detailed approach to produce each young person's plan. We have therefore developed assessment models to focus on those children with the most complex needs, while ensuring that support provided in mainstream schools is robust and able to support those who have less complex needs and do not require an Education Health and Care Plan. The new guidelines have been developed to reflect this approach.

Changes to school funding – High Needs Block

- 3.3. The principles underpinning the new legislation are;
 - greater involvement of parents/carers in decision-making about a child's plan and;
 - transparency and accountability for the deployment of budgets to support a child or young person with special educational needs
- 3.4. The approach that is being taken with regards to High Needs Funding is based on the premise that the majority of children can have their needs met in mainstream schools from available resources and that provision for the children with more complex needs (such that they have an Education, Health and Care Plan) will be funded through a relatively small additional top-up.
- 3.5. As a result, since April 2014 there has been a slightly different approach to the distribution of High Needs Funding to schools, ensuring that a 'High Needs Block top-up model' is operational for mainstream schools, with the Local Authority only making payments for provision over and above a notional £6,000 SEN budget. Please see Appendix B for a diagram which demonstrates this approach.
- 3.6. This approach will ensure that we have identified the required resources for a robust local offer within mainstream schools to support those young people with special educational needs that are not severe and complex. This will therefore manage expectations and any potential strain on High Needs Block – allowing additional support, provided via Education Health and Care Plans, to be focused on those with the most complex needs. The new guidelines reflect this approach.

4. PRINCIPLES OF THE NEW GUIDELINES

Who do the guidelines apply to?

- 4.1. The guidelines have been written in accordance with paragraph 9:16 of the Special Educational Needs Code of Practice 2014 which states:

“Local authorities may develop criteria as guidelines to help them decide when it is necessary to carry out an EHC needs assessment (and following assessment, to decide whether it is necessary to issue an EHC plan). However, local authorities must be prepared to depart from those criteria where there is a compelling reason to do so in any particular case and demonstrate their willingness to do so where individual circumstances warrant such a departure. Local authorities must not apply a ‘blanket’ policy to particular groups of children or certain types of need, as this would prevent the consideration of a child’s or young person’s needs individually and on their merits”.

- 4.2. The guidelines apply when considering new requests for EHC Assessments. They do not apply to those children and young people with existing Statements of Special Educational Needs or Learning Disability Assessments at 1 September 2014.

Why are we implementing the guidelines?

- 4.3. The guidelines have been produced to assist the Local Authority in deciding whether it is necessary for the Local Authority to initiate an Education, Health and Care Assessment. In addition to the guidelines, all requests for an EHC Assessment will be considered on an individual basis considering some or all of the following:

- The views and evidence submitted by parents/carers
- Where applicable, the views and evidence submitted by the young person¹
- The evidence presented by the educational setting
- The evidence presented by professionals
- Any other relevant body with information about the child/young person

Who can make a request for an EHC Assessment?

- 4.4. A request for an Education, Health and Care assessment for a child or young person aged 0-25 years and with special educational needs and/or disabilities can be made by:

- The child’s² parent
- A young person aged 16-25 years
- A person acting on behalf of a school or post 16 institution

¹ The term ‘young person’ refers to those aged 16-25 who are more experienced and able to make decisions for themselves. In this instance, the young person will be the main point of consultation.

² The term ‘children’ refers to those aged 0-16 who do not have the maturity and understanding to make important decisions for themselves. In this instance, parents will be the main point of consultation.

- Children and young people under 19 in youth custodial establishments have the right to request assessment for an EHC Plan.
- 4.5. Following a request for an EHC needs assessment, or the child having otherwise been brought to its' attention, the Local Authority must determine whether an EHC needs assessment is necessary.
- 4.6. The Local Authority must make this decision and communicate the decision to the child's parent within six weeks of receiving the request.

Considering a Request for an EHC Assessment – The Legal Context

- 4.7. The Children and Families Act defines whether a child/young person has special educational needs and requires an Education, Health and Social Care Assessment.
- 4.8. A child or young person has SEN if they have a learning difficulty or disability which calls for special educational provision to be made for him or her.
- 4.9. A child of compulsory school age has a learning difficulty if he or she:
- Has a significantly greater difficulty in learning than the majority of others of the same age or
 - Has a disability which prevents or hinders him or her from making use of facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post 16 provision
- 4.10. A child of under compulsory school age has special educational needs if he or she is likely to fall within the definition above when he/she reaches compulsory school age or would do if special educational provision was not made for him/her.
- 4.11. In some exceptional circumstances, it may be possible for a combination of less severe special educational needs to have a cumulative effect on a child's educational progress. An EHC Assessment will be considered if the cumulative effect may call for special provision which cannot reasonably be provided within the resources normally available to mainstream settings.
- 4.12. The four broad categories of needs as set out in the SEND Code of Practice 2014 form the basis for decision-making:
- Speech, language and communication
 - Cognition and learning
 - Social, emotional mental health
 - Physical, sensory medical
- 4.13. In each of these areas the borough has produced guidelines to identify the significance of a child's difficulty and to identify whether their needs can be met through the resources that are available to mainstream school. The questions have been designed by professionals and they act as a guide only in deciding whether or not an EHC Assessment is necessary. The guidelines for each area will be

completed by parents, the educational setting and professionals to identify the significance of the child's difficulties.

- 4.14. For each area of difficulty the child's parents/school/professional score the severity of the child's presenting difficulties. If the child reaches a certain score, the Council can use this information to determine whether the child's needs are significant enough to meet the criteria for an EHC Assessment. It is important to state that the guidelines are not a diagnostic tool and are simply used to weigh how the child's difficulties are reported to impact on their education. In addition to the guidelines the local authority will also consider the information which is gathered as part of the EHC Request for an Assessment process.
- 4.15. The Special Educational Needs Service has developed the pathway for assessment and planning in order that all Education Health and Care Plans can be produced within the statutory 20 week time limit (current draft at Appendix C).

5. EXPECTED IMPACT OF NEW GUIDELINES

- 5.1. Nationally, it is expected that around 2% of the child population in state funded schools will have special educational needs that require support over and above what is normally available and therefore require a statement of SEN or an EHC Plan.
- 5.2. The most recent figures show that, of the child population in Westminster that are of statutory school age and attend state funded school provision (14,774), there are 1,009 young people with a statement. This equates to 6.8% of the borough's the statutory school age population that attend state funded schools. This percentage is in line with the higher levels of children and young people in the borough who qualify for Free School Meals (34% in the primary phase and 36% the secondary phase compared with 16% nationally) and who have English as an additional language (72% in the primary phase and 64% in the secondary phase compared with 17% nationally)³.
- 5.3. When compared with previous practice, the new guidelines are more open, transparent and specific in the levels required to qualify for an Education, Health and Care Plan. This will enable clearer decision making by practitioners throughout the assessment process and may result in a different cohort of children and young people qualifying for a statutory plan than is currently experienced.
- 5.4. It is anticipated that the implementation of these initial eligibility guidelines will enable us to more effectively target our resources on those young people with the most complex needs, while working with local mainstream schools to ensure the continuous improvement of our ordinarily available offer of support for children with less complex additional needs, thus ensuring that the boroughs resources are used more efficiently and that young people with special educational needs continue to achieve improved outcomes.

³ Statistics from the DfE 2014 statistical release

- 5.5. The new legislation is very much focused on children with special educational needs achieving outcomes. When a child achieves the outcomes that have been identified on his or her plan, it would be expected that in a number of cases the local authority would no longer need to maintain the plan if his or her needs could be met from the Local Offer. Therefore, by focusing on outcomes, more children would have a plan for a time-limited period than is currently the case, where statements of SEN often remain for the duration of their school life.
- 5.6. Nationally, there is four-year period of transition for children with statements of SEN to transfer to an EHC Plan. During this period, statements of SEN will continue to have the same legal status as they did before the Children and Families Act came into effect.
- 5.7. We will be converting Statements of SEN throughout the four-year transition period. The transition process and resulting EHC plans will reflect the principles of the Children and Families Act. We will ensure that the process is person-centred and outcome focused. The number of children and young people that will have a transfer review in 2014/15 is outlined below, broken down by year group:

2014/15	
Year Group	Total
Year 11	76
Year 13	46
Year 14	32
Total	154

- 5.8. Children with Statements of special educational needs who are looked after by the Local authority will be transferred to an EHC plan in the year 2014/2015 irrespective of the year group that they are in.
- 5.9. The year groups below have been identified as transferring to EHC plans in the years 2015 to 2017. This will be reviewed following the implementation and learning from the 2014/2015 transfers. This plan will be reviewed in the summer term of 2015 and updated accordingly.

2015/16		2016/17	
Year Group	Total	Year Group	Total
Reception	25	Year 3	58
Year 1	45	Year 4	49
Year 3	58	Year 5	57
Year 5	57	Year 7	55
Year 7	55	Year 9	77
Year 11	81	Year 10	93
Year 13	65	Year 11	81
Total	386	Total	470

6. ELIGIBILITY OF YOUNG PEOPLE AGED 16-25

- 6.1. Currently, statements of SEN only last until the age of 18. The Act has extended the eligibility for a new Education, Health and Care Plan meaning that, as long as their needs continue to be the same and that they stay in education, young people will be potentially be entitled to funded support until the age of 25. It is estimated that around 10% of young people in further education currently have a statement of SEN. Due to the increase in the age limit; this figure could increase once EHC Plans are introduced.
- 6.2. There is no automatic entitlement to continued support or an expectation that those with an EHC Plan at age 18 must be allowed to remain in education or training from 19 - 25.
- 6.3. The local authority, working with the young person, their parent and relevant professionals, should consider whether there is clear evidence that special educational provision provided through an EHC Plan will continue to enable young people to progress towards agreed outcomes that will prepare them for adulthood.
- 6.4. The new SEN Code of Practice makes clear that a local authority should continue to maintain an EHC Plan for a 19 - 25 year old where all of the following apply:
 1. The education and training outcomes set out in their plan have not yet been achieved.
 2. The young person wants to remain in education or training so they can complete or consolidate their learning, including accessing provision that will help them prepare for adulthood.
 3. Special Educational provision is still needed.
 4. Remaining in education and/or training would enable the young person to progress and achieve those outcomes.
- 6.5. Young people have the right to request an assessment of their SEN at any point before their 25th birthday.
- 6.6. As this is a completely new area for eligibility, we have built upon the content and good practice of the 0-16 guidelines to develop Post 16 guidelines. The further development of these Post 16 guidelines will be done on the basis of consultation with young people who are currently in education and receiving support.
- 6.7. Young people aged over 18 are currently supported by services provided by Adult Social Care. There is therefore a need for Children's Services and Adult Social Care to work closely to establish any potential financial risks within the post 16 cohort and ensure that these are managed. We urgently need to identify young people that Adult Social Care teams are currently supporting, the value of the support that they receive and establish which department will be responsible for these costs in future.

7. LINKS TO THE LOCAL OFFER

- 7.1. The Local Offer is the Council's offer for parents and young people. It includes provision both in and out of school and includes services and support provided by the private and voluntary sectors as well as the Council and the National Health Service.
- 7.2. Each school will also publish their own school offer (known as 'the SEN Information Report') for children with special educational needs and disabilities.
- 7.3. The SEN eligibility guidelines are designed to ensure that those young people with complex needs receive an Education Health and Care Plan. Those young people who have less complex special educational needs will still receive support via services that are normally available through the local authority and schools' Local Offers.
- 7.4. A list of the special schools and special educational needs resource bases that are available across the tri-borough area is shown at Appendix D. Westminster City Council's local offer can be viewed at www.westminster.gov.uk/local-offer.

8. PERSONAL BUDGETS

- 8.1. Parents have the right to request a Personal Budget when a local authority has completed an Education, Health and Care needs assessment and confirmed that an Education, Health and Care plan will be prepared. As required by the published SEN and Disability Code of Practice, Personal Budgets will be focused to secure the provision agreed in the Education, Health and Care plan and will be designed to secure the outcomes specified in the plan.
- 8.2. A child or young person is eligible for a personal budget under the Children and Families Act 2014 if they have been assessed for an EHC Plan and a Plan is to be put in place. A personal budget can be:
 - A notional budget summarising resources and how they will be deployed
 - A direct payment to the young person or family
 - A direct payment arrangement to a third party which can include a broker, provider or nominee
 - A combination of the above
- 8.3. Personal budgets cannot be offered for services where the funding has been already delegated to the providers, for example a school or college. Additionally, where the support or service is to be delivered in a school, early years setting or college, the headteacher must agree the arrangement and where they do not, the personal budget cannot be allocated.
- 8.4. The personal budget can include funding from education, health and social care. However, the scope of that budget will vary depending on the needs of the individual and the areas that a local authority includes in its Personal Budget Policy. From

September 2014, a personal budget option will be offered to any family receiving an Education, Health and Care Plan where the following needs have been identified:

- Home to School Travel Assistance
- Personal Care
- Short Breaks
- Equipment and disposables

8.5. The scope of Personal Budgets should increase over time as local joint commissioning arrangements provide greater opportunity for choice and control over local provision. The full Personal Budgets policy is available on the Council's Local Offer.

9. CONSULTATION AND REVIEW

With parents

9.1. Consultation and co-production with parents is a key principle of the new legislation. In order to undertake this effectively, we have established a Parents' Reference Group, which contains representatives from the local Parents' Support Group (Westminster Parent Participation Group) and the Independent Advice and Support Service.

9.2. The initial eligibility guidelines were presented to the Parent Reference Group on Monday 21 July 2014. The representatives on the group recognised the increased focus on those young people with the most severe and complex needs and that this will require an effective mainstream local offer for those that have less severe needs. They highlighted that there is a risk that some children may not qualify for an Education, Health and Care Plan, but could struggle to have their needs met in a mainstream school. The parents' representatives have been reassured that these new guidelines will not impact anyone who currently has a statement of special educational needs and will only apply to those who are new to the system.

9.3. During the next 12 months we will work closely with parents and Parent Representative Groups to review the effectiveness of the guidelines and will consider amendments as required. This process will start following the implementation of the initial guidelines for a six month period.

With schools

9.4. The principles underpinning the new eligibility guidelines have been outlined in discussions with all headteachers of special schools and additionally resourced units via the Tri-borough Special Heads' Meeting and at local mainstream headteacher meetings. The direction of travel has also been referenced as part of the discussions at the High Needs Block reference meetings attended by mainstream headteachers in each borough.

9.5. The Special Schools Headteacher Representative on the Children and Families Act Executive Board welcomed the introduction of the guidelines, stating that they are much clearer and straightforward in their approach to assessment than what is currently used in schools. We will continue to work with schools to ensure they understand the new guidelines and work effectively within its framework.

10. LEGAL IMPLICATIONS

10.1. The relevant legislation is the Children and Families Act 2014. Part 3 of the Act together with associated regulations and Code of Practice came into force on 1st September 2014.

10.2. The main body of the report sets out the proposed implementation process leading to introduction of the Local Offer including the new eligibility guidelines, and refers at paragraph 5.7 to the transitional provisions which apply to those who already have a statement of SEN.

10.3. Local Authorities are under a duty to keep under review educational provision, training provision and social care provision for children and young people with special educational needs or a disability. Paragraph 1.7 of this report addresses this duty.

10.4. Implications completed by Joyce Golder, Principal Solicitor, Bi-borough Legal Services (020 7361 2181)

11. FINANCIAL AND RESOURCES IMPLICATIONS

11.1. Funding for the delivery of services to support children and young people's education needs is provided through the Dedicated Schools Grant (DSG). This includes post-16 provision that was transferred into the DSG in the last couple of years. There is no indication of additional DSG funding being made available and therefore the expectation is that any spending pressures relating to the educational needs of children who have a combined Education, Health and Care Plan are contained within existing resources. Detailed monitoring of expenditure will be required so that if it becomes apparent that additional burdens are being generated then appropriate representation can be made, especially with regard to post-16.

11.2. The table below sets out the numbers and level of support provided to students with statements of educational need (excluding nursery pupils) which is funded through the High Needs block of the DSG.

	Cost (£)	Volume (pupils)	Average Cost
Independent Schools & Non-maintained Special Schools	£4,055,580	156	£25,997
Other Borough Schools	£2,302,813	194	£11,870
Belonging regulations	£738,858	28	£26,388

Sub-Total	£7,097,251	378	£18,776	39%
Maintained Schools and Academies in Borough	£5,265,765	584	£9,017	
Beachcroft Pupil Referral Unit	£250,000	10	£25,000	
Sub-Total	£5,515,765	594	£9,286	61%
Total	£12,613,016	972	£12,976	

- 11.3. Where a relatively low-level support for children with high needs is being delivered by mainstream schools, this funding is provided through the Schools Block of DSG.

Funding for Schools – the ‘High Needs Block’

- 11.4. The local authority is keen to support schools in having a well-resourced Local Offer to meet children’s additional learning needs. This will require a change in the way that funds are distributed directly to schools. As there are restrictions on the way that school funding can be distributed any transfer of funds is unlikely to completely reflect the way that the number of children with statements are distributed across the borough’s schools. Officers are working to ensure that any change in funding does not disadvantage those schools with a greater than average number of children with statements or EHC Plans whilst looking at ensuring that all schools support children with less complex needs.
- 11.5. Consultation and engagement with schools is vital to the success of any proposals. Following consultation with tri-borough Schools Forums, each Borough has established a ‘mainstream school High Needs Block reference group’ to support a partnership approach to the on-going decision-making about the distribution of the High Needs Block.

Conversion of current ‘SEN Statements’ into ‘Education, Health and Care Plans

- 11.6. We will be converting statements of SEN into Education Health and Care Plans throughout the established four-year transition period. During this period, Statements will continue to have exactly the same legal status as they had before the implementation of the Children and Families Act.
- 11.7. A plan is in place to ensure that the conversion process can be completed using the resources available within the Special Educational Needs Service, however, significant engagement will need to be undertaken with parents to ensure that demand for early conversions is managed.

Staffing implications

- 11.8. The implementation of the Act and the bringing together of the three previously borough based Special Educational Needs Teams represents an opportunity to review the way in which financial and performance information is managed. Representatives from the SEN Service, Children's Services Finance and Children's Services Business Analysis have worked together to reorganise the entire service. A new staffing structure is in place and assimilation and recruitment into newly vacant posts has been completed.
- 11.9. Implications verified/completed by: Dave McNamara, Director for Children's Services Finance and Resources.

12. EQUALITY IMPLICATIONS

- 12.1. An equalities impact assessment is attached along with this paper. This outlines the predicted numbers of young people whom the guidelines will apply to during the first year of operation and the needs that they are likely to have. It also outlines the risks of implementing the new guidelines.
- 12.2. The key characteristics where an equalities impact could be experienced are 'age' and 'disability'.
- 12.3. The equalities impact assessment will be continuously referred to, redrafted and updated as the guidelines are reviewed during the first year of implementation.

LOCAL GOVERNMENT ACT 2000
LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.	None.		

LIST OF APPENDICES:

- Appendix A. New SEN Eligibility Guidelines in detail
- Appendix B. New funding model for SEN in Mainstream Schools from September 2014.
- Appendix C. Current draft Single Assessment pathway
- Appendix D. Tri-borough Special Schools and Resource Bases

If you have any queries about this Report or wish to inspect any of the Background Papers please contact:

Steve Comber

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Other Implications

- 1. Resources Implications**
Specific resources implications are outlined in section 11 of this report.
- 2. Business Plan Implications**
No implications.
- 3. Risk Management Implications**
There are no risk management implications arising from this report.
- 4. Health and Wellbeing Impact Assessment including Health and Safety Implications**
No implications.
- 5. Crime and Disorder Implications**
No implications.
- 6. Impact on the Environment**
No implications.
- 7. Equalities Implications**
As per section 12, a full equalities impact assessment accompanies this report.
- 8. Staffing Implications**
There are no staffing implications arising from this report.
- 9. Human Rights Implications**
There are no matters arising under the Human Rights Act 1998.
- 10. Energy Measure Implications**
No implications.
- 11. Communications Implications**
No implications.