

CABINET – 15 July 2014

SEND (Special Educational Needs & Disabilities) Reforms

Report by Director for Children's Services

Introduction

1. Members are asked to be aware of significant changes affecting children and young people, aged 0 to 25, with special educational needs (SEN) and disabilities. This paper outlines the key issues for the Council arising from Part 3 of the Children and Families Act 2014, with implementation commencing in September.

Background- The Children and Families Act (March, 2014)

2. The Children and Families Act (2014) replaces existing SEN legislation, and brings together the current separate arrangements for children in schools and young people in post-16 institutions and training up to age 25. The Act also removes the separate treatment of local authority maintained schools and academies under SEN legislation. The scope of the Act has been extended to include all disabled children and young people, rather than only those with special educational needs. Therefore local authorities and health commissioners now have duties relating to: identifying; planning; commissioning; providing information and advice; and reviewing provision for children and young people with disabilities.
3. The Act retains the pivotal role of the local authority in identifying, assessing, and securing the educational provision for children and young people with special educational needs. A new requirement is that the local authority must follow four guiding principles, namely that the local authority must:
 - Listen to the views, wishes and feelings of children, young people and parents;
 - Ensure children, young people and parents participate in decision-making;
 - Provide the necessary information and support to help children, young people and parents participate in decision-making; and
 - Support children, young people and parents in order that children and young people can achieve the best possible educational and other outcomes.

Local authorities and Clinical Commissioning Groups are required to begin implementing the changes from September 2014. The main changes are outlined below.

- **Local Offer** - The Act requires local authorities to publish a clear and transparent 'local offer' detailing services and provision to support children and young people with SEN and their families.
- **SEN Support in mainstream settings/schools/colleges** – The Act introduces a single category of SEN support replacing the School Action and School Action Plus provision.
- **Education, Health and Care Plans** - The Act introduces a streamlined assessment process for those with severe and complex needs, integrating education, health and social care services and involving children, young people and their parents. It replaces statements and learning difficulties assessments with Education, Health and Care (EHC) Plans.
- **Education, Health and Care Plans** can extend to age 25 if the young person remains in education. The plan ceases when the young person leaves education or training.
- **Personal Budgets** - Children, young people and families with an EHC Plan have the option of a personal budget, extending their choice and control over their support.
- **Joint Commissioning** - The Act introduces a new duty for joint commissioning which will require local authorities and health bodies to work in partnership when arranging provision for children and young people with SEN. This includes arrangements for agreeing what advice and information is to be provided about education, health and care provision, by whom, to whom and how such advice and information is to be provided. The Act also requires Clinical Commissioning Groups to comply with any health service requirements in EHC Plans.
- **Co-production** - The Act requires local authorities to involve parents, young people and children in shaping the provision of services for those with SEN, to develop much closer cooperation with a wide range of partners, such as schools, academies and colleges as well as other local authorities.
- **Tribunals** - The Act introduces consistent statutory rights and protections from birth through to age 25 for those with an EHC Plan.
- **Mediation**- The scope of disagreement resolution arrangements and mediation is extended to cover health and social care, as well as education.

Scope

4. Over 19,000 (18.3%) of Oxfordshire pupils have Special Educational Needs (SEN). Of these, around 2,300 (2.2% of pupils) have a statement of SEN.
5. The term Disability covers a range of conditions, such as sensory impairment (sight and hearing), physical disability, behavioural difficulties, learning disability, autistic spectrum conditions, and problems with speech and communication. It is not known exactly how many children in Oxford have disability, but one estimate puts the number at more than 7,500:

- About 100 of these are severely disabled.
 - Many thousands more are affected by a long-standing illness.
 - 750 children are supported by the Disability Social Care teams.
6. As with younger children, it is difficult to provide precise numbers for young adults with disability. Averaged national rates for 18-24 year olds are 4.1% for moderate disability and 0.8% for severe disability.
From these averages, the Institute of Public Care has calculated the numbers for 18-24 year olds in Oxfordshire for various disability types:
- | | |
|--------------------------------|------|
| • learning disability | 1812 |
| • autistic spectrum conditions | 706 |
| • moderate physical disability | 2739 |
| • serious physical disability | 534 |
7. It is generally recognised that there are difficulties in establishing an accurate and reliable figure for the number of children and young people with disability. There are a number of reasons for this.
- An agreed definition of disability: the current approach is to define it in the context of the child's participation in usual activities.
 - Diversity in types of disability: physical, sensory, learning, behavioural, autistic spectrum.
 - Disability can be long or short term, and involve more or less complex needs.
 - A number of ways (such as surveys and self-reporting) have been developed to provide estimates.
8. Numbers of children and young people with SEN and disabilities are continuing to rise.

Financial and Staff Implications

9. Schools Forum allocated £118,000 in 2013/14 and £366,000 in 2014/15 from balances to support the implementation of the changes. At that time there was no indication of any grants from the DfE for non-pathfinder authorities such as Oxfordshire.
10. Oxfordshire received an unringfenced DfE grant of £75,000 in October 2013 and was notified in February 2014 that the council would receive £834,624 during 2014/15: *'The purpose of this grant is to provide support to local authorities in England towards expenditure lawfully incurred or to be incurred by them. Local authorities can spend this one-off grant to recognise the programmes of change underway in the areas of SEN'*. On June 10th 2014 Oxfordshire received notification from the DfE of a further £495,092 for 2014/15, and an indicative amount for 2015/16. A total sum of £1.3m as a one off grant indicates the scale of work required to implement the changes. Unfortunately with such late notification, it has not been possible to recruit the additional staff in time for September.
11. Funding is being used for:

- Additional staff (including SEN Casework Officers, Educational Psychologists, Behaviour Support, Social Care, SEN Early Years, the development of personal transport budgets and independent travel training),
- Training for settings, schools and colleges, governors, professionals (across education, care and health), parents and voluntary organisations
- Supply cover for settings and schools to prepare for the changes
- Costs to produce the Local Offer
- IT developments
- Project management
- Costs for piloting Education Health and Care Plans
- Transferring statements to EHC Plans

The grant funding is sufficient to support the implementation of the reforms over the next two years.

12. There is a potential financial risk in sustaining the on-going additional burdens beyond 2016-17, once the grant funding ceases.
13. *The National Audit Office estimated that the cost to the public purse of supporting a person with a moderate learning disability through adult life (16–64) is £2–3 million. Equipping a young person with the skills to live in semi-independent rather than fully supported housing could, in addition to quality-of-life improvements, reduce these lifetime support costs by around £1 million. Supporting one person with a learning disability into employment could, in addition to improving their independence and self-esteem, reduce lifetime costs to the public purse by around £170,000.*

Adult care costs for those with learning difficulties and/or disabilities are second only to the costs of supporting the elderly (£5.19bn compared to £8.79bn, 2012-13)'. Implementing a New 0- 25 Special Needs System: LAs and Partners, DfE and DoH, April 2014.

This highlights the government's recognition of the need to invest in young people with SEN and disabilities to become as independent as possible.

Oxfordshire's response to the reforms

14. The SEND Reforms Programme has been established to coordinate the necessary changes to practice in Oxfordshire. The programme spans the Children Education & Families and Social and Community Services directorates, Oxfordshire Clinical Commissioning Group and NHS Commissioners.
15. Four task groups, aligned with the key areas detailed in the Act, underpin the SEND Reforms Programme Board:
- Local Offer
 - Single assessment and Education, Health and Care Plans
 - Personal Budgets

- Post 16 education and training
16. The SEND Reforms Programme reports to the Children & Young People's Board, Adult Health and Social Care Board and the Health & Well Being Board when appropriate. The programme is subject to the governance arrangements within the Children Education and Families directorate, Oxfordshire County Council and Oxford Health.
 17. There has been an extensive workforce development and training programme throughout May, June and July. This has included multi-agency workshops for social care, education and health professionals, training for Early Years settings, schools (over 520 school staff attended), Further Education and training providers, and briefings for governors. Training for parents/carers is being planned by Parent Carers Voice Oxfordshire and Parent Partnership for September.
 18. Oxfordshire is continuing to make good progress in preparing for the changes, compared with other non-pathfinder authorities. There is strong engagement and involvement across Children, education and Families, Social and Community Services, health, parent and voluntary organisations. The programme has moved from the awareness raising stage to the piloting stage.

Key risks and challenges

19. **Financial**
There is a risk that additional financial pressures may arise as a result of statutory duties extending to age 25, as young people or their parents will have continuing expectations regarding educational provision. Additionally the personalisation and choice agenda may result in increased demand for services across education, health and social care. There are concerns about the sustainability of the programme after the one-off DfE grants ends, given the additional burdens and increasing caseloads.
20. Evaluation of the SEND pathfinder programme, 'Impact Research Brief' (DfE October 2013) reported that the average amount of time to complete an EHC Plan was 42 hours, compared with 30 hours for the comparative Statementing process. There are approximately 300 new assessments per year, 2,300 statements and 600 Learning Difficulties Assessments to be converted to Education, Health and Care Plans, over the next 12 to 36 months. This will have significant resource implications. Opportunities to co-ordinate assessment and planning will be fully explored and should lead to long term efficiencies and improvements.
21. **Timescales**
'Best practice' models from Pathfinder authorities have been significantly delayed and are still emerging. The final Code of Practice was not published until June 2014 and remains subject to Parliamentary approval; the legal regulations are not yet available. These delays are resulting in very compressed timescales for developing legally compliant responses in Oxfordshire.

22. **Joint Commissioning**
Commissioning across the 0 to 25 age range, covering the Council's children and adult services, as well as health services for children and adults, brings a number of challenges and opportunities. A joint commissioning position statement has been produced and opportunities will be explored as they arise.
23. **Embedding effective change in settings, schools and colleges**
Education providers may view the reforms in terms of processes rather than effecting changes to culture and practice that will impact on learner outcomes. The reforms are being introduced at a time of significant change in schools, notably the new National Curriculum, and therefore will be competing for training and development opportunities.
24. **Increasing numbers of tribunals and legal challenge**
The number of SEN tribunals is increasing, 19 in 2011/12, 23 in 2012/13 and 28 in 2013/14. Raised awareness and increased expectations (reduced completion timescales from 26 to 20 weeks for an EHC Plan) is likely to exacerbate this rising trend. There is an anticipated similar increase in legal challenge relating to social care.
25. **Developing the Market**
The Children and Families Act focuses on increasing the choice and control that children, young people and families have over the services that support them through the introduction of personal budgets. It is recognised that the market for providing these services to children and young people is particularly underdeveloped (when compared to similar services provided in the adult market). Supporting growth in the market to enable increased choice and support is an aim for the programme and will require longer term commitment over the coming years.
26. **Partner Alignment**
Successful implementation of the reforms requires buy-in and cooperation across Children, Education and Families, Social and Community Services, as well as voluntary and community groups. A significant challenge to the programme is the continuous engagement and co-production across services and with partner organisations. There are also a significant number of interdependencies between the SEND reforms, the Care Bill and aspects of other programmes of work across the directorates, e.g. the eMarketplace and an Integrated Transport Hub.

Equalities Implications

27. The SEND reforms are national policy changes and equalities implications are fully taken into account within the Code of Practice. A social and community impact assessment has been carried out to consider the specific implications for Oxfordshire. The main issue is the high demand for SEN and disabilities

services and increasing numbers of children/young people accessing them year on year.

RECOMMENDATION

28. **The Cabinet is RECOMMENDED to be aware of the significant changes to SEN and disabilities and the challenges facing the Council over the coming years.**

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Background papers: SCIA, SEN and Disabilities Code of Practice

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