

# DOUGLAS SILAS

s o l i c i t o r s

 Education,  Disability &  Public Law

## FACTSHEET

### ***“THE DRAFT SEN CODE OF PRACTICE – MARCH 2013 (summary)”***

***“Probably the best solicitor  
there is for claimant-type work  
in the field of education law”***

(The Legal 500)

*This is one of our FREE Factsheets on SEN issues written specifically for parents looking for specialist help.*

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[April 2013]

Whilst everyone was considering the Children & Families Bill issued the month before, at the end of March 2013 the Government also issued an 'indicative' draft SEN Code of Practice (with less fanfare). We have tried to summarise it below.

## Overview

- The code of Practice is divided into 7 sections:
  1. Introduction
  2. A Family Centred System
  3. Education, Health and Care: Integration, Joint Commissioning and Co-operation
  4. The Local Offer
  5. Early Years, Schools, Colleges and Other Providers
  6. Assessments and Education, Health and Care Plans
  7. Resolving Disputes

### I. Introduction

- a. A new system for special educational needs
  - i. Professionals who work with children with SEN should strive to always support them
  - ii. Sets out the main reforms of the proposed Children and Families Bill
- b. The SEN Code of Practice
  - i. Explains and provides guidance on carrying out duties in the proposed legislation
- c. The purpose of the Code and who it applies to
  - i. The purpose is to provide practical advice on how to carry out statutory duties related to SEN and education
  - ii. The Code defines special educational needs and disability
  - iii. The Code is statutory guidance for organisations who work with and support children with SEN and their parents
- d. Roles and responsibilities
  - i. The new SEN system will focus on:
    1. Good quality teaching at every stage
    2. A vital role for health bodies in meeting the needs of children with SEN
    3. Clinical Commissioning Groups (CCGs) as full partners in securing provisions for meeting these needs
- e. Related legislation, regulations, and guidance
  - i. The Code is complimented by other guidance documents including Working Together to Safeguard Children and the Equality Act 2010
- f. Principles underpinning the Code and the new system
  - i. The following principles underpin the Code and system:
    1. Early identification of needs
    2. High expectations and aspirations
    3. Focus on the outcome and children and young people
    4. Importance of the views of children and young people
    5. Choice and control for young people and parents
    6. Collaboration with education, health, and social care partners
    7. Clarity of roles and responsibilities
    8. High quality provisions

- 9. Importance of skills, knowledge, and attitudes of those working with children and young people
- g. Implementation of the new Code of Practice
  - i. Following a certain date, all organisations listed in section 1.3 must have regard to the Code of Practice

## II. A Family Centred System

- a. Introduction
  - i. At the heart of the proposed Children and Families Bill is the expectation that LAs/educational settings place parents and young people at the centre of decisions
- b. Person-centred planning
  - i. Planning should start with the individual and take account of their wishes
- c. Parent Partnership Services
  - i. Provide impartial advice and support to parents of children and young people with SEN to make informed decisions
  - ii. Services should be available to all people through commissioning by a local authority
  - iii. Outline of characteristics of effective parent partnership services
- d. Parent Carer Forums
  - i. Parents and carers of disabled children who work alongside authorities to make sure services can appropriately meet children's needs
  - ii. Should work in partnership with LAs in:
    - 1. Preparing and reviewing local offer
    - 2. Reviewing and planning SEN provision
    - 3. Joint commissioning of services

## III. Education, Health and Care: Integration, Joint Commissioning and Co-operation

- a. Education, Health and Social Care – working together for positive outcomes
  - i. LAs will be required to ensure the integration of special educational provisions with health and social care provisions
  - ii. LAs and CCGs must make arrangements for considering/agreeing:
    - 1. EHC provision reasonably required by children and young people with SEN
    - 2. What EHC provision is to be secured and by whom
    - 3. Advice and information to be provided
    - 4. How complaints should be made/are dealt with
    - 5. Procedures for resolving disputes
  - iii. Joint commissioning arrangements must focus on:
    - 1. Securing EHC assessments
    - 2. Securing the EHC provision specified in EHC plan
    - 3. agreeing on personal budgets
  - iv. LAs have duty to ensure suitable education including for those unable to attend school
  - v. LA must have regard to the NHS mandate
- b. Keeping provision under review
  - i. LAs and CCGs must keep arrangements under review

- c. Working in partnership
  - i. LAs/CCGs must work in partnership with the following, all of whom have a range of duties toward children and young people with SEN:
    1. Health bodies
    2. Designated Medical Officer
    3. Social care services

#### **IV. The Local Offer**

- a. What is the local offer?
  - i. LAs must publish information about the provision they expect to be available in their area
  - ii. Two key purposes:
    1. Provide clear information about support/services available
    2. Make provision more responsive to local needs by involving those affected in its development/review
  - iii. Local offer should be engaging, accessible, transparent and comprehensive
- b. What must be included in the local offer?
  - i. Local offer must include information about:
    1. EHC provision
    2. Arrangements for identification and assessment of special educational needs
    3. Other education provision
    4. Training provision, including Apprenticeships
    5. Travel arrangements
    6. Support for school transitions and preparing for adulthood
    7. Sources of advice and support in the area
    8. Arrangements for making complaints and the resolution of disagreements
- c. How the local offer should be published
  - i. LAs should make local offer widely accessible as a web based resource and for those without access to the web
- d. Who should be consulted by a local authority in preparing its local offer
  - i. Children and families should be involved in planning of, publishing of, and feedback on the local offer
  - ii. Local authorities must seek and publish comments on the local offer
- e. The local offer: links to joint commissioning, co-operation and health and social care
  - i. Joint commissioning arrangements will be informed by:
    1. Local needs identified by Health and Wellbeing Boards
    2. Agreed priorities of the Joint Health and Wellbeing strategy
- f. How the local offer links to other duties
  - i. Section to be developed

#### **V. Early Years, Schools, Colleges, and Other Providers**

- a. Improving outcomes for all – high expectations for children and young people with SEN

- i. All children and young people with SEN should have an appropriate education with opportunities to achieve goals
- b. "All teachers are teachers of children with special educational needs"
  - i. Focus on good quality teaching
  - ii. National Curriculum requirements
  - iii. Principles of 16-19 (16-25 Sept. 2013) Study Programmes:
    - 1. Students should follow coherent programme that supports progression to further study or work
    - 2. Study Programme should be flexible for each student's needs
- c. Inclusion and choice
  - i. There is a general principle of inclusion in mainstream schools for children and young people with SEN but there is also the right to seek placement at special schools
  - ii. Children and young people with SEN but without an EHC plan have the opportunity to be admitted to special schools upon agreement from relevant parties
  - iii. Local authorities must comply with a parent's request preference for a particular school unless it would:
    - 1. Be unsustainable to the age, ability, aptitude or SEN of the child or young person
    - 2. Be incompatible with the efficient education of others or the efficient use of resources
  - iv. Schools and local authorities have duties under the Education and Disability Act 2010 towards disabled pupils
- d. Identifying needs
  - i. SEN can be identified at key points during a child's life:
    - 1. From birth to two: health assessments enable early identification of needs
    - 2. Through early years providers: practitioners may become concerned about a child's development and must notify parents
    - 3. Progress check at age two: practitioners must identify any concerns for developmental delays
    - 4. Integrated review: will identify a child's development and suggest intervention, if necessary, from 2015
    - 5. Assessment at the end of the Early Years Foundation Stage (EFYS) Profile: when the child reaches the age of 5, his or her progress is assessed against expected levels
- e. The four primary areas of special educational need
  - i. Communication and interaction
  - ii. Cognition and learning
  - iii. Emotional, social and behavioural development
  - iv. Sensory and/or physical
- f. Additional SEN support in schools, early years and colleges
  - i. Responsibility of educational settings in consultation with parents to determine if a child/young person requires additional SEN support
  - ii. Educational setting should have clear approach to assessing SEN
- g. The Special Educational Needs Co-ordinator (SENCo)

- i. Maintained mainstream schools, maintained nurseries, and Academies must ensure there is a teacher designated as a SENCo for the school
    - ii. Has day-to-day responsibility for the operation of SEN policy
    - iii. Must ensure that the school can track and record support plans
    - iv. Must be a liaison for the transfer process between schools
  - h. Further information
    - i. Schools have legal duty to publish information about the implementation of the SEN policy
    - ii. From 2013, LAs have legal duty to secure funded early education places for two-year-olds looked after by LAs or from lower income families
  - i. External Support and Wider Support for Education Settings
    - i. The following services are available for support for children with SEN:
    - ii. Educational Psychologist
    - iii. Child and Adolescent Mental Health Services
    - iv. Specialist support teachers or support services
    - v. Behaviour support teams
    - vi. Youth Offending Teams
    - vii. Speech and language therapists
    - viii. Occupational therapists
    - ix. Physiotherapists
  - j. Transitions points and preparing for adulthood
    - i. Schools have duty to ensure independent careers guidance for pupils in years 9-11
    - ii. Schools, colleges and LAs should work together to ensure adequate information sharing from one provider to the next
  - k. Children and young people in specific circumstances
    - i. LAs must arrange suitable full-time education for children would not be able to receive suitable education because of illness
    - ii. LAs should share information about children and young people with needs with those who are responsible for education in custody
- VI. Assessments and Education, Health and Care Plans
  - a. Introduction
    - i. EHC plans are integrated support plans for children and young people with SEN from age 0 to 25
  - b. Timescales
    - i. Entire assessment process from request to completion of EHC plan should last no longer than 20 weeks
    - ii. LAs must respond to any request for assessment within 6 weeks, whether deciding to undertake assessment or not
    - iii. Parents must be given 15 days to consider a proposed EHC plan to make comments and request a school
    - iv. The following exemptions may apply:
      - 1. if the LA has requested advice from a relevant body that cannot reply due to certain conditions
      - 2. if there are exceptional personal circumstances that affect the child or the parents of the child
      - 3. if the child or parents are absent from the area for longer than four weeks

- c. Requesting an assessment
  - i. A child's parent, young person, or school representative may request and EHC assessment
- d. Considering whether an assessment is necessary
  - i. In determining whether an assessment is necessary, LAs should pay attention to:
    - 1. Wishes and feelings of the child and parents
    - 2. Evidence of child's rate of progress
    - 3. Evidence of the extent and cause of the learning disabilities
    - 4. Evidence of action taken by the school to meet the needs
    - 5. Evidence that, if progress has been made, it is the result of much additional effort
    - 6. Evidence of the child's physical, emotional, social development and health needs
    - 7. If a person is over 18, whether or not remaining in education/training would help them progress
  - ii. LA must give reasons for decision
- e. Conducting co-ordinated assessments and planning
  - i. One person should work closely with the parent or young person in co-ordinating the information and process
  - ii. The assessment process should be as streamlined as possible
- f. Sharing information
  - i. Agencies involved must share information to facilitate joined up working
- g. Advice for education, health and care assessments
  - i. Local authorities must seek advice when conducting EHC assessments from:
    - 1. Educational representatives
    - 2. Medical representative
    - 3. Educational psychologist
    - 4. Social care professionals
    - 5. Others which either the LA or parent/young person thinks appropriate
- h. Determining whether an EHC plan is necessary
  - i. LA should prepare EHC plan when it determines that the special educational needs provision cannot reasonably be provided within the resources normally available to mainstream schools
  - ii. LA should consider all evidence gathered during assessment when making its decision
  - iii. LAs must take age into account if the young person is above 18
- i. Preparing an Education, Health and Care plan
  - i. LAs should have regard to the following principles:
    - 1. Decisions should be transparent and involve children/parents
    - 2. Plans should be clear, concise, readable and accessible
    - 3. Plans should be person-centred, evidence-based, and focused on outcomes
    - 4. Plans should be specific about interventions that will make a difference

5. Plans should be written in a way that could be used by any local area
6. Plans should support preparation for transition
- ii. The following sections must appear in all plans:
  1. Views of the child and parents
  2. Child or young person's SEN
  3. Outcomes sought for the child
  4. Special educational provision required
  5. Any health or social care provision
  6. Any additional provision
  7. Name of the school
- iii. Speech and language therapy should normally be regarded as educational provision
- iv. LAs can continue to provide social care services for those 18-24
- j. Expressing a preference for a particular school, college or institution
  - i. Parents of children with EHC plan have a right to express a preference for:
    1. Maintained school (mainstream or special), Academy, Free school
    2. Special Academy or Special Free School
    3. Non-maintained special school
    4. Further education or sixth form college
    5. Independent school/independent specialist college
  - ii. LA must comply with preference unless it is incompatible with:
    1. Age, ability, aptitude or SEN of the child/young person
    2. Efficient education of others
    3. Efficient use of resources
  - iii. LA must consult school it plans to name, which has 15 days to respond to LA
  - iv. If LA determines no mainstream school is compatible for the child, it must demonstrate that there are no reasonable steps for it to take to prevent that incompatibility
  - v. Transport should only be recorded in the EHC plan in exceptional cases where the child has particular transport needs
  - vi. In agreeing on an EHC plan, LAs should consider need to provide a full package of provision and support
  - vii. Parents may choose to place a child with EHC plan at independent or non-maintained school at their own expense
- k. Personal Budgets in EHC plans
  - i. An amount of money determined by the LA to deliver the provisions set out in an EHC plan
  - ii. There are three options for the control of the budget:
    1. Notional arrangements – authority retains funds but parents/young person directs usage
    2. Third party arrangements – funds paid to an individual/other organisation on behalf of the parent
    3. Direct payments – individuals receive cash to purchase services themselves
- l. Children and young people in specific circumstances

- i. Youth Offending Teams (YOTs) will work with youth offenders and LAs to secure appropriate EHC plans
  - ii. LAs need to consider whether mobility or deployment issues will affect outcomes for the service child or young person
- m. Finalising an EHC plan
  - i. LA must send draft EHC plan to parents
  - ii. Parents have 15 days to respond with views on content and to request school
  - iii. If LA and parents cannot agree about content of EHC plan, LA can still issue the plan but must inform the parents of the option to access mediation and appeal to the SEN Tribunal
- n. Maintaining an EHC plan
  - i. LA along with school must ensure that the appropriate arrangements are in place to meet the content of the EHC plan
- o. Reviewing an EHC plan
  - i. LA must arrange for a review of the EHC plan on an annual basis with the following provisions:
    - 1. The parents/young person must be given at least two weeks notice of the review and be invited
    - 2. Representatives of EHC relevant to the child's plan must be invited with at least two weeks notice
    - 3. The meeting must focus on the child's progress toward achieving the outcomes specified
  - ii. A plan must be reviewed and amended prior to transfer between key phases of education
- p. Re-assessments
  - i. During a re-assessment, the LA must:
    - 1. Take account of existing information
    - 2. Engage professionals across education, health and care
    - 3. Fully engage parents and young persons
    - 4. Take into account the age of a young person if over 18
- q. Preparing for the transition to adulthood
  - i. LAs should ensure that early transition planning is in place for all children/young people with an EHC plan
  - ii. When the child/young person is expected to leave education within two years, the review must consider what provision is necessary to assist preparing the young person for adulthood and independent living
- r. Ceasing an EHC plan
  - i. LA may cease to maintain an EHC plan for child if:
    - 1. LA are no longer responsible
    - 2. They determine a special provision is no longer required
    - 3. Young person over 16 takes up paid-employment
    - 4. the young person enters Higher Education
    - 5. Young person aged 18 or over leaves education and no longer wishes to engage in future learning
  - ii. LA must consult appropriate bodies if considering ceasing to maintain the statement

- iii. Parent or young person may appeal to the Tribunal and LA must continue to maintain plan during this time
- VII. Resolving Disputes
  - a. Early resolution of disagreements
    - i. It is in the best interest of children for decisions about provisions to be made as soon as possible
  - b. Local complaints procedures
    - i. Section to be developed
  - c. Disagreement resolution arrangements
    - i. LAs must arrange for disagreement resolution arrangements to be available
  - d. Mediation
    - i. Parents and young people wishing to make an appeal to the SEN Tribunal may only do so after contacting an independent mediator
    - ii. If parents want to continue with appeal, the mediator will issue a certificate allowing the registration of an appeal to the SEN Tribunal
    - iii. If the parent or young person wishes to go ahead with mediation, it must be scheduled within 30 days
  - e. Parents' and young people's right to appeal to the First-tier Tribunal (SEND) about EHC assessments and Education, Health and Care plans
    - i. Parents and young people have two months from the date of receiving a notice from the local authority with the decision to appeal
    - ii. Appeals can be brought regarding:
      - 1. Decision by LA not to carry out EHC assessment
      - 2. Decision by LA not to make a special educational provision following an EHC assessment
      - 3. Description of a child's SEN, the special educational provision specified, the school or type of school specified in the plan or that no school is specified
      - 4. Decision by LA no to amend or replace an EHC plan following a review/re-assessment
      - 5. Decision by LA to cease to maintain a plan
    - iii. Tribunal can dismiss the appeal, order an assessment, and order the creation of a plan or to maintain a plan with amendments
  - f. Disability discrimination claims
    - i. Parents of disabled children have the right to appeal to the First-tier Tribunal (SEND) if they feel the child has been discriminated against by schools or LAs within six months of the alleged discrimination
  - g. Exclusions
    - i. Government issues statutory guidance on exclusions
  - h. The First-tier Tribunal (SEND)
    - i. When an appeal is registered, the Tribunal will send a copy to the LA along with a copy of directions that sets out time limits for sending documents/providing details of witnesses
    - ii. Within 10 working days of the hearing, the appellant and LA should receive a copy of the Tribunal's decision by post
  - i. Legal Aid

- i. Legal aid may be available to assist with an appeal if a person satisfies a financial means assessment
- ii. Provides advice and assistance for preparing an appeal but does not cover having a lawyer act as a formal legal representative before the Tribunal
- j. NHS Complaints – Healthwatch
  - i. Section to be developed
- k. Complaints about social services provision
  - i. Section to be developed

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**If you have any concerns about your child, you should seek professional advice as soon as possible.**

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The Legal 500

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