

## **Special Education Needs and Disability (SEND) Bill**

**The following is the response/ evidence from;**

**Southern Health & Social Care Trust**

**Children & Young Person's Directorate**

The Trust Children & Young People's Directorate (CYPS) provides a range of Health & Social Care Services (HSC) to children & young people including those with Special Educational Needs and Disability, these include Acute and Community Paediatric Services, Social Care, Community Nursing including Health Visiting, School Nursing, Allied Health Professionals ( Orthoptics, Occupational Therapy, Physiotherapy, Speech & Language Therapy), Child & Adolescent Mental Health Service including psychiatry and psychology. These practitioners are specialists in the areas of child health and disability, with supplementary training to their professional qualification.

The services are varied with staff working in a wide range of settings including acute hospital and out patient units, mainstream and special schools, multi agency teams, child development centres, autism, assessment diagnostic and intervention services, Child & Adolescent Mental Health Teams and Sure start centres

HSC services have their own priorities driven by statutory requirements and legislation pertinent to Health & Personal Social Services. HSC has separate funding streams and have a duty of care to all children & young people with an assessed need regardless of whether a statement of educational needs is issued or not. A high number of children in mainstream school who are receiving services from HSC do not go through the statutory process and are managed at the lower stages of the Code of practice, which reflects the preventative impact of HSC services.

When a child or young person goes through the statutory process advice is sought from the relevant HSC Services by education. HSC services are expected to contribute to this process and make available service provision to enable a child or young person access the curriculum.

There is little cognisance given to the differing priorities and separate funding streams of HSC and Education. SHSCT would like the committee to give consideration to this matter as there is a case for enhanced integrated service planning across HSC and Education that requires the appropriate funding stream.

The SHSCT welcomes the opportunity to submit specific evidence related to the Articles considered relevant to the services from Health & Social Care services.

**:Clause 1: Duty of the Authority to have regard to views of the child**

- This clause places a general duty on the Authority to seek and have regard to the views of the child in decisions that affect the child surrounding his or her special educational needs. It provides that in relation to all functions within the SEN framework the Authority should also have regard to the importance of the child participating in decisions and for the child being provided with information and support necessary to enable participation in those decisions.

SHSCT strongly supports the principal of inclusion with a clear duty to seek the views and participation of children and young people in decision making relating to their educational needs, including transition.

**Clause 2: Duty of Authority to publish plans relating to its arrangements for special educational provision**

- This clause inserts Article 6A of the 1996 Order which places a duty on the Authority to prepare and publish a plan setting out arrangements to be made or proposed to be made in relation to special educational needs provision.
- New Article 6A (2) of the 1996 Order requires that the plan should include a description of the resources and the advisory and support services the Authority proposes to make available in discharging its functions in relation to special educational provision and the description of the arrangements for training of staff in grant aided schools. The Authority must review the plan at least once a year and may revise it, having consulted with such bodies or persons as the Authority thinks appropriate. The Authority must publish the plan so as to bring it to the attention of people likely to be affected by the plan.

As a child undergoes the statutory process, advice is sought from HSC. Speech & language Therapy, specification for this service is often included in Part 3 of the Statement Educational Needs, changing it from a recommendation of the statement to a requirement. Occupational therapy and physiotherapy is often included in Part 5, but there are an increasing number of parental requests for Occupational Therapy to be included in Part 3. This shift results in education “to make available” therapy services from a separate organisation (HSC) with differing priorities and separate funding streams.

HSC staff recognises the benefit of a collaborative approach to a child’s care in Education and work closely with education staff in order to integrate therapy

throughout the school day, facilitate access to the curriculum and achieve the best outcomes.

Through the activities outlined above HSC services are required to contribute from a health budget to support education putting further pressure on a stretched HPSS budget. Joint commissioning of services to support Special Education Needs and Disability would be essential to ensure adequate service provision.

### **Clause 3: Duties of Boards of Governors in relation to pupils with special educational needs**

This clause amends Article 8 of the 1996 Order by making a small number of important changes to the existing duties on Boards of Governors of ordinary schools.

Clause 3 (2) (a) recognises that people, other than teachers, such as classroom assistants and playground assistants, working within a school may be involved in supporting a pupil's education and, where this is the case, they should be made aware of the child's special educational needs.

Clauses 3 (2) (c) and 3 (4), respectively, place a new duty on the Boards of Governors of ordinary schools and of special schools to maintain a personal learning plan for each registered pupil with SEN.

Clause 3 (2) (c) also places a duty on Boards of Governors of ordinary schools to ensure that a teacher in the school is designated as a "learning support co-ordinator". Clause 3 (4) places a corresponding duty on the Board of Governors of a special school. Regulations may require a Board of Governors to ensure that the learning support coordinator has particular experience or qualification or both.

Clause 3(2)(c) also places a new duty on the Boards of Governors of ordinary schools to secure that parents of SEN children of compulsory school age and children over compulsory school age are made aware of the arrangements for the avoidance and resolution of disputes between them and the Board of Governors.

Clause 3(3) amends Article 8 of the 1996 Order providing a power to the Department to make regulations to prescribe the circumstances and the manner in which a Board of Governors shall notify the Authority of changes regarding a child for whom the Authority is making special educational provision.

The Trust welcomes the recognition that people other than teachers working in the school may be involved in the supporting a pupil's education and where this is the case, they should be made aware of the child's special educational needs. Classroom assistants and playground assistants are a valuable resource in providing

a child with support to ensure therapy programmes are integrated into a child's school day. Therapy programmes aim to support and enhance the child or young person's ability to access the curriculum, communicate, cope with school activities and enable them to be ready to learn, be socially included, complete class based tasks and attend to personal care needs such as toileting, eating lunch or changing for PE.

It would be important to recognise these staff are appropriately trained and competent to undertake the duties and are supported in their role.

There has been a significant growth in pupil numbers in Special and Mainstream schools within the Trust. A positive and growing change in the outcomes for children is that those with complex health and disability needs are surviving longer and are attaining school age. However this does result in additional competing demands on HSC services as we are expected to prioritise increasing demands according to clinical need and statutory requirements from both health and education.

The benefit to a child or young person of a Personal Learning plan is recognised by the Trust as positive but the demands in supporting the plans create significant capacity issues for HSC.

#### **Clause 4: Duty of Authority to request help from health and social care bodies**

- This clause amends Article 14 of the 1996 Order to impose a duty on the Authority to request help in all cases where it considers that the Regional Health and Social Care Board or a health and social care trust could help in the exercise of its functions. This Clause also takes the opportunity to reflect the current structures within the health and social care sector.

HSC services are funded by the Regional Health and Social Care Board to meet the statutory legislation requirements as per Health & Personal Social Services legislation. HSC services are absorbing significant amounts of increasing work as a result of Education legislation without capacity required within the current workforce. Current commissioning priorities, driven by Regional HSC targets differ between Education and Health and Social Services often making a collaborative approach difficult and challenging.

As more children with complex needs survive and require long term services there is an increased need for HSC services and staff have to prioritise demands according to clinical need and statutory requirements. There is the expectation that HSC services will deliver services to an increasing number of pupils with special educational needs without this being factored into HPSC planning.

There is a notable increase in the number of children with significant physical and/or learning disability needs attending the school of their choice which is often the local mainstream school. HSC have responded with the interventions and advice to support these children to access the curriculum. However creating a built environment where there is access and egress throughout can be a challenge for schools.

The full opportunity to develop and support teachers and classroom assistants to assist in the delivery of the children's therapy programmes in school settings could be developed. This would reduce disruption to the school day both for the individual child with SEND and other children in the class. Joint commissioning between Education and HSC could address this issue.

This clause reinforces the current legislation with regards to the Education Authority obtaining medical advice from Health and Social Care Trusts but does not take any consideration of the facts that many of these children are healthy and therefore do not require a medical assessment.

#### **Clause 5: Assessment of needs: reduction of time limits**

Clause 5 (1) makes amendments to Article 15 of the 1996 Order by shortening the period of time to not less than 22 days in which the Authority can receive written evidence from parents of children of compulsory school age or, from children over compulsory school age when the Authority is considering whether to undertake a statutory assessment. The Authority will be able to continue with a statutory assessment of a child's needs before the expiration of the 22 day period with the written consent of a parent, if the child is of compulsory school age, or of the child himself or herself, if over compulsory school age.

Clause 5 (2) also makes similar amendments to Article 20A of the 1996 Order (inserted by Article 10 of the 2005 Order) in relation to requests to the Authority for statutory assessments, originated by a Board of Governors of a grant-aided school, or the proprietor of an independent school.

There is evidence of parental confusion in relation to submissions of written evidence from parent's when the Authority is considering whether or not to undertake a statutory assessment. Parents often approach HSC Services seeking reports to support their applications when these are not necessary at this stage in the process.

Parents require clarity around this aspect of the process and what it is they are required to submit thereby reducing parental anxiety in trying to obtain evidence from HSC staff who are clear the information is not required.

#### **Clause 6: Appeal following decision not to amend statement following review**

This clause amends Articles 18(1)(c) and Article 19 of the 1996 Order. It introduces a new right of appeal to the Tribunal for parents of children of compulsory school age and the child himself or herself if over compulsory school age in circumstances where, following an annual review of a statement of special educational needs, the Authority decides not to make any changes to the statement. The Authority must provide a copy of any advice given to it on which that decision was based and must provide information as to the right of appeal to the Tribunal. Article 19 provides that all statements must be reviewed within the period of 12 months beginning either with the date on which the statement was made or the date of the previous review.

The Trust would wish that the Committee give consideration to require the Authority to request reports from HSC in a timely fashion to ensure these can be produced and submitted if required to assist the review process.

#### **Clause 9: Rights of child over compulsory school age in relation to special educational provision**

This clause makes amendments to Part 2 of the 1996 Order, as set out in the Schedule, to confer on a child over compulsory school age, who has, or may have, special educational needs, rights within the SEN framework which were previously exercisable by a parent. The new rights for a child over compulsory school age include the right to request a statutory assessment and the right to appeal to the Tribunal against certain decisions of the Authority. This clause also provides regulation-making powers for cases where a child over compulsory school age lacks, or may lack, capacity to exercise the new rights. These include making provision to determine whether a child lacks capacity in relation to the exercise of his or her rights, and for the parent of the child to exercise those rights where it is determined that the child lacks the capacity to do so.

The Trust would submit that clarity is required regarding how the Authority will be required to determine whether a child lacks capacity in relation to the exercise of his/her rights and to ensure there is collaboration in making this determination.

#### **Clause 13: Definition of "child" for the purposes of special education**

This clause amends Article 3(8) of the 1996 Order to make provision to allow the Authority to maintain a SEN statement, to the end of the school year following the child's 19th birthday. This will enable a child with a statement, who reaches the age of 19 years during a school year, to remain in school until the end of that school year, subject to the Authority maintaining the statement.

Many of the young people with special educational needs, especially those who are pupils in special schools will receive support from a range of services in HSC. The responsibility for such support will remain with HSC into adulthood however does transfer at 18 from children's to adult services.

Transition plans for these pupils who have statements of special educational need are drawn up and monitored through the statutory annual review process, arranged by schools. HSC staff should be included in this process for any young person who will require services from the Trust and appropriate agreed processes in place between the 2 organisations.

It is essential young people 16yrs and older with complex health & disability needs have a multi-disciplinary/multi agency discussion of their needs to enable future planning and the timely application for resources before their transfer into adult services at age 18yrs.

## **FINANCIAL EFFECTS OF THE BILL**

16. The proposals do not have any significant financial implications for the Department. The duties proposed for Boards of Governors serve to place on a statutory basis, functions that are broadly comparable with those already set out as good practice in statutory guidance. The duty on the Authority in relation to the preparation and publication of a plan in connection with special educational provision serves to add transparency to the information already held by the Authority on the services for schools and SEN pupils. The overall thrust of the proposals is to make the best use of the funding available, so that the same level of resources can be used as effectively as possible. It is envisaged that some modest costs to implement the proposed pilot arrangements, in due course, for children's appeals to the Tribunal would be able to be contained within existing budget, since a reduction is expected in the overall level of appeals as a result of the new mediation arrangements. Costs arising from the new rights of appeal for parents of children under age 2 and for parents and children over compulsory school age following annual review will largely depend on the effectiveness of the Authority's management of the new framework, the exercise of the new right of appeal and the uptake of mediation arrangements by potential appellants.

The Explanatory and Financial Memorandum which accompanies this legislation appears to consider the Financial Implications to the Department of Education and does not consider the implications for Health and Social Care Trusts which have to meet these requirements.

These are two organisations with differing priorities and separate funding streams. HSC Services are required to provide to both at the same time, yet not factored in when planning education services despite increasing demand.

The SHSCT area has the highest percentage of Children & Young People with statutory assessments of educational need in the post primary school agegroup .

The Trust would submit that a requirement to ensure collaboration in commissioning services between HSC & Education, would ensure appropriate financial spending priorities with improved service planning and better joint prioritisation to meets the needs of children & young people.

This concludes the submission by SHSCT

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