



<b>Report to Health &amp; Wellbeing Board</b> <b>Report of Dave Hill</b>	<b>Reference number</b> <b>HWB/12/14</b>
<b>Date of meeting 27<sup>th</sup> March 2014</b> <b>Date of report 10<sup>th</sup> March 2014</b>	<b>County Divisions affected by the decision</b> All Divisions
<b>Title of report: Implications of the Children and Families Act for Children with Special Educational Needs and Disability (SEND).</b>	
<b>Report by</b> Dave Hill, Executive Director People Commissioning <b>Enquiries to</b> Barbara Herts/Tim Coulson	

## **1. Purpose of report**

- 1.1. To ensure that members of the Health and Wellbeing Board are aware of the implications of the new legislation for joint commissioning of services for Children with SEND between Education, Health and Social Care.
- 1.2. To consider and approve the next steps in ensuring that Essex has a co-ordinated response to the new SEND legislation in Children and Families Act in time for its implementation in September 2014.

## **2. Recommendations**

- 2.1. Agree the proposals of the SEND strategic Oversight Group as to how Essex is going to implement the SEND reforms  
Specifically that:
  - The Strategic Maternity, Children and Young People's Integrated Commissioning Group will oversee and manage the development of joint commissioning in priority areas with health, education and social care, for example, speech and language, occupational therapies as set out in the Integrated Commissioning Intentions document.

- Acknowledge the commitment required of Health partners as outlined in the NHS Mandate and NHS England operational plan, including engagement in the relevant SEND work streams to implement the bill;
  - Joint commissioning
  - Education, Health and Care (EHC) Plans
  - Personalisation
  - Local Offer

### **3. Background and proposal**

- 3.1 The Children and Families Act covers a wide range of areas for SEND, including implementation of joint education, health and care assessments and plans to replace Statements of SEN and the provision of a local offer to support families, however this report concentrates on the joint commissioning aspects for children and young people with a special educational need and disability.

The Children and Families Act reforms the current Special Educational Needs provisions predominantly laid out in the Education Act (1966.) This follows a number of years scrutiny of the existing legislation which started with Select Committee reports on SEN in 2005 and 2006 and was followed by the Bercow Review into speech and language therapy (2007); the Rose Review into Dyslexia (2008); the Lamb review into Parental Confidence in the SEN System (2009) and the OFSTED review into SEN in (2010). The Government published its response to these in the Green Paper Support and Aspiration (2011), followed by pre-legislative scrutiny (2012) and then the Bill (2013) which will receive Royal Assent by March 2014 with an implementation date of September 2014.

#### **3.2 The legislation requires:**

- Greater focus on outcomes and achievement for children and young people with SEND;
- The Local Authority to work with health to jointly commission services to deliver integrated support for children and young people with SEN 0-25;
- Consultation with children, young people and their parents in delivering the new system;
- Cooperation with a range of local providers to deliver the new system including providers with whom relationships may not be so well established currently, for example post 16 education and training providers;
- Publication of a local offer of SEN services and provision;

- Local Authority to publish comments on the adequacy of the Local Offer and what steps it will take to improve services where complaints are made.
- Provision of a coordinated education, health and care assessment for CYP 0-25 and a new EHC Plan if required; this will replace the current system of SEN statements in schools and Learning Disability Assessments (LDAs) in further education and training;
- Offering those with EHC plans the option of a personal budget;
- Reviewing transition from children to adult services and whether to use the new power to provide children's services to over 18s to smooth transition

3.3 The Government is currently developing a new SEN Code of Practice which will act as the statutory guidance on implementing these requirements. Draft versions have been available for consultation and a final version is now awaited by spring 2014.

The draft Code of Practice also places an expectation on CCGs that a Health Officer (DHO) should be identified, whose role will be to ensure that the CCG is meeting its statutory responsibilities for SEN.

3.4 The new working arrangements across People Commissioning within the Local Authority will enable the joint commissioning arrangements to be developed with Health through the engagement of commissioners aligned to work within the CCGs and more broadly across children and adult services to provide more co-ordinated services.

CWD/SEN Strategy groups have recently amalgamated to form one reference/stakeholder Group for SEND which will enable the effective consultation on and dissemination of information related to the developments and implementation of the requirements.

A Project Oversight Group has been established, representative of all key partners from education, health and social care to drive the effective implementation of the reforms through the direction and regular monitoring and evaluation of activities undertaken by the work streams.

3.5 The Education Health and Care Planning work stream has been working on what the new approach and format will be for an Education Health and Care plan and more broadly how that might be integrated with a pre statutory stage of the

planning process in 'One Plan'. The 'One Plan' is currently being trialled with 106 families. The new EHC Plan format will also be piloted with families once it has been approved. The Authority will work alongside key health partners to consider what joint arrangements are put in place in line with the statutory responsibilities to jointly commission services in respect of Education Health and Care Plans.

As part of the development of the Local Offer and SEND Strategy the authority has consulted through 4 public meetings, a web based questionnaire (with over 1000 responses) and specific meetings with parents groups on parents' and young people's priorities for the Local Offer and SEND provision generally. The feedback, in respect of both the Local Offer and the SEND Strategy, has been positive with both the key parents groups and independent scrutiny welcoming the proposals.

Health and the Local Authority will be expected to have implemented all the requirements of the legislation set out above by September 2014.

#### **4. Policy context**

- 4.1. The implementation of the SEND Reforms will support the delivery of the Health and Wellbeing Board overarching priorities in the Health and Wellbeing Strategy as determined by the JSNA in particular;
  - Every child in Essex having the best start in life and being able to make life style choices and have the opportunity to enjoy a healthy life.
- 4.2. It also links to a number of other plans in the context of delivery and commissioning including CCG Operational Plans, Local Authority strategic Plans, Children, Young People and Families Strategic Plan and Children and Adult Safeguarding Plans.
- 4.3. The Children and Families Act 2014 introduces some new measures for co-operation through the Code of Practice but also builds up on a number of existing duties to co-operate.
- 4.4. The policy drives for a change in relationship between health, education and social care professionals to deliver better outcomes for children and young people with SEND.
- 4.5. The Draft Code of Practice clearly lays out the process for addressing the responsibilities to meet these enhanced requirements for co-operation.

#### **5. Financial Implications**

5.1 The Special Educational Needs Reform Grant is a new grant released in light of the bill for those children and young people with SEN, with the main purposes of the grant being:

- It will improve outcomes for children and young people with SEN
- Increase choice and control for parents
- Promote a less adversarial system

5.2 It has been announced that the Authority will receive **£1.6m** from the Special Educational Needs Reform Grant. The funding is not ring-fenced and so can therefore be spent in any way the Authority deems best meets local need.

5.3 The Authority has undertaken some initial analysis on the additional costs that extending support to young people with SEN up to the age of 25. This analysis was based on the current take up of placements and estimated that there could be additional cumulative pressures in social care of up to **£2.0m** from 2014/15 – 2016/17. There could be further pressures on health and schools budgets as well.

5.4 There is a risk of unbudgeted pressures and/or that this grant may not be sufficient to contain all the pressures that the requirements of the bill provide for. Whilst work continues to analyse the extent of pressures as a result of this legislation, it is vital that joint commissioning can ensure that integrated support is delivered as well as opportunities for efficiencies within the system are identified.

## **6. Legal Implications**

6.1 There is a statutory duty on NHS to jointly commission services to support children with an education health and care plan. Education Health Care Plan (EHCP) replaces the current Statement of Special Educational Need and requires the agencies involved to jointly commission any services relevant to that plan.

6.2 The EHCP strengthens existing duties of co-operation between Education, Health and Social Care in the delivery of the Local Offer and the EHC Plan

6.3 The new legislation:

- Extends entitlement to that plan from 0-25 years of age and abolishes the Learning Difficulty Assessment for young adults over 16;
- Introduces new rights of appeal and mediation for services specified in that plan to Health and Social Care;
- Introduces rights to a direct payment (personal budgets) for parents and young people with an EHC plan.

## **7. Staffing and other resource implications**

- 7.1. These will be determined by the work streams ensuring sufficient capacity to implement the reforms effectively.

## **8. Equality and Diversity implications**

- 8.1. The new legislation has a strong crossover with the Equality Act (2010) duties where schools and other settings are required to produce Access Plans and also provide reasonable adjustments not already specified within Education, Health and Care Plans.
- 8.2. The requirement to produce a local offer also extends to Health and Social Care provision within an area.
- 8.3. These proposals should enhance access and transparency and therefore be positive in respect of Equality Act Implications. Especially with the extension of the strategic and information duties to disabled children.

## **9. Background papers**

- 9.1. Children and Families Bill 2014. <http://services.parliament.uk/bills/2012-13/childrenandfamilies.html>
- 9.2. SEN Draft Code of Practice. DfE. 2013.  
<http://www.education.gov.uk/a00221161/children-families-bill>
- 9.3. NHS Mandate 2014.  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/256497/13-15\\_mandate.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/256497/13-15_mandate.pdf)
- 9.4. NHS England Operational Plan 2014-2019.  
<http://www.england.nhs.uk/ourwork/sop/>
- 9.5. Government Briefing to Local Authorities December 2013.
- 9.6. Essex SEND Strategy (2013) [http://www.essex.gov.uk/Education-Schools/Schools/Special-Education-Needs/Documents/SEND\\_Strategy.pdf](http://www.essex.gov.uk/Education-Schools/Schools/Special-Education-Needs/Documents/SEND_Strategy.pdf)