

Agenda item 5
HWB/07/21

Report title: Improving the Special Educational Needs and Disabilities (SEND) system in Essex	
Report to: Essex Health and Wellbeing Board	
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Date: 28 th April 2021	For: Discussion
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1. Purpose of Report

- 1.1. To inform the Health and Wellbeing Board of the progress made against the written statement of action following the SEND Care Quality Commission (CQC)/Ofsted inspection in October 2019.
- 1.2. To inform the HWB of the revised governance arrangements in place for SEND across the local area.
- 1.3. To inform the HWB of the Essex Family Forum's (EFF) survey (summary of key findings) and the SEND Improvement Board's response and next steps.
- 1.4. To update the HWB on SEND tribunals in Essex and proposed next steps.
- 1.5. To facilitate a discussion on the ambitions, challenges and concerns set out in the SEND programme in Essex.

2. Recommendations

- 2.1. That the Board note and discuss the progress made against the written statement of action.
- 2.2. That the Board notes and discusses the revised governance arrangements in place for SEND across the local area and the relationship with the HWB.
- 2.3. That the Board notes and discusses the content of the Essex Family Forum survey, the response from the SEND Improvement Board and the proposed next steps.
- 2.4. That the Board notes and discusses the increase in volume and outcomes of SEND tribunals in Essex and endorses the proposed next steps to address the current position.

- 2.5. That the Board discuss its ambition for the SEND system in Essex and how the HWB will hold the SEND governance structure to account for progress as well as what support it can provide to address challenges and concerns.

3. SEND CQC/Ofsted inspection – progress against the written statement of action

- 3.1 Ofsted and the CQC visited Essex from 30 September to 4 October 2019 to inspect how effectively the local area fulfil their responsibilities for children and young people with SEND.
- 3.2 The inspection report was published on 23rd December 2019 and is attached as a background paper.
- 3.3 As a result of the inspection a Written Statement of Action (WSOA) was required because of three significant areas of weakness in the local area's practice. ECC and the area's five clinical commissioning groups were jointly responsible for submitting the written statement to Ofsted.
- 3.4 The local area will be re-inspected in 18 months and the inspection team will wish to see clear evidence of positive impact for children, young people and their families.
- 3.5 The WSOA (attached as a background paper) explains how the local area will tackle the following areas of significant weakness:
- The joint commissioning arrangements between the local authority and the CCGs do not work well enough to provide children and young people with the services that they need:
 - Too much variation between the CCGs leads to inequality, inconsistency and unacceptably long waiting times for services.
 - Joint commissioning is not sufficiently informed by what is already known about the gaps in services for health and education across the 0-25 age range, across the whole local area.
 - The reasons for, and accuracy of, the high proportions of children and young people identified with moderate learning difficulties (MLD) are yet to be resolved. Potential over-identification could mask underlying difficulties in communication and language, and social, emotional and mental health (SEMH) development.
 - Too many Education, Health and Care plans (EHCP) do not include the information needed to secure high-quality outcomes for children and young people.
 - The EHCPs do not consistently secure the right professional advice to meet children's and young people's needs, and do not have specific details of the provision that will be put in place.
 - Strategic oversight is not effective in making sure that EHCPs are fit for purpose.

- 3.6 Three workstreams have been established to address the three areas of significant weakness. Each workstream is representative of the local area across education, health and social care functions. The Essex Family Forum are a key partner in each workstream.

Joint commissioning

- 3.7 The WSoA sets out the local area's approach and the actions required:

:

- Establish a SEND Joint Commissioning Group.
 - Develop a joint 0-25 SEND data set.
 - Undertake mapping of current 0-25 health, education and social care SEND provision/ services across the county.
 - Develop SEND Joint Commissioning Strategy.
 - Implement a robust process/ structure for reviewing the effectiveness of joint commissioning arrangements.
 - Implement a robust process to evaluate the effectiveness of the SEND Joint Commissioning Group.
 - Undertake a thorough review of services Ofsted/ CQC found to need further development, take recommendations to SEND Joint Commissioning Board.
 - Implement annual 'progress and impact report' for integrated services.
 - Implement balanced system for Essex (outcome based integrated approach to service design and delivery), through which we will jointly commissioning services going forwards.
- 3.8 A Joint Commissioning Framework has been developed which demonstrates the commitment of local commissioners in Essex to develop shared commissioning and delivery models to meet the diverse needs of children and young people with special educational needs and/or disabilities in the county.
- 3.9 A SEND Joint Commissioning Group has been established to support progress towards two key objectives:
- Children, young people and their families experience equitable access to a consistent, high quality range of educational support, health services and specialist provision, appropriate to their needs and circumstances.
 - Commissioners share a common, accurate view of need across the county and use this to jointly commission consistently high-quality services, which are accessible across the county.
- 3.10 The phase one timeline has been from September 2020 to March 2021 and the following areas have been covered:
- Therapies – Physiotherapy, Occupational Therapy and Speech and Language Therapy (SALT)

- Neurodevelopmental (this includes ADHD, ASD and behavioural)
 - SEND Information Advice Support Service (SENDIASS)
 - Equipment
 - The Local Offer
- 3.11 A detailed overview of the activity and progress in the joint commissioning (JC) workstream is attached as appendix one.
- 3.12 The success of the JC workstream will be determined by ensuring that the potential for joint commissioning is explored at every point at which decisions are made regarding commissioning. As a consequence of the progress being made the local area will work in a way setting out clear pathways across services for children and young people with SEND and these are understood by parents and carers and that a child or young person needing specialist provision can be access this quickly.
- 3.13 Phase one has been shortened due to Covid-19 but work has progressed at speed with all work streams. Phase Two will be challenging but there are clear plans in place for achievement, monthly progress reports to both the Joint Commissioning Group and the Send Improvement Board.

Over-identification of moderate learning difficulties

- 3.14 The following activity has been under-taken to address the over-identification of MLD in children and young people with SEND in Essex:
- Data analysis to understand the current numbers of CYP identified with MLD.
 - Identification of schools where there is a likely over identification of MLD and under identification of speech, language and communication needs (SLCN) and/or SEMH compared to national averages.
 - Targeted guidance, training and support for schools and settings has been developed to improve identification and assessment of need - with a focus on SLCN and SEMH.
 - Guidance has been developed for schools and settings around recording of needs on the annual SEND census.
 - Data has been gathered down to school level showing identification of need at SEN support and EHCPs and compared to national average.
 - Training delivered on identification of need to the ECC SEND teams working with schools and settings.
 - Quadrant discussions and data analysis which subsequently are informing strategic planning meetings (SPMs) with schools.
 - Outcomes of the SPMs have been shared and discussed at quadrant and county level to inform training needs.

Progress to date

- 3.15 There has been a year-on-year reduction in the number of CYP identified with MLD at SEN Support from 2018 to 2021 (from 7056 in 2018 to 5476 in 2021).
- 3.16 The percentage of the SEN Support population identified with MLD has reduced significantly over the same time period (from 34% to 23% in primary and from 36% to 26% in secondary).
- 3.17 Although the national data is not yet available for 2021 the indications are that the over-identification of MLD in Essex schools is moving much closer to the national average.
- 3.18 The next steps for the workstream will include further support for schools and settings where over-identification continues and a review and update of the current definitions of SEND used by ECC, schools and health.

Quality of Education, health and care plans (EHCPs)

- 3.19 Isos have been commissioned to undertake a comprehensive review of the Essex assessment and planning system. The workstream is focused on:
 - Revised operational and strategic governance structures, with clear lines of accountability - meeting structures in place, TOR agreed and meeting forward plans.
 - Complete design of new, multi-agency, effective 0-25 EHC Plans processes.
 - Develop robust processes and systems for multi-agency moderation of plans to strengthen the quality, specificity and co-production of plans consistently across Essex.
 - Develop the Essex Ordinarily Available Offer (setting out what each school should have as its minimum offer for children and young people with SEND).
- 3.20 Good progress has been made in establishing a SEND scheme of delegation for decision making, a quality assurance and moderation framework and an improved model for annual reviews in Essex.

4. SEND Governance

- 4.1 The SEND Improvement Board was established following the local area SEND inspection with an initial remit to produce and sign off the WSoA and then to support and oversee the action plan to deliver the necessary improvements.
- 4.2 A new model for SEND governance was presented to the Improvement Board on 25th March 2021 and agreed in principle. All groups are multi-agency (including Education, health and social care, parents and families and provider/school/setting representation).

SEND Partnership Board:

- Replaces the SEND Improvement Board and the SEND Strategic Governance Group.
- Accountable for the written statement of action in response to the local area inspection, implementation of the SEND transformation programme and ensuring sufficient progress and impact ahead of re-inspection.
- Accountable for overseeing delivery of the Essex SEND Strategy.
- Accountable for oversight of the local area's collective statutory responsibilities for SEND as defined in a joint-outcomes framework;
- Strategic link to other boards including HWB and CYPPB and partners' governance boards.
- Co-production with parents, carers, families, children and young people.
- Support and challenge for the WSOA workstreams and the local (quadrant) SEND groups.
- Reports to the HWB and the CYPPB.

SEND Transformation Project Leads Group:

- Time limited for the duration of the WSoA.
- Operational development and delivery of the local area WSoA on behalf of the SEND Partnership Board;
- Monitor and drive ongoing progress of the four WSoA workstream groups (MLD, EHCP, joint commissioning, preparation for re-inspection);
- Ensure effective engagement across all partners to ensure the achievement of the identified actions within agreed time-frames;
- Consider areas of risk and advise on appropriate remedial action.

SEND quadrant groups

- Operational delivery of SEND transformation plans (quadrant) and countywide SEND strategy;
- Local ownership and delivery of the improvements identified in the SEND WSoA;
- Quality assurance of quadrant Education, Health and Care plans (EHCPs);
- Monitoring and review of quality assurance, outcomes and impact at quadrant level;
- Development and delivery of quadrant specific strategy based on identified needs specific to the local community.

4.3 The SEND Governance structure is attached as appendix two.

5. Essex Family Forum – annual family impact survey

5.1 The Essex Family Forum presented their annual family impact survey to the SEND Improvement Board in February 2021; the survey is attached as a background paper. The survey was conducted to measure the current levels of parental satisfaction with local services for SEND and to gather data on

their lived experiences. The survey will be reproduced annually to enable a comparison of the baseline data and measure progress.

5.2 The survey responses covered a number of primary concerns for parents and families which are set out in the table below:

Navigation of the SEND system	<i>Parents describe feeling overwhelmed by the “system” itself which can be so complex that families often feel unequipped to navigate alone. At the beginning of their journey and, indeed, at many different points throughout their child/young person’s life, SEND parents find themselves in a world they are unfamiliar with, have received no prior training for and have no colleagues to lean on for support and guidance.</i>
SEN Support	<i>The largest number of individual comments we received were in the SEN Support section and paint a sometimes worrying picture, when the majority of children with SEND do not have the legal protection of an Education Health and Care Plan and need to rely on high quality teaching and arrangements at SEN Support to remove their barriers to learning and plan and achieve high-quality outcomes. Our survey respondents report that schools are sometimes unsure of how, unable or unwilling to support the needs of their children and young people with SEND.</i>
Training/knowledge of teaching and support staff	<i>The majority of families reported that Teaching and Support Staff in schools and settings understood their child’s needs, well or very well and had good or excellent knowledge and training in effectively supporting the child/young person.</i>
One Planning	<ul style="list-style-type: none"> • School not providing support outlined in plan or following external advice • Poor quality of One Plan (outcomes not measurable, provision not specific) • External Professionals not involved.
Communication with families	<i>At the simplest explanation, communication appears to be the key component which is felt by many families to be currently missing. There is poor communication reported at every level, from between individuals within a school setting, between services, and all the way up to strategic level.</i>
Coproduction with young people and their families	<i>Children and young people were not considered to have participated in reviewing and setting their outcomes.</i>
EHC Needs Assessment Process	<i>It is apparent from the survey figures and comments that parents and carers find the EHC Process an extremely stressful and overwhelming experience, even when they feel supported by Schools/Settings, SEND Inclusion and SEND Operations Teams.</i> <ul style="list-style-type: none"> • Applications for EHC Needs Assessment • Way Forward Meetings (offered to 38%)

	<ul style="list-style-type: none"> <i>Timescales not met</i>
Communication with SEND Operations Teams	<i>Many parents describe frustration at poor communication with the SEND Operations team, lost documentation, difficulty in actually contacting personnel, inaccurate advice being given and a lack of empathetic understanding by staff.</i>
Quality of EHCPs	<i>Majority of parents felt that either all or most of the outcomes were clear, measurable and achievable. Parents stated that provision, support, and outcomes outlined in EHC Plans were not specific and that the language contained within the plans need to be simplified.</i>
Implementation of provision in EHCPs.	<p><i>High number of parents reporting that provision outlined in the plan is not received:</i></p> <ul style="list-style-type: none"> <i>therapies not being delivered</i> <i>failure of school and therapists to work together</i> <i>provision not being specific in the plan</i> <i>school's not delivering the provision</i>
Annual Reviews	<ul style="list-style-type: none"> <i>Attendance/contribution from professionals (50%)</i> <i>50% response in 4 weeks from LA</i> <i>Excessive delays to or non-issuance of revisions/amendments</i>
Local Offer	<p><i>Most common themes running through the comments:</i></p> <ul style="list-style-type: none"> <i>that the site needs to be easier to navigate</i> <i>Some parents would rather speak to a person</i> <i>There were parents who had no knowledge of any of the support groups or how to contact them.</i>
Home Education	<i>There is clearly a need to gain a better understanding of the challenges faced by parents who decide to home-school their child/young person, as well the reasons that led to that decision, given the high proportion of parents that feel there is no alternative option.</i>
Tutoring at home	<i>A higher proportion of children not receiving the Home Tutoring they have been allocated than those that are receiving tutoring. The situation regarding the home tutoring arrangements not being in place has already been flagged to Essex County Council and needs some further exploration.</i>
Appeals and Tribunals	<p><i>Perception among parents that it is a deliberate test of parental determination by the Local Authority in a bid to save money as many parents will accept the Local Authority's initial decision.</i></p> <p><i>What seems particularly incongruous is the number of tribunal cases that are conceded before the hearing.</i></p> <p><i>As the parent carer forum for Essex, we are concerned about the significant negative impact this must have on the well-being of families that reach this stage of the process.</i></p> <p><i>We would like to explore further how learning from these cases is shared with the SEND services within Essex and how it influences future decisions.</i></p>

- 5.3 The SEND Improvement Board has committed to provide a written response to the EFF the week commencing 26th April; there will be a verbal presentation of the key points at the HWB and a full copy of the response will then be circulated.
- 5.4 A working party is being established to explore the most effective mechanism for engaging directly with parents and young people to address the concerns set out in the survey.

6. SEND tribunals in Essex

- 6.1 One of the main concerns shared by parents in the annual impact survey is the SEND tribunal system in Essex.
- 6.2 The table below shows the growth in SEND appeals in Essex from 2015 to 2019 (2019 is the latest nationally published data set):

Local Authority	2015			2019		
	Appeals registered ⁴	Total Appealable Decisions ¹	SEND Tribunal Appeal Rate ²	Appeals registered ⁴	Total Appealable Decisions ¹	SEND Tribunal Appeal Rate ²
Essex	85	7,737	1.1%	315	10,356	3.0%
England Total ⁴	3,126	269,565	1.2%	7,385	413,131	1.8%

- 6.3 As well as a significant increase in the volume of appeals there has also been a growth in the percentage of parents exercising the right to appeal; the growth in the percentage appealing is much higher than the national growth over the same time period.
- 6.4 The evidence is clear that a growing number of appeals are conceded before hearing and that those that do proceed to hearing are highly likely to be won by the parent.
- 6.5 As well as causing parental distress and anxiety the current level of tribunals in Essex is having a detrimental impact on both the SEND operational teams and the SEND tribunal team.
- 6.6 ECC is commissioning a comprehensive review of the tribunal system in Essex understand the drivers for appeals, the effectiveness of the current system and to explore with parents and parental support groups positive ways to work together to address the concerns.

7. Issues for consideration

Financial implications

- 7.1. There are likely to be significant resource implications to consider in order to address the serious weakness regarding joint commissioning across education, health and social care. This does not necessarily mean additional resource but will require the education, social care and health to work in greater alignment when commissioning and to consider where pooled budgets and resources are likely to achieve greater impact and more cost effectiveness.

8. Equality and Diversity implications

- 8.1 The Public Sector Equality Duty applies to the Health and Wellbeing Board when it makes decisions. The duty requires it to have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination *etc.*, on the grounds of a protected characteristic unlawful
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 8.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 8.3 An equality impact assessment will be completed as part of the WSoA to ensure that there is no disproportionately adverse impact on any people with a particular characteristic.

9. List of appendices

- 1 - Joint commissioning – activities and progress;
- 2 - SEND governance structure

10. List of background papers

<https://files.ofsted.gov.uk/v1/file/50141698>
<http://www.essexlocaloffer.org.uk/wp-content/uploads/2020/04/2020-03-27-Essex-JWSOA-v0.6-AA.pdf>
<https://essexfamilyforum.org/parent-surveys-and-feedback/>