


<p style="text-align: center;">London Borough of Hammersmith & Fulham</p> <p style="text-align: center;">CABINET</p> <p style="text-align: center;">4 JULY 2016</p>	
<p style="text-align: center;">GUIDANCE FOR ASSESSING YOUNG PEOPLE AGED 19 AND ABOVE FOR CONTINUING IN EDUCATION WITH AN EDUCATION HEALTH AND CARE PLAN</p>	
<p>Report of the Cabinet Member for Children and Education : Councillor Sue Macmillan</p>	
<p>Open Report</p>	
<p>Classification - For Decision Key Decision: Yes</p>	
<p>Wards Affected: All</p>	
<p>Accountable Director: Clare Chamberlain, (Interim) Executive Director for Children's Services</p>	
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1. EXECUTIVE SUMMARY

- 1.1. Following the implementation of the Children and Families Act, young people aged 19-25 with special educational needs (SEN) and disabilities may be eligible for statutory support to access education and training via an Education, Health and Care Plan. This is a departure from the previous legislation, where a statement of SEN ceased to be maintained at the age of 16 or 17 if a young person attended FE College or lapsed at 19 years if he/she attended a school. There is no additional funding in the system to address increased demand consequently the new duties have the potential to place a strain on the High Needs Block of the Dedicated Schools Grant.
- 1.2. Draft guidelines have been produced in order to assist the decision making process for which young people aged 19 and above are eligible for support and to what extent. These have been developed in-line with the ethos of the new legislation and the content of the new Special Educational Needs Code of Practice.

2. RECOMMENDATIONS

- 2.1. To consider the draft guidelines (Appendix 1) and approve their use during the next academic year. These guidelines will be continually reviewed as the full impact of the Children and Families Act becomes more evident.

3. REASONS FOR DECISION

- 3.1. This decision is required as the implementation of the guidelines will affect a distinct group of young people within the borough. There is no significant General Fund expenditure attached to the implementation of these proposals.

4. PROPOSAL AND ISSUES

- 4.1. The Children and Families Act introduced new legislation for supporting children and young people with complex special educational needs. A 'statement' has been replaced by an Education Health and Care Plan (EHCP). Under the previous legislation, a statement 'lapsed' (finished because it no longer applied) when a young person left school at 16, even if they went into a college or into training or when a young person reached the age of 19. This meant the statutory responsibility and therefore the legal protection also stopped. The new EHCP can cover birth to 25. An additional change is that statutory education age has risen from 16 to 18 ('Raising of the Participation Age' - RPA).
- 4.2. Nationally, many parents took the Act as a signal that there would be education for all young people with a statement, Learning Difficulties Assessment (LDA) or EHCP until they were aged 25. However, the budget to local authorities did not increase commensurately to cover a whole additional cohort. In November 2014 the DfE produced a 'thematic review' of Post 19, clarifying guidance and criteria. These criteria have a focus on whether or not outcomes are achieved and whether more time in education would be meaningful. The DfE are clear that there is no automatic entitlement to continued support at age 19 for special education provision, or an expectation that those with an EHC plan should all remain in education until age 25.
- 4.3. Young people who no longer need to remain in formal education or training will not require special educational provision to be made for them through an EHC plan. In these cases the responsibility on local authorities is to ensure a smooth transition to other services which will support the young person (e.g. Adult Social Care). There are very real tensions for local authorities between need, provision and resources. It is lawful for Local Authorities to prioritise those with the most need and to devote resources where they will have greatest impact. It is not lawful to plan the resource allocation for young people based on the resource available.

Numbers and cost for this cohort in LBHF

Age	Number	Total placement costs	Independent placement costs
16-18	77	£2,014,683	£771,045
19+	26	£981,421	£642,001
Total	103	£2,996,104	£1,413,046

(Data as at October 2015)

- 4.4. The numbers above are derived from finance information and will be different to numbers published elsewhere. This is because published LA returns will have only been for young people with a statement. As our legal responsibilities have widened, it is appropriate to include the full cohort supported from the High Needs Funding Block (i.e. supported by SEN department during the academic year 2014/15).
- 4.5. Furthermore, within the 19-25 age groups, the Adult Social Care Learning Disability team are supporting 25 young people at a cost of approximately £600,000 for a full year. Of these 25 young people, 13 are also funded for support by the SEN Service.
- 4.6. The majority of Post-16 and Post-19 learners with high needs are educated locally in school sixth forms and in colleges however, at any point in time the figures are an indicative 'snapshot' since young people move in and out of the borough and may leave provision.
- 4.7. The aim going forward is to have a better range of education and social care provision locally, preventing the need to make independent, (often expensive), out of borough placements. This year each FE college has been offered a transition meeting with senior officers to talk through individual learners, enabling information sharing and consistent funding decisions to be made.

Strategic Plan

- 4.8. The eligibility guidelines have been developed to reflect the strategic approach that is being adopted locally to deliver support for young people aged 16/19 and above.
- 4.9. Local Authorities are strategic commissioners within their own localities. In order to meet the needs of our learners at Post-16 and Post-19 it is important to be working with providers, identifying gaps in the market and working with them to develop the provision to meet need. The Children and Families Act requires a joint approach across agencies – education, health and social care – so that appropriate provision is developed to respond to changing needs within the population.

- 4.10. There is much to do to improve the experience of Post-19 transition – for young people and for their parents. There are three separate workstreams underway to address eligibility guidance, local offer and pathways/ transition planning.
- 4.11. It is a fundamental objective within the SEN Service that young people have their needs met by good or outstanding local provision. Therefore additional provision is being commissioned to enable young people to be educated within Borough or neighbouring provision. This includes additional provision in sixth forms at William Morris and St Charles; targeted provision in Kensington and Chelsea College, City of Westminster College; Ealing Hammersmith and West London College; and collaborations between special school provision and colleges.
- 4.12. In order to increase the 'Local Offer', various developments have been under consideration and some will need business cases with feasibility studies to be brought to Members for approval.
- Queensmill – a Post-19 provision to support young people with complex autism.
 - Jack Tizard and QE2 / College Park are exploring models for Post-19 learners with complex needs
 - Kennet West Skills Centre provides vocationally focused education for young people with a range of learning difficulties (ages 16-25).
 - Alexandra College is a Camden provision for young people needing a highly individualised curriculum. The SEN Service is able to commission up to 6 places for academic year 2015/16.
 - Pathways to employment and coordinated planning with Adult Social Care are vital in moving this agenda forward. A supported employment service, Project Search, has been commissioned to provide bespoke packages for young people with learning and physical disabilities.
- 4.13. Funding currently spent on out of area independent provision must be re-profiled as young people move through the system, in order to fund the local developments. It is crucial that we have high quality, cost effective local provision that parents trust.
- 4.14. Keyworkers are continuing to work with colleagues in other services to ensure more effective transition and appropriate provision. Those young people with the highest needs and therefore eligible for social care support, will be discussed with Adult Social Care. The Post-19 criteria are becoming better understood by all, and all young people will have a 'plan' (but not necessarily an EHCP) in early 2016 so that transitional arrangements can be developed and clearly communicated with families. Ultimately, with a strong Local Offer delivered in partnership with social care and health, vulnerable young people will not require an EHCP to receive the support they need. The main providers that are commissioned to deliver Post-16/Post-19 education will have a

detailed Service Level Agreement which includes expectations about pathways to employment.

- 4.15. Furthermore, the Children's Services and Adult Social Care are working together to develop a strategy to increase the availability of viable pathways into employment as per the continuum outlined in section three of the draft guidelines. A summary of the plans to develop this strategy is outlined in appendix 2.

5. CONSULTATION

- 5.1. Significant consultation on the draft guidelines has been undertaken with:
 - Parents and carers of young people with SEND represented by Parentsactive and/or Mencap
 - Local authority officers, including via the Children and Families Act Implementation Executive Board
 - The Cabinet Member for Children and Education
 - Local authority and specialist SEN legal advisors
- 5.2. The local Parent Reference Group, Parentsactive, have coordinated a wide consultation during the development of the guidelines and the feedback that they have received from local families has been addressed throughout the process.
- 5.3. Via the guidelines, the local authority is devoting resources where they will have the greatest impact in-line with the law. Therefore, the key focus of the feedback from local families surrounds the need for there to be a high quality local offer of provision for young people aged 19 and above who do not have outcomes linked to employability and independent living and therefore will not have an Education Health and Care Plan. Our strategy to achieve this is outlined in section four of this report and the input of local families will be central to our plans to deliver the proposals.
- 5.4. We will continue to monitor the effectiveness of the guidelines during the first year of operation and will make amendments as required to ensure that all statutory legislation continues to be complied with.

6. EQUALITY IMPLICATIONS

- 6.1. These guidelines are being implemented to ensure that all young people aged 19 and above who are seeking an Education Health and Care Plan are subject to a fair and equitable decision making process.
- 6.2. Legal advice has been sought during the development of the guidelines to ensure that statutory requirements are complied with and the impact of the

guidelines will be monitored throughout the first year of implementation to ensure that amendments can be made as the legislation develops.

7. LEGAL IMPLICATIONS

7.1. Local Authority responsibilities in respect of EHC Plans for those aged 19 and above (potentially up to 25) are set out in the following:

- s36-50 Children and Families Act 2014
- The Special Educational Needs and Disability Regulations 2014
- The SEN Code of Practice 0-25 years issued January 2015

7.2. The SEN Code of Practice is statutory guidance and as such local authorities must have regard to it in considering their duties regarding EHC Plans.

7.3. s37 Children and Families Act 2014 sets out as follows:

s37(1) Where, in the light of an EHC needs assessment, it is necessary for special educational provision to be made for a child or young person in accordance with an EHC plan –

- a) the local authority must secure that an EHC plan is prepared for the child or young person, and
- b) once an EHC plan has been prepared, it must maintain the plan.

7.4. So where an EHC needs assessment has been carried out in accordance with s36 then the local authority has to decide whether it is necessary for special educational provision to be provided under an EHC plan.

7.5. Paragraphs 9.150 – 9.156 of the SEN Code apply specifically to young people aged 19 to 25. It is clear (para 9.151) that there is not an automatic entitlement to continued support under an EHC plan at age 19. Nor is there an expectation that those with an EHC plan should remain in education until aged 25.

7.6. A local authority may cease a plan for a 19 to 25 year old if it decides that it is no longer necessary for the EHC Plan to be maintained. Paragraphs 9.64-69 and 9.150-156 should be carefully considered when determining whether an existing EHC Plan remains necessary or not, and Regulations 30 and 31 must be complied with.

7.7. Legal Implications verified/completed by: Kevin Beale, Principal Solicitor, Tel: 020 8753 2740.

8. FINANCIAL IMPLICATIONS

8.1. Local Authorities used to receive education funding for SEN as part of the Dedicated Schools Grant (DSG). Post 16 funding to the LA was for sixth forms, and colleges received their funding separately – at a lower rate per

head. Provision for young people post 19 with complex and very specialist needs was funded at Independent Specialist Providers via a different government department (the Learning and Skills Council and then the Education Funding Agency). There was an 'LSC' Block Grant used for post 16 SEN, but this needed to be topped up from DSG. The entire responsibility and additional funding for this transferred to Local Authorities in 2014.

8.2. The Dedicated Schools Grant is now available as different 'blocks'. The Schools Block, Early Years Block and High Needs Block. The government has changed the mechanisms for funding and sixth forms are now funded at the same rate as a college. SEN funding for all providers is made up of 3 elements. Element 1 is the base budget per pupil. Element 2 is the notional SEN funding. These go directly into each school and college budget. Element 3 is the High Needs Block which remains under local authority control and may be referred to as 'top up funding'. The DfE put a financial 'definition' on high needs SEN. In mainstream this is over £6,000 and special provision is funded at a flat rate of £10,000 (topped up by the LA placing pupils). Mainstream Schools/ colleges are expected to fund the first £6,000 of support or provision for SEN out of their budget (Element 2) and any additional requirement comes from the High Needs Block.

8.3. The table below shows the increase in spend that has been required within the High Needs Block. It compares the total spend in 2012/13 with that which has been required in 2015/16 and demonstrates total increase of £4,700,000. This increase has been due to increased top-up rates (+£4,250,000), increased base funding (+£484,000) and 96 additional commissioned places.

LBHF - High Needs Block Growth 12/13 to 15/16		School Budgets			
School Type	Financial Year	Commissioned Places	Total Place Funding	Total Top-up Funding	Total funding
Mainstream Schools	12/13	237	£846.00	£1,033.40	£1,879.40
Special Schools (Pre-16)	12/13	659	£4,380.00	£6,640.07	£11,020.07
16-19 Provision	12/13	28	£100.00	£87.18	£187.18
Post 19 provision	12/13	0	£0.00	£0.00	£0.00
Other (placements in other LEAs and in Independent)	12/13	170	£0.00	£2,978.70	£2,978.70
Non-resident income	12/13	0	£0.00	-£3,016.00	-£3,016.00
Grand Total - All LBHF Schools		1094	£5,326.00	£7,723.34	£13,049.34
Mainstream Schools	15/16	285	£1,080.00	£1,849.43	£2,929.43
Special Schools (Pre-16)	15/16	644	£4,480.00	£8,735.61	£13,215.61
16-19 Provision	15/16	102	£250.00	£1,446.69	£1,696.69
Post 19 provision	15/16	26	£0.00	£616.36	£616.36
Other (placements in other LEAs and in Independent)	15/16	133	£0.00	£2,086.60	£2,086.60
Non-resident income	15/16	0	£0.00	-£2,760.00	-£2,760.00
Grand Total - All LBHF Schools		1190	£5,810.00	£11,973.69	£17,783.69
Variance (decrease) / Increase					
Mainstream Schools	Change	48	£234.00	£816.03	£1,050.03
Special Schools (Pre-16)	Change	-15	£100.00	£2,095.54	£2,195.54
Special Schools 16-19 Provision	Change	74	£150.00	£1,358.51	£1,508.51
School Schools Post 19 provision	Change	26	£0.00	£616.36	£616.36
Other (placements in other LEAs and in Independent)	Change	-37	£0.00	-£892.10	-£892.10
Non-resident income	Change	0	£0.00	£256.00	£256.00
Total variance (decrease) / Increase		96	£484.00	£4,250.35	£4,734.35

8.4. Each LA must identify the number of places likely to be needed in Post-16 (sixth form or college) and Post-19 provision. The base funding for any non-LA maintained places is then deducted from the LAs overall schools' budget. If an LA needs to place more young people than it anticipated, this cost must

be fully met from the High Needs Block with the LA working with providers to give best value. The High Needs Block for each LA does not increase if the pupil numbers rise and the original calculation for each LA did not include high needs pre-school children – who must now be funded. The pressure on the High Needs Block can easily escalate. Even though recent legislative changes may imply a wider scope of responsibility which now encompasses the colleges and potentially young people to 25 years of age, there is no additional funding to support this level of higher learner numbers. It is important to note that under the legislation, the Schools Block cannot be used to fund Post 19 learners and it is unlawful to refuse to support a young person due to lack of resources.

- 8.5. Finance Implications verified/completed by: Dave McNamara, Director for Finance and Resources (CHS), Tel: 020 8753 3404.

9. IMPLICATIONS FOR BUSINESS

- 9.1. Local implications for businesses will be positive as more local organisations are encouraged to meet the needs of and employ young people with special educational needs and disabilities, particularly via their Corporate Social Responsibility agenda.

LIST OF APPENDICES:

- Appendix 1 - Post-19 Guidelines v9
- Appendix 2 - Developing Pathways into Employment (LBHF) v2