

5 Early years providers

What this chapter covers

This chapter explains the action early years providers should take to meet their duties in relation to identifying and supporting all children with special educational needs (SEN), whether or not they have an Education, Health and Care (EHC) plan.

Relevant legislation

Primary

The following sections of the Children and Families Act 2014:

- Co-operating generally: governing body functions: Section 29
- Children and young people with SEN but no EHC plan: Section 34
- Children with SEN in maintained nurseries: Section 35
- Using best endeavours to secure special educational provision: Section 66
- SEN co-ordinators: Section 64
- Informing parents and young people: Section 68
- SEN information report: Section 69
- Duty to support pupils with medical conditions: Section 100

The Equality Act 2010

Regulations

The Statutory Framework for the Early Years Foundation Stage

The Special Educational Needs and Disability Regulations 2014

Improving outcomes: high aspirations and expectations for children with SEN

- 5.1 All children are entitled to an education that enables them to:**
- achieve the best possible educational and other outcomes, and
 - become confident young children with a growing ability to communicate their own views and ready to make the transition into compulsory education
- 5.2 Providers of early years education, that is all early years providers in the maintained, private, voluntary and independent sectors that a local authority funds, are required to have regard to this Code including the principles set out in Chapter 1.**
- 5.3 The Early Years Foundation Stage (EYFS) is the statutory framework for children aged 0 to 5 years. All early years providers must follow the safeguarding and welfare requirements of the EYFS and the learning and development requirements, unless an exemption from these has been granted.**
- 5.4 Providers must have arrangements in place to support children with SEN or disabilities. These arrangements should include a clear approach to identifying and responding to SEN. The benefits of early identification are widely recognised – identifying need at the earliest point, and then making effective provision, improves long-term outcomes for children.**
- 5.5 All those who work with young children should be alert to emerging difficulties and respond early. In particular, parents know their children best and it is important that all practitioners listen and understand when parents express concerns about their child's development. They should also listen to and address any concerns raised by children themselves.**
- 5.6 Maintained nursery schools must:**
- use their best endeavours to make sure that a child with SEN gets the support they need
 - ensure that children with SEN engage in the activities of school alongside children who do not have SEN
 - designate a teacher to be responsible for co-ordinating SEN provision (the SEN co-ordinator, or SENCO)
 - inform parents when they are making special educational provision for a child

They **must** also prepare a report on:

- the implementation of their SEN policy
- their arrangements for the admission of disabled children
- the steps being taken to prevent disabled children from being treated less favourably than others
- the facilities provided to enable access to the school for disabled children, and
- their accessibility plan showing how they plan to improve access over time

5.7 Early years providers **must** provide information for parents on how they support children with SEN and disabilities, and should regularly review and evaluate the quality and breadth of the support they offer or can access for children with SEN or disabilities. Maintained nursery schools and all providers of relevant early education to children with SEN **must** co-operate with the local authority in reviewing the provision that is available locally (see Chapter 3), and in developing the Local Offer (see Chapter 4). Providers should work in partnership with other local education providers to explore how different types of need can be met most effectively.

5.8 Local authorities **must** ensure that all providers they fund in the maintained, private, voluntary and independent sectors are aware of the requirement on them to have regard to the SEN Code of Practice and to meet the needs of children with SEN and disabilities. When securing funded early education for two-, three- and four-year-olds local authorities should promote equality and inclusion for children with disabilities or SEN. This includes removing barriers that prevent children accessing early education and working with parents to give each child support to fulfil their potential.

5.9 Where assessment indicates that support from specialist services is required, it is important that children receive it as quickly as possible. Joint commissioning arrangements should seek to ensure that there are sufficient services to meet the likely need in an area (Chapter 3, Working together across Education, Health and Care for joint outcomes). The Local Offer should set out clearly what support is available from different services, including early years, and how it can be accessed.

Equality Act 2010

5.10 All early years providers have duties under the Equality Act 2010. In particular, they **must not** discriminate against, harass or victimise disabled children, and they **must** make reasonable adjustments, including the provision of auxiliary aids and services for disabled children, to prevent them being put at substantial disadvantage. This duty is anticipatory – it requires thought to be given in advance to what disabled children and young people might require and what adjustments might need to be

made to prevent that disadvantage. All publicly funded early years providers **must** promote equality of opportunity for disabled children. There is further detail on the disability discrimination duties under the Equality Act in Chapter 1, Introduction. The guidance in this chapter should be read in the light of the guidance in Chapter 1 which focuses on inclusive practice and removing barriers to learning.

Medical conditions

- 5.11 All early years providers should take steps to ensure that children with medical conditions get the support required to meet those needs. This is set out in the EYFS framework.

SEN in the early years

- 5.12 All early years providers are required to have arrangements in place to identify and support children with SEN or disabilities and to promote equality of opportunity for children in their care. These requirements are set out in the EYFS framework. The EYFS framework also requires practitioners to review children's progress and share a summary with parents. In addition, the 'Early years outcomes' is an aid for practitioners, including child minders, nurseries and others such as inspectors, to help them to understand the outcomes they should be working towards. Links to the EYFS framework and the guide to early years outcomes are provided in the References section under Chapter 5.
- 5.13 Some children need support for SEN and disabilities at home or in informal settings before, or as well as, the support they receive from an early years provider. Provision for children who need such support should form part of the local joint commissioning arrangements and be included in the Local Offer.

From birth to two – early identification

- 5.14 Parents' early observations of their child are crucial. Children with more complex developmental and sensory needs may be identified at birth. Health assessments, such as the hearing screening test, which is used to check the hearing of all new-born babies, enable very early identification of a range of medical and physical difficulties. Health services, including paediatricians, the family's general practitioner, and health visitors, should work with the family, support them to understand their child's needs and help them to access early support.
- 5.15 Where a health body is of the opinion that a young child under compulsory school age has, or probably has, SEN, they **must** inform the child's parents and bring the child to the attention of the appropriate local authority. The health body **must** also give the parents the opportunity to discuss their opinion and let them know about any voluntary organisations that are likely to be able to provide advice or assistance. This

includes the educational advice, guidance and any intervention to be put in place at an early point and before the child starts school.

5.16 This support can take a number of forms, including:

- specialist support from health visitors, educational psychologists, speech and language therapists or specialist teachers, such as a teacher of the deaf or vision impaired. These specialists may visit families at home to provide practical support, answering questions and clarifying needs
- training for parents in using early learning programmes to promote play, communication and language development
- home-based programmes, such as Portage, which offer a carefully structured system to help parents support their child's early learning and development

5.17 Early Support supports the better delivery and co-ordination of services for disabled children, and their families, including training for professional or trained independent volunteers providing a single point of contact or key working. (See References section under Chapter 2 for a link to the Early Support Programme.)

5.18 From September 2014, 2-year-olds for whom Disability Living Allowance is paid will be entitled to free early education.

5.19 Information about these services should be included in the Local Offer.

Early years provision

5.20 The majority of 3- and 4-year-olds, and many younger children, attend some form of early years provision. The EYFS framework sets the standards that all Ofsted-registered early years providers, and schools offering early years provision, must meet to ensure that children learn and develop well and are kept healthy and safe. This includes ongoing assessment of children's progress. Early years providers and educational settings should have arrangements in place that include a clear approach to assessing SEN. This should be part of the setting's overall approach to monitoring the progress and development of all children.

5.21 In assessing progress of children in the early years, practitioners can use the non-statutory Early Years Outcomes guidance as a tool to assess the extent to which a young child is developing at expected levels for their age. The guidance sets out what most children do at each stage of their learning and development. These include typical behaviours across the seven areas of learning:

- communication and language

- physical development
- personal, social and emotional development
- literacy
- mathematics
- understanding of the world
- expressive arts and design

5.22 The EYFS framework includes two specific points for providing written assessments for parents and other professionals – when the child is aged two and at the end of the reception year – which are detailed below.

Progress check at age two

5.23 When a child is aged between two and three, early years practitioners must review progress and provide parents with a short written summary of their child's development, focusing in particular on communication and language, physical development and personal, social and emotional development. This progress check must identify the child's strengths and any areas where the child's progress is slower than expected. If there are significant emerging concerns (or identified SEN or disability) practitioners should develop a targeted plan to support the child, involving other professionals such as, for example, the setting's SENCO or the Area SENCO, as appropriate. The summary must highlight areas where:

- good progress is being made
- some additional support might be needed
- there is a concern that a child may have a developmental delay (which may indicate SEN or disability)

5.24 It must describe the activities and strategies the provider intends to adopt to address any issues or concerns. If a child moves settings between the ages of two and three it is expected that the progress check will be undertaken in the setting where the child has spent most time.

5.25 Health visitors currently check children's physical development milestones between ages two and three as part of the universal Healthy Child Programme. From 2015, it is proposed to introduce an integrated review that will cover the development areas in the Healthy Child Programme two-year review and the EYFS two-year progress check. The integrated review will:

- identify the child's progress, strengths and needs at this age in order to promote positive outcomes in health and wellbeing, learning and development
- enable appropriate intervention and support for children and their families, where progress is less than expected, and
- generate information which can be used to plan services and contribute to the reduction of inequalities in children's outcomes

Assessment at the end of the EYFS – the EYFS profile

5.26 The EYFS profile provides parents, practitioners and teachers with a well-rounded picture of a child's knowledge, understanding and abilities. A profile is usually completed for children in the final term of the year in which they turn five. It is particularly helpful for children with SEN and should inform plans for future learning and identify any additional needs for support.

Identifying needs in the early years

5.27 In addition to the formal checks, early years practitioners working with children should monitor and review the progress and development of all children throughout the early years.

5.28 Where a child appears to be behind expected levels, or where a child's progress gives cause for concern, practitioners should consider all the information about the child's learning and development from within and beyond the setting, from formal checks, from practitioner observations and from any more detailed assessment of the child's needs. From within the setting practitioners should particularly consider information on a child's progress in communication and language, physical development and personal, social and emotional development. Where any specialist advice has been sought from beyond the setting, this should also inform decisions about whether or not a child has SEN. All the information should be brought together with the observations of parents and considered with them.

5.29 A delay in learning and development in the early years may or may not indicate that a child has SEN, that is, that they have a learning difficulty or disability that calls for special educational provision. Equally, difficult or withdrawn behaviour does not necessarily mean that a child has SEN. However, where there are concerns, there should be an assessment to determine whether there are any causal factors such as an underlying learning or communication difficulty. If it is thought housing, family or other domestic circumstances may be contributing to the presenting behaviour, a multi-agency approach, supported by the use of approaches such as the Early Help Assessment, should be adopted.

- 5.30 Identifying and assessing SEN for young children whose first language is not English requires particular care. Early years practitioners should look carefully at all aspects of a child's learning and development to establish whether any delay is related to learning English as an additional language or if it arises from SEN or disability. Difficulties related solely to learning English as an additional language are not SEN.
- 5.31 Where a child has a significantly greater difficulty in learning than their peers, or a disability that prevents or hinders a child from making use of the facilities in the setting and requires special educational provision, the setting should make that provision. In all cases, early identification and intervention can significantly reduce the need for more costly interventions at a later stage.
- 5.32 Special educational provision should be matched to the child's identified SEN. Children's SEN are generally thought of in the following four broad areas of need and support – see Chapter 6, paragraph 6.28 onwards, for a fuller explanation:
- communication and interaction
 - cognition and learning
 - social, emotional and mental health
 - sensory and/or physical needs
- 5.33 These areas give an overview of the range of needs that providers should plan for. However, individual children often have needs that cut across all these areas and their needs may change over time. For instance speech, language and communication needs can also be a feature of a number of other areas of SEN, and children with an Autism Spectrum Disorder may have needs across all areas. The special educational provision made for a child should always be based on an understanding of their particular strengths and needs and should seek to address them all, using well-evidenced interventions targeted at areas of difficulty and, where necessary, specialist equipment or software. This will help to overcome barriers to learning and participation. Support should be family centred and should consider the individual family's needs and the best ways to support them.
- 5.34 Reviewing the effectiveness of interventions in enabling children to make progress can itself be part of the assessment of need, informing the next steps to be taken as part of a graduated approach to support, as described in 'SEN support in the early years' below. It may be necessary to test out interventions as part of this process, both to judge their effectiveness for the child and to provide further information about the precise nature of their needs.

- 5.35 There is a wide range of information available on early years and early intervention and on different areas of need and the most effective interventions. For more information and links to useful resources see Annex 2: Improving practice and staff training in education settings.

SEN support in the early years

- 5.36 It is particularly important in the early years that there is no delay in making any necessary special educational provision. Delay at this stage can give rise to learning difficulty and subsequently to loss of self-esteem, frustration in learning and to behaviour difficulties. Early action to address identified needs is critical to the future progress and improved outcomes that are essential in helping the child to prepare for adult life (Chapter 8, Preparing for adulthood from the earliest years).
- 5.37 Where a setting identifies a child as having SEN they must work in partnership with parents to establish the support the child needs.
- 5.38 Where a setting makes special educational provision for a child with SEN they should inform the parents and a maintained nursery school must inform the parents. All settings should adopt a graduated approach with four stages of action: assess, plan, do and review.

Assess

- 5.39 In identifying a child as needing SEN support, the early years practitioner, working with the setting SENCO and the child's parents, will have carried out an analysis of the child's needs. This initial assessment should be reviewed regularly to ensure that support is matched to need. Where there is little or no improvement in the child's progress, more specialist assessment may be called for from specialist teachers or from health, social services or other agencies beyond the setting. Where professionals are not already working with the setting, the SENCO should contact them, with the parents' agreement.

Plan

- 5.40 Where it is decided to provide SEN support, and having formally notified the parents, (see 5.38 above), the practitioner and the SENCO should agree, in consultation with the parent, the outcomes they are seeking, the interventions and support to be put in place, the expected impact on progress, development or behaviour, and a clear date for review. Plans should take into account the views of the child. The support and intervention provided should be selected to meet the outcomes identified for the child, based on reliable evidence of effectiveness, and provided by practitioners with relevant skills and knowledge. Any related staff development needs should be identified and addressed.

- 5.41 Parents should be involved in planning support and, where appropriate, in reinforcing the provision or contributing to progress at home.

Do

- 5.42 The early years practitioner, usually the child's key person, remains responsible for working with the child on a daily basis. With support from the SENCO, they should oversee the implementation of the interventions or programmes agreed as part of SEN support. The SENCO should support the practitioner in assessing the child's response to the action taken, in problem solving and advising on the effective implementation of support.

Review

- 5.43 The effectiveness of the support and its impact on the child's progress should be reviewed in line with the agreed date. The impact and quality of the support should be evaluated by the practitioner and the SENCO working with the child's parents and taking into account the child's views. They should agree any changes to the outcomes and support for the child in light of the child's progress and development. Parents should have clear information about the impact of the support provided and be involved in planning next steps.
- 5.44 This cycle of action should be revisited in increasing detail and with increasing frequency, to identify the best way of securing good progress. At each stage parents should be engaged with the setting, contributing their insights to assessment and planning. Intended outcomes should be shared with parents and reviewed with them, along with action taken by the setting, at agreed times.
- 5.45 The graduated approach should be led and co-ordinated by the setting SENCO working with and supporting individual practitioners in the setting and informed by EYFS materials, the Early Years Outcomes guidance and Early Support resources (information is available at the National Children's Bureau website – see the References section under Chapter 5 for the link).
- 5.46 Where a child has an EHC plan, the local authority must review that plan as a minimum every twelve months. As part of the review, the local authority can ask settings, and require maintained nursery schools, to convene and hold the annual review meeting on its behalf. Further information about EHC plan reviews and the role of early years settings is in Chapter 9, Education, Health and Care needs assessments and plans.

Transition

- 5.47 SEN support should include planning and preparing for transition, before a child moves into another setting or school. This can also include a review of the SEN support being provided or the EHC plan. To support the transition, information should be shared by the current setting with the receiving setting or school. The current setting should agree with parents the information to be shared as part of this planning process

Involving specialists

- 5.48 Where a child continues to make less than expected progress, despite evidence-based support and interventions that are matched to the child's area of need, practitioners should consider involving appropriate specialists, for example, health visitors, speech and language therapists, Portage workers, educational psychologists or specialist teachers, who may be able to identify effective strategies, equipment, programmes or other interventions to enable the child to make progress towards the desired learning and development outcomes. The decision to involve specialists should be taken with the child's parents.

Requesting an Education, Health and Care needs assessment

- 5.49 Where, despite the setting having taken relevant and purposeful action to identify, assess and meet the special educational needs of the child, the child has not made expected progress, the setting should consider requesting an Education, Health and Care needs assessment (see Chapter 9, Education, Health and Care needs assessments and plans).

Record keeping

- 5.50 Practitioners **must** maintain a record of children under their care as required under the EYFS framework. Such records about their children **must** be available to parents and they **must** include how the setting supports children with SEN and disabilities.

Keeping provision under review

- 5.51 Providers should review how well equipped they are to provide support across the four broad areas of SEN. Information on these areas is collected through the Early Years Census, and forms part of the statutory publication '*Children and Young People with SEN: an analysis*' which is issued by DfE each year.

The role of the SENCO in early years provision

- 5.52 A maintained nursery school **must** ensure that there is a qualified teacher designated as the SENCO in order to ensure the detailed implementation of support

for children with SEN. This individual should also have the prescribed qualification for SEN Co-ordination or relevant experience.

5.53 The EYFS framework requires other early years providers to have arrangements in place for meeting children's SEN. Those in group provision are expected to identify a SENCO. Childminders are encouraged to identify a person to act as SENCO and childminders who are registered with a childminder agency or who are part of a network may wish to share that role between them.

5.54 The role of the SENCO involves:

- ensuring all practitioners in the setting understand their responsibilities to children with SEN and the setting's approach to identifying and meeting SEN
- advising and supporting colleagues
- ensuring parents are closely involved throughout and that their insights inform action taken by the setting, and
- liaising with professionals or agencies beyond the setting

The role of the Area SENCO

5.55 To fulfil their role in identifying and planning for the needs of children with SEN, local authorities should ensure that there is sufficient expertise and experience amongst local early years providers to support children with SEN. Local authorities often make use of Area SENCOs to provide advice and guidance to early years providers on the development of inclusive early learning environments. The Area SENCO helps make the links between education, health and social care to facilitate appropriate early provision for children with SEN and their transition to compulsory schooling.

5.56 Typically, the role of the Area SENCO includes:

- providing advice and practical support to early years providers about approaches to identification, assessment and intervention within the SEN Code of Practice
- providing day-to-day support for setting-based SENCOs in ensuring arrangements are in place to support children with SEN
- strengthening the links between the settings, parents, schools, social care and health services
- developing and disseminating good practice

- supporting the development and delivery of training both for individual settings and on a wider basis
- developing links with existing SENCO networks to support smooth transitions to school nursery and reception classes, and
- informing parents of and working with local impartial Information, Advice and Support Services, to promote effective work with parents of children in the early years

5.57 The Area SENCO plays an important part in planning for children with SEN to transfer between early years provision and schools.

5.58 Where there is an Area SENCO in place, they will want to work with early years providers who are registered with either Ofsted or a childminder agency. They should consider how they work with and provide advice to childminder agencies and their registered providers in supporting children with SEN.

Funding for SEN support in the early years

5.59 Local authorities must ensure that all providers delivering funded early education places meet the needs of children with SEN and disabled children. In order to do this local authorities should make sure funding arrangements for early education reflect the need to provide suitable support for these children.

5.60 Early years providers should consider how best to use their resources to support the progress of children with SEN.

