Policy And Procedure To Meet The Needs Of Young Offenders With Special Educational Needs In Youth Custody Under The Children And Families Act 2014

Introduction

This policy sets out the arrangements in Blackpool to meet the requirements of the Children and Families Act 2014 supporting children and young people with Special Educational Needs when they are detained in youth custody.

The Children and Families Act 2014 (C&F Act) transforms the system for disabled children and young people and those with special educational needs (SEN). Part of the new legal framework introduces new requirements for supporting children and young people with SEN when they are detained in youth custody.

The new legal framework for supporting children and young people with SEN in custody is not complete. The Department for Education, working with the Ministry of Justice and the Department of Health, are currently developing statutory regulations and statutory guidance which will provide more detail to support the primary legislation.

Legal Definition of Special Educational Needs

A child or young person has SEN if they have a learning difficulty or disability which calls for special educational provision to be made for him or her.

A child of compulsory school age or a young person has a learning difficulty or disability if he or she:

- Has a significantly greater difficulty in learning than the majority of others of the same age, or
- Has a disability which prevents or hinders him or her from making use of facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions

A child or young person does not have a learning difficulty or disability solely because the language (or form of language) in which he or she is or will be taught is different from a language (or form of language) which is or has been spoken at home.

Key aspects of the new system

The wider changes to the SEND system provide an important context to why and how the system will change for children and young people with SEN in custody.

- Age range: 0 - 25 system (for young offenders the framework applies up to age 18)

1 Compiled using the Council for Disabled Children’s factsheet “The SEND Reforms: Young Offenders with Special Educational Needs, 2015,
• Working towards clearly defined outcomes
• Joint working between education, health and social care; co-ordinated assessments and Education, Health and Care plans
• Engagement and participation of young people, children and their parents with greater transparency and information about what is available in the local area through the Local Offer
• Personalisation and personal budgets (personal budgets will not apply in the secure estate3)
• School Action and School Action plus has been replaced by a single category ‘SEN support’
• New rights and responsibilities for young people. The C&F Act 2014 defines a young person as over compulsory school age (the end of the school year in which the pupil turns 16). As a young person, rights and responsibilities which would have sat with a child’s parent, such as the right to request an assessment, the right to name a school in an EHC plan or the right to appeal, will sit with the young person themselves.

The Needs of Children and Young People in Custody

Set out in the Ministry of Justice: Transforming Youth Custody consultation 2013

• 18% of sentenced young people in custody had a statement of special educational needs, compared to 3% in the general population
• Of 15-17 year olds in YOIs, 88% of young men and 74% of young women had been excluded from school at some point. Of 15-17 year olds in YOIs, 36% of young men and 41% of young women were aged under 14 when they last attended school
• A recent review6 suggests that the prevalence of neuro-developmental disorders (e.g. dyslexia, communication disorders and epilepsy) among young people in custody is higher than in the general youth population
• Over 60% of people in youth justice estate have difficulties with speech, language or communication

The Secure Estate

Education provision in the secure estate is arranged differently depending on the type of establishment. In SChs; education is arranged by the local authority. In STCs, it is arranged via contracts between the Youth Justice Board and the private providers (currently G4S and Serco). Although the National Offender Management Service is responsible for the overall running of YOIs, it (and the person in charge of a YOI) does not manage the education provision. In YOIs, education is arranged by a contract between the Ministry of Justice and the Youth Justice Board and a private education provider (these contracts are currently being re-issued, with providers expected to be confirmed by the end of 2014).

Health provision in the secure estate is the responsibility of NHS England. It is arranged by health providers in each establishment overseen by NHS England local area teams.

Assessments: When a child or young person enters the youth justice system or custody, he or she will be assessed using two main tools:
• Asset is completed by the Youth Offending Team when a child or young person first comes to their service. Asset looks at the child or young person’s offence and identifies factors or circumstances which may have contributed to their behaviour. The education element is built on in custody by literacy and numeracy tests carried
out by the education provider. New, additional screening tools have been developed to be used alongside Asset, including a Speech Language and Communication Tool and a Physical and Mental Health tool. With the introduction of Asset Plus these screening tools will be within the new framework

- Comprehensive Health Assessment Tool (CHAT) is carried out by the health provider. It includes a screening to be carried out before the first night of admission. Following this a physical health assessment, a mental health assessment, a substance misuse assessment and a neuro disability assessment will be carried out within 3-10 days.

Implementation of the Legislation

The youth justice elements of the legislation apply to:

- Children and young people aged 18 and under.
- Children and young people who have been sentenced or remanded by the Courts to relevant youth accommodation in England
- Relevant youth accommodation is a Young Offender Institution, a Secure Training Centre or a Secure Children’s Home

The aims for detained children and young people are to achieve:

- One responsible local authority for a child or young person’s special educational provision while they are in the community and in custody
- Continuing and appropriate special educational provision when a child or young person is in custody
- To help the resettlement process by identifying need and ensuring that provision continues when a child or young person returns to the community
- To make the best use of the time that the young person is in detention so that an assessment can get under way and support can be put in place immediately on release

New Powers and Duties Brought in by the Children & Families Act 2014

Local authorities in England are empowered to supply goods and services to any authority or other person making special educational provision for a detained person.

‘Home’ local authorities have the duty to:

- Keep an EHC plan when a child or young person enters custody
- Arrange SEN provision for a child or young person with an EHC plan while they are in custody
- Consider a request for an EHC needs assessment from the parent of a child in custody, a young person in custody or the person in charge of a custodial establishment.
- Consider whether an EHC needs assessment is necessary when a child or young person is brought to their attention as having or may have SEN.
- Cooperate with relevant providers of youth custodial institutions, youth offending teams, Clinical Commissioning Groups and NHS England.
Youth offending teams are empowered to bring a child or young person to the attention of the authority as someone who has or may have SEN.

YOTs have the duty to:

- Co-operate with local authorities
- Have regard to the SEND Code of Practice

Further Information

Children and Families Act 2014

SEND 0-25 Code of Practice

Transitional arrangements guidance
### Procedure for Children and Young People Entering Custody WITH EHC Plans

<table>
<thead>
<tr>
<th>Process</th>
<th>Youth Offending Team</th>
<th>SEN Team</th>
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<tbody>
<tr>
<td>Remand/ sentence to custody</td>
<td>Notify the SEN team of the remand or sentence of a young person to custody, specifying the location, legal basis, and duration (if known)</td>
<td>Provide the secure establishment with and maintain an existing EHC plan when a child or young person enters custody, keeping it on hold pending the decision whether a reassessment is necessary</td>
</tr>
<tr>
<td>Planning</td>
<td>Ensure that the SEN team are invited to attend all sentence planning and review meetings.</td>
<td>Attend all sentence planning and review meetings.</td>
</tr>
<tr>
<td>Provision</td>
<td>Share relevant education and health information from current assessments and plans, including the ePEP to support provision.</td>
<td>Arrange special educational provision according to the existing EHC plan, taking into account any further information provided by the YOT</td>
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<td>Obtain copies of the EHC plan for the young person’s case records</td>
<td>Ensure that provision is what is set out in the EHC plan unless this is not practicable. Arrange provision corresponding as closely as possible to the EHC plan</td>
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<td>Ensure that health provision</td>
<td>Ensure that the secure establishment arranges health provision for the child or young person if specified in the plan, or, if not practicable, provision corresponding as closely as possible to it</td>
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<td>Monitor delivery of the EHC plan</td>
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<td>Review and reassessment</td>
<td>Share relevant education and health information from current assessments and plans, including the ePEP to support assessment.</td>
<td>Review the child or young person’s needs and arrange appropriate provision in custody If it appears that the SEN provision specified in the plan is no longer appropriate</td>
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<td>Health review and reassessment</td>
<td>Contribute to reviews of health provision, ensuring that health information held by the YOT is made available by or through the YOT Health Officer</td>
<td>Ensure that the young person’s needs are assessed by the secure establishment if it appears that the health provision is no longer appropriate and the provision in custody is arranged</td>
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<td>Release/ Community part of a DTO</td>
<td>Contribute to the review of an EHC plan on release, ensuring the involvement of the YOT Health Officer.</td>
<td>Review the EHC plan as soon as possible when the child or young person is released and ensure that the plan is immediately active in the community according to Part 3 of the C&amp;FA, including those in secure mental health settings or subject to secure welfare orders.</td>
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### Procedure for Young People Entering Custody WITHOUT EHC Plans

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<td>Review the learning needs of the young person in collaboration with the secure establishment and request an EHC needs assessment if necessary</td>
<td>Determine whether to conduct an EHC assessment. The young person or parent and secure establishment must be consulted and informed of the decision</td>
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<td>Keep the SEN Team informed of potential changes to the remand status and release of young people into local authority accommodation or bail, with or without the condition of supervision by the YOT</td>
<td>Confirm timescales for the process within the 20 week limit.</td>
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<td>Assessment</td>
<td>Share relevant education and health information from current assessments and plans, including the ePEP to support provision.</td>
<td>Complete assessment while the young person is in custody or continue assessment in the community under arrangements in Part 3 of the C&amp;F Act. Focus the assessment on the young person’s post detention needs and provision</td>
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<td>Ensure that the secure establishment arranges health provision for the child or young person if specified in the plan, or, if not practicable, provision corresponding as closely as possible to it</td>
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<td>Appeals and mediation</td>
<td>Support young people or parents wishing to appeal to the SEND first Tier Tribunal if they don’t agree with decisions made by the local authority SEN Team</td>
<td>Arrange and participate in mediation prior to an appeal being lodged</td>
</tr>
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<td>Provision</td>
<td>Obtain copies of the EHC plan for the young person’s case records</td>
<td>Issue a final EHC plan if the assessment is completed for it to take immediate effect in custody</td>
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<td>Share relevant education and health information from current assessments and plans, including the ePEP to support review and reassessment.</td>
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<td>Transition in the adult estate</td>
<td>Facilitate the sharing and transfer of relevant information.</td>
<td>Although there is no requirement on the home local authority to keep the young person’s EHC plan at this point, they may wish to continue to do so, especially if the young person will be released before their 25th birthday, as in the community the wider SEND framework will apply to them.</td>
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