



16th May 2023

Statement for Schools' Forum from the Special and AP School Leaders

Introduction

At Schools' Forum on 12th May 2022, it was agreed that the LA would work in partnership with special school and AP leaders to design one fair special school and AP system. The special school and AP leaders fully supported this and in good faith endeavoured to help the LA design and refine a sustainable, transparent and fair banding system. Whilst this work eventually commenced with school leaders in November 2022 this has not been completed. As the leading experts in SEND education in South Gloucestershire we are profoundly concerned and upset by the absence of published new bandings and agreed moderation processes and a fair funding system that we could support as being accurate, in line with DFE guidance, sustainable and able to authentically able to meet children's needs.

Pupils are in special schools now with no banding, inaccurate bandings, banding values that bear no relation to the provision the pupil needs and Headteachers are being sent consultations to accept new pupils without agreement as to what funding they will have. The impact of this on schools means there is a disconnect between a child's EHCP allocation of resource to meet needs and an impossible situation with recruitment and budget planning.

Current situation

At a meeting with special school and AP leaders on 30th March 2023, we were informed of the position that South Glos. LA is now taking towards funding, which we have not previously been made aware of or agreed to i.e.:

- Top-up funding bears no relation to banding descriptors (therefore pupils' needs) for the next 4 years (presumably whilst the safety-valve plan is implemented) rather Schools will receive a fixed level of funding based on a formula.
- The LA is however paying top-up funding using the new bandings which are not necessarily accurate.
- Total top-up funding will effectively be frozen regardless of the needs of children joining schools or changes in need i.e. in accordance with the needs that must be met by the LA as stipulated in the child's EHCP.

Lack of transparency and partnership is deeply concerning. It also risks damaging the SEND system in South Glos. further.

It also throws into question the LA's ability to adhere to DFE guidance which states:



1. “They (LAs) should work closely with schools and colleges that have pupils or students with high needs. In doing so, they should ensure there are clear processes for identifying, determining, and allocating appropriate levels of top-up funding”. (High Needs Operational Guidance (HNOG 2023-24 Section 11.1).

Under the new formula, these processes are not in place.

2. “...the local authority must be satisfied that the final allocation of funding (both the top-up funding and other elements of funding) is sufficient overall to secure the agreed provision (for example, that specified in an EHC plan) and should keep top-up funding levels under review at regular intervals.” (High Needs Operational Guidance (HNOG 2023-24 Section 11.1).

The formula does not allow for pupils’ changing needs to be met.

3. “Where a child or young person with SEND has relevant health or social care needs, these should be addressed within an integrated EHC plan. Responsibility for securing the provision specified in the plan sits with the relevant statutory bodies: the local authority for education and social care provision, and either the Integrated Care Board (ICB, replacing clinical commissioning groups) or (in some cases) NHS England for health provision.” (Annex 4 of HNOG 2023-24).

South Glos. LA has not ensured that a strategic plan for health input is in place to ensure school budgets are not used, as they currently are, for health input. The LA had assured special school and AP leaders that they would have a detailed risk analysis and indicate mitigation of risk in the services provided by Health for complex medical interventions, administering medications, training and supervision. This has not been done. School funding is still not compliant as it does not identify health and social care costs and therefore is not acting in accordance with Section 4.2 of the Children and Families Act 2014.

4. “We expect commissioning local authorities and all types of schools/colleges to work together so that agreement can be reached on the level of top-up funding required to enable suitable provision to be made for individual pupils and students. It is always better if principles are agreed in advance.... these arrangements should be developed collaboratively, and clearly communicated so that parents, as well as staff in schools, colleges and the local authority, have a shared understanding”. (Section 11.3 HNOG)

Consultation and impact assessment have not been undertaken. Therefore, the LA is creating a system whereby children with increasing complex needs may be unable to access provision identified in their EHCP because of insufficient funding and/or absence of health funding.



Conclusion

The legal duty to secure the provision in an EHCP rests with the local authority that maintains it. Case law has established this. This means that the local authority must fund the specified provision in full in every individual child’s EHCP and must ensure that it is delivered. We fail to see how South Glos. LA will be able to defend its position when challenged.

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