

SECTION 1: INTRODUCTION - PRINCIPLES AND PROCEDURES

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Introduction

1.1 This SEN Code of Practice (the Code) provides practical guidance to **grant-aided schools and special schools**, the Education Authority (EA)¹, health and social care authorities² and others on carrying out their statutory duties with regard to children who have, or may have, special educational needs (SEN). As well as primary and post-primary schools, nursery schools and nursery classes (in primary schools) fall within the definition of grant-aided as defined in Article 2 of the Education and Libraries (NI) Order 1986 (the 1986 Order).

Key point: See the Glossary for the definition of the key terms used in this Code.

Background

1.2 The first *Code of Practice on the Identification and Assessment of Special Educational Needs* was issued in 1998. The Department of Education (DE), as a consequence of the Special Educational Needs and Disability (NI) Order 2005 (the 2005 Order), issued a *Supplement to the Code of Practice on the Identification and Assessment of Special Educational Needs* in 2005 to provide further guidance to schools, the EA and others (including the Special Educational Needs and Disability Tribunal (SENDIST)). This included providing for greater inclusion through strengthened rights for children with SEN meaning that a child with SEN has a right to be educated in an ‘ordinary school’ (see Glossary) (hereafter referred to as a ‘mainstream school’). Furthermore, if a child has a ‘Statement of Special Educational Needs’ (a Statement), the child will be educated in a mainstream school unless it is incompatible with the wishes of their parent or the provision of the efficient education for other children.

¹ Section 1(1) of the Education Act (NI) 2014 c.12 (N.I.).

² Health and Social Care (Reform) Act (NI) 2009 c. 1 Sch.6 para.1(1)(a) (April 1 2009). The term “health and social care authority” means a health and social care trust and the Regional Health and Social Care Board established under Article 10 of the Health and Personal Social Services (NI) Order 1991

1.3 This SEN Code of Practice introduces a new SEN and Inclusion Framework (the SEN Framework) which emerged from DE's review of special education and inclusion. It places the child firmly at the centre of the graduated response to meeting the needs of children with SEN. It aims to help children with SEN achieve improved outcomes and fulfil their potential.

1.4 Executive agreement to the final policy on a revised SEN Framework and approval to proceed to prepare the required implementing legislation was given in July 2012. The Executive agreed to a move from five to three stages of SEN support, aimed at removing or reducing the barriers to learning faced by children with SEN. The new SEN Framework has at its core a strong legislative base which has been the subject of scrutiny of the Northern Ireland Assembly structures. Section 2 of the Code sets out the legislative basis and highlights the key duties, rights and responsibilities for providing a more responsive approach in the identification, assessment and making of special educational provision for those children who need it. This Code reflects both the existing statutory duties with regard to SEN and new statutory duties which were introduced under the Special Educational Needs and Disability Act (Northern Ireland) 2016 (the 2016 Act). The 2016 Act introduced:

- a) new statutory duties on Boards of Governors of grant-aided schools, including a requirement to designate a teacher of the school as a Learning Support Coordinator (LSC) and for each child with SEN to have a Personal Learning Plan (PLP) prepared;
- b) new statutory duties on the EA, including a requirement to set out a plan of its arrangements for special educational provision and to co-operate with health and social care authorities on the identification and assessment of children who have, or may have SEN, and for providing children with the SEN services they need and to provide independent mediation arrangements for parents or children over compulsory school age about EA decisions made within the SEN Framework which carry a right of appeal;
- c) new statutory duties on health and social care authorities including a requirement to co-operate with the EA on the identification and assessment of

children who have, or may have SEN. Health and social care authorities are also required to co-operate in providing children with the SEN services they need and in the preparation of a transition plan (prepared during the school year in which a child with a Statement attains age 14. If, in helping the EA in making an assessment of a child under Article 15 of the 1996 Order, it identifies any treatment or service likely to be of benefit in addressing the SEN of a child, the health and social care authority is required to provide that treatment or service; and

- d) new rights for parents including a right of appeal against a decision of the EA not to amend a Statement following annual review of a Statement and the transfer of rights to children over compulsory school age.

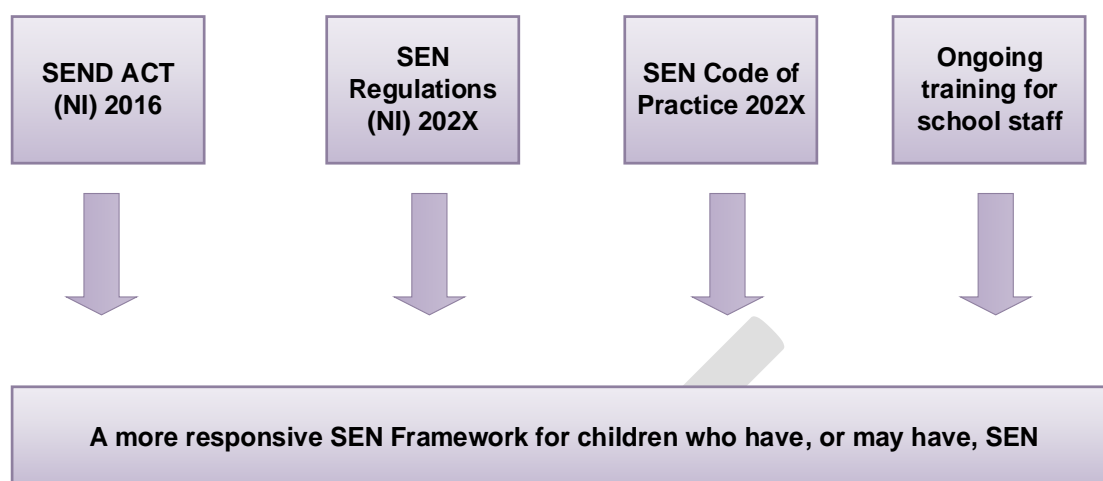
1.5 A summary of these **new duties and rights** (paraphrased) are included as an **Annex 1** of this Code.

1.6 The SEN Framework is set in the context of a well-developed inclusive educational policy environment aimed at providing “*a system that is recognised internationally for the quality of its teaching and learning, for the achievements of its young people and for a holistic approach to education*”³ including:

- a) improving the well-being of children and young people;
- b) raising standards for all;
- c) closing the performance gap, increasing access and equality;
- d) developing the education workforce;
- e) improving the learning environment; and
- f) delivering high quality education services.

³ Department of Education’s Vision, Corporate Goals and Strategic Objectives.

Diagram 1.1: The Key Building Blocks of the SEN Framework



1.7 In the development of the Code consideration has been given to the:

- a) Children's Services Co-operation Act (Northern Ireland) 2015 (the 'CSC Act 2015') which requires "*children's authorities*" to co-operate with each other and with other "*children's services providers*" to improve the well-being of children and young people (including their physical and mental health; and learning and achievement). In the context of the SEN Framework "*children's authority*" includes the EA and health and social care authorities, DE and Department of Health (DoH), and the "*children's services*" includes schools;
- b) recommendations in the 2017 Northern Ireland Audit Office (NIAO) Report on the Review of SEN, which focused on the provision for children with SEN in mainstream schools. In particular, the need for DE and EA to ensure that schools apply a clear and consistent approach to identifying and providing for, children with SEN. This included greater focus on support to maximise progress and improve outcomes for those children with SEN;
- c) United Nations Conventions on: the Rights of the Child (UNCRC) and Persons with Disabilities (UNCRPD); and
- d) General Data Protection Regulations (GDPR): in particular Articles 5, 6, 7 and 13 in relation to the sharing of the PLP, (See Section 3).

1.8 The Code aims to help schools and the EA obtain the best value from the resources and expertise they invest to help children with SEN make progress and achieve better outcomes:

- **For schools**, this includes recognition that not every child experiencing difficulty in learning requires special educational provision. Through: sensibly adapted classroom practice; differentiated educational provision adapted to meet the different aptitudes and abilities; and generic learning support, many learners will progress. This will allow schools to focus on making special educational provision for those children with a significantly greater difficulty in learning. It also includes making best use of resources, advice and support and training made available through the EA.
- **For the EA** this includes responsive and timely delivery of: resources; advisory and support services; and training to help secure progress and improved outcomes for children with SEN. This will all be detailed in its arrangements for special educational provision.
- **For health and social care authorities** this includes timely delivery of advice to inform statutory assessment including the identification of any relevant treatment or service which may benefit a child, the delivery of that treatment or service and providing, where appropriate, updated advice for the purpose of a review of a child's Statement.

1.9 Whilst replacing the original 1998 Code and the 2005 Supplement to it, this Code retains and builds upon much of the earlier guidance. It also takes into account the experiences of schools and the EA and developments in education since 2005, including the changes brought in as a result of the 2005 Order, namely increased inclusion of children with SEN in mainstream schools.

The Status of the Code

1.10 This Code is issued by DE under Article 4 of the Education (NI) Order 1996 (1996 Order). Effective from [date to be inserted]: all grant-aided schools (including nursery schools and nursery classes in primary schools); the EA; health and social care authorities; and others exercising relevant statutory functions, including the SENDIST, will need to be able to demonstrate, in their arrangements for children with SEN, that they are fulfilling their statutory duty under Article 4 of the 1996 Order to **have regard to this Code.**

1.11 To “have regard” means that schools, the EA and health and social care authorities (including Health and Social Care Trusts (HSC Trusts)) are expected to follow the practical guidance contained in this Code for identifying and assessing those children who have, or may have, SEN and, where appropriate, make special educational provision for those children with SEN. The arrangements contained in the Code are to be given great weight and departed from only for the strongest of reasons. Schools, the EA and health and social care authorities will be expected to explain any departure from the Code, for example, in the event of an appeal being taken to the SENDIST, where this is relevant to the case it is considering.

Key point: The Code’s full application by all schools aims to ensure that schools apply a clear and consistent approach to identifying, assessing and providing for, children with SEN.

1.12 **Voluntary and private early years and pre-school education settings** are expected to follow broadly the same procedures for identifying those children who have, or may have, SEN and making appropriate special educational provision. These settings, are not however required to have a LSC or put in place a PLP for each child who has special educational needs. It is considered good practice for these settings to follow the principles of the Code. It is the EA’s responsibility to ensure that children, regardless of the setting, are managed within the parameters of the SEN Framework in relation to support provided by the EA.

1.13 In the case of **school inspections**, the Education and Training Inspectorate (ETI) will consider within the wider context:

- a) the strengths of SEN identification, assessment and making provision, including the identification of areas which require further development;
- b) the impact of the action taken by the school on the outcome for learners;
- c) the use made of qualitative and quantitative data as evidence of improvement; and
- d) the extent to which schools have had regard to this Code.

1.14 In the case of **co-operation between the EA and health and social care authorities**, a joint inspection team, made up of inspectors appointed by DE and the Health and Social Care Regulations and Quality Improvement Authority (RQIA), will consider:

- how the EA and the health and social care authorities have co-operated with each other in the identification and assessment of children who have, or may have, SEN;
- the provision of services that SEN calls for; and
- the preparation of transition plans for children with a Statement starting during the school year a child attains age 14.

The Format of the Code

1.15 The⁴ Code should be read as a whole, so that a full understanding can be gained of the various parts of the processes, the roles and responsibilities of all concerned and the particular considerations affecting provision for children at different stages in their lives and school careers. To aid understanding, direct links

⁴ 1998 Code of Practice - Identification and Assessment of SEN - paragraph 1.3.

are provided to the legislation which underpins the SEN Framework with key statutory duties paraphrased, where appropriate. The Code is set out in 14 sections as follows:-

- **Section 1: Introduction: Principles and Procedures**
- **Section 2: The Law, Roles, Rights and Responsibilities**
- **Section 3: Identification, Assessment and Provision by Schools**
- **Section 4: Statutory Assessment**
- **Section 5: Making and Maintaining a Statement**
- **Section 6: Children Under Compulsory School Age – Services, Assessments and Statements**
- **Section 7: Annual Review of a Statement**
- **Section 8: Transition Planning for a Child with a Statement**
- **Section 9: Co-operation between Education and Health**
- **Section 10: Children in Specific Circumstances**
- **Section 11: Advice and Information**
- **Section 12: Disagreements, Appeals, Mediation and Tribunals**
- **Section 13: Children Over Compulsory School Age**
- **Section 14: Inclusion of Children with Special Educational Needs (SEN) and/or a Disability**

1.16 The Code also has a number of annexes (including flowcharts and checklists) which have been developed for day-to-day use by the teacher, LSC and EA officer.

The Coverage of the Code

1.17 This Code provides guidance to the EA and the Boards of Governors, as the responsible bodies of grant-aided schools, including special schools, and to all those who help them, including the health and social care authorities, in the discharge of their statutory functions.

1.18 Within the process of identifying those children who have, or may have, SEN, it provides guidance to help schools consider and take action regarding those

children where there is a concern about a child's progress in the classroom. It recognises that all schools are required to respond to and teach children with a wide range of different aptitudes and abilities within their classes. The Code provides guidance for:

- when there is a concern about a child's learning where whole school educational provision has not met the child's needs;
- the child who requires special educational provision to be made; and
- the most significant and/or complex difficulties, where a Statement may be needed.

Definition of Special Educational Needs

1.19 For all involved in a child's education it is important there is a clear understanding of the meaning of '**special educational needs**', '**learning difficulty**' and '**special educational provision**'. All these terms are defined in Article 3 of the 1996 Order, as paraphrased in the following information boxes.

A child has special educational needs if:

- they have a **learning difficulty** which calls for **special educational provision** to be made.

A child has a learning difficulty if:

- (a)** they have a significantly greater difficulty in learning than the majority of children of the same age;
- (b)** they have a disability which either prevents or hinders them making use of everyday educational facilities of a kind generally provided for children of the same age in ordinary schools; **or**

(c) they have not attained the lower limit of compulsory school age and is, or would be if special educational provision were not made, likely to fall within (a) or (b) when of compulsory school age.

Special educational provision means in relation to a child:

- who has attained the age of 2 years, educational provision which is additional to, or otherwise different from, the educational provision made generally for children of their age in ordinary schools; and
- under that age, educational provision of any kind.

The Principles of the Code

1.20 The fundamental principles include:

- a) **High Expectations and Improved Outcomes**– for all children who have, or may have, SEN. There should be high expectations **and a focus on improved outcomes** for all children who may experience learning difficulties during their school careers. Children with SEN have different and individual needs which will change as they develop. This Code recognises a graduated response to reflect a continuum of needs and a continuum of provision which may be made in a variety of forms.
- b) **Inclusion** - the needs of most pupils with SEN and/or a disability will be met in mainstream schools, without the need for a statutory assessment or a Statement. Children with SEN, including those with Statements, should, wherever appropriate, and taking into account the wishes of parents or the child over compulsory school age, have a right to be educated alongside their peers in mainstream schools.
- c) **Access to a Broad and Balanced Curriculum** – all children with SEN require the greatest possible access to the Northern Ireland Curriculum and

Entitlement Framework.

- d) **Early Identification and Intervention** – even before a child reaches compulsory school age, they may have SEN requiring the intervention of the EA as well as a HSC Trust. The earlier a child who has SEN is identified and the appropriate course of action taken, the more responsive the child with SEN is likely to be.
- e) **Partnership and Co-operation** - effective assessment and provision will be best secured where there are meaningful relationships between children over compulsory school age, parents of other children, schools and the EA. The knowledge gained from effective partnerships and the co-operation between education and HSC Trusts, are key contributors to securing improved outcomes.

Essential Practices and Procedures

1.21 The essential practices and procedures that this Code embodies are:

- a) children with SEN should be identified as quickly as possible with a clear and focused programme of special educational provision prepared (a PLP) for each child with SEN. The PLP should set out the intended outcomes and the special educational provision to be made including arrangements for monitoring and review;
- b) a graduated response to addressing the SEN of a child with provision being made through the most appropriate body. In most cases this will be the child's mainstream school in partnership with the child who is over compulsory school age or the parents of other children. In other cases, it may involve the EA, health and social care authorities and other external specialists, and no statutory assessment will be necessary;
- c) the ongoing development, review, evaluation and dissemination of the school's SEN policy, SEN aspects of the school development plans and plans for special educational provision;

- d) the ongoing development of the EA's SEN policy and its plan of arrangements for special educational provision which should be clear, transparent and easily accessible;
- e) the EA must make decisions on whether an assessment is required, complete assessments and make Statements, if necessary or appropriate, within set timescales (subject to relevant exceptions), and as quickly as thorough consideration of the issues allows;
- f) the EA must produce clear and thorough Statements (when Statements are required) setting out the child's educational and non-educational needs, and the objectives to be secured. The Statement should set out the nature and extent of the provision to be made including any relevant treatment or services to be delivered by health and social care authorities and the arrangements for monitoring and review;
- g) the EA must ensure the annual review of the special educational provision made for the child, including the monitoring and revision of educational targets and must make decisions on the outcome of annual reviews within set timescales;
- h) the EA, should as far as reasonably practicable, seek and consider the views of the child, recognising the importance of the child's participation;
- i) there must be close and effective co-operation between all agencies concerned and a multi-disciplinary approach to completion of assessments and the resolution of issues;
- j) for parents, children over compulsory school age and other children to be provided with advice, support and information by the EA to assist them to understand the SEN Framework, exercise their rights and make informed decisions; and
- k) within the operation of the SEN Framework practices and processes, maximum use should be made by parents, children over compulsory

school age, schools, the EA, HSC Trusts and others of available technology.

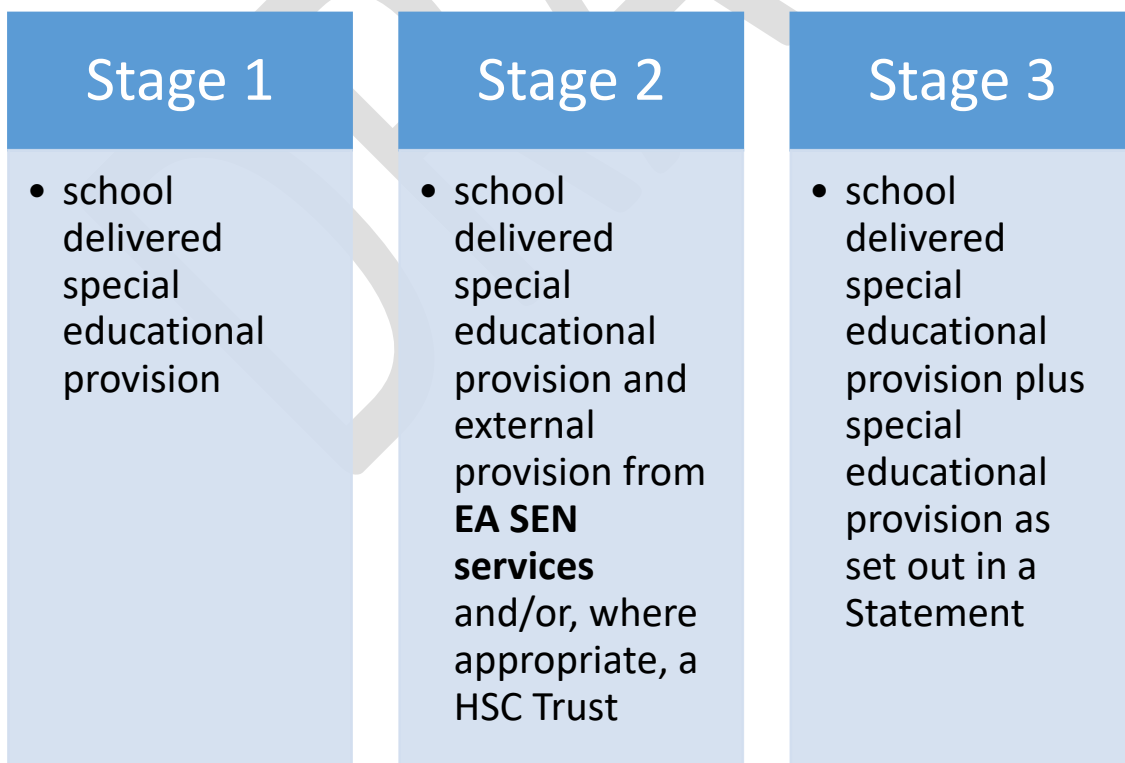
1.22 Consistent with the need for early identification, the Code also deals in Section 6 with how the school-focused principles, practices and procedures should be applied in the case of children below compulsory school age.

Three Stages of Special Educational Provision

1.23 In recognising that there is both a continuum of needs and special educational provision, the Code provides for three stages of delivery of special educational provision.

Key point: At each Stage of special educational provision the school retains the day-to-day lead responsibility for the child with SEN.

Diagram 1.2: The Three Stages of Special Educational Provision



1.24 These Stages are underpinned by a systematic and ongoing process of assessment of the individual child's SEN and special educational provision. This includes monitoring, evaluation and review to determine the impact of provision on the child's progress.

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