

Meeting:	Cabinet
Date:	23 June 2005
Subject:	Phase 3 delegated funding for pupils with SEN statements in mainstream schools
Responsible Officer:	Paul Clark, Director of Children's Services
Contact Officer:	Roger Rickman, Group Manager Enhanced Services
Portfolio Holder:	Councillor Stephenson, Education and Lifelong Learning
Key Decision:	No
Status:	Public

Section 1: Summary

Decision Required

It is recommended that the Cabinet:

- (1) approves and endorses the principles of Phase 3 delegated funding for pupils with SEN statements in mainstream schools from September 2005;
- (2) agrees the proposals for further developing the delegation formula;
- (3) notes the contents of the legal report requested at its meeting of 17 February 2005.

Reason for report

As an interim measure Cabinet at its meeting on 17 February 2005 agreed a change to the formula for delegating SEN funding as part of the schools funding formula for 2005-06. At the same meeting the Cabinet accepted in full the recommendations of a review of Phase 3 SEN delegation conducted by the Lifelong Learning Scrutiny Sub-Committee and further resolved to examine the possible full implementation of Phase 3 SEN delegation at a future meeting.

Benefits

The introduction of a formula element for SEN funding will support early intervention and wider preventative measures in schools and reduce bureaucracy. The proposals are consistent with the government's strategy of encouraging the further delegation of SEN resources, guidance issued by the Department of Education and Skills and the findings of research by the Audit Commission.

Cost of Proposals

The proposals are concerned with the distribution of funding to schools.

Risks

Although the changes proposed have been developed through a strong partnership between the local authority and schools and involved active consultation with parents, reductions in statements can give rise to anxiety for parents and schools with possible misunderstanding over who should be responsible for meeting the needs of those children who would formerly have had statements.

The local authority has significantly reduced the contingency for funding new costed statements and upward adjustments in support given the expectation that there will be a reduction in making new statements and this might be under pressure as the financial year progresses.

Implications if recommendations rejected

If the recommendations are rejected this will cause difficulty with school's budget planning in relation to proposals that are widely accepted in schools. A change to the formula for delegating SEN funding has already been agreed for this year and budget planning in schools has been on the basis of a three-year phased introduction.

Section 2: Report

2.1 Brief History

Phase 3 SEN delegation is part of a programme of delegating SEN resources that commenced in 2001. In order to meet the government's delegation target of 85% in 2001-02, Phase 1 SEN delegation was implemented in September 2001 whereby additional funding held centrally for pupils with statements of special educational needs was delegated to schools to cover the cost of the additional provision specified in statements.

Phase 1 SEN delegation did not include schools that were 'additionally resourced' for pupils with statements. Phase 2 SEN delegation involved a comprehensive review of these arrangements that applied in all high schools and a significant number of primary schools. The outcome of the review was the rationalisation of the additional resourcing arrangements in schools to cover only specialist provision. In all other schools the method of resourcing involving costed statements introduced in Phase 1 SEN delegation was implemented.

Phase 3 SEN delegation aims to adjust the balance between School Action/Plus and statements. The changes are intended to bring over time a move away from costed statements to a formula funded model for pupils with lower levels of need, reducing reliance on statements that the authority was criticised for when it was inspected by Ofsted.

The proposals for Phase 3 SEN delegation were developed by a working group of officers and headteachers and involves a formula with three equal factors, educational attainment, social deprivation and current costed statements, for that part of the overall funding previously distributed through costed statements specifying 15 hours or less teaching assistant support.

2.2 Options considered

Phase 3 SEN delegation represents a major and significant change in the SEN funding system and how resources for children with statements are delegated to schools. It will involve a change process over several years and has a number of important elements that need to be put in place in order to be successful in achieving the aims of supporting early intervention, the development of 'whole school' inclusive practice and reduced bureaucracy, leading to better outcomes for children. The review of Phase 3 SEN delegation carried out by the Lifelong Learning Scrutiny Sub-Committee highlighted a number of key safeguards to ensure that children with special educational needs continue to receive the best possible service. These and the associated action plan have been adopted in full by Cabinet at its meeting on 17 February 2005.

Strengthened accountability arrangements are being developed with schools, incorporating provision mapping, and a number of training sessions for headteachers, special needs co-ordinators and special educational needs governors are planned for June and July. In addition a further seminar for members dealing specifically with Phase 3 SEN delegation will be arranged in September.

Additional support for parents is available from the Parent Partnership Service and an information leaflet will be issued shortly, answering the main questions that arose through the consultation process and setting out the appeals procedures. The authority already has a well established arrangement for the provision of an independent disagreement resolution and advocacy service for parents. These are detailed in the supplemental report to Cabinet on 17 February 2005.

Initial proposals for developing the funding formula have been discussed with the Schools Forum that has requested the working group in consultation with the Portfolio Holder for Education and Lifelong Learning to make detailed recommendations to the Forum in June concerning possible adjustments to the formula. It has always been anticipated there would be a move away from using deprivation indices and proxy indicators in the formula to an approach that uses data on the number of individual children at School Action Plus and objective educational data. The proposal to the Schools Forum will be to develop and adjust the formula over the next few years, putting forward changes in 2007-08 to the social deprivation measures and attainment measures for first schools, leading in subsequent years to a change in the balance of the formula factors and introducing School Action Plus data when this is considered to be sufficiently reliable.

The Schools Forum has already been consulted on and agreed the principle that increases in the number of children with special educational needs will be reflected in the total amount of funding delegated to schools for special educational needs and met through growth in the Individual Schools Budget each year.

2.3 Consultation

Consultation took place with all school governing bodies and parents of children with special educational needs in the autumn 2004 on the proposed changes to SEN funding. The balance of opinion in schools was in favour of the proposals. Whilst parents showed some uncertainty and anxiety about the proposed changes there was felt to be sufficient support for the principles and benefits of a move away from costed statements to a formula funding model. Further consultation with school governing bodies will be necessary with regard to any future changes to the delegation formula.

2.4 Financial Implications

Cabinet agreed the funding formula to schools for 2005/2006 on 17 February 2005. The Schools Forum and all schools are required to be consulted upon any changes to the funding formula for 2006/2007 and beyond. Any growth identified for increases in the number of children with special educational needs will need to be met from the Individual Schools Budget which is part of the Schools Budget set by the Government each year.

2.5 Legal Implications

Cabinet at its meeting on 17 February 2005 requested a full legal report on Phase 3 delegation and this is included as part of this report as an appendix.

Section 313 of the Education Act 1996 (as amended) obliges a local education authority to take into account the Code of Practice for Special Educational Needs. Paragraphs 7:35 and 7:50 stipulate that if a school is not able to meet a child's needs with the resources normally available to it then the obligation to statutorily assess the child's special educational needs is incurred. Phase 3 delegation increases the resources available to a school to meet a child's special educational needs. It also improves the speed of a response to meet a child's needs once identified.

In delegating the resources to the schools directly this affords the schools an increased opportunity to meet the child's needs before a statutory assessment is required.

A child does not have a statutory right to have a statement of special educational needs. A child does have a statutory right to receive education in accordance with their age, ability, aptitude and special educational needs. However, it is still felt that in the most complex cases and where a school would not have sufficient resources to meet the needs of the child concerned, a statement of educational needs still serves a useful purpose.

2.6 Equalities Impact

The proposed changes will support wider preventative work and early intervention and more efficient use of resources in schools for children with special educational needs and disabilities.

Section 3: Supporting Information/ Background Documents

Appendix

Legal report

Background Papers

Local management of schools – changes to the funding formulae and extended delegation of budgets, Education, Arts and Leisure Committee, 17 January 2001.

Delegation of funding for pupils with statements of special educational needs, Education, Arts and Leisure Committee, 13 June 2001.

The Distribution of Resources to Support Inclusion, Department for Education and Skills, 2001.

Local management of schools – changes to the funding formulae and extended delegation of budgets, Education, Arts and Leisure Committee, 23 January 2002.

Special Educational Needs: a mainstream issue, Audit Commission, 2002.

Local management of schools – changes to the funding formula 2004/05, Cabinet, 17 February 2004.

Lifelong Learning Scrutiny Sub-Committee, Report of the Scrutiny Review Group, Review of Phase 3 delegated funding for pupils with SEN statements in mainstream schools, January 2005.

Changes to the Schools Funding Formula, Cabinet, 17 February 2005.

Lifelong Learning Scrutiny Sub-Committee review of Phase 3 delegated funding for pupils with SEN statements in mainstream schools, Cabinet, 17 February 2005.

Lifelong Learning Scrutiny Sub-Committee review of Phase 3 delegated funding for pupils with SEN statements in mainstream schools supplemental report, Cabinet, 17 February 2005.

Lifelong Learning Scrutiny Sub-Committee review of Phase 3 delegated funding for pupils with SEN statements in mainstream schools action plan, Cabinet Information Circular, 17 March 2005.

Recommendations of the Sub-Committee's review of Phase 3 delegated funding for pupils with SEN in mainstream schools, Lifelong Learning Scrutiny Sub-Committee, 19 April 2005.

Any person wishing to inspect the background papers should telephone 020 8424 1035

Appendix

PHASE THREE SPECIAL EDUCATIONAL NEEDS DELEGATION

Legal Report

When dealing with a child's special educational needs whether that be on the School Action, Plus, or a Statemented pupil, there are four parties who may play a part in securing appropriate provision to meet the child's identified special educational needs.

The four parties are as follows:

- Local education authority
- Governing body
- Parents
- Other agencies e.g. National Health Service, or social services

The four parties have a range of statutory responsibilities with respect to children who have special educational needs. The aim of this note is to confirm those statutory responsibilities. Phase 3 delegation to school means that the boundary has changed as to when a child may or may not need a statement. The reality of the situation is that fewer children may well be statemented as a result of this process. The benefit is that more children will have their needs recognised and provided for more promptly.

LOCAL EDUCATION AUTHORITY

The statutory responsibilities for the local education authority are contained within the Education Act 1996 (as amended). In summary those responsibilities are as follows:

Section 313

For the local authorities to take into account in its actions relating to children with special educational needs, the statutory Code of Practice.

Section 315

To consult governing bodies on the co-ordination of special educational need provision within the borough and to keep those arrangements under review.

Section 321

Sets out the authority's main responsibilities:

- Responsibility to identify children with special educational needs
- Responsibility to determine the provision required meets the identified special educational needs.

These responsibilities exist for children who reside within the local education authority's area and are registered at a school either maintained by the authority or if independent, a placement for which the local authority pays. The responsibility can commence at the age of 2 for a child and continue to the end of compulsory school age (i.e. the end of the school year in which the child is 16). If a child remains at school, the responsibility is extended until the age of 19 for an individual.

Section 29 and The Special Educational Needs (Provision of Information by Local Education Authorities) (England) Regulations 2001 SI 2001/2210.

These regulations and legislation set out requirements for the authority in respect of information it must publish about children with special educational needs. The requirements include an explanation as to the quantity of provision the local education authority expects the school to make with respect to children who do not have statements. The authority must also publish the aims of the special educational need policy. Such a policy includes promotion of high standards; encouragement of pupils to participate in education and decisions about their education; to share practices across schools with respect to special educational needs provision and how the local authority will work with other statutory and voluntary bodies.

In addition, the local authority is obliged to provide plans and set objectives in relation to the following issues:

- To identify children with special educational needs
- To monitor the admission of special educational need pupils regardless of whether they are statemented pupils or not
- To assess children with special educational needs
- To make and maintain statements
- To provide support for schools
- To audit, plan, monitor and review provision, both generally and in relation to individual special educational need pupils.
- To secure training advice and support for staff working in this area
- To review and update arrangements

GOVERNING BODIES

Section 313 of the Education Act 1996, a governing body must have regard to the Code of Practice which exists in relation to statemented pupils.

Section 317 of the Education Act 1996, sets out of the responsibilities of governing bodies. They are as follows:

- A governing body must use its best endeavours to secure for registered pupils with special educational needs the provision which their particular learning difficulty calls for and to ensure that this is put in place.
- Where a school is informed by the local education authority that a registered pupil has special educational needs, the governing body must ensure that those needs are communicated and made known to all staff who teach that child.

- The governors are to ensure that all teachers in school are aware of the importance of identifying and providing for those registered pupils who have special educational needs. The governors are to ensure that children are educated efficiently and this includes the use of resources.
- The governors must report annually on their special educational needs policy.
- The governors must ensure that parents are informed if their child is in receipt of special educational needs provision.

Section 327

The governors must provide access for any person from the local education authority to monitor special educational needs provision within their school.

PARENTS

The parents have responsibilities with respect to their child's education. They are brief but they are as follows:

Section 7 of the Education Act 1996 obliges the parents' to secure education of the child if they are of compulsory school age. This means that a child must receive suitable full-time education which takes into account the age, ability and aptitude of the child and any special educational needs that they may have. Receipt of such education must be on the basis of regular attendance at school.

Section 323 and Schedule 26 of the Education Act 1996 obliges the parents to ensure that the child is available for examination or assessment in relation to their special educational need. Failure to comply with this can result in a criminal charge being laid at the Magistrates Courts, punishable by a maximum penalty of £500 at the Magistrates Court.

OTHER AGENCIES

From time to time a child's special educational needs constitutes a partnership working with the health trusts and social services. Frequently these agencies will come into contact with children before they have started school and ascertain that they have special educational needs. The obligations on these agencies is to advise the local education authority of their view and this can be found under the Section 332 of the Education Act 1996. Parents should also be advised by these agencies of voluntary organisations who can assist parents in this situation.

Under Section 322 of the Act, the local education authority can ask health trusts and social services for assistance in supporting the child's statement of special educational needs. The defining case in this area is in fact a Harrow case *ex parte M* (1997). The gist of the case was that once a need has been identified in a child's statement of special educational needs regardless of what that need is, it is the local education authority's responsibility to provide for that need. The case concerned physiotherapy and speech and language therapy for a particular child with cerebral palsy.