**South of England Principal Educational Psychologists (SOEPEP)**

**Cross Border Agreement between South of England Educational Psychology Services**

A Core function of SOEPEP is to maintain cross-border and inter-authority co-operation (ref 2.12).

This document sets out the legal position and the respective responsibilities of local authorities (LAs). It is based on the Children and Families Act 2014 and the Special Educational Needs and Disability Code of Practice: 0-25 years: January 2015 which took effect from 1 April 2015 and is referred to throughout as “the Code”. The statutory requirements for those in youth custody took effect in April 2015.

There are situations which may not be covered by this document or where interpretation differs with regard to individual cases. When this occurs all Principal Educational Psychologists will take the needs of the Child/Young person as the paramount consideration when agreeing cross border decisions. Principal Educational Psychologists use the British Psychological Societies Code of Ethics & Conduct; and the BPS DECP Ethical Trading Guidelines for Practice for Educational Psychologists (2nd Edition: December 2018) & BPS DECP Guide for Commissioners of EP Services (2018), in order to support them with these decisions.

There are different arrangements for each LA in terms of how Educational Psychology Services (EPS) are funded and deployed and what the LA funds or commissions EPSs to do. Some EPSs are funded for all work by the revenue grant; others are funded by the Dedicated Schools Grant; others have a proportion of both. Some services are totally traded; some are partially traded; some do not trade at all. This means that the way the LA uses their EPS differs in terms of what constitutes a core and traded offer.

Primary principles:

* It is important that the child or young person remains at the centre of the process;
* Primarily the most sensible service to be involved with an individual student is the service who may best know the person and the surrounding environmental aspects of relevance;
* A local authority should be in control of its own spending mechanisms, costs, funding arrangements, local offers and so on.

Resulting factors:

* When a child is educated across the border from where he or she lives, all support work prior to statutory work (EHC needs assessment) should be completed by the school based local authority;
* Statutory work, which is defined as writing the psychological advice for the EHC needs assessment and re-assessment work around advising the home local authority in circumstances where needs have changed significantly or the provision is no longer able to meet the needs of said young person, should be completed by the home based local authority services or those commissioned by that service;
* When there are concerns or a request for a consultation raised by a school, but there is no prima facie evidence that the placement is at serious risk of breaking down, and the child already has a statutory EHC plan the school based service should become involved through their traded strand.

Other points of relevance:

* The local offer may or may not affect the funding arrangements around any given circumstance, but funding arrangements and local offers should not affect the principles of who should be involved as outlined above
* In specific circumstances, particularly in relation to the first two points of principle, specific individual arrangements may be appropriate to adopt. In these circumstances it will be appropriate for the relevant Principal Educational Psychologists to consider the circumstances and agree the most appropriate way forward. Such arrangements would be expected to relate to single cases and to be negotiated individually as and when appropriate. They should not compromise the principles or the usual cross border arrangement agreement.

**Legal Position: SEN General Responsibilities**

S24 of Children and Families Act 2014 sets out when an LA is responsible for a child or young person “if he or she is in the authority’s area and has been identified by the LA as someone who has or may have a SEN or has been brought to the LA’s attention by any person as someone who may have a SEN.  For children in early years or mainstream school the code clarifies that “Every school is required to identify and address the SEN of the pupils that they support. Mainstream schools, which in this chapter includes maintained schools and academies that are not special schools, maintained nursery schools, 16 to19 academies, alternative provision academies and Pupil Referral Units (PRUs)..” [ref 6.2]. Later at para 6.63 ... Where, despite the school having taken relevant and purposeful action to identify, assess and meet the SEN of the child or young person, the child or young person has not made expected progress, the school or parents should consider requesting an Education, Health and Care needs assessment (see Chapter 9). To inform its decision the local authority will expect to see evidence of the action taken by the school as part of SEN support.

Initial support is to be provided by the school and via the school’s budget and EP services would support schools in their LA and not “pupils” from that LA wherever they attend school.

When a child attends a school in area 1 but resides in area 2, the school would request a needs assessment to area 2, as the home authority.  This is based on section 24 and is clarified in the code “a reference to ‘a local authority’ means the home local authority i.e. where the child is ‘ordinarily resident’ “[par 10.62]

This deals with the situation up to the point of the issue of an EHC Plan.

**EHC Plans**

If an EHC Plan is issued, the responsible LA is the home LA and therefore the EP service of the home LA would have to provide a service to the child in whatever school they are attending. The core offer would be subject to that policy of the home LA regarding entitlements.

Reg 4 of The Education (Areas to which Pupils and Students Belong)(Amendment)(England) Regulations 2009 referred to as the Belonging Regulations do not apply for the purposes of determining which authority area a child is in for the purposes of s321(3) EA199.   This is also the case for S24 C&F Act2014 – see below.

When there are concerns or a request for EP involvement by a school, but there is no prima facie evidence that the placement is at serious risk of breaking down, and the child already has a statutory EHC plan the school based service should become involved through their non-statutory [core or traded] strand.

**Children and young people educated out of area**

10.26 Where a child or young person being educated out of the local authority’s area is brought to the local authority’s attention as potentially having SEN, the home local authority (where the child normally lives) should decide whether to assess the child or young person and decide whether an EHC plan is required.

10.27 Where a child or young person being educated out of area has an EHC plan, the home local authority must ensure that the special educational provision set out in the plan is being made. They must review the EHC plan annually. Local authorities can make reciprocal arrangements to carry out these duties on each other’s behalf.

10.28 If the child or young person is placed by a local authority at an independent special school, non-maintained special school or independent specialist provider, the local authority must pay the appropriate costs.

10.29 If it is a residential placement, so far as reasonably practicable, those placing the child or young person should try to secure a placement that is near to the child’s home. However, in making this decision they must have regard for the views, wishes and feelings of the child or young person and their families about the placement.

Where the local authority names a residential provision at some distance from the family’s home the local authority must provide reasonable transport or travel assistance. The latter might be reimbursement of public transport costs, petrol costs or provision of a travel pass.

**Children in Specific Circumstances**

**Children in Care**

As set out above the Belonging Regulations DO NOT APPLY, therefore the home LA will be responsible for children in their area with an SEN.

Code, para 10.8 A significant proportion of looked after children live with foster carers or in a children’s home and attend schools in a different local authority area to the local authority that looks after them. Local authorities who place looked after children in another authority need to be aware of that authority’s Local Offer if the children have SEN. Where an assessment for an EHC plan has been triggered, the authority that carries out the assessment is determined by Section 24 of the Children and Families Act 2014. This means that the assessment must be carried out by the authority where the child lives (i.e. is ordinarily resident), which may not be the same as the authority that looks after the child. If a disagreement arises, the authority that looks after the child, will act as the ‘corporate parent’ in any disagreement resolution, as described in Chapter 11.

For the purposes of the legislation, a child in care includes a child who is placed in a secure unit under section 25 Children Act 1989.

Child in care – the EHC needs assessment is the responsibility of the LA where the child is ordinarily resident, not necessarily the LA looking after them.

Child in care has a plan and moves into the area – new LA is responsible for maintaining the plan.

**Children in Custody – who have been sentenced**

There are separate provisions for those in custody, set out in chapter 10 of the code.

The responsibility for those detained in custody is as follows, for those “with an EHC plan this is the local authority which maintained their EHC plan when they were in the community”. Also when needs are identified for those in custody a request for an assessment of post-detention EHC needs must be made to the home local authority, meaning where the detained person is “ordinarily resident’” prior to going into custody [10.62].

For the LA where the secure unit exists, this will require checks to determine where the person resided prior to the secure order (Children Act) or by the criminal courts.  If they were not ordinarily resident in that LA prior to being detained, that LAs core offer would not apply to them, but regardless of the order which places them in custody, it would be the place they were living in [that LA] is responsible and that LA could act on behalf of the home authority if requested.

If that LA was responsible for an EHC Plan prior to detention, then para 10.66 of the code applies and the LA must not cease the plan but keep it while the person is detained and review it as soon as possible on release (see paragraph 10.136).  There are also requirements in the Code for considering whether a person requires a post-detention EHC needs assessment to look at needs once the sentence has concluded.  Further, “If a detained person has an EHC plan before being detained (or one is completed while the detained person is in the relevant youth accommodation) the local authority must arrange appropriate special educational provision for the detained person while he or she is detained (see paragraphs 10.123 to 10.127). This would be the LA where the person lived prior to detention.

For completeness, the code also gives advice about what to do when a young person is **Moving to a new local authority on release –see from** 10.139 if the person is moving to the LA where the secure unit is, then that LA would become responsible, so there would be a “core” role for EPs, as with any young person moving to the area upon release.

**Children Remanded**

This applies to those under 18 years.

In 2012 the law changed so that any young person remanded to relevant youth accommodation: The Legal Aid, Sentencing and Punishment of Offenders Act 2012.  The Ministry of Justice Consultation Paper (<https://consult.justice.gov.uk/digital-communications/remand-funding/supporting_documents/remandfunding.pdf>)

The definition of A remand to youth detention accommodation is a secure remand and may be to an under-18 young offender institution, secure children’s home or secure training centre.  This is also set out in Section 102 LA, S&PO Act 2012.

A child is on remand, when they have been detained, while they await trial or sentence, so would normally be for a short period, and can only occur if the child is charged with a serious offence, there is a risk to the public or the child or to prevent the commission of further imprisonable offences (s99 LA, S&PO Act).

This remand will have the effect of the child being looked after and the rules re looked after children will apply – namely that if an EHC needs assessment is required then the responsible authority is the LA where the child lived prior to the remand, in those cases, this will also be the LA that is looking after them.

**All Custody Cases**

For those who entered custody with an EHC plan or where one is finalised when they are in custody it is the LA where they were ordinarily resident before entering custody that must arrange the special educational provision & keep the plan, working with the youth accommodation, the plan cannot be amended and must be monitored [para 10.121 to 10.133].

The Code deals with preparing EHC plans for a detained person in custody and includes a specific section on the EHC Plan headings – para 10.103, the preparation of the plan places a key emphasis on co-operation with the Youth Offending Service. There is no power to adjust the statutory timescales but via the Special Education Needs and Disability (Detained Persons) Regulations 2015 [link to Regulations:- <http://www.legislation.gov.uk/uksi/2015/62/contents/made>] there is an ability to satisfy certain steps to allow flexibility; and EHC plans to be reviewed upon release [code para 10.134].

**Adults**

Note that the SEN provision under the Children and Families Act no longer apply when a detained person moves to an adult prison.  However a person may be entitled to an EHC plan if under 25 and intending to stay in education upon release.  [10.148]

**Table 1 Usual Cross Border Arrangement for EPs**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Pupil resident in LA1 and attends LA1 school  | Pupil resident in LA2, attends LA1 school  | Pupil resident in LA1, attends LA2 school  | Pupil resident in LA2, attends LA2 school  |
| Non-statutory:core and traded offers are relevant here | LA1 EP | LA1 EP  | LA2 EP | LA2 EP  |
| Statutory | LA1 EP | LA2 EP | LA1 EP | LA2 EP |

**Table 2 Cross Border LA arrangements for Children in Care**

In contrast to these usual arrangements for all pupils, the Belonging Regulations for looked after children make the LA where the pupil lives responsible to agreeing to assess and undertaking an EHC needs assessment.

 (The originating LA has continuing responsibility to fund the arrangements made to support the pupil’s EHC plan)

It is suggested that statutory duties associated with reviews and psychological advice be carried out by the EP from LA1 in consultation with EP from LA2 not solely by EP from LA2.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | LAC Pupil LA1 resident in LA1 and attends LA1 school  | LAC Pupil LA1 resident in LA2, attends LA1 school  | LAC Pupil LA1 resident in LA1, attends LA2 school  | LAC Pupil LA1 resident in LA2, attends LA2 school  | LAC Pupil LA1 resident in LA2, attends schools in LA3 |
| Non-statutory:Core and traded offers are relevant here | LA1 EP | LA1 EP  | LA2 EP | LA2 EP | LA3 EP |
| Statutory | LA1 EP | LA2 EP | LA1 EP | LA2 EP | LA2 EP |