

EAST AYRSHIRE COUNCIL

CABINET – 13 JANUARY 2010

RESPONSE TO THE EDUCATION (ADDITIONAL SUPPORT FOR LEARNING) (SCOTLAND) ACTS 2004 AND 2009 : CONSULTATION ON CHANGES TO THE SUPPORTING CHILDREN'S LEARNING CODE OF PRACTICE

Report by Executive Director of Educational and Social Services

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to seek approval from Members for the Council's response to the *Supporting Children's Learning Code of Practice* arising from the new Education (Additional Support for Learning) (Scotland) Act 2009.

2. BACKGROUND

- 2.1 The Education (Additional Support for Learning) (Scotland) Act 2009 was passed by the Scottish Parliament on 20 May 2009 and received royal assent on 25 June 2009. The main provisions of the 2009 Act and the effects that it has on the Education (Additional Support for Learning) (Scotland) Act 2004 relate to the undernoted:

- Placing requests and placing request appeals
- Mediation services
- Dispute resolution
- Definition of additional support
- Contribution not recoverable under Section 23 of the Education (Scotland) Act 1980
- Assessment and examination
- Looked after children
- Pre-school children
- Advocacy services
- Published information
- Post school transitions
- Tribunal arrangements

- 2.2 The original 2004 Act placed specific statutory responsibilities on local authorities relating to children with additional support needs. The legal definition of additional support needs is:

“A specific young person has additional support needs for the purposes of this Act where, for whatever reason, the child or young person is, or is likely to be, unable without the provision of additional support to benefit from school education provided or to be provided for the child or young person.”

2.3 The key thrust of the 2004 Act was to broaden the definition of children with educational additional support needs, to include (not exhaustively) the undernoted:

- have parents with mental health/addiction problems
- have experienced bereavement
- children who are young carers
- have a learning difficulty
- have English as a second language

2.4 Based on experience and in particular comments received from parental representative groups a number of amendments were made to the 2004 Act resulting in the 2009 Act.

3. SUPPORTING CHILDREN'S LEARNING CODE OF PRACTICE

3.1 A Code of Practice was published when the 2004 Act was implemented and the consultation document is seeking views on the revised Code of Practice in respect of the amended legislation.

3.2 Guidance in the Code of Practice should read alongside other legislation and policy initiatives. In particular, *Getting it Right for Every Child* (GIRFEC) is seen as the main delivery tool for the amended legislation and Code of Practice alongside Curriculum for Excellence and Hall 4 which relates to health services.

3.3 A number of professionals across services and agencies have a duty to have regard to the Code. These include early years services, educational services; social work services; and health services.

4. RESPONSE TO THE CONSULTATION

4.1 The questions relating to the draft Code of Practice reflects the key changes in respect of the new legislation. Attached to this report is a copy of the proposed response. The response has been informed by colleagues across services and agencies who sit on the Additional Support for Learning Strategy Group. This comprises representatives from early years services, educational services, social work services and health services.

4.2 In general terms, the Code of Practice is very helpful in setting out the range of responsibilities which officers across services and agencies need to have due regard to in fulfilling specific statutory responsibilities set out in the legislation.

4.3 There are key issues which arise from the new Education (Additional Support for Learning) (Scotland) Act 2009 as they relate to public bodies, and in particular the local authority as an Education Authority and have a potential impact on resources.

The legislation continues to place a statutory responsibility on education authorities to ensure that there is adequate and efficient provision for the additional support required for each child or young person with additional support needs for whose school education they are responsible. Education authorities must make appropriate arrangements to identify and assess additional support needs and in so doing provide appropriate additional support for certain disabled children under school age (generally children under 3 years old) belonging to their area who have been brought to the attention of the authority as having additional support needs arising from their disability.

4.4 It is anticipated that there may be significant resource implications for the local authority in implementing the legislation due to the change specifically in the legislation which now:

- *Presumes that all looked after children and young people have additional support needs unless the authority determine that they do not require additional support to enable them to benefit from school education. In addition, all children who are looked after must be considered for a statutory co-ordinated support plan.*

4.5 The extended requirements in relation to the provision of information may also have resource implications. Authorities now require to publish, review and update, specified information about their policy and arrangement in relation to provision for identifying, addressing and keeping under consideration provision for each child or young person with additional support needs.

5. LEGAL IMPLICATIONS

5.1 There are no legal implications arising directly from the terms of this report. However, the consultation response, once submitted, shall be utilised by the Scottish Government to inform any amendment to the Supporting Children's Learning Code of Practice. The Council, as Education Authority, will be under a duty to have regard to this document once amended when carrying out its functions under the Education (Additional Support for Learning)(Scotland) Acts 2004 and 2009.

6. FINANCIAL IMPLICATIONS

6.1 When the Code of Practice is published in its final form, the financial implications of implementing the new legislation will be clearer.

7. COMMUNITY PLANNING IMPLICATIONS

7.1 Community Planning Partners have a key role as corporate parents.

8. RISK MANAGEMENT IMPLICATIONS

8.1 There are no risk management implications arising from the terms of this report.

9. RECOMMENDATIONS

9.1 It is recommended that Members of Cabinet:

- (i) approve the response to the consultation in respect of the supported children's learning code of practice and;
- (ii) otherwise note the contents of the report.

Graham Short
Executive Director of Educational and Social Services

KG/JP
18 December 2009

LIST OF BACKGROUND PAPERS

1. Supporting Children's Learning Code of Practice.

Members wishing further information should contact Kay Gilmour, Head of Service, Community Support, Tel (01563) 576104.

IMPLEMENTATION OFFICER: KAY GILMOUR

EAST AYRSHIRE COUNCIL**EDUCATION (ADDITIONAL SUPPORT FOR LEARNING) (SCOTLAND) ACT 2009****TRIBUNALS:**

Section	Question	Comment
Q36/37	Do you agree that the Secretary should have the discretion to accept electronic references without a signature?	The secretary should only have a discretion to accept electronic references without a signature in circumstances where he/she is satisfied that they correctly and accurately reflect the position of the person making the reference.
Q38/39	Do you agree that an appellant's representative should be able to sign a withdrawal notice to expedite the process?	If the appellant appoints a representative who is acknowledged as such by the Tribunal then it seems fair that they should be permitted to sign a withdrawal notice.

COORDINATED SUPPORT PLAN

Section	Question	Comment
Q14/15	Do you agree that authorities should be placed under a duty when writing to parents or young people about coordinated support plan matters to advise the parents or young person that where they have an outstanding placing request or placing request appeal with a potential host authority, they should notify that potential host authority that their child/they are in coordinated support plan territory.	Ownership should be on the receiving authority, upon receipt of a placing request, to contact home authority regarding whether a CSP is in place / process.
Q16/17	Do you agree that authorities should be placed under a duty when writing to parents or young people about coordinated support plan matters to advise the	Ownership should be on the receiving authority, upon receipt of a placing request, to contact home authority of any coordinated support plan action.

	parents or young person that in any future placing requests submitted by the parent or young person to another authority, the parent or young person should notify the potential host authority, of any coordinated support plan action.	
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DISPUTE RESOLUTION

Section	Question	Comment
Q3/4	Are you content with the proposal that parents and young people should send referrals for dispute resolution directly to Scottish Ministers?	We would wish to resolve disputes at a more local level in order to continue to promote and develop positive relationships with parents/carers. However, where an independent adjudicator is deemed appropriate, it is unclear what the added benefit will be to enabling parents and young people to refer directly to Scottish Ministers, as they will in turn refer back to the local authority.
Q9/10	Do you agree that where the authority have failed to provide the support contained in a co-ordinated support plan the only route of appeal should be to the Tribunal?	Current arrangements should remain, whereby dispute resolution is also an option, again in order to continue to promote and develop positive and local relationships with parents/carers.

SOURCES OF INFORMATION

Section	Question	Comment
Q3/4	Are there other organisations in addition to Enquire, the Scottish Independent Advocacy Alliance, you would like to see included in the order?	Advocacy for children and young people.

CODE OF PRACTICE

Section	Question	Comment
Q7/8	Are you generally content with the guidance contained in chapter 3?	Section 28 – would benefit from further clarification. It states that social work services belonging to another Authority is classed as “another appropriate agency” and therefore covered by the two potential exceptions. Section 28 states that social work services from the same Council are not an ‘appropriate agency’ but are covered by the Act. Clarification of what this means would be helpful.
Q21/22	Are you content with the case study grid provided in Annex C?	<ul style="list-style-type: none">• Case Study 3 – would infer that all children within residential establishments would require a CSP. This has potentially significant resourcing issues. In addition, a child or young person may be in residential care for less than 12 months.• Case Study 4 – would infer that all children receiving block speech and language therapy would require a CSP thus setting a precedent that could have significant resource implications for health• An example of a child who is in an outwith Specialist Placement/ School and receiving in-house support from therapist, where they are (1) employed by that establishment/agency and (2) when they are not employed by that establishment/agency would be helpful.

Q 27	Is there any other information you would like to see included in Chapter 5 or Annex C?	As above - an example of a child who is in an outwith Specialist Placement/School and receiving in-house support from therapist, where they are (1) employed by that establishment/agency and (2) when they are not employed by that establishment/agency would be helpful.
Q 28	Is there anything contained in chapter 5 or Annex C that you think should be removed?	Yes – Case Study 4 should be removed depending on response to Q 21/22 above.
Q55	Is there any other information you would like to see included in Annex B?	Yes – does the CSP template have to be in the format presented? For example should it not be in line with GIRFEC/IAF?