

EAST AYRSHIRE COUNCIL

EDUCATION COMMITTEE – 31 JANUARY 2006

RECORDS OF NEEDS AND APPEALS

Report by Executive Director of Educational and Social Services

1. PURPOSE

- 1.1** To inform Members of the latest developments in relation to Records of Needs and appeals procedures and to seek approval for certain changes in arrangements resulting from these changes.

2. BACKGROUND

- 2.1** Members will recall that at its meeting of 08 November the Education Committee considered a report giving an update on progress towards implementing the Education (Additional Support for Learning)(Scotland) Act 2004. That report gave information about aspects of the arrangements necessary to phase out Records of Need and introduce Co-ordinated Support Plans (CSP). Not all children and young people who presently have a Record of Need will necessarily qualify for a CSP. Committee requested a further report relating to procedures as they relate to the Appeals Committee.
- 2.2** Since that report, the Authority has now received detailed guidance from the Scottish Executive in the form of SEED Circular 5/2005, a copy of which is in the Members' Information Point.

3. FURTHER INFORMATION ON TRANSITIONAL ARRANGEMENTS

- 3.1** Beyond the general conditions described in the Committee report of 08 November 2005, the Transitional and Savings Provision Order 2005 has been approved by the Scottish Ministers. This deals principally with appeals under certain scenarios following commencement of the Act:
- 3.2** The Order also establishes a time limit of 60 days from the commencement date of the Act for appeals to be lodged with the authority's Appeals Committee. In practice this means that the time limit expired on 13 January 2006. At that time there were no outstanding appeals, and therefore the requirement for the Appeals Committee to exercise a function in relation to Records of Need has ceased.

- 3.3** This means that all future disagreements in relation to additional support for children's learning will be handled under the new arrangements of the national code of practice - mediation, dispute resolution and the additional support needs tribunal. However, with there is the exception of placing requests which are considered in section 4.2 and 4.3 below.
- 3.4** Records of Needs require to be retained until 13 November 2010 and stored under secure arrangements preserving their confidentiality. The Authority will therefore require to allow for this requirement in terms of long term storage.
- 3.5** Regulations have been amended to allow disclosure of Records of Need to further external agencies including mediators, external adjudicators and the additional support needs tribunal.

4. OTHER CHANGES

- 4.1** The requirement to publish information on provision through school handbooks will also change to reflect the new legislation. The Scottish Executive has not yet issued amended regulations updating this aspect of Schedules 1 and 2 of the Schedule to the Education (School and Placing Information) (Scotland) Amendment Etc Regulations 1993. Such an update is anticipated before December 2006.
- 4.2** Appeals Committees will continue to have a role in relation to placing requests. The 60 day rule therefore does not apply to appeals for children with a record of needs who have appealed a placing request decision before commencement of the Act. A further detailed report will be submitted to Committee in relation to the authority's arrangements for placing requests caused by legal changes.
- 4.3** The placing request appeals system for children without a co-ordinated support plan, or for whom no assessment for a CSP has taken place remains unchanged. However, in cases where the authority has refused a placing request and there either is a CSP in place, or there has been an assessment for a CSP but one has not yet been prepared, or the Authority has decided that no CSP is required, then the case is automatically referred to the ASN tribunal.

The Tribunal will then consider the appeal about the CSP, and will then make a determination specific to the circumstances of the child:

- a CSP is not required the placing request is returned to the Appeals Committee for determination; or

- a CSP is required but not yet prepared, the Tribunal may direct that the authority agree the placing request and amend the CSP appropriately; or
- a CSP is required but not yet prepared, the Tribunal may confirm the Authority's decision and this becomes detailed in the CSP; or
- a CSP is prepared and not discontinued, the Tribunal may direct that the authority agree the placing request and amend the CSP appropriately; or
- a CSP is prepared and not discontinued, the Tribunal may confirm the Authority's decision and this becomes detailed in the CSP; or

Where a case is referred by the Tribunal back to the Appeals Committee it will be handled like a conventional placing request. However, if 12 months have elapsed since the Tribunal decision, then a new appeal, including another reference to the Tribunal would be competent.

5. POLICY/LEGAL IMPLICATIONS

- 5.1** The changes described here in relation to Records of Needs and the handling of placing request appeals will require appropriate changes to the scheme of delegation and terms of reference of the Appeals Committee. Specifically, in relation to paragraph 5.1(b) in the Scheme of Delegation that the section:

“The Appeals Sub-Committee is authorised to consider and dispose of cases relating to children with special educational needs within the terms of the Education(Scotland) Act, 1980 and in accordance with subsequent guidance issued by the Scottish Ministers and as described in the report to Education Committee on December 1999.”

should be deleted, and in its place substituted:

“The Appeals Committee is authorised to consider and dispose of cases relating to children and young people in cases where the authority has refused a placing request and there is no Co-ordinated Support Plan (CSP) in place, or for whom no CSP assessment has occurred.

In places where the Authority has refused a placing request and there either is a CSP in place, or there has been an assessment for a CSP but one has not yet been prepared, or the Authority has decided that no CSP is required, then the matter will be automatically referred to the Additional Support Needs Tribunal and will be administered in accordance with Section 18 and Schedule 2 of the Education(Additional Support for Learning)(Scotland)Act 2004 and any subsequent regulations and guidance issued by the Scottish Ministers.”

6. COMMUNITY PLANNING IMPLICATIONS

6.1 Nil

7. FINANCIAL IMPLICATIONS

7.1 Nil.

8. RECOMMENDATIONS

It is recommended that Members :

- (i) approve the change to the Scheme of Delegation described in paragraph 5.1 of this report; and
- (ii) note the changes to the arrangements for Appeal Committee proceedings that will apply to placing requests for children where issues of Co-ordinated Support Planning are in dispute; and otherwise note the contents of this report

John Mulgrew
Executive Director of Educational and Social Services
GRS/GRS
26 January 2006

Members requiring further information should contact Graham Short, Head of Service: Quality Improvement, (01563-576089).

LIST OF BACKGROUND PAPERS

- 1.** SEED Circular 5/2005: Education (Additional Support for Learning)(Scotland) Act 2004
- 2.** Education Committee, 08 November 2005

Implementation Officer: Graham Short