

EAST AYRSHIRE COUNCIL

EDUCATION COMMITTEE – 04 FEBRUARY 2004

EDUCATION (ADDITIONAL SUPPORT FOR LEARNING)(SCOTLAND) BILL

Report by Director of Educational and Social Services

1. PURPOSE

- 1.1 To advise Members of the results of a consultation exercise on the Education (Additional Support for learning)(Scotland) Bill.

2. BACKGROUND

- 2.1 The Education (Additional Support for learning)(Scotland) Bill was laid before the Scottish Parliament on 28 October 2003. This followed an initial and comprehensive consultation exercise in January 2003. The documentation issued by the Scottish Executive appears to leave scope for interested parties to relay their views on this draft legislation and therefore to influence the shape of the final legislation. A number of interested bodies have taken advantage of this facility and there are already a wide range of consultative responses circulating.

- 2.2 A copy of the new Bill is available in the Members' information point. A copy of the CoSLA response which is one of the most substantial and detailed commentaries is also available alongside the Bill.

- 2.3 The present legal background to this area of provision is contained in the Education (Scotland) Act 1980 as amended mainly by the Education(Scotland) Act 1981. There are extensive regulations flowing from this legislation which lay down stringent conditions on education authorities on how the requirements of children with special educational needs will be met. Although this system works effectively it is cumbersome and expensive to operate and there is general agreement that it is time to overall this 20 year old legislation.

3. THE PROPOSALS

A summary handout of the Bill provided by the Scottish Executive is available in the Members' Information Point. The key features of the Bill are:

- a move from the term "special educational needs" to a much wider and more encompassing term "additional support needs"
- new duties on education authorities and others
- more rights for parents

- new independent mediation services for all parents of children with additional support needs
- a new dispute resolution service for parents, in addition to mediation
- a new Code of Practice which will set out how the new system will operate
- better planning and preparation for transition to post school life
- removing the current Record of Needs and replacing it with the new Co-ordinated Support Plan for those who need it
- new independent family-friendly Tribunals to hear appeals on a range of issues related to Co-ordinated Support Plans.

4. CONSULTATION

4.1 A small working group was convened to collate a draft response. This group consisted of representatives from Psychological Services, the Quality Improvement Team, Network Support, Youth Strategy, Hearing Impairment Service and Educational Audiology. Workshops were also held with the Special Educational Needs Parents' Forum in Kilmarnock and Cumnock. This draft response was then circulated to representative parents for further comment. A draft was also sent to schools to obtain comments from teachers and young people. One of the parental respondents expressed concern at the overall time available for consultation on the Bill. She quite correctly pointed out that the timescales involved were rushed and did not allow time for sufficient consultation.

4.2 It would be fair to say that the Bill has generated much interest nationally. Not all groups have welcomed the Bill. Some groups representing parents have been strong in their opposition to some of its terms. These concerns tend to flow from the perceptions of the protection of children's rights provided by the Record of Needs. Significantly in two very detailed responses from East Ayrshire parents there were very major concerns expressed on the impact of the Bill on real inclusion of all children, and possibility of the creation of a two-tier system. As one parent put it "*Why can all children not have a personal learning plan?*"

5. RESULTS OF THE CONSULTATION

5.1 There was endorsement of the terms and detail of the CoSLA response. However it was felt that a number of points were worthy of emphasis.

5.2 It is acknowledged that the present legislation is dated. Much has been learned about making provision for special educational needs over the last 20 years. However, it is now time to make use of that knowledge and further develop provision. The reasons for the Bill are therefore accepted. However, there is also considerable merit in the argument presented by organisations such as the Equity Group that the Bill is a lost opportunity to

totally revise and modernise the educational legislation in order to better secure the ideals of inclusion. There is no doubt that educational law is becoming much more complex being subject to a series of separate statutes and that a new specific Act focused on one large, but minority, group may not be helpful. Equally, there is an opportunity to look at the needs of all children and families and to codify the present provisions while pruning out the time-expired aspects of the law. It is therefore very difficult to disagree with the view of one East Ayrshire parent who stated:

“Whether we agree with the Bill or not. Changes will be required. I think we should learn from our successes and failures in the past and continue to improve services following examples of good practice.”

Another stated:

“My views echo that of the Equity Group; yes the current legislation definitely needs updated, but this hasn’t been thought through and thoroughly consulted on.....It is most definitely a lost opportunity.”

- 5.3** While there is no opposition in principle to the idea of a co-ordinate support plan (CSP) there are concerns over how it may be implemented. There are no accredited examples of CSPs in circulation and therefore the concept of the CSP has, at present, no real clarity. It is therefore very difficult to positively endorse the concept. Significant concerns exist that the CSP will resemble the Statement of Needs found south of the Border. Such a specific document would carry, amongst other things, significant implications for resource allocations. Agreement with this part of the Bill therefore requires much more specific and clear information than presently exists.
- 5.4** The Bill establishes a number of categories of children who might be labelled as having “additional support needs”. However, it fails to do this with any clarity. For this reason there are two views on whether fewer or more children will be covered by this legislation. While the definition of children with special educational needs was never particularly clear, there is a need under this new law to have clarity. This will ensure a consistency of provision both within and between education authorities. There needs therefore to be clear and established criteria for what is meant by “additional support needs”.
- 5.5** The Bill announces the intention to introduce a Code of Practice rather than to issue guidance on implementation. This may be very helpful. However, it is likely that the development of the Code will be extremely time consuming. There is a need to exercise vigilance to ensure that the development of the Code moves in phase with the actual implementation of the legislation.

- 5.6** Under the present system there are delays in the assessment process due to the time that it sometimes takes other agencies and parents to fulfil their part of the process. As presently framed the Bill is not clear on the duties of other agencies in assessment. There is considerable scope to improve this clarity of duty to benefit children.
- 5.7** Similarly there needs to be greater clarity on the duties of other agencies to actually make provision of services once the assessment process is complete.
- 5.8** Consistent with the existing practice in East Ayrshire the publication of better information for parents and young people is very welcome. The requirement on Authorities to publish a policy and a description of the various services can only be a positive development. It is believed that this same duty should also be placed on other agencies such as health services.
- 5.9** There is scope to strengthen the provisions in relation to future needs. This has always been an area where service provision has been much less clearly defined than in the school sector. Bridging the transition to adult life and future provision is arguably the most important stage of the whole process. It is clearly important that the best elements of the present system should be retained, including assessment. However, there also needs to be a much stronger position on post school provision.
- 5.10** The concept of mediation is welcome. However, there requires to be further thought on how this will relate to anticipated provisions such as dispute resolution and the Tribunal. Clearly such provision should be free of charge to parents and young people, but is any resulting costs (presently estimated at upto £800 cash per case plus associated costs should be covered by additional resources to authorities). The aim of everyone should always be to resolve disagreements before any formal procedures are necessary. One parent provided the response of the National Autistic Society who take the view that mediation should be entirely independent of education authorities, and is difficult to disagree with this.
- 5.11** There should be much further thought on the matter of the introduction of Tribunals. Clarity of procedures needs to be in place from the start. In particular the criteria for a case being taken to a Tribunal. It should be essential that all other available avenues have been exhausted before a Tribunal is contemplated. Tribunals should not result in the growth of a new national bureaucracy, nor it should it impose additional burdens on authorities that will divert resources away from provision of services to children. There is a case for the findings of a Tribunal to be binding on

parents as well as authorities. Parents should not be faced with additional costs through taking a case to a Tribunal. Whatever system is produced it should be recognised that disputes between parents and authorities are very few and far between. We must be guarded about introducing a measure that will result in an adversarial approach to resolving matters rather than one founded on positive partnership.

As one East Ayrshire parent put it:

“I think it is only fair that parents have the right to resolve disputes at tribunal but it must be emphasised that a tribunal is a last resort. I worry that the partnerships that have been encouraged between parents and education authorities might suffer because of the pressures that a tribunal system could bring. We must build on these partnerships to create equal opportunities for all children.”

The view of the national Autistic Society is endorsed that the findings of a Tribunal should be binding on other agencies as well as education authorities.

- 5.12** A new role of “co-ordinator” is introduced who can be outwith the education service. There needs to be further clarity on the roles and duties of this position. There may be resource implications and there will most certainly be implications for current staffing and employment issues.

6. FINANCIAL IMPLICATIONS

- 6.1** The possible financial implications of this change in the law are not to be underestimated. It is possible that the following aspects of the Bill will result in additional costs:

- provision of mediation services free to parents at £600-£800 per case
- participation in and preparation for tribunals
- participation in and preparation for dispute resolution
- processing of increased numbers of CSPs relative to Records of Needs
- resource identification in CSPs
- time for additional support needs co-ordinators
- preparation of and publication of publicity and information leaflets
- costs associated with dismantling Record of Needs system and construction of the replacement CSP system

- 6.2** It is not possible at this stage to quantify these costs, nor to assess by how much expenditure can be off-set against savings in the Record of Needs system. There is potential for considerable additional expenditure arising as a direct result and indirectly from the proposed changes.

7. POLICY/LEGAL IMPLICATIONS

Nil

8. RECOMMENDATIONS

It is recommended that Members :

- (i) approve this report as a response to the Education (Additional Support Needs)(Scotland) Bill;
- (ii) request that the Director of Educational and Social Services write to the Scottish Executive seeking reassurance that additional costs arising from implementation will be supported by national financial allocations; and
- (iii) otherwise note the contents of this report

John Mulgrew
Director of Educational and Social Services

GRS/GRS

30 January 2004

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

LIST OF BACKGROUND PAPERS

1. The Education (Additional Support Needs)(Scotland) Bill;
2. Summary Handout on the Additional Support for Learning Bill (available in Members' Information Point)

Implementation Officer: Graham Short