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# 1

## How the SEN Framework changed

### Chapter overview

This chapter traces the background to the changes that started to be implemented from September 2014, in line with the 2014 and 2015 SENDs Codes of Practice. It outlines how SEN has evolved since the time of Warnock and the 1981 Education Act.

It explains how the Codes themselves have changed from the five-stage model of the first code, to the four-stage model of the code that was in existence from 2001 to August 2014.

It states why a change to the SEN Framework which necessitated a new SEND Code of Practice was thought to be necessary and what the changes hoped to achieve.

### The background

The year 2014 was a landmark in the lives of young people who have special educational needs or disabilities (SEND) and their families, as it heralded the most comprehensive overhaul of the system for over 30 years. The change in the way the special needs system operates was a result of the Children and Families Act (2014), which meant that a new SEND Code of Practice needed to be written and implemented from September 2014. To understand the significance of a change that has been described as the biggest shake-up of the system for over 30 years, it may be helpful to start with a reminder of the SEN Framework that had been in place since the 1980s.

## How the previous system arose

A few years after the Education Act of 1970, which brought all children into the education system for the first time, Mary Warnock (who later became Baroness Warnock), was invited by the government of the day to chair a committee to look into the education that ‘handicapped’ children (as they were described at the time) were receiving. Subsequently, the *Report of the Committee of Enquiry into the Education of Handicapped Children and Young People* (DES, 1978) was published. It was the work of this committee that resulted in the term ‘handicapped’ being replaced by ‘special educational needs’.

The Warnock Committee’s use of the term ‘SEN’ was partly to move away from concentrating too heavily on placing a child with a handicap in a category of need, (‘educationally subnormal’ and ‘maladjusted’ were two of the terms used at the time), rather than seeing each child as an individual who has individual needs. Secondly, the term SEN was used to encompass a much wider range of pupils who, although their needs may be less significant, still benefit from support to overcome any barriers to learning.

The Report resulted in the Education Act of 1981, which is remembered largely for setting out the statementing procedures that remained in place until statements were replaced by Education, Health and Care Plans (EHC Plans) from September 2014. This was a well-intentioned move to safeguard the provision for the 2% or so of pupils with the most complex needs. The downside was that it did little to take on board the needs of the 18% identified by Warnock as having less complex special needs, but still requiring some support.

## The first SEN Code of Practice

However, the needs of the whole SEN continuum were addressed in the first version of the SEN Code of Practice which was published in 1994 (*Code of Practice on the Identification and Assessment of Special Educational Needs* (DfE, 1994)). This set out a five-stage model:

**Stage 1** Following initial concerns by a teacher, parent, or professional from health or social services, the child should be placed on an SEN register and receive support within the classroom.

**Stage 2** If insufficient progress is being made, the special educational needs co-ordinator (SENCO) should be involved and an Individual Education Plan (IEP) drawn up.

**Stage 3** Where there is still a lack of progress, the Local Education Authority (LEA) should be informed and Support Services consulted, who help to draw up a new IEP.

**Stage 4** If the concerns continue, the pupil should be considered for a formal assessment, which the LEA carries out if it is felt that the child might need a statement.

**Stage 5** If, following the formal assessment, the LEA decides that it needs to determine the special educational provision the child needs, a statement of special educational needs will be drawn up.

The Code also outlined the role of the SENCO and assumed that this would be 'a designated teacher' (paragraph 2.14). When the Code was updated in 2001, it was suggested that the role should be viewed as equivalent to a literacy or numeracy co-ordinator in a primary school, or a head of department or head of year in a secondary school.

## A change of century and a second code of practice

The turn of the century saw two significant events: the 2001 Special Educational Needs and Disability Act (sometimes referred to as 'SENDA') and, in the same year, *Special Educational Needs: Code of Practice* (DfES, 2001b), which was an updated version of the 1994 Code. After the Act, 'SEN' was replaced increasingly by 'SEN and disability' or SEND. However the overlap between SEN and disability has never been clearly defined, so both SEN and SEND continue to be used.

The 2001 Code of Practice described children's needs under four broad headings:

1. Communication and interaction
2. Cognition and learning
3. Behaviour, emotional and social development (BESD)
4. Physical or sensory impairment.

As mentioned previously, three of these have been retained in the current Code, with BESD being replaced by 'Social, emotional and mental health difficulties'. The reasons behind this change are given in Chapter 3 of this book and comments on the change from BESD to SEMH appear as part of the case studies in Parts 2 and 3.

The Code also reduced the graduated response from five to four stages, although the terminology of stages was no longer used. Putting pupils on an SEN register was no longer seen as a necessary first step, although many schools continued to have a register. Stages two and three became School Action and School Action Plus:

**School Action** A child is put on this level if s/he is making inadequate progress and needs interventions that are additional to, or different from, those provided as part of a differentiated curriculum. These could be recorded in a Group Education Plan rather than an IEP, if a group of children needed similar support.

**School Action Plus** The child is moved on to this next stage if progress is still insufficient and the school feels the need to call on outside agencies for further advice and support.

The final two stages of Statutory Assessment and Statementing remained as before.

## Developments between 2002 and 2010

Although there was no major review of the SEN Framework between the Warnock Report and the build-up to the Children and Families Act 2014, there were many developments affecting children and young people with special needs and those who support them.

In 2003, Cathy Ashton (now Baroness Ashton), who was the Minister for SEN at the time, established a special schools working group (see The Report of the Special Schools Working Group 2003) to consider their future role. This fed into the Labour government's *Removing Barriers to Achievement: The Government's Strategy for SEN* (DfES, 2004). It suggested that special schools might educate fewer children, as teachers in mainstream schools became more used to educating pupils with a wider range of needs. Yet, when Andrew Adonis (Lord Adonis), who, by then, was Minister for SEN, was asked by the Education and Skills Committee a couple of years later (see Special Educational Needs, Vol 3 2005/ 06) whether this was still the case, he replied that the government wanted to support having 'a flexible range of provision' and would be content for special school places to remain at their current level. Subsequently, the Department produced *Planning and Developing Special Educational Provision: A Guide for Local Authorities and Other Proposers* (DCSF, 2007) setting out what a continuum of provision should cover.

Although there were no major changes to the overall framework, the significance of the role of SENCOs was increasingly recognised, first by legislation in 2008 requiring them to be qualified teachers and secondly, by introducing a mandatory qualification for them.

### Key point: SENCOs' qualifications

- 2008 Legislation was introduced stating that anyone taking on the role of SENCO must be a qualified teacher.
- 2009 From this date, it became law for every new SENCO to gain the Masters-level National Award for SEN Co-ordination within 3 years of taking up the post.
- 2014 In line with the *SEND Code of Practice: 0 to 25 Years*, from 1 September, revised learning outcomes for the Award replaced the previous ones. (See National College for Teaching and Leadership (2014) *National Award for SEN Co-ordination: Learning Outcomes*.)

Towards the end of the Labour government's 10 years in office, the profile of SEN gathered momentum and a series of reports were issued into

different types and aspects of SEN. Significant among these, in terms of their influence on the coming changes, were the *Lamb Inquiry: Special Educational Needs and Parental Confidence* (DCSF, 2009) and Ofsted's *The Special Educational Needs and Disability Review: A Statement is not Enough* (Ofsted, 2010).

In the foreword to Brian Lamb's Inquiry, he said that, in gathering the views of parents, he had 'met some of the happiest parents in the country and some of the angriest'. He summed up the four areas where change was most needed as:

1. Putting outcomes for children at the heart of the system
2. Giving parents a stronger voice
3. Focusing on children's needs and not waiting for them to fail before providing the help they need
4. Strengthening the voice of children.

All these comments are reflected in the changes to the SEN Framework.

The Ofsted Review 2010 criticised schools for the over-identification of SEND. Whether or not it is a coincidence or partly as a result of Ofsted's comments, the number of pupils with special needs has dropped since then (see Chapter 5 of this book for a fuller explanation). The review also said that: '... no one model – such as special schools, full inclusion in mainstream settings, or specialist units co-located with mainstream settings – worked better than any other' (Executive summary, Ofsted, 2010: 7). This is borne out by the case studies in this book, which show effective practice across a range of very different settings.

### Questions for reflection

1. What do you think about Ofsted's comment that teachers over-identify pupils with SEN?
2. What are your reasons for agreeing or disagreeing with what the Ofsted Inspectors wrote?
3. How difficult do you think it is to identify which pupils have special needs, when SEN is a continuum, which, at the milder end, merges into the rest of the school population?

### Why change was necessary

According to the government in the Information Pack produced for school leaders in July 2014 (*A DfE Presentation Pack for School Leaders: The 0–25 Special Educational Needs and Disability Reforms* (DfE, 2014b)), change was necessary because the previous system was too complicated. It was expensive and yet it delivered poor outcomes; in other words, it did not represent value for money. Under this general statement, the following points were made:

*Parents struggle to find the services to help them and they have to tell their stories over and over again.*

The difficulty of where to find the help parents need has led to the Local Offer, where all the information can be found in one place. Education, Health and Care Plans (EHC Plans) are designed to enable parents to tell their story once and not have to retell it to different people, as professionals across all the services should be working more closely together.

*Moving from children's to adults' services can be very difficult.*

Extending the age range to 25 years and having one system for pre-16 and post-16 should make this a seamless transition.

*Despite spending over £5 billion a year on SEND provision, those with special needs are less likely to do well at GCSE and more likely to be NEETs (Not in Education, Employment or Training).*

While it may well be true that not all the money that is expended on children and young people with special needs is spent as effectively as it might be, the comment about pupils with SEND doing less well at GCSE seems a strange one. Certainly, the hope must be that the changes to the SEN Framework result in more learners reaching their potential. While it is possible to have SEND and to be sufficiently academic to move on to Higher Education, or, indeed, to have exceptional gifts, the fact remains that students with special needs will have general or specific learning difficulties, or other barriers to learning. While the right provision and education can, and does, make an enormous difference, it does not make it a level playing field. This means that there are also those who will find it difficult to get into employment and who may become NEETs, although here a greater difference could be made and there are case studies in this book showing some of the innovative ways that are being found to ensure that fewer students with special needs become NEETs.

*These issues affect a lot of people, with one in five being identified with SEND and 2.8% with more complex needs.*

The attention being given to this sizeable group of learners is to be welcomed and should result in better outcomes for them and a happier experience for them and their families.

The next chapter covers how the system is changing and looks at the work of the SEND Pathfinder authorities in piloting some of the changes. It gives further information on the cultural shift the 2015 SEND Code of Practice represents and leads into the final chapter in Part One of this book, which is devoted to an overview of the SEND Code.

## Further reading

**For additional information, you can refer to the relevant sections of the SEND Code of Practice 2015:**

SEND Code of Practice (2015): Foreword and Introduction.

DCSF (2009) *Lamb Inquiry: Special Educational Needs and Parental Confidence*. Nottingham: DCSF Publications.

DfES (2011b) *Special Educational Needs: Code of Practice*. Nottingham: DfES Publications.

Ofsted (2010) *The Special Educational Needs and Disability Review: A Statement is Not Enough*. Manchester: Ofsted Publications.

Tutt, R. (2007) *Every Child Included*. London: Paul Chapman Publishing.