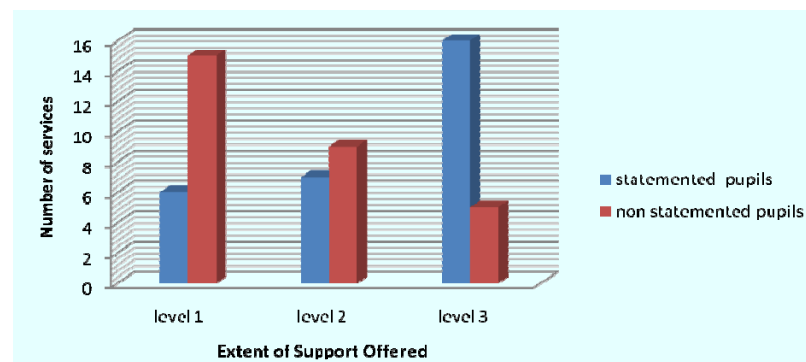


South Eastern Sensory Impairment Partnership

Sensory Advisory Services and the Independent Sector: An Overview

In the Summer of 2007, the HOSS email forum saw extensive interaction regarding practice of Sensory Services when providing support to pupils in non-maintained mainstream schools (Independent Schools). A huge variation in practice emerged, ranging from Sensory Services who provide full service, free of charge, on the same basis as to maintained schools, to Services where all support – including assessments – is charged to the Independent School

Table 1: Levels of support to pupils in Independent Schools: sample of 29 Services – data collated by Ros Kendrew



1 = no support unless this is paid for by the Independent School

2 = limited support free of charge (assessment/training/monitoring/report writing)

3 = full support free of charge as required by statement and/or as per criteria for engagement used with maintained schools

Areas of concern

When considering the Code of Practice, Education Act 1996 and SENDA 2001, Case Law;

- What is the legality of Sensory Services providing no support to pupils **with** statements of SEN, unless paid for by the Independent school?
- What is the legality of Sensory Services providing no support to pupils **without** statements, unless paid for by the Independent school?
- Differences in practices between Sensory Services

How concerns were addressed

South East Regional SEN Partnership (**SERSEN**), became South East Sensory Impairment Partnership (**SESIP**) in April 2008.

- ❖ Task group established September 2007 with representatives from Services in Local Authorities of Bromley, Greenwich, Kent, Oxfordshire, Surrey, West Sussex and the Sensory Consortium for the Unitary Authorities of Berkshire.
- ❖ Research into Education Act 1996, SENDA 2001, Code of Practice, case law and LA legal departments' interpretations of all these

The following guidelines have been put together by Heads of Sensory Services who have relied on their own Local Authority legal departments for clarification, where given, of the application of statute, case law and professional codes.

Local Authorities/Sensory Services must satisfy themselves – with reference to their own legal departments – as to the practices that should be adopted in their local area with regard to Independent Schools

Pupils with Statements of Educational Needs						
Placement	Duties	Responsibility for Fees	Provision of/funding for Specialist Teachers and or equipment	Non-educational provision	Assessment	Cross border responsibility
<p>Attending an Independent school by parental preference</p> <p>Attending an Independent school, the LA will not be able to draw down the “age weighted pupil unit” and “Directed Schools Grant”</p>	<p>General duty <u>L. Authority</u> Education Act 1996</p> <p>Ed Act 1996 S. 321 If the Independent school brings a child to the notice of the LA – this means the LA is aware – it must exercise its general duties. LA is responsible for assessing and identifying provision that should be made for the SEN</p> <p>COP 8:97 LA must be satisfied that the (Independent) school is able to make SEN provision for the child that meets their SEN before they are relieved of their duty to arrange provision in an appropriate school.</p>	<p>Parents should pay: Where the parents have chosen an Independent school and the LA has made, or is satisfied that there is, appropriate provision (‘suitable arrangements’) for the child’s SEN</p> <p>LA should fund the fees: When placed by the LA or SENDIST in the Independent provision on account of the CYP SEN <u>described in part 3 of the statement.</u></p>	<p>Education Act 1996 324(5) a) unless the child’s parents have made suitable arrangements, the authority</p> <p>(i) shall arrange that the special educational provision specified in the statement is made for the child ie this is compulsory on the LA</p> <p>The LA then has to assess whether the provision for the SEN described in part 3 of the statement can be met by the school; or if the LA still has a statutory duty to ensure those needs are met from its own resources see:- R v Hackney: A direct quote from the judgement”:- it would be absurd if the LA, having concluded that some of the child’s needs required additional provision from the resources of the LA, were obliged to meet <u>all</u> that child’s needs by that means and precluded from deciding that <u>other</u> needs could be met from resources available to the school”</p> <p>This judgement refers to the fact that the LA would only continue to be responsible for those aspects of additional SEN provision that the school <u>cannot</u> provide. Those SEN that the school <u>can</u> provide for, the LA only has a duty to arrange that the school does so provide</p> <p>Services may charge for additional specialist provision:- Where the parents have chosen an Independent school</p>	<p>Education Act 1996 324 (5) a) unless the child’s parent has made suitable arrangements, the authority</p> <p>(ii) may arrange that any non-educational provision specified in the statement is made for him in such a manner as they consider appropriate – ie not compulsory on the LA</p> <p>NB caselaw now provides that SALT is educational provision other than in exceptional circumstances</p>	<p>L A has Statutory duty to conduct assessments for statement and for the annual review of the statement</p>	<p>Education Act 1996 s.321 (3) Home LA has the general duty to assess</p>

	<p>COP 8:97 Parents should not be treated as having made suitable arrangements if the arrangements do not include a realistic possibility of funding those arrangements for a reasonable period of time.</p> <p>If the LA is satisfied it need not name the school but only the type of provision</p> <p>The LA, whether or not school is named in the statement, is under a duty to maintain the statement and review it annually</p> <p>Education Act 1996 s.437 <u>School Attendance Order</u> can be issued by LA If child's needs continue not to be met in the independent school</p>	<p>In this case the naming of the Independent school in part 4 of the statement <u>does</u> mean the LA must pay the school fees</p>	<p>and the LA has determined that appropriate provision for <u>all</u> of the SEN is available in the school. It would be wise to consider:-</p> <ul style="list-style-type: none"> - the school being able to meet all SEN is unlikely to happen due to the very nature and severity of SEN that requires statements of educational needs to be issued by the LA in the first place - It is likely that disputes could arise between the school and the LA if the LA does determine that all the SEN can be met by the Independent school's own resources <p>Following on from R v Hackney it is possible that an LA can consider arguing (as has already been successfully done once) that it is not required to make provision 'twice' where there are LA resources available elsewhere eg a Deaf/VI Unit/Base. In this case the additional provision that the school does not have, need not be provided free of charge by the LA. <i>It is up to individual LAs and their legal depts if they wish to pursue this tenuous and risky argument: it is not backed by statute or usable judicial precedent and so has no certainty of outcome.</i></p> <p>Services should make additional provision free of charge -When the Independent school is chosen by parents and provision for all or part of SEN is not available in the school (note R v Hackney) -or when placed by the LA or SENDIST in the Independent school on account of the CYP SEN described in part 3 of the statement</p>			
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Pupils Without a Statement of Educational Needs							
Placement	Duties	Fees	Specialist Teachers	Equipment	Non educational provision	Assessment	Cross border responsibility
Attending an Independent school by parental preference	<p>General duty <u>L. Authority</u> Education Act 1996</p> <p>Ed Act 1996 S. 321 If the Independent school brings a child to the notice of the LA – this means the LA is aware – it must exercise its general duties. LA is responsible for assessing and identifying any provision that should be made for the SEN</p> <p><u>Independent schools</u> fall within the provisions of SENDA 2001 but <u>not</u> the Code of Practice.</p> <p>SENDA 2001 S. 14(7) ss(8-13) apply equally to maintained and Independent schools ie the responsible body (the governors) must draw up an <u>Accessibility plan</u></p>	Met by parents	<p>Education Act 1996 s. 321(3) places a duty on LA to identify and assess SEN free of charge</p> <p>Assessment and strategies to meet SEN should be provided by LA free of charge to inform the school how to meet the child's needs.</p> <p><u>continuing support from a TOD or QTVI</u> Services should charge where LA feel this is appropriate, the Sensory services could provide the opportunity for schools to purchase support. The school is free to purchase elsewhere</p>	<p>The duty is on the Independent school to provide the equipment. Should the school decide not to provide then this would be the responsibility of the parent.</p> <p>(The equipment provided to maintained schools is from the Directed Schools Grant which does not include CYP in Independent schools)</p>	Independent school is required to ensure this provision is made.	Education Act 1996 s.321 LA has general duty to provide without charge for assessing/identifying children brought to attention who have or probably have SEN	Education Act 1996 s.321 (3) Host LA has the general duty to assess and identify free of charge

	Pre Statutory School Age and Academies
Early Years	Services provided for or funded by the home (resident) authority up until the end of the term in which the child becomes five (statutory school age)
Academies	Academies are funded for SEN as part of their direct funding from the DCSF. They have obligations to SEN children imposed on them under the Funding Agreement. They are obliged to use their best endeavours to secure that, if any pupil has SEN, the SEN provision which the pupils learning difficulty calls for is made. All provision detailed in statements should be provided and regard should be given to the Code of Practice. For the purposes of SEN legislation and admissions, Academies are deemed to be non independent and fall within the definition of a mainstream school. However Academies do not have exactly the same statutory duties for SEN children as other mainstream schools but their obligations under the Funding Agreement are clear. Education Act 1996 (amended by SENDA 2001) s316A duties apply.

These guidelines have been compiled and consulted upon, for the South East Sensory Impairment Partnership (SESIP), by Andrew Burgess: Head of Advisory Service for the Deaf and Hearing Impaired: Greenwich Council.

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