

SEND funding

Pressure on both Local Authorities (LAs) and schools to meet the increasing additional needs of pupils with SEND, means that schools are increasingly struggling to meet pupils' diverse learning needs. This article aims to identify the responsibilities in this area as described by guidance and legislation.

In April 2013, the Government introduced a new system for funding to schools, academies, early years' settings and colleges, through its School Funding Reform programme. In 2014 the DfE developed its model for funding SEN. This sees financial support for pupils with SEN as being made up of three elements:

1) Core Budget:

This is the **Age Weighted Pupil Unit Value (AWPU)**, the basic entitlement for all 5-16yr olds. The amount the school receives is based on the number of pupils attending. The AWPU value varies between phases and also between Local Authorities. There is an assumption by the DfE that this amount is the equivalent of £4,000 per pupil, but in reality, most primary schools receive between £2k-£3k. **(DfE *1)** A proportion of the AWPU is intended to be used to meet the additional needs of pupils with SEND at the school but this proportion is not defined or ring fenced so Senior Leadership Teams (SLT) can use as much or as little as they deem necessary to meet their statutory duties regarding responding to the needs of pupils with SEND.

2) Notional SEN Budget

The Dedicated Schools Grant (DSG) is allocated from the Education Funding Agency (EFA) to local authorities and comprises three parts: the schools' block, the early years' block and the high needs' block. Each LA, in consultation with its schools, decides the proportion of its schools' block it will distribute via the notional SEN budget.

In 2016/17, the **median notional SEN allocation was 8.8%** but there is a wide variation between authorities. **84% of LAs allocated between 5%-15% of the schools' block as notional SEN budget, but 5% allocated less than 5% (DfE *2)**. Individual school's notional SEN budget allocation is based on locally agreed formula that may include percentages of pupils who:

- receive free school meals,
- have English as an additional language,
- are looked after children,
- have lower attainment for English and maths,
- have high mobility.

The notional SEN budget is provided to schools to support provision that is 'additional to and different from' that made for all pupils. Schools are required to use this to fund up to **£6,000 worth of provision** for a pupil with SEN. Although the notional SEN budget enters each school as a separate funding stream, it is not ring fenced and SLTs can allocate any amount they deem appropriate to meet the needs of pupils with SEND.

3) Top up funding

The allocation to LAs for high need pupils within the DSG was based on levels of historic need and is not ring-fenced so LAs can decide to spend more or less of the total high needs' block funding than they have been allocated.

LAs use locally devised criteria to distribute additional funding to their schools and academies. The DfE state that the formula used should be devised **so that funds provide additional support for individual high needs pupils, where the cost of provision goes beyond the £6,000** but to avoid creating a perverse incentive for schools. All LAs have individual arrangements for applying for these funds and all allocations for individual LAs High Needs Funding in 2016/17 are listed in (DfE *3).

The (DfE *4) states:

Pupils and students who receive support from local authorities' high needs budgets include:

- *children aged 0 to 5 with SEND whom the local authority decides to support from its high needs budget; **some of these children may have EHC plans if identified at an early stage, but this is not a requirement,***
- *pupils aged 5 to 18 with high levels of SEND in settings which receive top-up funding from the high needs budget; **most, but not all, of these pupils will have either statements of SEN or EHC plans,***
- *those aged 19 to 25 in FE institutions who have an EHC plan,*
- *compulsory school-age pupils placed in AP by local authorities or schools.*

N.B. Academies are funded through the EFA, not through the local authority. Academies get the same level of AWPU funding for each pupil as local authority schools in the same area; their notional SEN budget is worked out in the same way and they can get top-up funding from the local authority in the same way.

Disability Access Fund

EYs settings (but not YR in schools) can apply for DAF. £615. Child must be receiving Disability Living Allowance and claiming free EYs education. LA EYs team will have info. (see also Contact a Family <http://preview.tinyurl.com/y9rvro54>)

Sample questions

- 1) *Our notional SEN budget was £8k this year. We have two pupils with Education Health and Care Plans and the LA has told us that we need to contribute £6k each to meeting their needs as described in the EHCP. We are a small school and have no spare funding – what can we do?*

Remind the LA that the amount provided for the notional SEN budget that **DfE *4 (6.2)** states; *local authorities **must ensure** schools and academies **have sufficient funding in their delegated budget** to enable them to support pupils' SEND where required up to the mandatory cost threshold of £6,000 per pupil.*

In addition, always remember **that it always the LA's duty** to meet the needs of pupils with an EHC plan and **never the schools.**

Myth: *It is the responsibility of the school to arrange the special educational provision specified in a statement.*

Fact: The legal responsibility for arranging the provision specified in a statement falls upon the Local Authority. This is an absolute obligation. If a school cannot make the provision specified in Part 3 of the statement from their own SEN budget, the Local Authority must arrange the provision.

Law: Section 324 (5) (a) (i) of the Education Act 1996 says “the authority shall arrange that the special educational provision specified in the statement is made for the child.”

NB: This is true not only for statements but also for EHC plans (Section 42 (2) of the Children and Families Act 2014). IPSEA
<http://preview.tinyurl.com/md34yz2>

IPSEA FAQ section Once special educational provision has been specified in an EHC plan, **the LA has a legal duty to provide it. This cannot be overruled by the LA’s SEN funding policy or internal funding arrangements** including banding, matrixes, or notional SEN spending levels such as £6,000 or £10,000.

Pittick Case law (IPSEA website) The principle remains that it is the LA which is obliged to arrange the provision in a statement (and secure the provision in an EHC plan) and **if the school is not able to fund the special educational provision in the statement or EHC plan from its own resources, the obligation to arrange/secure the provision remains with the LA.**

2) IPSEA for Special Needs Jungle, agony aunt section. *We have pupils with a hearing loss to whom we provide a high level of support from the sensory support service. When schools apply for an EHC plan they find it difficult to evidence where they have spent £6000 as they are not able to put our service down, as it is not a direct cost to them. Is it a legal requirement for them to have spent this amount of money in order to progress with assessment? The LA also ask that the children have a 2 year delay academically. This is not always a true reflection of the needs of the child.*

The requirement for schools **to evidence their spending of more than £6000** from their notional SEN fund **or indicating that the pupil is on the 1st or 2nd percentile** is often requested by LAs **but neither of these are required by law to apply for an EHC needs assessment.** The legal test that all LAs must apply is set out in s. 36(8) of the Children and Families Act 2014. No other test applies (and this is the only test that the SEND Tribunal will consider if the LA refuses to assess and the parent/young person appeals). The test can be summarised as two questions:

- does the child/young person have or may they have special educational needs (SEN); and
- might it be necessary for special educational provision (SEP) to be secured for these SEN under an EHC Plan?

If the answer to both these questions is “Yes” then the LA must carry out an EHC needs assessment.

3) *Our school is very successful at including children with SEND. We have a local reputation for doing so but this has led to increasing numbers of parents with children with SEND wanting their child to attend our school. However, we are anxious about being able to meet their needs as our notional SEN budget does not cover costs and the LAs criteria for applying for additional funding is very rigid. What should we do?*

Remember that the school is required to use its **best endeavours** to meet pupils with SEN needs, so you must ensure the school is doing all it can within financial restraints to respond to the barriers to learning presented by pupils. Some of these will have no cost and other costs might be mitigated using volunteers and partnerships with other schools and agencies. But: **(DfE *5)** (5.3) *If the cost of providing for a pupil with high needs is more than allocated through the core or place funding, the local authority will allocate the institution additional top-up funding to enable a pupil with high needs to participate in education and learning.*

Remind the LA that **(DfE *4)** (6.2) states: *Additional funding (from the high needs allocation) can be provided where for example, a primary school may have developed a reputation for meeting the needs of high achieving pupils with autistic spectrum disorder, or pupils with physical disabilities, and it is not possible to target additional funding to the school through the prior attainment or other factors in the local formula.*

And also, **(DfE *5)** states; *Targeted support can also be provided where there are disproportionate number of pupils with a type of SEN.... even where the costs of meeting their needs are less than the £6,000 threshold.*

Although there is often pressure placed on schools to accept responsibility for funding SEN provision, the SEND Code of Practice (2016) states: *Schools are not expected to meet the full costs of more expensive special educational provision from their core funding. They are expected to provide additional support which costs up to a nationally prescribed threshold per pupil per year (i.e. £6k). The responsible local authority, usually **the authority** where the child or young person lives, **should provide additional top-up funding where the cost of the special educational provision required to meet the needs of an individual pupil exceeds the nationally prescribed threshold.** (i.e. £6k)*

References

DfE *1 *Local authority funding proforma data 2016 to 2017* identifies the AWPU for pupils in all LAs in England. <http://preview.tinyurl.com/hsr77ru>

DfE *2 *Information on LAs' allocation to the notional SEN budgets Page 21 Schools block funding formulae 2016 to 2017* <http://preview.tinyurl.com/hsr77ru>

DfE *3 *Dedicated schools grant: How much money each LA receives for their schools' budget for the 2016 to 2017 financial year (includes high needs budget).* <http://preview.tinyurl.com/z3e49xl>

DfE *4 *High needs funding operational guide 2017-2018 (Jan 2017) Section 5:1 Definition of a High Needs pupils or Students* <http://preview.tinyurl.com/hc7wzqn>

DfE *5 *Schools revenue funding 2016 to 2017: Criteria for allocating targeted high needs funding July 2015* <http://preview.tinyurl.com/zq8pqfp>

Pittick IPSEA <http://preview.tinyurl.com/z689dur>

4) *We have a child joining our school in YR who has Type 1 diabetes. The CCG and the LA both say that since the SEND Reforms, it is now the school's responsibility to pay for the additional staff required to monitor exercise, food intake, sugar levels and inject the insulin as necessary. We are very concerned as we have no spare funding and are afraid of being unable to keep this child safe.*

Section 10 of the Children Act 2004 is a particularly important piece of legislation if schools are struggling to get the support and training they need to allow them to look after a child with a medical condition properly. Section 10 essentially means the local authority must make arrangements to promote cooperation between the authority and relevant partners with a view to improving the wellbeing of children, including their physical and mental health, protection from harm and neglect, and education. If a school cannot get the support it needs to look after a child with a medical condition, then they must approach their local authority.

Section of 17 of the Children's Act gives local authorities a general duty to safeguard and promote the welfare of children in need in their area. **If a school is looking after a child with a medical condition so poorly that the child is put in danger, the local authority must step in.**

Legal duties on the NHS Section 3 of the NHS Act 2006. **This gives Clinical Commissioning Groups (CCGs) a duty to arrange for the provision of health services to the extent the CCG considers it necessary to meet the reasonable needs of the persons for whom it's responsible. What this means is that CCGs should provide the healthcare the people in its area need, if these needs are reasonable. In relation to children with medical conditions, this means that a CCG should, within reason, make sure support and health care is in place to improve their health or at least keep them healthy.** Poor management of a medical condition at school will obviously affect the health of a child. **If a school is unable to get the support it needs to help manage a child's condition successfully then both the local authority and the local CCG have a responsibility to the child's health and welfare.**

<http://preview.tinyurl.com/k9gmz64>

Supporting pupils at school with medical conditions (Dec 2015)

Page 15 **Local authorities and clinical commissioning groups (CCGs) must make joint commissioning arrangements for education, health and care provision for children and young people with SEN or disabilities (Section 26 of the Children and Families Act 2014). Local authorities should provide support, advice and guidance, including suitable training for school staff, to ensure that the support specified within individual healthcare plans can be delivered effectively.** Local authorities should work with schools to support pupils with medical conditions to attend full-time. <http://preview.tinyurl.com/nrv8wxy>