

## **DERBYSHIRE'S CRITERIA FOR WHEN TO CARRY OUT A STATUTORY ASSESSMENT OF SPECIAL EDUCATIONAL NEEDS**

Local Authorities have to make effective arrangements for special educational needs (SEN) by ensuring that the needs of children and young people with SEN are identified and assessed quickly and matched by appropriate provision. For most children and young people their education setting or school can provide all the help they need. However, in a very few cases their needs require a statutory assessment which is a detailed investigation by the Local Authority. When asked to carry out such an assessment, the Authority normally has six weeks to give its decision. If it refuses, the Authority has to write to the parent(s), early education setting, school or other agency giving its reasons. The parent(s) then has a right of appeal to the independent Special Education Needs and Disability Tribunal [SENDIST] and, if they wish, access to local arrangements for sorting out any disagreement.

### **STATUTORY ASSESSMENT OF SPECIAL EDUCATIONAL NEEDS (How this is decided for children in the Early Years Foundation Stage)**

The Early Years Foundation Stage includes all children from birth to the end of the Reception Year. There are currently two curriculum frameworks for practitioners working in this age range. The Birth to Three Framework applies to children from birth to the age of three. The Foundation Stage applies to children from the beginning of the term after their third birthday to the end of Reception Year.

Children under the age of two who are referred for statutory assessment are likely to have been identified by their parents (or those with parental responsibility) or by health colleagues. It is likely that they will have severe and complex needs. The LA may make an assessment if the parents (or those with parental responsibility) consent to it and must make an assessment if the parent requests it. The statutory assessment of children under two need not follow the statutory procedures applying to children over the age of two. Statements will be rare for children under two.

Children who are over the age of two but under the compulsory school age fall into two groups: children who are attending an early education setting and those who are not. Early educational settings where the child will access the Foundation Stage curriculum are:

- Pre-schools, playgroups & private day nurseries
- Portage services
- Maintained mainstream & special schools
- Independent schools
- Non-maintained special schools
- Accredited childminders

When children have special educational needs we have a duty to ensure that their needs are met. Early education settings cater for children with a wide range of needs through their normal arrangements. A small group of children will require help which is *additional to* and *different from* what is available to all children.

The SEN Code of Practice advises that at *Early Years Action* the setting should:

- consult both child and parents (or those with parental responsibility)
- record concerns
- make support arrangements
- record progress and review it regularly

At *Early Years Action Plus* the setting should:

- involve external specialists, eg staff from the Authority's services and/or the National Health Service
- make any new support arrangements
- record progress and review it regularly

Following help at *Early Years Action Plus* if the child is not making *adequate progress* then the setting, parents (or those with parental responsibility) and other agencies can make a request for a statutory assessment.

**Adequate progress can be defined in a number of ways. It might, for instance, be progress which:**

- Closes the attainment gap between the child and their peers
- Prevents the attainment gap growing wider
- Is similar to that of peers starting from the same attainment baseline, but less than that of the majority of peers
- Matches or betters the child's previous rate of progress
- Ensures access to the full curriculum
- Demonstrates an improvement in self-help, social or personal skills
- Demonstrates improvements in the child's behaviour

In a very few cases where there are severe and complex needs the extent of the child's needs will be evident. In such cases requests for assessment might be made prior to any early education intervention, and there should be no need for reports from all the agencies involved with the child before the Authority can reach a decision. The Authority should act on reports from the professionals most closely involved with the child.

A statutory assessment is to determine the child's needs in close collaboration with parents (or those with parental responsibility), setting, child, and professionals from

all agencies, and to decide whether or not a Statement of special educational needs is necessary.

The parents' perspective is particularly important when assessing the special educational needs of young children.

## **KEY DECISIONS MADE BY THE LOCAL AUTHORITY WHEN CONSIDERING A REQUEST FOR STATUTORY ASSESSMENT**

In considering whether to make a statutory assessment, Derbyshire Local Authority follows the guidance in the *Special Educational Needs Code of Practice (DfES 2001)*. The panel known as *the Statutory Assessment Moderation Group (SAMG)* meets to consider evidence presented regarding the child's needs, to ensure that all the ways in which the child can be helped are in place. The SAMG panel has to weigh up the progress made by the child and how effective the actions have been so far to address the child's difficulties. It has to decide whether the child's difficulties are such that there needs to be a statutory assessment, or it may decide that other approaches will help the child.

**In coming to a decision the overriding consideration for the panel is to ensure that the child's needs will be met.**

In deciding if it is necessary for the Local Authority to make a statutory assessment, the SAMG panel will carefully consider all evidence presented to address the following *key decisions*. Referrers will be expected to have reviewed their evidence against these in making a referral. It would be good practice for settings to have consulted with one of the support services or agencies involved at *Early Years Action Plus* before making a referral.

Normally the requirements of all *key decisions* will have been met for the Local Authority to agree a statutory assessment.

### **KEY DECISION 1 - The child experiences significant barriers to learning, participation and achievement**

The evidence should include:

- the views of parents (or those with parental responsibility) at *Early Years Action Plus*
- the views of the child as appropriate
- copies of advice, where provided, from health and social care
- the child's developmental and educational history
- evidence of difficulties either singly or, more often in combination, in:
  - cognition and learning
  - behavioural, emotional and social development
  - communication

- sensory impairment
  - physical impairment
  - medical needs
- details of progress including skills acquired and other functioning, showing measurement over time of the rate and style of the child's progress

## **KEY DECISION 2 - additional and/or different provision has been made**

Where the child is in a setting the evidence should show that:

- provision has been made using normally available resources including where appropriate, advisory and/or teaching support
- professionals with relevant specialist knowledge have been involved, and their advice has been followed
- help has been:
  - planned
  - put in place
  - monitored and reviewed (Settings can show this using any of the recording and reporting procedures which they normally use).
- parents (or those with parental responsibility) have been involved in planning and shown how to play a full part in helping the child learn
- the child has been involved to an appropriate level
- any progress that has been made is the result of a sustained high level of provision, beyond that normally made at *Early Years Action Plus*

## **KEY DECISION 3 – Any remaining barriers to the child's learning, participation and achievement**

Any evidence should show what barriers remain following the additional help and the implications for future planning. These will include barriers that the setting cannot find a way of overcoming without a statutory assessment.

## **EXCEPTIONAL CIRCUMSTANCES**

In order to ensure that decisions are made in the best interests of the child, it is important to recognise that there will be occasions when a statutory assessment may be agreed without the requirements of the 3 key decisions above having been fully met. For example, where:

- a child has moved from another Authority and there is evidence that a statutory assessment had been agreed or was in progress.

- there is clear evidence of severe and complex difficulties but the child has a history of moves where additional support has not been possible and this is increasing the child's vulnerability
- there is clear evidence of severe and complex difficulties but the child has only recently come to the notice of the relevant agencies and time spent in initial assessment would not be in the child's best interests
- a child's functioning has been significantly changed by major illness or injury
- a child experiences a sudden and significant change in behaviour, perhaps as a result of emotional trauma, resulting in a requirement to protect the child and/or others, where a graduated response would be inappropriate
- there are other circumstances judged to be exceptional by the SAMG.

## **IF THE DECISION OF THE AUTHORITY IS NOT TO ASSESS**

When a parental request for the statutory assessment of a child in the Early Years Foundation Stage is refused, the Local Authority's Early Years Special Educational Needs Panel will review the suitability of existing support. Based on consideration of cases by this panel, the Authority can arrange placements and access to services, where appropriate, without any requirement for a statutory assessment.

Whenever the Authority refuses to make a statutory assessment, it will inform the parent(s) of the reasons for the decision and that there is a right of appeal to the independent Special Educational Needs and Disability Tribunal. Information will also be given about the availability of disagreement resolution services and the fact that these do not affect the right of appeal.

## **STATUTORY ASSESSMENT OF SPECIAL EDUCATIONAL NEEDS (How this is decided for children and young persons beyond the Reception year in school)**

When children have special educational needs we have a duty to ensure that their needs are met. In Derbyshire all children with special educational needs can receive extra help or resources provided by schools. Schools have funding for children with special educational needs and can also call on the advice of support services and other agencies. The local authority has published guidance to schools (*The DCC Descriptors of SEN Provision*) which outlines the support they are expected to provide.

Schools cater for children with a wide range of needs through their normal arrangements. A small group of children will require help which is *additional to* and *different from* what is available to all children.

The SEN Code of Practice advises that at *School Action* the school should:

- consult both child and parents
- record concerns

- make support arrangements
- record progress and review it regularly

At *School Action Plus* the school should:

- involve external specialists, eg staff from support services and/or other agencies
- make any new support arrangements
- record progress and review it regularly

The great majority of children will have their needs met in this way.

Following help at *School Action Plus* if the child is not making *adequate progress* then schools, parents (or those with parental responsibility) and other agencies can make a request for a statutory assessment.

**Adequate progress can be defined in a number of ways. It might, for instance, be progress which:**

- Closes the attainment gap between the child and their peers
- Prevents the attainment gap growing wider
- Is similar to that of peers starting from the same attainment baseline, but less than that of the majority of peers
- Matches or betters the child's previous rate of progress
- Ensures access to the full curriculum
- Demonstrates an improvement in self-help, social or personal skills
- Demonstrates improvements in the child's behaviour

*(SEN Code of Practice 5:42 and 6.49)*

A statutory assessment is to determine the child's needs in close collaboration with parents (or those with parental responsibility), school, child, and professionals from all agencies, and to decide whether or not a Statement of special educational needs is necessary.

## **KEY DECISIONS MADE BY THE LOCAL AUTHORITY WHEN CONSIDERING A REQUEST FOR STATUTORY ASSESSMENT**

In considering whether to make a statutory assessment, Derbyshire Local Authority follows the guidance in the *Special Educational Needs Code of Practice (DfES 2001)*. The panel known as *the Statutory Assessment Moderation Group (SAMG)* meets to consider evidence presented regarding the child's needs, to ensure that all the ways in which the child can be helped are in place. The SAMG panel has to weigh up the progress made by the child and how effective the actions of the school have been. It has to decide whether the child's difficulties are such that

there needs to be a statutory assessment, or it may decide that other approaches in school will help the child.

**In coming to a decision the overriding consideration for the panel is to ensure that the child's needs will be met.**

In deciding if it is necessary for the Local Authority to make a statutory assessment, the SAMG panel will carefully consider all evidence presented to address the following *key decisions*. In making a referral schools will be expected to have reviewed their evidence against these. It would be good practice for schools to have consulted with one of the support services or agencies involved at *School Action Plus* before making a referral.

Normally the requirements of all *key decisions* will have been met for the Local Authority to agree a statutory assessment.

### **KEY DECISION 1 - The child experiences significant barriers to learning, participation and achievement**

The evidence should include:

- The views of parents (or those with parental responsibility) at *School Action Plus*
- The views of the child
- Copies of advice, where provided, from health and social care
- The child's developmental and educational history
- Evidence of difficulties either singly or, more often in combination, in:
  - Cognition and learning
  - Behavioural, emotional and social development
  - Communication
  - Sensory impairment
  - Physical impairment
  - Medical needs
- Details of progress including attainments and other functioning, showing measurement over time of the rate and style of the child's progress

## **KEY DECISION 2 - additional and/or different provision has been made**

The evidence should show that:

- Provision has been made in school, using normally available resources, in line with Derbyshire's *Descriptors of SEN Provision* including where appropriate, advisory and/or teaching support
- Professionals with relevant specialist knowledge have been involved, and their advice has been followed
- Help has been:
  - planned
  - put in place
  - monitored and reviewed (Schools can show this using any of the recording and reporting procedures which they normally use).
- Parents (or those with parental responsibility) have been involved in planning and shown how to play a full part in helping the child learn
- The child has been involved to an appropriate level
- Any progress that has been made is the result of a sustained high level of provision, beyond that normally made at *School Action Plus* as outlined in the Derbyshire Descriptors

## **KEY DECISION 3 – Any remaining barriers to the child's learning, participation and achievement**

The evidence should show what barriers remain following the additional help and the implications for future planning. These will include barriers that the school cannot find a way of overcoming without a statutory assessment.

## **EXCEPTIONAL CIRCUMSTANCES**

In order to ensure that decisions are made in the best interests of the child, it is important to recognise that there will be occasions when a statutory assessment may be agreed without the requirements of the 3 key decisions above having been fully met. For example, where:

- a child has moved from another Authority and their former school has provided evidence that a statutory assessment had been agreed or was in progress
- there is clear evidence of severe and complex difficulties but the child has a history of moves between schools/Authorities or is out of school and it has not been possible to make a graduated response and this is increasing the child's vulnerability
- a child's functioning has been significantly changed by major illness or injury

- the child experiences a sudden and significant change in behaviour, perhaps as a result of emotional trauma, resulting in a requirement to protect the child and/or others, where a graduated response would be inappropriate
- there are other circumstances judged to be exceptional by the SAMG.

Whenever the Authority refuses to make a statutory assessment, it will inform the parent(s) of the reasons for the decision and that there is a right of appeal to the independent Special Educational Needs and Disability Tribunal. Information will also be given about the availability of disagreement resolution services and the fact that these do not affect the right of appeal.