

SPECIAL EDUCATIONAL NEEDS AND DISABILITY ACT 2001

EXPLANATORY NOTES

BACKGROUND

Special Educational Needs (England and Wales)

18. The legislation relating to SEN is contained in Part 4 of the EA (ss.312 - 349, Schedules 26 and 27). This has been amended by the School Standards and Framework Act 1998 (SSFA) to amend the references to the categories of schools. There is a statutory code of practice (the Code of Practice on the Identification and Assessment of Special Educational Needs) to which LEAs, governing bodies, health and social services and the SENT must have regard when exercising their functions under Part 4 of the Act. There was a consultation on a revised draft of this Code from 7 July to 13 October 2000. The aim is to publish the final version of this Code to come into force from September 2001.
19. A child has SEN if he has a learning difficulty which calls for special educational provision to be made for him (s.312). A child, for the purposes of the SEN provisions, includes any person under the age of 19 who is a registered pupil at a school.
20. About 20% of children will have some form of SEN at some time. Most of these children will have their needs met by their school, but around 3% of children will have severe or complex needs which will require the LEA to determine and arrange for the special educational provision for the child by means of a statutory statement of SEN.
21. It has always been intended that as many children with SEN as possible can be included within mainstream rather than special schools, whilst recognising the importance of the specialist sector. There is a duty in section 316 of the EA to secure that a child is educated in a mainstream school, unless that is incompatible with the wishes of the parent, provided that three conditions are satisfied: that this is compatible with (i) his receiving the special educational provision his learning difficulty calls for; (ii) the provision of efficient education for the children with whom he will be educated; and (iii) the efficient use of resources.
22. School governing bodies have a duty (s.317) to use their best endeavours to see that pupils with SEN at their schools receive the special educational provision their learning difficulties call for.
23. The LEA must keep their arrangements for special educational provision under review (s.315). They have a duty (s.321) to secure that they identify children within their area who have SEN and the LEA need to determine the special educational provision for which their learning difficulty calls.
24. Where an LEA are of the opinion that a child has SEN and that it is necessary for the authority to determine the special educational provision which any learning difficulty he may have calls for, the LEA will make an assessment of the child, to decide whether a statement of SEN should be made for the child (s.323).

*These notes refer to the Special Educational Needs And Disability
Act 2001 (c.10) which received Royal Assent on 11 May 2001*

25. Once the assessment of the child's needs has been completed, the LEA will decide whether it is necessary for them to make and maintain a statement of the child's SEN (s.324).
26. If the LEA decide to make a statement, the statement must be in the form prescribed by the Schedule to the Education (Special Educational Needs) Regulations 1994 (revised regulations are planned to come into force at the same time as the revised SEN Code of Practice). Any statement made by the LEA must give details of the assessment of SEN and specify the special educational provision to be made. The special educational provision must include the type of school, or other institution, which the LEA considers would be appropriate, the name of the school preferred by the parents if this has to be named in accordance with Schedule 27 or, if none, the name of any school the LEA considers should be specified, and any provision for which arrangements are made otherwise than in a school, for example, occupational therapy.
27. The SENT considers parents' appeals against the decisions of LEAs in England and Wales about their children's SEN, if parents cannot agree with the LEA. The SENT considers appeals about refusals to assess, refusals to make statements, the contents of statements and decisions to cease to maintain statements. The constitution of the SENT is provided for in section 333 of the EA. There is a President and a chairmen's panel appointed by the Lord Chancellor and a lay panel appointed by the Secretary of State for Education and Employment or (as appropriate) the NAW. Each Tribunal consists of a chairman and two lay members. The procedure of the Tribunal is set out in the Special Educational Needs Tribunal Regulations 1995 made under section 336 of the EA. The Special Educational Needs Tribunal Regulations 2001 have been laid before Parliament and will, unless annulled, come into force on 1 September 2001.