

Draft Code of Practice for the Education (Additional Support for Learning) (Scotland) Act 2004

The Scottish Executive November 2004

Response from the CALL Centre

The CALL Centre is a leader in the field of communication and innovative support services for children and young people using both low tech and high tech approaches to aid children's personal communication and access to and delivery of the curriculum. We support others to carry out individual assessments, loan equipment to schools, carry out applied research and development, undertake technical developments and produce information sheets, journal articles, books and videos for the education community in Scotland.

We have participated in several consultation events to discuss the Draft Code and participants' comments at these events have informed this response. Our response considers the practical implications of the proposed changes.

OVERARCHING COMMENTS

We welcome the Code and the Executive's commitment to consult with users about its contents and structure. Openness and consultation has been a feature throughout all stages of the draft Bill, the Act, the Code and associated regulations.

Clarify the terms 'appropriate agency' and 'education authority'

It will help the reader if the Code states more clearly that, although social work and other agencies may be in the same local authority as education, they are not considered 'appropriate agencies'. Even for those familiar with the discussions around the Act and the Code it is difficult to appreciate that, although involvement of social work may be appropriate and social work is an agency, it is not considered an 'appropriate agency' under the Act. And yet, even though it isn't an appropriate agency it may be involved as a result of the education authority exercising its non-

education functions, that is as the corporate authority.

We suggest re-writing the second half of Paragraph 6 on Page 26 with a plain English version of the text that refers to Section 23(5) of the Act, thus changing these two sentences:

“...This requires an education authority to exercise their non-education functions if they consider that would help them in the exercise of their functions under the Act. Again, this is subject to the exceptions based on compatibility and being unduly prejudicial.”

Clarification will help the reader as this provision has far-reaching consequences for one of the criteria for opening a CSP. Two further clarifications are needed. First, the glossary should include definitions for ‘appropriate agency’ and ‘education authority’. Second, the scenarios and flow chart should apply the term consistently, especially in relation to children with a CSP (see below). Paragraphs affected are:

- Page 23 para 15
- Page 26 para 6
- Page 29 para 14.Final sentence
- Page 29 para 15
- Page 31 para 23 Who needs a CSP?

Co-ordinator versus contact person

It will help readers if the Code clarifies roles of co-ordinator and contact person. Co-ordination is vital when identifying support needs; deciding who might offer support in assessing and meeting these needs; liaising with other agencies; and supporting the child or young person in transition processes.

The co-ordinator should be someone who understands the child’s needs well, rather than someone who arranges, attends and/or chairs meetings, rarely seeing the child in between. The co-ordinator should be someone who is familiar with and, together with other agencies and parents helps to write the child’s IEP.

It would not be appropriate for the Code to link a particular professional body with the role of co-ordinator (educational psychologists have been mentioned at facilitation sessions).

Educational psychologists rarely know an individual child's IEP, and mostly are unaware of how the different practitioners work as a team with a particular child. And yet, these are the skills that are needed for the co-ordinator role to work. The co-ordinator should focus on how things can be made to work for the child or young person:

- The co-ordinator should know the child and the team first, the system second
- The contact person (person from whom a parent or young person can obtain advice and further information) should know the system first, the child and the team second

Scenarios

More effective use could be made of scenarios. The current set are static, limited in focus, dislocated from the three flow charts and will not assist practitioners in their decision-making. We understand that there are restrictions on space available in the Code. However, most of the scenarios that are used contain superfluous detail.

We suggest re-writing the existing scenarios so that each scenario features a number of points to illustrate the Code rather than focusing on factors giving rise to additional support needs arise. It would be useful to label the flow charts with 'stages of intervention' each stage then referring to a relevant scenario.

The scenarios should also illustrate what decisions are being made, how and who is making them. The scenarios should signpost to practitioners the following transitions:

- Pre-school child identified by health as lead agency to education (e.g. newborn hearing screening identifies child with hearing impairment)
- Pre-school child transition from pre-school to primary
- Transition from primary to secondary
- Primary school child 1: multiple education involvement, no need for CSP
- Primary school child 2: has PLP, IEP and needs CSP
- Secondary school child

- Transition secondary to post school

One or more of the three Flow Charts would refer to each scenario, and the following points would be reflected across the scenarios:

- Factor giving rise to ASN
- Involving parents (e.g. meetings, IEP planning, how information communicated)
- Identifying support needs
- Actions carried out by a co-ordinator – why chosen, at what point became involved, knowledge of child and circumstances
- Actions taken by a contact person
- Parent making an assessment request
- Grounds for refusing an assessment request
- Scenario with PLP; one with PLP and IEP; one with PLP, IEP and CSP
- Comparison with looked after child who has Individual Care Plan, CSP (and possibly other plans). Showing either why ICP sufficed or what ICP covered, what IEP covered and how CSP referred to both
- Child's views sought and taken into account
- Where advocate for child is needed and authority acts to provide one e.g. child protection arrangements where child also has a CSP

Involving parents, children and young people

Involving parents and young people

The guidelines on good practice for involvement should be included in the main text of the Code rather than in Annex D. Presenting guidance on involvement and participation in the main text will emphasise to all practitioners that they need to address their practice.

Getting involvement right in the first place and maintaining it thereafter helps to avoid

mediation, dispute resolution and referrals to the ASN Tribunal. Real involvement is the best way of reducing bureaucracy and time spent on administering disagreements.

Involving children and young people

For similar reasons we recommend that practice guidance on involving children and young people with communication support needs is included in the main text rather than as Annex C.

2. SPECIFIC COMMENTS

Our specific comments follow page and paragraph numbering used in the Code. Where comments are longer with more detailed recommendations, we first set out what we perceive as difficulties of the Code. We follow this with specific recommendation(s) on that point.

Section 1 comments

Page 11, para. 14

It would be useful to refer to a scenario linking the ASL Act and Section 23 of the Children (Scotland) Act 1995. (See our later comments on Annex A Scenarios.)

Section 2 comments

Page 20-21 re-structuring between paras. 3 & 6

Insert after first sentence of Para. 3: "There is a wide range of factors which may lead to some children and young people having a need for additional support." First sentence from Para. 6. "A need for additional support should not imply that a child or young person lacks abilities or skills."

Page 22 para 11 bullet points

Other duties on education authorities exist in relation to the framework for ASN. These are:

- Seek and take account of the views of children, young people and parents, for those children and young people the authority consider it appropriate to do so [when establishing whether a CSP is required.] [Cf page 33 para. 26.]

- Take account of any information provided by, or on behalf of, the parent or young person, such as an assessment report commissioned by the parents [*Cf* page 33 para. 26 final sentence.]
- meet requests to establish whether child or young person has ASN or requires a CSP
- Comply with requests from parents (or young people) for a particular form of assessment, unless the request is unreasonable. [*Cf* page 33 para. 28.]

Section 3 comments

Page 28-29 and para 15

More detailed guidance on what is meant by “a more in depth level of planning to meet their needs” in relation to children needing a CSP. At consultation meetings local authority representatives have requested clear information about when a CSP should be drawn up. The Code should clarify:

- Whether health and/or social work need to be involved with the child before consideration is given to opening a CSP. If they are involved, how long the agency should have been involved before consideration is given to a CSP.
- If other agency involvement is required but the child does not have a CSP, whether, and if so how, continued involvement of that agency can be ensured.
- If other agency involvement will be needed but, at the time of opening a CSP that agency is not yet involved, how that other agency will become involved in order to help inform the CSP.

The Code should clarify these points so that agencies do not delay preparing a CSP by not becoming involved with the child – only providing resources once a CSP is in place.

Page 28 Chart 1

- Label the left side of Chart 1 e.g. ‘Stages of intervention’
- Top box: omit first use of phrase “in consultation with parents”; keep second which appears on next line.

- Third box down: in the context of community schools the advice could be sought from outside education with the agency located in the same school. Suggest using the term “partner agencies” rather than “other agencies”.
- Link stages of intervention with scenarios and planning documents. Our later comments on scenarios go into more detail.

Page 28

See attached alternative to Chart 1. The chart shown on page 28 implies that the actions taken (boxes on right side of page) do not inform the decisions made about intervention (boxes on left side of page). Arrows flow from left to right and from bottom to top of boxes on right side. Arrows also flow from top to bottom of boxes on left side. In practice, the results of actions taken should inform the next stage of intervention. Therefore the direction of arrows should be:

- horizontally from left to right and, if action taken not successful
- diagonally down from right to left, to decide next stage of intervention
- boxes on right: arrow up only from bottom box to second bottom box

A draft alternative is attached to our response

Page 29 para. 14

Include ‘parents and young person’ when referring to who should be consulted when drawing up IEP.

Page 29 para. 15

“A smaller number of children who have IEPs...” add “will need...”

Also see recommendations on PLP, IEP, and CSP below for more detailed discussion.

Pages 29-30 and elsewhere

The relationship between Personal Learning Plan (PLP), Individualised Education Programme (IEP) and Co-ordinated Support Plan should be clarified. The link between all three and Care Plans should also be clarified.

In doing so the Code should take into account the following:

- When PLPs were first introduced, within the context of new community schools, education authorities were invited to develop their own planning templates and frameworks. As a result a ground up approach was taken and authorities now have different interpretations of what a PLP is for, ranging from a curriculum document through to expression of a child's view. Authorities are now likely to be hostile to prescribed templates and frameworks for PLPs.
- Not all authorities use PLPs whereas some have a PLP for every child.
- There is huge variation in practice in how IEPs are produced. For example, many parents have never heard of an IEP, and if they have, may be told what their child's IEP is. Some IEP targets are produced sequentially i.e. one by teacher, another by speech and language therapist etc. Others write IEPs only in consultation with those who know and work with the child. In at least one authority IEPs are produced by a promoted member of staff who is very good at writing IEPs but will see the child only very occasionally.
- Page 30 Para. 22 provides for a flexible interpretation of CSPs and IEPs but in our view it would help to have a clear demonstration of the relationship between and among all three (PLP, IEP and CSP).

Recommendations on PLP, IEP & CSP

It would be helpful to have a clear statement about the relationship between all three planning documents which have education as the lead agency. It may help for example if the Code states that all children have PLPs, some of whom have IEPs; and some of those with IEPs would have CSPs. The analogy of a triangle with PLPs at the base and CSPs at the top was found to be helpful at facilitation sessions.

The Code should link directly to stages in the flow charts. It may be helpful to have stages of intervention numbered and linked to the descriptions.

Scenarios should reflect the stages of decision making set out in the flow charts and clear links to PLP, IEP and CSP should be shown.

Page 32, para 25 Decision Tree (Chart 2)

Evidence boxes 1 and 3 have been truncated, as has box 4 on flow chart. It would help to give the flow chart on left side a heading label e.g. 'Flow chart' or 'Decision tree'. The heading above para. 26 could then be labelled 'CSP Decision Tree'.

Page 33, para 26

Compare with our previous comment [our reference above to Page 22 para 11 first bullet]. States that must seek the views of children and their parents, or the young people themselves.

Page 33 para 28

As authorities must meet requests to establish whether child or young person has ASN or needs a CSP [our reference to Page 22 para 11 fourth bullet] the Code should indicate who might make such requests and which requests authorities will need to respond to.

Page 35 Chart 3

We are concerned at the implications of box 4 which notes that the CSP should be passed to the education officer to liaise with managers in other services. While there is a need for liaison at manager level our concern is that this step could become a replacement for Part V of the Record of Needs. Up to box 3, all planning has taken place between teacher, parents and others involved, agreements reached and a draft CSP produced. At box 4, however, it appears that provision will be decided by staff who do not know the child, the family or those working with them. In effect, provision will be resource led and needs, having already been identified, may not be addressed.

There is a second concern about service manager involvement. Bureaucracy will increase as decisions may be overturned, groups then having to reconvene and decisions delayed.

A third reason for concern is the tight timetable imposed on turnaround for a CSP – 12 weeks from initiation to implementation. In our view it will be impractical to achieve this turnaround time given the logistics of liaising effectively with all relevant senior managers. Also a child-centered approach would require liaison with service managers to take place for every child considered for a CSP on a case-by-case basis.

Recommendation on education authority officer liaison:

Unless there is a clear reason for involving senior managers across agencies decisions should as

far as possible be devolved to the team working with the child.

Preparing a CSP (Chart 3); paras. 36-40: co-ordinator and contact person; Regulations on CSP (ASN04)

The Draft Code descriptions for the roles of co-ordinator and contact person are likely to lead to misunderstandings. Also the purposes of the two roles are not clear. Below we consider first the descriptions given in the Code followed by the purpose of the roles.

Page 36 Descriptions of co-ordinator and contact person

Para 37 notes that the CSP should contain the contact details of someone within the education authority who will provide advice and further information to parents.

Para 39 describes the role and responsibilities of the CSP co-ordinator. Until that point the only reference made to the co-ordinator is contained in flow chart 3, which mentions it twice. The Code does not mention that the CSP should include the name and details of the CSP co-ordinator. It goes on to state that the co-ordinator “should be...closely involved in working with the team who support the child or young person.”

Paragraph 40 notes that the authority should nominate a contact person at authority or school level to act as a source of advice and information. We assume that this is a reference to the person described in Para 37. Para. 40 goes on to state that the contact person and co-ordinator may or may not be the same person.

From the wording of paragraphs 37, 39 and 40 it is not clear if three people are being considered: person who will provide advice and information; co-ordinator; and contact person at authority or school level who may be same person as the co-ordinator. The Act¹ identifies two.

¹ In Sections 9 and 11 of the Act a distinction is made between:

[(S9(2)(c) which in turn refers to S11(5)(d)] that is the person who co-ordinates the child's or young person's provision of additional support

[S9(2)(d)] the person from whom a parent or young person can obtain advice and further information.

No link is made between the descriptions given of the roles contained in the Code and in the Draft Regulations on Co-ordinated Support Plan (ASN04). On page 17 of the Draft Regulations the headings used are: Additional Support Provision Co-ordinator and 'Parental Advice and Information on the Co-ordinated Support Plan'. The link to the co-ordinator is clear but the second is not.

Recommendations on describing co-ordinator and contact person roles

- In Para. 36 refer briefly to both contact person and co-ordinator.
- Move Para. 38, which refers to document templates and training. This should come after describing roles of co-ordinator and contact person.
- Describe the role of co-ordinator in Para. 37. Describing it first will help emphasise that the role deals with planning for the child or young person rather than finding out general information about CSPs and information relating to the Act.
- The description of co-ordinator role should mention that the role can be carried out by people outwith the education authority – either in the paragraph describing role of co-ordinator or separate paragraph.
- If Paras. 37 and 40 do indeed refer to one contact person then combine the two paragraphs. If two different contact people are being described then the difference should be clarified and presented in two separate paragraphs.
- Use the same title for contact person on Page 17 of Draft Regulations on CSPs (ASN04).

Purpose of co-ordinator and contact person roles

In our view the role of a co-ordinator should be both child-centred and outcomes-led, rather than focused on processes and administration. In contrast, authorities are likely to find processes

administratively more straightforward and under their control to have a single authority-wide (or area wide) co-ordinator. A named, but remote, officer with responsibility for CSPs will inevitably focus on process and administration rather than on outcomes for the child or young person. The Scenario describing Amy (page 71-2) includes a key role for the co-ordinator in co-ordinating the CSP and reflects more what we believe is the purpose of the co-ordinator.

Recommendations on remit of co-ordinator and contact person roles

The Code should reflect the central role of the CSP co-ordinator as someone who works closely, and is in frequent direct contact with, the child, parents and professionals working with that child [as noted in Section 3 Para. 66]. The co-ordinator is then well-placed to monitor service delivery, identify if provision is not being made and take any necessary follow up actions. The co-ordinator is also in a position to keep parents and young people informed of progress.

With this point in mind the margin text cross-reference should include reference to Section 9 and 11 of the Act (see earlier footnote text).

Page 38, para 47

Replace “Where children and young people are not making adequate progress as expected, the child’s needs should be re-assessed and appropriate support provided.”

With “Where children and young people are not making adequate progress as expected, their needs should be reviewed and appropriate support provided.”

The reference to review rather than re-assess is to avoid the possibility that any child who is not making adequate progress would then have to undergo full assessments and lead to possible additional assessment requests.

Section 4 comments

Page 51 para. 1

Preface the paragraph with “With support,...”. As paragraphs 7-11 indicate, not all children and young people will be able to influence decisions and express opinions directly, some will do so in other indirect ways.

Page 51 para. 4

Other legislation that should be referred to are:

- Local authorities and schools must improve communication with disabled pupils and take steps to improve how they can give their views. [Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002 S1(2)(c)(ii) and S2((1)(c)(ii)].
- Children's views must be sought and taken account of in key decisions that affect them. [Children (Scotland) Act 1995 S6]
- Views of children using services should be taken into account. [Regulation of Care (Scotland) Act 2001. Including references to both this Act and the one above will help to ensure that the Education (ASL) (Scotland) Act is not out of step with other children's legislation.]

Page 53 para 7

We welcome the work that has gone into explaining why seeking and taking account of views on every occasion has to be balanced against the need for continuous review of ASN. The emphasis placed on encouragement, flexibility in seeking and taking account of views except in exceptional circumstances is important.

Page 56 para 23

We welcome the fact that the Executive has taken seriously the need to include good practice guidance on involving parents. These practice points should be included in the main body of the text, for three reasons. First, every effort should be made to reduce the numbers of referrals to mediation, dispute resolution or ASN Tribunal. Getting parental involvement right in the first place helps to keep decision-making local, focused on the child and therefore an effective use of scarce resources. In contrast, referral to formal processes represents an opportunity cost. Whether it is referral to mediation, dispute resolution or tribunal processes, such referrals require backroom staff to be deployed by authorities. Staff need to be trained, deployed and paid for. None of that money is then available to provide services.

Our second point is one that was made clear to us during consultation. Teaching staff and

education authority officials do not routinely involve parents. The Code must ensure that authorities do not misinterpret the Act as an invitation to conduct 'business as usual' on parental involvement. Placing guidelines on involvement and participation in the main text will strengthen and clarify that all practitioners need to take them seriously.

Third, readers are likely to ignore content that is not in the main body of the text. Our experience at facilitation sessions was that most delegates had not turned to any of the appendices except the scenarios, on which they had been asked to comment.

For these reasons we would urge the Executive to reconsider and include guidelines for involvement in the main text of the Code. Only if the Executive is not prepared to do so, and as a last resort should they remain as an Annex. If so, the Code should reinforce the need for authorities to refer to and use the guidelines. The following text should then be inserted into paragraph 23:

[Insert page 56 para. 23]

"Arrangements will work well where there is trust between education authorities and parents. Valuing parents, respecting their views and contributions, and regarding them as partners from first contact onwards, make effective and productive working relationships more likely. When professionals show openness, honesty and respect for everyone's views, and offer support for parents, children and young persons to express these views, then recourse to mediation, dispute resolution and tribunals will be markedly reduced. Wherever possible, a partnership approach should be extended to include older children and young persons. We are therefore setting out guidelines on good practice for involving parents at Annex D."

Page 57 after para 25

The Code should reflect the Act's provision for a parent or young person to have more than one supporter or advocate. The following may be appropriate:

"There is no limit on the number of supporters or advocates a parent or young person can have. Education authorities should be prepared to respond positively and flexibly to parents and young people who choose to have more than one supporter or advocate and to find effective ways of communicating and corresponding with them."

Page 57 after para 25

We suggest adding the following paragraph (following that above on more than one supporter or advocate), requiring education authorities to have to show why a support or advocate is refused.

"Where an education authority consider a request for a supporter or advocate to be unreasonable, the parent or young person may ask it to provide its reasons for refusal. These

must show grounds for the request to be unreasonable. The parent or young person can also engage in mediation or dispute resolution.”

Annex A Scenarios comments

Additional scenarios suggested

We recommended in our Overarching Comments that the Code includes a scenario describing a pre-school child who has multi-agency involvement which requires co-ordination of health, care, education and voluntary organisations. The scenario could be used to illustrate the purpose of the care plan, CSP and other planning frameworks. It can also show involvement of health visitor, referral by her to educational visiting service in education. The Code could then direct the reader to the scenario from Page 11, Para. 14 which refers to Section 23 of the Children (Scotland) Act 1995.

Pre-school is the stage at which most CSPs are likely to be either drawn up or considered, and pre-school children are more likely to have multi-agency involvement, perhaps requiring a changeover in lead agency from health to education. That scenario could be contrasted with a pre-school child who has health agency involvement but for whom a CSP is not required.

It would also be helpful if a scenario illustrates both a CSP addressing education-led concerns and a Care Plan addressing out-of-school arrangements for the same child.

Consistency with Education {ASL} (Scotland) Act 2004:

There is a mismatch between the description of Dean given on Page 29, Para. 15 and in the scenario referred to in that paragraph. In Para. 15 the reference is in the context of the discussion on Co-ordinated Support Plans. In the case scenario Dean is identified as having a social worker. However, in the scenario he appears not to have a Co-ordinated Support Plan. As each local authority's social work functions are considered to be another agency for the purposes of the Act, the scenario should be re-written so that Dean has a CSP. If it was intended that Dean did not have a CSP then the reasons for him having social work involvement, but not requiring a CSP, should be stated e.g. support needs not complex or multiple or not lasting for more than a year.

Also Para. 15 would have to re-written.

Case scenario Paul also has extensive (daily) involvement from another agency, this time health in the form of physiotherapy. Again there is no mention of a CSP. Given Paul's proposed transfer to mainstream secondary school with a planned programme of physiotherapy it would seem even more important that he has a CSP.

3. Omissions

See specific comments above.

Glossary:

Include definitions for the following:

- appropriate agency
- education authorities
- parent
- prescribed pre-school child.

CALL Centre

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