



Department
for Education

**EDUCATION & TRAINING
FOUNDATION**



BACKGROUND TO THE RESOURCES

PAPER ONE

Background to the Resources

PURPOSE

The purpose of these papers is to provide a professional development opportunity for senior managers in post-16 organisations who are seeking to become more inclusive by embedding support for all young people with special educational needs and disabilities (SEND) into their organisational improvement arrangements.

The resources have been developed to support senior managers in their journey towards, or in sustaining, inclusive provision within a complex and constantly changing Further Education landscape. They focus on organisational strategies that impact across an organisation, encompassing the identified needs of a diverse range of students, with or without Education and Health Care (EHC) plans. They do not focus on the curriculum and pedagogy, since many resources are already available on the Excellence Gateway.

In developing these resources, members of The Inclusion Circle were fully aware that no single model or approach works for all. Every organisation has different challenges both internally and externally. Some will be long established organisations, who have for many years followed an inclusive approach, with only minor disturbances to their establishment structures and the communities they serve; others will have seen, and may currently be experiencing, significant changes to their establishments and their communities.

BACKGROUND TO THE PROJECT

Manchester Metropolitan University secured funding from the Department for Education (DfE) through the Education and Training Foundation (ETF) for the provision of workforce support for those senior managers working with young people with SEND. As part of the workforce development ETF carried out a needs analysis which found that whilst FE colleges almost always had senior leaders with strategic responsibility for students with SEND, this often did not translate into organisational strategies for addressing students' needs being built into the structures, policies and processes of organisations: too often SEND was an 'add-on' rather than part of mainstream. The needs analysis indicated that more needed to be done so that provision in all organisations in the Education and Training sector encouraged inclusion for all young people with identified support needs across the organisations, and that managers used their 'best endeavours' to secure and monitor provision.

The approach The Inclusion Circle team members adopted, in the development of these resources, was to identify some of the key challenges that organisations across the sector may face in developing and implementing strategies for inclusion, and to provide examples from the sector about possible ways to respond successfully to some of them. The examples encourage senior managers to reflect on the current situation in their organisation, and to take steps to improve its inclusiveness.

This briefing paper outlines the current and previous policies that have shaped inclusion in the Education and Training sector. It also outlines some of the current challenges that organisations face when seeking to implement an inclusive strategy.

THE POLICY CONTEXT

This summary contains Endnotes for further detail about legislation and policy implementation, where managers need further clarification.

The current policy document that provides statutory guidance for organisations in the Education and Training sector is the Special Educational Needs and Disability Code of Practice: 0-25 years (DfE and DoE 2015). This Code brings together the regulations in the Children and Families Act 2014 (the Act) and the legal obligations that post 16 institutions and local authorities and others have towards disabled young people under the Equality Act 2010. It also identifies the need for a stronger focus on preparing young people for adulthood. Definitions and terminology in relation to SEND are included below (Endnote 1).

This Act, the Code and associated funding arrangements, introduced significant change in the relationship between local authorities and the Education and Training sector, whereby local authorities assumed direct responsibility for the commissioning of high needs provision, including those requesting placement in independent specialist colleges. They also assumed responsibility for EHC plans for individual students, replacing the Learning Difficulty Assessments

(LDAs) that had been a requirement since 2008. The local authorities were expected to work with their local health care providers in determining the EHC plans as students made the transition from school to the FE sector. A significant change for the sector was the requirement for local authorities to negotiate with the education or training organisations named in the EHC plan, over the costs and fees for the placements of individual students. Previously, the fees had been based on an agreed and centralised national funding formula.

Under the current sector funding arrangements, education and training organisations are allocated a budget to provide for students who have a declared or identified need, but without an EHC plan. Managers are required to use their 'best endeavours' to provide support these for students, as well as those individuals with an EHC plan.

The Act and Code reflect the recognition that, despite successive disability legislation (1995, 2001, 2005, 2010) (Endnote 2) and the ground-breaking Tomlinson Committee Report Inclusive Learning 1996 (FEFC) (Endnote 3) students with SEND have historically participated and performed less well than their peers and have faced a post-code lottery in the determination of placements (Endnote 4) The Act and Code are the culmination of a gradual process of recognition, from successive funding bodies and policy makers, that young people with SEND are able to benefit from a programme of education and training on leaving school (Endnote 5) The Act and Code confirm that professionals across

education, health and social care, have high expectations of young people by preparing them for adult life, and helping them to achieve the best outcomes in education, employment, independent living, health and community participation.

Encouraging a social model of inclusion, the Tomlinson Committee Report argued that organisations should move away from labelling individuals, and strive to create an appropriate educational environment that enables them to learn, endorsing the social model of disability. The Inclusion Circle team members' approach to the development of these resources for senior managers, is predicated on this understanding of inclusion, whereby provision should match the needs of the individual, rather than the individual having to accommodate to the provision. It is further based on the recognition that the Act and Code focus strongly on aspiration, achievement and progression.

The Education and Training sector is in a period of significant upheaval and uncertainty in terms of policy direction and implementation. The following topics are amongst the most significant in relation to SEND:

- The Adult Skills Plan, based on the Sainsbury Review, focuses in particular on higher level vocational training (BIS and DfE, July 2016). The plan suggests a transition year, acknowledging that many young people with EHC plans have low prior attainment and would benefit from more time. The plan further suggests that all young people

with EHC plans should undertake a supported internship, that includes an extended work placement, unless there is good reason not to do so.

- The Paul Maynard taskforce recommends that the minimum standard of English and mathematics qualifications be adjusted to accommodate a defined group of apprentices who have learning difficulties and disabilities which mean that, despite meeting occupational standards, they are unable to meet English and mathematics requirements.
- The Area Reviews continue, resulting in actual or potential mergers and significant changes to many establishments.
- The Local Authority SEND reviews continue and identify significantly variable opportunities for young people in the Education and Training sector.
- The local nature of commissioning practice means that requirements and expectations in relation to the development and monitoring of EHC plans may vary significantly.
- The number of young people with SEND who participate in Education and Training sector has increased, particularly for those with profound levels of need, following the introduction of the Act.
- The number of young people and adults with mental health needs is increasing, and is a national priority.

Key Challenges for organisations in offering inclusive provision for all individuals with identified needs, not just those with EHC plans.

1. High turnover or low turnover of support staff, resulting in loss of expertise or lack of opportunity to recruit specialists.
2. Insufficient staff specialism as the needs of the student cohorts change. This may mean an increasing number of students with particular needs, such as mental health, or it may mean very low incidence of students requiring specialist adjustments.
3. Individuals studying on mainstream provision may require very diverse types of support, and cohorts may fluctuate over time.
4. Everyone in the organisation, including trustees and governors, needs to understand their duties and responsibilities as set out in the SEND Act and COP.
5. The development and implementation of inclusive quality arrangements to make sure all individuals with a declared need, across the organisations, are supported effectively.
6. Local authorities have different commissioning arrangements and expectations of organisations at each stage of the transition process, from entry to final progression.
7. The focus on destinations involves working with a range of external organisations and agencies such as charities, community groups and employers.
8. The proportion of apprentices with identified learning needs is very low compared with those on academic and vocational courses.
9. The sourcing of external work experience opportunities for students/trainees with SEND is particularly challenging when all young people on Study Programmes, at all levels, are expected to have external placements.

REFLECTION

Inclusion is, of course, a continuous and fluid process which needs to take account of changing priorities, such as the recent increase in the numbers of young people with mental health needs who require support/adjustments. Absolutes are rarely realistic in the context of inclusion, so any evaluation of where you are should include a recognition of its relativity.

Nevertheless, it could be useful at this point for you to reflect on where your organisation is currently in relation to inclusion for all students with identified support needs; you may want to differentiate your level of confidence in meeting the needs of different groups e.g. may be good in providing support for dyslexia but not ASD.

How confident are you that you are meeting the identified needs of all individuals, across the organisation? Identify, where you can, any specific aspects where you are less confident.

- Very confident
- reasonably confident
- not very confident
- not at all confident

Identify any specific areas for development that have contributed to your evaluation.

What are the challenges/barriers both internal and external, that need to be overcome so that you become more confident that the identified needs of all individuals, across your organisation are being met?

The following papers may be/will be helpful in identifying possible strategies to overcome some of these challenges.

ENDNOTES PROVIDING MORE BACKGROUND DETAIL

ENDNOTE 1

Definitions of SEND used in the Children and Families Act 2014, and the Code of Practice (COP) 2015

'A young person has Special Educational where a learning difficulty or disability calls for special educational provision to be made for him or her'.

A young person has a learning difficulty or disability if he or she:

- *'Has a significantly greater difficulty in learning than the majority of others of the same age, or*
- *'Has a disability which hinders him or her from making use of facilities of a kind generally provided for others of the same age in mainstream schools of mainstream post-16 institutions'.*

The definition of disability adopted in the DDA and subsequent Equality Act 2010:

- *'a physical or mental impairment which has a long term and*

substantial adverse effect of their ability to carry out normal day to day activities'.

The Equality Act 2010 sets out legal obligations for organisations:

- They must not directly or indirectly discriminate against, harass or victim disabled young people
- They must not discriminate for a reason in consequence of a disability
- They must make reasonable adjustments, including the provision of auxiliary aids and services to ensure that disabled young people are not at a substantial disadvantage compared with their peers. This duty is anticipatory-thought should be given to any adjustments that young people might need in attending the organisation.

The term 'SEND' adopted by the Act and the COP to describe students reflects that previously used in schools and early years' settings, replacing the terminology used in the post-16 sector: 'learning difficulties and/or disabilities (LDD)'. The terminology used by local authorities and funding bodies has also changed, so that students are no longer referred to as having a statement, or a Section 139A Learning Difficulty Assessment (LDA) but as needs, which, for funding purposes, are described as high or low, with the term HNS used to identify students with EHCPs requiring funding above £6,000.

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ENDNOTE 2

Disability Legislation from 1995

1. Disability Discrimination Act (DDA) 1995

This Act prohibited discrimination against disabled people in a range of circumstances covering employment and occupation, education, transport and access to goods, facilities and services. The legislation applied to all organisations, including education and training organisations. The Act introduced the notion of 'reasonable adjustments', which meant that organisations had to endeavour to find ways to to allow access to premises and to facilities such as computing equipment. Colleges had 'anticipatory duties' to plan for the possible needs of students before they arrived at the settings.

2. The Special Needs and Disability Act (SENDA) (2001)

This Act made it unlawful to to discriminate against learners on the grounds of their disability. Under the Act providers have a legal duty in relation to disabled learners to make reasonable adjustments to enable learners to access the provision. They also had 'anticipatory duties to encourage people to declare a disability as early as possible so that they could plan for required support.

3. The Disability Discrimination Act (DDA) 2005

This updated the DDA 1995 to align it more with other equalities legislation, so that it included a specific duty for the LSC and other public bodies to promote 'disability

equality' and to have a disability equality scheme and action plan.

In order to meet the DDA requirements, the LSC implemented a national programme of funded adaptations in organisations, so that many now have accessible facilities for all students, and such adaptations are an expectation in new builds.

4. Equality Act 2010 and Disability

The Equality Act 2010 incorporated all of the previous anti-discrimination legislation, including the DDA and continued to require organisations to protect individuals experiencing discrimination in educational settings. 'Reasonable adjustments' continued to be required. The recent House of Commons Select Committee Report, The Equality Act: the impact on disabled people (2016) found that concepts of 'reasonable adjustments' and 'anticipatory duties' are not fully understood and expressed concerns that aspects of disability had become less visible after the DDA had been replaced by the Equality Act.

ENDNOTE 3

The Tomlinson Committee Report Inclusive Learning (1996) FEFC

This Report has been seen as a watershed or landmark in the development of provision for students with a range of learning needs and particularly those with high needs. The Report examined the ways in which the Further Education Funding Council (FEFC) implemented the requirements of the Further and Higher

Education Act 1992 and identified how the Council could remedy any ways in which it was not fulfilling the requirements.

The Report established the concept that provision should match the needs of the student, rather than the student having to accommodate to the provision. Often referred to as the social model of disability, Tomlinson argued that organisations should move away from labelling the student, and strive to create an appropriate educational environment that enables them to learn. In order to achieve this, the Report made key recommendations which included:

- Increasing participation, so that more students take part in Education and Training sector
- Assessing students' requirements and achievements, using an inclusive approach, which is guided by students' wishes, is fair, transparent and accessible
- Managing teaching and learning so that it takes account of how students learn, progress and achieve
- Provide funding for individual support so that all students have equal access to learning, enabling them to progress and achieve
- Quality assurance and monitoring of provision
- Collaboration between agencies
- Developing the expertise of staff, and funding adaptive equipment as required.

This resulted in a nationally funded programme of staff development and resources to assist colleges in the development of inclusive practice. However, this only applied to the college sector.

ENDNOTE 4

Publications that evaluated the effectiveness of provision over time

- Greater Expectations (ALI 2005)
- Progression Post 16 for students with learning difficulties and/or disabilities (Ofsted 2011)
- Moving Forward (Ofsted 2015)

All of the above identified ways in which the participation and achievements of young people with high needs was significantly lower than other students. Lack of national data across all settings, meant that little was known about the achievements and destinations of the students with the highest needs. However, those students supported on mainstream programmes often achieved as well and in some instances, better than their peers. Participation in apprenticeship programmes was very low. 'Moving Forward' found the implementation of the SEND reforms patchy and slow.

ENDNOTE 5

The Learning and Skills Council (LSC) and Young People's Learning Agency (YPLA)

The policy development under the LSC and the YPLA shows the increasing encouragement of local provision, and a stronger focus on ambitious destinations, particularly employment.

From 2001, and following change in the funding body from the Further Education Funding Council (FEFC) to the LSC, the Common Inspection Framework adopted by ALI and Ofsted for all remits, included evaluation indicators relating to the

the effectiveness of support provided for students, following an initial assessment. Subsequent frameworks have included the evaluation of these aspects in all settings, not only in colleges, and this continues to be the case.

The publication of the findings of the report of the LSC steering group for provision for students with learning difficulties and disabilities, *Through Inclusion to Excellence* (2005), contributed to the LSCs strategic review of the provision across the sector. The overarching recommendation was that LSC develop a national strategy for the regional/local delivery of provision, that included an increased supply of local, high quality provision. This resulted in regional initiatives to provide locally for more students with high needs as they completed compulsory schooling, and the recognition of the need for improved local collaboration. The LSCs strategy *Learning for Living and Work* (2006) emphasised the expectation that programmes of learning should lead to employment or independent living. By 2010 the Department for Children, Skills and Families (DCSF), in conjunction with the LSC, stated in its 16-19 statement of priorities and investment strategy for 2010-2011 that 'more adults and young people with learning difficulties and/or disabilities will be expected to gain meaningful employment.' Funding for students to attend specialist independent colleges continued to be the responsibility of the LSC, and subsequently the YPLA, until 2013, when it became the responsibility of local authorities, encouraging the development of local provision.

