

## CHAPTER ONE



# The Bigger Picture: The Law, Guidance and Recommendations



Practitioners are encouraged to ‘**identify and respond early to needs which could lead to the development of learning difficulties**’ (EYFS Practice Guidance, page 6, para 1.10).

In order to support practitioners to fulfil the above responsibility, this chapter aims to outline the various legal requirements, guidance and recommendations which govern early years practice. It also highlights the references within the documentation which relate to the early recognition of additional needs.

In so doing we hope to show that the process of recognising additional needs is not only the province of specialists but is the collective responsibility of all practitioners. The tools and systems needed to identify those children who may have additional needs are already woven into the fabric of every setting. The starting point should be practitioners looking at each child holistically as an individual and striving to meet their needs in order for them to reach their potential – a theme which runs through all current thinking about early education.

The chapter sets out guidance on:

- ▶ government policy
- ▶ the Early Years Foundation Stage
- ▶ the Special Educational Needs Code of Practice
- ▶ the Disability Discrimination Act.

### **An overview**

The government has made it policy over the past few years to create good quality, affordable childcare and education for all children.

At the heart of this policy lies ***Every Child Matters***, a document which identifies five outcomes for children that should be achieved no matter where they live, whatever their needs or the services they use. It sets down the basic principle that it is the duty of all those caring for and working with children to ensure that their needs are identified and met.

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The five outcomes are to:

- ▶ stay safe
- ▶ be healthy
- ▶ enjoy and achieve
- ▶ achieve economic well-being
- ▶ make a positive contribution.

The government's ten-year strategy for childcare, *Choice for Parents, the Best Start for Children*, promised to establish a single coherent development and learning framework for all young children from birth to the age of five.

From September 2008 the **Early Years Foundation Stage (EYFS)** is the relevant framework. The ultimate aim of the framework is to help children achieve all five of the *Every Child Matters outcomes*.

The government also recently formed the National Strategies SEN/LDD Programme and Adviser Team. One of the roles of this team is to advise local authorities on the implementation and development of their SEN policies, provision and practice. The aim is to help local authorities and schools to narrow the gap in achievement for groups of vulnerable children and to improve the links between SEN programmes and national strategies, including the EYFS.

Another key government SEN strategy document *Removing Barriers to Achievement* also originally proposed the **Inclusion Development Programme (IDP)** which was finally launched in October 2007. The IDP aims to support schools and early years settings by helping them develop more inclusive practice and to raise awareness and confidence among staff about dealing with various kinds of SEN.

This is to be done through a yearly focus on a particular aspect of special needs. Training and materials will be developed by the National Strategies Team alongside voluntary and specialist organisations and then disseminated to the various phases of education, including early years.

All practitioners should therefore have access to further training in various aspects of special needs.

## The Early Years Foundation Stage

The guiding principles of the EYFS place each individual child at the centre of care and the curriculum. It stresses the importance of looking at children holistically and the duty of all practitioners to meet their often diverse needs.

*The EYFS framework is designed to be fully inclusive of all children's needs, recognising the need to respond to differences of ethnicity, culture, religion or belief, home language, family background, SEN, disability, gender or ability. There is significant flexibility to provide the six areas of learning and development in a way that reflects the needs and circumstances of each child.*

(EYFS Statutory Framework, Page 41, para 4.3)

Section 2 of the **Statutory Framework** details the learning and development requirements. It outlines the educational programmes to be taught to young children, the early learning goals and the assessment arrangements for their achievements.

Section 3 of the **Statutory Framework** details the welfare requirements. Throughout these requirements there are references to meeting the individual needs of children at an appropriate level.

Under the ***equal opportunities*** section there is a specific legal requirement for all providers to:

have and implement an effective policy about ensuring equality of opportunities and for supporting children with learning difficulties and disabilities.

Also mentioned here is that all providers should 'have regard to' the Special Educational Needs Code of Practice (DfEE, 2001).

The statutory guidance referred to should be incorporated into a policy on ***equality of opportunities*** and should include the following:

- ▶ information about how the individual needs of all children will be met;
- ▶ information about how all children, including those who are disabled or have special educational needs, will be included, valued and supported, and how reasonable adjustments will be made for them;
- ▶ a commitment to working with parents and other agencies;
- ▶ information about how the SEN Code of Practice is put into practice in the provision;
- ▶ the name of the Special Educational Needs Coordinator;
- ▶ arrangements for reviewing, monitoring and evaluating the effectiveness of inclusive practices;
- ▶ information about how the provision will promote and value diversity and differences;
- ▶ information about how inappropriate attitudes and practices will be challenged;
- ▶ information about how the provision will encourage children to value and respect others.

The accompanying ***Practice Guidance for the EYFS*** also stresses that the principles and policies should be reflected in practice.

Practitioners must *promote positive attitudes to diversity and difference within all children* (page 6, para. 1.8).

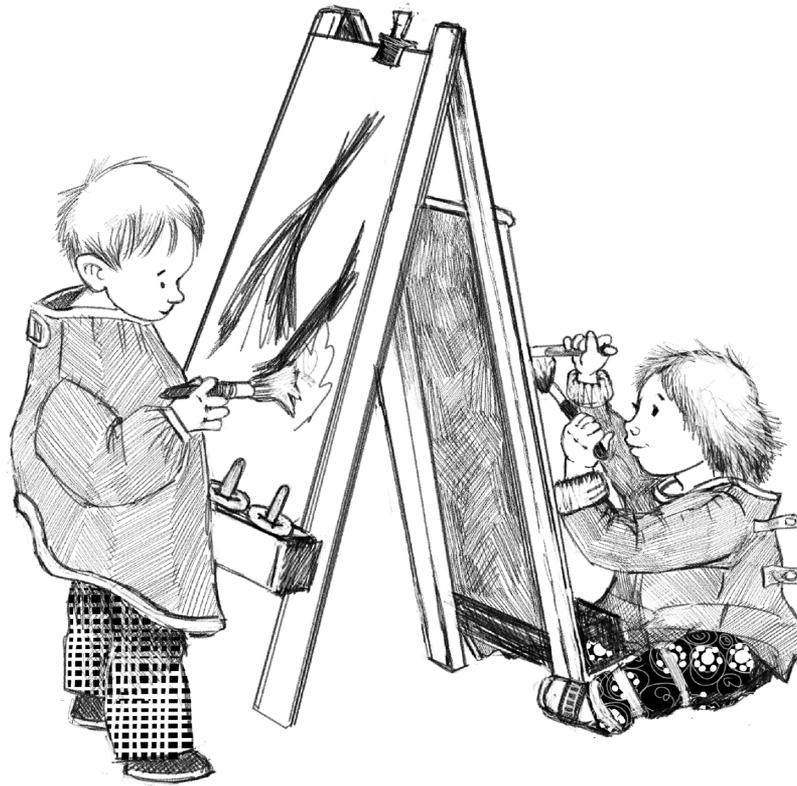
Practitioners must also *plan for the needs of any children with learning difficulties or disabilities* (page 6, para. 1.9)

With a focus on removing or helping to counter underachievement and overcoming barriers for children where these already exist, practitioners should also identify and respond early to needs which could lead to the development of learning difficulties (page 6, para. 1.10).

The **Principles into Practice**, cards divide the principles into four key ***themes***:

- ▶ A Unique Child
- ▶ Positive Relationships
- ▶ Enabling Environments
- ▶ Learning and Development.

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Each of these themes is then supported by commitments which describe how these inclusive principles can be put into practice. For example, the theme of 'A Unique Child states:

Every child is a competent learner from birth who can be resilient, capable, confident and self-assured.

It is recognised that babies and children develop in individual ways and at varying rates (Principles into Practice card 1.1). Practitioners are urged to:

Identify the need for additional support as early as possible

and it is pointed out that:

Knowing when and how to call in specialist help is one important element of inclusive practice. (Principles into Practice card 1.2)



### Hands-on activity

Look at the EYFS Principles into Practice cards and find further references to identifying and planning for individual needs, e.g.

**'Enabling environments'** card 3.1.

► 'babies and children are individuals first, each with a unique profile of abilities ...'

## The Special Educational Needs Code of Practice (DfEE, 2001)

The early identification of learning difficulties and disabilities is key in current thinking. This is also stressed in the SEN Code of Practice (2001) which has already been established as important guidance and which runs alongside the EYFS.

The Code of Practice outlines certain expectations with regard to identifying and meeting the needs of children with learning difficulties and/or disabilities. These include a series of principles that early years settings are expected to adhere to.

### The principles of the Code of Practice

- ▶ Every child with special educational needs should have their needs met.
- ▶ As far as possible these needs will be met within a mainstream setting with access to a broad, balanced and relevant curriculum.
- ▶ The views of parents should be sought and taken into account.
- ▶ Wherever possible the views of the child should be taken into account.

(DfEE, 2001, page 16, para. 2.2).

### What do we mean by special educational needs?

The legal definition of SEN (Education Act 1996) as set out in the Code of Practice (DfEE, 2001) is:

*Children have special educational needs if they have a learning difficulty which calls for special educational provision to be made for them.*

*Children have a learning difficulty if they:*

- (a) *have a significantly greater difficulty than the majority of children of the same age;*
- or*
- (b) *have a disability which prevents or hinders them from making use of the educational facilities to be found locally for children of the same age;*
- (c) *are under compulsory school age and fall within the definition at (a) or (b) above or would do so if special educational provision was not made for them.*

The Code of Practice describes **special educational needs** as falling into four main areas:

- ▶ Communication and interaction
- ▶ Cognition and learning
- ▶ Behavioural, emotional and social development
- ▶ Sensory and physical.

Some children of course will have difficulties in more than one of these areas.

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## Roles and responsibilities

The Code of Practice assigns the day-to-day organisation and coordination of special needs provision to the Special Educational Needs Coordinator (SENCO). However, it also clearly states that identification of, planning for and working with children with special needs, learning difficulties and disabilities lies firmly with **all** members of staff.

## Policies and procedures

The Code of Practice sets out very clearly the procedures to be followed once a child is identified as having special or additional needs. The importance of both parental involvement and child participation is a key principle in this process.

The actions which follow are called a **graduated response** which is further explained in Chapter 8.

## The Disability Discrimination Act 1995

A large group of children currently attending our pre-school settings are covered by the duties of the Disability Discrimination Act 1995 (DDA).

The DDA sets out two *core duties*:

1. Not to treat a disabled child less favourably.
2. To make reasonable adjustments for disabled children.

From October 2004 '**reasonable adjustment**' include removing physical barriers.

The core duties are **anticipatory** and provision and plans for disabled children should therefore be in place before they might actually be needed.

The DDA has implications for all aspects of early years settings' policies, and practice and also sits well alongside the principles of the EYFS.

The idea that settings need to include in their equal opportunities policies information about how reasonable adjustments will be made to cater for individual needs has already been mentioned. The anticipatory nature of these duties also means that settings will need to be aware of what might be needed and plan for future eventualities.



### Further reading

- Department for Education and Employment (2001) *Special Educational Needs: Code of Practice*. London: DfES
- Department for Education and Skills (2007) *Statutory Framework for the Early Years Foundation Stage*. DfES.
- Department for Education and Skills (2008) *Practice Guidance for the Early Years Foundation Stage*. DfES.
- National Children's Bureau Enterprise Ltd (2003) *Early Years and the Disability Discrimination Act 1995: What Service Providers Need to Know*. NCB.