

Specialist provision for hearing impaired children within mainstream schools: advice to commissioners (England)

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This briefing sets out what needs to be considered when formulating any proposals to make changes to specialist provision for children with a hearing impairment within mainstream schools. This advice is intended mainly for commissioners of provision in local authorities for children with special educational needs and disabilities (SEND).

This is intended to complement our separate briefing *Specialist Education Services for Children with Hearing Impairment: Advice for commissioners*¹.

Terminology

We use the term deaf to refer to all children with a hearing impairment or loss, including those with a mild or temporary hearing loss.

We use the term specialist provision for deaf children within mainstream schools to refer to any provision which specifically cater for the needs of deaf children as an integral part of a mainstream school. Such schools will provide support from a range of specialist staff to ensure the needs of the deaf pupils are fully met within the daily life of the school.

Specialist provision for deaf children within mainstream schools can take a variety of forms and a range of terms are in place to describe them, including:

- resource provisions
- designated provisions
- resource bases
- resource centres
- deaf centres
- bases for deaf and hearing impaired children
- special educational needs (SEN) units.

Importance of specialist provision within mainstream schools

Specialist provision within mainstream schools should provide specialist support for school staff and deaf pupils on the school roll, so that deaf children and young people:

- make good educational progress and reduce or close any attainment gap that was existing between them and their peers on entry to school
- are happy at school, feel included and fully participate in the life of the school
- move successfully on to a new school, further education or work.

Every deaf child is different. They may vary according to their levels of hearing loss, technology used, communication approaches and additional needs. Given this diversity of need, it is important that there is a spectrum of provision available in each area so that parents can make informed choices based on the individual needs of their child. Many parents choose specialist provision within a mainstream school. Their reasons for this will vary but are likely to include:

¹ www.ndcs.org.uk/document.rm?id=6841 (accessed 13 December 2016)

- a need for their child to receive more direct specialist support from Teachers of the Deaf, speech and language therapists and other professionals during part of the school day than they would if they were receiving support only from a visiting/peripatetic Teacher of the Deaf
- providing their child with an opportunity to have a peer group of both hearing and deaf friends
- where specialist provision adopts a particular communication approach, such as Signed Supported English, to ensure that the child's communication needs can be met
- enabling the child to receive support for part of the school day in designated classrooms with improved acoustics
- being an alternative to special schools, particularly where such placements would involve long travel times or a residential placement away from the family.

Deaf children attending specialist provision are on the school roll. As such, the governing body and the Head teacher are accountable for the quality of provision and the progress the pupils make. However, arrangements for staffing the specialist provision can vary. In many cases, specialist staff in the provision are directly employed and line-managed by senior staff within the local authority. They work in the school with the agreement of its governing body, which should oversee its operation and the progress of deaf pupils on roll.

In other cases, staff are directly employed by the school and are managed by one of the school's senior management team. A service level agreement should be in place between the school and the local authority covering matters such as funding, admissions and the additional support to be provided.

Different approaches are also taken to how specialist provision is funded. The National Sensory Impairment briefing note *The Funding of Pupils with Sensory Impairment Attending Resource Bases and Special Schools (Pre-16 Provisions)*² outlines the different ways in which specialist provision is funded.

Considerations when making decisions that may impact on specialist provision within mainstream schools

A wide range of legislation and guidance apply to mainstream schools with specialist provision. In this note, we focus on five key areas of legislation or guidance that govern how any decisions around changes to specialist provision should be made.

- 1) The Equality Act (2010)³.
- 2) The Children and Families Act (2014)⁴, Special Educational Needs and Disability (SEND) Regulations (2014)⁵ and the SEND Code of Practice (2015)⁶.
- 3) *Making 'prescribed alterations' to maintained schools* (2018) and accompanying guidance for decision-makers⁷.
- 4) *Making significant changes to an open academy and closure by mutual agreement* (2019)⁸.
- 5) The Education (School Teachers' Qualifications) (England) Regulations (2003)⁹.

In the following sections, we set out our understanding of the key questions and risks that should be considered in any decisions in relation to specialist provision within mainstream schools. This includes, for example, the decision to close a specialist provision within a mainstream school or reduce the level of

² www.natsip.org.uk/index.php/funding-reforms-equality-act/660-funding-briefing-paper-resource-bases-and-special-schools-pre-16 (accessed 27 November 2019)

³ www.legislation.gov.uk/ukpga/2010/15/contents (accessed 27 November 2019)

⁴ www.legislation.gov.uk/ukpga/2014/6/contents/enacted (accessed 27 November 2019)

⁵ www.legislation.gov.uk/uksi/2014/1530/contents/made (accessed 27 November 2019)

⁶ www.gov.uk/government/publications/send-code-of-practice-0-to-25 (accessed 27 November 2019)

⁷ www.gov.uk/government/publications/school-organisation-maintained-schools (accessed 27 November 2019)

⁸ www.gov.uk/government/publications/making-significant-changes-to-an-existing-academy (accessed 27 November 2019)

⁹ <http://www.legislation.gov.uk/uksi/2003/1662/contents/made> (accessed 27 November 2019)

qualifications held by staff within the provision. Unless stated otherwise, these key issues and risks apply equally to all state-funded schools (including academies).

These are summarised in the following checklist:

Checklist

- 1) Do you have an accurate understanding of:**
 - the population and needs of deaf children across the area for which you are responsible
 - the need and likely demand for specialist placements?
- 2) Have proactive steps been taken to inform families about the availability of specialist provision in this area? Is all specialist provision in your area included within the Local Offer?**
- 3) Can you demonstrate that you have reviewed and identified whether SEND provision is 'sufficient'?**
- 4) In keeping provision under review, have you consulted with parents and young people? Can you show that any new proposals have been 'coproduced'?**
- 5) If proposing changes, have you shown that it will improve the quality of provision?**
- 6) If proposing changes, have you checked whether this constitutes**
 - a 'prescribed alteration' (for maintained schools), or
 - a 'significant change' (for academies)?**If it does, have you taken steps to ensure statutory guidance and government advice on making such changes is being followed?**
- 7) If proposing changes, have you assessed the impact this will have on disabled children? As part of this, have you considered the implications any decisions on specialist provision have for local authority duties to secure:**
 - any provision set out within statements of SEN or Education, Health and Care Plan
 - the statutory requirement for deaf children within the specialist provision to be taught by a qualified Teacher of the Deaf?

- 1) Do you have an accurate understanding of:**
 - the population and the needs of all deaf children across the area for which you are responsible
 - the need and likely demand for specialist placements?

To ensure you can make an informed decision on any changes, you should at the very least have basic information on the number of deaf children in your area, their needs and current educational placements. As set out earlier, each deaf child is different and there will be a wide diversity of need. Some of this information may be available in the Joint Strategic Needs Assessment (JSNA)¹⁰ for your area and/or from your service's response to the Consortium for Research into Deaf Education (CRIDE)¹¹ annual survey to education services for deaf children.

¹⁰ Advice and guidance on developing JSNAs has been produced by NHS England and can be found online at: www.england.nhs.uk/wp-content/uploads/2017/09/joint-strategic-needs-assessment-guidance-jul19.pdf (accessed 27 November 2019)

¹¹ More information on CRIDE can be found at www.ndcs.org.uk/CRIDE or at <https://www.batod.org.uk/information/cride-reports/> (both accessed 27 November 2019)

As deafness is a low incidence need it can be difficult to predict levels of need as demand for the specialist provision may fluctuate from year to year. It will be important to obtain assessment information from specialist support services, early years settings and schools to get an accurate as possible estimate of the need for places in the future. It will also be important to liaise with neighbouring local authorities to ascertain the needs of children in their areas.

Assessing likely future need will avoid the risk of you incurring costs from having to re-establish a specialist provision in future years. Such costs are likely to involve significant capital investment in ensuring that designated classrooms for deaf children meet government guidance on acoustics¹², as well as costs in re-training Teachers of the Deaf and other specialist staff.

In considering the need for specialist placement, it will also be important to consider if collaboration with other local authorities would help you more effectively meet the needs of deaf children and provide a spectrum of provision. The SEND Code of Practice states that “partners should consider strategic planning and commissioning of services or placements for children and young people with high levels of need across groups of local authorities, or at a regional level” (paragraph 3.68).

2) Have proactive steps been taken to inform families about the availability of specialist provision in this area? Is all specialist provision in your area included within the Local Offer?

Parents of deaf children often report to us that they were unaware that there was specialist provision within a mainstream school in their area. Section 30 of the Children and Families Act requires local authorities to set out in their Local Offer provision what provision it expects to be available in the area for children with SEND. Schedule 2 of the SEND Regulations make it clear that this includes any specialist SEN provision offered within schools, regardless of the arrangements for staffing or funding the provision.

Despite this, we continue to encounter examples where it is difficult to find information about specialist provision in a Local Offer. We have also encountered examples where the existence of specialist provision is not included in the website for the school that hosts the specialist provision.

Local authorities should ensure they take proactive steps to bring the attention of any specialist provision to families in their area. In addition, in terms of ensuring full transparency, they should also have established clear criteria for admissions to specialist provision. This criteria should be developed as part of the Local Offer with the involvement of parents. It may include factors such as:

- a) being unable to make progress in line with other children despite the best endeavours of the pupil's local mainstream school
- b) having an additional need as well as deafness (e.g. language difficulty and social and/or emotional health needs)
- c) late diagnosis of deafness
- d) needing signed support to access the curriculum
- e) pupils who use English as an additional language and who are struggling to make progress.

3) Can you demonstrate that you have reviewed and identified whether SEND provision is 'sufficient'?

The Equality Act places a duty on local authorities to make reasonable adjustments – including through the provision of auxiliary aids – to ensure that disabled children are not placed at a substantial disadvantage. This duty is anticipatory and applies equally to local authorities and to education settings.

¹² www.gov.uk/government/publications/bb93-acoustic-design-of-schools-performance-standards (both accessed 27 November 2019)

Section 27 of the Children and Families Act also requires local authorities to keep provision for disabled children under review to ensure it is sufficient to meet their education, training and social care needs.

There are three aspects to reviewing the sufficiency of provision.

- 1) Are there sufficient places to meet the needs of pupils who: (i) are unable to make progress in their local school which is at least in line with that of other children; and (ii) whose needs cannot be met in their local mainstream school? The earlier section on ensuring you have an accurate understanding of the population of deaf children in your area will be relevant to this section.
- 2) Does the provision meet relevant quality standards?
- 3) What are the outcomes achieved by deaf children in the area and are deaf children making good progress?

In terms of quality standards, the National Deaf Children's Society/National Sensory Impairment (NatSIP) quality standards for resource provisions may be helpful. These quality standards aim to improve outcomes for deaf pupils by providing a framework which:

- helps schools evaluate the effectiveness of the education provision made for deaf children and young people
- informs the development of school policy and plans
- supports the development and review of service level agreements between the local authority and the school hosting the resource provision
- promotes good practice and the effective and efficient use of resources.

The quality standards are linked around four main areas.

1. Securing inclusion and effective teaching and learning.
2. Outcomes for deaf children and young people.
3. Leadership and management.
4. Participation and partnership working.

The quality standards also set out an expectation that the number of Teachers of the Deaf should be set at a level where each is not supporting any more than six deaf children at a time. Depending on the needs of individual children (including whether any children have additional needs), this number may need to be fewer. In our view, this should exclude any time allocated for Planning, Preparation and Assessment (PPA).

In reviewing provision, any inspection reports from Ofsted of the school will also be relevant. In addition, Ofsted and the Care Quality Commission began inspecting local area provision for children with SEND¹³ to identify their effectiveness in identifying and meeting the needs of children with SEND. These inspections will have a broader focus on the extent to which schools and local authorities work well together to identify and meet needs and improve outcomes.

In keeping provision under review, it will be important to look ahead to and anticipate future needs as well. This should include a consideration of future recruitment or capacity needs, taking into account in advance any possible need to replace staff who are due to retire. Given the challenges that some services face in recruiting Teachers of the Deaf, schools may wish to take proactive steps to begin training a Teacher of the Deaf in advance of any likely retirements.

Finally, it will also be important to maintain an audit trail setting out how provision has been kept under review and how it has been determined that provision is sufficient.

¹³ https://reports.ofsted.gov.uk/search?q=&location=&lat=&lon=&radius=&level_1_types=4&level_2_types%5B%5D=18 (accessed 27 November 2019)

4) In keeping provision under review, have you consulted with parents and young people? Can you show that any new proposals have been ‘coproduced’?

In keeping provision under review and to demonstrate due and specific regard for the needs of disabled children, you must consult with deaf children and their parents. The involvement of parents and young people, and the provision of information and support to enable them to participate in decisions is a requirement under section 19 of the Children and Families Act. This not only applies to decisions about individual support, but also about local provision more generally. Section 27 of the Act also reiterates the requirement to consult with disabled children and their parents when keeping provision under review.

The law¹⁴ also requires that any consultation:

- allows respondents to make an informed response. This means setting out fully the implications for their deaf children and making documents accessible to families who use other languages as needed.
- ensures adequate time for responses
- genuinely takes responses into account and is conducted with an open mind.

Paragraph 4.12 of the SEND Code of Practice establishes some principles on how to ensure that young people are able to effectively engage with any consultations.

It is important that **all** relevant parents and young people have an opportunity to respond and give their views. You should therefore take steps to proactively draw their attention to relevant consultations and avoid limiting any consultation to selected stakeholders or groups, who may not necessarily be representative of everyone’s views. In relation to any consultations on specialist SEN provision within mainstream schools, relevant stakeholders will include families of children who have yet to start school and also families in neighbouring areas who currently – or may wish to – send their child to the specialist provision.

5) If proposing changes, have you shown that it will improve the quality of provision?

Paragraph 4.19 of the SEND Code of Practice states that:

“Local authorities must keep their educational and training provision and social care provision under review and this includes the sufficiency of that provision. When considering any reorganisation of SEN provision decision makers must make clear how they are satisfied that the proposed alternative arrangements are likely to lead to improvements in the standard, quality and/or range of educational provision for children with SEN.”

The above is sometimes referred to as the ‘SEN improvement test’.

In considering the SEN improvement test, it will be important to specifically consider how the proposed change will improve outcomes achieved by deaf children and ensure they will or continue to make good progress. Other key questions to consider as part of this include:

- will the changes lead to improvements in the availability of support from specialist Teachers of the Deaf? This is unlikely to be the case if the number of specialist Teachers of the Deaf in the area will be reduced as part of any closures to a specialist provision. Any such reduction will have a knock on impact on the ability of Teachers of the Deaf to provide advice to mainstream teachers on, for example, specialist assessments and hearing technology.

¹⁴ Broach, S. et al. *Disabled Children: A legal handbook. 2nd edition*. 2016. Legal Action Group and Council for Disabled Children. councilfordisabledchildren.org.uk/help-resources/resources/disabled-children-legal-handbook-2nd-edition (accessed 27 November 2019)

- will deaf children continue to be educated in rooms with high quality acoustic environments? Local authorities have often invested considerable amounts of capital funding in meeting acoustic guidelines for classrooms for deaf children. Closing a specialist provision can often be a false economy if it means that significant capital investment is then needed in other schools.
- what are the outcomes achieved by deaf children in the specialist provision? If these children are achieving better outcomes or making better progress than other children in the area, it may be difficult to justify taking action that would lead to reduced outcomes for these children.
- what judgements Ofsted have made of the specialist SEN provision? If Ofsted has judged the school to be good or outstanding, then there will be a need to demonstrate that any children affected by any changes will continue to be taught in good or outstanding settings.
- will the change restrict the ability of the local authority to meet the diverse needs of deaf children? This includes, for example, those who require signed support to access the curriculum.
- will the change result in the displacement of deaf children, and, if so, will those pupils still receive the same high level of support in local mainstream schools?

6) If proposing changes, have you checked whether this constitutes:

- a 'prescribed alteration' (for maintained schools), or
- a 'significant change' (for academies)?

If it does, have you taken steps to ensure statutory guidance and government advice on making such changes is being followed?

In addition to the SEN improvement test, there is also a separate process for making changes to SEN provision within mainstream schools. The process differs between maintained schools and academies, though similar principles apply and both schools and local authorities will again need to show how the change will lead to improved provision.

Maintained schools

Making 'Prescribed Alterations' to Maintained Schools sets out the statutory process that schools with 'SEN provision' must follow. Any change to establish, remove or alter SEN provision within a mainstream school is regarded as a prescribed alteration. It is accompanied by a separate guidance for decision-makers, which is also statutory. The guidance documents make clear that local authorities "should aim for flexible range of provision and support that can respond to the needs of individual pupils and parental preferences".

The guidance documents also state that, in making any prescribed alterations, local authorities should:

- ensure that any changes will not undermine the quality of education in the area
- ensure open and fair consultation with parents and other interested parties, providing them with sufficient opportunity to give their views
- give the "greatest weight" to those most affected by proposals, especially parents at affected schools
- email the Department for Education for anything which may be seen as contentious or controversial.
- be satisfied that proposals do not adversely impact on travel arrangements for disadvantaged children.

The guidance also reiterates the SEN improvement test referred to earlier, requiring the local authority to set out how proposed changes will "lead to improvements in the standard, quality and/or range of educational provision" – especially if any proposed changes will lead to children being displaced.

Academies

Making significant changes to an open academy and closure by mutual agreement sets out government advice on changes to academies. It advises that a full business case must be produced for any changes to provision reserved for pupils with SEN, including any changes to remove specialist provision or decrease

the numbers for which this provision caters. The business case must be approved by the Regional Schools Commissioner. The advice is clear that any such changes cannot proceed under a 'fast-track' application that is an option for other types of changes to academies.

In developing a full business case and to avoid the risk of breaching their funding agreement with the Department for Education, the academy should:

- consult with the local authority and consider any reasonable objections they may have. The academy should also consult with any other local authorities who have placed a child with an EHC plan at the academy.
- demonstrate that the proposed change “will not have a detrimental impact on local SEN provision or pupils with SEN currently in the school.”
- carry out a fair and open local consultation, lasting at least four weeks, with all those who could be affected by the proposed changes. This will include parents of deaf children currently enrolled at the specialist provision as well as other parents in the area. We would also advise the academy to consult with parents in neighbouring areas given their interests in seeing a spectrum of provision available in the area. The full business case should outline the responses received.
- set out any potential issues and risks with their proposed change
- provide details of any 'displaced' children, including the details of the school at which they will be placed.

Where a proposal is contentious, the Regional Schools Commissioner may choose to escalate the proposal to the Secretary of State for Education.

7) If proposing changes, have you assessed the impact this will have on disabled children? As part of this, have you considered what implications will any decisions on specialist provision have for local authority duties to secure

- **any provision set out within statements of SEN or Education, Health and Care Plan**
- **the statutory requirement for deaf children within the specialist provision to be taught by a qualified Teacher of the Deaf?**

You must ensure that any changes to the services meet the obligations set out under the Equality Act to promote equality of opportunity between disabled persons and other persons and to take steps to take account of a person's disability.¹⁵ Local authorities must demonstrate they had due and specific regard to how any changes will impact on deaf children. This will require the local authority to provide an audit trail or documentation to show how this regard was had.

Though there is no specific requirement to produce an equality impact assessment, it is a common way of demonstrating that due regard has been had. We recommend that this assessment is carried out where any changes are being proposed that may impact on services for deaf children.

Case study: reversing cuts in Stoke on Trent

Failure to follow the Equality Act – in terms of having due regard for the impact of your decisions on deaf children – puts you at risk of legal action. Legal action was taken against Stoke on Trent City Council after it became apparent that proposals to cut the number of Teachers of the Deaf had been put forward without any assessment of the significant impact these changes would have on deaf children. In the face of judicial review, local authority officials conceded and signed a 'consent order' agreeing to reverse plans for further cuts.

¹⁵ Department for Education guidance on the Act can be found at www.education.gov.uk/aboutdfe/policiesandprocedures/equalityanddiversity/a0064570/the-equality-act-2010 (accessed 27 November 2019)

Where a deaf child has been identified as having a special educational need, local authorities are required under section 19 of the Children and Families Act to make sure that the child receives the support they need to facilitate their development and achieve “the best possible educational and other outcomes”. Local authorities are also required to assess their needs and, if necessary, determine through an Education, Health and Care plan what provision is needed to meet those needs. These services cannot be withdrawn without a reassessment of a child’s needs.

Section 28 of the Children and Families Act also requires local authorities and schools to co-operate in fulfilling the requirements of the Act. It is sensible to do so given the risk that a failure by mainstream schools with specialist provision to provide effective support for deaf children is likely to result in:

- requests for statutory assessments
- reassessments if the child already has a statement or EHC plan
- out-of-area placements which could increase costs in the medium-term.

If you are considering changes to staffing, you **must** ensure that the specialist provision remains in compliance with the Education (School Teachers' Qualifications) (England) Regulations. Specifically, this requires that teachers of classes of deaf children **must** be qualified Teachers of the Deaf or in training to become one within three years. This requirement is reiterated in the SEND Code of Practice, which also sets out the government’s clear expectation that deaf children, when not in designated classes, and their teachers will also be able to access support from a qualified Teacher of the Deaf (paragraph 6.61).

A head of a resource provision will be needed to oversee the deployment of specialist support in the provision and it will be important that the head has expertise in deafness also. A head can also ensure that:

- relevant quality standards are met¹⁶
- the specialist SEN provision is working effectively with the peripatetic service
- the school is in compliance with any service level agreements in place.¹⁷

Working in partnership

We help parents of deaf children to make sure that their children receive the support they need to make good educational progress. Our Local Engagement team seeks to influence and supports local decision-makers on the needs of deaf children, including sharing examples of good practice, to make sure that this support is in place.

Contact the Local Engagement team by emailing localengagement@ndcs.org.uk or through our Freephone Helpline on 0808 800 8880 (voice and text).

¹⁶ www.ndcs.org.uk/documents-and-resources/quality-standards-resource-provisions-for-deaf-children-and-young-people-in-mainstream-schools/ (accessed 27 November 2019)

¹⁷ Template service level agreements are available on our website at www.ndcs.org.uk/information-and-support/being-deaf-friendly/information-for-professionals/education-resources-for-managers/ - scroll down to ‘Template service level agreements/specifications’ (accessed 27 November 2019)