

**UNDERSTANDING
& CHALLENGING
THE SEND CODE
OF PRACTICE**

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BEATE HELLAWELL

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SEND TERMS AND ACRONYMS

	Academy Schools/ Trusts	Academy schools are state-funded schools in England which are independent of local authority control and directly funded by the Department for Education. Their admission policies may differ from those of local schools.
	Assess, Plan, Do, Review	Refers to the 'graduated approach' to intervention outlined in the 2015 Code and suggests that any intervention should repeatedly go through these four stages of the cycle.
CQC	Care Quality Commission	The independent regulator of all health and social care services in England. Jointly inspects local authority SEND provision with Ofsted.
CiN	Child in Need	A child who has the support of a social worker and where parents have an agreed improvement plan they must address in order to avoid the removal of the child from the family home.
CYP	Child/Children and Young Person/ People	Often used in conjunction with the 2015 Code to highlight that the relevant age range is now 0–25.
	Children and Families Act 2014	The legislation that underpins the SEND Code of Practice 2015. Part 3 of the Act outlines the legislation that is specific to children with SEND.
CCG	Clinical Commissioning Group	NHS organisations set up to organise the delivery of NHS services in England. CCGs include all GP groups in their geographical area.
CoP	Code of Practice Commissioning	Used as an abbreviation for the SEND CoP 2015. Local SEND services are jointly designed by local education, social care and health agencies, according to local needs. Decisions about which services to prioritise and how much funding the various services should receive are made in consultation with local service users and voluntary organisations that represent various and particular interests.

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CAF	Common Assessment Framework	A centralised tool for agencies and professionals to gather and share information about CYP and their needs. Introduced in 2008, it is no longer a statutory requirement and many LAs have developed their own information sharing systems since.
CPD	Continuous Professional Development	CPD is the education of professionals following completion of formal training. CPD consists of any educational activity that helps to maintain, develop or increase knowledge, problem-solving and technical skills or professional performance standards. SEND expertise is generally assumed to be acquired through CPD activities, rather than prior learning.
	Differentiation	Refers to an approach to teaching that identifies and matches students' various individual needs, aptitudes and interests. Differentiation may take the form of different activities, different levels of support or different outcomes for example. Considered to be a key pedagogical strategy for including children with SEND in mainstream classrooms.
	EHC Needs Assessment	The process that includes making a decision whether to initiate a statutory assessment, undertaking multi-professional assessments, conducting a series of person-centred planning meetings, and writing and issuing the draft and then final EHC Plan. This has to be completed within 20 weeks.
EHC Plan	Education, Health and Care Plan	Replaces Statements of SEN in the SEND Code of Practice 2015. Has a number of statutory sections: A: Views, interests, aspirations of the CYP and their family B: CYP's special educational need C: CYP's health needs relating to SEN D: CYP's social care needs relating to SEN E: Outcomes, including for adult life F: Educational provision G: Health provision H: Social care provision I: Named school or institution J: Personal budget K: Advice gathered from needs assessment
EP	Educational Psychologist	EPs contribute to statutory assessments and have their own professional and ethical code.
EAL	English as an Additional Language	EAL is not considered to be a SEN, but is an 'additional need'.

ECM	Every Child Matters	Five wellbeing outcomes introduced in the 2004 Children Act, which gave multi-agency working a legal framework. No longer statutory, although many service providers still use the principles.
	First-tier Tribunal (SEND)	Responsible for handling appeals against local authority decisions regarding SEND assessments, placements and provision.
	Graduated Approach	The ongoing process of reviewing and implementing interventions to meet the needs of CYP with SEND as outlined in the 2015 Code. It suggests a cycle of 'assess, plan, do & review'.
	Inclusion Statement	The inclusion statement in the NC introduced in 2014 sets out two broad principles: (1) teachers need to have high expectations and set ambitious targets for those with low levels of prior attainment; (2) teachers need to respond to pupils' needs and overcome potential barriers to learning.
	Independent Supporter	A person recruited locally by a voluntary or community sector organisation to help families through the EHC needs assessment and construction of an EHC Plan. This person is independent of the local authority and receives additional training, including legal training.
IEP	Individual Education Plan	Regularly reviewed plan of tailored interventions for the CYP with SEND who may not have an EHC Plan. Required when the previous Code was introduced and still used by some schools. In the USA, IEPs are the equivalent of the EHC Plan.
	Key Worker	The professional who takes primary responsibility for coordinating other professionals and for liaising with parents so that they have a single point of contact. In practice, this role is most often taken up by SENCOs or the named LA caseworker who manages the statutory assessment process, but it could be a social worker or health professional or someone from a voluntary organisation.
LSA	Learning Support Assistant	School support staff specifically recruited to support the CYP with EHC Plans.
LA/LAs	Local Authority	Locally elected governments and their officials have a number of statutory obligations for CYP with SEND, including EHC assessments, reviews of EHC Plans and the coordination of the Local Offer.
LEA	Local Education Authority	Introduced with the 1944 Education Act and subsumed into LAs following the 2004 Children Act.

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LMS	Local Management of Schools	Introduced with the 1988 Education Act that allowed all schools to be removed from the direct financial control of local authorities and redirected to the headteacher and governors of a school.
	Local Offer	LAs in England are required to set out in their Local Offer information about the provision they expect to be available across education, health and social care for CYP in their area who have SEN or are disabled, including those who do not have EHC Plans. Local authorities must consult locally on what provision the Local Offer should contain.
	Local Pathfinders	31 LAs were chosen to try out and evaluate specific aspects of the current SEND framework in advance of legislation.
LAC	Looked After Child	A child that has been taken into care, where the LA is the 'corporate parent'.
NC	National Curriculum	Introduced in 1988, revised for the Curriculum 2000, and again in 2015. The 2015 curriculum removes the previous national NC levels which have been used by professionals to document the lack of progress some individuals make in spite of additional support. This lack of progress might indicate a SEN.
Ofsted	Office for Standards in Education, Children's Services and Skills	Inspects and regulates services that care for children and young people, and services providing education and skills for learners of all ages.
	Outcome	Can be defined as the benefit or difference made to an individual as a result of an intervention. The 2015 Code states that an outcome should be personal and not expressed from a service perspective. It should be something that those involved have control and influence over, and whilst it does not always have to be formal or accredited, it should be specific, measurable, achievable, realistic and time-bound (SMART).
	Parent-Partnership Services	LAs are required to set up a local independent advice and information organisation that supports parents through the statutory assessment process and for other related concerns.
PCP	Person Centred Planning/ Reviewing	Person Centred Planning discovers and acts on what is important to a person. It is a process for continual listening and learning, focusing on what is important to someone now and in the future, and acting on this in alliance with their family and their friends.

	Personal Budgets	An amount of money identified by the local authority to deliver all or some of the provision set out in an EHC Plan. By having a say in the way this budget is used, a parent or young person can control elements of their support.
PMLD	Profound and Multiple Learning Difficulties	One of the SEND categories of need under Cognition and Learning.
	Provision Mapping	Replaces IEPs as the recommended tool in the 2015 Code for documenting additional provision and desired short-term outcomes for CYP with SEND. Where IEPs focused on individuals, a provision map provides an overview of SEND support offered to all children on a school's SEND register.
QFT	Quality-first Teaching	Refers to the effective inclusion of all pupils in high-quality everyday personalised teaching. Teaching will: (1) be based on clear objectives that are shared with the learner and returned to at the end of the lesson; (2) carefully explain new vocabulary; (3) use lively, interactive teaching styles; and (4) make maximum use of visual and kinaesthetic as well as auditory/verbal learning.
	Reading Recovery	A school-based, short-term intervention designed for children aged five or six, who are the lowest achieving in literacy after their first year of school.
SA	School Action	A child was put under this category of SEN if they made inadequate progress and needed interventions additional to or different from those of a quality-first differentiated curriculum. Relates to the previous Code and is no longer a recognised category.
SA+	School Action Plus	A child was moved to this SEN category if outside agencies supported and advised those in school. Relates to the previous Code and is no longer a recognised category.
	SEN Areas of Need	The 2015 Code recognises four broad areas of need: (1) communication and interaction; (2) cognition and learning; (3) social, emotional and mental health; (4) sensory and/or physical.
	SEN Caseworker	Named professional in LA who coordinates the statutory assessment, issues the EHC Plan and oversees reviews.

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	SEN Information Report	A statutory document that schools have to produce alongside their SEN policy. Whilst a policy might be aspirational, the SEN Information Report must be specific about how help and support for pupils with SEND works in that setting. The SEN Information Report should be written in a way that makes the information clear and meaningful for parents, and avoid specialist vocabulary.
	SEN Support	A single category of support in school for children who do not need an EHC Plan. It replaces School Action and School Action Plus.
	SEND Identification, Provision and Reviewing Process	The 2015 Code covers three distinct phases for supporting children and young people with SEND and sets out what LAs and professionals are expected to do during each of these phases: (1) identification refers to the required work undertaken leading up to the issuing of an EHC Plan; (2) provision describes the implementation of the Plan; and (3) reviewing the monitoring processes that ensure the Plan is implemented and achieves its purpose.
SLA	Service Level Agreements	A contract between a service provider (either internal or external) and the end user that defines the level of service expected from the service provider.
SEBD	Social, Emotional and Behavioural Difficulties	SEN category of need recognised in the previous Code, but has been replaced by SEMH in the 2015 Code.
SEMH	Social, Emotional and Mental Health	Replaces the SEBD area of need category. The other three broad categories remain the same.
SEN	Special Educational Needs	Term introduced in the 1978 Warnock Report. Now often used interchangeably with SEND.
SEND	Special Educational Needs and Disability	Term introduced with the 2015 Code to indicate the alignment of practices and provision for SEN and disabilities.
SEND CoP 2015	Special Educational Needs and Disability Code of Practice 2015	Statutory code that determines and limits professional conduct with regard to SEND identification and provision.
SENCO	Special Educational Needs Coordinator	A senior member of staff in educational settings who oversees SEND provision. Has extended strategic responsibilities in the 2015 Code.

SpLD	Specific Learning Difficulties	Dyslexia, dyspraxia and dyscalculia are the SpLDs mentioned in the 2015 Code.
SMART Targets	Specific, Measurable, Attainable, Relevant, Time-limited	Mnemonic acronym. Targets are used to tailor intervention support to individuals and to make professionals accountable for outcomes.
	Standards Agenda	The attempt to raise the attainment of pupils, often by narrowing the curriculum and by focusing on effort and merit, in order to improve the skills level of the workforce and to ensure competitiveness in a globalised economy.
	Statement (of SEN)/Statementing	Legal document describing the SEN and outlining relevant provision. Has been replaced by EHC Plans.
SA	Statutory Assessment	The statutory assessment is a full investigation of a child's educational needs carried out by the local authority where the CYP lives. It is a legal process and needs to be completed within 20 weeks.
	Structured Conversations	A series of focused, managed <i>conversations</i> between teacher, parent and CYP. It is intended to support the greater engagement of parents and CYP by enabling them to make their contributions heard and understood by teachers and the wider school community.
TA	Teaching Assistant	Support staff in school who often has a general support brief, although is frequently trained to provide specific interventions.
TAC	Team Around the Child	A Team Around the Child is a group of practitioners working with a CYP and their parents to plan provision for SEND and other needs.
TAF	Team Around the Family	A Team Around the Family addresses the needs of a family unit by providing a group of practitioners from various agencies.



GLOSSARY

Bureaucracy refers to a system of government where most of the decisions are taken by state officials rather than elected representatives. The term is often used when referring to excessively complicated administrative procedures.

Coalition government refers to the government from 2010 to 2015 under the joint leadership of David Cameron (Conservative Party) and Nick Clegg (Liberal Democrats). The 2015 Code had its passage through Parliament during this period.

Cognitive approaches focus on mental processes like memory and problem solving, in opposition to behaviourism, which largely ignores mental processes.

Communities of Practice refers to a group of people who share a concern, profession or passion for something they do, and learn how to do it better as they interact and deliberate regularly. Communities of Practice reflect the fundamentally social nature of human learning.

Concept is a theoretical idea or mental image of how something is, or how something should be done.

Conceptualise refers to inventing or contriving an idea or explanation and formulating it mentally. Whilst this process may be based on a specific example or event, a concept is an abstract idea that has been generalised.

Construct is another term for concept.

Critical pedagogy is based on the work of Paulo Freire and argues that one of the primary goals of education is to help people develop the ability to assess the political and social structures that exist and to empower people to question authority and speak out against injustices.

Critical theory is a social theory oriented towards critiquing and changing society as a whole, in contrast to traditional theory oriented only to understanding or explaining it.

Dialectic knowledge is gained when two or more people hold different and contradictory points of view about a subject but wish to establish truth through reasoned arguments and a willingness to hold divergent views.

Discourse in sociology describes the language, ideas and values held by institutions and society. Discourse defines the reality of the social world and the people,

ideas and things that inhabit it. Discourse is seen as embedded in and emerging out of relations of power, because those in control of institutions – like the media, politics, law, medicine and education – control its formation. As such, discourse, power and knowledge are intimately connected, and work together to create hierarchies.

Distributed expertise refers to the understanding that various professionals offer different kinds of expertise and that working as a group increases the capacity to learn, act on and transform the problems of practice individual practitioners are faced with.

Distributive justice is concerned with the nature of a socially just allocation of goods. A particular consideration in the field of SEND is whether limited resources should be distributed equally, or allocated where most progress can be made, or else where the need is greatest. This has implications for allocation of support staff for example.

Diversity means understanding and accepting that each individual is unique, and recognises individual differences as valid and valuable. It works against efforts to assimilate individual thought and preferences.

Enactment has two distinct meanings. It may simply refer to the moment when proposed legislation has completed all the stages of scrutiny in both Houses of Parliament and becomes law in an Act of Parliament, such as the Children and Families Act 2014. It is also a term used to indicate that new policies and legislation are not simply implemented in a top-down way by compliant practitioners, but that those who are charged with that implementation are creative actors who interpret and sometime subvert policy in ways that suit local situations.

Equality focuses on fairness and impartiality and relates to the equal access to and distribution of resources. It can only work if everyone starts from the same position and needs the same things.

Equity focuses on fairness and impartiality and involves trying to understand and give people what they need. It suggests that giving everyone exactly the same is not sufficient to close the achievement gap.

Evidence-based practice assumes that there is a demonstrable relationship between a planned intervention and a measurable positive outcome and suggests that research and a rigorous evaluation of interventions can provide the evidence.

Framework refers to a theoretical structure of assumptions, principles and rules that holds together ideas and broad concepts.

Green Papers set out what the government of the time intends to legislate for. This Paper is scrutinised by both Houses of Parliament in various committees and is also subject to wide consultations. A Green Paper may, usually with amendments, become law or it may have little impact. Whilst a new government cannot disregard any legislation, they usually dismiss Green Papers of previous governments.

Inter-professional collaboration focuses on the personal interactions between individual professionals or groups of professionals.

Marketisation of education refers to the introduction of competition and the exposure of educational services to market forces.

Middle way seeks to avoid the extremes of unchecked market forces and an over-reliance on centralised planning advocated by socialism.

Model refers to the graphical, symbolic, physical or verbal representation or simplified version of a concept, phenomenon, relationship, structure, system or aspect of the real world.

Moral dilemmas arise in situations where decisions have to be made and where the principles laid down in policy documents or the procedures established in organisational practices conflict with the values espoused by those policies or else the values held by individual professionals or groups of professionals. They can sometimes be resolved by principled deliberations, informed by normative ethics.

Moral stress has three components. The 'psychological dimension' describes a sensitivity to personal moral responsibility which gives rise to traditional negative stress symptoms. The 'moral dimension' is experienced in the tension between personal (moral) values and professional obligations, where what is expected and 'should' be done conflicts with whether this 'ought' to be done. The 'routine dimension' relates to the everyday, ongoing and unrelenting aspects of moral stress. The dilemmas and choices are experienced as burdens and have a cumulative effect on wellbeing, including experiencing negative stress symptoms.

Moral theories, also referred to as **normative** theories, seek to explain why a certain action is wrong or why we ought to act in certain ways. Popular moral theories include utilitarianism and virtue ethics.

Moral uncertainty refers to temporary uncertainty which is resolved by referring to manuals, managers or established local practices.

Morally charged critical incidents refer to incidents which are highly significant for an individual because they make them stop and think and raise questions. The incident might leave individuals feeling unsettled or distressed and can constitute a crisis point for an individual.

Multi-agency working focuses on the structural and strategic relationships between various agencies.

Neoliberal refers to a policy model that promotes the virtues of competition, privatisation and the individual liberty of the free market economy as the most effective mechanism for the distribution of social resources. It redefines citizens as consumers, whose democratic choices are best expressed by buying and selling, and where inefficiency is punished, and merit is rewarded.

New Labour refers to the British Labour Party from 1997 to 2010 and the government under the leadership of first Tony Blair and then Gordon Brown. It was

presented as a newly reformed party that endorsed market economics alongside socialist aspirations.

Normative as a sociological term refers to cultural norms and shared values within institutions. These norms enforce social activity and outcomes that 'ought' to occur and are socially valued.

Normative statements make claims about how things *should* or *ought* to be, which things are *good* or *bad*, and which *actions* are *right* or *wrong*.

Paradigm is a set of concepts and practices which are accepted by an individual or a society as a clear example of how things work in the world.

Policy actors refer to those who are directly or indirectly affiliated with or affected by a given policy process. The focus is on the active participation of individuals who are credited with 'agency'.

Policy enactment theory posits that new policies are interpreted and translated by policy actors who are always also policy subjects. This is a creative, complex and contradictory process, which always depends on a particular context.

Policy subjects also refer to those who are directly or indirectly affected by the policy process. The focus is on how an individual's 'subjectivity' is shaped by those policies.

Policy technology in sociology refers to the application of knowledge, techniques and tools to adapt and control the social environment.

Post-modern society is argued to be different from modern society because the stable institutions which used to bind us together have much less influence now. With the rise of globalisation and new media technologies, individuals can much more freely construct their own culture and identity.

Progressive policies advocate progress, change, improvement or reform, as opposed to wishing to maintain things as they are.

Psychological perspectives focus on how individuals think, feel or behave and often look for explanations in the biological and cognitive functions of those individuals.

Pupil Premium Additional funding for publicly funded schools in England to raise the attainment of disadvantaged pupils of all abilities and to close the gaps between them and their peers.

Reflective practice refers to the habitual reviewing of decisions, encounters and experiences made in the course of professional action and the determination to inform future action through this reviewing process.

Reflexive practice assumes reflective practice and additionally includes an acknowledgement and consideration of one's own agenda, prior experiences, motivations and political stance and how these contribute to professional action.

Social constructivist approaches assume that knowledge is constructed through interaction with others.

Social inclusion refers to the process of improving participation in society for people who are disadvantaged, through enhancing opportunities, access to resources, voice and respect for rights.

Sociological perspectives focus on human behaviour and its connection to society as a whole. The connections between the behaviour of individual people and the (often problematic) structures of the society in which they live are highlighted.

Standards agenda refers to the attempt to raise the attainment of pupils, often by narrowing the curriculum and by focusing on effort and merit, in order to improve the skills level of the workforce and to ensure competitiveness in a globalised economy.

Statutory guidance issued by government refers to guidance that is legally binding, whilst **non-statutory** guidance issued by government is not a legal requirement to follow or implement.

Structural when used as a sociological term refers to the distinctive, stable arrangement of institutions whereby human beings in a society interact and live together.

Systemic refers to a series of relationships existing between individuals, groups and institutions and forming a coherent whole.

Tacit means implied rather than stated. Tacit knowledge is the knowledge individuals gain from experience and observation rather than from being explicitly taught.

Technicist approaches refer to success defined by the mechanistic achievement of targets.

Transactional focuses on the interaction and exchanges between people and recognises the assumed relational roles individuals adopt, for example as a 'parent' or 'child'.



ABOUT THE AUTHOR

Over the years, I have worked as play policy officer, primary class teacher, reading recovery teacher, dyslexia specialist, local authority SEN officer, NVQ assessor for teaching assistants and as senior lecturer at two universities. I have always been interested in the relationship between policy and practice and how each is shaped by and shapes the other. I have also grappled, both as a practitioner and an academic, with the complexities of partnership working and wondered how it is possible to satisfy professional demands whilst remaining true to my own moral compass. As I embarked on a professional doctorate, the 2014 SEND policy reform went through its various consultation stages and the SEND Code of Practice 2015 was enacted. It offered a fascinating area of research and this book is the result.

I had promised myself a belated gap year on the completion of my doctorate and I kept my promise. This book was therefore written on some of the most beautiful beaches and hill stations around the globe. A particular inspiration for me during this year were the writings of the Brazilian Paulo Freire on critical pedagogy and the importance of curiosity, of critical thinking and ultimately of hope. I do hope that this book not only demonstrates curiosity as well as critical thinking, but also offers hope for better partnerships and sound ethical practice in the interests of children and young people with special educational needs and disabilities.



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Parts of Chapters 5 and 7 have previously been published as a book chapter in Crutchley, R. (ed.) (2018) *Special Needs in the Early Years*. London: Sage.

This book is dedicated to my mum and dad and their example of lives well lived.



PART I

SEND POLICY AND POLICY REFORM

This first section introduces special educational needs and disability (SEND) policy and policy reform. Chapter 1 introduces the SEND Code of Practice 2015 and relates the story of its development and implementation. Chapter 2 traces the history of SEND policy reform with a focus on what this may mean for partnership working and introduces different ways of conceptualising what policy is and how policy is developed. Chapter 3 critically reviews key terms and concepts in the field of SEND and highlights professional dilemmas and challenges that may arise.

The generic term ‘SEND professional’ used in this book refers to a wide range of practitioners whose work is partly or wholly focused on meeting the needs of children with SEND. Class teachers, social workers and health professionals may have no specific prior interest or expertise in SEND, but their roles – often as a consequence of policy changes – increasingly involve working with this group of learners. SEND professionals also include those with a focus on SEND, for example special educational needs coordinators (SENCOs) in charge of the strategic development of SEND provision in schools and other educational settings, SEND advisors and caseworkers who focus on the statutory assessment and review work at local authority (LA) level, SEND specialist teachers and support staff from LAs and schools who provide front-line services, and some health professionals who have specialised in this area, including school nurses and speech and language therapists (SALT). What unites them is that they are all public professionals whose professional practices and identities are altered through neoliberal policy making (Ball et al., 2012).

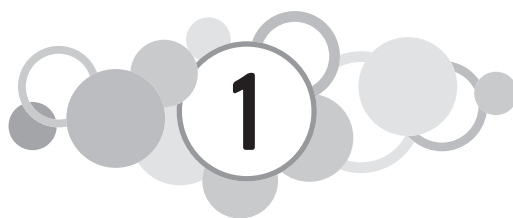
The term ‘SEND partnership trail’ indicates that SEND professionals often work in partnerships which are fluid and transient, improvised around the needs of a particular child rather than in formal teams or networks. Many professionals are engaged in numerous different partnership trails simultaneously and this can add an additional layer of complexity to partnership working.

The policy changes leading to the issuing of the SEND Code of Practice (CoP) 2015 (most explicitly stated in the preceding *Support and Aspiration* consultation document; DfE, 2011) identified defensive and unresponsive professionals in local government, and front-line professionals in schools who are overwhelmed by bureaucratic complexities, as sometimes undermining the expectations of parents and the wider public. The stated aim of the policy reform was, therefore, to ‘challenge any dogma, delay or professional interests which might hold children and young people with SEND back’ (DfE, 2013, p. 4). The evident belief that some

professionals operate at least some of the time against the public interest in order to protect or further their own interests logically dictates the introduction of a statutory code which narrows and prescribes local professional action as a remedy. It is consistent with policy reforms that limit professional autonomy and marginalise locally elected democratic systems in favour of policies informed by market principles and new forms of accountabilities and ethics (Cribb & Ball, 2005; Gunter et al., 2015; Lamb, 2012). The focus of the first section of this book is therefore to understand the 2015 Code in the context of these newer forms of accountability and ethics.

Multiple forms of accountability are accumulated through policy layers (Pinto, 2015) and pull professionals in different directions. Responding to these competing demands appropriately is particularly challenging where partnerships with vulnerable children and their families are concerned, and where the rhetoric of choice and entitlement and the reality of service constraints collide in the daily interactions between professionals and with parents. Policies are therefore neither neutral nor benign and 'are suffused with emotions and with psychosocial tensions. They can threaten or disrupt self-worth, purpose and identity. They can enthuse or depress or anger' (Ball et al., 2012, p. 8). The focus of this book is consequently not primarily on understanding what the SEND CoP 2015 requires professionals to do, but rather to equip professionals to negotiate some of the arising tensions and complexities.

Schofield and Sausman (2004) have identified three challenges for policy reform and implementation that are also key concerns for this book: (1) understanding the difference between policy intention and the experienced reality of front-line professionals as more than merely professional resentment; (2) limiting 'successful' policy implementation to compliance with prescribed processes so that 'what can be counted becomes what matters, rather than what matters counts' (p. 245) and where the focus is turned away from seeking a solution for identified problems; and (3) the possibility of losing professional knowledge because of a need to comply with what can be measured.



AN INTRODUCTION TO THE SEND CODE OF PRACTICE 2015

CHAPTER OBJECTIVES

- To trace the policy development of the SEND CoP 2015 and outline some of the implementation support provided since.
- To introduce the 11 chapters of the Code of Practice document in some detail.
- To briefly explore some implications for professionals and for partnership working and signpost more extensive discussion offered in other chapters of this book.

Towards the Enactment of the SEND CoP 2015

The story of the **enactment** of the 2015 Code goes back a long way. Alongside the many **New Labour** (1997–2010) policy initiatives that were advocating for **social inclusion** and inclusive education (see Chapter 3) as the just way to meet the needs of children with special educational needs (SEN), there was an increasing dissatisfaction and restlessness amongst parents and professionals. It prompted a 2006 Education and Skills Select Committee Report to urge the then government to ‘consider a completely fresh look at SEN’ (HoC, 2006, p. 108). This report also concluded that SEN policy has at times been discussed as if it was separate from the broader education system, resulting in tensions between competing policy initiatives. Examples of these competing drives include: (1) a renewed emphasis on whole-class teaching of literacy and numeracy versus a more personalised education; (2) the emphasis of social inclusion for all versus the need of all to contribute economically and therefore achieve academically; and (3) the conflicted role of local authorities (LAs) as both assessors of need and paymasters of additional services (Hodkinson, 2010). An Audit Commission Report (Audit Commission, 2002) had already identified unacceptable variations in provision and support of SEN between different LAs.

The influential Lamb Inquiry (Lamb, 2009), initiated as a government response to these concerns, reported ‘meeting some of the happiest parents in the country and some of the angriest’ (p. 2). The report recommended a greater focus on outcomes, stronger voices for parents, commissioning with a tighter focus on needs, and greater accountability from service providers secured via inspections. A 2010 Ofsted (Office for Standards in Education, Children’s Services and Skills) SEN review (Ofsted, 2010) criticised the over-identification of children with SEN and recommended improvements in teaching and learning for all, individual goal setting and rigorous inspections. All these recommendations are reflected in the 2015 Code.

For the **Coalition government** (2010–2015) ‘the case for change’ (DfE, 2011, p. 2) was clear and they therefore instigated a complete overhaul of the SEN legislative **framework** as a priority. This new framework was consulted on, debated in Parliament and finally introduced towards the end of its administration. A Conservative Party SEN Commission (Conservative Party, 2010) had agreed with Ofsted’s assessment that SEN were over-identified; considered that the prevailing inclusion ideology had failed many children with SEN; and stated that the new policy needed to ‘end the bias towards inclusion’ (no page number). This phrase was repeated in the Coalition government’s landmark *Support and Aspiration Green Paper* (DfE, 2011) that set out the intended changes in detail, but was later dropped amidst much media attention.

The proposals in *Support and Aspiration* aimed to link SEN and disability legislation; align the sometimes-contradictory notions of inclusion with parental preference; and instigate a more user-led system (Norwich, 2014). It also noted the wide variance of SEN identification between LAs and schools and proposed to abolish the existing stages of support and the ‘perverse incentives to over-identify children as having SEN’ (DfE, 2011, p. 9). SEN professionals were seen to preside over an ‘impenetrable and inefficient’ (p. 8) system where front-line staff were ‘too often hampered and frustrated by excessively bureaucratic processes’ (p. 11). Parents, who were deemed to ‘rightly want much more convenient personalised services over which they have greater control’ (p. 15), were also seen to be caught in a ‘bewildering and adversarial’ (p. 15) system. It was a very negative assessment of existing practices and professionals indeed.

Part 3 of the Children and Families Act 2014 legislated for changes to the SEND framework and with it necessitated the introduction of a new Code of Practice. The development of the Code can be traced from an early draft in March 2013 to the widely consulted-on draft of October 2013, generating over 700 responses (Tutt & Williams, 2015). A further draft and second consultation in April 2014 led to a new Code being published in July 2014 for a rather rushed September 2014 implementation. This version was superseded in January 2015, with some minor changes and amendments, by the current 2015 Code. It is likely that there will be further updates in future years.

National evaluation systems are increasingly used by governments to monitor, steer and reform their education systems, and the latest SEND framework is no exception in this development. Thirty-one Local Pathfinders projects were set up in

a number of LAs in October 2011 to find out ‘whether central government must act to facilitate local innovation’ (DfE, 2011, p. 18), and conceivably also to increase local ownership of the new policy intentions. In the event, Pathfinders did not substantially inform policy changes, as they operated in tandem with, rather than prior to, the consultation and implementation timescale for the new framework. Evaluations of Pathfinder projects were limited to evaluating processes rather than outcomes for children and young people (CYP) and their families. Findings included that whilst the new role of key workers was well established within Pathfinder authorities, those individuals were often unable to complete outcome-based EHC (Education, Health and Care) Plans. There were also considerable challenges for involving health service professionals. Evaluations recorded positive views about improved process arrangements for families, but no evidence of improved outcomes for children (Craston et al., 2013). More recent evaluations (Long, 2016) point to a continuing fragmentation of services, parental perceptions of declining services and an unexplained decline of children on current SEND registers.

LISTENING IN



Some of the SEND caseworkers quoted below have been involved in Pathfinder projects, others were confronted with new statutory requirements in the early stages of implementation. Consider their experiences and views and what they tell you about policy enactment:

Nobody really knew what it was going to look like. (LILLY)

There was nothing, ... everyone was just making it up and saying, ‘What are you doing? We are doing this.’ (GINA)

It’s quite exciting [...] it’ll be interesting at the end of this year to hear how people have found it. We’re being asked to do a lot at once, so there will be ... I’m not going to say mistakes, but I think there’ll be things that, you know, we’ll have to do differently later. (OLGA)

Discussion: These comments clearly demonstrate that the successful implementation of new policies is a complex process and that local professionals are actively involved.

During the period when the changes to the SEND framework were debated and consulted on, other significant policy changes occurred which also impact on ongoing SEND provision and practice. These include: (1) the changing economic climate and resulting austerity budgets of successive governments with significant cuts to LA budgets; (2) the transfer of local authority schools to academy trusts with the resulting loss of not only budgets and influence, but also expertise in LAs; (3) a growing pupil population with increasingly complex needs, including mental

health and medical conditions; (4) a school funding review bringing changes to how schools can fund and receive funding for SEND provision; (5) the introduction and prioritising of **Pupil Premium** activities over SEND provision; and (6) the introduction of a new national curriculum (NC) and examination system which preoccupied many schools at the time of the introduction of the 2015 Code (DfE, 2013; EET, 2015; Tutt & Williams, 2015).

Regular newsletters from the Department for Education (DfE) provide local managers with implementation data. The DfE also issues supporting documents, for example outlining an accountability framework covering local and national roles and responsibilities and introducing new local joint area inspections from Ofsted and the Care Quality Commission (CQC) (DfE, 2015). Another example of implementation support provided by the DfE offers guidance regarding workforce development needs in schools, suggesting that staff need to understand the wider policy context as well as person-centred planning, management of personal budgets and how to define outcomes as priority areas (DfE, 2014). A third strand is research reports commissioned by the DfE.

Organisations including the National Association for Special Educational Needs (NASEN) and the Council for Disabled Children (CDC) are funded by the DfE to support implementation by developing training materials and audit tools to support service improvement and promote good practice. However, the proliferation of associations, institutions and certifying bodies who offer continuous professional development (CPD) opportunities for SEN professionals has been criticised as an example of the rise of the ‘SEND industry’ (Tomlinson, 2012). This will be explored further in Chapter 3.

This first section has provided background information and explained some of the influences that have shaped the construction of the SEND CoP 2015. The next section will look at the chapters of the Code in more detail.

Introducing and Challenging the SEND CoP 2015

The full title of the SEND Code of Practice 2015 is ‘Special Educational Needs and Disability Code of Practice: 0–25 years – Statutory Guidance for Organisations Which Work with and Support Children and Young People Who Have Special Educational Needs or Disabilities’ (DfE and DoH, 2015) and highlights three important developments from the preceding SEN Code of Practice, issued in 2001. It makes clear that the 2015 Code is a **statutory** document, that respective disability legislation and special educational needs legislation have been aligned in ways not previously seen, and that the Code is now covering a much greater age range than the former 5–16 years (or 19 in specific circumstances).

The 272 pages of the 2015 Code make it a considerably longer document than the previous 142-page Code, despite the stated intention to ‘reduce bureaucratic burdens by simplifying statutory guidance’ (DfE, 2011, p. 12). It demonstrates the complexity of the provision addressed within, and maybe also some mistrust by central government for local professionals and local government to manage

local concerns. Whilst the previous Code (DfES, 2001) aimed to provide **non-statutory** ‘practical guidance on the discharge of their functions’ (p. 6) for professionals, the 2015 Code prescribes statutory guidance, indicated by a bold ‘must’ throughout the text, just as the use of the word ‘should’ addresses non-statutory guidance that also must be considered, and any departure must be explained. Heightened expectations for effective partnership working with parents and between professionals were clearly articulated throughout the consultation period for the CoP and this remains a theme in almost every chapter in the document (see Table 1.1), replacing the stand-alone chapter on partnership working in the previous CoP.

Emerging Issues and Critiques

The Coalition government and others (DfE, 2011; Tutt & Williams, 2015) have argued that new legislation which is operationalised through the 2015 Code constitutes the most comprehensive overhaul of the SEND system in over 30 years. Others (Gray, 2014; Norwich, 2014) remark that little has changed and that the process reflects a missed opportunity for addressing some of the contradictions, duplications and dilemmas inherent in the system. Intended changes have been publicised widely, whilst little attention has been paid to significant continuities that will limit how practice can change in the long term. Those continuities include: (1) the unchanged and problematic definition of SEN (CoP, pp. xiii–xiv); (2) the same legal test whether an EHC Plan is required (CoP, p. xi); and (3) the same parental right to express a preference for a particular school, with the opportunity for the LA to decline, after consideration, if ‘it would be unsuitable for the age, ability, aptitude or SEN of the child or the attendance of the child would be incompatible with the efficient education of others, or the efficient use of resources’ (CoP, 9.79). This last statement indicates that although more choice for parents was a key promise made and has raised parental expectations, LAs continue to operate under the same constraints as before, and are arguably even further constrained by recent austerity measures.

The 2015 Code, although intending to provide simplified advice, entails many vague formulations. It suggests for example that local authorities ‘may develop criteria to help decide when it is necessary to complete an assessment, but must be prepared to depart from those criteria’ (CoP, 9.16), leaving a known area of dispute between parents and local professionals wide open to local variance and potential conflict. This is also true where schools are urged to ‘use their best endeavours’ (CoP, 6.2) to identify and address the SEN of their pupils, without further explaining what this might look like and when ‘best endeavours’ can be considered as exhausted.

A further example concerns the general obligation to take all reasonable steps to facilitate mainstream education, with the Code acknowledging that this may not be possible ‘where the child’s behaviour systematically, persistently or significantly threatens the safety and/or impedes the learning of others’ (CoP, 9.93).

Table 1.1 A summary of the SEND 2015 CoP chapters

Introduction	<ul style="list-style-type: none"> • provides some important definitions regarding SEN and disability; • identifies the organisations and services who must have regard for the statutory guidance; • lists relevant legislation and other guidance that the 2015 Code refers to; • provides an overview of key changes from the previous Code. • Significant changes to professional practice include: <ul style="list-style-type: none"> ○ an extension of the applicable age range (now covering 0–25 years) to address recognised problems around early identification, as well as the previously inadequate transition into adult supported or independent living for young people with SEND; ○ the introduction of the Local Offer, detailing all the services and provision that can be accessed locally; ○ the replacing of the Statement of SEN with the Education, Health and Care (EHC) Plan; ○ and an opportunity for holding personal budgets. • For educational settings, it prescribes: <ul style="list-style-type: none"> ○ the replacement of the social, emotional and behaviour difficulties (SEBD) area of need with social, emotional and mental health (SEMH); ○ the merging of School Action (SA) and School Action Plus (SA+) into a single SEN Support category. • For class and subject teachers, the most significant change is that they are specifically and explicitly charged with having primary responsibility for the progress and wellbeing of each child in their class, with the special educational needs coordinator (SENCO) adopting a more strategic leadership role.
Chapter 1: Principles	<ul style="list-style-type: none"> • provides an overview of the key aims and principles that underpin the 2015 Code: <ol style="list-style-type: none"> 1. to place children, young people and their families at the heart of the SEND identification, provision and reviewing processes by requiring LAs to ‘have regard to the views, wishes and feelings’ (CoP, 1.1) of families, not only concerning their individual provision, but also relating to the commissioning and designing of local services. 2. the requirement for education, health and social care providers to work together more closely, with the Code prescribing how LAs and clinical commissioning groups (CCGs) will have to collaborate at a service commissioning level and at an individual user level through the newly introduced EHC Plan.
Chapter 2: Impartial information, advice and support	<ul style="list-style-type: none"> • covers the information, advice and support services LAs have to provide impartially and ‘at arms’ length’ (CoP, 2.8), expressing the key social value of (parental) autonomy. Required provision includes already existing Parent Partnership Services, newly introduced Independent Supporters for some families and the adoption of a key working approach.

**Chapter 3:
Working
together across
education,
health and care
for joint
outcomes**

- explains the joint commissioning arrangements and the respective roles of education, health and social care agencies, with the charge to co-produce the Local Offer. Children, young people and their families need to be given the opportunity not only to be consulted, but also to be actively involved in commissioning decisions where the focus should be on outcomes at individual, service and strategic levels.

These changes imply the idea of a rational citizen-consumer who is empowered not merely to act in the interests of their own family, but also to simultaneously advocate on behalf of all local children. Whether this can be realised in a system which also offers personal budgets, continued access to First-tier (SEND) Tribunal hearings for individual cases, and individualised EHC Plans detailing personalised interventions that are predicated on the need for a within-child deficit diagnosis in order to receive a label, and with it an entitlement to additional support, remains to be seen. These challenges will be further explored in Chapters 3 and 8 of this book.

**Chapter 4:
The Local Offer**

- explains how LAs should develop and publish a Local Offer that sets out the range of services and support they expect to be available for local children and young people with SEND;
- suggests that professional development and expertise must be secured at three levels: (1) awareness training for all staff; (2) enhanced expertise to meet particular types of SEN when working directly with children and young people; and (3) specialisms for those providing advice and support (CoP, 4.32).

These arrangements imply a particular vision of continuous professional development (CPD) that focuses on developing skills, rather than the formation of values, motivations and dispositions of individual professionals (Hellowell, 2015). They may support the fostering of fragmented and specialised expertise within SEND, which does not attempt to re-professionalise teachers, but rather expands the SEND 'market' through the growth of consultants and specialist services (Tomlinson, 2012). This concern will be discussed further in Chapter 5 of this book.

**Chapter 5:
Early years
providers**

- explains the action early years providers should take to meet their duties in relation to identifying and supporting all children with SEND, whether or not they have an EHC Plan;
- highlights the crucial role of health services in the early identification of need.

For many private early years settings, this will be the first time they have to engage with these statutory requirements and there may be a particular need for those settings to train practitioners.

(Continued)

Table 1.1 (Continued)**Chapter 6:
Schools**

- the short 12-page chapter covers identification and provision of SEND within schools;
- applies mostly to mainstream schools, although the general 2010 Equality Act duties and the duty to publish an SEN information report is also relevant to special schools, as are duties in respect of EHC needs assessments and plans;
- describes the four broad areas of need which are used for SEND classification and reporting purposes;
- outlines the new graduated approach of SEN Support and the 'Assess, Plan, Do, Review' cycle (CoP, 6.45–6.56) with its emphasis on the impact interventions should achieve, rather than on the provisions to be made;
- clarifies the extended role of the SENCO, now covering 11 key responsibility dimensions (CoP, 6.90);
- argues that 'making higher quality teaching normally available to the whole class [...] tends to be more cost effective and sustainable' (CoP, 6.15) and states that 'teachers are responsible and accountable for the progress and development of the pupils in their class, including where pupils access support from teaching assistants or specialist staff' (CoP, 6.36), and that this should mainly be done by 'high quality teaching and differentiation for individual pupils' (CoP, 3.37) rather than through additional intervention and support.

In the formulations quoted, the language of the market and the responsabilisation of individual practitioners (Wright, 2012) is clearly articulated. The extended role of the SENCO outlined in the Code continues to weaken the former emphasis on shared practice between more and less experienced colleagues, and focuses the role to one of strategic management within a managerialist framework that promotes notions of distributed leadership. These challenging themes will be further explored in Chapters 4 and 7 of this book.

Whilst the brevity of the chapter could be seen as evidence for the government's stated intention to remove bureaucracy and allow for local decision-making, others (for example Norwich, 2014) have argued that it rather demonstrates that there has been an insufficient analysis of outstanding contentions and contradictions prior to the enactment of the 2015 Code. As a result, these are simply not addressed in the CoP (but will be discussed in a later section of this chapter).

**Chapter 7:
Further
education**

- explains and provides guidance on the statutory duties on further education colleges, sixth form colleges, 16–19 academies and some independent specialist colleges approved to identify, assess and provide support for young people with SEND.

Similarly to early years provisions, for many professionals working in the further education field the 2015 Code is newly applicable to their practice and replaces previous arrangements and expectations.

**Chapter 8:
Preparing for
adulthood from
the earliest
years**

- particularly relevant for those who are working with students aged 14 and over and includes both the transition into post-16 education, and the transition from post-16 education into adult life;
- much of the chapter applies to all young people with SEND, except where it states that arrangements are for those with EHC Plans only;
- sets out how professionals should support CYP identified with SEND to prepare for adult life, and help them go on to achieve the best outcomes in employment, independent living, health and community participation;
- emphasises the need for high aspirations, that discussions about longer-term goals should start early, and that they should focus on the CYP's strengths and capabilities and the outcomes they want to achieve.

**Chapter 9:
Education,
Health and Care
needs
assessments
and Plans**

- a lengthy chapter addresses the statutory needs assessment and construction of the EHC Plan;
- sets out the reduced 20-week timeframe (CoP, 9.40) during which the whole statutory assessment process has to be completed. This is a likely response to consumer demand for speedy resolutions and assumes that all partners, including parents, are able and willing to collaborate effectively and in a timely manner. This concern will be further explored in Chapter 8 of this book.
- also details the required content of Sections A to K of the EHC Plan (CoP, 9.62).

The newly introduced Section A, where the views, interests and aspirations of CYP and their families are documented, and Section D, where desired outcomes, including those for adult life, are recorded, may be the most controversial. Chapter 10 of this book will look at these Sections in more detail.

**Chapter 10:
Children and
young people in
specific
circumstances**

- addresses the specific circumstances of children in need (CiN), looked after children (LAC), care leavers and young people in youth custody, and deals with the specific complexities where various agencies have to coordinate provision across potentially a number of LAs. These circumstances sometimes provide particular challenges for partnership working also, which will be further explored in Chapters 4, 7 & 9.

**Chapter 11:
Resolving
disagreements**

- a lengthy final chapter of the Code considers the resolution of disagreements. These include:
 1. complaints procedures outlined by local providers;
 2. disagreement resolution and mediation processes, with the latter being specifically linked to decisions about SEN needs assessments and EHC Plans (CoP, 11.13);
 3. arrangements for the First-tier Tribunal (SEND).

These are all enlisted to secure opportunities for parents to confront dissatisfaction effectively and to keep professionals accountable.

The document concludes with a helpful glossary of terms and provides useful references.

Whilst behaviour that challenges is here seen as a reason for offering special provision (maybe responding to Warnock's [2005] claim that mainstream schools may not be suitable for children with social, emotional or behavioural difficulties), in another place the Code states that 'persistent disruptive or withdrawn behaviours do not necessarily mean that a child has SEN' (CoP, 6.21) and that behaviour difficulties and low attainment per se do not constitute SEN. Professionals have to act and build partnerships in these contradictory and confusing spaces.

CASE STUDY: SABRINA AND KEVIN



A class teacher reflects on his role of providing support for two children with SEND. What are the issues he raises and how do they relate to the 2015 Code?

We have got Sabrina, who has a diagnosis of Autism. She has a 1:1 teaching assistant in the morning, and then another one in the afternoon. She came from Reception, from a free-flow classroom into Y1. She joined in with everyone with her 1:1, but then as the term progressed and it went to more formal teaching, we had to develop her own timetable and her own activities because she couldn't access what other children were doing. Being a mainstream class teacher, I have never really dealt with this level of special need before, and I haven't worked with a 1:1 before. She is the child that probably has the most severe needs, but there are other children as well. Kevin has Autism as well. We thought he was getting a 1:1 by Christmas, but it is not happening yet. The reason why he has not got a 1:1 is because Sabrina has more obvious needs, Kevin is much quieter and does his own thing, but his needs are actually as high.

Discussion: The teacher is aware of an inconsistent allocation of resources for different children with very similar needs, but also highlights the limited confidence he has in his own expertise when working with children with significant SEN and in directing the activities of support staff. His comments speak to the particular concerns class teachers may have about the clearly articulated expectation in the 2015 Code of responsibility for most children with SEN at classroom rather than school or LA level, but also demonstrate that this teacher has not yet made the transition from focusing on outcomes for the child rather than on their needs and provision.

Conclusion

This first chapter has outlined significant stages in the journey towards the enactment of the SEND CoP 2015. It has also introduced the various chapters of the CoP, but disrupted the document's 'decidability' (Slee & Allan, 2001, p. 180) by questioning its intended status as a 'straightforward' (DfE, 2011, p. 5) tool for providing professional guidance. It identified the need to investigate and challenge the 2015 Code beyond its role as an instruction manual for professional practice, which is the concern of future chapters.

QUESTIONS AND ACTIVITIES



- What do you think are the reasons for the SEND CoP 2015 being almost twice as long as the previous SEN Code? Does a lengthy Code help or undermine professional practice?
- Why has the 2015 Code become statutory? Is this in the interest of, or detrimental to, partnership working?
- How important for shaping new policy and legislation do you think the Local Pathfinders were? How would being part of a Pathfinder project have helped individual professionals?
- Investigate one of the many reports mentioned that contributed to the shaping of the 2015 Code. Can you identify where recommendations have found their way into the requirements articulated in the Code?
- Try to read the Introduction and Chapter 1 of the 2015 Code, as well as one additional chapter that relates specifically to your current or intended future role. It will give you important insights into how the Code has been written and what it asks of professionals and practitioners.
- LAs have to provide information and advice services 'at arm's length'. Research and maybe speak to some of the organisations that provide this service in your local area.
- Research your local mediation and conflict resolution services; they may be provided by the local information and advice services.
- Local Offers are published on websites so that they can be easily accessed by parents and also easily updated. Look at the Local Offer of the LA you live and/or work in. Try to compare this site with some others and identify what makes for an accessible Local Offer.
- Look at the latest SEND newsletters published by the DfE (you can easily access these via <https://councilfordisabledchildren.org.uk/help-resources/resources/department-education-send-newsletters>) to see what the current implementation successes and issues are.

SUGGESTED FURTHER READING

The DfE has published a series of summaries of the 2015 Code, including for parents, social care professionals, early years professionals and school staff. Choose a relevant summary from:

www.gov.uk/education/support-for-special-educational-needs-and-disability-send

The following book provides a detailed summary of the 2015 Code and how it came into being:

Tutt, R. & Williams, P. (2015) *The SEND Code of Practice 0–25 years: Policy, provision and practice*. London: Sage.

WEBSITES TO EXPLORE

These websites contain many resources and documents that relate specifically to the introduction and implementation of the SEND CoP 2015:

Council for Disabled Children: <https://councilfordisabledchildren.org.uk>

NASEN: www.nasen.org.uk

SENDGateway: www.sendgateway.org.uk

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