Bradford SENDIASS

# Early Years Inclusion and support information

There are many misconceptions around the available SEND support for children under compulsory school age and some common inquiries that SENDIASS experiences are:

- Some early years settings saying they cannot accommodate a child who is not toilet trained
- Early years settings admitting a child onto their register, but reduced provision in terms of entitlement
- Early years setting requesting that parent/carer assists with supervision and/or medical intervention
- Early years settings not admitting a child due to 'Health and safety'
- Early years setting advising parents, 'It would be better if you looked elsewhere' due to the needs of the child.
- Parents or carers being mis-informed that they cannot apply for inclusion funding or an EHCNA/EHCP if their child is under compulsory school age.

The aim of this information sheet is to provide guidance to what SEND support is available for children under compulsory school age and the SEND law that aims to protect these children.

## SEND Funding for children under compulsory school age

Special Educational Needs Inclusion Funding (SENIF) is allocated to promote the inclusion of children within a pre-5 setting who may require additional / different provision due to their Special Educational Need and/or Disability (SEND). This funding also supports local authorities to undertake their responsibilities to strategically commission SEND services as required under the Children and Families Act 2014.

Local authorities are expected to target their Early Years SEND Inclusion Funds at children with lower-level emerging SEND. 'Emerging SEND' is not defined within the DfE's guidance. We define this as children, assessed as requiring any SEND Support who do not have an Education Health and Care Plan (EHCP). At the point an EHCP is put in place for a child, the resources allocated via this EHCP will replace SENIF funding. SENIF must solely be used to enhance staffing ratios. (See link for more information: SEN inclusion Early Years funding operational guidance )

## Funded childcare for 2-year-olds

The government funds up to 570 hours of free childcare per year for eligible 2-year-olds. This works out as 15 hours a week if your child takes up the childcare during term time, or you could take fewer hours over more weeks in the year. All eligible two-year-olds are able to take a place the term after their birthday.

The eligibility criteria include parents or carers who receive certain benefits. Or children who are looked after, children who have left care, children who have an EHCP, or children who are in receipt of Disability Living Allowance. See the links for more information:

- SEN inclusion Early Years funding operational guidance available March 2026 – sets out how the DfE expects LAs to pass funding to providers.
- Early years pupil premium – conditions apply in order to be eligible. Parents need to be in receipt of certain benefits or certain eligibility criteria applies to child.
- Disability access fund – EY provider can apply if child receives DLA and receiving free early education for 2-, 3- and 4-year-olds.

**Early years settings have a statutory duty** to have regard to the SEND Code of practice (S. 77 C&FA 2014). For early years settings who do not have a 'function' under the C&FA 2014, they have a duty under section 123 School Standards and Framework Act 1998 so they too must have 'regard' to the SEND Code.

**Early Years SEND Law for Maintained Early Years Settings**

There are a number of specific Laws and guidance which are in place to protect SEND children under compulsory school age who attend maintained and non-maintained early years settings. These include:

**Children and Families Act 2014:**

- Under Section 36 of the C&FA 2014, **a maintained early years setting** can request an ECHNA.
- For maintained Nurseries 'best endeavours' Section 66 of the C&FA 2014 applies.

**Under the Childcare Act 2006:**

- LAs and their partners to improve the outcomes of all children under 5 and reduce inequalities.
- Duty to secure free early years provision for children under compulsory school age
- Duty to secure sufficient childcare for working parents, or parents who are studying or training for employment (via Regulations)
- Duty on the Secretary of State to secure the equivalent of 30 hours of free childcare over 38 weeks of the year for qualifying children of eligible working parents.
- The Childcare (Free of Charge for Working Parents) (England) Regulations 2022 fleshes out the particulars of how the duty will be discharged.
- Regulation 44 requires LAs to secure free childcare for qualifying children of eligible working parents, to discharge the duty in section 1 of the Act.

**The Equality Act 2010:**

**Maintained Nursery Schools** are covered under Part 6 EQA 2010 – claims can go to the SEND Tribunal

- EQA part 6 section 85:
  - (6) A duty to make reasonable adjustments applies to the responsible body of such a school.
  - (7) In relation to England and Wales, this section applies to—
    - (a)A school maintained by a local authority;
    - (b) An independent educational institution (other than a special school); An alternative provision Academy that is not an independent educational institution
    - (c) A special school (not maintained by a local authority).

Section 98 SCHEDULE 13 Education: reasonable adjustments (This is also linked to section 20 EQA)

*Preliminary*

1. This Schedule applies where a duty to make reasonable adjustments is imposed on A by this Part.

*The duty for schools*

2(1). This paragraph applies where A is the responsible body of a school to which section 85 applies.

(2). A must comply with the first and third requirements.

(3). For the purposes of this paragraph—

(a)the reference in section 20(3) to a provision, criterion or practice is a reference to a provision, criterion or practice applied by or on behalf of A;

(b)the reference in section 20(3) or (5) to a disabled person is—

(i)in relation to a relevant matter within sub-paragraph (4)(a), a reference to disabled persons generally;

(ii)in relation to a relevant matter within sub-paragraph (4)(b), a reference to disabled pupils generally.

(4). In relation to each requirement, the relevant matters are—

(a)deciding who is offered admission as a pupil;

(b)provision of education or access to a benefit, facility, or service.

**<u>Early Years SEND Law for NON- Maintained Early Years Settings</u>**

**Under the children and families Act 2014**

Under Section 24 of the C&FA 2014, **an independent Early year's setting can request an EHCNA**. But first they would need to bring the child to the attention of the local authority as being a child with SEND or as a child that may have SEND need at compulsory school age.

**24: When a local authority is responsible for a child or young person**

(1)A local authority in England is responsible for a child or young person if he or she is in the authority's area and has been—

(a)identified by the authority as someone who has or may have special educational needs, or

(b)brought to the authority's attention by any person as someone who has or may have special educational needs.

(2) This section applies for the purposes of this Part.

**Under the Childcare Act 2006:**

- LAs and their partners to improve the outcomes of all children under 5 and reduce inequalities.
- Duty to secure free early years provision for children under compulsory school age
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**The Equality Act 2010**

Early years settings **not constituted as schools** are covered by Part 3 – this includes:

- Family centres
- Pre-schools
- Playgroups
- Childminders

However, unlike maintained early years settings, Complaints, claims of unlawful behaviour or disability discrimination would have to be made to the county court.

**For further information and advice, contact Barnardo's SENDIASS:**

**Telephone: 01274 513300**

# Bradford SENDIASS

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**Or visit our website for more useful information:**

**https://www.barnardossendiass.org.uk/bradford-sendiass/**

**Another useful link would be, IPSEA: http://www.ipsea.org.uk/**

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