



Estyn

Rhagoriaeth i bawb - Excellence for all

Arolygiaeth Ei Mawrhydi dros Addysg
a Hyfforddiant yng Nghymru

Her Majesty's Inspectorate
for Education and Training in Wales

Local authority placements of pupils with additional learning needs in independent special schools with linked 52-week residential provision



BUDDSODDWR MEWN POBL
INVESTOR IN PEOPLE



OCTOBER 2008

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- ▲ secondary schools;
- ▲ special schools;
- ▲ pupil referral units;
- ▲ independent schools;
- ▲ further education;
- ▲ adult community-based learning;
- ▲ youth support services;
- ▲ youth and community work training;
- ▲ LAs;
- ▲ teacher education and training;
- ▲ work-based learning;
- ▲ careers companies;
- ▲ offender learning; and
- ▲ the education, guidance and training elements of The Department for Work and Pensions funded training programmes.

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- ▲ provides advice on quality and standards in education and training in Wales to the National Assembly for Wales and others; and
- ▲ makes public good practice based on inspection evidence.

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Introduction

- 1 Estyn produced this report at the request of the National Assembly for Wales. The report focuses on pupils with additional learning needs¹ placed by local authorities in independent special schools with linked 52-week residential provision. These schools have either residential provision attached or are linked to residential care homes. For the purposes of this report, these schools will be termed as independent special schools with linked residential provision.
- 2 The report takes particular account of the strategic direction established by the Welsh Assembly Government in 'The Learning Country: Vision into Action'.
- 3 According to the 1996 Education Act, Section 347 (5) (b), the consent of the Welsh Assembly Government is required where a local education authority intends to place a child who is the subject of a statement of special educational needs in an independent school which either:
 - does not have special educational needs approval i.e. approval to admit pupils with statements of special educational needs; or
 - does have special educational needs approval, but the specific child is outside the terms of special educational needs approval of the school.
- 4 The Education Act 2002 defines an independent school as any school that provides full-time education for:
 - five or more pupils of compulsory school age; or
 - one or more pupils with a statement of special educational needs; or
 - one or more pupils, in public care, at a school which is not maintained by the local education authority.
- 5 The Education Act 2002 requires that all independent schools be registered with the National Assembly for Wales and comply with the Independent School Standards (Wales) Regulations 2003². The Welsh Assembly Government has agreed procedures with the Care and Social Services Inspectorate Wales (CSSIW) and Estyn for evaluating a school's compliance with the regulations and readiness for operating.
- 6 Between April 2006 and December 2007, Estyn conducted a survey of local education authorities and independent special schools with linked residential

¹ This term covers a very wide range of needs. We use the term ALN in relation to learners who have needs besides those of most of their classmates, for a number of different reasons, including learners who:

- have special educational needs (SEN), as defined within the SEN Code of Practice for Wales (2002); and
- have emotional, social and behavioural difficulties.

² See Appendix 3

provision across Wales. Inspectors sent comprehensive questionnaires to all local authorities and received 20 completed responses. Inspectors visited six local education authorities and held discussions with senior officers and elected members. Inspectors also visited eight independent special schools with linked residential provision, and considered evidence taken from the inspections of all independent special schools with linked residential provision and local authorities over the period from 2005 to 2008. In addition, evidence was gathered from the Care and Social Services Inspectorate for Wales (CSSIW) and the Wales Audit Office.

7 This report took account of the main findings of recent Estyn reports, including:

- Choice and flexibility for 14-19 learners (March 2008);
- 'Education in children's homes' (2008); and
- Annual Report of Her Majesty's Chief Inspector of Education and Training in Wales, 2006-2007.

Background

- 8 In April 2008, schools in Wales registered around 82,000 pupils as having special educational needs. The special educational needs 'Code of Practice' 2002 defines a pupil as having special educational needs if he or she has a difficulty which requires special education to be made for him or her. A small minority of these pupils (3.2%) have needs of such severity or complexity that a statement of special educational needs is required to specify the provision to meet their needs.
- 9 Nearly all pupils with statements of special educational needs have their education provided through local authority mainstream schools, special school resourced units, or pupil referral units.
- In April 2008, local authorities in Wales placed 2.2% of statemented pupils in independent schools. Nearly all of these pupils are looked-after children with complex special needs such as extreme social, emotional and behavioural difficulties (SEBD) and/or other difficulties such as autistic spectrum disorder (ASD).
- 10 A recent Estyn report, 'Education in children's homes' (2008), found that:
- “Almost all pupils in these types of independent residential special schools have social, emotional and behavioural disorders (SEBD) but only about half of these pupils have statements of special educational needs”.
- 11 Therefore, the number of pupils with complex special needs in independent schools is higher than the 2.2% with statements officially known to the Welsh Assembly Government (WAG).
- 12 The cost of this provision to local authorities in Wales is high, despite this being only a small proportion of the total pupil population. The annual cost of provision in independent special schools with linked residential provision for pupils with complex special needs ranges from £40,000 to £500,000 per pupil. The significant majority of this cost is attributed to the residential aspects of 52-week provision. In 2007, local authorities in Wales spent approximately £16 million on this type of provision. This means that local authorities use significant resources to meet the needs of these pupils.
- 13 This report focuses on the way local authorities in Wales plan and monitor the quality of the provision for the pupils with complex special needs they place in independent special schools with linked residential provision.
- 14 In response to this report, Estyn will:
- follow up with local authorities in Wales any shortcomings found in the inspections of independent special schools with linked residential provision;
 - continue to work with CSSIW to improve joint inspection processes; and

Local authority placements of pupils with additional learning needs in independent special schools with linked 52-week residential provision, October 2008

- liaise with the Welsh Assembly Government on sharing, with the Children's Commissioning Support Resource (CCSR), the reports about the quality of provision in independent special schools with linked residential provision.

Main findings

- 15 The difference between a pupil with complex special needs receiving their education locally or at an independent special school with linked residential provision is determined by the quality of school-based support and the availability of effective non-educational support for pupils and their families.
- 16 The failure of many local authorities and their health partners to strategically plan and provide enough flexible local services, including family support, has led too many pupils with complex needs to be placed out of their own area to receive education and care.
- 17 Senior leaders do not always have good enough commitment to joint planning to make the best use of the total available resources in an area. There is much to do to improve the strategic planning necessary to bring about joint services, whether this is between the agencies of one authority or across the regions of Wales.
- 18 Inspection visits to independent special schools with linked residential provision found that, for the majority of pupils, their complex range of special needs are not being met. Placing authorities too often focus on finding a school that can meet the pupils' most challenging needs, which are often behavioural, rather than assessing all the complex needs of pupils and making sure the school can meet all of these needs.
- 19 Local authorities do not always follow statutory procedures when they make provision for pupils in an independent special school with linked residential provision. In addition, local authorities and independent special schools with linked residential provision do not always make sure they consider pupils' special educational needs when they make a risk assessment of their challenging behaviour.
- 20 Between 2006-2007, Estyn inspected services that support children with additional learning needs and promote social inclusion in two local authorities and found that their support services for pupils with complex needs and disabilities were effective.
- 21 However, during these inspections Estyn also found that local authorities do not provide well enough for pupils with special educational needs who have social, emotional and behavioural difficulties, and that mainstream schools do not identify the needs of these pupils early or consistently enough.
- 22 Most local authorities:
 - do not monitor the quality of provision well enough for those pupils educated in other authorities or in independent special schools with linked residential provision;
 - do not know if this provision meets pupils' needs; and
 - do not know if they are getting value for money from independent special schools with linked residential provision compared to local, flexible supported provision.

- 23 In the most effective local authorities, officers ensure that comprehensive individual education and care information is passed to the independent special school with linked residential provision prior to pupils' placement. Nevertheless, far too often local authorities fail to ensure that the schools have the information they require to understand the needs of individual pupils.
- 24 The most effective monitoring procedures take place where Independent Reviewing Officers and Looked-After Children's Education Co-ordinators work together to integrate reviews, including the pupils' annual review of statement of special educational needs, in order to keep up to date comprehensive information about pupils' care and educational progress.
- 25 Joint regional work between local authorities provides the potential for reducing the costs of provision for pupils with complex needs. However, good joint planning can still be undermined as a result of independent providers setting up competitively priced and well resourced new provision. Joint protocols between regional partners are required to secure the involvement of agencies and their commitment to use any regional developments that are established.
- 26 The collaborative working arrangements, including pooling of budgets and other resources between local authorities and their health partners have not progressed well enough. These arrangements have yet to make an impact on the quality of services for most pupils with complex needs.
- 27 The Children's Commissioning Support Resource (2007)³ database does not currently contain inspection reports and notes of visits by Estyn or CSSIW. This means that local authority officers using the database have no indication of the quality of provision and subsequently children and young people could be placed in independent special schools with linked residential provision or children's homes that provide an education that does not meet their needs.
- 28 The separate inspection requirements and the different sets of regulations governing independent special schools with linked residential provision have hindered more cohesive working between Estyn and the CSSIW.

³ The Children's Commissioning Support Resource (CCSR) is a database provided by the Welsh Local Government Association for Welsh local authorities to assist in the identification of suitable placements for its looked-after children population.

Recommendations

Local authorities should:

- R1 strategically plan services in partnership with others to provide effective non-educational support, in conjunction with school based support, for pupils with complex special needs and their families;
- R2 make sure, prior to placement, that independent special schools with linked residential provision can meet the individual pupils' range of complex needs;
- R3 ensure that comprehensive individual education and care information is passed to the school prior to pupils' placement;
- R4 always follow statutory procedures when making provision in independent special schools with linked residential provision;
- R5 ensure Independent Reviewing Officers and Looked-After Children's Education Co-ordinators work together to integrate pupils' reviews; and
- R6 encourage their schools to work closely with parents and partners from other agencies, for example children's social services, the youth support services, health services and the police, to agree action that will further improve the behaviour of pupils with complex special needs.

Independent residential special schools with linked residential provision should:

- R7 ensure that they only take pupils they have the expertise to teach;
- R8 not accept pupils until they receive comprehensive individual education and care information from the placing authority; and
- R9 make sure they have the consent of the Welsh Assembly Government before they accept pupils with statements of special educational needs.

Why do pupils attend independent special schools with linked residential provision?

- 29 Around 82,000 pupils in Wales have special educational needs. Most of these attend local mainstream schools. Approximately 3% of these pupils have statements of special educational needs, with approximately one quarter of these attending local authority special schools. Local authorities provide a statement of special educational needs for pupils who have additional learning needs that require specific provision, over and above that provided to other pupils. There are no national criteria for deciding on which levels of special educational needs require a statement, and therefore each local authority makes decisions based on the needs of the individual against their own local criteria.
- 30 Evidence from inspections of schools in 2006-2007 shows that in schools, overall, pupils behave well. In a minority of cases pupils are excluded from schools. Often, the most significant measure taken by local authorities to improve pupil behaviour and prevent exclusion consists of offering additional training to teachers and support staff. Estyn's report 'Behaviour Wales: Good practice in managing challenging behaviour' (2006) identified examples of successful strategies and initiatives offering support and intervention. The report noted that:
- “Schools and local authorities are making good use of a plethora of approaches in projects to support and improve the management of challenging behaviour. There is compelling evidence of the usefulness of these in improving the behaviour and wellbeing of pupils”.
- 31 Of the measures taken to improve pupils' behaviour, a few schools have support centres where teams of specialist staff can help those pupils in danger of being excluded. These schemes are working well and have helped the schools to reduce the number of fixed-term and permanent exclusions.
- 32 All local authorities try to support schools and prevent pupils' placement breakdown and exclusion by providing training, advice and additional behaviour support workers to help manage pupils' challenging behaviours.
- 33 Most local authorities have specialist behaviour support teams comprising of teachers and support workers, often with an educational psychologist working with them. Generally, these teams can intervene promptly to offer a range of support mechanisms, including short term placement at a pupil referral unit. These teams are making a difference, through training, advice and support to schools and direct intervention with pupils.
- 34 For some pupils, who have difficult behaviours which are challenging for schools and disruptive to the learning of their peers, education of a flexible nature, usually off-site⁴ the mainstream school either supplements or replaces mainstream provision. These pupils are benefiting from the broader range of opportunities provided through the Welsh Assembly Government 14-19 Learning Pathway initiative. This initiative aims

⁴ 'Off-site' provision is often vocational or work-based training, co-ordinated by the 14-19 Network of local providers.

to encourage more young people to achieve their potential and equip them better for the world of work. A recent Estyn report, 'Choice and flexibility for 14-19 learners' found:

“The choice of courses available to learners is increasing. The best example is where groups of schools and colleges have planned provision together and made the full range available to all learners in their institution”.

- 35 However, the report also found that very few schools are providing a wide enough range of options at either age 14 or 16.
- 36 Further to additional, flexible support in school, nearly all pupils with complex special needs receive some sort of support or service from a range of professionals. For example, this support may come from an educational psychologist, educational welfare officer, social worker, youth support worker, clinical psychologist, child psychiatrist or other members of the Child and Adolescent Mental Health Services (CAMHS). Involvement in the youth justice system is commonplace. These services provide the most effective support when they work together with pupils and their families.
- 37 Improving pupils' behaviour often requires schools and local authorities to work effectively together with partners from other agencies, particularly when the pupils' behavioural problems stem from circumstances at home. However, overall, schools and local authorities do not work closely enough with parents and partners from other agencies, for example children's social services, the youth support services, health services and the police, to agree action that will further improve pupils' behaviour. It is often the holistic support and intervention provided at home, including the advice and guidance to parents about how to manage their children's behaviour, coupled with support at school that helps improve pupils' behaviour.
- 38 Despite receiving the types of additional support noted above, most of the pupils presently attending independent special schools with linked residential provision have been permanently excluded from at least one mainstream school or specialist provision, such as a pupil referral unit, because of their challenging behaviours. Overall, local authorities do not provide well enough locally for pupils with complex special needs, particularly for those with social, emotional and behavioural difficulties.
- 39 Disappointingly, this year in Estyn's inspections of local authority services we found around a half of local authorities:
- are not clear about how best to provide effective services for children and young people; and
 - have not been able to agree with other council services and partners, such as social services and the community health service, either their common priorities or the best way to work together.
- 40 In the one local authority that had effective strategic management, there was a clear strategy and high-quality planning for integrating education and children's services. Therefore, multi-agency working is developing, but there remains much to do before it becomes effective in meeting pupils' complex special needs.

- 41 Research carried out in 2007 by the Audit Commission in England entitled: 'Out of authority placements for special educational needs' found that:
- "A lack of integrated programmes of support for children and families, such as therapies and mental health support, has led to demand for out-of-authority provision in many areas".
- 42 Inspection evidence confirms that, in local authorities where strategic planning of additional learning needs and inclusion services is good, there is an inclusion strategy that encourages joint working between education and children's social services to assist joint planning initiatives. Such joint working to support looked-after children⁵ is a common feature in authorities that have low levels of out of county placements.
- 43 Where local provision is not available to meet pupils' complex special needs, local authorities consider placement in an independent special school with linked residential provision, but this only happens in exceptional circumstances. A hypothetical example illustrating the typical experiences of a pupil in their pathway to this type of provision is provided in Appendix 2.
- 44 Often this provision is not located in the pupils' home county. Local authorities have the responsibility to fund this provision if they decide that independent residential special schooling is required.
- 45 Nearly all of the pupils who are in independent special schools with linked residential provision for 52 weeks each year have complex special needs such as extreme social, emotional and behavioural difficulties (SEBD) and/or other difficulties such as autistic spectrum disorder (ASD). However, schools and local authorities still do not identify the needs of these pupils early or consistently enough. Neither do they identify the full range of the difficulties that make up these pupils' complex needs.
- 46 Inspection visits to independent special schools with linked residential provision over the past three years found that, for the majority of pupils, their complex special needs include additional learning difficulties, including specific learning difficulties. In most cases, the school is not meeting these additional needs as they are concentrating on the most challenging problem, usually the extreme SEBD or ASD. This is often because the placing authority has not identified clearly enough the pupils' needs on referral, or on the statement of special educational needs, and the school has not made a re-assessment of pupils' needs. Visits to these schools found too few examples of good, up to date pupils' assessment data. Therefore, pupils' learning is often hampered by teaching that is not planned to meet their individual needs. This in itself can lead to further behaviour difficulties as pupils feel frustrated at their difficulties in learning.

⁵ Children for whom the local authority has legal parental responsibility. This term is used to describe all children who are named in a care order, or who are provided with accommodation on a voluntary basis for more than 24 hours. Used to be called 'in care'.

How do local authorities ensure provision will meet pupils' needs?

- 47 Estyn's annual inspection visits to independent special schools with linked residential provision find evidence of pupils placed in schools that cannot meet their educational needs. However, a minority of local authorities do have good procedures and measures to ensure that placements are appropriate to pupils' needs. These effective procedures involve:
- checking that the school has staff trained appropriately to meet the pupils' behavioural and special educational needs;
 - asking for evidence from the school that they meet the independent school standards;
 - designating the co-ordination of effective and high quality personal education plans to the Looked-After Children's Co-ordinator;
 - visits to proposed provision by education and social services staff;
 - checking inspection reports;
 - contacting the Care and Social Services Inspectorate for Wales to discuss provision;
 - contacting the local social services office to discuss provision; and
 - discussing with other authorities that have pupils placed about their satisfaction rates.
- 48 However, not enough local authorities follow the procedures described above.
- 49 Since the recent guidance from the Welsh Assembly Government, 'Towards a Stable Life and a Brighter Future', local authorities have been required to establish a multi-agency panel to consider all out of county placements. This includes placements to independent special schools with linked residential provision. All local authorities involved in the research for this report have established their panel but, so far, not all are working to their full potential. A few do not involve education staff fully in placement decision making. This means that school placements are not always co-ordinated well enough and schools do not therefore receive the information they need to plan for pupils' complex needs.
- 50 A new resource, the Children's Commissioning Support Resource (CCSR) is now assisting local authorities in the identification of placements for looked-after children. It is a resource database, co-ordinated by the Welsh Local Government Association (WLGA), developed in response to concerns about the:
- numbers of looked-after children in Wales;
 - the increase in placements being made in independent provision; and
 - the costs relating to these placements.

- 51 Early indicators suggest the database to be very useful to local authorities in seeking appropriate placements for looked-after children. However, the database does not currently contain inspection reports and notes of visits by Estyn or CSSIW. This means that local authorities have no information of the quality of provision on which they are making placement decisions.
- 52 Independent special schools with linked residential provision do not always receive enough information about pupils' educational needs before placement. Indeed, even after placement, this information is often incomplete. For example, assessment reports provided as part of the statutory assessment procedures undertaken by the local authority are often missing. It is not unusual to find that schools do not have a copy of pupils' statements of special educational needs. These shortcomings mean that teachers are unaware of pupils' special educational needs and may be providing inadequate individual educational plans. In contrast, the schools usually have good information about the pupils' care needs. This is because they feel, rightly, unable to make a decision about offering placements without such comprehensive details as the pupils' social circumstances, criminal behaviour and mental health needs.
- 53 Local authorities and independent schools do not always make sure they consider pupils' learning needs as part of the individual risk assessment process. A risk assessment of individual pupils' needs is a crucial process that helps providers make sure they keep pupils, staff and the local community safe. Within this assessment, an understanding of pupils' special educational needs is an important component because there is a clear correlation between challenging behaviour and special educational needs.

Placement monitoring

- 54 Nearly all of the pupils in independent special schools with linked residential provision will be termed as 'looked-after children' (LAC) by a local authority, whether accommodated or subject to care orders. These schools have either residential provision attached or are linked to residential care homes. This means that pupils placed out of their home area can live at or near the school.
- 55 Pupils who are 'looked-after' should have an Independent Reviewing Officer (IRO), appointed by the local authority, who chairs the regular statutory reviews for each individual. There should be a review of pupils' progress within 28 days, three months and six months of placement with a Care Plan, and six monthly with a Pathway Plan.
- 56 Importantly, the IRO also monitors the performance of the authority in caring for the individual under review. Local authorities and their partners need to comply with the guidance in their placement, planning and review.
- 57 However, not all local authorities comply with the guidance to appoint an IRO for all pupils accommodated or subject to care orders. Therefore, the monitoring of a few pupils' placements is infrequent and does not regularly provide local authorities with the information they need to make sure that pupils are cared for and educated appropriately.
- 58 Many local authorities keep careful track of individual pupils' general progress when they place them in independent special schools with linked residential provision. They do this by reviewing the child's Care Plan/Pathway Plan and Personal Education Plan in addition to the statutory annual review of statement of special educational needs.
- 59 The most effective monitoring procedures take place where IROs and Looked-After Children's Co-ordinators work together to integrate reviews, including the pupils' annual review of statement of special educational needs.
- 60 However, most local authorities do not collate or analyse this valuable information from reviews about individual pupils' placement progress in particular schools to form a strategic overview of how well individual schools meet the needs of specific groups of children.
- 61 Local authority officers generally keep members of their councils well informed about the progress of pupils in independent special schools with linked residential provision but do not give them enough detailed information on the quality of provision to enable them to decide if these placements are value for money. However, as nearly all of the pupils placed in independent special schools with linked residential provision are looked-after children their placements are subject to regular council reporting processes. These processes have the potential to include greater evaluation of value for money, and planning of future specialist provision and services.
- 62 The cost of provision for pupils with complex special needs placed in independent residential special school ranges from £40,000 to £500,000 per pupil. This means that local authorities use significant resources, over and above the amount they

spend on their maintained schools, to meet the needs of the small number of pupils who have complex needs. However, despite spending approximately £16 million on this type of provision across Wales last year, few local authorities have strategically planned enough flexible local services, with partners, for pupils with complex needs.

Good practice in monitoring pupils' placements

Case study 1

One authority has recently entered into block-costing arrangements and cost reduction agreements. This authority is one of very few that has a contracting process for independent special school placements with linked residential provision for looked-after children that is clear. Social workers manage this process through the statutory reviews, and the authority's educational psychology service is fully involved. Officers from education, social services and health are working much more closely together to scrutinise how well out-of-county placements are working for individual children.

When this authority has concerns about the progress being made by a child, education, health and social services officers visit the placement together in order to challenge the school. Together, they have decided to remove a few children from unsatisfactory placements and have developed flexible alternative arrangements

Case study 2

The head of social services in one local authority has recently set up a multi-agency programme board to address social services' overspend on placing looked-after children in independent special schools with linked residential provision. Senior education officers sit on this board, along with their colleagues from social services, and all partners recognise that the high cost of provision needed by these young people can only be managed by the support of all agencies.

The authority's placement officer, based in social services, working with partners from education, has developed useful templates to use in the monitoring and evaluating the quality of the placements.

The effective use of these processes help the local authority to provide statistical analyses to members on an annual basis.

Making flexible arrangements to meet pupils' needs

- 63 Generally, not enough local authorities make good use of individual support packages to enable children to stay at home rather than go to an independent special school placement with linked residential provision. However, there are good examples where effective partnership with health services has enabled additional health support to be put in place for children who have mental health issues as and when they need it. In addition there are examples of health services making good use of private nursing agencies to employ qualified children's nurses who have additional psychiatric training.

Good practice in ensuring that pupils remain in local area

One authority has funded two care workers, attached to a special school, to give enhanced levels of support to children with cerebral palsy and additional needs. This provides a level of support that teachers cannot provide themselves and enables the children to stay in county.

This authority also makes use of a foster-plus scheme which pays more to foster carers who are able to work with children with particularly challenging behaviour. This scheme is designed to support children who would otherwise be educated in independent special schools. These foster parents are well supported by a respite hostel provided by Social Services. The education department provides specific training for care workers for with children with autism. As a result, there has not been an out-of-county placement, due to challenging behaviour, for the last 18 months.

Joint working

- 64 The Welsh Assembly Government have used the powers of the Education Act 2002 to support local authorities to work together to strategically plan and develop educational provision for 'low incidence special educational needs', such as ASD and SEBD.
- 65 Potentially, joint work provides a way of providing regional provision and reducing costs on independent special provision for pupils with complex needs. However, where regional partnerships plan to develop joint provision there is a need to ensure that:
- the planning of education provision is based on the established need of pupils;
 - firm joint protocols include a commitment by authorities to use the regional provision; and
 - planned provision gives value for money.
- 66 Evidence from the inspection of local authorities in 2006-2007 found local authorities and their partners starting to make joined-up arrangements for children and young people. However, we also found that senior leaders do not always have good enough commitment to joint planning to make the best use of the total available resources in an area. There is much to do to improve the strategic planning necessary to bring about joint services, whether this is between the agencies of one authority or across the regions of Wales.
- 67 Estyn found there to be barriers to joint working in its evaluation of the effectiveness of joint work in helping to manage the behaviour of pupils in Wales 'Behaviour in Wales' (2005). The barriers include:
- poor communication and sharing of information;
 - under-developed planning, with inappropriate or unclear priorities;
 - evaluation arrangements that are not robust;
 - inadequate levels of funding;
 - a lack of clarity about which agency pays for what, and when; and
 - lack of trust by one agency of another.
- 68 Wales Audit Office noted in their report, 'Out of authority placements for special educational needs', (2007), that:
- "improvements to procurement and better regional collaboration may help to reduce spending on independent special schools".

- 69 This report makes it clear that, in a few cases, local authorities could plan more effectively for pupils with complex needs:
- “...higher levels of initial investment have the potential to reduce the numbers of pupils placed in expensive out-of-county provision, and by increasing schools’ capacity and confidence in catering for special educational needs”.
- 70 The Audit Commission’s report, ‘Out of authority placements for special educational needs’ (2007) identifies good practice in regional collaboration in England. Their research concluded that:
- “Collaboration through regional partnerships is developing and has begun to have an impact on controlling costs in some regions, but joint commissioning of provision locally and regionally is underdeveloped”.
- 71 This is also the situation in Wales, as confirmed by the Chief Inspector of the Care and Social Services Inspectorate Wales in his annual report for 2006-2007. The report notes the need for better service planning:
- “A key challenge facing local government is to strengthen the commissioning and contracting of services in order to ensure that the pattern of provision required is meeting the needs of its current and future citizens”.

Statutory requirements, guidance and inspection

The Special Educational Needs Code of Practice for Wales (2002)

- 72 The Special Educational Needs Code of Practice for Wales (2002) provides guidance on the structures and legislation to local authorities, schools and others on carrying out their statutory duties to identify, assess and make provision for pupils' SEN.
- 73 The Code provides clear guidance in Section 8:2 for local education authorities to provide a statement of special education needs:
- “...when it considers that the special educational provision necessary to meet the child's needs cannot reasonably be provided within the resources normally available to mainstream schools and early education settings in the area”.
- 74 There is therefore a statutory requirement that pupils who attend a special school, whether this is a maintained or independent school, should have a statement of special educational needs.
- 75 However there are a number of exceptional circumstances where the Code, under Section 7:31 provides flexibility to allow a child who does not have a statement to attend a special school:
- where the child is being assessed to determine if a statement is needed;
 - where there has been a change in circumstances; and
 - where the child is in hospital and is admitted to a special school within the hospital.
- 76 The local authority must make clear the purpose and length of time of placements made without statements.
- 77 The Code also states in Section 8:25 that:
- “When an emergency placement is made, the local education authority (LEA) should immediately initiate a statutory assessment or re-assessment... If the child has been placed and will remain in a special school, a statement should always be made”.
- 78 This means that where there has been a change in circumstances that is sufficient for the local authority to make provision in an independent residential special school, the authority should ensure that a statutory assessment is initiated. When a pupil without a statement has been placed in an independent special school for an assessment but it is decided that no statement is necessary, the Code of Practice states that the pupil may only remain at that school for a maximum of 10 days.

- 79 Estyn's annual inspection visits to independent special schools find that local authorities do not always follow these statutory procedures. For many pupils, this means they do not have an assessment of their special educational needs, or that assessments are incomplete. As a result, their needs are not being met and they are therefore unlikely to meet their own learning potential.

Inspection and regulation

- 80 Estyn inspects independent special schools with linked residential provision under section 168 of the Education Act 2002. In addition, Estyn visits each school to judge that they comply with the Independent Schools Standards Regulations (Wales) 2003. The Care and Social Services Inspectorate for Wales inspects the social welfare provision at these schools, or related children's homes. The two inspectorates have a protocol on joint working and information sharing.
- 81 Schools that wish to provide for pupils with a statement of special educational needs require additional approval of the Welsh Assembly Government for the various categories of additional learning needs.
- 82 If a local authority wants to place a pupil with a statement of special educational needs at an independent special school, they must ensure that the school has the approval of the Welsh Assembly Government to meet the pupils' specific special educational needs. Where the school does not have this, the local authority must seek consent from the Welsh Assembly Government to the proposed placement.
- 83 Despite these clear requirements, local authorities continue to place pupils in schools that are unable to meet their full range of special educational needs. Local authorities do not always follow the correct procedures before they place pupils unless reminded by schools to do so. Estyn regularly finds pupils placed without appropriate consent of the Welsh Assembly Government. The outcome of this means that pupils do not have their special educational needs appropriately met.
- 84 One of the reasons for this continued disregard is the high numbers of pupils placed by local authorities in England in schools in Wales. Regulation is not consistently applied across England and Wales and this sometimes leads to confusion as local authorities in England are not familiar with regulation in Wales.
- 85 Many of the independent special schools have their residential facilities registered with the Welsh Assembly Government as children's homes because of the long periods of time that children and young people stay. The Care and Social Services Inspectorate Wales inspects these children's homes. Estyn inspects the education provision, even when this is provided on site at the children's home.
- 86 A joint protocol between Estyn and the Care and Social Services Inspectorate Wales keeps both inspectorates informed about developments at the schools. The partnership has also led to some simultaneous inspection of the social welfare and education provided by independent special schools. However, the separate inspection requirements and the different sets of regulations governing the provision have hindered more cohesive working.

- 87 During visits to independent special schools, inspectors scrutinise samples of case files. Very often there is incomplete information about pupils, particularly about their learning needs. There are particular weaknesses in transfer of important information from the local authority on pupils' learning in nearly all independent special schools with linked residential provision. Far too often these files contain clear evidence of the failure of local authorities to meet the needs of individual pupils. Many of the files tell a similar story: a long history of concerns about social care and of educational failure. Many local authorities have failed to intervene early enough and provide appropriate support for many of these children and young people.

What is the impact of Welsh Assembly Government policy?

- 88 The numerous statutory measures, policy changes and strategic guidance from the Welsh Assembly Government provide a coherent framework for local authorities to structure their services. These include:
- The Children Act 2004;
 - Children and Young People: Rights to Action;
 - Children and Young People's Partnership (CYPP);
 - Stronger Partnership for Better Outcomes;
 - Towards a Stable Life and Brighter Future;
 - Making the Connections-Delivering better Services for Wales;
 - Making the Connections-Beyond Boundaries: Transforming Public services in Wales; and
 - Beyond Boundaries-Review of Local Service Delivery.
- 89 These measures promote the importance of collaboration and partnership working between the services for children, and the benefits to be gained in terms of increasing their capacity to make improvements. Good communication is the key to effective partnership working and many authorities are developing their communication protocols and prioritising information sharing as a means of improving their partnership working.
- 90 The Children Act 2004 enables partners to pool their budgets in order to support collaborative working arrangements. It is this aspect that is the most crucial to making partnership work. However, implementation of this has not progressed well and the pooling of budgets and other non-financial resources has yet to make a difference to services for most pupils with complex needs.
- 91 In England, the Act brought a statutory requirement for local education authority's and children's social services departments to work in partnership to form children's trusts. The new children's trusts were encouraged to integrate assessment of need, commissioning and service delivery. This requirement was not enacted in Wales. However, a small number of local authorities used this legislative opportunity to extend partnership working by re-organising the structures of education and social services into integrated children's services.

- 92 It is too early to discern the full impact of integrated structures on children and young people. However, there is evidence from inspection of local authorities in Wales, that where this integration has happened, there have been improvements in planning processes for pupils with complex needs. Clear, shared vision and good quality relationships and communication between agencies have been the key factors behind these improvements.
- 93 Better planning and co-ordination has not been restricted to authorities that have changed their corporate structure. Generally, there is positive movement forward in planning and co-ordinating joint services for pupils with disabilities. There are many examples of such services providing good assessment, advice and support to pupils with disabilities and their parents or guardians.
- 94 Generally, local authorities and their partners are too slow in improving their arrangements and working together more effectively to implement joint arrangements and commissioning. Effective planning and commissioning of services for pupils with SEBD, and for those with ASD are not progressing well enough across Wales.
- 95 Despite the generally limited progress, there are examples of innovative, flexible packages of support that are helping to keep young people in their home area. In addition, there are a small number of examples of young people returning from independent special schools with linked residential provision to their home area through good joint planning and provision by local authorities. However, these represent a relatively small number of children.
- 96 Most authorities are beginning to develop the formal understanding and processes that arrangements for joint commissioning require. There is widespread commitment to improving joint working, but progress is slow.
- 97 However, despite the Welsh Assembly Government's clear vision for improved services, through better partnership working, the failure of many local authorities and their health partners to provide integrated packages of support, including family support, therapies and mental health provision, has led too many pupils with complex needs to be placed out of their own area to receive education and care.

Appendix 1: Welsh Assembly Government policy

Children Act 2004

Part 3 of the Children Act provided a new statutory basis for partnership working and planning to take forward the vision of children's services. Section 25 of the Act requires local co-operation between local authorities and their partners with a clear aim of helping every child to achieve his/her full potential. It enables partners to their pool budgets in order to support these arrangements.

Section 27 of the Act requires that local authorities appoint a lead director and a lead member for children and young people's services with responsibilities for ensuring co-operation in partnership planning for children and young people. There is a similar requirement for Local Health Boards (LHBs) and National Health Service Trusts (NHSTs) for appointing lead officers to work in partnership with local authorities.

Children and Young People: Rights to Action

This policy and guidance, introduced in 2004, introduced seven core aims as the basis for making decisions and prioritising objectives, nationally. These aims also form the basis for decisions on strategy and service provision locally.

The aims seek to ensure that all children and young people:

- have a flying start in life;
- have a comprehensive range of education and learning opportunities;
- enjoy the best possible health and are free from abuse, victimisation and exploitation;
- have access to play, leisure, sporting and cultural activities;
- are listened to, treated with respect, and have their race and cultural identity recognised;
- have a safe home and a community which supports physical and emotional wellbeing; and
- are not disadvantaged by poverty.

The partnership work required of local authorities to plan and work towards implementing these core aims underpins the policy that comes into operation later this year, to produce children and young people's plans (CYPP).

Children and Young People's Partnership (CYPP)

Under section 26 of the Children Act 2004, local authorities must prepare and publish a plan setting out the authority's strategy for discharging their functions in relation to children and relevant young people. The plan must:

- provide strategic vision and state the agreed priorities that will direct the work of all partners;
- describe how requirements of national and local strategies, policies and priorities will be tackled locally and the main elements that will deliver service improvement under each of the seven core aims;
- set out agreed joint targets to enable the measurement of progress targets over the planning timescale;
- identify the contribution made by individual partners towards meeting joint objectives, ensuring that they are consistent and mutually supportive; and
- provide a basis for the joint commissioning of services and sharing of available funding, including core budgets of statutory partners and resource or financial contributions from the voluntary sector.

Local authorities are required to work together with partners in the community to implement the necessary changes in organisational culture and practice that ensure the identification, strategic planning and integration of services for children and young people.

Stronger Partnership for Better Outcomes

This guidance, introduced in 2005, strengthens co-operation across services, placing the focus on improving outcomes for children and young people rather than compliance with process. It would be neither practical nor appropriate for a single agency to deliver the outcomes required of the seven core aims.

The guidance promotes the development of joint commissioning of services as a means of drawing together service planning and provision. There is recognition that the Children and Young People's Partnerships (CYPP) would be useful in developing these processes.

Towards a Stable Life and Brighter Future

Since June 2007, new measures have strengthened the arrangements for the: placement; health; education; and wellbeing of looked-after children and young people. The guidance requires local authorities and their partners to work together when making arrangements for the placement of looked-after children and the provision of their health and education.

The measures of joint working regarding looked-after children and young people are further supported by the development of the Local Service Boards. These Boards are still in their infancy, but in their first year they have prioritised social care issues as a priority.

Appendix 2: Case study of typical pupil's pathway to an independent special school with linked residential provision

This hypothetical example illustrating a typical pathway to independent special school was developed jointly between inspectors in Estyn and CSSIW. The pupil is fictitious, but based on fact.

David's story

David is born into a single parent family of four boys. All four boys have different fathers, none of whom provide support. The mother is a drugs user.

Pre-school and Early Years education

David is identified by health professionals as a having developmental delay with communication and difficult sleep pattern.

David attends local children's centre through Flying Start initiative. There are concerns at the centre about David's aggressive behaviour, communication and general progress. David's name is placed on SEN register at 'Early Years Action' in accordance with SEN Code of Practice. An individual education plan (IEP) is prepared for him.

Community Paediatrician discusses concerns about David at pre-school multi-agency 'sorting panel'. Educational psychologist starts an education file.

A referral is made to social services for David and his siblings for an assessment as children 'in need' or possibly as children in need of protection. An Initial and Core Assessment under the Assessment Framework is completed by a social worker who co-ordinates a multi-agency plan to begin to address the specific issues for David and other family members. This is a co-ordinated plan with actions taken by health and education input.

Primary school

Regular reviews of IEP progress, but concerns remain. School provides part-time support on a one-to-one basis from delegated SEN budget. An individual behaviour plan (IBP) is prepared.

Requests for additional support are made to local authority Moderation/SEN Panel. David is classified as having 'School Action Plus' and the authority provide the support of an Educational Psychologist and a Behaviour Support Teacher.

David is placed on the child protection register after a Local Safeguarding Children's Board (LSCB) child protection case conference prompted by teacher reporting bruising. This follows long-term concerns about poor communication, difficult behaviour, poor diet, and issues of cleanliness, excessive tiredness and poor

attendance. A variety of education staff (school, psychology service, education welfare officer, behaviour support officer and others) attend this conference and the information provided by them (alongside that of other professionals) informs the decision that David has not suffered significant harm.

A request from his school to the authority's Moderation/SEN Panel for additional support after concerns about David's level of receptive and expressive language, as well as his very difficult behaviours. School claim they cannot sustain the additional support from their own budget. Local authority officers request additional evidence from the school.

Whilst awaiting a response from the local education authority, David is temporarily excluded from school.

Evidence provided by the school to the Moderation Panel suggests that David's communication is not sufficiently behind that of peers to meet the additional funding criteria. However, the Behaviour Support Teacher re-instated to provide INSET to whole school on Positive Behaviour Management.

David's attendance rate is below 60%.

David is temporary excluded from school. The Moderation/SEN Panel begins statutory assessment procedures after receiving a report from the Behaviour Support Teacher. The report states he has difficulties relating to his peers, and is not a popular child. The report also suggests he has specific learning difficulties in addition to his challenging behaviour.

Before the educational psychologist assessment further child protection concerns lead to another LSCB multi-agency child protection meeting and a plan, based on the Assessment Framework domains, is devised. A range of specific interventions are to be provided by education and other agencies. Other aspects of the plan focus on meeting social care needs and reducing further child protection risks. Education staff are involved in monthly Core Groups and three-monthly and six-monthly review conferences to monitor and review the plan.

A re-referral is made to the local authority LSCB after police intervention. The local authority takes David 'into care'. This means he becomes a 'looked-after child' (LAC) for his own safety. He is accommodated with the agreement of his mother, as a subject of police protection. The local authority decides to begin proceedings to seek a care order.

The care placement is 45 miles from school, in a neighbouring authority. David is admitted to another school nearer his foster home. Before making this placement, the local authority considers the matters, as laid out in the Placement of Children (Wales) Regulations 2007. This includes specific educational considerations (Schedule 3) including how the proposed placement will meet the child's educational needs. As the foster placement is out-of-county, the case is discussed at a child care panel (this should be before the placement is made but in this emergency is within 25 days of the placement being made). The panel includes senior officers from the local authority and other agencies. Their role is, amongst others, to ensure that the child's educational needs will be met in the proposed placement.

While David is looked-after, a care plan is developed which includes an educational element in the Personal Education Plan (PEP). This is completed within 20 days of becoming David becoming looked-after.

David is temporarily excluded from school. A support worker, provided by local education authority on one-to-one basis (temporarily), remains with him until the assessment processes leading to a statement of special educational needs are completed.

The local authority prepares a statement of SEN. This states that David needs to transfer at the end of Year 7 to a special school because of his social, emotional and behavioural problems and his special educational needs. The curriculum will be modified to meet his learning needs. A Speech and Language Therapist will provide support to develop his poor communication. David does not want to attend a special school; he wants to go the local secondary school with his classmates.

Special school

David returns to own family. His attendance at school gets worse. There is regular police intervention for theft and anti-social behaviour. David's case returns to a LSCB child protection conference after concerns of neglect. He is returned into the care of the local authority. However, his behaviour becomes dangerous and care placements keep breaking down.

David is permanently excluded from school. He is placed at Pupil Referral Unit (PRU).

David absconds from care placement on a regular basis.

The PRU refer his case to the LSCB after concerns for his safety. The meeting refer his case to the local Out-of-County Placements Panel who agree that a residential special school would provide a more stable environment. Joint funding of a placement is agreed, but costs and arrangements need to be considered after a placement is finalised. There is difficulty locating a suitable school that has availability. In the interim, David receives home tuition of three hours per week and attends a mechanics workshop supported by a youth worker.

Independent special school

A social worker and behaviour support teacher visit a school 85 miles from David's home. It is an independent special school with care home on-site providing 52-week residential provision for pupils with social, emotional and behavioural difficulties. They agree that the school can provide good care and manage David's behaviour. David moves to this residential provision.

Very limited information arrives at school about David's educational achievements. His statement of special educational needs is provided, but not the supporting appendices. This means that his underlying special educational needs are not recognised at the school. The school aims to help David control his anger and manage his own behaviour better. They provide therapy to help him. The care home side of the establishment has more detailed information about David's background

and needs and this informs the placement plan for the care provision and the overall management plan for him. It is recognised that there needs to be consistency between his schooling time and the wider care provision.

David's behaviour in school deteriorates after a brief initial period. He refuses to work, apart from in the art lesson. He becomes abusive and physically challenging to staff.

Police are regularly involved after reports of incidents and also when David fails to return home after visits to the community.

David refuses to go to school. There are numerous incidents of challenging and aggressive behaviour. A review meeting is called and the management plan and care plan are reviewed several times.

David is excluded from school.

The whole process to identify different placements to meet his needs is repeated, possibly more than once.

Appendix 3: The independent school standards (Wales) regulations 2003

Part 10 of the Education Act 2002 requires that all independent schools must be registered with the National Assembly for Wales before a school begins to operate. Regulations made under the Act set out a range of standards that all independent schools must satisfy as a condition of registration. These regulations cover:

- the quality of education provided;
- the spiritual, moral, social and cultural development of pupils;
- the welfare, health and safety of pupils;
- the suitability of proprietors and staff;
- the premises and accommodation;
- the provision of information; and
- the way in which complaints are handled.

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