

Leicester City's BERA Framework



Delivering high quality SEND provision, the application of Best Endeavours and Reasonable Adjustments within a mainstream setting.

Introduction

This framework associated process and documentation were developed by Leicestershire County Council. The process is now being implemented across both the County and the City and we would like to take this opportunity to thank Leicestershire County Council for their work on this. In the City this replaces the document, 'Inclusive Provision for SEND (Special Educational Needs and Disability) Pupils in Mainstream Schools.' We would also like to thank colleagues, in both mainstream schools and specialist settings, for their help with personalising the framework for Leicester City.

Leicester City Council is committed to achieving the outcomes for children and young people with Special Educational Needs and Disability (SEND) and to enable them to be successfully included in their community.

Whilst we are committed to ensuring that there are sufficient places in specialist settings and services, we know that most children and young people with SEND are educated in mainstream schools. Our strategic aim is to develop and sustain a high quality inclusive mainstream education offer for all children and young people with SEND in Leicester City, working in partnership with schools and families to achieve this.

There are many schools in Leicester that are highly inclusive and already offer excellent provision for children and young people with SEND. We want to build on that good practice. We believe, however, that the needs of some children and young people currently accessing specialist provision could and should be met in mainstream settings. We are confident that if the right support and breadth of provision is put in place, many more children can be successfully educated in their local schools alongside non-SEND children and young people.

We are committed to working in partnership with schools to build capacity, expertise, and a commitment to inclusion so that we can increase our ability to identify need and put support in place earlier. This should improve the quality of our offer to all pupils with SEND, irrespective of whether or not they have an Education Health and Care Plan (EHCP) and ensure that needs are met in the environment that is for the child or young person, mainstream wherever possible and specialist when necessary.

Purpose of the Framework

The aim of this Framework, which will be piloted and amended in line with feedback over time, is to support mainstream schools and the local authority to understand and consistently meet our shared responsibilities within the legislative framework, promoting effective inclusive practice and enabling children with SEND to achieve and thrive. It will support decision making about what constitutes appropriate 'best endeavours and/or reasonable adjustments' to meet the needs of children and young people with SEND within mainstream settings and ensure that those decisions are based on a rationale which is clear, transparent and consistently applied. It is intended to:

- support shared understanding amongst schools, all agencies, and staff on the application of best endeavours and reasonable adjustments duties, and in doing so, ensuring good inclusive practice.
- support schools and the local authority to work together to put appropriate provision or practice or services and/or resources in place to ensure that pupils with SEND are not disadvantaged in comparison with their non-SEND/non-disabled pupils.

- provide a process by which schools, the local authority and/or children and young people, parents/carers can raise concerns that ‘best endeavours and/or reasonable adjustments’ may not be in place.
- identify the process for decision making and the criteria which supports this process.
- support an evaluation of the application of ‘best endeavours’ or ‘reasonable adjustment,’ focussing on the impact on the children and young people, with a view to securing consensus, where appropriate, about what actions need to be taken and by whom, to facilitate positive outcomes.
- where there is no consensus, support us in making decisions as to whether there has been a failure to apply ‘best endeavours’ or ‘reasonable adjustment,’ and what actions need to be taken and by whom to remedy this.
- set out the steps that will be taken by us as a local authority to meet our responsibilities, both to provide services and provision, and to support, and where appropriate challenge schools, where it is deemed there has been a failure either to apply ‘best endeavours’ and/or reasonable adjustments’ and/or to take the remedial action identified through the application of this process in a timely manner.
- ensure that any judgments made are set within a clear framework and underpinned by a transparent rationale, with an effective process for external moderation and conflict resolution where appropriate.

This Framework is supported by a suite of guidance documents to aid decision making and exemplify expectations in relation to effective SEND practice. The framework and associated documents will be piloted and amended in line with feedback over time.

Principles:

- The child or young person and their family is at the heart of what we do. Their views, wishes and aspirations are always taken into account.
- All children and young people with SEND can expect to be treated fairly and have their needs met.
- The curriculum offer is appropriate, accessible and focuses on securing outcomes which matter to the children and young people and will support positive future lives.
- Our focus is on difference and not deficit, and we are committed to ensuring that ‘best endeavours’ and ‘reasonable adjustments’ are used effectively to maximise progress and secure positive outcomes.
- We have high expectations and promote positive attitudes to SEND.

Terminology

Throughout this document the term ‘school’ is used to refer to:

- Mainstream schools (including mainstream academies)
- Maintained (state funded) nursery schools and Private/Voluntary/Independent sector
- 16-19 academies
- Alternative provision academies • Further Education Institutions
- Pupil Referral Units.

The National Context

In the last 10 years we have experienced the most comprehensive reform of Special Educational Needs in a generation. In considering and developing our provision for pupils with SEND, there are two key pieces of legislation which need to be taken into account –

[The Equality Act](#) (2010), and subsequent amendment (2012) which introduced

‘Reasonable Adjustments’ and the [Children and Families Act](#) (2014), which identifies the schools’ responsibilities in relation to ‘Best Endeavours’.

'Best Endeavours' and 'Reasonable Adjustments' within Leicester City

In the past, a lack of shared understanding about what we mean by these two terms has meant that it has been difficult to effectively support schools either to meet their responsibilities or to provide effective challenge where they do not. This framework and its supporting guidance document, which has been co-produced with schools, SENCos, local authority staff, parents, and carers, is intended to clarify what we mean by these terms and to support us in ensuring the legislation is consistently applied. It is also intended to support the possible outcomes for our children and young people with SEND.

The Legislative context: The Children and Families Act and associated Code of Practice 2014

The [Children and Families Act 2014](#), and associated [SEND Code of Practice](#), which came into force on 01 September 2014, aims to ensure that children and young people with disabilities achieve well, have choice and control over their support and are enabled to progress from education into happy and fulfilling lives, including employment.

The Act enshrines the importance of ensuring that young people and their families or carers are fully involved in decisions about their support and the outcomes they want to achieve. The legal framework is designed to join up support across education, health, and care, from birth to 25 by bringing about key changes to the way in which departments, providers and practitioners work together to facilitate this. The expectation is that these changes will result in improved outcomes for children and young people and ensure that their experiences will be a journey which is less confrontational and more efficient than in the past.

Best Endeavours

The [Children and Families Act 2014](#) and associated [SEND Code of Practice](#) (2014) states that:

'Mainstream schools **must** use their best endeavours to make sure that a child with SEN gets the support they need – this means doing everything they can to meet children and young people's SEN.'

SEND CoP (Code of Practice) 6.2 pg.92

This duty applies irrespective of whether the children and young people have an EHCP or not. Although there has been less legal challenge about what this means than one might have expected, nonetheless, it is a requirement with legal status. There is value in identifying what we mean and expect by 'best endeavours' in Leicester City.

Within the code of practice, the terms 'must' and 'should' are used to differentiate between 'duties' (i.e., legal requirements) and 'expectations.' This framework and the supporting guidance documents will consider what we mean by 'best endeavours,' with reference to both duties (musts) and expectations (should) in relation to Leicester City's 'graduated response.'

Using 'best endeavours' means doing everything the school can to meet the children and young people's SEND.

The Equality Act - Reasonable Adjustments

Schools and local authorities have a duty to provide reasonable adjustments for disabled pupils under the [Equality Act 2010](#). From 1 September 2012, the reasonable adjustments duty for schools and education authorities includes a duty to provide auxiliary aids and services for disabled pupils.

Leicester City's approach to determining whether a duty re 'Best Endeavours' and/or 'Reasonable Adjustments' applies.

Who does it apply to?

Whilst 'reasonable adjustments' applies to disabled pupils as defined in the Equality Act 2010, the Code of Practice applies to children and young people with SEND. The Equality Act says that a pupil has a disability if he or she has a physical or mental impairment that has a long-term and substantial adverse effect on his or her ability to carry out normal day-to-day activities. The Code of Practice identifies that:

'This definition provides a relatively low threshold and includes more children than many realise: 'long-term' is defined as 'a year or more' and 'substantial' is defined as 'more than minor or trivial.' This definition includes sensory impairments such as those affecting sight or hearing, and long-term health conditions such as asthma, diabetes, epilepsy, and cancer. Children and young people with such conditions do not necessarily have SEN, but there is a significant overlap between disabled children and young people and those with SEN. Where a disabled child or young person requires special educational provision, they will also be covered by the SEN definition.'

CoP (2015) xviii. Pg.16

Some disabled pupils will also have special educational needs (SEN) and may be receiving SEN support or have an EHCP. The fact that a disabled pupil has SEN Support or an EHC (Education Health and Care) plan does not take away a school's duty to make reasonable adjustments for that pupil. In practice of course, many disabled pupils who also have SEN Support or an EHC plan will receive all the support they need through the SEN framework and there will be nothing extra that the school must do. However, some disabled pupils will not have SEN and some disabled pupils with SEN will still need reasonable adjustments to be made for them in addition to any support that they receive through the SEN framework. Schools should therefore consider whether there is a 'Best Endeavours' and/or 'reasonable adjustments' duty for all children and young people with a SEND, irrespective of whether or not they have an EHCP plan or are on SEN support.

The [Reasonable Adjustments for Disabled Pupils Guidance for Schools in England](#) requires schools:

'To take such steps as it is Reasonable to have to take to avoid the substantial disadvantage' to a disabled person caused by a provision, criterion or practice applied by or on behalf of a school, or by the absence of an auxiliary aid or service.'

The reasonable adjustments duty is triggered only where there is a need to avoid 'substantial disadvantage.'

'Substantial' is defined as being anything more than minor or trivial. Whether a disabled pupil is at a substantial disadvantage or not will depend on the individual situation.

In the reasonable adjustment guidance, the term 'school' is used to refer to both schools and local authorities, so this is a shared responsibility. This responsibility is also referenced in the [SEND Code of Practice \(2014\)](#), which states that schools must:

'Make reasonable adjustments, including the provision of auxiliary aids and services, to ensure that disabled children and young people are not at a substantial disadvantage compared with their peers. This duty is anticipatory – it requires thought to be given in advance to what disabled children and young people might require and what adjustments might need to be made to prevent that disadvantage.' Send CoP pg.17

There are three elements to reasonable adjustments:

- Provisions, criteria, and practices – this relates to the way in which a school operates daily, including its decisions and actions.

- Auxiliary aids and services – this means anything that constitutes additional support or assistance for a disabled pupil, such as a piece of equipment or support from a member of staff.
- Physical features – whilst this element does not apply to schools in relation to disabled pupils, they do have a duty to plan better access for disabled pupils including in relation to the school's physical environment.

For this reason, in the framework and supporting guidance we do not distinguish between whether the action taken to support a pupil to achieve and thrive falls under 'best endeavours' or 'reasonable adjustments. Instead, we consider the impact it has on the children and young people.

Best endeavours or reasonable adjustments are effectively the first tier of putting in appropriate support to meet SEND and they complement quality first teaching. Wherever there is concern about progress or wellbeing, consideration should always be given as to whether the concern may be related to an undiagnosed/ unrecognised SEND. Recognising this and taking appropriate action to address it would fall within the 'best

endeavour/reasonable adjustment duty.' It is important to be aware therefore, that although it is a possible outcome of the process, children and young people do not need to be on a SEN support register or have an EHCP before consideration is given to the relevance of 'best endeavours/reasonable adjustments.'

How do we apply it?

Within the code of practice, the terms 'must' and 'should' are used to differentiate between duties (i.e., legal requirements) and 'expectations.' Within Leicester City, we are expecting that in order to deliver 'best endeavours,' schools will be able to evidence that they are meeting the vast majority, if not all the expectations set out in the code – the 'shoulds.'

Inevitably, there will be some overlap between 'best endeavours' and 'reasonable adjustments,' but while 'shoulds' are recommendations, and are therefore potentially discretionary, a reasonable adjustment is mandatory. Those who must have regard to it are expected to explain any departure from it.

Therefore, in order to determine when a 'should' under 'best endeavours' becomes a 'must' or a 'reasonable adjustment,' the judgment relates to whether or not the children and young person is at a substantial disadvantage in comparison with non-disabled /nonSEND peers, because of action taken, or not taken. If so, the school is potentially in breach of the Equality Act and/or the Code of Practice.

As with 'reasonable adjustments,' the disadvantage will be deemed to be 'substantial' when it is judged to be anything more than minor or trivial. Whether a pupil with SEND is at a substantial disadvantage or not will depend on the individual situation

Therefore, in making judgments about what constitutes a 'reasonable adjustment' or a 'best endeavour' it will be important to consider the context and individual circumstance of both the children and young people and their school.

As noted above, in applying the legislative responsibilities associated with 'best endeavours/reasonable adjustments' it is important to take the context into account. All children and young people are individuals and the 'best endeavours/reasonable adjustments' that are appropriate for them will depend upon the way in which their SEND affects them, and the context in which they are being educated.

Framework and Supporting Guidance

The supporting guidance 'Delivering high quality inclusive provision for SEND Pupils in Mainstream Schools: Best Endeavours and Reasonable Adjustments - A guide for Schools' has therefore been developed to support schools and the local authority in assessing the need for or appropriateness of 'best endeavours/reasonable adjustments' and to provide a resource for

schools to draw on in evaluating and developing their current SEND practice. It provides examples of what might reasonably be expected of schools in relation to 'best endeavours' and/or 'reasonable adjustments,' in terms of both general SEND and with reference to specific areas of need.

The supporting guidance draws heavily on the Code of Practice and as such provides a summary of the responsibilities the school has in relation to the Children and Family Act. It also exemplifies where and how the duties under the Equality Act might be applied.

Section 1 Applying Best Endeavours/Reasonable Adjustments to SEND Provision

'Part 1 Applying best endeavours/reasonable adjustments to SEND provision', considers what might reasonably be expected of a mainstream school's overall SEND provision in order to meet its responsibilities with respect to the legislative expectations associated with providing 'best endeavours/reasonable adjustments'.

These expectations are considered in relation to:

- People and Services – providing general guidance relating to expectations in relation to best endeavours/reasonable adjustments for teaching assistants (TAs), teachers, SENCos (Special Educational Needs Co Ordinators) and leaders/head teachers, in terms of effective SEND practice (general).
- Provision and practice – considering a range of aspects which might impact on the quality of a schools SEND provision, such as curriculum and policy.
- Environment – considering what adaptations the school might reasonably be expected to make to accommodate the needs of its pupils with SEND.
- Resources for learning - this section, whilst not exhaustive, provides some examples of the types of resources for learning schools might reasonably be expected to provide for pupils with SEND out of their SEN budget.

It is anticipated that schools, governors, and parents of pupils with SEND might draw on this guidance to help them evaluate and develop their overall SEND provision, and to reassure themselves, that the schools are fulfilling their responsibilities in relation to SEND provision. Schools might also find it useful as a tool to help them to evaluate and develop effective inclusive practice.

Section 2 Applying Best Endeavours/Reasonable Adjustments to specific areas of need.

The duty to provide best endeavours/reasonable adjustments applies to both schools and local authorities. 'Part 2 Applying best endeavours/reasonable adjustments to specific areas of need' therefore explores how this shared responsibility might be addressed in relation to children and young people with:

1. [Speech, Language and Communication Needs](#)
2. [Autism Spectrum Disorder](#)
3. [Specific Learning Difficulties](#)
4. [Moderate Learning Difficulties](#)
5. [Social Emotional and Mental Health](#)
6. [Hearing Impairment](#)
7. [Visual Impairment](#)
8. [Multisensory Impairment \(MSI\)](#)
9. [Physical Disability](#)
10. [Medical Conditions](#)

It is important to note that the guidance contained in 'Delivering high quality inclusive provision for SEND Pupils in Mainstream Schools: Best Endeavours and Reasonable Adjustments - A guide for Schools' is illustrative of expectations, but not exhaustive. It is neither possible nor

appropriate to set out every situation/context/ example whereby a reasonable adjustment or best endeavour should be applied. Judgments about the appropriateness of this must be determined on a case-by-case basis, taking the needs and situation of the individual children and young people and their school context into account. How the framework and supporting guidance will work in practice to support the provision of Best Endeavours/Reasonable Adjustments.

The framework and supporting guidance are designed to provide a useful resource to which schools, parents and/or the local authority might refer when identifying where, whether and how the duty to provide 'reasonable adjustments' or 'best endeavours' might apply. It provides a framework to support judgments about the adequacy of 'best

endeavour/reasonable adjustment' put in place and helps identify what more needs to be done where the judgment is made that a pupil has been substantially disadvantaged because of action taken or not taken, whether by the school or the Local authority.

It is anticipated that:

Schools may use the Framework and Supporting guidance as a reference to support them in identifying what 'Best Endeavours/Reasonable Adjustments' they might need to have in place in terms of generic special needs and/or with reference to a specific type of need. Where appropriate, schools should seek specialist expertise from relevant professionals in line with their responsibilities, as identified within the code of practice.

Parents may draw on the Framework and supporting guidance to help them consider whether and/or what 'best endeavours/reasonable adjustments' they might reasonably expect a school to put in place to address their son or daughter's SEND.

Local authority staff/relevant specialist experts will ensure their advice and guidance, where appropriate, refers to the 'best endeavours/reasonable adjustments' that a school should have in place to support the provision of high-quality inclusive SEND provision and, where appropriate, references specific actions/provision required to meet the needs of a particular pupil.

Visits to schools by local authority staff, such as the SEND Support Service, may involve identifying and/or reviewing the 'best endeavours/reasonable adjustments' which are needed/have been put in place, with a focus on impact for children with SEND in general and/or the specific needs of a children and young people depending upon the nature and purpose of their involvement.

Best endeavours/reasonable adjustments are effectively the first tier of putting in appropriate support to meet SEND needs. Therefore, in order to progress any additional interventions, including requests for funding and/or requests for EHCP assessments it is essential that the schools can evidence, to the satisfaction of the Local authority, that appropriate 'best endeavours/reasonable adjustments' have been put in place and how this has impacted the child or young person.