

Using banding systems to determine support for deaf children

A note by the National Deaf Children's Society

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Case law¹ has confirmed that local authorities must ensure they are able to meet the individual needs of children with special educational needs or disabilities (SEND) in any move towards the use of any 'banding' systems for funding such support. In particular, local authorities remain responsible for ensuring that funds secure all of a child's specified special educational need provision in Section F of an Education, Health and Care plan.

This note set out four key steps that we would expect local authorities to carry out if they are considering introducing such a system.

1) Assess the impact this would have on individual deaf children.

This should involve mapping existing individual deaf children against any proposed new banding system. It will be important that this mapping process looks at the needs of deaf children **individually** and not as a cohort. In our view, a failure to carry out this kind of assessment and mapping exercise would be a breach of the Equality Act duty to have due regard for the impact of its policies on disabled children.

If this mapping results in any deaf child being allocated less funding than required to meet their needs, then the banding system would need to be reviewed or amended. In addition, a decision to proceed with any new banding system, knowing that some deaf children would lose out, would be a breach of the requirements imposed by the Children and Families Act to secure appropriate SEND provision for a child.

2) Confirm that deaf children will continue to be assessed 'independently' of any decisions around funding.

A key principle should be that the support provided to deaf children is determined by their needs, and not by arbitrary boundaries in a banding system. It will be important for the local authority to outline how they will determine that decisions on support levels are based solely on needs. The introduction of banding systems should not be at the cost of the person-centred approach required by the Children and Families Act.

In relation to deaf children, it is important that a Teacher of the Deaf is involved in any such assessments. In relation to assessments for an Education, Health and Care plan, this is a statutory requirement.

3) Confirm that there will be sufficient flexibility and responsiveness within the system if there is a change in the individual needs of deaf children.

Support to deaf children may need to be increased if, for example, they are failing to make sufficient progress with their language development. Any new banding system should not restrain any such flexibility, where required.

¹ As set out in paragraph 39 of the [Department for Education High Needs Operational guidance](#), a High Court ruling issued on 12 April 2019 confirmed that "there is nothing in [the Children and Families Act] 2014 (or the 2014 Regulations or Code of Practice) which prevents local authorities from administering their High Needs SEN funding through a system of bandings. **Provided the funding system secures the child's overall SEN (Section F) provision in practice, it will not be unlawful**". (bold text for emphasis).
More information about the High Court ruling - R (AD) and others) v London Borough of Hackney (2019) EWHC 943 - can be found at: www.11kbw.com/wp-content/uploads/R-AD-v-Hackney-LBC-12-04-2019-APPROVED.pdf

4) Confirm that there will be full transparency with parents of deaf children on any banding system and how support needs will be assessed within this.

Parents should also be provided with information on their rights to appeal if they have any concerns or reservations.

More information

The National Deaf Children's Society note Specialist Education Services for Deaf Children: Advice to Local Authorities provides more information on the wider factors to take into account when considering any changes to support for deaf children. The note can be downloaded from: www.ndcs.org.uk/documents-and-resources/specialist-education-services-for-deaf-children-advice-for-commissioners-england/

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