

CABINET – 22 JUNE 2021

SPECIAL EDUCATIONAL NEEDS AND DISABILITIES - PROGRESS WITH THE DELIVERY OF THE HIGH NEEDS BLOCK DEVELOPMENT PLAN

REPORT OF THE DIRECTOR OF CHILDREN AND FAMILY SERVICES

<u>PART A</u>

Purpose of the Report

- 1. The purpose of this report is to advise the Cabinet on the progress with delivery the of the High Needs Block Development Plan, the worsening position with regard to the 2021/22 SEND (Special Educational Needs and Disabilities) capital programme, and planned consultation with schools to seek to effect a transfer of funding from the Schools Block Dedicated Schools Grant to the High Needs Block.
- 2. The Cabinet is also asked to consider whether the desired transfer of funding to the High Needs Block should be pursued via the Secretary of State if the Schools Forum does not agree to the request.

Recommendations

- 3. It is recommended that
 - a) The Cabinet notes the financial position, in particular
 - the forecast overspend for High Needs Block of over £9.35m at the end of the current financial year and a potential deficit of £43m by 2024/25;
 - the effect of the High Needs Block overspend on the revised Special Educational Needs and Disabilities (SEND) capital programme 2021/22, as detailed in paragraphs 37 to 41 of this report;
 - b) The Cabinet notes that Leicestershire Schools and the Schools Forum will be consulted in Autumn 2021 on a proposed transfer of 0.5% of Schools Block funding to the High Needs Block for 2022/23 to help manage the revenue position;

c) The Cabinet considers if an application should be made to the Secretary of State to make the transfer at c) above should the Schools Forum refuse the request.

Reasons for Recommendation

- 4. The High Needs Block (HNB), part of the Dedicated Schools Grant (DSG), funds SEND provision and is currently overspent. The High Needs deficit is forecast to continue to increase up to 2024/25. The transfer of up to 0.5% from the Schools Block to the High Needs Block is included within the Department's financial plan for SEND services, and the position will worsen by £2m should the transfer not proceed.
- 5. It is a requirement to consult Leicestershire schools and the Schools Forum for proposed transfers of up to 0.5%. Should the Forum not approve the transfer, the Council may seek approval from the Secretary of State; such a request would need to be submitted to the Department for Education (DfE) by mid-November 2021 for a transfer within 2022/23.
- 6. Initial engagement with the Leicestershire Schools Forum has already taken place on the subject of the proposed transfer. It is intended to undertake formal consultation and thereafter submit a report to the Schools Forum as soon as all relevant information is available and necessary approvals from the Secretary of State have been sought.

Timetable for Decisions (including Scrutiny)

- 7. The Schools Forum will receive a report in June setting out the Council's intention to consult on a transfer of funding from the Schools Block to the High Needs Block and again in September outlining the detailed proposals and the consultation with schools. In October it is intended that the Schools Forum will be asked to consider the outcome of the consultation and the transfer request.
- 8. It will be necessary to seek permissions from the Secretary of State during the formulation of proposals for consultation which may include variations to the nationally set Minimum per Pupil Funding Level and the Minimum Funding Guarantee. It will be necessary to submit a request to the Secretary of State for approval to undertake the transfer should Schools Forum not give approval in November.
- 9. The Children and Families Overview and Scrutiny Committee will receive a report on 1 September 2021 regarding the High Needs Block Development Plan and the proposed transfer of funding to the HNB.
- 10. The annual refresh of the Council's Medium Term Financial Strategy in autumn 2021 will consider the impact of any transfer for schools and the Authority.

Policy Framework and Previous Decisions

- 11. In October 2019 the Cabinet considered a report concerning SEND funding and, noting the then forecast £6.1m overspend, agreed inter alia that the Director of Children and Family Services be authorised to apply to the Secretary of State for a transfer of funding to the HNB should it be refused by the Schools Forum. In a subsequent report in November 2019 it was noted that the Forum had refused the request. The Cabinet agreed that the transfer would not be pursued further on that occasion but noted that should the HNB deficit continue to rise it might be necessary to reconsider this in the future.
- 12. The Children and Families Act 2014 introduced a number of new duties for local authorities and Clinical Commissioning Groups (CCGs). The County Council's SEND Strategy 2020 to 2023, agreed by the Cabinet on 18 September 2020, outlines these responsibilities and sets out how the Council and its CCG partners will work together to meet these.
- 13. The Council's Medium-Term Financial Strategy (MTFS) agreed on 17 February 2021, includes significant savings to be made from 2021/22 to 2025/26. To contain the overspend strong financial control plans and discipline will be essential. The HNB Development Plan savings are in addition to those contained within the MTFS and will support the delivery of savings by investing in local provision to accommodate current and future demand.
- 14. The School and Early Years Finance (England) Regulations 2021 contain provisions setting out the use of the Dedicated Schools Grant, associated operational guidance issued by the Department for Education sets out the process to be followed to effect a transfer of funding from the Schools Block to the High Needs Block and the permissions required.

Resource Implications

- 15. The HNB of the Dedicated Schools Grant is the sole source of funding to Local Authorities for meeting the needs of children and young people with Special Educational Needs (SEN). Nationally the level of funding is insufficient to meet growing needs, and the associated deficits held by almost all local authorities are a significant concern.
- 16. The projected deficit at the end of the current MTFS has increased by £13.8m from £29.2m to £43m despite the delivery of £24m in revenue savings. The projected deficit is the most significant short-term financial risk faced by the County Council. Under time-limited legislation local authorities are required to carry deficits on their balance sheets as unusable reserves. However, given the deficit will ultimately need to be recognised and financed there is a real and immediate impact of the financial resilience of the Authority and the funding available for all other County Council services.

- 17. The projected deficit will increase by £2m should a transfer of funding from the Schools Block to the High Needs Block of the Dedicated Schools Grant not be approved.
- 18. In the absence of any changes nationally the Council has embarked on an ambitious transformation plan for SEN services under the High Needs Block Development Plan. This includes an expansion in public sector provision of school places to reduce the dependence on high cost private sector independent schools.
- 19. The Council has allocated circa £27.5m of capital resources into expanding SEND provision to help contain the deficit of which just £7.3m has been received in Government Grant for additional SEND places. Continually increasing capital funding is not sustainable and will be reviewed as part of the MTFS refresh.
- 20. The Director of Corporate Resources and the Director of Law and Governance have been consulted on the content of this report.

Circulation under the Local Issues Alert Procedure

21. This report will be circulated to all members of the Council.

Officers to Contact

Jane Moore – Director of Children and Family Services Jane.Moore@leics.gov.uk 0116 3052649

Paula Sumner – Assistant Director Education and SEND, Children and Family Services Dept. <u>Paula.Sumner@Leics.gov.uk</u> 0116 305 0546

Jenny Lawrence – Finance Business Partner, Corporate Resources Dept. Jenny.Lawrence@Leics.gov.uk 0116 3056401

PART B

Background

High Needs Block Development Plan

- 22. Part 3 of the Children and Families Act 2014 sets out the duties placed on Local Authorities and other partners for Children and Young People in England with SEND. Local authorities have legal duties to identify and assess the special educational needs of children and young people for whom they are responsible. Local Authorities become responsible for a child or young person in their area when they become aware that the child or young person has or may have SEN.
- 23. High Needs funding provides the funding for support packages for an individual with special educational needs in a range of settings. It is also intended to support good quality alternative provision for pupils who cannot receive their education in schools. The High Needs funding system supports provision for pupils and students with SEN and disabilities from their birth to 25 years.
- 24. The High Needs Block Development Plan was approved by the Cabinet in December 2018. This sets out the actions to be undertaken to realign expenditure for pupils with Special Educational Needs with the High Needs Block (HNB) Dedicated Schools Grant (DSG) received from the Department for Education (DfE). The Plan includes proposals for expansion of local provision, developing more inclusive practices in the County Council's education services and schools to reduce the reliance upon specialist provision particularly in high cost independent provision and streamlining working practice and processes.

Progress on Delivery

- 25. A comprehensive programme of work supporting the objectives of the Plan has delivered against a number of individual workstreams:
 - **Inclusion** ensuring that the Council has an inclusive offer and helps the wider sector to support children and young people to ensure that children's needs are identified and supported as early as possible in the most appropriate settings to reduce the risk of needs unnecessarily escalating.
 - Strategy and Commissioning development and launch of a multiagency SEND and Inclusion Strategy that is monitored by a multi-agency SEND and Inclusion Board, including Health and schools. A key achievement has been the development of a draft Joint Commissioning Strategy across Leicester, Leicestershire and Rutland (Leicester City, Leicestershire County and Rutland Councils and the two CCGs) specifically to support children with SEND.

- Right Place Right Time ensuring that all resources are making the best contributions to outcomes for children and young people as they progress through their education including links to outcomes whilst giving providers flexibility to determine how those resources are used to deliver outcomes for children.
- SENA (Special Educational Needs Assessment) Whole System Review – ensuring processes, performance management and practice within the service are robust and efficient.
- **Contracts and Commissioning** Focused placements in the independent sector, ensuring the achievement of value for money from all providers and delivery of the outcomes outlined in children and young people's Education and Health Care Plans.
- **Sufficiency** ensuring the right provision in Leicestershire to cater for emerging demographic trends and housing development as well as ensuring that the provision is able to meet the needs of children. This element of the programme will deliver 534 additional specialist school places based in mainstream schools co-produced with schools, 3 new schools, and expansion of Leicestershire special schools including post-16 provision.
- 26. The DfE issues annual benchmarking data which combines a number of data sets to provide a rounded local picture through comparison of Education and Health Care Plan (EHCP) numbers, expenditure and DSG allocation. The latest available data identifies Leicestershire having:
 - A rate of 31.0 per 1,000 of the 0 -18 population having an EHCP against rates of 30.5 for statistical local authority neighbours, 31.1 for England and 25.9 for the East Midlands, a lower proportion of funding in the DSG through SEN proxy indicators which reflect incidence of deprivation and health but also pupil prior attainment. This suggests Leicestershire being a low need authority with the expectation of lower numbers of EHCPs in comparison to statistically similar authorities, which is not the case.
 - An increasing reliance upon higher cost independent schools, which can be seen both through the proportion of placements in the independent sector and expenditure on this provision being significantly higher than all comparator groups, with lower direct SEND funding allocations to mainstream schools and academies. This is significant to the financial position given the average cost of an independent school placement is 68% above that for a Leicestershire area special school and 54% higher than the newly opened special schools.

- 27. The programme of work supporting the delivery of High Needs Development Plan is built on initiatives that impact on the key variables which affect the financial position, benchmarked where possible against statistical nearest neighbours. A number of metrics have been adopted that allow performance to be measured against the programme outcomes with a number reporting a positive impact:
 - The number of referrals for EHCPs has reduced by 5.2% over the last year and by 9% over the last three years. Whilst this reduction has not resulted in a reduction in the overall number of EHCPs it may be a significant factor in the reduction in the rate of growth and means that the right children have an EHCP to support their needs.
 - The latest national data shows the rate of EHCP growth below both statistical neighbours and the East Midland average, although in terms of overall EHCP numbers Leicestershire retains a higher baseline.
 - The annual growth in EHCPs is forecast to be in line with general population growth by 2025. This position will be kept under constant review given the significant influence of national policy on SEND numbers, particularly for any impact of the SEND Review due to be published by the DfE.
- 28. The rate of growth in EHCPs significantly exceeds population growth. For the period 2013 to 2015 the percentage growth in the number of SEND places was 110% against a population increase for the same period of 9%. The greatly disproportionate increase in EHCPs has been influenced by national policy changes, specifically school funding reform in 2014 which introduced a direct link between the ability to evidence need and funding and SEND reform in 2014.
- 29. As the programme has evolved and several elements have been successfully delivered and are being embedded, a refresh of the programme structure was prudent, with revised governance arrangements to help ensure the delivery at pace of further key measures. Officer groups will focus on the data and evidence from within the system, maintaining emphasis on the key variables of the programme and ensure changes are integrated into service planning and delivery.
- 30. The programme has been successful in delivering the workstreams set out above and is beginning to deliver further changes across services supporting children with SEND and within schools. It will continue to explore all aspects of the Leicestershire SEND system to identify areas where it may be possible to generate further savings.

Financial Challenges

31. Whilst the HNB Development Plan of work has been successful in delivering service transformation and increasing the number of specialist school places in Leicestershire some of the financial targets set out within the original plan have been exceptionally challenging. The Plan has been revised to ensure it

fully reflects the current SEND and financial environment, the significant changes that have affected the financial position are

<u>Demand</u> – the demand for specialist places has increased in excess of that estimated in 2018 by 10% to 2022/23 and is forecast to rise a further 3.5% to 2024/25. The 2018 financial plan was based on a forecast of 493 independent placements by March 2022; as a result of the measures outlined above, revised estimates are now down to 419, a reduction of 15%. Growth has largely been contained through the additional places created where the number of places in lower cost, provision has increased by 22%. During 2019/20 and 2020/21 the number of independent school placements had been stable at 372 but it increased over the last quarter of 2020/21 to 395, and numbers are expected to increase by a further 9% by 2024/25. Demand for places is the significant driver of cost and the deficit. It is essential to the delivery of the Plan that demand is reduced, particularly that for independent school and special school placements given the length of time that pupils are likely to remain in these.

<u>Savings</u> – the plan, as set out in 2018, included significant levels of savings to be achieved through the movement of pupils from higher cost independent school placements to the new provision. Unfortunately, this has not been possible. Whilst additional places have been created, the sustained rate of growth has meant that places have been occupied with new demand; overall the use of the new provision has reduced costs by around £10m but it has not delivered the planned savings as a result of the increased demand and difficulties in achieving pupil movements. An EHCP names the school in which provision through the statutory annual review process or if a placement can no longer meet need, such a movement could only be expected at key transition points and with the agreement of all professionals and parents/carers as such very few moves have been possible.

<u>Cost Increase</u> – overall the cost of independent school places has risen by 4% from 2018/19 to 2024/25 and in Leicestershire special schools by 11%. This is related to the increasingly complex pupil needs. Whilst the increase in independent school places has been kept to a minimum through robust commissioning arrangements, places are often difficult to source and there is no incentive for providers to reduce costs. It is essential that costs are challenged and that the planned new provision in Leicestershire can be shown to meet pupils' needs equally well or better than independent providers. Independent placements currently account for just 8% of all placements but 27% of placement spend.

The National Financial Position

32. There is growing evidence nationally of a worsening high needs position. Recent surveys paint a concerning picture:

The Society of County Treasurers reports that for English councils

• There is a cumulative high need deficit of £1.15bn by 2022/23.

- The number of EHCPs rose by 25% in the years 2018/19 to 2020/21.
- SEN transport costs saw an increase of 25% between 2018/19 and 2020/21 with a further expected increase of 40% to 2022/23.

The f40 Group (of English local authorities with historically low education funding) reports

- An increase in EHCPs of circa 5% per year and in excess of general population growth.
- That only 4 local authorities are reporting an annual surplus in grant and deficits of up to £70m.
- That all but 7 local authorities have cumulative deficits of up to £1,000 per pupil.
- High Needs budget deficits of up to 100% of the annual grant.
- 33. It is exceptionally clear that the SEND system needs significant change in order for it to become sustainable, and that this is something that additional funding alone cannot change. In September 2019 the Government announced a major review into support for children with SEN but the work was delayed and the report is still awaited. A consultation on future funding methodology is also expected.
- 34. The DfE has recognised the grave financial position in five local authorities through DSG (Safety Valve) Agreements supported by £100m of additional funding to address the deficit positions. The agreements require the authorities to implement an agreed action plan with funding released upon achievement of agreed milestones. The agreements also suggest that these local authorities will receive capital funding should their capital plans deliver reductions in SEN expenditure. The DfE has not published any information on the criteria it has used to select these authorities or indicated whether similar funding will be made available in future years. However, from information publicly available it would seem that all five authorities have overall DSG deficits of more than 10% in comparison to 3% for Leicestershire for 2020/21, rising to an estimate 7% in 2024/25.

The Leicestershire Financial Position

35. Overall the financial position has worsened by from that set out in the MTFS, increased demand and cost being the significant changes in that position. The cumulative High Needs budget deficit in 2024/25 has increased by £13.8m. Whilst it can be seen that the financial position in Leicestershire reflects the national position it presents a significant financial risk. The current financial projections are set out in the table below.

2021/22	2022/23	2023/24	2024/25
£,000	£,000	£,000	£,000
-83,120	-83,120	-83,120	-83,120
91,393	97,709	101,662	106,216
8,708	8,708	8,708	8,708
671	372	455	247
1,059	0	0	0
101,831	106,789	110,825	115,171
18,711	23,669	27,705	32,051
0	-5,700	-5,700	-5,700
0	-2,000	0	0
-2,659	-2,899	-3,181	-3,420
-6,697	-10,623	-13,073	-14,942
-9,356	-21,222	-21,954	-24,062
9,355	2,448	5,751	7,989
7,062			
10,387			
26,804	29,252	35,003	42,992
22,723	22,591	24,680	29,197
4,081	6,661	10,323	13,795
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36. Local authorities are required to carry forward the aggregated DSG deficit from all funding blocks. The DfE has removed a requirement for local authorities to submit DSG recovery plans for deficits in excess of 1%. A surplus is held in the schools block where funding for school growth is out of line with the growth trajectory for mainstream schools and required to meet costs in future years. Hence it cannot be used to partially mitigate the High Needs deficit.

Capital Programme

- 37. The programme to date has been highly successful in delivering additional places, analysis of future demand undertaken in summer 2020 and more recent evidence emerging from the demand and needs being identified within the Special Educational Needs and Assessment service (SENA) and a refresh of forecasting work now underway indicates more needs to be done.
- 38. Growth in the need for places shows a slowing down of demand in the next few years as a consequence of the HNB Development Plan work but thereafter a steady increase in numbers overall as a result of increased births

and new housing. The rate of growth can be influenced by national policy and the position will be closely monitored for any change in trajectory.

- 39. The earlier projects within the HNB Development Plan have predominately focussed on the emerging concerns about support for pupils with Social, Emotional and Mental Health (SEMH) and Communication and Interaction (C&I) needs. The significant housing growth planned in future years indicates a continuing need to provide additional places to meet the SEMH and C&I demand, however other potential shortfalls have been identified including for pupils who would otherwise attend Area Special Schools and having Severe Learning Difficulties or Profound Multiple Learning Difficulties (SLD or PMLD) and accompanying cognitive learning difficulties, Post-16, and specialist nursery provision.
- 40. Recent analysis of demand for C&I places as evidenced from recent data returns shows the following:
 - The expected growth in the overall number of pupils with C&I and associated speech, language and cognitive needs based on birth and housing projections between the 2020 base of 1,650 pupils and the forecast position in 2030 of 2098 pupils represents an increase of 448 places.
 - The expected number of pupils currently placed in local authority specialist and Individual Support Plan provisions by 2024 based on the expected growth is circa 20% of C&I demand therefore, approximately 86 pupils.
 - The Fusion C&I Academy in Barwell caters for 80 pupils. Although as a new school it is not yet at capacity it is predominately admitting in lower year groups and therefore most will be at the school for some time. This suggests there will be a demand for a further C&I school within the next two to three years.
- 41. However, there is little correlation between the growth in the number of EHCPs and the overall growth in the pupil population. It is therefore exceptionally difficult to anticipate what type of provision pupils will attend. The 2021/22 SEN Capital Programme set out within the MTFS has been updated to reflect the most recent demand data and to incorporate a High Needs Provision Capital Grant of £3.642m recently awarded by the DfE. The revised SEND programme is shown in the following table -

	2021/22	2022/23	2023/24	2024/25	Total
	£000	£000	£000	£000	£000
SEND Programme					
Social Emotional Mental Health (SEMH) Units	920	0	0	0	920
SEMH Special School - LA Developed	500	0	0	0	500
SEMH Special School - Free School	200	1,000	8,000	0	9,200
Northern C&I School	3,642	0	0	0	3,642
Communication and Interaction Difficulty Units	0	0	0	0	0
Communication and Interaction Difficulty School	0	0	0	0	0
Expansion of Special Schools	2,530	0	0	0	2,530
Other SEND schemes	200	0	0	0	200
Sub-total - SEND Programme	7,992	1,000	8,000	0	16,992

Transfer of Funding within Dedicated Schools Grant

- 42. Currently local authorities may transfer up to 0.5% of funding from the Schools Block DSG to the HNB following consultation with schools and subject to the approval of the Schools Forum (which represents the views of Leicestershire Headteachers and Governors). Should the Schools Forum not approve a transfer, or for transfers in excess of 0.5%, approval can be sought from the Secretary of State. The financial plan assumes a 0.5% transfer for 2022/23, estimated to be £2m. Whilst 2022/23 school funding arrangements will not be confirmed by the DfE until July it is expected this provision will be unchanged. The financial plan includes a transfer for one year only, as it is expected that the next stage of implementation of the National Funding Formula in 2023/24 may limit the ability of local authorities to make such transfers from this point.
- 43. The intended transfer of funding was set out in a report from the Director of Children and Family Services to the Schools Forum on 8 February 2021. The report proposed a process to fully engaged schools in developing proposals for the transfer prior to formal consultation in September and laying recommendations to the Schools Forum in November. However, following the meeting letters were received from Leicestershire Primary Heads (LPH) and Leicestershire Secondary Heads (LSH) stating that they did not support a proposal to transfer funding and did not wish to participate in the working group to develop the proposals. As a result, proposals for the transfer will now be made directly to schools through consultation beginning in September and then by seeking approval from the Schools Forum in November. Should the Schools Forum refuse the request the Council has the option to apply to the Secretary of State.
- 44. The [schools] National Funding Formula, adopted by Leicestershire in 2018, includes a number of restrictions on local authorities as to how the formula for schools can be constructed; some requirements can be waived by application to the Secretary of State to disapply them. Disapplication requests will need to be submitted to the Secretary of State to formulate proposals for any transfer. These are expected to be;
 - Disapplication of the Minimum per Pupil Funding Level. This will allow for the impact of the transfer, which will reduce school funding, to be more evenly distributed across schools thus lessening the impact.
 - Disapplication of the Minimum Funding Guarantee. The DfE sets a range in which local authorities have discretion in this area but may need to be set outside this range to enable the transfer.
 - Permission to cap and or scale gains. Local authorities have discretion to use the formula to limit any funding gains.
- 45. The timing and detail of disapplication requests will be dependent upon the outcome of the formula modelling and confirmation on the 2022/23 funding arrangements. Decisions by the Secretary of State on these and any other disapplication requests may limit the options available to affect the transfer and the impact upon individual, or groups of schools.

46. Should the Schools Forum not approve a transfer of funding, a request for approval would be required to be submitted to the Secretary of State in November prior to submission of the Schools Funding Formula to the DfE in January. If the transfer does not take place the forecast deficit will increase to £43m by 2024/25.

Conclusions

- 47. The SEND system in its current format is unsustainable and needs to undergo major changes to ensure that SEND policy and the funding to deliver it are mutually supportive. It is hoped, but not expected, that the long awaited SEND Review undertaken by the DfE will deliver this change, further delay on its publication and delivery of change will only serve to worsen the financial position locally and nationally.
- 48. High Needs deficits are a significant national problem and one the DfE is fully aware of but seems unable or unwilling to address with any urgency. The outcome of the long-delayed review of SEN is expected to be published in the Summer. However, early indications are this will do little to address the critical funding position.
- 49. The Council's High Needs Development Plan is delivering the green shoots of sustainable change. The sufficiency workstream, whilst not delivering cashable savings, has reduced costs by around £10m by diverting children who previously would have entered higher cost independent provision into local provision, delivering both costs benefits and ensuring that children and young people receive their education in their communities. The annual rate of growth in EHCP numbers is reducing, is below that in other local authorities and projected to fall further in future years and fall to be in line with the general population growth.
- 50. Demand management is crucial to the recovery of the deficit, however the County Council is limited in the actions it can take. The SEND system and the cost of provision are significantly influenced by parental preference for specialist provision, often for the higher cost independent provision and a school funding and performance framework that offers perverse incentives for mainstream schools and academies to not be fully inclusive.

Equality and Human Rights Implications

51. The policy for school funding is set and delivered under an Equality and Human Rights Assessment undertaken and published by the DfE. An assessment will be undertaken on the impact of the proposed transfer of funding to assess implications for individual and groups of schools given that this would result in the Leicestershire school funding formula differing from the National Funding Formula.

Background Papers

Reports to the Cabinet regarding Special Educational Needs and Disabilities Provision and the High Needs Block Development Plan and minutes of those meetings -

18 December 2018 - <u>https://bit.ly/2TP07nJ</u> 29 March 2019 - <u>https://bit.ly/3fWpP21</u> 24 May 2019 - <u>https://bit.ly/2S7nk4d</u> 22 October 2019 - <u>https://bit.ly/3v0l0sO</u>

Report to the Cabinet 22 November 2019 - Special Educational Needs and Disabilities: Proposed Transfer of Funding with Dedicated Schools Grant - <u>https://bit.ly/3x5Majo</u>

Report to the Cabinet 18 September 2020 - Special Educational Needs and Disabilities and Inclusion Strategy 2020 to 2023 - <u>https://bit.ly/3fXYJrB</u>

Report to the Schools Forum 8 February 2021 - 2021/22 Schools Budget https://bit.ly/3giUkOT