

Education inspection framework 2019: inspecting the substance of education questionnaire

Written evidence submitted by the Special Educational Consortium, April 2019

About SEC

The Special Educational Consortium (SEC) is a membership organisation that comes together to protect and promote the rights of disabled children and young people and those with special educational needs (SEN). Our membership includes the voluntary and community sector, education providers and professional associations. SEC believes that every child and young person is entitled to an education that allows them to fulfil their potential and achieve their aspirations.

SEC identifies areas of consensus across our membership and works with the Department for Education, Parliament, and other decision-makers when there are proposals for changes in policy, legislation, regulations and guidance that may affect disabled children and young people and those with SEN. Our membership includes nationally recognised experts on issues including assessment and curriculum, schools and high needs funding, the SEN legal framework, exclusions and alternative provision.

NB The questions answered in this response are those that are relevant to the remit of the consortium. We have also provided additional comments and recommendations below these answers.

1. To what extent do you agree or disagree with the proposal to introduce a 'quality of education' judgement?

SEC welcomes the shift of focus from test and exam results, however achieved, to the 'quality of education' judgement, with a clear focus on curriculum. Currently many disabled children and young people and those with SEN have been marginalized and, in some cases, discriminated against. In a system that focuses solely on attainment, there are risks that schools will be reluctant to admit and quick to exclude children who are unlikely to contribute significantly to the threshold attainment measures.

The emphasis on curriculum within the quality of education judgment is refreshing,

Supported by:

Achievement for All • Afasic • Ambitious about Autism • Association of Colleges • Association of Educational Psychologists • British Dyslexia Association • Contact • Centre for Studies on Inclusive Education • Down's Syndrome Association • Equals • IASS network • Interchange Sheffield • IPSEA • Mencap • NASUWT • National Autistic Society • NASEN • Natspec • National Association of Independent Schools and Non-Maintained Special Schools • National Association of Head Teachers • National Deaf Children's Society • National Network of Parent Carer Forums • National Development Team for Inclusion • National Education Union • Prospect • Royal National Institute of Blind People • Scope • Seashell Trust • Sense • The Driver Youth Trust • The Thomas Pocklington Trust • United Kingdom's Disabled People's Council • Young Epilepsy

though SEC has concerns about whether the skills that have been cultivated in regular assessment activity will readily translate into the skills needed for the development of an inclusive curriculum relevant to the needs of all the children in a school.

SEC notes that Ofsted proposes a year's delay in judging schools under the new judgement on curriculum. SEC would want to know what professional development work will be planned in that time to make sure the relevant professional skills are in place in schools by the end of that year. In particular, SEC would want to know what professional development work will be planned to ensure that children with SEN receive their curriculum entitlement.

SEC also notes that the second stage of Ofsted's own curriculum research did not include special schools. SEC would want to know how inspectors will judge the quality of the curriculum in schools where the national curriculum does not provide the same 'benchmark' as it does in schools where children are working closer to national expectations.

SEC considers that the direction of travel with the proposed framework is good, and that overall it offers a more inclusive approach, with a sharper focus on groups of pupils who may be at a disadvantage in schools and other settings. SEC would like to see an even clearer reference to SEN and a sharper focus on disabled pupils (more below).

2. To what extent do you agree or disagree with the proposed separation of inspection judgements about learners' personal development and learners' behaviour and attitudes?

SEC considers that the separation of personal development from the behavior and attitudes judgment is positive. We welcome the more inclusive approach, with a sharper focus on groups of pupils who may be at a disadvantage in schools and other settings. However, SEC considers that there needs to be clearer reference to both SEN and disability, with specific reference to the need to make reasonable adjustments for disabled pupils under the Equality Act.

There is real benefit in schools knowing this themselves, analysing data and addressing any patterns of disadvantage such as bullying, exclusions, higher levels of absence.

3. To what extent do you agree or disagree with the proposed focus of section 8 inspections of good schools and non-exempt outstanding schools and the proposal to increase the length of these inspections from the current one day to two days?

The proposed increase in the time allocated for section 8 inspections seems entirely appropriate given the more complex range of judgements to be made of whether a school remains 'good'. In particular SEC would point to: the complexity of the

judgement to be made of the quality of education and the breadth of curriculum; and any patterns of disadvantage across all the judgements, for disabled children and young people and those with SEN and what the school is doing to address these.

4. To what extent do you agree or disagree with our proposal not to look at non-statutory internal progress and attainment data and our reasons why?

The proposal not to look at non-statutory internal progress and attainment data would need to take into account that, for some children who are making much smaller steps in learning, the quality of internal tracking is key to planning and assuring progress. We see some related challenges for inspectors in making consistent judgments about progress and attainment for children working below the level of the national curriculum; and in determining the degree of ambition for children where there are no national benchmarks.

5. To what extent do you agree or disagree that the proposal to reduce the types of provision we grade and specifically report on will make our inspection reports more coherent and inclusive?

Despite our view that the overall direction of travel is good and reflects a more inclusive approach, there needs to be more specific reference to SEN and disability at particular points. Specifically in relation to FE, there is a strong feeling that the separate judgement on the quality of the high needs provision has driven improvement, and that the loss of it will lead to the erosion of the progress that has been made. We recommend, below, that this separate judgment is retained.

Additional Comments

SEC welcomes many aspects of the draft framework and, in particular:

- The clear articulation of the improvement purpose of Ofsted and the EIF;
- The message that inclusion should underpin EIF;
- The clearer focus on the quality of education overall, and progress from starting points, that will inform Ofsted judgments;
- The focus on the curriculum, particularly its intent and impact, is helpful for schools that use a very personalised curriculum for their learners with complex needs;
- The increased reference to SEN and disability.

However, to realise the intended improvement purpose for disabled children and children with SEN, the EIF should recognise the systematic disadvantage they are placed at in exclusions, absence, bullying, difficulties in admissions, segregation within the school and 'elective' home education. HMCI has herself highlighted the scandal of the lack of support to children with SEN, "One child with SEND not

receiving the help they need is disturbing enough, but thousands is a national scandal."

SEC attaches massive importance to the Ofsted inspection process getting education to work better for disabled pupils and pupils with SEN; ensuring Ofsted challenges poor practice and recognising good inclusive practice. The changes to the framework present an opportunity to make a real difference for groups of children and young people who are disadvantaged in our education system. We welcome Ofsted's commitment to this.

In general the EIF is positive about SEN and disability, and recognizes and welcomes the wide range of pupils on our schools. Para 182 of the handbook (part of the grade criteria for the quality of education) says, positively, 'Pupils with SEND achieve the best possible outcomes' echoing the principles in s19 of the Children and Families Act. Other sections seem to compromise expectations of pupils with SEN and disabilities, 'the provider has the same academic, technical or vocational ambitions for almost all learners' (EIF page 10 para 25). Some sections seem to be simply incorrect in their assertions: 'all pupils, including the weakest readers, make sufficient progress to meet or exceed age-related expectations' (Handbook, p88, para 285). It is really important to state our ambitions for all pupils positively, without compromising them, but also without over-claiming or asserting things that are unlikely to be the case. Before final publication, we would ask Ofsted to run a check on the consistency of language across all the guidance (the framework, the handbook etc.).

There are several areas where SEC is making recommendations to sharpen the focus on SEN and disability and to provide some specific hooks for judging quality. We specifically draw on the recognised benefits of schools knowing and understanding themselves; being aware of both positive and negative patterns; and addressing any challenges.

1. Equality Act

SEC would like more reference to disability across framework, specifically within the context of the Equality Act. References to children with 'SEND' do not adequately recognise discrimination against disabled pupils or schools' duties towards them or the different responsibilities under the Equality Act and the Children and Families Act.

Recommendation 1: The framework should make clear reference to disability as a 'protected characteristic'; to ways in which children have protection from discrimination under the Equality Act; and to the expectation that inspectors will see reasonable adjustments being made for disabled children.

Both the Equality Act and the Children and Families Act place duties on schools to publish information about how they address their duties. Under the Equality Act schools must publish:

- Information and objectives showing how they are addressing their duties under s.149, the Public Sector Equality Duty;
- An Accessibility Plan showing how the school is increasing access to the physical environment of the school, the curriculum and information for disabled pupils.

These duties to publish afford schools an opportunity to show how well they know themselves; what patterns of disadvantage they have identified; and what they are doing to address any patterns. This is key to Ofsted's judgment of the school. The documentation should be scrutinised by inspectors before the inspection starts and the reality of practice checked against what the school has set out.

Recommendation 2: Inspectors should request and scrutinize, in advance of the inspection, (para 51 of schools' handbook):

1. The information and objectives schools publish under the Public Sector Equality Duty
2. The school's Accessibility Plan

Recommendation 3: The inspection itself should then test out schools' own assessment of themselves. Where necessary, inspectors should seek more detail and specific evidence of the school's own understanding of how well disabled children are faring in the school: data and proportion of disabled children; representation in absence, bullying, exclusions figures in the analysis (in para 56); participation in all the opportunities of the school, including participation across the full breadth of the curriculum; and opportunities beyond the school day.

Recommendation 4: The inspection itself should also test the effectiveness of the objectives and plans in addressing any issues identified in the analysis; and how well the school is achieving its published objectives and plan.

2. The law and exclusions:

SEC is deeply concerned about unlawful exclusions and illegal removal of pupils from the school roll. The framework needs to give a clearer steer to inspectors as to how they should challenge this in an inspection.

Recommendation 5: Inspectors should check whether, as per DfE exclusions guidance, pupils were given access to a full assessment of their needs before an exclusion route was considered.

Recommendation 6: Where a pupil has been removed from the school and it is unclear whether or not that pupil has been removed following a properly conducted exclusion, an unlawful exclusion or other practices, the burden of proof should be on the school to show that they had followed the lawful procedures.

Recommendation 7: Where a parent has appealed to the Independent Review Panel, the decision of the Panel should be registered on the Ofsted portal; this information should be taken into account in the calculation of the risk factors for an Ofsted inspection; and taken into account in the inspection itself.

3. Effectiveness of the SEN operation and the impact of special educational provision

SEC considers that there needs to be a sharper focus throughout EIF on SEN as well as on disability. Whilst recognising the significant overlap of the two groups of pupils, it would be helpful to reflect the different frameworks of and responsibilities under the Equality Act and the Children and Families Act. There is little reference to EHCPs, CFA, the COP throughout the framework and handbook.

SEC welcomes the section that does address SEN and disability (page 90 of the handbook) However, the location of this section makes it look marginal and its title is open to different interpretations.

Recommendation 8: The title of the section on page 90 should be clearly labelled, 'Applying the EIF to SEN in mainstream schools and in special schools and settings'.

Recommendation 9: This section needs greater prominence and the references should be woven more clearly throughout the handbook.

Recommendation 10: The Inspection handbook for schools should specifically list (para 51 of schools' handbook) the school's SEN information report and inspectors should scrutinize this.

Recommendation 11: Need to recognize and include SEMH in areas of SEN (page 91 and para 294)

SEC welcomes the detailed analyses that schools should provide (para 56 of schools' handbook).

Recommendation 12: This list of analyses that schools should provide (para 56 of schools' handbook) should include:

- 1.** The number of pupils SEN and the nature of their needs
- 2.** The numbers of children with EHCPs and on SEN Support

SEC welcomes the guidance (para 294 schools handbook) on the gathering and evaluation of evidence on SEN and disability.

Recommendation 13: This section should include how well the school is providing for pupils on SEN support and how well it is implementing EHC plans for pupils with a plan.

SEC welcomes the reference to specialist services in para 294. A number of organisations in SEC are deeply concerned about the erosion of specialist support services over recent years. Schools cannot on their own be expected to have sufficient skills, expertise and experience to support children with the full range of SEN. They need to be able to draw on specialist skills beyond the school.

Recommendation 14: SEC would like an additional point: How actively the school seeks specialist support from outside the school to supplement and complement their own expertise and what impact this is having.

Recommendation 15: Children themselves should be added to the point about parental involvement.

The research overview makes a distinction between differentiation and adapting the curriculum. Since differentiation is woven into much of the language of provision for children with SEN, it is important to clarify what Ofsted expect to see happening in schools. SEC recognizes and understands concerns about the provision of low level activities while others get on with higher level learning, so sees this as an opportunity to address this.

Recommendation 16: Ofsted should provide clear guidance on good and poor practice in differentiation and adapting.

Some schools are highly committed to the best possible outcomes for disabled children and children with SEN. Others are not. High quality provision for children and young people with SEN and disabilities is key to their life chances. The revised EIF promises to be a tool for improvement. If, despite these intentions, there is no improvement in outcomes for children and young people with SEN and disabilities, Ofsted should consider a limiting judgement on SEN and disability so that schools are not given a good or outstanding judgment unless the SEN provision and disability access and inclusion is at least good.

4. Pupil voice

SEC welcomes the commitment to hearing the voice of pupils during the inspection. There is a further commitment to talking to pupils chosen by inspectors rather than by the school. To gather insights into the effectiveness of the school's approach to SEN and disability, inspectors should make sure they hear from a wide range of pupils: those at SEN Support, those with an EHC plan, those for whom reasonable adjustments are being made, those who find it difficult to communicate, those who use alternative forms of communication. SEC asks Ofsted to consider how

inspectors will hear the voice of pupils who are not present on the day of the inspection, for whatever reason.

Recommendation 17: Inspectors should make sure they meet and talk to a cross section of pupils and a good proportion of disabled pupil and pupils with SEN, including those on SEN Support and those with an EHCP, those who use different forms of communication.

Recommendation 18: Where children are using signing or other forms of alternative communication, and inspectors do not have the relevant communication skills themselves, the provision of interpreters should be by Ofsted, not the school, so that pupils are not constrained by staff from the school being present. The National Deaf Children's Society has evidence that children and young people don't speak frankly when using an interpreter from the school.

Recommendation 19: As well as hearing pupil voice directly, inspectors should review evidence of how the school hears pupil voice as part of their regular practice. Inspectors should also consider how disabled pupils and pupils with SEN are represented of within that 'pupil voice' and how the school has taken into account what pupils have said.

5. Training of inspectors:

The quality of the judgments made during inspection depends very heavily on inspectors' knowledge experience and training. Judgements of SEN seem to be more variable than others and there are concerns that inspectors have variable skills and understanding of SEN and disability.

Recommendation 20: Inspectors' training should ensure they have a sound knowledge of SEN and Equality legislation to inform the judgements they make. Inspectors' judgements should be informed by this sound knowledge and guided by the handbook in the ways we have recommended, above.

6. Early Years

Ofsted/CQC local area reviews have in general given a positive account of early years provision. Yet there is a rising number and percentage of exclusions of young children from school (5 year-olds, 4 year-olds and under). This raises questions about whether the needs of young children are being identified and addressed appropriately.

Failures in the early years are likely to accelerate the movement of children out of the mainstream.

Recommendation 21: There should be a sharper focus on access and inclusion and the quality special educational provision in the early years.

Recommendation 22: There should be a specific analysis by schools, and inspected by Ofsted, of exclusions, absence, and the experiences of disabled young children and young children with SEN (para 56 in schools handbook).

7. Post 16

SEC supports the broadening of the focus of inspection to include learners on SEN support, as well as those with high needs. However, specifically in relation to FE, there is a strong feeling that the separate judgement on the quality of the high needs provision has driven improvement, and that the loss of it will lead to the erosion of the progress that has been made.

Recommendation 23: The separate judgment on high needs is retained in FE.

For further information:

If it would be helpful to provide further information or to clarify any aspect of this response, we would be pleased to help.

Philippa Stobbs
Special Educational Consortium
April 2019