

**Consultation on the National Audit Office Value for Money  
Study: Support for pupils with special educational needs  
and disabilities (SEND)**

**A response from the Special Educational Consortium**

**5<sup>th</sup> March 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.

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## **1 - To what extent has the Department for Education created a set of incentives that influence local authorities and schools to direct funding to pupils on the basis of need?**

It has proved problematic to attach funding directly to levels of need in respect of SEN as, with a relative definition of need, perverse incentives can too easily lead to higher levels of identification. Proxy measures provide an alternative basis for the calculation of need and provide a more objective measure. There are reliable linkages to deprivation, low prior attainment, English as an additional language and pupil mobility (turnover) as indicators of higher cost pupils but these do not necessarily fit well with low incidence, high cost needs.

With the overall quantum of funding coming under such significant pressure, more pupils are being put forward for EHC needs assessments and EHC plans; there are rising numbers of children being educated in special schools; and rising numbers of children being excluded.

From the very start of implementing the 2014 SEND reforms it was clear that local authorities were likely to come under significant additional funding pressures, not necessarily linked directly to levels of need. Reasons for this include:

- EHC Plans available for 0-25 year olds
- Greater expectation of engagement with both parents and children
- A new system for local professionals to navigate (additional training etc)

In addition, as nasen point out, local authorities face an increasingly challenging world of decision-making and prioritization of services resulting in 'fragmented approaches which introduce thresholds into the assessment and support process and within which appropriate prioritisation amongst competing services remains extremely difficult.' In such cases effective early help and intervention programmes may be disproportionately affected when tough budgetary decisions are being made. It has also become more challenging for local authorities to offer any support and advice to schools to supplement and complement what schools can do on their own.

Both local authorities and schools are facing significant challenges with the allocation of funding. The high level of the ring fencing of the schools' budget at a local level has made it more challenging for local authorities to respond

to children whose needs are brought to their attention. As our members NDCS have pointed out, this is evidenced by the large number of local authorities that applied to the Department for Education for permission to go beyond 0.5% rule on the ring-fence. In 2018/19, 27 local authorities made a formal request for 'disapplication' of rule on the ring-fence, of which 12 were turned down. NDCS' subsequent Freedom of Information request at the end of 2018 has identified that a further 30 local authorities have made a similar request for 2019/20.

However, conversely, there has been no ring-fencing of the funding from the DfE to support the implementation of the reforms. How have local authorities spent the millions (£223m between 2014 and 2018) assigned to implement the SEND reforms? Although LAs have attempted to use these funds for the purposes for which they were intended, it has been reported that this funding has been used for, amongst other things, legal support for SEND tribunals, preparation for SEND inspections and away days<sup>1</sup>. Furthermore, there has been little accountability nationally to link this expenditure to the successes (or failures) of the SEND reform process.

## **2 - Do you consider that need is assessed consistently across England, and between different groups of pupils (for example, between boys and girls or between different sorts of need)?**

The single category of 'SEN support' replaced School Action and School Action Plus in the 2014 Code of Practice. There has been too little formal evidence or evaluation of the consequences of this change or of the quality of the provision being made for children and young people on SEN support. SEC believes that attention has been disproportionately focused on EHC plans, at the expense of the much larger proportion of children with SEND who do not have an EHC plan.

While there is a shortage of evidence on the introduction of SEN support, SEC has noted with concern a number of indicators that point to a reduction in the capacity of mainstream schools to meet the needs of children and young people with SEND from their own resources:

- Rising numbers of EHC plans;

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<sup>1</sup> <https://specialneedsjungle.com/600-million-send-reforms-disabled-children-have-had-poor-value-for-money/>

- Rising numbers of children being educated in special schools;
- Rising numbers of exclusions;
- Rising numbers of children being 'electively' home educated.

IPSEA point out that there is a lack of consistency nationally when local authorities are considering whether to conduct an EHC needs assessment. Their experience is that 'some local authorities apply much more stringent local criteria, meaning children who may be assessed in one area would not be assessed in another'. Evidence for this includes being told of criteria such as that the child needs to be in the bottom 2% nationally, or that they need to be a certain number of years behind their peers academically. Such approaches are not compliant with the law. IPSEA have also identified wide variation between different areas in the levels of 'refusal to assess'; in 2017 the average percentage of requests for assessment which were refused was 22.6%. However, in some local authorities, the refusal rate was well over double this:

- Sutton: 57.2%
- Cheshire West and Chester: 54.3%
- Brent: 50.4%
- Nottingham: 49.4%

With growing concerns about the quality of the transfer of statements to EHC plans, in 2017 SEC undertook a survey<sup>2</sup> of the transfer process. The results of a showed that the legal entitlements of children and parents were being systematically compromised. Specifically

- 52% of respondents said that children in their area being transferred from statements rarely or never received a full EHC needs assessment.
- 35% of respondents said that children in their area being transferred from statements sometimes received a full EHC needs assessment.
- Only 10% of respondents said that children in their area being transferred from statements always received a full EHC needs assessment.

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<sup>2</sup> Over 430 organisations and professionals responded to the survey, covering activity in 125 (83% of) local authorities.

Given that the transfer process was only completed in 2018 there is likely to be a significant number of children still subject to 'compromised' EHC plans that do not reflect their full entitlement. It is likely that similar compromises are being faced by new families entering the system and working with a flawed EHCP process that does not reflect the intentions of the principles set out in s19 of the Children and Families Act.

### **3 - How far do you consider that the Department has made clear what it expects local authorities and schools to do to support pupils with SEND, and supported the exchange of good practice?**

For Regional Schools Commissioners, with significant responsibilities for decisions about academies and schools, it is not clear how decision-making takes into account the impact of those decisions on pupils with SEN and disabilities; or how the Children and Families Act and the Equality Act apply to their duties.

Some of the duties on local authorities have been clearly articulated and carefully followed up by DfE, for example the timescales for the completion of an EHC needs assessment and plan. Others, such as the responsibility of LAs for all children and young people with SEN, s24 of the Children and Families Act, have been left unexplained. LAs are either unaware of this responsibility or are reluctant to hold schools to account for pupils on SEN Support; many are uncertain about what powers they have to do so.

Surveys carried out by the National Autistic Society in 2017 found widespread issues of requests for assessments being refused, long delays between requests and support being provided, and too little training for education professionals in the particular needs of children who are on the autism spectrum.

DfE has funded a range of activities focused on developing, promoting and sharing good practice: dedicated Trusts and networks, a range of training and professional development opportunities and a wide range of resources and practice materials. Ofsted/CQC local area inspections can be a powerful way of nudging local developments – many LAs have made good use of their inspection letter to bring about changes they needed to make locally.

### **4 - To what extent do you consider that there are:**

**a) enough school places, of the right type and in the right places to meet the needs of pupils with SEND effectively?**

**b) sufficient appropriately trained staff, including in local authorities and SEND co-ordinators in schools, to support pupils with SEND effectively?**

There is significant pressure on special school places, an increase in the use of independent special schools, an increase in the use of alternative provision and a trend towards home education. The 'choice' for parents of children with SEN is not a real one: if a mainstream place is not working well for your child, a mainstream place ceases to be a choice. The overall pressure on school places, now working its way through secondary schools, is a further factor in limiting choice for parents.

The SEND tribunal tells its own story. Between 2016/17 and 2017/18 there was a 20% increase in appeals registered with the Tribunal. In 2017/18 there were 5679 appeals, the majority of which were 'won' by parents (or 'lost' by LAs, depending on your view). Given the challenges, stress and sheer amount of work involved for parents to go through this process, it is fair to say that such an undertaking is not done lightly, and the majority of dissatisfied families are often not in a position to do so. Therefore, it is likely that a true reflection of parents dissatisfied with core aspects of the SEND system that the SEND Tribunal addresses (assessment, placements, provision etc) has also numerically seen a significant increase.

Staff development in both schools and local authorities is essential to improving outcomes for children, choice for parents and children, and an understanding of children's entitlement. Nasen suggest that 'A focus on, and investment in, real and ongoing teacher development through research-informed methodology is key'. IPSEA argue that 'initial teacher training and the SENCO qualification should include at least one module dedicated to the SEND legal framework'. However, we know that schools are increasingly expected to cover a number of issues affecting children and young people, and so the time and space to learn about a wide range of SEND issues is becoming increasingly challenging. Nonetheless, if we are to achieve the aspiration that all teachers should be teachers of SEND, the provision of both initial and continuing professional development is vital.

## **5 - What more could be done to measure outcomes for pupils with SEND?**

There are some essential elements in increasing our understanding of how to improve outcomes for children and young people with SEN:

- There needs to be a better understanding of what interventions work in enabling children and young people to make progress. The announcement of a new programme, a longitudinal study, by the DfE is welcome. There needs to be a robust evidence base, but also encouragement to schools to gather their own evidence of what works.
- There needs to be better sharing of the evidence that we already have. There is evidence, from the extended programme of research, the Deployment and Impact of Support Staff in Schools, led by Peter Blatchford, of the unplanned use of support assistants working against children's progress. Subsequent work has sought to support the better deployment of support assistants and there is evidence of good progress where teaching assistants are trained to deliver specific programmes on which they have been trained. However, the majority of provision (at SEN support or through an EHCP) is still calculated in terms of hours with little ambition in terms of outcomes, little specification of how those hours are to be used, or the skills required of those making the provision.
- A clearer articulation in the local offer of what schools, colleges and early years settings are expected to provide from their funding before approaching the local authority for high needs funding. In local areas where this is clearly articulated, there are indications of more appropriate requests for EHC needs assessments and EHC plans. Setting this out clearly also allows for changes in the light of new understanding about what approaches secure the best progress.
- National data about the progress of all pupils acts as a backdrop to inform expectations of what might be an aspiration or an expectation for a child or young person.

There are wider considerations and longer term outcomes as well:

- Destination measures after leaving school: NDCS suggest that the data on long term outcomes such as destinations could be improved, with a

closer focus on how young people with SEND have been supported into adulthood.

- Indicators of improved access and inclusion, showing greater welcome for children and young people into school and reductions in exclusions, and a reduction in parents seeking placement elsewhere. The issue of home education is particularly topical, and IPSEA who has previously highlighted the fact that many families do not choose to home educate, but have it forced upon them, agree with suggestions that greater local authority involvement with home educated children is needed.
- Indicators of parental 'satisfaction' over and above those reflecting satisfaction with their child's placement and reflected in reduced moves out of school.

## **6 - What are the main strengths and weaknesses in the current system, and what are the consequences of these?**

The main strengths of the current system are in the principles and the design. Associated with this, there are examples, identified in a wide variety of ways, Ofsted/CQC inspections, Trusts and networks, of how the system can work well.

However, as it is working currently, too many children and young people with SEND are subjected to repeated failure before an EHC needs assessment is made. SEC has further concerns about EHC needs assessments as there is huge variability in local practice at all stages of the EHC needs assessment process, for example:

- Schools in some areas are told that they have to satisfy local authority criteria before a child or young person can be assessed, for example, the school must submit an educational psychologist report with a request for an assessment;
- There is a lack of knowledge about the law on EHC needs assessments, including who can request an assessment;
- There is insufficient involvement of children and young people, and their parents in EHC needs assessments;

- There is inconsistency across areas in professional input to an EHC plan;
- Variation is further exacerbated by the lack of a national template for an EHC plan.

Despite pockets of strong leadership across education, health and social care identified in some of the Ofsted and CQC joint inspection outcome letters, there is little evidence of systematic improvements to joint working and co-operation between agencies. Where there have been improvements, these have tended to be between health services and local authorities. Links between social care and the new SEND framework have been particularly slow to develop.

Lack of co-operation between agencies is in part due to funding pressures: all sectors are under funding pressures and this is inhibiting joint working and the development of joint commissioning. Other challenges include poor data sharing arrangements, a lack of strong strategic leadership, and a failure to involve children, young people and parents in joint arrangements.

Poor joint working is compromising the quality of EHC needs assessments and EHC plans, resulting in plans that are not holistic and that risk leaving children and young people with unidentified health and social care needs and without provision to meet those needs.

SEC has concerns about the lack of rigour in addressing transition requirements in EHC plans in year 9 and beyond. This raises concerns about how well young people with SEND are being prepared for adulthood. There has been progress in developing new routes into employment for young people with SEND, for example supported internships. However, these are not always well understood by those providing information, advice and guidance or those undertaking transition reviews.

These concerns are reflected in DWP and DH statistics from 2016 that reveal one of the most significant inequalities in the UK today with less than half (48%) of disabled people in employment compared to 80% of the non-disabled population.

Provision for young adults when they leave college is insufficient and insufficiently joined up across education, health and social care, and across both children's and adult services.

## **7 - Is the current system sustainable? How could support, and outcomes, for pupils with SEND be improved, within current funding levels?**

There is compelling evidence that High Needs Funding is under unsustainable pressure. This pressure is damaging local authorities' ability to meet their legal obligations to disabled children and young people, those with special educational needs, and those in alternative provision. SEC has identified 5 pressure points that contribute to this crisis:

- more children and young people with the most complex needs;
- more children and young people with Education, Health and Care plans;
- more children and young people being educated outside the mainstream system;
- more children and young people being permanently excluded;
- more young people with SEND receiving support beyond the age of 16.

Pressure on funding has meant that local authorities have reduced the support they make available to settings, for example specialist teachers and educational psychologists. At the same time, pressure on school funding has reduced schools' ability to buy in such support. This has led to fewer children being properly supported in mainstream schools, more EHC plans, more placements in special schools, and more children and young people in alternative provision. These more expensive options then lead to even less support being available from local authorities for children on SEN support.

Unlike schools, colleges receive no additional funding for young people on SEN support, unless they reach the 'high needs' threshold.

There remain significant challenges in the funding relationship between local authorities and post-16 providers. There has been difficulty in trying to fit Further Education into a schools model, particularly where some larger colleges have students from multiple local authorities.

With many colleges having over 100 High Needs students, there are significant problems for the college when decisions are delayed or payment is late.

**8 - Has the Department established effective mechanisms for parents and young people to understand their rights and seek redress when their rights are not being met, and removed barriers to them doing so?**

There has been a significant increase in support to parents, children and young people through Information, Advice and Support Services. However, many of the Ofsted/CQC inspection letters refer to the pressure on services and ways in which this compromises access to support.

However, as IPSEA clearly state, 'the current legislative framework puts the onus on parents or young people to enforce their own rights where things go wrong'. This is clearly seen during the EHC process, and the increasing number of parents going to tribunal.

**Further information**

We would be pleased to clarify any aspect of this submission, or to add further information.

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**Special Educational Consortium**

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