



# Revision to the SEN and Disability Code of Practice: 0-25 years

Consultation response submitted by the Sheffield Parent Carer Forum

- 1) Does the Code clearly reflect the changes made to the consultation draft to take account of the amendments to the Children and Families Bill to include disabled children and young people in the provisions on identifying children and young people, integrating education, health and care provision, joint commissioning, the local offer and providing information and advice? (Chapters 1, 2, 3 and 4)

No

**Comments:** The references to the Equality Act on pages 5 and 6 are helpful, but they still do not explain how “reasonable adjustments to procedures, criteria and practices” differ from “special educational provision”. It is confusing that the Code puts children with visual or hearing impairments and those with long-term health conditions into the same group and states that these children “do not necessarily have SEN” (page 5). Is the provision of a BSL signer or a hearing loop a reasonable adjustment, or is it special educational provision? And what about children with high-functioning autism, who may be able to access the academic instruction, but not the social opportunities provided by the setting?

It would be helpful to clarify if pupils with physical disabilities who require additional ongoing support and equipment to access educational provision (e.g. para 6.32) are to be regarded as having SEN.

- 2) Does the Code clearly reflect the changes made to the consultation draft to take account of the amendments to the Children and Families Bill to include children and young people in the local authority duties to provide information and advice? (Chapter 2)

Yes.

**Comments:** The first version of the Code stated that the clearest way of achieving impartiality of the information advice and support service was to “contract out such services to voluntary, community and private sector organisations” (page 21). This statement, which we support, has been removed from the new version. Many parents do not believe that a service which is part of the local authority or CCG can be truly impartial, and we feel that the Code ought to say that such services “should” be contracted out.

**3) Does the Code clearly reflect the changes made to the consultation draft to take account of the amendments to the Children and Families Bill to provide for local authorities to set out what action they intend to take in response to comments from children, young people and parents on the local offer? (Chapter 4)**

Yes.

**Comments:** Para 4.26 reflects an issue which is present throughout the Code – the fact that no systematic distinction is made between consultation/co-production at an individual level and at a strategic level. In relation to the latter, local authorities should engage with representative organisations, which in most local authorities will be the local parent carer forum.

While we agree that local authorities should not be required to publish abusive or vexatious comments or individual complaints (para 4.25), we think that there is a need for them to publish a **summary of complaints** they have received about specific services, as this will help to drive service improvement.

Parents of **YOUNG PEOPLE** should also be involved in developing and reviewing the Local Offer.

Para 4.58 should require local authorities to publish clear eligibility criteria for deciding whether to assess / issue an EHC plan. “How the local authority will consider a request” is too vague (see comments on EHCP thresholds below).

**4) Does the Code clearly reflect the changes made to the consultation draft to take account of the amendments to the Children and Families Bill to clarify when health and social care is to be treated as special educational provision? (Chapters 4 and 9)**

No.

**Comments:** Whilst the statement in relation to Speech and Language Therapy is useful (para 9.72), there are other types of provision where clarification is needed; for example, employing a PA to access work experience; independent travel training; or day care services which include training in independent living skills.

**5) Does the Code clearly reflect the changes made to the consultation draft to take account of the amendments to the Children and Families Bill to require local authorities to include the social care services they must deliver under the Chronically Sick and Disabled person’s Act 1970 in Educational Health and Care (EHC) plans? (Chapter 9)**

No.

**Comments:** Parents don’t normally know which social care services are provided under which Act. Para 153 should explain which kind of short breaks provision needs to be included in an EHC plan, and do so in layman’s terms (e.g. services accessed through a social worker assessment need to be

included, services accessed through a CAF do not). The same applies to para 9.115 about direct payments for social care services.

We welcome the requirement to quantify special educational provision in terms of type, hours, frequency and level of expertise (page 151), but feel the same should apply to health and social care provision where practical – however, the revised Code only appears to require local authorities to quantify this in terms of the type and who will provide it (page 152).

**6) Does the Code clearly reflect the changes made to the consultation draft to take account of the amendments to the Children and Families Bill to clarify the duties on local authorities in respect of young people over 18 with SEN. These are to consider whether a young person requires additional time, in comparison to the majority of others of the same age who do not have SEN, to complete his or her education or training, and to have regard to whether educational or training outcomes specified in an EHC plan have been achieved when considering whether or not to cease to maintain the plan? (Chapters 8 and 9)**

No.

**Comments:** There is no provision for parents and young people to appeal against the outcomes specified in an EHC plan (para 11.40). This is problematic as the achievement of education and training outcomes set out in an EHC plan will be key in determining whether to continue to maintain a plan, especially for 19-25 year olds (para 9.148). There is also a requirement for the plan to “set out the special educational provision that will enable outcomes to be achieved” (para 9.66) We feel that outcomes could become a bone of contention between parents and local authorities – with parents aiming high, and local authorities aiming for outcomes which are easily achieved so that the EHC plan can be cased early. In addition, local authorities could refuse to specify provision if the EHC plan does not contain a relevant outcome. For these reasons, outcomes need to be appealable to the First-Tier Tribunal.

The statement in 8.41 that local authorities “should consider the need to provide a full package of provision and support across education, health and care that covers five days a week, where that is appropriate to meet the young person’s needs” is helpful, but doesn’t go far enough. We welcome the requirement to take into account the impact on the family (para 8.44). However, this should be made more specific by stating that local authorities must not have blanket policies of only offering three or four days of provision per week for learners with LDD, and that five-day packages **must** be provided for learners who are unable to engage in independent study or who are not safe to be left on their own (this would be more helpful than just saying “where appropriate”). The impact on the family should be assessed via a carer’s assessment which takes into account the need for parents to work.

Para 7.23 states, “where students have EHC plans, colleges should provide the local authority with regular information about the progress that student is making towards the agreed outcomes set out in their EHC plan.” This is a worrying statement for parents, as the local authority may decide to cease the EHC plan if it considers that the educational outcomes have been achieved. We feel that

the annual review should be the only process by which progress towards outcomes is reviewed, as this needs to be done in partnership with the family and in a transparent manner. It should only be possible to cease an EHC plan following a full review.

**7) Does the Code clearly reflect the changes made to the consultation draft to take account of the amendments to the Children and Families Bill to include young offenders in assessment and planning duties that are broadly similar to those for other children and young people? (Chapter 10)**

Not sure

**8) Does the Code clearly reflect the changes made to the consultation draft to take account of the amendments to the Children and Families Bill to extend disagreement resolution arrangements and mediation to health and social care as well as education? (Chapter 11)**

No

**Comments:**

Para 11.8 about four types of disagreements is very poorly written. It does not help to clarify which kind of cases the disagreement resolution service can help with.

The requirements to contact a mediation officer and consider mediation are very confusing, and in practice it will be very difficult to keep to deadlines.

The Code should include a requirement to record, in writing, any agreements reached through disagreement resolution or mediation, and the timescales for implementing them.

Para 11.28 should clarify the time limits for local authorities to implement agreements made at mediation, and para 11.43 should set out the time limits within which local authorities must comply with Tribunal decisions– we assume these will be included once the final regulations have been published. Para 11.28 should also set out the time limit for appealing to the Tribunal if the local authority fails to implement an agreement within the time limit – we feel this should be two months after the implementation deadline has expired.

Para 11.11 and 11.31 should include a requirement to help parents and young people understand their rights.

The requirement on local authorities to seek feedback from the service to influence decisions on SEN policies, procedures and practices is helpful.

If a parent attempts mediation and no agreement is reached, they only have one month to register an appeal with the Tribunal (para 11.27). Since they would normally need to know the outcome of the mediation before they can prepare their case statement, they effectively have less time to prepare than parents who do **NOT** attempt mediation (who only have to wait three working days to

receive a certificate – para 11.21). We feel the time limit should be two months from the date of issue of the certificate, so there is no penalty on parents who attempt mediation.

The graphic on page 229 is confusing, as it states: “If young person or parent wishes to register an appeal following mediation THIS IS DEPENDENT ON THE DISCRETION of the Tribunal to accept appeals outside of the two months time limit/or within 1 month of a certificate”. Sure if the appeal is registered within 1 month of the certificate, this must be accepted?

Para 11.39 should explain if young people can ask their parents to **REPRESENT** them at tribunal hearings (it just mentions “help and support”).

**9) Do changes to the Code, and the plans to produce supplementary materials, address the responses to the main consultation on clarity, layout and accessibility?**

No

**Comments:**

**About this consultation**

The timescale for this consultation was too short, particularly since it coincided with the Easter holidays, when many parent carers were busy looking after their children. We were therefore unable to consult with our wider membership, and have only included the views of a small group of parent carers.

We feel it was unreasonable to expect stakeholders to comment on the revised Code of Practice without having access to the revised Regulations it refers to.

We also think that it was unhelpful to restrict the consultation to those revisions which reflect changes to the legislation. This new version includes numerous changes which are unrelated to this, and which are probably based on feedback received during the consultation. The consultation feedback should have been published alongside this new version to help respondents understand the rationale behind it.

**General comments**

The accessibility of the document has been improved by numbering the paragraphs and dividing the text up into clearer sections. There is still a lot of repetition, with similar content appearing in different chapters, but worded slightly differently (e.g. see comments below on information about social care assessments and provision, or in relation to preparing for adulthood reviews (para 8.11 and 8.26.)). The Code should be streamlined by pulling these bits of information together under clear headings, and referencing those sections throughout the document.

There is a much improved explanation of the meaning of the words “must” and “should”. However, it would be even better if the Code stated that, where the word “should” is used, organisations must do something equally good or better.

The Code states at several points that local authorities or schools/colleges “should consider” doing something (e.g. 2.18, 2.20, 5.44, 8.76). This is not helpful. For the avoidance of doubt, it would be better to use the term “should” throughout. Equally unhelpful is the statement that a local authority “is likely to conclude” that an EHC plan is necessary when certain conditions are met (para 9.144) – it would be much clearer to state that a local authority “should” carry out an EHC assessment in such a case.

It would be helpful to include a glossary section at the beginning of the document which gives definitions of key terms, such as “parent”, “child”, “young person”, “special educational needs”, “maintained (nursery) school”, “best endeavours” etc.

It is very disappointing that the Code now refers to “consulting with”, “involving” or “taking into consideration the views of” children, young people and their parents, rather than “co-producing” with them (e.g. sections 1.4, 1.11, 3.28, 3.32). In fact, the term “co-production” now only makes a single appearance in the Code (on page 49, in relation to the Local Offer). In our experience, there is less conflict, and higher satisfaction with services, if children, young people and their parents are involved in the decision-making process as equal partners FROM THE BEGINNING. This is very different from consultation, which usually involves asking stakeholders to comment on a range of options – none of which may actually meet their needs.

The section on parent carer forums in the first draft of the Code (section 3.4) was more accurate, and acknowledged the vital role these forums play in improving services. We feel that this has been lost in the new draft, and recommend that the previous version is reinstated. For example, the first version of the Code stated that “local authorities, CCGs and other service providers should work in partnership with parent carer forums” (page 25), whereas the new version says that “local authorities are actively encouraged to work with [parent carer forums]” (page 11). The new version also contains errors which were not present in the first draft, e.g. parent carer forums do not just represent parents and carers of children and young people “with disabilities”, but tend to use much wider descriptions, e.g. “additional needs” or “disabilities and/or SEN”.

It would be helpful to distinguish between consultation/co-production at an individual level (e.g. EHC plans) and at a strategic level (Local Offer, and review of SEN and social care provision) – and refer to the need to involve parent carer forums in relation to the latter. There should be a clear expectation that parent carer forums WILL be involved in strategic decision making as a key partner, particularly in relation to joint commissioning and the local offer; however, phrases like “[partners] ... must consult with family representatives (such as parent carer forums)” (para 3.32) or “Parent Carer Forums and other local groups are useful ways to engage families” (para 4.9) appear to give local authorities and CCGs permission to just ask some other parents if they don’t like what their local forum is telling them.

We like the references to supporting children and young people in relation to their personal and social development, and making friends (e.g. 1.25, 1.40).

## Social care

The section on children's social care (10.13 – 10.25) comes very late in the document, and is not easy to find – would parents really think to look under “Children and young people in specific circumstances”? The section does not give clear information about rights and timescales for social care assessments, e.g. what does “The maximum timeframe for a social care assessment to conclude that a decision can be taken on next steps is 45 working days from the point of referral” mean in practice? (para 10.16)

The information about social care assessments and provision is scattered across the text, and is very hard to find. It would be helpful to explain the different social care assessments in one place under a clear heading, and include references to this throughout the Code. This section should bring together information from para 4.45 about carer's assessments; early help assessments; references to the particular rights of young people with autism and their parents under the Autism Act (para 8.28); the information about transition to adult social care and transition assessments under the Care Act 2014 (paras 3.51 and 8.59); and the duty on local authorities to provide a range of short breaks and to publish a short breaks statement (para 4.44). It should explain that local authorities **MUST** offer direct payments for social care services, including for children and young people **WITHOUT** an EHC plan (para 9.120). The role of the Common Assessment Framework should also be explained in this section.

Para 8.68 seems to suggest that a local authority cannot cease a children's social care service until it has carried out a transition assessment. If this is correct, it should be clearly stated here.

## Early Years

Para 5.43 states that “where, despite purposeful action by the setting, a child continues to make little or no progress over a sustained period, practitioners **SHOULD CONSIDER** involving appropriate specialists”. This is much weaker than the equivalent paragraph in the section on schools, which states that “a school **SHOULD ALWAYS** involve a specialist where a pupil continues to make little or no progress over a sustained period or where they continue to work at levels substantially below those expected of pupils of a similar age” (6.53). Early identification and intervention are important at any age, but never more so than during the early years. For example, if a child starts nursery aged three and is unable to say any words, the setting should make a referral to the Speech and Language Therapy Service immediately – waiting to see what happens “over a sustained period” would mean losing valuable time during a crucial period of language development.

## Schools

It is worrying that chapter 6 only applies to MAINSTREAM schools. Guidance for mainstream AND special schools in relation to learners with EHC plans is completely missing from the Code. For example, where is the guidance on reviewing shorter term targets for learners with EHC plans, and involving parents in those reviews? This effectively means that learners with EHC plans could have less frequent reviews, with less involvement of parents, than those without EHC plans. This does not

make any sense at all. Chapter 6 should describe the duties of ALL schools in relation to ALL learners with SEN, and highlight any additional duties placed on them in relation to learners with EHC plans. The same applies to the chapters about Early Years, Further Education and Preparing for Adulthood.

The graduated approach (assess/plan/do/review cycle) described in paragraphs 6.41-6.51 (schools) and paragraphs 5.36-5.42 (early years) is too weak. These sections would have been an excellent opportunity to introduce both person-centred thinking and increased rigour into the SEN system. We would like to see a much sharper focus on relevance, research/evidence, and recording of interventions and their effectiveness (an excellent starting point would be the “Seven questions for parents” outlined by professor Richard Hastings: <http://theconversation.com/autism-at-school-seven-questions-for-parents-24958>). Both this section, and the section on involving parents and pupils in planning and reviewing progress (para 6.59-6.66) should apply equally to ALL learners with SEN, whether they have an EHC plan or not, and wherever they are educated.

Para 6.45 states: “All teachers and support staff **who work with** the pupil should be made aware of their needs...” We think this should be changed to “all staff **who may come into contact with** the pupil”, so it would also include caretakers, lunchtime supervisors, etc.

Para 6.78 states: “Schools should also make data on the levels and types of need within the school available to the local authority.” Parents would also like to be able to access this information, particularly when choosing a school for their child, so it would be helpful to suggest that schools could publish this information on their website.

The section about Medical conditions (6.10) is too short – will this be extended once the guidance on medical conditions has been published?

We welcome the clarification that “progress” does not just refer to academic attainment, but also wider development or social needs (para 6.15), and that attainment in line with chronological age should not be taken to mean that no learning difficulty or disability is present (para 6.20). These are important statements in relation to learners with impairments such as Asperger’s Syndrome or mental health difficulties.

Paragraph 6.19 is problematic as it appears to set a very high threshold for SEN assessments (“persistent” and “long-lasting” difficulties). Parents often tell us that schools act as gatekeepers to external services, and this statement could delay access to early identification and intervention.

We welcome the clarification in para 6.24 that a detailed assessment of need should ensure that the full range of an individual’s needs is identified, not simply the primary need, and that the purpose of identification is to work out what action the school needs to take, not to fit a pupil into a category.

We would like to see an emphasis on identifying and removing triggers for disruptive behaviour, rather than just “managing the effect” of such behaviour (para 6.30).

We feel that the previous draft’s requirement to meet parents at least termly was better than “at least three times each year” (para 6.60), as there is nothing to stop schools from holding three meetings in the space of a week.

The annual report mentioned in para 6.59 could be a regular school report, but what is probably meant here – and what parents would want – is a report specifically about the child’s SEN.

### **Further education**

Colleges should be encouraged to involve the student’s parents; for example, in para 7.12 “[College] should involve the student closely at all stages of the cycle [...]” add “and their parents”; in para 7.13, state that colleges should also request and include relevant information from the student’s **PARENTS**.

As stated above, the use of the expression “should/can consider” is confusion. For example, see para 7.20: “Where, despite the college having taken relevant and purposeful action to identify, assess and meet the needs of the student, the student is still not making the expected progress, the college or young person **can consider requesting** an assessment for an EHC plan.” The young person can “consider requesting”, but the college “should request”.

The statement in para 8.8 that EY providers and schools “should support children and young people so that they are included in social groups and develop friendships”, particularly around phases of transition, is extremely helpful. It would be useful to repeat this in chapters 5 and 6.

### **Mental capacity and involvement of parents**

Para 8.15 states: “Parents, or other family members, can continue to support young people in making decisions, or act on their behalf, provided that the young person is happy for them to do so, and it is likely that parents will remain closely involved in the great majority of cases.” This is a helpful statement, but there needs to be a formal process through which the need to involve a young person’s parents is recorded and reviewed (either because the young person has expressed a wish for the parents to remain involved, or because the young person lacks mental capacity). Otherwise, the involvement of parents will be hit and miss. For example, a discussion about this could be included in the Y11 annual review, and the decision recorded in the EHC plan. This may include a requirement to send any correspondence to both the parent and the young person.

Para 8.17 states that local authorities, schools, colleges, health services and other agencies should involve the family “**in most cases**”, and that a decision in respect of an EHC plan will “**typically**” involve discussions with their family.

Para 8.19 states that “where a young person is under 18, the involvement of parents is particularly important and local authorities should continue to involve them in the **vast majority of decisions**”.

Para 9.150 states that the “local authority must fully involve the young person, and, **where appropriate**, their parents in the decision making process.”

None of this is very clear. It would be much better to state that local authorities, health services, schools and colleges **must** continue to involve the young person’s parents, except when certain conditions apply, and clearly describe these conditions.

We do not think it is helpful to exclude parents of young people aged 16 and 17 from requesting an EHC needs assessment (para 9.7) or appealing to the First-Tier Tribunal. In the health service, during this 2-year period medical consent forms can be signed by either the parent or the young person or both. It would make sense for the SEN system to mirror this very sensible approach.

The new section on Mental Capacity is very useful. In particular, the statement on page 239 that “in the case of a young person who does not have such a representative, the decision will be taken by the young person’s parent” and the clarification provided on page 240 that a person’s mental capacity does not have to be reassessed each time a decision needs to be taken.

However, what is lacking here is a formal process by which the fact that a young person lacks mental capacity (or a young person’s wish to be represented by his or her parents, regardless of whether they have capacity or not), can be recorded and communicated to all of the agencies involved with the young person. Without such a process, there is a risk that engagement with parents will be inconsistent and ad hoc.

It is not clear whether the reference to regulations which specify the particular occasions when a representative or parent has to act on behalf of a young person lacking capacity (page 240) is the same as the list of occasions when the local authority considers the views of the representative instead of the young person (page 241). Could this be simplified by combining the two?

Para 9.23 states that local authorities should ensure that children and young people who need it have support from an advocate. It also suggests that this advocate could be a parent or a professional. We feel it is important to include a requirement that the advocate **MUST** be independent, i.e. not directly employed by the local authority or CCG, in order to avoid conflicts of interest.

## **EHC Plans**

**Thresholds:** The big omission in chapter 9 is the lack of clear eligibility criteria for carrying out an EHC assessment and issuing an EHC plan. The issue of a financial threshold remains: para 9.3 states that it may be necessary to make special educational provision in accordance with an EHC plan “where the special educational provision required to meet the child or young person’s needs cannot reasonably be provided from within the resources normally available to mainstream EY providers, schools, and post-16 institutions.” This appears to suggest that only children and young people who require top-up funding from the High Needs block would qualify. Indeed, we are hearing rumours from parents that several local authorities are planning to transfer statements to EHC plans only if they specify support above a certain level (e.g. more than 12 hours of teaching assistant support per week). This is **NOT** a person-centred approach, and the Code needs to be reworded to avoid giving the impression of a financial rather than a needs-based threshold. In addition, what can be provided “from within available resources” will vary – between types of settings (the Code acknowledges as much in para 9.14!), between individual settings, and from year to year, as this depends on the number of pupils on roll whose needs take them close to, or over, the nationally prescribed threshold. Pupils with high needs are **NOT** spread evenly across settings and year groups, therefore

blanket policies based on a nationally prescribed funding threshold are inappropriate. We need clear eligibility criteria based on NEED, not funding arrangements.

There are also inconsistencies within the Code. Para 7.29 states that “there is no requirement for an EHC plan for a young person for whom a college receives **additional top-up funding**, except in the case of a young person who is over 19.” This statement contradicts para 9.3, which states that it may be necessary to make special educational provision in accordance with an EHC plan “where the special educational provision required to meet the child or young person’s needs cannot reasonably be provided form within the **resources normally available** to [...] post-16 institutions.”

The requirement to prove that the child or young person is not progressing, or not progressing sufficiently well, despite appropriate special educational provision having been made for them (para 9.53) could lead to long delays. If a local authority refuses to carry out an EHC assessment alleging that the provision made by the school has not been “appropriate”, what happens next? Who holds the school to account and ensures that the provision is made appropriate?

The terms “adequate progress”, “sufficient progress” and “expected progress” are all used interchangeably in relation to EHC assessments, with no explanation given. This is no help at all to parents who are trying to establish whether their child may be entitled to an EHC plan.

We welcome the very helpful statement in para 9.49 that professionals “may comment on the amount of provision they consider a child or young person requires and local authorities should not have blanket policies which prevent them from doing so.” It would be even better to state that professionals “should” comment on the amount of provision, and to add that CCGs should not have such blanket policies either.

We welcome the new deadline of 31 March for issuing a proposed amended EHC plan naming the post 16 institution (para 9.176).

**Disclosure of EHC plans:** We believe that the final decision about which parts of an EHC plan can be disclosed and to whom should rest with the young person and their parents, not the local authority. We do not think that local authorities should be able to override a family’s wishes and disclose an EHC plan to “any agencies which may be referred to in the plan as making educational, health or social care provision” (para 9.206). For example, a PA making social care provision under a direct payment may not need to know sensitive information about the family.

**Decision not to issue an EHC plan:** many pathfinders have adopted a non-statutory plan (similar to a note in lieu) as part of a step-down process. This is hinted at in para 9.56, but could be much more explicit. By adopting a person-centred approach and effective signposting when a request for an EHC plan is turned down, many tribunal appeals could be avoided. Often, the request for a statutory assessment is a desperate plea from parents to be LISTENED to.

**Content of EHC plans:** We welcome the much more explicit guidance on the content and structure of EHC plans in paras 9.59 and 9.60. This will make EHC plans more portable across local authority borders, reduce the risk of a postcode lottery, and make plans easier to understand for parents and those who advise them.

It is, however, disappointing that there are no recommendations to include a one-page profile in the EHC plan. The description of Section A should include a recommendation to that effect – parents always tell us how incredibly useful these are.

**Reviews of EHC plans:** Para 9.67 and the requirement to include the arrangements for the setting of shorter term targets by the education/training provider in section E of the plan are too vague. There is a risk that reviews of shorter term targets of learners with EHC plans could be less frequent, less rigorous and with less involvement of parents than those for learners on SEN support but without EHC plans. (see previous comments on sections 6.41-6.51 and 6.59 – 6.66, which we feel should be revised and applied to all learners with SEN, whether they have an EHC plan or not).

The statement in para 9.188 that EHC plans “are not expected to be amended on a very frequent basis” is disappointing. Parents want EHC plans to be “live” documents which are kept under review and amended much more frequently than statements.

It is not clear whether para 9.173 (Reviews where a child or young person does not attend a school or other institution) applies to home education, and this should be made explicit.

**Outcomes in EHC Plans:** Para 9.62 states that “EHC plans must be focused on education and training, health and care outcomes”. The way this is worded seems to suggest that outcomes should be classed as education, health or social care specific. This is not person-centred – in reality, one outcome will often cut across all three agencies. However, we welcome the reference to “wider outcomes”.

Para 9.66 states that “outcomes will usually set out what needs to be achieved by the end of a phase or stage of education in order to enable the child or young person to progress successfully to the next phase or stage”. However, according to para 9.194 a local authority may cease to maintain an EHC plan when the educational and training outcomes have been achieved. This would imply that parents need to worry about the EHC plan being ceased whenever their child reaches the end of a phase of education. This is exactly the wrong time to cease a plan, as transitions are particularly difficult for learners with SEN. In addition, the fact that outcomes have been achieved at the end of a phase of education would indicate that the support provided has been effective; this would be a reason to continue with the EHC plan, NOT to cease it! An EHC plan should only be ceased following a full review if there is clear evidence that the special educational provision it sets out is no longer required.

As stated above, we are concerned that parents will not be able to appeal against the outcomes set out in a plan – even though these will be crucial when deciding whether to cease a plan, particularly for those over the age of 18 (para 9.148 and 9.167) .

## **Personal budgets**

9.101 What happens if the setting does not agree to the provision purchased through a direct payment to be delivered on their premises?

9.104 Who would carry out the review of such a decision?

It is disappointing that the First-Tier Tribunal will not be able to hear appeals concerning the social care or health elements of an EHC Plan.

9.131 states that a local authority can choose to assist the child's parent or young person in making their arrangement (e.g. home education) suitable, including through a financial contribution. It would be helpful to clarify if this refers to a direct payment.

### **Other comments**

Some references to Independent Supporters appear to suggest that these would be around for longer than just the period from 2014-16 (e.g. para 2.19 vs. para 11.6).

**Exclusions:** There is only a brief section on exclusions in the chapter on resolving disagreements (chapter 11). Given that learners with SEN are far more likely to be excluded than those without SEN, it is essential that relevant guidance on exclusions is referenced in the chapters on early years, schools and further education (chapters 5, 6 and 7) – at the very least, this should refer to unofficial exclusions (DfE guidance on exclusions, para 13), giving consideration to a multi-agency assessment for pupils who demonstrate persistent disruptive behaviour (para 18), and requesting an early or interim review if the student has a statement of SEN (para 24).

**External advice services:** There are several references to services for children with hearing or visual impairments, which is laudable, but no reference to services for children with other types of impairments which also require specialist teaching, such as ASD, Down Syndrome, or dyslexia (e.g. 9.141). We feel that there has been a continued erosion of the role of external support services, with teachers being expected to take on more and more of their remit (e.g. see para 3.40). While there is definitely a need for teachers to be better trained in identifying and supporting learners with SEN, this can never be a substitute for specialist input. The idea that a mainstream teacher would be expected to design a social skills programme for a child with autism, for example, is extremely worrying. Badly designed and implemented interventions can be more harmful than doing nothing.

### **For questions and comments about this consultation response, please contact:**

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