

# CCCG Response to the SEND and AP Green Paper Consultation

## SEND Review: Right Support, Right Place, Right Time

### Chapter 2: A single national SEND and alternative provision system

- 1. What key factors should be considered when developing national standards to ensure they deliver improved outcomes and experiences for children and young people with SEND and their families? This includes how the standards apply across education, health and care in a 0-25 system.**

We strongly welcome the principle of having national, legally enshrined standards, but that such standards should apply to a person's life and not stop at 25 years old, as the Green Paper suggests.

We also feel that the current system (as in the SEND Code of Practice) is not broken. The fundamental issue is that the Code isn't adequately enforced by local authorities (LAs), because they lack sufficient funding or resources to carry out their legal obligations of monitoring and enforcing compliance – resulting in a situation where some LAs simply ignore their legal duties.

Other key factors to consider:

Every individual with SEND is unique, with different backgrounds, abilities, capacity, levels of support at home, and needs. Any new or revised standards must take this into consideration, but the Green Paper is unclear on how will be done. We agree that the National Standards must carefully integrate health and social care with education, but again, there is insufficient detail in the Green Paper on how this will be achieved.

There must also be more guidance for LAs, parents and carers, and schools, colleges, universities and workplaces, so that everyone knows their rights and responsibilities. In our experience, if parents know what they are entitled to, this knowledge removes a lot of disputes from the system, and if providers know their duties and responsibilities, they work together better because they all know what is expected of them and of each other.

Fix the tribunal system – see Q.7.

- 2. How should we develop the proposal for new local SEND partnerships to oversee the effective development of local inclusion plans whilst avoiding placing unnecessary burdens or duplicating current partnerships?**

Local SEND partnerships are an excellent idea, but they are not new and, again, the fundamental issue with them is that, where they exist, there is lack of consistency in how they operate. CCCG is a large, London-based further education group, with 11 sites across a number of London boroughs and our SEND staff work with multiple LAs. We see a lack of consistency – and wide variations in quality – between different partnerships. For example, we find that West London is a good partnership to work with, but others are less effective.

We agree with the principle of a network of local SEND partnerships, but there must be standards – again, monitored and enforced – that govern how they are set up and which organisations are members. The partnerships must include local authority(ies), education providers (including schools, further education colleges, universities *and* alternative provision), health and care partners, parents, and other partners, to produce a local inclusion plan setting out how each local area will meet the national standards.

We are pleased further education (FE) was included in the proposals for local SEND partnerships, but the Green Paper's relatively small number of references to FE colleges and post-16 education is extremely concerning and overlooks the vital role that general and specialist FE colleges play in helping students with SEND progress to adulthood.

### **3. What factors would enable local authorities to successfully commission provision for low-incidence high-cost need, and further education, across local authority boundaries?**

This is a key challenge faced currently when a student moves between LAs. LAs often do not properly communicate, leading to situations where one may fund a student's needs, and the other may refuse to. Learners with the highest needs cost more to LAs and are therefore the students that LAs do not want to pay for – this is a huge concern.

Standardising the EHCP process should help to ensure that the needs of a student are properly detailed and communicated across local authority boundaries.

National costing formulae, with a regional or large city 'factor' (to allow for higher costs for staff time, support time and other resources) should also be considered.

Although it is important that the needs of every child and young person with SEND is met in their local area, it is also important to ensure as they get older and move into adulthood, that their education, health and social needs are still being understood and met. The Green Paper aims to develop SEND system for ages 0-25 but does not acknowledge that when students with SEND go to university, their EHCPs end and no longer have the same support – therefore there is no duty on health, care and education to work together to support them. These students should also benefit from the statutory support from an EHCP.

#### **4. What components of the EHCP should we consider reviewing or amending as we move to a standardised and digitised version?**

We work with 35 LAs. Each has its own EHCP style and format, so we welcome the proposal to standardise and digitise EHCPs.

However, key information is often missing from EHCPs, (eg: a student may have behavioural problems or demonstrate inappropriate and sexualised behaviour). This can have devastating consequences for their transition from secondary school, as the college cannot put the right risk management and mitigation in place, exposing students to potential harm.

The Green Paper doesn't say how a digitised EHCP will be implemented, how it will be paid for and if it will be compatible with providers' systems. Clarity on all these points is needed:

- At the 11 May Public Accounts Committee meeting, the DfE said they hadn't decided if digitisation will be paid for locally or centrally. If payment falls to LAs, implementation will be inconsistent.
- To ensure EHCPs are all high-quality, we recommend mandatory training for all local authorities.
- The consultation proposes standards for how and when EHCPs should be reviewed, but annual reviews are already law. The problem is that they often do not happen.

Sections B, C, E and F of the EHCP are the most important. Sections E (outcomes) and F (health needs) are the most neglected. It's imperative that education and health systems work together to ensure every student has the support they need. We hope the National Standards will enable this, and we also want to see local education, health and social care representatives on the SEND Delivery Boards.

#### **5. How can parents and local authorities most effectively work together to produce a tailored list of placements that is appropriate for their child, and gives parents confidence in the EHCP process?**

A standard EHCP, universally applied and enforced, will boost confidence in the EHCP process, but we are concerned about the proposal to create a tailored list of placements for a child or young people with SEND, as individual need differs tremendously. Fundamentally, who will decide that this list is appropriate and provides a mix of placements that will adequately meet the needs of each individual?

The current Code of Practice allows parents to exercise their choice – for instance if a parent wants to send their child to a specialist and out-of-borough provision – but there is always a tension between what a parent wants for their child and what their local authority is willing to fund.

For instance, the cost of our high-quality *Ambitious About Autism* provision, at our Tottenham Centre, part of the College of Haringey, Enfield and North East London (CONEL), is £55,000 per student, per year.

Most LAs will be resistant to covering such a cost, wishing to send a student to a cheaper provision, which can ultimately lead to parents going to tribunal.

6. **To what extent do you agree or disagree with our overall approach to strengthen redress, including through national standards and mandatory mediation? Strongly Agree, Agree, Neither Agree nor Disagree, Disagree, Strongly Disagree**
- **If you selected Disagree or Strongly Disagree, please tell us why, specifying the components you disagree with and alternatives or exceptions, particularly to mandatory mediation.**

The National Standards will ensure that LAs will hold mediation. After mediation, any disputes should go to a panel which can overturn the Local Authority's decision. It is crucial that the panel is made up of individuals who have an in-depth knowledge of SEND and that the panels are able to change depending on the mediation which is brought to them.

We strongly agree with mandatory mediation. There should be an independent and neutral advocacy service, to help parents navigate the SEND system, such as SENDIAS services. In our experience, where SENDIAS services are strong, there are better relationships between parents and local authorities.

As with all touchpoints in the SEND system, SENDIAS needs to be properly funded so they can offer a consistent service. We also feel that SENDIAS should be extended to cover health and social care requirements.

7. **Do you consider the current remedies available to the SEND Tribunal for disabled children who have been discriminated against by schools effective in putting children and young people's education back on track? Please give a reason for your answer with examples, if possible.**

The current remedies are not effective, and tribunals typically take a year to resolve. Tribunals are also inherently unfair, as not all households have the necessary time, skills or resources to understand the issues, advocate forcefully for their child and win their case.

As a result, tribunals are invariably used by better informed and educated, 'sharp-elbowed' parents, to secure their preferred provision for their child. If, for example a child's parents feel that an out-of-borough residential setting is best for their child, but the LA disagrees, those parents often resort to a tribunal to get what they want.

To stop people using the tribunal system to secure their preferred provision, the Government should consider tightening the rules on when and how tribunals can be used – perhaps only when a procedural error has occurred or where a local authority hasn't followed their legal duties.

### Chapter 3: Excellent provision from early years to adulthood

**8. What steps should be taken to strengthen early years practice with regard to conducting the two-year-old progress check and integration with the Healthy Child Programme review?**

This question is not relevant to our work.

**9. To what extent do you agree or disagree that we should introduce a new mandatory SENCo NPQ to replace the NASENCo?**

- **Strongly agree**
- **Agree**
- **Neither agree nor disagree**
- **Disagree**
- **Strongly disagree**

**If you selected Disagree or Strongly Disagree, please tell us why.**

It is important that all teachers are given appropriate SEND training and that it is built into the teacher training system. We are disappointed with the limited reference to training and support in the Green Paper, as if we are going to improve the lives of children and young people with SEND, there must be a greater understanding of their experience and ultimately a culture change in recognition of this.

Teachers often do not have the confidence, time or the will to take on the responsibility of children and young people with SEND. For example, the National Autistic Society and All-Party Parliamentary Group on Autism's 2019 research [The Autism Act, 10 Years On](#) found that less than 5 in 10 teachers said they were confident about supporting a child on the autism spectrum (p.33). Therefore, ALL basic teacher training must include compulsory SEND training, giving all teachers the required understanding to provide the early intervention and support that SEND students need.

We welcome the idea of specialist further education SENCOs, but currently you must be a qualified teacher – trained in a *school* setting – to undertake the full SENCO training and qualification. In addition, some qualifications are a post-graduate level 7 equivalent, which is a barrier that stops many further education staff from accessing important training that helps to improve their SEND skills and knowledge.

**10. To what extent do you agree that we should strengthen the mandatory SENCo training requirement by requiring that headteachers must be satisfied that the SENCo is in the process of obtaining the relevant qualification when taking on the role?**

- **Strongly Agree**
- **Agree**
- **Neither Agree nor Disagree**
- **Disagree**
- **Strongly Disagree**

**If you selected Disagree or Strongly Disagree, please tell us why.**

We strongly agree that staff are fully trained, but please also refer to our response to Q.9.

**11. To what extent do you agree or disagree that both specialist and mixed MATs should be allowed to coexist in the fully trust-led future? This would allow current local authority maintained special schools and alternative provision settings to join either type of MAT.**

- **Strongly Agree**
- **Agree**
- **Neither Agree nor Disagree**
- **Disagree**
- **Strongly Disagree**

**If you selected Disagree or Strongly Disagree, please tell us why**

Agree. Although it isn't clear that joining a Multi-Academy Trust (MAT) results in better outcomes for SEND pupils, the Government is pressing ahead with its plans to move the specialist sector into MATs. We feel that enabling maintained special schools to join either type of MAT is sensible and gives those schools more flexibility and options than if they were only able to join one type. We also hope that MATs will strengthen consistency across the board.

We would also highlight that, all students who are at risk of exclusion and likely to be moved to alternative provision (AP), should first have an EHC needs assessment, as there is almost always an underlying issue affecting their behaviour. We feel this would significantly reduce the number of exclusions, because those students – armed with an EHC assessment of their needs – would be able to receive the funding and support they need to remain in a mainstream setting.

**12. What more can be done by employers, providers and government to ensure that those young people with SEND can access, participate in and be supported to achieve an apprenticeship, including through access routes like traineeships?**

Supported internships help SEND students into work. We run fully-funded supported internships with good quality employers (read about supported intern Otis Smith at: <https://www.westking.ac.uk/news/otis-is-living-his-dream-at-the-british-library/>), where SEND students get support from a job coach – this is a very good model for employers to follow and would help more SEND students make a successful transition from college to work.

However, not enough people with SEND benefit from a supported internship. Employers can claim £1,000 for taking on an apprentice, but nothing for a supported intern, so, to make supported internships more popular, employers should be similarly rewarded.

Work should be done to raise employers' awareness of supported internships and make it easier for colleges to find willing employers – currently a time-consuming process. There should be a register of companies who will take on SEND students.

Traineeships are generally not long enough or supportive enough for many students with SEND.

We also support the improvement of careers guidance, by requiring Carers Advisors to have additional, specific training for people with SEND.

Having level 2 English and maths is a substantial barrier to SEND students accessing and completing apprenticeships. Many SEND students will be work-ready but may never be able to achieve this level. We agree with Mencap's proposal, in their [Accessible Apprenticeships Report](#), that English and maths requirements for people with an LLD should be based on the skills required for the role – where an employer and provider reasonably expect that the apprentice can successfully achieve all other aspects of the apprenticeship requirement.

#### Chapter 4: A reformed and integrated role for alternative provision

**13. To what extent do you agree or disagree that this new vision for alternative provision will result in improved outcomes for children and young people?**

- **Strongly Agree**
- **Agree**
- **Neither Agree nor Disagree**
- **Disagree**
- **Strongly Disagree**

Neither agree nor disagree. We feel that the focus of the Green Paper in terms of AP should be on understanding why a child cannot stay in a mainstream school, rather than managing behaviour which may have been as a result of their needs not being met. As we explained in our response to Q.11 above, no child should be excluded or moved to AP without first having a full EHC assessment of needs and the right provision made for them, as there is almost always an underlying issue affecting their behaviour.

We feel that this would significantly reduce the number of exclusions, because those students – with an EHC assessment of their needs – would be able to receive the funding and support they need to remain in a mainstream setting.

It's our experience (see also Q.21 below) that local authorities sometimes refer young people to AP without an adequate assessment – perhaps because AP is less expensive to the local authority than, say, a Pupil Referral Unit.

There also needs to be careful consideration around who is to decide the best interests of a child, especially where there may be lack of parental support in that child's life. Conversely, the Green Paper does not mention parental involvement – and in many cases their input is vital.

**14. What needs to be in place in order to distribute existing funding more effectively to alternative provision schools, to ensure they have the financial stability required to deliver our vision for more early intervention and re-integration?**

We run well-regarded, accredited, AP for challenging Key Stage 4 pupils in north London. Pupils are typically aged 14-16 and our courses provide knowledge, experience and vital employability skills required by employers – in an inclusive and safe environment that fosters a culture of mutual respect and

tolerance for students and staff. Our high achievement rates exceed national averages, despite our provision costing considerably less (c.£6,500 for our GCSE provision) than a Pupil Referral Unit and other AP.

Most pupils are at secondary school and are referred to us by their local authority, which essentially subcontracts us to run the provision. In all cases, the school receives a minimum of £10,000 funding from the DfE, but we do not receive that full sum. To distribute this funding more evenly, a set amount should be decided and then allocated according to the support needed for each individual learner.

**15. To what extent do you agree or disagree that introducing a bespoke alternative provision performance framework, based on these 5 outcomes, will improve the quality of alternative provision?**

- **Strongly Agree**
- **Agree**
- **Neither Agree nor Disagree**
- **Disagree**
- **Strongly Disagree**

**If you selected Disagree or Strongly Disagree, please tell us why.**

AP must be delivered to high standards, so that students can realistically progress from AP to their next step – be that into A Levels, further education, university, apprenticeship or other employment.

We agree that focusing on those 5 key outcomes would improve the quality of AP. Currently 4 of the 5 key outcomes (effective outreach support, improved attendance, reintegration, and academic attainment, with a focus on English and maths) are being delivered on for students, but more often than not, the fifth and most important outcome (successful post-16 transitions) are not delivered.

As with many elements of current SEND provision, the primary challenge is not that the frameworks and 'rules' aren't in place, it is that they are not being consistently monitored and adhered to. So, any new frameworks must be rolled out nationally and supported by a monitoring and measurement regime which ensures that LAs and providers are operating their AP provision to the required standards.

Finally, there is a question around who should develop the performance framework and be responsible for monitoring outcomes. Ofsted are a possibility, but they do not yet have the new framework for next round of SEND Area Inspections ready.

**16. To what extent do you agree or disagree that a statutory framework for pupil movements will improve oversight and transparency of placements into and out of alternative provision?**

- **Strongly Agree**
- **Agree**
- **Neither Agree nor Disagree**
- **Disagree**
- **Strongly Disagree**



**If you selected Disagree or Strongly Disagree, please tell us why.**

Agree. Not having the transparency of placements into and out of AP has a detrimental impact on the learner, support agencies and the alternative provision.

We feel that a statutory framework for pupil movements will improve oversight and transparency of placements into and out of alternative provision, but there are a number of issues and challenges:

- How should such a statutory framework for pupil movements be developed and by whom? There is no detail in the consultation.
- How would a framework work?
- How will the framework tackle the use of unregistered providers? Will, for example, all providers have to be registered to get around this problem? If so, with whom? Their local authority??
- How will compliance with the framework be monitored, measured and enforced? And by whom? The local authority? If so, this will require additional resourcing – many of the issues identified by the review and outlined in our response, are because LAs are under-resourced.

## Chapter 5: System roles, accountabilities and funding reform

**17. What are the key metrics we should capture and use to measure local and national performance? Please explain why you have selected these.**

Most of these measures seem sensible. Your 250-word limit is insufficient to fully comment on all the proposed metrics, but please note:

- Data must be accurately collected. Poor data fed into an 'inclusion dashboard' will drive poorer decisions for children and young people with SEND, while giving leaders false confidence that all is well and giving everyone a distorted view of LAs' achievement.
- Most of the measures under 'outcomes and experiences' would usefully capture performance – especially those measuring students' outcomes and destinations.
- However, we are wary of measuring 'attainment'. As we said in Q.12, achieving a Level 2 or 3 qualification is beyond many of our SEND students.
- When deciding metrics, beware of unintended consequences – e.g: 'timeliness of EHCP assessments' is a useful measure (this will enable parents to see if their local authority is assessing EHCPs promptly), but 'percentage of pupils with EHCPs' could penalise local authorities that have many students with EHCPs (the distribution of people with EHCPs will not be uniform across the country).
- As the main goal in improving the SEND system is to give people the right support for their needs, the inability to provide this is the main reason parents go to tribunal, so measuring 'tribunal appeal rates' could be a useful metric to gauge how LAs are performing, although we may see higher appeal rates in affluent areas (see Q.7).
- Value for money metrics are key and should be measured.
- It's important that parents can input into the process.

**18. How can we best develop a national framework for funding bands and tariffs to achieve our objectives and mitigate unintended consequences and risks?**

Special education provision is not standard – it is special, unique and must be individualised. Applying a one-size-fits-all approach would be unfair, and children and young people will be denied the support that meets their needs.

Clarity is needed on who will set the funding bands and tariffs. We strongly argue that it would not be appropriate for LAs to do this and that the local SEND delivery boards (with appropriate SEND-informed membership) decide.

Costs for individual specific interventions and activities can and should be standardised, with clear regional costs, so that everyone in that area or region pays the same fees for the same interventions.

However, a banding system must properly support individual needs. Many children and young people with SEND have very complex and multiple needs, which may not easily fit into a certain banding category. Care must be taken to ensure that a banding and tariff system is flexible and does not cap support for the most complex needs. This need not be incompatible with the standardised costs mentioned above.

Any banding system must also include regional or city factors (as adult education funding currently does), to allow, for example, for higher staff and capital costs in certain parts of the country, especially due to the rise of the cost of living which will affect staffing and delivery costs.

We also recommend that the Government pilot any proposed schemes in different parts of the country to understand local needs.

## Chapter 6: Delivering change for children and families

### **19. How can the National SEND Delivery Board work most effectively with local partnerships to ensure the proposals are implemented successfully?**

We would like to see more clarity in defining what a National SEND Delivery Board is and how they will be set up, how they will carry out their duty, and so on.

As mentioned in our answer for Q.4, the National SEND Delivery Board should be made up of specialists from across education, health and social care. Because a one-size-fits all approach for the whole country is unlikely to work, we encourage the creation of Local SEND Delivery Boards.

We also recommend that members of the SEND Delivery Boards are drawn from SEND specialists such as the Association of National Specialist Colleges (Natspec), the Association of Colleges (AoC), charities such as Mencap, employers, and education, health and social care representatives. The Chair of the National Board should be the CEO of one of the above organisations.

### **20. What will make the biggest difference to successful implementation of these proposals? What do you see as the barriers to and enablers of success?**

The biggest barrier to successful implementation of these proposals is a lack of resources and funding. As we highlighted in our response to Q.1, LAs need more resources, support and training to effectively deliver the support that people with SEND deserve.

The DfE needs to look at the root causes of the problem to properly solve the system – the key is early identification of an individual's SEND needs. Again, LAs lack the capacity and resources to undertake this vital work alone.

The DfE also needs to deliver a solid plan of how they are going to implement these proposals; how they will hold LAs to account when this has failed previously; etc.

As an FE college group, we strongly urge the DfE to acknowledge that for the successful transition of SEND students into adulthood, it is essential that colleges and the FE sector are included within the SEND structure as a valued partner. As we have already mentioned, the comparative lack of references to FE and colleges within the Green Paper is disappointing and concerning.

The EHCP process is also a major issue: it is long-winded and, as explained elsewhere in our submission, inconsistently written and applied. We also find that, when we are receiving a student who is transitioning from a school or other provider, we are typically given just 15 days to turn this around – this is way too short and can lead to a poor-quality transition – especially if the EHCP paperwork is incomplete or deficient.

### **21. What support do local systems and delivery partners need to successfully transition and deliver the new national system?**

Set rules that everyone understands, place them on a statutory footing, provide guidance and support to enable LAs and providers to follow the rules, and monitor compliance. Also communicate with parents so they understand and can navigate the system.

Training is also key – everyone involved with the national system needs to understand their part and what is expected from them. This is particularly important for LAs and teacher training in school, so that individuals' needs can be identified early.

In terms of AP, a national system is needed to enable all information to be shared. Some schools and LAs have very complex and vulnerable learners, and a college setting may not be the most appropriate for them. But often, we are not given important information about a student until they have been enrolled at the college – sometimes for many months or more. If we have a good relationship with a school we gain full transparency, otherwise this is not the case. It is important that all information is shared for the benefit of the student, other students in the college and the staff who are supporting them, and that local authorities and schools are discouraged from passing their most challenging pupils onto whichever provision is cheapest, closest or will take them.

### **22. Is there anything else you would like to say about the proposals in the green paper?**

The Green Paper is too school-centric – there's very little in it for 16-25-year-olds with SEND, and further education and preparation for adulthood make up only 2 pages of the 100-plus page document. The purpose of the SEND system is to ensure that children and young people with SEND are prepared for *adulthood*, so it's essential that further education colleges, and arguably universities too, are included within the plans.

Colleges provide good-quality and important KS4 provision which is great value for money (c.£7,000 per student per year vs c.£20,000 for a Pupil Referral Unit), but college provision is not well known or is an afterthought for many LAs. The Government need to write college KS4 provision into the national framework, so LAs can consider referring appropriate pupils to that provision.

Accountability needs to be addressed for the SEND system to work and deliver for children and young people. The Green Paper does not address how LAs, schools, health professionals etc will be held accountable if they do not deliver their legal duties – something that is a failing of the current system.

The Green Paper concentrates on ways to save cost in the system, but it should instead make sure the money is spent effectively. It is disappointing that the Green Paper implies that the main cause of DfE intervention will be an overspend on SEND rather than failure to deliver – this is the wrong attitude, and we'd like to see a cultural shift in the DfE's approach.