

Response ID ANON-EXGA-GRNV-2

Submitted to SEND Review: Right support, right place, right time
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Introduction

Who is this for?

Instructions

About you

a) Welcome - what is your name?

Name:
Steve Thomas

b) Would you like to provide your email address?

Email:
steve.thomas@prospect.org.uk

c) Are you happy for the Department for Education to use your email address to contact you to clarify points in your response, if necessary?

Yes

d) Would you like us to keep your responses confidential?

No

Reason for confidentiality:

e) Can we publish your response?

Yes, publish my response

f) Which of the following best describes the capacity in which you are responding to this consultation?

Other

If Other, please give details:
Trade Union

g) What is your role within your organisation?

What is your role within your organisation:
Group Secretary

Not Answered

h) What is the name of your organisation?

Organisation Name:
Prospect - Education and Children's Services Group

Not Answered

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 this applies across education, health and care in a 0-25 system.

Q1:

The argument in Ch 2, para 4 is misplaced. The C&FA 2014, CoP 2015 gives explicit statutory instruction, expectations and criteria. The very high number of FTT cases that parents bring, and partially win, shows that parents do not have confidence in the system. There is no need for another set of standards, everybody should follow the ones that already exist and deliver them. This includes Health and Social Care. Current examples of their lack of adherence include, Health avoiding their role in delegation of medical interventions in schools and the two-year-old health check in early years setting; Social Care

not responding to a EHC needs assessment stating 'not known' when s17 requires them to assess all children with a disability as ChiN. The s28 duty to co-operate in the C&FA 2014 needs to be strengthened.

Voice of the CYP must be strengthened.

There is significant concern amongst our members that the introduction of standards will be used to undermine the statutory rights and entitlements for CYP and families and this would not achieve the stated aim of the Green Paper to improve outcomes, improve the experience of CYP and families and improve value for money. We have a legal framework, unless the covert aim of the Green Paper is to repeal it.

Standards will add confusion and will not be considered in court-based action (Tribunal) which considers the legal framework only, how would this reassure parents? Is the purpose of the standards simply to rank local areas without any contextualisation.

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?

Q10:

The word 'inclusion' is used repeatedly in the Green Paper without definition. This reference is a good example, where local inclusion plans refer to having sufficiency of places locally, which we agree is necessary, but does not address the quality of provision within those places where barriers still exist to prevent the CYP benefitting from a fully inclusive curriculum offer.

This proposal does not show how it would link to the Joint Strategic Needs Assessment and Health and Wellbeing Board. If the suggestion is that the SEND Partnership should be a sub-committee of these, it may have merit as it would strengthen the focus on children with SEN and disabilities, which can get lost in the wide range of JSNA and HWB concerns.

We note there are already a range of SEN standards that operate at a national and LA level (eg SEN2 return, AP census, timescales, FTT data etc), but fewer that apply to individual schools and settings and it is at the individual school level that improvements in inclusive practice are required. Therefore, as well as collecting data at a school level the mechanism for challenging inappropriate or unlawful practice that does not rely on an individual parent seeking redress must be put in place.

The insertion of a top level national or local SEND partnership board is unlikely to give confidence to parents unless they see changes in practice in schools, particularly at a pre-statutory stage, and they could create more layers of reporting without any impact.

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

Q3:

This already exists in the high needs funding place commissioning process. However, we agree that it should be improved due to the needs of a small number of CYP who have exceptionally complex needs. Even where cross-border commissioning is in place the variability of numbers from year to year means places that a LA has notionally commissioned may not be available when they need them due to the first-come-first-served, and no-waiting-lists nature of these places. Greater incentives for regional commissioning should be considered, for instance a small administrative payment to the host LA.

We would like to see ICBs become involved in regional planning for these places as most have a very high Health component.

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

Q4:

Although this proposal made sense when it was suggested and rejected during the passage of the C&FA 2014, it would now be a costly and disruptive proposal when every LA has developed their own system although this could be overcome by DfE procuring on behalf of all LAs. Also, the change of format will not necessarily have an impact of quality of contents or make them more accessible to parents, particularly those who are not digitally connected, as became apparent during lockdown.

However, if it goes ahead, we believe all sections are required but: -

Section A needs to be a forward-looking commentary from parents and linked to Preparation for Adulthood themes

Section B needs to include 'strengths' as well as areas for development.

Section C needs to be clearer about provision from Health and Social Care and should also include Early Help and expectations of families, where professionals cite interventions, such as canoeing and horse-riding which can be hard for educational settings to deliver.

If the drive is for greater standardisation, then template for wider professional advice would be helpful.

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?

Q5:

Prospect does not agree with this approach for special school placements, but it may have a place for placements in mainstream school in urban areas where there should be many options available within a three-mile radius, and this might allow a more equitable spread of pupils. This proposal indicates the erosion of parental choice, and it does not incorporate any recognition of the wider costs and efficient use of resources e.g. transport costs, which are currently established in law.

We also encourage the DfE to clarify to schools whether the SEND Information Report is as described in the Code of Practice, 2015, para 6.79 or that described in Statutory Instrument 2014 1530 Schedule 1 Regulation 51.

6 To what extent do you agree or disagree with our overall approach to strengthen redress, including through national standards and mandatory mediation?

Strongly disagree

Q15:

It would be costly in officer time (at least half a day just to attend) and fees (£500 - £1000 each). Mediation must be voluntary. Prospect strongly endorses the suggestion that LGSCO be allowed to investigate cases in schools.

We suggest there may be greater merit in a mandatory informal disagreement process prior to formal mediation. This will allow disputes to be resolved earlier without the requirement for formal mediation. The suggestion that if this does not reduce the number of appeals to SENDT then the multi-agency panel will be used as quasi-independent will just add a further barrier to parents and is too late in the process.

The emphasis should be on early disagreement resolution. In order to strengthen this process, we would support suggestion of a written outcome with clear actions agreed by all following early disagreement resolution meetings which would be timebound. This follows the same process as formal mediation and is something that is reassuring for parents and young people.

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.

Q16:

It could be but currently the Disability Discrimination route is underutilised and relies entirely on parents making a claim. Prospect would support the desire of the LGSCO to be able to investigate cases of concern within a school, but these also rely on parents making a complaint.

Currently, the only recourse to redress is through individual, parent-led complaint. There is nothing that addresses quality issues in a systemic way for SEND pupils. For instance, where a parent seeks an Independent Review of a permanent exclusion of a child with SEND and asks for a SEN Expert to Advise the Panel, if the outcome is to quash and direct reconsideration of the exclusion, that judgement is not conveyed to Ofsted to be available on their information portal providing evidence of discriminatory decision making by the governors (unlike LGSCO findings against a school). This means that schools can avoid accountability and never change unlawful and discriminatory behaviour. Even in the few cases that are taken to the FTT discrimination tribunal after a successful IRP hearing, the outcomes are limited and do not bring about systemic change in the school.

In addition, the focus is solely on schools and education, where is the accountability for health and social care?

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?

Q8:

The two-year-old progress checks are essential and MUST be conducted by Health staff, not by setting staff. This is because only Health staff have a complete knowledge of and access to the range of therapies and specialists that may be required. The workforce in nurseries is too unstable with high turnover and the training and re-training costs would be prohibitive.

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

Agree

Q18:

This should also include the requirement for them to be on the school leadership team. The DfE needs to be clear about whether current NASC SENCOS should undertake the NPQ.

Prospect notes that the SENCO qualification is only one component in the likely success of the role. The others are having the status within the school to bring about change and having the time to fulfil the role. DfE will be aware of the very high rate of churn in SENCO posts

What about training for all other teachers so that 'every teacher a teacher of SEND'.

There are concerns about the appropriateness of the NPQ curriculum to ensure practical and strategic relevance, application and statutory compliance.

Who would fund the course, it should be free.

10 To what extent do you agree or disagree 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

Q19:

Concerns that this could inadvertently act as a barrier as the school supporting the member of staff could then lose them once qualified. Why could it not be mandatory that they start the qualification at time of appointment.

Strongly agree, dependent on amends as outlined above, and this should be emphasised to HTs in guidance that in this circumstance only an 'extended period of probation' is made in order to avoid the need to use the capability procedure to remove them from post if they are unsuccessful with their qualification. For the qualification to be credible there must be expectation that a small minority of participants will not achieve the necessary standard to be awarded a pass and therefore cannot remain in role.

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.

Agree

Q20:

Deeply disappointed that the move to MATs is a foregone conclusion even the DfE's own research does not support this.

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?

Q12:

All employers above 250 employees should have a quota for employing young people and adults with SEND and LD and should have a dedicated job coach who can identify roles (job carver) suitable for those with SEND including Learning Difficulties.

There should also be clear expectations for supported apprenticeships, work experience and other ways to include young people with disabilities in the workplace and employment market.

Supported internships should receive nominal pay and DwP should provide more effective support in the workplace.

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

Q22:

Strongly agree that the model proposed in para 10 is correct and in areas where it has been developed it does indeed reduce the incidence of permanent exclusion.

The expansion of a high-quality AP system properly staffed and funded and resourced to include Early help, social work, CAHMS and mental health could be a real strength, particularly for CYP who are disaffected. It would be important this did not create 'holding pens'. The irony of developing an alternative school system when this paper purportedly espouses inclusion is significant.

The AP system must involve routes back into mainstream and must be a revolving door, rather than a trap door.

The specialism of AP must be its different approach, therapeutic offer, smaller class sizes and a range of qualifications. Of course, it would be even better if this was a feature of mainstream schools which would be more authentic inclusion rather than segregation.

It is notable that the proposed Local Area SEND Inspection framework does not appear to be convinced about the integration of SEND and AP:

We are concerned that alternative provision may sometimes be used inappropriately to supplement the SEND system, for example as a temporary placement while children wait for an EHC plan assessment or a place in a special school.

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?

Q14:

As with any school, AP need to have the reliability of funding that will enable them to invest in the quality of staff that they require. The population of AP can be very variable and therefore a guaranteed place fund plus top up amount needs to be agreed over a longer period than a one-year commissioning cycle. It also needs to ensure that even if permanent exclusions reduce the overall commission will remain to allow for preventative and transition services to continue.

In parallel with this all-mainstream schools should strengthen their curriculum offer to accommodate low ability or spikey profile learners, by for instance offering Functional Skills English and Maths as well as GCSE

DfE will be aware that there are many areas in England where AP has been de-commissioned, and the funding devolved to schools. The re-establishment of AP facilities will be costly in both capital and reduction to schools' revenue but will need to be addressed if this part of the Green Paper is to be enacted and multi-agency wrap-around support is available in AP to identify previously unmet need and offer intervention.

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

Q24:

Strongly agree that the 5 key outcomes in para 20 are the right ones to in a provision performance framework and we would suggest a 6th – measure of progress from pupils starting points which could include softer outcomes such as improved behaviour, reduced anxiety, increased confidence, social skills, reduction in antisocial or offending behaviour. Given the importance of well rounded, confident children and young people this should also be a feature of the mainstream performance framework.

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

Q25:

Strongly agree that statutory framework for pupil movements will improve oversight and transparency of placements into and out of AP, but this will create new burdens for LAs and must be resourced accordingly.

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.

Q17:

It is essential that the school inspection framework does not dis-incentivise schools from developing better inclusive practice

A comprehensive set of data showing the success of better inclusive practice in schools and settings available in a timely manner would be a great improvement. It would look at the availability of therapies and specialist teachers at SEN support stage, the confidence of parents to trust that SEN Support will meet their child's needs through an annual survey, the increased attendance and the decreased behavioural incidents for the pupils with SEND which will show their willingness to engage with the interventions provided by the school. However, what the Green Paper does not explain is who will hold the school to account if the data indicates concerns. Prospect's view is this should be done by the LA and not Ofsted, RD or MATs themselves.

DfE have developed the Safety Valve and Delivering Better Value programmes which will hold the LA accountable for the overspend of their budgets, but these programmes depend on the LA being able to hold schools and settings to account for the effectiveness of their inclusive practice (see question 20).

There should be no requirements that CYP require an EHCP in order to get access to therapy. A national expectation that Health providers deliver this to all children and young people would be more cost efficient overall.

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

Q27:

There are many dangers in a funding bands and tariffs approach, but if it is undertaken it would be better to look at funding for levels of provision, rather than funding for levels of need.

All CYP need to be treated as individuals and many have combinations of needs which defies a simplistic approach. There is also a danger that those providers who can make bespoke and often very expensive provision will find a way to subvert a tariff or will close.

There is also the danger that it would increase spend in order to achieve a higher band. Many LAs who have implemented banding have now moved away from it due to the unintended consequences, lack of flexibility and because they do not enable consideration of the individual CYP's needs.

There is also a real concern that the focus of using an EHCP as a gateway to resources will add to demand for EHCP. A way to avoid further increase in

demand would be increase what is available ordinarily.

Many parents report it is not the EHCP per se that they want, but for their child to be able to access resources such as therapy and the correct interventions. If there was a greater expectation and funding for SEN support this would reduce bureaucracy, delay and increase parental confidence.

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?’

Q19:

We are not convinced that it would be effective to have a National Delivery Board without some stronger levers available within LAs to hold all partners to account for their compliance with statutory requirements.

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?

Q20:

The biggest difference to successful implementation will be if SEN Support stage receives the attention required to make parents and school staff confident that ‘everything is being done’ to support children to avoid escalation to EHCP level to access resources. One important component would be specialist teachers to support schools ‘ordinarily available’

It is notable that in the 14 recently published ‘Dedicated School Grant ‘Safety Value’ agreements in LAs with the most serious DSG deficits, all set out plans to strengthen the early identification and intervention strategies they provide by, for instance - ‘making EP and specialist teacher service free at the point of delivery, increase the outreach offer for specialist SEND, the introduction of a SEND/Early Help pathway and the school based Speech and Language Therapy model, promoting Ordinarily Available provision and embedding the Graduated Response approach, the creation of speech, language and communication needs offer for children and young people on SEND support to reduce the escalation of need to EHCP level.’

Each LA, in deficit positions, put forward strategies to increase spending in this earliest SEN stage in order to prevent the need for more costly intervention. This is a good example of ‘invest to save’ and the Green Paper should encourage this strategy everywhere.

It is notable the green paper was published ahead of its own commissioned research High needs budgets: effective management in local authorities (publishing.service.gov.uk) AND that the green paper does not reflect the good practice already in existence within the current framework.

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

Q30:

There will be significant impact for LLAs to develop and embed systems if all these proposals are agreed, in particular, the additional reporting, transfer of EHPS onto a standardised template, cost of data base systems to digitise, additional staffing need for enhanced levels of coproduction and working such as the multi-agency panels and the local inclusion plan, strategic SEND Board. This will require significant and ongoing resources and funding for LAs for their general fund to record, collate and report in these areas.

It would be more cost effective and better for CYP with SEND and their families to focus on improving SEN support and what is ordinarily available. This would support LAs to develop better inclusive practice, particularly at SEN Support stage, in schools and settings through support and challenge.

Further detail is required as to the phasing of all and any proposals including that of transferring EHCPs into standardised format if agreed.

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

Q22:

If the provision is well composed in mainstream schools and the parents are confident that their child’s needs can be met there without the need to escalate to EHC plan, then the only reason to pursue an EHC plan should be if a specialist placement (which requires a plan) is needed. Currently parents are insisting on a plan to ensure their child can access otherwise limited resources which should be ordinarily available.

Whether the Treasury and DfE’s concern is about reducing cost or about improving outcomes for children and young people, a re-balancing of costs is required with sufficient available at the universal and targeted levels to significantly reduce the need to escalate to the specialist levels as the DfE’s own publications on ‘Safety Valve’ and ‘Delivering better value’ so convincingly demonstrate.

There is a missing element of accountability in the Green Paper proposals, with nothing proposed beyond parent-led challenge at school level. It is essential that the effectiveness of SEN provision at SEN Support can be evaluated systemically as well as individually.

The 90% target for KS2 SATs in the Schools Bill is likely to increase the school referrals for EHCNAs for children unlikely to achieve this threshold which will raise, and not lower, the number of EHC plans and undermine the parents’ confidence in schools SEN provision even further and may drive an increase in incidences of admissions breaches or permanent exclusions.

The SEND and AP green paper consultation questions do not reference the Equality Act 2010.

