

CSDG briefing: Draft Children and Families Bill proposals on SEN

CSDG welcome the Government's commitment to reform the SEN system to deliver greater choice for parents and improved outcomes for young people with special needs. However, we are concerned that the provisions contained in the draft legislation will not allow the Government to meet these aims

Specifically, under clause 18 section 2 of the current draft bill, children with very complex needs will be unable to access the provision they require. Despite widespread concern raised at consultation stage, parents are still unable to state a preference for a place in an independent special school, where the specialism to care for children with severe needs is uniquely available.

The need for specialism

Many of those with the most complex needs require specialist care, often in a residential setting. A high proportion of the young people cared for by CSDG members require 1:1 care, to ensure that challenging behaviours, such as lack of communication or a history of violence, receive appropriate levels of support.

If given a choice, parents of children with severe needs will more often than not express a preference for an independent special school place: the most recent data shows that in 60% of school appeal cases, parents are pressed into fighting for a placement in a non-maintained or independent special school.¹ This is because the independent sector is often the only appropriate option for delivering these services. For example, 85% of children with severe learning disabilities, 86% of those with profound and multiple disabilities, and 43% of those with autistic spectrum disorders rely on provision in special schools.²

The reforms as they stand will therefore do little to end the recourse to expensive tribunals that many parents have to fight through in order to secure the appropriate provision for their child.

Capacity in the SEN system

The draft Bill's inclusion of non-maintained special schools in the list of provision from which parents can state a preference, whilst welcome, does little to guarantee the appropriate support for children with the most complex needs. The independent sector delivers 9,900 SEN places in total – of which 7,900 are in independent special schools – whilst the non-maintained sector delivers just 3,300 places.³ Parents must be able to state a preference for the full range of provider to ensure that access to specialist care is not restricted and that there is sufficient capacity within the system to meet need.

Best value in SEN services

Enabling parents to state a preference for an independent special school place would not disproportionately affect cost.

Placement price is not linked to sector but to the level of specialist support required – for the significant minority of children with very severe SEN, provision is likely to be more expensive simply because of the intensive support necessary to meet need – not owing to the sector of the provider.

Putting children with complex needs in less intensive settings that cannot meet their needs will increase costs in the long-run as unmet needs intensify, or through an increased cost in tribunals as parents are forced to fight through the tribunal system to secure the right provision for their child.

Additionally, there is currently no means of measuring like-for-like costs between local authority provision and that delivered by the independent sector. Pricing should be based on the whole cost of a placement

¹ http://www.sendist.gov.uk/Documents/Publications/AnnualReports/SEND_AnnualReport_09_10.pdf

² <http://www.education.gov.uk/rsgateway/DB/SFR/s001075/sfr14-2012v2.pdf>

³ Ibid

including all overheads, capital investment, inspectorial and advisory functions. The price of a place in an independent special school accounts for every single element of provision. However, local authority service costs often do not account for additional expense of: respite, budgets held by parents, health costs, foster care etc.

Additionally, frustrating access to the full range of provision prevents local authorities from fulfilling their commissioning function. Decision making will be limited to a select part of the full menu of provision and decisions will be less likely to be made on the basis of the assessed needs of the child.

Creating a legal definition

In part, the omission of independent special schools from the menu of parental choice is due to the absence of a legal definition that enables a distinction to be made between state funded independent special schools and mainstream independent schools.

This has led to concern that parents may demand places for their statemented child in a mainstream independent school, at cost to the taxpayer and the local authority.

It is important to remember that independent special schools are state funded – in the same way as maintained and non-maintained special schools are. It is therefore right to put them on the same legal footing to ensure local authorities are able to properly fulfil their commissioning duties to meet the needs of young people in a cost effective way.

CSDG believe that creating a legal definition of an independent special school is simple and would easily enable parents to be able to have true choice.

Under Clause 45 subsection 2 of the Bill “(d) independent special school” should be inserted. In subsection 4 of the same clause, the following definition should be included:

“(2) An independent special school is one which is:

- (a) specially organised to make special educational provision for pupils with special educational needs; and
- (b) where at least 90% of the pupils attending are publically funded by a local authority; and
- (c) where an Education, Health and Care Plan is maintained for at least 50% of the pupils attending.

The draft Children and Families Bill presents an exciting chance to create a vibrant SEN system in which high quality services meet the specific needs of young people – it is vital that we do not miss this opportunity.

Follow up and contact details

To arrange a meeting, or if you would like any further information, please contact Charlotte Taylor on: 020 7227 1648 or at charlotte@westminsteradvisers.co.uk.

About CSDG

The Children’s Services Development Group is a policy coalition of leading independent providers of specialist services for looked after children and young people with complex needs. Its members: Acorn Care & Education, Cambian Group, Hesley Group, National Fostering Agency, Options Group, SENAD Group, Witherslack Group and Young Foundations, provide services to vulnerable young people, delivering excellent outcomes and value for money across the UK.