

Making the SEND system work for 16 to 25-year-olds: priority issues and solutions to be considered in SEND review and reform

About the Special Educational Consortium

The Special Educational Consortium (SEC) is a membership organisation that comes together to protect and promote the rights of disabled children and young people and those with special educational needs (SEN). Our membership includes the voluntary and community sector, education providers and professional associations. SEC believes that every child and young person is entitled to an education that allows them to fulfil their potential and achieve their aspirations.

SEC identifies areas of consensus across our membership and works with the Department for Education (DfE), Parliament, and other decision-makers when there are proposals for changes in policy, legislation, regulations and guidance that may affect disabled children and young people and those with SEN. Our membership includes nationally recognised experts on issues including assessment and curriculum, schools and high needs funding, the SEN legal framework, exclusions and alternative provision.

Introduction

SEC has decided to present to the DfE a set of post-16 issues and proposed solutions in addition to its broader paper covering the full 0-25 SEND system. Although many of the faults in the current system affect both children and young people, there are some which have a different – and sometimes greater – impact on those aged 16 and over, and others which are unique to this age group. We are calling on the DfE to pay specific attention to these issues when taking action to address the SEND crisis.

We have kept the focus of this paper on the overall SEND system as it affects 16 to 25-year-olds, rather than on other educational reforms which have an impact on young people with SEND. This means that we have not included developments such as

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T-levels, qualification reform, or apprenticeships. However, we would like to take this opportunity to remind the DfE of the importance of considering post-16 education and training reform and the needs of young people with SEND in a joined-up way. In particular, we would stress that equality impact assessments should be done iteratively as part of ongoing development work, rather than as an afterthought at the end of a project.

10 key post-16 issues

1. Lack of strategic and regional planning by local authorities

Although a lack of strategic planning is not limited to this age group, it is having a disproportionate impact on post-16 and post-19 provision. Lack of regional or cross-border planning is also particularly significant for 16 to 25-year-olds where travel-to-learn patterns tend to be more varied than for school-aged children. Post-16 provision for young people with low incidence SEN, such as sensory impairment, which cannot be sourced or cost-effectively developed at local level for the small numbers who need it is especially compromised by this lack of regional planning. Lack of strategic planning is leading to the proliferation of small new provision. The number of specialist post-16 institutions (SPIs) has more than doubled since 2012 - from 60 to 120+. There are concerns that a similar pattern may be emerging with post-16 alternative provision (AP). New settings are being opened, with the encouragement of local authorities without a full options analysis or a thorough understanding of the consequences of creating new providers. Opportunities to develop more cost-effective solutions (for example through the expansion of, or investment in, existing post-16/19 providers including developing some as regional hubs) are being missed and specialism diluted. Young people are sometimes being encouraged to remain in school settings post-16 and now also post-19, without consideration of whether this provision will best support their transition to adulthood.

Failure to consider housing and employment within local area strategic planning has led to a lack of post-education options for young people with SEND. This, in turn, has resulted in added pressure from parents to keep young people in post-19 education as a means of ensuring that they have access to some sort of meaningful activity.

Proposed solution

The DfE should require local authorities to

- establish joint local authority/provider networks or forums including all post-16 providers that provide places for young people from the local area to support strategic planning*
- publish strategic plans supported by this forum, including details of regional planning and their approach to commissioning specialist services*
- include in their strategic planning post-school/college options for housing, employment and continuing adult education, bringing their education and adult services teams together to consider post-19 provision more holistically*
- track young people after they have left education and training and gather and analyse data on outcomes to support evaluation of the quality of provision*
- advise LAs to focus on improving quality of existing provision and workforce development, with new provision opened only following consultation with existing providers, where gaps cannot be addressed through outreach and partnership work with these providers.*

2. Decline in specialist expertise

The disappearance of or rapid decline in many local authority specialist advisory services (as evidenced in the RNIB's recent [Left out of Learning](#) report) the under-funding of national specialist colleges, and a more general lack of investment in FE workforce development have combined to create a serious shortage of specialist expertise, including, for example, teachers of the deaf, positive behavior support staff, and therapists. This is resulting in some young people's needs going unmet.

Proposed solution

*DfE should invest at national level in FE workforce development including creating centres of **specialist** expertise to match those being funded this year as hubs to help providers improve support for young people with lower-level needs. Centres of excellence would support both mainstream and specialist settings and be a more cost-efficient alternative to opening new SPIs. They would also provide specialist staff with an opportunity to network and upskill through mutual support and training.*

3. The high needs funding system

It is a widely held view that whilst it was right that the legislation extended rights and duties to the whole 0-25 age group, sufficient funding for the additional responsibilities did not follow. The Local Government Association (LGA) [reported in December 2018](#) that the biggest single pressure on local authority high needs budgets is the 16-25 age group.

The basic principles of a localised high needs funding system appear to have been designed with schools and children in mind, where the majority of children, particularly those in mainstream settings, are educated within the boundaries of the local authority. The picture is very different post-16, which has a *national* funding formula for all *non*-high-needs students, and where providers typically admit young people from multiple local authorities - each with their own funding policies, processes and paperwork. The mechanisms developed to make the system fit-for-purpose for FE settings (such as the import/export adjustment) have resulted in a hugely complex and bureaucratic system which is a drain on both local authority and provider time and resource.

There is a fundamental tension in a system where local authorities are both responsible for meeting the needs of children and young people with SEND and balancing the books. As local authorities grapple with this potential conflict of interest, made more acute by current financial constraints, local decision-making about high needs funding is leading to inconsistencies about who is entitled to receive it, how much they receive and for how long. In particular, local authorities appear to be reluctant to adequately fund young people with low incidence needs requiring highly specialist support, which cannot be sourced or cost-effectively developed at local level for the small numbers who need it. This is driving increasing numbers of young people and their families to challenge local authority decisions through tribunals.

Proposed solution

- *DfE should work with Natspec, AoC, AELP and other interested parties to develop an approach to high needs funding which better matches the needs of post-16 and post-19 learners and is more workable for FE providers. This should include exploring the viability of previous recommendations made by the provider representative bodies including funding place numbers for all post-16 providers on a lagged basis rather than from LA workbooks, and creating a regional or national funding mechanism for the small numbers of young people with low incidence SEN who require highly specialised provision.*
- *DfE should require local authorities to use standardised procedures and paperwork including a revised national contract and standardised templates for top-up fees and EHC Plans.*

4. Support for those with SEND without an EHC Plan or with an EHC Plan but no high needs funding

Currently there is no designated SEND support funding in FE colleges equivalent to the notional SEND budget for schools. Unless a young person is in receipt of high needs funding, colleges do not receive any Element 2 funding at all. These young people must be supported by the college's disadvantage fund, which has to cater for an ever-growing range of students. 18% of college students have an identified SEND but only about 3% receive high needs funding.

There are currently 47,000 learners in further education with an EHC plan, but of these around 30,000 receive high needs funding. Where learners are assessed as needing support of just less than £6,000, the college has to fund this entirely out of their overstretched disadvantage fund, leaving little in reserve for the many students with less acute needs. In some instances where learners are judged to fall just short of the £6,000 high needs threshold, it appears that calculations may be based less on learners' needs than on the local authorities' need to manage their high needs budget.

In addition, colleges are enrolling increasing numbers of 16-year olds who have been in AP, off-rolled, excluded, home-educated or for a variety of other reasons out of education during Key Stage 4. These young people do not attract high needs funding but come to college with a range of different support needs, often requiring a transition year with small class sizes which tend to be run at a deficit. Moreover, if the young person then moves on to a two-year college programme, their third year is only funded

at 75%, forcing colleges either to subsidise their third year or, in some cases, to take the difficult decision to only offer them a further year's education or training.

Proposed solution

- *DfE should recognise the extent of students for whom disadvantage funding is intended, carry out more detailed cost analysis, and increase it accordingly.*
- *DfE should ensure that those leaving AP, who are still in need of high levels of support, are funded at college at an equivalent rate to that which they were allocated while in AP.*
- *DfE should enable students who, because of their SEND, require three years at college to complete their education and training to receive 100% funding for their third year - in line with proposals to fully fund a transition year and two-year T level programme for learners who need the extra input to achieve at level 3.*

5. Transitions in and out of further education

Transition into and out of further education have long been identified as weak points in a young person's learner journey, despite the funding invested over the years into improving the situation. They remain weak points under the current system.

5a. Transition in

The March 31 deadline for specifying the post-16 provision and FE institution where they will be placed is routinely missed. This late decision-making about placements leads to unnecessary anxiety for young people and families and difficulties in planning for the receiving provider. Planning for transition does not always begin, as the Code of Practice requires in Year 9, with local authorities often unrepresented at the critical Year 9 annual review.

Proposed solution

- *The DfE should develop national transition standards and protocols which help ensure compliance with the requirements of the Code of Practice. The protocols should require that annual reviews from Year 9 onwards should include **explicit** consideration of whether and at which point the individual might best progress to FE; they should also make mandatory attendance by a local authority representative at the critical Year 9 review. The transition protocols should include guidelines on sharing information between schools and college for young people with SEND but without an EHC plan.*
- *The DfE should make funding available to provide effective transition support both for young people with and without an EHC plan as they prepare to move to FE (e.g. link programmes, summer courses, open days).*
- *The DfE should issue guidance on joint commissioning to address the key barrier of the three day-week in college which causes some families to opt for continuing five-days-per-week school-based education. Guidance should include examples of proactive collaboration between education and social services which reduces the likelihood of families having to take a coordinating, or even mediating, role between the two.*
- *The DfE should make explicit the grounds on which exceptional approvals can be made for schools to offer post-19 education and implement a more robust and transparent process for considering such applications.*
- *Local authorities should be required to first consult with existing post-16 specialist and mainstream providers before proposing new SPIs.*
- *DfE should also take steps to ensure that informal arrangements for post-16 AP are not developed, instead providing greater support to existing FE providers to help young people re-integrate into mainstream education and training.*

Transition from special schools is not always based on careful consideration of which type of provision (school or college) is best-placed to meet their needs at the different stages of their post-16 learning journey or on an individual young person's readiness for FE. An increasing number of special schools are seeking exceptional approvals to offer post-19 provision, sometimes as an emergency measure where a local authority has made no other plans for an individual's or small group of learners' ongoing education or

social care. Some new specialist colleges are opening without age-appropriate programmes, suitably FE-experienced staff or appropriate facilities.

Young people without EHC Plans are frequently arriving into FE settings from mainstream schools - either directly or following a period of exclusion, non-attendance or time spent as NEET (not in education, employment or training) - with little or no information to facilitate the planning of appropriate support.

5b Transition out

Local authorities are often not engaging soon enough in planning for what happens to young people with SEND once they leave education, despite the Code of Practice requirements around transition-planning as an EHC Plan is ceased. The situation is exacerbated by a lack of social care services, supported employment services and specialist careers information, advice and guidance and very limited options for supported housing. This is sometimes leading to families trying to hold on to education places at the end of a course or to residential students going onto courses in a general FE college on their return to their local area – or much worse, being confined to their homes.

Sometimes young people or their families battle to keep an EHC Plan in place simply as a means to access therapies such as speech and language therapy which they would otherwise lose. Family concerns about loss of benefits also prevent some young people from progressing into paid work.

Proposed solution

- *The national transition standards and protocols recommended above should embrace transition out of, as well as into, FE. Specifically, DfE should introduce a statutory requirement for local authorities to coordinate **multi-agency** transition planning for learners with an EHC Plan for life after education/training at least **three** months before leaving college.*
- *As part of its careers strategy, the DfE should invest in the development and training of specialist careers advisers (akin to the specialist Connexions advisers who previously provided excellent support to young people with SEND) to ensure that all young people with SEND have access to appropriate CIAG.*
- *DfE should work with DWP to identify how to provide effective employment support post-education to ensure that young people with SEND are able to gain and sustain work.*
- *Government should re-examine the benefits system to identify and address disincentives to work for young people with a disability and/or improve messaging to families.*

6. Ceasing of EHC plans at 19

Individual local authorities are taking very different decisions about the ceasing of EHC plans when learners reach the age of 19. Some are making value judgements about what constitutes worthwhile learning, for example ceasing plans unless the education outcomes are firmly focused on gaining paid employment. Decision-making appears, in some cases, to be based on the availability of funding rather than being driven by the needs of the young people or consideration of the potential impact of investing in their education at this point.

The DfE guidance on this matter has not helped consistent decision-making; instead it appears to have encouraged some local authorities to take a particularly hard line on ceasing plans. It also implies that more effective early intervention should lead to a reduction in the need for continuing education beyond 19, despite its acknowledgement that learners with SEND typically learn more slowly than their peers.

Young people and their families are sometimes advised that they should move on to adult learning courses rather than retain their EHC Plan and stay in 16 to 25 provision. However, many local areas have little or no education provision for adults with learning

difficulties and/or disabilities, having chosen to target their limited adult education budgets at different learner groups.

Proposed solution

- *The DfE should withdraw its guidance on ceasing plans on the basis that it has created ambiguity that is not present in the Code of Practice itself.*
- *The DfE should require local authorities to give notice **in writing** of their intention to cease a plan. This written communication should be brief but meaningful and specific to the individual; it should include a justification for the decision and information on how parents, carers and young people can challenge this decision, and reassurance that provision will continue, as stated in the Code of Practice, during any period of appeal.*
- *The DfE should work to increase the amount of adult education provision targeted at learners with learning difficulties and/or disabilities, if necessary increasing the adult education budget to ensure that this happens.*

7. Young person as decision-maker

The commitment in the SEND reforms to place children and young people at the heart of the system and to make young people aged 16+ the key decision makers about their education, health and care has not been realised. The rights of the young person and their families to express preferences are too often being downplayed in the search for low-cost solutions resulting from financial pressures.

Proposed solution

- *The DfE should issue guidance to local authorities on involving young people in the different aspects of decision-making.*
- *The DfE should also fund training for young people on understanding their legal rights and developing the skills to act as a decision-maker, making them more capable of self-determination as they reach adulthood. The DfE should work with partners to ensure that the full range of young people with SEND have access to appropriate training.*

8. Transport

Because local authorities are not statutorily required to fund post-16 transport, an increasing number of local authorities are cutting funding for transport in an effort to balance the budget. Some young people are unable to get to college as a result and are therefore missing out on education and training altogether or being forced to opt for alternative provision which may not meet their needs as fully, on the basis that they can afford to access it.

Proposed solution

- *Government should change the law with regard to the funding of travel so that the current statutory duties on local authorities are extended to cover all students with EHC Plans over the age of 16.*
- *This is a solution that should be implemented swiftly to rectify an anomaly without waiting for a full review of the SEND reforms.*

9. An inspection loophole

Ofsted inspects only those providers who are ESFA-funded and yet hundreds of 19-25 year-olds with an EHC Plan are receiving provision funded through social care or local authority high needs budgets. There appears to be a variety of reasons why provision is being funded in this way, including as described above, as a means to access speech and language therapy. Whatever the reason, the funding source being other than ESFA means that the provision is unregulated and therefore its quality is unknown.

Proposed solution

- *Local authorities should be required to inform DfE of all providers they fund for learners with an EHC Plan and Ofsted should be resourced so that it can inspect that provision.*
- *The DfE should commission research to investigate the extent to which young people with an EHC Plan are offered provision delivered by non-ESFA-funded providers, and the different reasons why this is happening, to better understand whether it is, in all circumstances, in the best interest of the young person.*
- *This is a solution that should be implemented swiftly to close an inspection loophole without waiting for a full review of the SEND reforms.*

10. Lack of accountability

While lack of accountability is an issue for the entire 0-25 SEND system, we have included it here because so many of the problems encountered by 16 to 25-year-olds with SEND, as described above, relate to failure to comply with existing duties or statutory guidance. Some of the most common examples of non-compliance which negatively impact on young people include: failure to meet the deadline of 31 March for decision-making about places on transfer from school to college; failure to give two months' notice of ceasing an EHC plan; failure to maintain a plan while transition to adult services is being planned or while families of young people challenge the decision to cease a plan; and failure to include detailed exploration of different post-16 options in annual reviews from Year 9 onwards.

Proposed solution

- *The government should introduce a system of accountability including sanctions for non-compliance, with a view to bringing practice into line with the SEND Code of Practice and the original vision of the SEND reforms. We would broadly support the recommendations for the system of accountability described in the Education Select Committee's recent [SEND inquiry report](#).*
- *The SEND tribunal and local government ombudsman should report separately on the number of appeals and complaints they receive which specifically affect 16 – 25 years olds, e.g. transition to FE and ceasing of EHC plans post-19, to help establish the extent of the non-compliance in these areas and track whether or not the situation improves over time.*