

# Natspec response to the SEND and AP Green Paper online survey questions

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.

National standards and expectations of provision could help ensure better quality and more consistent experiences for children and young people (CYP). However, to achieve that

- the content of the standards would need to be developed with SEND specialists and the bar 'set high'
- it must be recognised that provision for individual CYP changes at different ages and stages
- providers must be adequately resourced to meet the standards, and there must be consistency in resources for SEN support between schools and colleges
- the standards must be based on a premise that for those with the most complex needs, highly specialist provision that cannot be duplicated in every local area is likely to be commissioned out of area.

The existing Code of Practice (CoP) already describes a national system that should result in consistency across LAs. CYP and families' negative experiences of the current system mainly result from lack of compliance with the CoP (e.g., paragraphs 8.22 to 8.29 on transition planning between LAs, schools and colleges and 8.39 to 8.42 on packages of support across 5 days a week) rather than a problem with its content. If new national standards are to deliver better experience and outcomes, the new system needs much greater accountability; it's not clear that the current proposals will deliver on this.

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?

We welcome the proposal for local SEND partnerships. These partnerships must be broader than existing groupings, include all relevant education, health and social care organisations, and span the whole 0-to-25 age range. They **must not** be connected with or developed from the Schools' Forum. To ensure effective planning of post-16 provision, partnerships should:

- have a post-16 sub-group, mandated to plan for 16-25 provision as part of the local inclusion plan
- be required to collaborate across boundaries to produce a regional plan, with the local plan for each neighbouring authority plan referencing how FE and specialist provision will be commissioned jointly
- include providers of post-school/college services (housing, employment support and adult education) to help ensure successful transitions out of education

- include both specialist and GFE colleges, with the same representation and status as special and mainstream schools
- use data and information management to enable longer term place planning in planned further education provision.
- be subject to much stronger management and intervention if they fail to meet the requirements in Chapters 3 and 4 of the current CoP, covering effective partnerships, joint planning, and information about local provision.

The £70m for capacity within LAs to produce plans must be monitored, with reports on how this is spent publicly available.

SEND partnerships should be subject to close monitoring and local inclusion plans should consistently quality assured, with strong sanctions in place if national standards are not met.

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

We do not believe that provision for low-incidence high needs in FE should be commissioned by LAs. The rest of FE is funded via ESFA or combined authorities, including funding National Colleges for high-level specialism. We recommend that 3-4% of the HN budget should be allocated nationally. This would not result in increased costs for the small numbers of young people who need highly specialised post-16 provision; streamlined administration may even reduce cost.

If LAs are required to commission this provision, the following factors are necessary:

- a regional strategic plan for each of the 9 English regions mapping current supply of FE SEND specialisms
- place-planning involving post-16 SEND partnership sub-groups, based on effective use of data including much earlier prediction of number of places needed
- DfE must monitor and hold to account each regional group of LAs to ensure accurate analysis of supply including all provider types
- provision planning based on national agreements about minimum size for FE providers. Natspec can work with DfE to help define minimum size for SPIs and to consider how many specialist providers are needed nationally/regionally
- a recognition in the revised CoP, regional plans and Local Inclusion Plans, that the use of regional and national specialist colleges does not constitute a failure of 'local provision'
- greater access to High Needs Provision Capital Allowance for specialist colleges; LAs required to consult with SPIs and GFEs about distribution of HNPCAs, resulting in an equitable distribution across the age ranges and provision types.

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

We support the move to a standardised and digitised EHCP. We recommend that the DfE works closely with a range of stakeholders, including children, young people and providers, to draft the new template.

We would welcome a sub-section that captures transition outcomes in Year 9, progress against which could then be monitored at subsequent annual reviews. This would help address the fact that, despite currently being required from Year 9, discussions and decision-making about post-school options is often delayed and hence rushed and unsatisfactory. We would like to see these transition outcomes revised and updated in the final annual review at school and recorded as a set of FE outcomes that are fit-for-purpose for their final years of full-time education.

The template could also include clarification of funding needed to secure the post-school provision identified and the different funding source for specific elements. This would help clarify which body is responsible for funding which elements and should encourage joint commissioning and potentially reduce the funding burden on education.

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?

We do not support the concept of a tailored list. It potentially reduces options for children, young people (CYP) and their families and erodes some of their rights prioritised in the previous reforms. There is a risk that local authorities may omit some providers, such as specialist FE colleges, for financial reasons rather than on the basis of their ability to meet need. We think it likely that 'the tailored list' would increase rather than reduce the amount of conflict in the system, with a corresponding loss of trust/confidence from families.

We agree that CYP and families need better information, advice and guidance about possible provision, particularly in relation to their post-school options, but this should be met by the introduction of independent transition workers who are able to provide objective information about different provision, together with greater compliance with the existing Code of Practice requirements regarding the Local Offer.

There is also a need to improve the current 'consultation process' relating to naming of providers. Colleges are sometimes named despite their inability to meet the needs of a particular young person and on the basis of inadequate information about the individual. These placements often breakdown as a result. A revised system of identifying placements should also put an end to procurement systems and frameworks which require providers to bid against an unseen young person.

Should the DfE decide to press ahead with tailored lists, it would be essential to involve providers in the process and an independent key worker representing the CYP's best interests.

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.

Strongly Disagree	We would like to see a much stronger focus in these proposals on reducing the need for redress – by driving greater compliance in the first place. At the same time more weight should be attached to the views and wishes of young people and their families, and more support given to enable them to express themselves and be heard. It should not only be those with the time, education, stamina and resource to battle the system who get the provision their YP need. Redress (with the enormous burden it places on families) should be a last resort for a very few not a common route. The proposal for mandatory mediation appears to be a solution for reducing the number of tribunals. Given the high percentage of tribunals that find in favour of families, we think a reduction in tribunals would be more likely achieved by introducing more means/resources to ensure that LAs are acting lawfully - rather than by adding an extra hoop for families to jump through before they can hold an LA to account. DfE might also consider the possibility of introducing some kind of rapid review of cases to prevent any, where LAs are clearly acting unlawfully, from heading down the tribunal route.
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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.

n/a

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?

n/a

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 or Disagree, Disagree, Strongly Disagree

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

Neither agree or disagree	We do not have a view on the specific qualification that a school SENCO should hold but would support government investment into upskilling SENCOs and ensuring they have sufficient non-teaching time to do their jobs well. We would be happy to be involved in discussions about the potential of an FE-equivalent qualification.
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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

	n/a
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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

Neither Agree nor Disagree	<p>We do not believe that there is any evidence that a fully trust-led future will raise standards of provision for students with SEND, and in any case it does not appear that there are any proposals to include colleges within this future vision. The Green Paper does not cover how colleges might relate to MATs, and does not propose that colleges are part of the “fully trust-led future”.</p> <p>The current picture is confused for colleges, with some colleges being MAT sponsors (e.g. Orchard Hill), and a significant minority of SPIs that are either established by a MAT or are a member of a MAT. This has resulted in a lack of clarity and potential conflict with funding regulations, as SPIs are funded by ESFA as independent companies/charities, yet often subsidised indirectly by the MAT which sets its overarching vision and policies.</p> <p>We believe greater progress can be made if Local SEND Partnerships are mandated to create effective post-16 plans, involving schools and colleges working together on transition standards, and groups of colleges then working together to share good practice and provide peer support to improve quality. Natspec’s existing networks and our partnership work between specialist and GFE colleges has demonstrated that effective joint working and support, leading to improved outcomes for young people, can exist effectively outside a MAT structure.</p>
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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?

<p>Government should implement the <u>2016 Maynard recommendations</u> on making apprenticeships accessible to those with learning difficulties, extending them to apprentices with other types of SEND and to those on traineeships. Eligibility for the flexibilities around English and maths qualification should be made available to learners with additional needs, beyond those with an EHCP, as is the case currently. Restricting eligibility in this way is closing down apprenticeships as an option for many young people who would benefit from this type of learning but are currently debarred because of the English and maths requirements. Government should, in any case, be wary of using the EHCP as a passport for</p>
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holders to access certain types of provision or benefit, as it is creating a perverse incentive to gain or maintain an EHCP and does not take account of regional variations in the issuing of EHCPs.

The DfE might also consider the circumstances in which supported internships can provide a route into apprenticeships for some young people and offer further guidance on this.

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

Neither agree or disagree	We support the increased regulation of alternative provision (AP) although we are disappointed in the lack of analysis in these proposals about the causes for increasing demand for AP and the reasons why such a large proportion of AP learners have an SEN. We also note that there is no reference to post-16 AP; although it does not officially exist as a provision type, many of the new, smaller SPIs are effectively offering AP to a very similar SEMH cohort, including to young people with behaviours of concern. We would welcome a discussion, alongside AoC, with DfE about this rising demand and the potential for partnerships between specialist and general FE colleges to replicate the model of <i>'targeted support in mainstream settings, or access to time-limited or transitional places in alternative provision schools'</i> .
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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?

n/a

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

n/a

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

n/a

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

DfE needs to work with FE organisations to ensure metrics include those that check the health of the system for students aged 16-25. Examples of possible FE-relevant metrics include:

- Number and percentage of young people with transition outcomes recorded following Year 9 reviews
- Number and percentage of young people who have their EHC Plans updated prior to transition to FE, with current Code of Practice deadlines met
- Ratio of young people to transition workers supporting exploration of post-16 options
- Number and percentage of post-school placements identified by the statutory deadline
- Number of 16 to 25-year-olds with SEND with access to a specialist careers adviser
- Number and percentage of young people who receive a multi-agency review and post-college plan at least a term ahead of their education leaving date
- Progression rates into paid employment and different types of supported/independent living arrangements
- Proportion of adult education budget spent on provision aimed at people with learning disabilities
- Amount of capital investment into SPIs and GFE colleges as a proportion of the total available across the 0-25 system
- Number of LAs working together within regions or sub-regions to plan for and meet low-incidence need

Metrics need to focus on the quality of what is delivered, not just on the process; otherwise they risk encouraging perverse behaviours.

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

We do not support the proposal for national funding bands and tariffs for all provision types, due to the highly individualised programmes required in specialist FE colleges. Under the pre-2013 national FE funding matrix, specialist college students were almost always funded outside the matrix because they could not be fitted into standard categories. A fair new system should allow provision for young people (YP) with multiple and the most complex needs to be costed separately and individually, and not set any expectations that it ought to be possible to meet their needs within a prescribed funding band.

For lower cost, less complex SEN, a national framework *could* result in greater certainty for both funding bodies and education providers, but to do so the following factors are essential:

- FE-specific funding tariffs which take into account different group sizes, the transition to a new and more challenging environment, and different support to develop autonomy and independence rather than in-class support.
- Recognition a child or YP may move between bands at different ages/stages

- Multi-year funding agreements. Annual budget allocation results in one-year post-16 placements where longer programmes are needed to achieve outcomes, causing unnecessary anxiety for YP and families.
- Block funding agreements to be agreed early, with clear systems for reconciliation partway through the year.
- Reflection of geographical differences, e.g., variation in wages, cost of living or transport
- Tariffs must include costs of staff not directly supporting the YP, e.g. staff involved in employer engagement or essential administration.

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

Successful implementation is dependent on effective processes (currently undefined) and effective accountability. The Green Paper relies on additional investment in the Safety Valve and Delivering Better Value programmes to identify solutions, without evidence that these have addressed the issues faced by 16-to-25-year-olds and FE. Effective accountability requires agreed expectations, monitoring, feedback, trusted relationships between the parties, rewards for high performance and sanctions for poor performance.

The proposed role for the delivery board, "to hold partners to account for the timely development and improvement of the system", is unrealistic. The suggested diverse membership, with representatives from across the system, means that the board would effectively be holding its own members to account. This should be DfE's role, through the SEND directorate and the Regions Group, with the national delivery board responsible for monitoring implementation, reporting successes and failures to DfE, and proposing further changes to ensure that the legal framework is upheld. More robust funding agreements with LAs with effective sanctions (that do not involve reduced budgets that would penalise CYP and families) could be used as a lever to ensure effective implementation.

The national delivery plan should also be based on a robust examination of why implementation has failed up to now, making it clearer how regional and local inclusion plans should be structured to address issues throughout the age range. There should be quality assurance of local inclusion plans with frequent updating and publication of progress.

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 problems in the current system stem from poor implementation and a lack of accountability rather than the quality of existing legislation or the Code of Practice (CoP). To avoid a repeat of this failure, we need more effective oversight, statutory intervention powers and robust consequences for local areas acting unlawfully.

DfE must communicate how new national standards will be different from the statutory guidelines already in the CoP, the relationship between a revised CoP and national standards, and how they will be quality assured to avoid setting low expectations of support required for children and young people (CYP). Local SEND partnerships should be mandated to use the

CoP so that it becomes central to their practice, with references to it in everyday communications, guidance and systems in a way that never happened in the 2014 reforms.

DfE must not exclude FE learners and providers in these reforms. The vast majority of CYP with EHCPs go on to college, yet the Green Paper focuses only on their lives at school. Over 28% of all EHCPs at any one time are held by those aged 16+. SEND partnerships and Local Inclusion Plans must put an appropriate focus on 16-25-year-olds and FE and be mandated to thoroughly explore FE issues and undertake a needs analysis and supply and demand mapping, backed up by proportionate investment in FE. The DfE Regions group should have the capacity to oversee local authorities in relation to their work with colleges as well as MATs.

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

A successful transition requires support for cultural and systemic change and considerable resourcing for communication, training, and new systems. All stakeholders need to understand what is different about the new system, why this represents an improvement, and what new expectations it sets for their practice. The transition period should minimise disruption to services for children and young people (CYP). When implementing standardised and digitised EHCPs, improved quality of content not just format must be a priority. The introduction of a new template must not be used as an opportunity to reduce statutory support.

Specialist FE colleges would require the following to prepare for and make a positive contribution to the new system:

- investment in staff training to ensure they understand new requirements, participate in local SEND partnerships, share expertise with GFEs including through acting as national centres of specialist expertise, and undertake vital delivery roles
- a sufficiently resourced and trained workforce within LAs who understand the post-16 and FE landscape
- a strong relationship with the DfE regions group and an understanding amongst that group of the contribution of SPIs to the post-16 sector
- clarity in guidance on funding for providers and LAs and policy initiatives acknowledging that SPIs are within scope
- revised commissioning arrangements to support joint SPI/GFE programmes and cross-boundary working for low incidence high needs provision
- changes to the 16-19 funding system to support better place-planning based on data for GFEs and SPIs, which allow for tapering of support in the final term.

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

We are not convinced that addressing the problems in the current SEND system requires the re-writing of legislation which will disrupt provision for years with no guarantee of driving improvements. While new national standards, mandatory mediation and tailored lists might

cut costs, there is no evidence to show how they will improve the experience of CYP. Government needs to heed the Education Select Committee's warning to "*avoid the temptation to address the problems within the system by weakening or watering down duties or making fundamental changes to the law*" and focus on improving accountability, ensuring compliance with existing legislation and the CoP, e.g. through increased powers for the ombudsman, strict conditions for LA use of ESFA funding and sanctions for non-compliance.

Natspec is disappointed that the opportunity to set out a vision for improving SEND in FE has been missed, despite the extensive advice sought from AoC and us by the review team, and the pressing need for government to predict and plan for the growing numbers of FE students with EHCPs, and SEND more generally. We offered an analysis of FE issues and solutions and described the potential contribution to the system of specialist colleges – all ignored.

Specialist colleges have a critical role in direct delivery, providing specialist training and working in partnership with GFE colleges to improve provision, and maintaining and developing specialist expertise nationally. Support for specialist colleges from government to play these roles effectively is essential to a robust SEND system for FE.