Letter to Secretary of State for Education from lawyers who represent children & young people with special educational needs & disabilities (SEND)

Sent by IPSEA (Independent Provider of Special Education Advice), full list of signatories included

Rt Hon Gillian Keegan MP
Secretary of State
Department for Education

By email: sec-of-state.ps@education.gov.uk

21 November 2022

Dear Secretary of State

SEND Review

We are writing to express concern about the direction that the Government's SEND Review has taken, and the apparent intention to implement major reforms to the system for supporting children and young people with special educational needs and/or disabilities.

As lawyers who help families secure the special educational provision and support to which their children are legally entitled, we are concerned that the proposals in the green paper ("Right support, right place, right time") risk diluting children and young people's rights to provision and support that meets their individual needs.

In particular, we are concerned that the proposal to introduce statutory national standards will have the effect of levelling down not up, meaning that some children and young people with SEND would receive less provision than they need.

The premise of the green paper is that there is a lack of clarity and consistency about what should be provided to children and young people with SEND, resulting in widespread local variations, and that too many children and young people are currently receiving too much specialist provision. However, the law as it stands is clear and specific, and applies in every local authority area in England.

From our experience, the problem is not that children and young people with SEND are receiving costly provision that they do not need, but that too many children and young people are not receiving the support that they do need. SEND law is clear about what children and young people are entitled to and where responsibility lies. Much of the "discretion" exercised by local authorities that is referred to in the green paper is unlawful.

The SEND reforms introduced by the Children and Families Act 2014 were – and remain – the right reforms, underpinned by important principles that continue to hold true. There have been extensive analyses by the National Audit Office, Education Select Committee and

others of how these reforms have been implemented. There is consensus that implementation has been inadequate, with local authorities routinely failing to fulfil the legal duties to children and young people with SEND set out in the legislation and associated regulations.

The SEND system is broken because it lacks local accountability. It is riddled with unlawful decision-making, with no negative consequences for local decision-makers – only for children and young people with SEND. This will not be fixed by proposals to reduce parents' choice of education setting or to make it mandatory for families to participate in mediation before being permitted to register an appeal.

Any accountability that exists flows from individual parents bringing complaints or appeals – an option that is not available for every family. Families who are able to access legal advice (whether paid or not) are in a stronger position to secure their children's rights than those who are not able to do this – which means that some of the children and young people who are most in need do not get the right support. This inequitable situation is created by unlawful decision-making, not by pushy parents. There is nothing in the green paper to suggest that the Government intends to address this situation.

We know that the Government wishes to create a less adversarial system. But this will only happen if families can have confidence that decisions about their children are taken in accordance with the law, and that routes of redress are accessible and transparent. We are afraid that what is proposed will end up making the SEND system less accountable and more adversarial.

The need for redress could be reduced by creating a culture in which lawful decisions are taken first time. In our experience, parents do not pursue appeals or complaints unless there is no alternative. Mandatory mediation is not the right solution here. Mediation is, by definition, a voluntary concept. Problems with the current SEND mediation process – including poor advice, long delays and the failure to ensure that individuals with decision-making power are present at mediation meetings – will not be solved by making it compulsory. Rather, introducing a mandatory mediation stage is likely to increase delays in providing children with the support they need.

In our view, the key to resolving the SEND crisis lies in finding a way to ensure that local authorities comply with the existing law and fulfil their duties to children and young people, not in implementing a new set of reforms. Every need that a child or young person has must be identified and met, through provision that is specified and quantified. There are clear entitlements and little scope for local discretion.

The 2014 reforms had the potential to transform the provision and support that children and young people receive, to ensure that every child and young person had access to support that meets their needs and respects them as an individual. They still have the potential to do this, if policy-makers are committed to making the system work as it should for every child and young person.

Yours sincerely

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