

IPSEA

Independent Panel for Special Education Advice

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Independent Review of Home Education – IPSEA’S Submission

Some families with children with SEN make a positive choice to educate their children at home. For others it is the least bad option which may come about for a number of reasons:

- inadequacy of local SEN provision e.g. lack of special schools or lack of appropriately resourced units in mainstream schools
- religious reasons e.g. lack of local school of relevant faith which can cater
- school or LA failure to make statemented provision
- breakdown of relationships with school and/or LA
- response to threats of prosecution
- neutral position pending tribunal hearing (e.g. on secondary transfer)
- response to unsuccessful tribunal

It is clearly a matter of grave concern that some of the most vulnerable children including those with very complex special needs, should end up out of school through a default in the system. Once a child is being home educated, LAs may decline to provide support or make special educational provision.

IPSEA supports the statementing process as it is. Although clearly various LAs persist in writing statements which may be unenforceable due to vagueness, we would not wish to see any compromise of the guarantee that a properly written statement can bring. It is problematic, however, that Statements cannot be transferred to Home Education unless it can be demonstrated that all or part of a child’s special educational needs cannot be met in a school¹.

IPSEA would advocate keenly that this position be changed to allow a child’s home to be named in Part 4 of the Statement, in place of a school, where this is the choice of the parent. This would be with a view to allowing and requiring LAs to support families who have a child with SEN in Home Education and avoid the

¹ This has been held to be the effect of Section 319 Education Act 1996 most recently in TM v Hounslow and SENDIST [2008]

current situation where some LAs “wash their hands” of children educated otherwise than at school.

We have considered whether a change to the law in this regard could have unforeseen consequences. For example, could a situation arise after a number of years where some LAs consider that Home Educating statemented children, whether or not this is the preference of the parents, is cheaper than properly planning for and resourcing school provision for children with disabilities in their area and “lean” on parents to make this choice? Home educating is clearly not for everyone; it can be isolating, many parents need to work and do not have the skills, so we would not wish people to be pressurised into it.

We would hope that there are sufficient safeguards within the system to stop that sort of abuse of process e.g.:

- LAs (or tribunals on appeal) would be under the usual duty to satisfy themselves that this “placement” would be able to meet the child’s educational needs with the benefit of statemented help.
- Inspection of LAs - As a former DCS you will be more aware than we, but we presume the process of inspection of LAs would safeguard the position of children. We would hope that Ofsted would be able to be alert to
 - whether some LAs have high numbers of statemented home educated children and low levels of special schools,
 - how statemented home educated children are supported and monitored, and
 - whether LAs are fulfilling their duty to plan to increase access to mainstream schools for children with disabilities,which are all linked.
- SEND appeals (formerly SENDIST)

We recognise that if homes were to be named in Statements, there would clearly be a need for a mechanism to ensure accountability both in relation to the quality of education provided to the children and the use of public funds. In the context of Social Services, LAs have the power to make “direct payments” to families. We are not confident that this would be appropriate in the context of education. We can envisage a risk that they might be seen by the press or the unscrupulous as payments for taking difficult children out of school, for example, to improve league tables. (“Why don’t you educate him at home, Mrs X? They’ll give you the AWPU? That’s worth £ 2,500. Think what you could do with that.”)

We would suggest that there are various options for monitoring and, possibly, purse-holding:

- LAs
- Ofsted, the Independent Schools Inspectorate (ISI) or other independent inspectorates – inspection only could be undertaken by a new HE service under the aegis of existing central inspection services
- State mainstream or special schools

- Educational charities e.g.
 - Independent schools – mainstream or specialist
 - Other charities involved in education otherwise eg Kids Co, Red Balloon, Fairbridge. (We are not in touch with these charities, have not discussed this with them and do not purport to be able to speak for them.)

In some cases, the LA may be the straight-forward choice but we would suggest that there should be flexibility to allow the parties to have the arrangement monitored through a third party. This flexibility would be important for the sake of the child when there has been a breakdown of relations e.g. with the LA or former school. The involvement of schools, whether state or independent, would be in tune with the vision for 21st century schools which work collaboratively with other agencies. If third parties were to be involved, in legal terms there would need to be clarity as to whether they were safeguarding the interests of the LA, parent or child when expectations conflict.

We are aware that some specialist independent schools² are already interested in supporting home educated children with SEN, e.g. those who wish to return to school, and are exploring ways in which they can do this drawing on their resources (eg therapists) and teaching expertise. Some other ISC mainstream independent schools are already supporting mainstream home educators by providing examination centres and assessment of course work or language orals. Some are already looking at how they can provide or widen access to sports opportunities, or Duke of Edinburgh courses.

We are considering whether there could be any unintended consequences in these suggestions.

- In any arrangements with third parties to provide monitoring of education and accountability for spending, there would need to be clear funding agreements in respect of services provided, plus training and clear expectations of the role.
- These are clearly not roles which it is appropriate to force on independent schools or other educational charities as they are all differently resourced and they value their independence.
- It would also cause schools (whether state or independent) financial difficulties if it became expected that parents who fail to get their child into the school by normal routes could simply become Home Educators and claim educational services from the schools by that route. That could lead

² Legally there is no longer a separate category of specialist independent schools. They used to be registered under s347 of the Education Act 1996 and had separate inspection arrangements but this provision has just been repealed by the Education and Skills Act 2008. It is not yet clear how the old regime is to be replaced. DCSF has indicated to the ISC that they will issue Guidance to LAs in the latter half of next year about how to approve specialist independent schools to accept statemented pupils now that they are no longer separately registered for specific categories of disability.

- to some popular schools having extended home educated hangers-on who ought rightly to be in other schools.
- Once the law acknowledges that, at the very least, the AWPU should follow a pupil into Home Education, it would be a small step to argue that it should also be able to follow a child into an independent school if that is the preference of the parents. We are aware that situations frequently arise where children with SEN leave state schools for reasons of bullying or damage to the child's self-esteem or inability to cope with the hurly-burly of a large school. Some parents would rather not home educate if they could place their child into the local independent school, often smaller over all with smaller classes than the state schools. However, even if there is a bursary available, willing schools may find it impossible to meet the child's needs without "top-up" SEN funding which some LAs will not countenance in an independent school.
 - For some children's charities, performing a monitoring role might threaten to undermine the independence from authority on which their credibility relies. So it may not be an option for them.
 - Neither LAs nor independent monitors would have the right to enter a home for the purpose of performing this role. When a statemented child is in an independent school, the LA has the right to enter the school (which it would not normally have) for the purpose of monitoring the SEN provision. We consider that it would not be appropriate to extend this to a right enter homes for monitoring purposes. This would undermine the relationship of trust that would be required for the monitoring and support to work well. If access was not granted appropriately, the LA could amend the Statement. Social services already have the powers to enter when there are child protection concerns.

If a requirement were to be brought in to register home educated children as such, we would broadly support measures to register children with SEN, particularly statemented children, as a sub-category. This country has a long and valued tradition of allowing parents to educate their children independently of state control whether at home or in independent schools.

However, this needs to be balanced with the rights of the child to receive a suitable education. It is, therefore, strongly arguable that the state should as a minimum be able to differentiate those children in "educated otherwise" from those out of education. Where children in "education otherwise" are known to have special educational needs, LAs should not be able to avoid their duty to support the child's education if the parents wish to claim that support. Likewise, arguably, parents should not be able to defeat the rights of vulnerable children to safeguarding protection.

It would, therefore, be reasonable to flag in some way those for whom help can be claimed as of right. If this were to be a contentious suggestion, however,

consideration could be given to making it the flagging system voluntary at the option of the parent.

As to ContactPoint, once all children are registered, it will be possible for LAs to scan the database with a view to picking out children who are not in school.

There are several potential flaws in this:

- ContactPoint will only record children who are ordinarily resident in England. The most vulnerable children, such as trafficked children and asylum seekers may not be ordinarily resident and as such may not be on the system at all either because they live unseen or for more technical legal reasons: children are generally deemed to be ordinarily resident where their parents are. A child such as Victoria Climbié whose parents were abroad, may not be “ordinarily resident”. So we are introducing a system which will compromise the privacy of the majority of children without necessarily even recording the existence of the neediest children.
- The reasons for being out of school will be diverse. For this reason, identifying all those out of school may not tell a LA a great deal. Many home educated children are well cared for and well educated and their parents are likely to be horrified by moves to group them with high risk children. The time spent in checking out such children is likely to be a waste of precious resources which could be better targeted towards meeting needs. It might also be seen as an invasion of privacy and breach of the right to educate a child free from state interference.
- Having all 11 million children on the system without any filtering at all will be totally unhelpful to identify those who are in need or at risk.
- The designers of the system would appear to have little concept of how stretched services are and rely on the notion that all it will take to facilitate “early intervention” is ready access to phone numbers. For example, if there is only one specialist autism worker in a London Borough and that person already has an overwhelming workload, he/she is not going to any more able to help once ContactPoint is up and running than they are now. In fact, they may become even less able to help if they are then being contacted by phone by even more people asking for help. This example could be repeated for many services eg some London Boroughs do not provide speech and language therapy to children over a certain age e.g. 7 years. ContactPoint will not make it any easier to access SaLT in that borough.
- Where ContactPoint indicates that a child has a number of people working with them, presently or historically, there are concerns from representatives of children with SEN and disabilities that
 - this may lead to buck-passing if professionals jump to conclusions that a child is already accessing help. It will not be clear whether the neediest children are those who are in receipt of many or no additional services.
 - this may affect school admissions. It is legitimate and advisable for a Head to consider whether his or her school can meet a child's

SEN before accepting them into the school. If a head were to check ContactPoint before accepting a child, a long list of additional services may create an impression which may or may not be accurate and off-putting eg the list: "Youth Offending Team, Social Services, sensitive services (sexual or mental health or substance abuse), housing officer" will create a different impression from: "Speech therapist, paediatric OT, Scope".

- In relation to the technology, as we understand it, LAs are already obliged to keep a register of children with disabilities. They do this with greater and lesser success, it appears not to be kept updated and the exercise seems to be pointless.

In summary we would return to our contention that, with the right monitoring and support in place, it would be a step forward to be able to name a Home in part 4 of a Statement and that we are sure there would be independent sources of expertise to make this feasible.