



IPSEA

Independent Parental Special Education Advice

Hunters Court, Debden Road, Saffron Walden, Essex CB11 4AA

Children and Young People with Special Educational Needs and Disabilities – Call for Views

Submission by IPSEA

This submission is made by IPSEA (Independent Parental Special Education Advice), a registered charity providing free legally based advice and support for parents of children with special educational needs and disabilities.

IPSEA was established in 1983 and currently advises over 3,000 parents and carers every year, including over 25% of those making applications to the Special Educational and Disability Tribunal (SEND). Our opinions are therefore based on evidence from what these parents tell us and our experience whilst supporting them through the current system.

Q1) Are the SEN and Disability statutory frameworks - including the SEN statementing process - helping children and young people to get what they need? If not, what changes could help?

IPSEA Comments:

1. The current SEN statutory framework (Education Act 1996 and associated regulations and Code of Practice) contains features which are vital to the best interests of children with SEN:

- a. a duty on an LEA to assess SEN when there is a probability of a child's having such needs
- b. when assessment confirms the existence of SEN, a duty on an LEA to describe those SEN in a legal document (the statement)
- c. a duty on an LEA to specify the provision required to meet the needs described in the statement
- d. a duty on an LEA to arrange the special educational needs specified in a statement
- e. a parent's right of appeal to an independent Tribunal against an LEA's refusal to assess or issue a statement and the content of a statement when first issued or subsequently amended, reviewed or ceased.

Providing advice to parents of children with special educational needs

IPSEA's experience is that problems arise for children with SEN and their parents when LEAs fail to fulfil their duties under the 1996 Act, not because of any weaknesses inherent in the Act itself. Whatever changes are envisaged to improve the legal framework it is essential that the above 4 key duties, plus parental rights of appeal, are preserved.

In their recent review report Ofsted inspectors note: "The review found a virtually unanimous feeling that the special educational needs system as it stands now is unfair..." and recommend "Legislation should be simplified so the system is clearer for parents and schools."

IPSEA believes that it is crucial to differentiate between the law itself and LEAs' failure to fulfil their duties under that law.

It is also essential to recognise that this legal duty is placed on LEAs and not schools. Too often parents and schools themselves are led to believe that provision of the right support for a child is a duty which falls on a Head Teacher and that provision must be funded from within existing resources. Whilst an individual LEA's SEN policy may imply a delegation of responsibility, this cannot happen in legal terms. Ofsted has failed to appreciate this distinction.

No change aimed at simplifying the law would be safe for children unless the 5 features described above are preserved. It is not enough to reflect in policy these intentions as this does not establish a means for parents to challenge decisions made.

It is IPSEA's view that an LEA should remain responsible for arranging a child's special educational provision. What is important is that the assessment of Special Educational needs and the identifying of the provision that is needed to meet those needs is left to unfettered professionals. To be truly unfettered those involved in the assessment of a child therefore need to be outside of an LEA's control and influence. This is the next major step needed to make the system less confrontational for all involved, To do so does not require a rewriting of SEN law but minor amendments.

IPSEA's opinion, therefore, is that the legal framework, on the whole, is fit for the purpose it was designed for – to identify and ensure special educational provision. What it does not do, and was not designed for, was to consider a child's holistic needs, such as medical and social care needs, unless they affect their education. Development of government policy, with the introduction of such approaches as Every Child Matters agenda that consider a child from this person centred approach has not been reflected in an update of the law to ensure this happens.

2. The Disability Discrimination legal framework is less effective than the SEN legal framework in defending children's interests. The major problem is the lack of an effective remedy when discrimination is found by a Tribunal. Normally, the sum total of recompense is a letter of apology, which is of limited practical benefit to the victim of discrimination and which has limited deterrent effect on the discriminating body. Any review of discrimination in education should consider extending the powers of the Tribunal so that more appropriate Orders can be made when discrimination is found.

Q2) How can we identify children's special educational needs earlier, and make sure that they get the support they need as quickly as possible?

IPSEA Comments:

The current legal framework allows for children's special educational needs to be identified and provided for from birth i.e. the law is sufficient in this respect. There are, however, issues in terms of lack of awareness of the scope of the law in this respect, and a matter of both the uneven provision of professional expertise and resources between LEAs who are tasked to provide it. Currently the help and support a child receives is a postcode lottery. Where health professionals understand the referral system into education within an LEA and educational professionals value and respect their opinion the system can work well.

Once children are at school the procedures for identifying and meeting needs are clearly set out in the Code of Practice and, if adhered to, should ensure that there are no delays between identifying and providing for children's needs. Again this is totally dependent on the individual LEA's SEN policy.

For children who need support at the School Action or school Action plus levels of support it needs to be clear that the school are responsible for delivering the support but that they will need on occasions access to support of external expertise i.e. behavioural support or specialist teaching teams quickly and with responsible restriction. Too often it is the experience of parents that the correct support is not put into place by a school because of a "cap" on the number of times they can access these central services.

It is clear that individual schools cannot be staffed or resourced to respond immediately to all newly identified needs, which means that it is vital that LEAs maintain central provision (a 'pool') which schools can draw on as and when needs are identified. The value to schools and pupils of LEAs fulfilling such a role was attested to in the recent Ofsted report:

"One local area visited, supported by the local authority, had developed networks to pool some funding and services. The aim was to provide a more customised approach in the area to needs that were common. Although the work was in its early stages, there were promising signs that it was making a difference.

For example, the schools needed to work with parents on communication and social skills. Employing family support workers who were shared across the small schools that were unable to fund the provision on their own and using educational psychologists to develop the work had helped to strengthen what could be provided for families. The head teachers said that the teachers had more time to focus on teaching and that children's needs were being met, in partnership with the parents. Children were starting at school with higher levels of language skill than previously. Inspectors found that having a range of personnel in schools ensured that teaching staff spent more time on their core roles."

Q3) How can we improve the processes for special educational needs and disability - in schools, in assessments, and across all services - so that professionals can spend more of their time with children and their families?

IPSEA Comments:

In schools: the key is knowledge and understanding of the SEN system. To date a SENCO does not have specific training in the SEN process and is expected to pick this up on the job. This is extremely easy to remedy with basic on-line training and access to resources. This will allow clear expectations of what they are expected to do and when.

They also require clear and easy referral systems in order to access specialist professionals to support them in the pivotal role they play in shaping a child's life and future.

In assessments: Statutory assessment requires an LEA to collect written reports (Advice) from medical, educational, psychological and social services professionals on a child's needs and the provision required to meet them. The LEA must then study these reports, together with the parent's written submission and, if a statement is necessary, distil the contents of the Advice in a Statement of Special Educational Needs.

The process takes 12 weeks.

It is difficult to see which element in the assessment process is superfluous, and therefore dispensable.

The role of professionals in assessments is crucial. If professionals are to spend more time with children, there need to be more of them.

Assessment cannot be the 'Peter' which is robbed to pay the 'Paul' of professional spending more time with children.

Across all services: Children with SEN are assessed by many professionals from many different health, social care and educational backgrounds. Parents rarely understand the different forms of assessment being carried out. No-one understands why there is no joined-up thinking between these professionals. The introduction of the CAF (Common Assessment Framework) started to support collaborative, holistic assessment of children but is not underpinned by any legal rights to enforce the role parents play or the legal force of any decisions made. In its current form CAF has no role in the Statutory Assessment process and does not contribute to identifying a child's educational needs or provision. The current appeal to the SEND Tribunal around a child's SEN is limited to educational needs and cannot take into account social care needs or the holistic picture for them or their family. Any solution that would successfully work across all services would need to ensure that the legal essentials identified in question 1 applied across all professional assessments.

Q4) How can we ensure all schools and colleges have high expectations for children and young people with special educational needs and disabilities, including their future potential and contribution to society?

IPSEA Comments:

Expectation of achievements come from children themselves and their parents, but most influentially in the educational system through schools. Key leaders of expectations are Head Teacher and SENCOs. If they are trained to identify potential where it is not so obvious then other staff will follow in having high expectations.

This can only be achieved through increasing the amount and the quality of training for these key professionals, not only new to the profession, but those who may not be aware of new developments in SEN knowledge and teaching approaches (initial and in-service), including disability equality training.

The role of the IEP (Individual Education Plan) is key in agreeing objectives and expectations. Too often it is not seen as a useful tool but an administrative burden. Used well it gives the child and all involved a clear road map in terms of defined objectives and expectations and ways of measuring progress towards them.

Q5) How can we improve the choices of schools and services available to parents and improve opportunities for them to be involved in decisions that affect their family?

IPSEA Comments:

Currently parents of children with SEN are misled into thinking they have choice in the school they send their child to or the services they can access. The word 'choice' is misleading and leads to many issues around misrepresentation.

Identifying a maintained school for a child is limited by what is on offer within a geographical area. There is currently no requirement on LEAs to provide a certain type of school provision for children in an area - which leads to a postcode lottery.

A parent has no choice to turn to the Independent school sector unless they can prove that no LEA school can meet their child's needs.

True choice comes where a parent can consider more than one option and not be forced into the best financial solution for the LEA.

Parents are likely to value provision which has been tailored to meet their child's needs, appropriate in kind and amount, over 'choices' of services and/or schools.

Parents can request assessment, contribute their views to the process, and appeal if unhappy with the outcome. But this is not, strictly speaking, being 'involved in decisions' i.e. parents do not get to make decisions.

Parents want their children's needs to be assessed and provided for in a transparent way and they want their views to be given serious consideration, The majority of parents do not expect, nor seek, to actually make decisions on their children's educational needs.

Providing advice to parents of children with special educational needs

Q6) How can we improve the transition from school to adult life for young people with special educational needs and disabilities and the support provided for their families throughout?

IPSEA Comments:

By extending the scope of the current legal framework so that the duties and rights cover young people with SEN up to the age of 25.

Q7) What works well?

IPSEA comments:

IPSEA has countless examples from its surveys of parental satisfaction of the 'system' working well for children when the law has been adhered to e.g. when assessments have led to the necessary provision being unambiguously specified in a Statement of Special Educational Needs and when LEAs have fulfilled their duty to 'arrange' such provision.

For further information please contact:

Jane McConnell
Chief Executive
IPSEA (Independent Parental Special Education Advice)

jane.ipsea@hotmail.co.uk
01799 582 030
www.ipsea.org.uk