

# Children and Families Bill



## Disability Rights UK

### Evidence relating to Part 3 Children and Young People with Special Educational Needs and Disabilities

#### 1 About Disability Rights UK

1.1 Disability Rights UK is led, run and controlled by disabled people. We have particular expertise in the area of supporting young people with learning difficulties and disabilities into post 16 education and training gained from incorporating services previously delivered by Skill: National Bureau for Students with Disabilities. This includes providing the only dedicated pan-disability disabled students' helpline covering all aspects of post-sixteen education and training. This gives us a distinct perspective on this legislation based on the experience of disabled learners 14-25.

1.2 Supporting disabled people to reach their potential in education, training, skills for independent living and employment underpins Disability Rights UK objectives.

1.3 Disability Rights UK works closely with SEC and other disability organisations that support young people and we endorse the amendments tabled by SEC, Ambitious about Autism, National Deaf Children's Society and The Association of National Specialist Colleges (Natspec).

#### 2 The Bill

2.1 Disability Rights UK welcomes in principle proposals to reform the current systems to support children and young people with learning difficulties and disabilities. The proposals have the potential to improve coordination between the multiple agencies involved in supporting people with learning difficulties or disabilities and to help smooth transition from school into post 16 education and training. We also welcome the recent Select Committee scrutiny of the Government's proposals which made some valuable recommendations for improvement.<sup>1</sup>

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<sup>1</sup> House of Commons Education Committee. 12/12/12 Pre-Legislative Scrutiny: Special Educational Needs

2.2 We raised a concern that the discussions so far have focused on the existing processes and SEN Code of Practice and extending this to cover young people in post-16 education and training and up to age 25. The roles, expectations and aspirations of young people with learning difficulties and disabilities in further or higher education or training are very different from children in schools. This is recognised in the current differences between the statutory Learning Difficulty Assessment (LDA) Guidance and the SEN Code of Practice. We do not believe that simply extending the current SEN approach to those in post-16 education will do enough to recognise these differences.

2.3 There is a risk that if some of the key protections in the LDA guidance are not preserved young disabled people 16-25 will be worse off than they are now.

2.4 It is important to remember that this Bill is not just about extending the current SEN Code of Practice up to age 25. It is replacing the current protections offered to young disabled people by the Statutory LDA Guidance.

2.5 This age range is up to 9 years of a young person's life and a crucial transition period. We want to see the Bill support young people with learning difficulties and disabilities achieve their potential in education and training and acquire the skills to compete in the employment market and to live independently.

2.6 The National Audit Office report<sup>2</sup> made clear the cost-benefits of disabled young people achieving their potential on leaving school compared with the potential costs to the public purse over a life time.

### **3 Clause 19**

3.1 Disability Rights UK welcomes the duties to involve and consult young people in decisions about their own plans and the local offer. This reflects the current statutory guidance on LDAs.

3.2 We would like to see Clause 19(d) strengthened to be clear what '*other outcomes*' encompass and to link this to the wider definition of well-being. The LDA guidance refers specifically to the outcomes of independence and employment and these should both now be included in 19(d). Without being clear on this there is an incentive for Local Authorities (LAs) to focus on narrow, school-based educational outcomes rather than the wider aspirations of the young disabled person. This might have the perverse effect of encouraging local authorities to try to lower educational outcomes to end EHCPs as early as possible and to reduce costs.

3.3 Clause 25(1) (a) already identifies well-being as an outcome of the EHC provisions, so well-being should be included in clause 19(d). Clause 28 (3) (c) includes 'provision to assist in preparing children and young people for adulthood

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<sup>2</sup> NAO 2011 Oversight of Special education for Young People Aged 16-25

and independent living' while clause 30 (2) (e) states: 'The local offer will cover....provision to assist in preparing young people for adulthood and independent living' and 30 (3) specifies (a) finding employment, (b) obtaining accommodation and (c) participation in society. These should be explicitly included in 19 to ensure rights and protections in the LDA guidance are not lost in the Bill.

#### **4 Clause 20**

4.1 We want to see the provisions of the Bill extended to children and young people with disabilities whether or not they have special educational needs. Indeed the Green Paper : Support and Aspiration: A new approach to Special Educational Needs and Disability (2011) included disabled people, as do the current statutory guidance on LDAs, and current policies and practices in colleges and the post-16 sector, which uses the term learners with learning difficulties and/or disabilities, not SEN.

**4.2 Disability Rights UK supports any amendment extending the duty to children and young people with disabilities, but without special educational needs.**

#### **5 Clause 22**

5.1 We welcome the duty on local authorities to identify all those children and young people in their area who have or may have special educational needs, but we want to see this extended to those with disabilities whether or not they have special educational needs.

5.2 We note that the NAO report<sup>3</sup> made clear that many local authorities did not have any or reliable data on the number or needs of young people in their area. In addition the current exercise to determine High Needs funding allocations have demonstrated local authorities still do not have the necessary data. The evidence shows the need for systems of accountability for local authorities.

5.3 A key element to ensuring the system is working for young disabled people is to make sure there is good data available both to local and national policy makers and to individuals. We fully endorse the recommendations around data made by the National Audit Office and the need for good data that goes beyond destinations and looks at the degree of independence achieved.

5.4 The local offer will depend on accurate data on the number and needs of young people with learning difficulties and disabilities to assist the planning of suitable provision.

5.5 Clause 65 requirements to provide and publish special educational needs information is linked to clause 22.

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<sup>3</sup> NAO 2011 Oversight of Special education for Young People Aged 16-25

## **6 Clause 30**

6.1 This clause must be strengthened to require local authorities to publish information about services that **will** be available, not expect to be available. In addition local authorities and health providers should have a duty to ensure the services are actually available and provided.

### **6.2 We support the SEC amendment to clause 30 to secure these improvements.**

6.3 We welcome clarification that the 'local offer' must also include information about provision beyond local authority boundaries and the transport arrangements for young people post-16.

6.4 We have already raised our concerns that there must be a national framework for the local offer to avoid a post-code lottery and **we support the SEC amendment to secure this.**

6.5 We want to see private and voluntary sector training providers included in the local offer, particularly as they deliver apprenticeship and other work-related training post-16.

### **6.6 We endorse the amendment tabled by Ambitious about Autism to include training providers in the local offer.**

6.7 We welcome the inclusion of independent specialist post-16 providers in the local offer.

## **7 Clause 32 Advice and information for young people**

7.1 Young people cannot make informed choices about education, training, progression to work and independence without **impartial** information and advice about the full range of options. Information for young people must be provided in suitable ways, and differently from the information prepared for parents and professionals.

7.2 The Bill should be aligned to school duties to provide careers guidance and to local authority duties to encourage participation and support vulnerable groups, as well as the National Careers Service provision.

7.3 It will be critical to ensure the qualification, timing and quality assurance measures for impartial careers guidance are all specified in the revised Code of Practice, as they currently are in the LDA Guidance.

## **8 Clauses 33 and 39 – mainstream post-16 settings**

8.1 We are very concerned about Clause 33 that says that a person has the right to mainstream education unless that is incompatible with the '*provision of efficient education for others*'. This wording reflects the current SEN Code of Practice for schools but is not present in the current LDA Guidance and would seem to us to have the potential to undermine equality legislation if it is on the face of the bill. We are not clear why this is needed when the Equality Act is clear on the requirements around reasonable adjustments in FE and there is guidance on reasonableness.

8.2 Used in the context of post-16 settings this clause introduces a concept that could undermine students' existing rights and protections under the Equality Act and provide an excuse for colleges to exclude learners with learning difficulties and disabilities on grounds of cost or inconvenience to other students.

## **9 Clause 36 Education, Health and Care Plans up to age 25**

9.1 We are concerned that clause 36 (10) states that where a young person is over the age of 18 the '*local authority must have regard to his or her age*' before agreeing to assess a young person's needs. The same caveat recurs in clauses 37, 44 and 45.

9.2 Many young people with learning difficulties or disabilities will have experienced disrupted education because of their impairment and so need longer to achieve their potential. Others may need to consolidate their learning to progress to their realistic outcome. Decisions whether to assess a young person's needs, or to maintain their EHCP should be based on the young person's progress in relation to their planned outcomes. Where a student is progressing as planned, the EHCP should be maintained, possibly through several stages. For example a young person may leave school at 18 with no work skills or accreditation, go to college to gain a Level 1, achieve well and progress to Level 2 to be able to apply for an apprenticeship or work.

9.3 Our experience over the last year is that local authorities are increasingly stopping funding for students post-19, regardless whether in fact the student has the potential to achieve their long-term outcome, and regardless of the LDA. Without the necessary qualifications and skills the student is likely to become NEET and will struggle to enter the labour market at great cost to the public purse. We anticipate that this clause on the face of the Bill will provide authority to cease all EHCPs at age 19. There is evidence already that some local authorities are basing their decisions purely on financial grounds, not the needs or potential of the young person.

**9.4 We endorse the amendment proposed by Natspec and SEC to delete the words 'have regard to age' and to continue EHCPs for young people up to 25 for those who need it to achieve their agreed outcomes.**

## **10 Clause 38 EHC Plans post-16 for young people intending to progress to university**

10.1 We would also wish to see EHCPs provide support into Higher Education as LDAs currently do. This transition point is a critical stage for many young disabled learners and the support needs to be in place to achieve this.

10.2 Frequently the LDA and key-worker co-ordinates the social care arrangements allowing the student to attend a university in another area in term time and return to the home local authority during holiday periods. They also ensure the young person is aware of the support available in HE and how to apply for it.

10.3 Once at university the HE systems take over in providing funding and support from the disability advisory service. However, should the students not achieve the grades to take up their place, or find the course is not suitable and discontinue, then the LDA is in place to ensure prompt support is provided.

## **11 Clause 45 Ceasing to maintain an EHC Plan**

11.1 It is important to recognise that disabled people may wish to re - enter education or training after having left it. Currently it is proposed that EHCPs will end when the young person has left education. There must be a way for ECHPs to be restarted quickly to prevent the young person becoming NEET. For those people who have acquired a disability later on (or whose disability has become an issue due to changes in the educational or training setting) a quick assessment needs to be available up to age 25.

**11.2 We endorse the SEC amendment to maintain an EHCP to age 25, so that it can quickly be reviewed if circumstances change.**

## **12 Clauses 69 and 47 Young people in custody**

12.1 Young people in custody currently have a LDA and Clause 69 removes this assessment and support mechanism. The Bill seriously erodes the rights of young people with learning difficulties or disabilities in a custodial institution and makes no sense given the aim of reducing re-offending rates.

12.2 In addition Clause 47 should be amended to ensure that the responsible local authority reviews the EHCP **before** the young person leaves detention, and not afterwards. This is compatible with the local authority duty to encourage participation and prevent vulnerable young people becoming NEET.

## **13 Clause 50 Extending the right of access to tribunal**

13.1 While in principle we support extending the right of access to First Tier Tribunal to students in FE colleges, we have serious concerns about some of the issues around this. Currently those who wish to challenge unlawful LDAs can seek Judicial

Review, which has the power to order interim relief measures while the issue is considered; something tribunals cannot do. This might have an unintended consequence of increasing the number of people who become NEET due to resultant delays in securing adequate support through Tribunal.

**13.2 We would support an amendment to give Tribunals the power to order interim relief measures while the issue is considered so that students post-16 do not lose existing rights.**

#### **14 Clause 66 Code of Practice**

14.1 The Code of Practice will be an essential adjunct to this bill. There is a need for the Code to ensure that the current protections of LDA Guidance are preserved (especially the requirement for keyworkers, trained staff doing assessments, good transition planning, and the publication of a policy on providing assessments post 16 to those who did not previously have one). It will also be an opportunity to clarify how support will be provided for those who have a learning difficulty or disability but do not receive an EHCP.

14.2 Due to its importance in delivering so much of the aspirations of this legislation it **should be approved by positive resolution rather than negative resolution.**

**15th March 2013**