



IPSEA

Independent Parental Special Education Advice

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

Response to the SEN and Disability Green Paper “Support and aspiration: A new approach to special educational needs and disability - a consultation”

Introduction

The issuing of a Green Paper focusing on Special Educational Needs (SEN) is a prime opportunity to explore how we can develop the system of support which ensures our children who have SEN and/or a disability reach their full potential.

IPSEA warmly welcomes the Government’s commitment to tackling the difficult, overwhelming and continuous issues faced by children and young people who have SEN, and their families.

We look forward to working together in partnership to improve the system for all.

Who IPSEA is and what IPSEA does

IPSEA is a registered charity providing free legally based advice and support to parents in England and Wales who have children with SEN and/or a disability. IPSEA has been advising parents for over 28 years, and therefore has a wealth of experience gathered over time and under changing legislation.

IPSEA’s advice is free. With the support of over 170 volunteers we provide:

- Downloadable resources on our website
- An Advice Line
- A Tribunal Helpline
- Individual SEND Tribunal casework support and advocacy

IPSEA is a recognised expert in SEN and disability discrimination law, providing independent services to thousands of parents each year (during 2010/11 our helplines answered over 2,500 calls). We are the largest single provider of support to parents appealing to the SEND Tribunal (during 2010/11 IPSEA volunteers provided individual casework support in over 300 tribunal cases. IPSEA also answered over 600 calls on our tribunal helpline).

IPSEA also provides comprehensive and accredited training to parents and professionals in SEN Law, Exclusions Law and the Equality Act duties in schools. Over the past 2 years we have trained more than 500 people from other organisations including Parent Partnership Supporters, Local Authority SEN officers, school governors, and other advice or condition specific charities.

Providing advice to parents of children with special educational needs

Our response to the Green Paper is based on IPSEA's collated and current experience, and on a survey we conducted which obtained 1,039 responses. We represent parents who have had difficulties with their school or local authority. In many cases, by contacting us and using the existing legal framework, these parents have achieved a satisfactory outcome for their children.

Where we oppose any of the proposals in the Green Paper, we are aiming to ensure similar outcomes in the future - and to protect the existing rights parents have.

The IPSEA Green Paper Survey

In order to ensure that the views IPSEA expresses on these important proposals were based on strong and tangible evidence, we ran a survey.

One issue that parents and supporters raised with us once the Green Paper was issued is that by posing 59 questions as the basis of the consultation, the Department of Education risked overwhelming those who wished to respond with their individual views. IPSEA, in consultation with an interest group of parents, professionals and IPSEA volunteers, identified the 17 questions that we felt were the most important to be considered by parents and those involved in supporting a child with SEN.

We set out IPSEA's views on each of these questions and then used a survey to ask whether people strongly agreed, agreed, were neutral about, disagreed or strongly disagreed with our views. We also offered respondents an opportunity to make comments on the proposals being made in the Green Paper.

The survey was made available both on-line and in paper form. IPSEA's survey was widely promoted (on Every Disabled Child Matters facebook page, Netbuddy's website, and by Contact a Family plus 10 other SEN organisations on Twitter). We also circulated it to thousands of parents that have been supported by IPSEA.

We had **1,039** responses in total. We have been overwhelmed by this response. The largest groups to respond were:

Parents	76.6%
Consultant/ Professionals	5.8%
Headteacher/ teachers	4.8%

IPSEA's survey results provide firm evidence from the collective voice of those passionate about the future of children with SEN.

IPSEA's views are a valuable resource for the Government as it develops its ideas.

Summary of IPSEA's views

The role of parents

- Parents need to be at the centre of the process of identifying and establishing the extent of their child's needs and additional educational provision to be put in place. 796 parents whose child has SEN/disability took part in our survey. They strongly believe that their views need to be listened to and respected by the professionals responsible for assessing and educating their children. They need to be acknowledged as "professional" parents. Without this basic respect, mistrust builds up – and this can have a detrimental effect throughout the child's education.

A Single Statutory Assessment

- To be effective, the existing legal right that children have to receive the special educational provision specified in their Statement must be extended to cover any health and social care provision identified as needed by the assessment. A commitment by all parties to provide their services is not enough. Children and young people need an enforceable legal right to this provision.
- It is essential that therapies such as Occupational Therapy, Physiotherapy and Speech and Language therapy remain as part of the educational assessment of a child's needs and remain part of a Local Authority's statutory duty to arrange as special educational provision.

The current Statutory Assessment process

- An effective way to shorten the overall assessment process would be to make statutory assessment on parental request compulsory. The first decision that would then have to be made by a Local Authority would be whether a child needed a Statement of SEN or statutory equivalent based on the evidence gathered from the statutory assessment.
- This innovation would be particularly effective when a child is born with condition such as Down syndrome, a hearing impairment, visual impairment or Cerebral Palsy where evidence exists that it is extremely likely they will need statutory assessment to identify the extent of their Special Educational Needs.

A "Local Offer"

- The level of support detailed in a Local Authority or school's core offer should reflect a child's legal entitlement. If the provision 'offered' falls short of a child's legal entitlement, then parents should be clear on the action they can take to protect their children. This is particularly important for those children and young people who are not supported with a statement of SEN but are on school action or school action plus under the current system.

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A bias towards mainstream education

- The legislation currently requires the individual consideration of every child. It supports parents in securing a place for their child in mainstream as a type of school, but falls away if they do not want a mainstream place.
- IPSEA would be strongly opposed to the removal or dilution of this right.

Academies

- Academies must be brought directly under the same statutory duties as maintained schools towards children with SEN.

The Child's right of appeal

- IPSEA welcomes the Government's commitment to opening up the right of appeal for children to the SEND Tribunal. Such a development will have a profound and positive effect in ensuring that particularly looked after children have an increased opportunity to have their case heard.

Enforcement

- SEN legislation already in place should be implemented. Local Authorities should be stopped from implementing illegal local SEN policies which turn the legal process into a postcode lottery.

Individual Education Plans

- Guidance on the use of Individual Education Plans should not be removed.

A National Funding Formula

- The introduction of banding is an administrative convenience but must be accepted as a guideline only and not take the place of the determination of the provision required to meet individual children's needs.

Jane McConnell
Chief Executive
30 June 2011

Early identification & assessment

Consultation question 1: How can we strengthen the identification of SEN and impairments in the early years, and support for children with them?

IPSEA's view:

1. The expertise of medical professionals, especially GPs, paediatric consultants and health visitors, is essential in the early identification and then support for families and children who have SEN and/ or a disability.
2. For those families who have a child born with an obvious impairment, early years' support is more readily available but not consistent across the country. It depends entirely on the expertise and training of the individual professionals they come into contact with. The Sure Start programme seems to have made an improvement to the on-the-ground experiences of parents with babies and small children in the sign-posting of sources of information.
3. For those families who have young children who are not obviously disabled, especially those with behavioural issues as part of an undiagnosed condition, the experience still seems to be dire. Too often concerns raised by parents in early years' settings are ignored or brushed aside as being the result of over anxiousness. Parents are rarely acknowledged as "professional parents" of their child. This sows the seeds of mistrust with professionals which taints the relationship between them and parents and can affect all interactions over the many years that they will have to have an ongoing relationship.
4. Parents need to be able to stay at the centre of the process of identifying and establishing the extent of their child's needs. Their opinions need to be respected, acknowledged and need to drive the process of establishing appropriate support. They need to be seen as "professional parents".
5. We question whether currently parents see Local Authorities as having a role as champions for vulnerable children and families. In order for that to be achieved a lot of re-building of trust and confidence needs to happen. It is essential that Local Authorities apply the SEN legal framework in a consistent manner in order that no postcode lottery exists between geographical areas in the delivery of provision.

IPSEA survey result:

96.9% of those that responded to this question **strongly agreed or agreed** with IPSEA's view that:

"Failing to listen to parents at an early stage sows seeds of mistrust between parents and professionals and can spoil the relationship between them for many years"

IPSEA survey result:

93.4% of those that responded to this question **strongly agreed or agreed** with IPSEA's view that:

“Parents need to be at the centre of identifying and establishing the extent of their child's needs”

IPSEA survey result:

92.3% of those that responded to this question **strongly agreed or agreed** with IPSEA's view that:

“Parents' opinions need to be respected and acknowledged”

A parent told us:

My LA claims that they have no obligation to fund SEN provision for disabled children under the age of 5 (compulsory school age). The Government offers 15 hours of free Early Years education to all 3 and 4 years old, but without equipment and assistance (and wheelchair accessible transport), disabled children are excluded from this educational provision. This is discrimination, and needs to be addressed by clear legal regulations.

A parent told us:

Please don't let any other child or parent struggle like we have had to get my son's needs met. I have had to fight, fight, fight. My son did not choose to be born with complex needs. Getting the right support early on would have prevented so much heartache.

A single assessment leading to a single plan

Consultation question 2: Do you agree with our proposal to replace the Statement of SEN and learning difficulty assessment for children and young people with a single statutory assessment process and an ‘Education, Health and Care Plan’, bringing together all services across education, health and social care?

IPSEA’s view:

1. In principle, we agree with the introduction of a single statutory assessment process, but to be effective the existing legal right that children have to receive the special educational provision specified in their Statement **must be extended** to cover any health and social care provision identified as needed by the assessment. A commitment by all parties to provide their services is not enough. Children & young people need an enforceable legal right to this provision.

IPSEA survey result:

96.3% of those that responded to this question **strongly agreed or agreed** with IPSEA’s view that:

“The existing legal right that children have to receive the special educational provision specified in their Statement must be extended to cover both health and social care provisions”

2. The Government need to look carefully at the evidence from the introduction of combined assessment processes in both Scotland and Wales. Anecdotal evidence suggests that what was initially seen as a radical overhaul of the system has resulted in a weakening of legal entitlement to provision, and many of the most vulnerable children without parents able to advocate for them are not receiving the support they would of under the previous system. The effectiveness of the Common Assessment Framework (CAF) system of triggering combined professional assessment and team around the child processes also need to be carefully considered, as it is our experience that this is only effective where professionals have the funding to be able to deliver what they agree as part of this process. Too often, on further reflection and consultation with more senior colleagues, professionals are not able to deliver what was agreed would be put into place as part of the CAF plan.
3. Without these extended legal entitlements what we would have would be no different to the existing system - where non-educational provision forms the backdrop to consideration before a SEND Tribunal but the Tribunal cannot order it into a Statement and the provision is non-mandatory.

IPSEA survey result:

93.9% of those that responded to this question **strongly agreed or agreed** with IPSEA's view that:

“Without these extended legal entitlements, the proposal would make no difference to the existing system where non-educational provision is non-mandatory”

4. It would not be acceptable if adding-in health and social care meant that the SEND Tribunal was stripped of its powers to make orders in relation to education.
5. It is very clear in law that whatever is identified as a provision in Part 3 of a child's Statement is educational provision and the Local Authority therefore has a clear legal duty to ensure that provision is delivered. Many Local Authorities have agreements with their Local Primary Care Trust concerning the delivery of services that could also be seen as healthcare provision – commonly speech and language therapy, Occupational therapy or Physiotherapy. It is parents' experience that often Local Authorities blame local healthcare providers for not being able to deliver these therapies and do not reveal that they have the legal duty to make the provision if these arrangements fail to do so. It is essential that these therapies remain as part of the educational assessment of a child's needs and remain part of a Local Authority's duty to make education provision.
6. The SEND Tribunal should, in future, be able to make orders across all three areas of provision: education, health and social care.

IPSEA survey result:

92.1% of those that responded to this question **strongly agreed or agreed** with IPSEA's view that:

“The SEND Tribunal should be able to make orders across all three areas of provision: education, health and social care”

7. IPSEA welcome the proposed extension of any entitlement identified by any single assessment to the age of 25 years old.

A parent told us:

The SEN Green Paper proposals need to address the fact that many interventions necessary for a child's SEN to be met are budget or policy driven rather than starting from the child's needs. In our experience, the LA refused to include provision for our son's clearly documented need for psychological support to enable him to access an education appropriate to his needs, firstly because they had not previously included this type of provision in statements of SEN for other children (policy driven) and secondly because they had no control over the CAMHS budget and therefore could not order them to make provision (budget driven). To some extent this was disingenuous in that they should have been able to pay for independent mental health services from their own budget if necessary. But it also shows how a joined up health/education/social needs policy would be more likely to meet an child's needs holistically and in a way appropriate to their individual needs.

A parent told us:

Please give parents more respect for their knowledge about their own child's needs and control over school options and expenditure. They know their own child and their needs best. Far too much money is wasted on some (not all) LA paid professionals who go into schools and deliberately underplay children's difficulties in order to save budgets. Some professionals have integrity and are extremely supportive but it should not be a lottery to get help!

Consultation question 3: How could the new single assessment process and 'Education, Health and Care Plan' better support children's needs, be a better process for families and represent a more cost-effective approach for services?

IPSEA's view:

1. The single assessment could provide a seamless service and reduce the number of repeated assessments a child has to undergo. If the information that these assessments glean is shared effectively between professionals this should reduce "repeated" costs.
2. The key to being effective is that there **MUST** be a key worker who is legally responsible for pro-actively driving the assessment process.

IPSEA survey result:

99.8%of those that responded to this question **strongly agreed** with IPSEA's view that:

"The key to a single assessment being effective is that a key worker is legally responsible for pro-actively driving the assessment process"

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3. The key worker needs to be trained to provide independent support and advice to families based on the law and without being influenced by Local Authority policies.

IPSEA survey result:

97.7%of those that responded to this question **strongly agreed or agreed** with IPSEA's view that:

“This key worker needs to be trained to provide independent support and advice to families based on the law - without being influenced by Local Authority policies”

4. Mechanisms would also need to be in place to ensure proper joined-up financing of the provision which a child needs. At present, health, education and social services often simply defend their own budgets. That even happens where health and social services are within a single children's services trust (a particular problem when a residential placement may be needed for both educational and social care reasons)

A parent told us:

I don't understand why the government are ripping up the current system and starting again, which will provide years of grey areas and uncertainty while parents, schools and LAs try to work out the new rules, with LAs working out loopholes while the parents are still trying to work out what it all means. Surely it would have been more sensible and cost effective to try to refine and enforce current laws and procedures.

Consultation question 4: What processes or assessments should be incorporated within the proposed single assessment process and 'Education, Health and Care Plan'?

IPSEA's view:

1. The current statutory assessment of Special Educational Needs requires a Local Authority to request information from five sources: parents; an educationalist; a healthcare professional; social services; and an educational psychologist. These professionals are not always able to provide the information required to identify all of a child's needs. We often find that, for instance, no assessment has been done by a speech therapist of a child with speech and language difficulties during the statutory assessment process because the PCT or health authority seems unable to provide a therapist.

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2. Where parents are able to, they should drive the assessment process. They should be identifying who needs to contribute views as to their child's needs from those people who are already supporting a child. If a child is looked after or parents are unable to be active in the assessment process careful consideration needs to be given to who else could trigger, co-ordinate and advocate for the child. It also needs to be made clear what role the child has themselves in steering an appropriate path through the system.
3. It has to be made clear who can trigger this single assessment process and what obligation this then imposes on those who will contribute to the assessment. If a health professional triggers an assessment would that then impose an obligation of both social care and education teams? If social care triggered such an assessment would that also mean that health would need to be involved – even if there was no obvious medical issues for a child.
4. It is vital that parents are able to choose suitably qualified professionals who they feel confident have the knowledge and expertise to identify their child's needs and the provision required to meet those needs. Such professionals may well be independent of the Local Authority tasked to then make the provision a child's needs call for.

IPSEA survey result:

95.9% of those that responded to this question **strongly agreed or agreed** with IPSEA's view that:

“It is vital that parents can choose suitably qualified professionals who they have confidence in”

A parent told us:

My concern is that by combining health & education, accountability would be reduced. Passing the buck would become far too easy.

Consultation question 5: What is the potential impact of expanding the scope of the proposed single assessment process and plan beyond education, health, social care and employment?

IPSEA's view:

The most obvious extension of this proposed single assessment system is to include the assessment for benefits such as Disability Living Allowance. The current application for any benefits assesses on a deficit basis - looks to identify everything that is wrong with a child - everything that they cannot do, will not be able to do compared with an ordinary developing child. It is about distributing a finite resources pot. The whole basis of awarding benefits would need to change for it to be successfully included in a single assessment process.

Consultation question 6: What role should the voluntary and community sector play in the statutory assessment of children and young people with SEN or who are disabled? How could this help to give parents greater confidence in the statutory assessment process?

IPSEA's view:

1. The voluntary sector should not be involved in the carrying out of individual assessments, as it would compromise the independence of the sector.
2. The voluntary sector has a clear support role to play in providing comprehensive independent advice and support to guide families through the the assessment process. This independence is vital for parental confidence.
3. Independent advice can not be given by people unclear as to the difference between the law and LA policy.

IPSEA survey result:

87.6% of those that responded to this question **strongly agreed or agreed** with IPSEA's view that:

“Independent advice cannot be given by people unclear as to the difference between the law and Local Authority policy”

4. The voluntary sector can play a role in training professionals in order to ensure a clear appreciation of children's legal entitlement to special educational provision. In the future this would also cover health and social care provision.

A parent told us:

Any specialist or organization carrying out any assessments must be independent of the organisation which will have to fund the provision. If this doesn't happen there will still be situations where assessors and the suggested provision are governed by funding bodies rather than the need.

Consultation question 7: How could the proposed single assessment process and 'Education, Health and Care Plan' improve continuity of social care support for disabled children?**IPSEA's view:**

Evidence from organisations such as the Down's Syndrome Association and other condition specific charities suggests that currently parents of children with SEN and/ or a disability find it extremely difficult to access support from social care teams. A clear postcode lottery exists. Overwhelmingly these children fall into an abyss as far as social care is concerned when they transfer from children's services into adult care. A system that provides support from 0 to 25 years old will ensure a consistency of support. We need to be alert to the fact that it may well result in the same issues arising - just at a later age.

Consultation question 8: How could the arrangements for provision of health advice for existing statutory SEN assessments be improved?

1. IPSEA support the idea of making the statutory assessment process faster but speed is not the only factor that needs to be addressed in order to make the process more efficient for children and families. The sources and quality of evidence that inform professionals as to the range of a child's needs and the provision needed to meet them must also be revised.
2. Currently a Local Authority only has to ask for one piece of medical advice to fulfill its statutory duty as part of the existing statutory assessment process. This can be from any health professional that is involved in supporting a child and is usually the GP. In reality most children with an SEN will be supported by a number of different health professionals not unusually between 8 to 10 individuals. These will include: the GP; a community paediatrician, an occupational therapist, physiotherapist, speech and language therapist, dentist plus more condition-specific specialists such as audiologists, ophthalmologists, endocrinologists, dieticians, ENT specialists, wheelchair specialists and of course those involved in surgery.
3. Currently those professionals that provide ongoing therapy for a child - typically speech and language therapists, physiotherapists and occupational therapists – will have that therapy identified and specified in any Statement of SEN maintained by a Local Authority following a statutory assessment. It is established by case law

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that these therapies that, on the face of it, may seem to be clearly healthcare needs are essential in order for a child to be able to receive an appropriate education. Speech and language is nearly always necessary for educational reasons. By being detailed in a Statement of SEN, which is a legal document, the Local Authority has a legal duty to make that provision. Many Local Authorities have arrangements with their local Primary care Trust to make that provision but ultimately if they cannot arrange it the Local Authority have a direct legal duty to find alternative therapists.

4. This legal duty to make therapy provision must remain within the education part of the plan. Without them children cannot access an appropriate education. If under the proposed single assessment process it was proposed that these therapies were to be classed as just healthcare provision, it would be essential that a legal duty to provide them remained and that decisions around what level of provision a child needed from which therapist were always related to a child's needs not the resources available. The provision of such therapies is a major cause of disagreement between parents and a Local Authority over the statement of SEN.
5. IPSEA welcomes the shortened time limits proposed in the Green Paper for the current system.

A parent told us:

There should be transparency of SEN decisions and also SEN provision/support should be specified and monitored so that parents are not hoodwinked into receiving a blanket care of support which is not monitored and vaguely looked over at the annual review where not many professionals attend anyway. It's usually only the parent and the Head teacher. Parents are left in the dark and feel helpless.

Consultation question 9: How can we make the current SEN statutory assessment process faster and less burdensome for parents?

IPSEA's view:

1. Currently:
 - When a parent or a school requests a statutory assessment this has to be considered by a Local Authority over a 6 week period.
 - If the LA agree or it is ordered following an appeal to the SEND Tribunal, the statutory assessment begins and takes 12 weeks.
2. In many LAs, in practice, the six week 'decision to assess' period is treated as the information gathering stage which is required once an assessment is actually underway. This is reflected by the fact that so many LAs are taken to appeal against refusal to assess decisions, with very few appeals against decisions not to issue a Statement after an assessment.

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3. An effective way to shorten the overall assessment process would be to make statutory assessment on parental request compulsory. The first decision that would then have to be made would be whether a child needed a Statement of SEN or statutory equivalent based on the evidence gathered from the statutory assessment.
4. This innovation would be particularly effective when a child is born with condition such as Down syndrome, a hearing impairment, visual impairment or Cerebral Palsy where evidence exists that it is extremely likely they will need statutory assessment to identify the extent of their Special Educational Needs.

IPSEA survey result:

96.9% of those that responded to this question **strongly agreed or agreed** with IPSEA's view that:

“An effective way to shorten the overall assessment process would be to make statutory assessment on parental request compulsory. The first decision that would then have to be made would be whether a child needed a Statement of SEN or statutory equivalent based on the evidence gathered from the statutory assessment”

5. Local authorities should allow all professionals to use their professional judgement during assessment, and give honest and untarnished opinions on children's needs and the provision required to meet them. All too often it appears that, say, educational psychologists or therapists have been instructed specifically **not** to advise on the provision which a child may need (even though that is clearly part of their role) with that being then done by a non-expert LA Statementing Officer, or similar).
6. The current SEN legal framework does not allow an LA to argue that a particular educational provision will not be made because of limited resources. This is unlike current healthcare and social care legislation which does allow needs to go unmet because of resource implications.
7. IPSEA would welcome the introduction of a standard statutory pro-forma for all schools to use when reporting back to their Local Authority on the Annual Review meeting. Schools are often not trained in conducting this vital stage in the evidence gathering process that forms the basis of the Local Authorities review of a statement. Therefore this essential check and balance of the system is not able to work effectively.

A parent told us:

It is essential that the statutory assessment process is done independently from the local authority - as there is a clear conflict of interest when they are the ones who must pay for any needs identified. Currently, the local authorities deliberately do NOT carry out proper assessments, leaving parents to pay for independent reports. This disadvantages children of parents who are not able to pay, or who cannot navigate the system. It also introduces an extra stage in the process - so firstly the LA decides whether or not to assess, then they do an assessment, then parents pay for independent assessment, then tribunal. It is essential to have an adversarial part of the new system (such as the current tribunal system) - so that parents are still able to challenge local authorities if they do not agree with their conclusions.

Giving parents' control

Consultation question 10: What should be the key components of a locally published offer of available support for parents?

IPSEA's view:

LAs should already be publishing key information about the level and type of SEN available to children under the Education (Pupil Information) (England) Regulations 2005.

These Regulations require that an LA should publish:

1. Information on that element of special educational provision for children with special educational needs but without Statements which the Local Authority expect normally to be met from maintained schools' budget shares and that element of such provision that the Authority expect normally to be met by the Authority from funds which it holds centrally.
2. The broad aims of the LA's policy in respect of children with SEN together with information about the action the Authority is taking to -
 - *promote high standards of education for children with SEN;*
 - *encourage children with SEN to participate fully in their school and community and to take part in decisions about their education;*
 - *encourage schools in their area to share their practice in making special educational provision for children with SEN, and*
 - *work with other statutory and voluntary bodies to provide support for children with SEN.*
3. The general arrangements made by the LA, including any plans, objectives and timescales, for -
 - *identifying children in their area with SEN;*

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- *monitoring the admission of children with SEN (whether or not those children have a Statement) to maintained schools in their area*
 - *organising the assessment of children's special educational needs pursuant to section 323 of the Education Act 1996 in the LA's area including any local protocols for so doing;*
 - *organising the making and maintaining of Statements in their area including any local protocols for so doing;*
 - *providing support to schools in their area with regard to making special educational provision for children with SEN;*
 - *auditing, planning, monitoring and reviewing provision for children with special educational needs in their area, both generally and in relation to individual children;*
 - *securing training, advice and support for staff working in their area with children with SEN, and*
 - *reviewing and updating the arrangements referred to in sub-paragraphs (a) to (g).*
4. These requirements are a good starting point. Currently the information required is not consistently published. There is no effective means to ensure that this information is consistently provided for parents other than by parents threatening or actually taking legal action against a Local Authority.

IPSEA survey result:

92.6% of those that responded to this question **strongly agreed** with IPSEA's view that:

"The current requirements are a good starting point"

5. The level of support detailed in a LA's core offer should reflect a child's legal entitlement. If the provision made falls short of a child's legal entitlement then parents should be clear on the action they can take to protect their children. This recommendation is particularly important for those children & young people who are not supported with a statement of SEN but on school action or school action plus under the current system.

Consultation question 11: What information should schools be required to provide to parents on SEN?

IPSEA's view:

Maintained schools should already be publishing key information about the level and type of SEN available to children under the *The Education (SEN) (Information) (England) Regulations 1999*. These Regulations require that a school should publically make available:

1. Basic information about the school's special educational provision:
 - *the objectives of the policy*
 - *name of the SENCO*
 - *arrangements for co-ordinating educational provision for pupils with SEN*
 - *admission arrangements*
 - *any SEN specialism*
 - *any facilities for pupils with SEN including those which help access.*

2. Information about the school's policies for identifying, assessing and making provision for pupils with SEN:
 - *the allocation of resources to and amongst pupils with SEN*
 - *identification, assessment and review procedures*
 - *arrangements for providing access to the curriculum for pupils with SEN*
 - *how children with SEN are integrated into the school*
 - *criteria for evaluating the success of the SEN policy*
 - *arrangements for considering parents' complaints about SEN provision within the school.*

3. Information about the school's staffing policies and partnership with bodies beyond the school:
 - *arrangements for SEN training for staff*
 - *use made of teachers and facilities from outside the school including support services*
 - *arrangements for partnership with parents*
 - *links with other mainstream and special schools, including arrangements when pupils change or leave school*
 - *links with health and social services, education welfare services and any voluntary organisations.*

IPSEA survey result:

91% of those that responded to this question **strongly agreed or agreed** with IPSEA's view that:

“There is no enforcement of these requirements”

6. As Academies and Free schools are not maintained schools, but Independent schools, these Regulations currently do not apply to them. It is essential that they are under the same duty to provide information as schools in the maintained sector.
7. In addition, under the Special Educational Needs and Disability Act 2001, governors of maintained schools must also publish the following information in their school prospectus each year:
 - *arrangements for admission of disabled pupils*
 - *steps taken to prevent disabled pupils from being treated less favourably than other pupils*
 - *facilities provided to assist access to the school by disabled pupils*
 - *details of the accessibility plan prepared by the governing body*
8. These requirements are a good starting point. Currently the information required is not consistently published by schools and made freely available to parents. There is no effective means for parents to ensure that the information is consistently provided. There is no enforcement of these requirements.
9. The level of support detailed in a school's core offer should reflect a child's legal entitlement. If the provision made falls short of a child's legal entitlement then parents should be clear on the action they can take to protect their children. This recommendation is particularly important for those children & young people who are not supported with a statement of SEN but on school action or school action plus under the current system.

IPSEA survey result:

95.3% of those that responded to this question **strongly agreed or agreed** with IPSEA's view that:

"If the provision made falls short of a child's legal entitlement then parents should be clear on the remedial action they can take to protect their children"

10. We understand that the Council for Disabled Children gathered evidence for the Department of Education on this issue. It would be good to refer to their findings and follow any recommendations made.

Personal budgets

Consultation question 12: What do you think an optional personal budget for families should cover?

IPSEA's view:

1. We have real concerns about the introduction of personal budgets. We welcome the fact that whether or not to run a personal budget is optional as it will not work for many families. There has to be an easy way for parents to swop between the two systems to reflect changing family circumstances.
2. The personal budget option, even if appropriate for an individual child, may turn out to have damaging consequences for the children with whom the child was hitherto educated. What safeguards will there be to ensure that when the personal budget follows a child it will not result in a depletion of the resources available to a school to fund provision for other children with SEN, and will not create organisational/staffing difficulties for a school with regard to arranging provision for the children who remain?
3. A personal budget should include enough funding to ensure that the provision required to meet a child's needs can be made without compromise. This would of course cover all therapies, including Speech and Language Therapy; Occupational Therapy and Physiotherapy. Parents should have discretion over who delivers the therapies.

IPSEA survey result:

94.6% of those that responded to this question **strongly agreed or agreed** with IPSEA's view that:

“A personal budget should include enough funding to ensure that the provision required to meet a child's needs can be made without compromise. This would of course cover all therapies, including Speech and Language Therapy; Occupational Therapy and Physiotherapy”

4. We are concerned that although the facility of a personal budget will provide an 'escape route' for parents who are desperate to remove their child from a school where they are under stress (e.g. from being bullied or repeatedly excluded) it will not necessarily represent an appropriate educational response to that child's special educational needs.
5. We need to be sure that safeguards will be put in place to ensure that schools do not push parents towards removing children whose behaviour is a challenge to them by referring them to the arrangements for the personal budget ('If you are not happy with what we are providing ...').

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6. At present, where a child has a Statement of special educational needs, the LA retains ultimate responsibility for meeting the child's needs subject to oversight by the Secretary of State. This applies when a child is withdrawn from the maintained sector and placed by a parent in an independent school and when a child is home-educated. This needs to be the case when a parent exercises the personal budget option. The personal budget needs to be agreed by a Local Authority, having considered the arrangements which a parent is proposing to put in place for their child, and IPSEA expects that a refusal by a Local Authority to release the funding to support a personal budget will give grounds for a right of appeal to the SEND Tribunal.
7. Because of the potential risks in this proposal, both for the individual children concerned and for those left behind, we believe that it should only be introduced as a pilot scheme in a small number of Local Authority areas and that the results of the pilots should be rigorously scrutinised before the scheme is introduced more widely. The introduction of pilots within an LA must not mean that current entitlement under the SEN legal framework is suspended.
8. It is likely that a significant proportion of parents will withdraw their child's personal budget from the maintained sector in order to help them pay the fees for a place in an independent school. This could quickly give rise to a situation where funds from the maintained sector (tax payers' money) were being taken out, to the detriment of provision for children with SEN in the maintained sector, in order to subsidise private schools.
9. Were this to happen then, inevitably, it would be provision for children from less advantaged backgrounds which would be at greatest risk.

A parent told us:

Giving people budgets does not mean they understand what is available or how to use these resources appropriately. Concerned the needs of the child will be missed and the needs of the parent take over.

Consultation question 13: In what ways do you think the option of a personal budget for services identified in the proposed ‘Education, Health and Care Plan’ will support parents to get a package of support for their child that meets their needs?

IPSEA’s view:

1. The option of a personal budget should allow parents to access the appropriate type of support for their child to suit not only the child’s but the family situation.
2. We are concerned that, if the right services are not available to purchase, families will face real difficulties in getting it right. A minimum level and type of provision needs to be guaranteed in any particular geographical area. It is also essential that the level of funding in a personal budget is actually able to purchase what the child needs. Experience with the existing direct payments system suggests that levels of payments made for care are not appropriate to provide the specialist support that a vulnerable child needs.

Inclusion

Consultation question 14: Do you feel that the statutory guidance on inclusion and school choice, *Inclusive Schooling*, allows appropriately for parental preferences for either a mainstream or special school?

IPSEA’s view:

1. Yes. The statutory guidance, *Inclusive Schooling*, clearly sets out a framework of inclusion which is more than a question of school placement. It states:

Inclusion is about engendering a sense of community and belonging and encouraging mainstream and special schools and others to come together to support each other and pupils with special educational needs. (Para 8)

The Government recognises and values the important role special schools (maintained, independent and non-maintained) play in providing for pupils with special educational needs.

Special schools have a continuing and vital role to play within an inclusive education system. (Para 53)

2. It reconfirms, like most countries in the world, that the United Kingdom supports the Salamanca Statement. The Statement drawn up by a UNESCO2 world conference, held in Salamanca (in 1994) called upon all Governments to:

- a. “adopt as a matter of law or policy the principle of inclusive education, enrolling all children in regular schools, unless there are compelling reasons for doing otherwise”.

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3. The right to mainstream education as a type of school placement, as contained in the Education Act 1996 s.316 and s.316A, ensures that a parent who wants to have their child educated in a mainstream maintained school can do so except in very exceptional circumstances. The legislation currently requires the individual consideration of every child; it supports parents in securing a place for their child in a mainstream school, but falls away if they do not want a mainstream place.
4. IPSEA would be strongly opposed to the removal or dilution of these rights.
5. If a parent wants their child educated in a maintained Special School the child has to have a Statement of SEN. Once a Statement of SEN is issued parents have a legal right to a place at any particular maintained special school they want unless a Local Authority can successfully make an argument against that individual school under Education Act 1996 sch. 27(3)(3).
6. IPSEA has no evidence that parents making choices about their child's school placement experience a bias towards inclusion. It is our experience that:
 - The majority of appeals to the SEND Tribunal involving school placement are concerning mainstream education.
 - The majority of appeals involving special school placements are where parents want their child educated at Independent special schools as opposed to the maintained special school that the LA have identified as being suitable.

A parent told us:

There is currently no bias towards inclusion, and the law must not be changed to make even more difficult for children with the most complex needs to go to mainstream schools if this is what their parents and of course the child wish. My child is severely disabled and in mainstream school, but every year we have had issues with the school which are deeply hurtful to us, which show that the school has no idea what inclusion is.

A parent told us:

At present, we are having issues because it appears the head thinks the law has already changed and he can freely admit he does not believe in inclusion and cannot meet the needs of our child, even though she is actually very well supported in the school. It is a nightmare, as in spite of the head teacher, our child is happy at the school and so is her sibling. We clearly are going to have to fight for her to be able to stay at the school, and this is at a time when allegedly there is still a bias towards inclusion!

Consultation question 15: How can we improve information about school choice for parents of children with a Statement of SEN, or new 'Education, Health and Care Plan'?

IPSEA's view:

1. Parents need to be made fully aware of the current limitations that exist in choosing a school for child with SEN.
2. Currently a parent's preference for a maintained school can only be rejected by an LA on one of three grounds detailed under Education Act 1996 sch. 27(3) (3) These are the grounds that the Green Paper refer to as new but which in fact were introduced by the Education Act 1993: the parents' choice of school is unable to meet a child's needs; there would be inefficient education of other children; there would be an inefficient use of resources.
3. When parents express a preference for mainstream as a type of school LAs must comply unless they can show that the efficient education of other children would be prejudiced and that there are no steps which can be taken to prevent this happening. The Green Paper suggests that this is a "bias towards inclusion" in the current arrangements and that it may be removed. However, reducing the rights of parents who are seeking inclusion will not increase the rights of parents who are seeking special school places for their child. The Government need to consider this issue with great care as the majority of children with SEN are currently in mainstream schools, with their parents' agreement.

IPSEA survey result:

100% of those that responded to this question **strongly agreed** with IPSEA's view that:

"Reducing the rights of parents who are seeking inclusion will not increase the rights of parents who are seeking special school places for their child"

4. Parents need to be made aware that currently Academies are not legally maintained schools and do not directly come under SEN statutory duties as detailed in the Education Act Part 4; SEN Regulations or the statutory guidance contained in the SEN Code of Practice. Legally, admissions to an Academy for children with a Statement of SEN, if disputed and brought to the SEND Tribunal, can only be dealt with under Education Act 1996 s.9.

IPSEA survey result:

99.7% of those that responded to this question **strongly agreed** with IPSEA's view that:

"Parents need to be made aware that currently Academies are not legally maintained schools and do not directly come under SEN statutory duties"

5. For those children with SEN but without a Statement, parental choice of school is governed by Academies' own admission arrangements.
6. Individual Funding Agreements may imply contractual rights similar to those of the maintained sector but these contracts are made between the leaders of an Academy (i.e. Governors) and the Secretary of State for Education. Parents and children are not party to these contracts and it is unclear whether and how they will be able to enforce them.
7. Choice of school will be furthered by:
 - Including in school information detail of their current expertise and arrangements for meeting the needs of children with SEN. Also their effectiveness.
 - Academies being brought directly under the same statutory duties as maintained schools towards children with SEN.

IPSEA survey result:

98% of those that responded to this question **strongly agreed or agreed** with IPSEA's view that:

“Academies should be brought directly under the same statutory duties as those of maintained schools towards children with SEN”

A parent told us:

It is essential that all schools are independently assessed and audited to establish just how effective they are in meeting the needs of children with a variety of special educational needs. Schools currently rated as 'very inclusive' or with an excellent reputation for special needs are, in reality, failing many children, particularly those with ASD.

Both consultation questions 14 & 15 refer to 'guidance' and 'information' but in fact raise issues about the legal framework, and certainly in the body of the Green Paper there is the suggestion that the Government intends to remove the strengthened rights of parents who are seeking mainstream school as a type of placement for their child over the rights of parents who are seeking special school as a type of placement. IPSEA would therefore like to make these further points:

8. Under the current arrangements parents seeking a place in a specific special school and parents who are seeking a place in a specific mainstream school have identical rights. These are, under schedule 27 of the Education Act, to express a preference for the school they name (regardless of type) which their Local Authority must comply with unless the child's needs could not be met, other children's education would be prejudiced or if there would be an inefficient use of

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resources. The LA decision to deny a parent their preference for a specific special or a specific mainstream school may be the subject of appeal to SEND Tribunal, which would test the decision by applying the same criteria, whether the school of preference was a special school or a mainstream school.

9. The bias arises in the current law when an LA denies a parent's preference for a specific mainstream school. In this event, an LA must name another mainstream school as an alternative unless it can show that the child's presence would prejudice the efficient education of the other children attending and that there are no steps which could be taken to obviate that prejudice. Despite this bias, LAs are able to deny parents a place in any mainstream school and again the SEND Tribunal has oversight of the decision when the parents choose to appeal.
10. To remove this qualified right to mainstream school as a type from those parents who want it for their children will not increase the rights of those parents who want special school as a type. Their rights would remain unchanged under schedule 27 (see a, above) i.e. the right to express a preference for a specific special school.

A parent told us:

So far and despite years of guidance to schools, schools are not fully inclusive. There is little flexibility and LSAs become, rather than assistants, the teachers of children as well as their sole companion. It is the detail of how inclusion is implemented in schools that will make the difference to the child. Despite appearing to listen to parents, schools often change very little to meet children's needs inclusively. There is no alternative but to ensure legal requirements are in place to ensure that inclusion actually happens and that schools do not simply pay lip service to it.

11. If the Government wish to be seen to be increasing parents' influence over their children's education, which is clearly signalled as one of their aspirations in the Green Paper, then they will presumably not wish to remove any of those parental rights which currently exist. The option this leaves, then, is for parents who express a preference for a specific special school to be given the right (qualified, again, and subject to SEND Tribunal oversight), if turned down, to be offered a place in another special school. If the Government are not prepared to extend parents' rights in this way they should leave this aspect of the law alone. It will not add to the rights of parents seeking a place in a special school to remove rights from parents who are seeking a place in a mainstream school. Robbing Peter does not pay Paul, it simply leaves Peter robbed.

A parent told us:

It is essential that all schools are independently assessed and audited to establish just how effective they are in meeting the needs of children with a variety of special educational needs. Schools currently rated as 'very inclusive' or with an excellent reputation for special needs are, in reality, failing many children, particularly those with ASD.

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Mediation

Consultation question 16: Should mediation always be attempted before parents register an appeal to the First-tier Tribunal (SEN and Disability)?

IPSEA's view:

1. IPSEA does not believe that parents should be compelled by law to engage in mediation as this would introduce a preliminary, quasi-judicial stage in the process of appeal.

IPSEA survey result:

100% of those that responded to this question **strongly agreed or agreed** with IPSEA's view that:

"Parents should not be compelled by law to engage in mediation as this would introduce a quasi-judicial stage in the process of appeal"

2. Effective mediation occurs when both parties have equal knowledge of their rights and what they might, in effect, be giving up as part of any negotiated settlement. There is a clear risk that unsupported and/or less able parents will be pressured to give up on provision when it is in fact their children's legal entitlement to receive it. It is widely acknowledged that parents of children who have learning disabilities are more likely to themselves have learning difficulties which would render them vulnerable to such pressure.

A parent told us:

The Government's proposal to make mediation a condition BEFORE a parent can engage in the appeals system is alarming and dangerous. This places the onus on the parent to instigate mediation when they may have already experienced hostility from the LA. Thus, it is likely parents will engage in mediation as a stepping stone to the appeals procedure (if they have the energy!).

The Government should take note of the recent study carried out by Riddell, Harris, Smith and Weedon (2009) which concluded that LAs are hostile to the notion of parents having legal rights and view mediation as a negative.

Further research conducted by Smith and Harris (2010) drew attention to the problems of mediation, namely, parents settling for less than they are legally entitled to.

Consultation question 17: Do you like the idea of mediation across education, health and social care? How might it work best?

IPSEA's view:

1. Parents need to be independently supported to understand the process and the consequence of any negotiated settlement they enter into.

IPSEA survey result:

91.7% of those that responded to this question **strongly agreed or agreed** with IPSEA's view that:

“Parents need to be independently supported to understand the process and the consequence of any negotiated settlement they enter into”

2. Neither parents nor LAs can be forced to mediate. They can be compelled to sit across a table from each other, but that physical act does not constitute mediation. To make mediation a legal requirement when a parent wishes to appeal is likely only to add to the expense and the bureaucracy of the overall process and delay the SEND Tribunal's final determination, without resolving any of the issues at stake.
3. Mediation implies equality between the parties involved. The risk in pitching parents against LA officers in mediation is that the outcome is more likely to reflect the balance of power (persuasiveness, experience of the setting, etc) than the child's actual needs and the provision required to meet them.
4. The authority and independence of the SEND Tribunal is what is required when there is disagreement between parents and LAs over a child's SEN. Anything less, which mediation certainly is, risks an outcome which does not reflect the best interests of the child.

The Child's right of appeal

1. IPSEA welcomes the Government's commitment to opening up the right of appeal for children to the SEND Tribunal. Such a development will have a profound positive effect in ensuring that particularly looked after children have an increased opportunity to have their case heard.
2. We look forward to using our knowledge and expertise to support the development and piloting of this innovation.

Learning & achieving

Question 22: What is the potential impact of replacing School Action and School Action plus and their equivalents in the early years with a single category of SEN in early years settings and schools?

IPSEA's view:

1. IPSEA does not believe the Government should replace School Action and School Action Plus with a single school based SEN category. This will not reduce rates of identification or improve outcomes; high quality teaching and learning will. Just by removing a stage of support it does not mean that children will not have additional educational needs.
2. There is a risk that a single school-based category will send a message that it is not necessary to seek support from outside the school at School Action Plus. This will not support the Government's intention to improve early intervention.
3. The current Code of Practice provides a clear guide for schools, Local Authorities and other agencies as to what support can be expected to be made for children at either School Action or School Action Plus and the different triggers for the two stages. The explicit language it uses makes it clear to parents what they should be able to expect for their child and it is valued by parents.
4. IPSEA have no evidence to support the Green Paper statement that children are often identified as having lower level SEN (at School Action) when in fact the barrier to their learning could and should be addressed through normal day - to - day classroom practice. This position devalues the expertise of the teaching profession.
5. The many and varied SEN funding schemes introduced by Local Authorities in order to fund support for children on School Action and School Action Plus leads to a postcode lottery of provision between Local Authorities. Those schemes that delegate more money from the central SEN budget directly to schools in their area expect a higher level of support to be provided by schools without additional funding. In the worse case examples parents are being told that the Local Authority no longer "do" statements as all funding is delegated to schools and all appropriate support can be provided by a school. This is clearly not true.
6. IPSEA welcome the proposal to introduce a performance measure which reflects the progress of the lowest attaining 20% of pupils.

A Chair of Governors told us:

Is the decision to have only one category of school based SEN a ruse to drastically reduce the number of children with identified SEN? There is no problem in having one category but it should still be possible for teachers to identify children at a School Action Level.

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Behaviour

Question 24: How helpful is the current category of BESD in identifying the underlying needs of children with emotional and social difficulties?

Question 25: Is the BESD label over-used in terms of describing behaviour problems rather than leading to an assessment of underlying difficulties?

IPSEA's view:

1. Our experience of supporting parents of children with a BESD label is that it is often used as temporary one whilst further investigation is carried out as to what is the root cause of the issues. In the majority of cases further medical or educational examination leads to a diagnosis. Where this does not happen or does not happen quickly then by identifying that a child has a BESD label a school ensures that they can assess the support a child needs to access education.
2. The Warnock report upon which the SEN framework is based states that the system of special educational needs should:

"embody a broader concept of special education related to a child's individual needs as distinct from his disability and a wider description of children which includes those with significant difficulties in learning, or with emotional or behavioural disorders, as well as those with disabilities of mind or body"

*"Our conclusion that up to one child in five is likely to need special educational provision in the course of his school career does not mean that up to one in five is likely to be handicapped in the traditional sense of the term. The majority will be unlikely to have such a long-term disability or disorder. **Their learning problems, which may last for varying periods of time, will stem from a variety of causes. But, unless suitable help is forthcoming, their problems will be reinforced by prolonged experience of failure.** We refer to the group of children - up to one in five - who are likely to require some form of special educational provision at some time during their school career as 'children with special educational needs'...."*

3. IPSEA continue to support that original view as being the right approach to take.

¹ Warnock, H, *Special Educational Needs - Report of the Committee of Enquiry into the Education of Handicapped Children and Young People*, 1978

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A parent told us:

I am very concerned about the proposal to remove EBD as an SEN category. My son has been identified as having 'complex difficulties' as his anxiety is so great that he can't go to school and struggles to leave the house so struggles to live a normal life. If EBD was removed his entitlement to a statement and funding from the LA may be removed as his difficulties are viewed as behavioural. As he will have to stay in Education until he is 18 under the new proposals to extend the school leaving age this is extremely worrying.

Question 26: How could we best ensure that the expertise of special schools in providing behaviour support is harnessed and shared?

IPSEA's view:

We feel that there should be no blanket assumption that special school settings have greater expertise than mainstream schools. Each school setting should be considered on its own merits in relation to providing good behaviour strategies and practice. The adoption of appropriate behaviour strategies is a matter for individual school staff and good team practice.

Academies & Free schools

Question 27: What are the barriers to special schools and special Academies entering the market for alternative provision?

IPSEA's view:

1. Parents are contacting IPSEA with two major areas of concern regarding Academies:
 - **Admission & funding.** Currently if a parent wants their child with SEN who has a Statement to attend an Academy, whether that be a mainstream or in the future a special Academy, and the LA does not agree with that wish then the issue has to be settled by the SEND Tribunal. As Academies are legally not maintained schools but independent schools the burden is on parents to prove that the LA preferred school cannot meet their child's needs and that a place there will not result in an inefficient expense to the public purse. When a parent is appealing for a place in a maintained school the burden is on the LA to name the parents' preference unless one of three very narrow criteria apply.

If a child is receiving additional support under School Action or School Action Plus, admission arrangements are governed by the individual criteria outlined in the Academy's funding agreement. It is essential that Academies come directly under the Admission Code issued by the Government which is binding on maintained schools.

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- **Receiving the educational provision identified that their child needs.**
Once a child is admitted into an Academy, if they do not receive the Special Educational Provision outlined in their Statement then ensuring that they do is not a straightforward process. Unlike maintained schools, Academies do not have a direct line of responsibility to a Local Authority but instead are party to a contract, the Funding Agreement that is between themselves and the Secretary of State. Whilst the Local Authority that issues a statement is still legally responsible for ensuring the provision it outlines is made, we are concerned that they do not have an effective relationship with an Academy to ensure this happens.
2. The Government's proposals for special free schools and academies mean that decisions on the local planning of special school places will be taken by central Government. This does not correspond with the Government's increasing thrust towards local responsibility and decision-making.
 3. IPSEA feel very strongly that central government is not well placed to make these decisions. They need to be made in the light of a local assessment of needs, of the current pattern of provision and in the light of parental preferences.
 4. IPSEA's view is that the DfE will ultimately need a local presence to hear views and forecast and plan places for children with SEN. This could potentially be a huge duplication of local authority responsibilities.
 5. IPSEA feel that it is essential for the ensuring of school choice that Local Authorities, with the responsibility for ensuring special educational provision is made, have to be left with the resources to meet these responsibilities. This is both in terms of funding and in terms of the ability to open, close, change special schools, units resources bases, specialist support and outreach services as local needs and parents' preferences change

Question 30: What might the impact be of opening up the system to provide places for non-statemented children with SEN in special Free Schools?

IPSEA's view:

1. "Opening up the system" in this way may render the legal distinction between special and mainstream school setting doubtful – currently a cornerstone of the SEN legal framework and the basis of central and local government funding arrangements for SEN provision.
2. We believe that the Government should consider the implications of such a move very carefully especially in relation to place-led versus pupil-led funding of SEN provision and the implications for maintained schools and Local Authority funding arrangements.

Performance & attainment

Question 31: Do you agree with our proposed approach for demonstrating the progress of low attaining pupils in performance tables?

IPSEA's view:

Whilst school performance is firmly linked to the academic performance of its pupils in relation to exam results then there will always be an incentive for schools not to include those pupils who have little or no chance of contributing to this measurement.

Consultation question 32: What information would help parents, governors and others, including Ofsted, assess how effectively schools support disabled children and children with SEN?

IPSEA's view:

1. Schools need to be accountable for the progress and attainment of pupils with SEN. A well drafted and updated Individual Education Plan allows all professionals and parents to know exactly what progress and child has made, what targets they are working towards and what additional provision they are receiving in order to achieve.
2. When considering whether a school is suitable for a child a supported visit to it is essential, with parents having the right to observe classes and ask questions of the professionals who will be working with their child. This would enable a parent to assess a school's ethos with regards to disability. Thus, published information should be full and comprehensive and clearly written but this is not sufficient on its own.

IPSEA survey result:

95.2% of those that responded to this question **strongly agreed or agreed** with IPSEA's view that:

“A supported visit is essential, with parents having the right to observe classes and ask questions of the staff who will be working with their child”

3. Evidence from parents suggests that whether a school is successful or not in meeting the needs of a child with SEN depends a lot on the attitude of the Head teacher and SENCO. They are key members of the senior leadership team and shape the attitude and ethos of a school. Knowledge and experience of a child's particular difficulties come second to a willingness to learn from parents as the professional expert on their child's needs.

Services working together for families

Consultation question 40: We have identified three core features of the role of local authorities in supporting children and young people with SEN or who are disabled and their families: strategic planning for services, securing a range of high quality provision, and enabling families to make informed choices and exercise greater control over services. Do you agree that these are the three core features of the role of local authorities in supporting children and young people with SEN or who are disabled and their families, or are there others?

IPSEA's view:

1. We agree with these three core features. More importantly there is a fourth core feature: legislation already in place should be implemented.

IPSEA survey result:

93.2% of those that responded to this question **strongly agreed or agreed** with IPSEA's view that:

"There should be a fourth core feature: legislation already in place should be implemented"

2. Under the current SEN framework it is left to individual parents to ensure that an LA is meeting its duty towards a child. Too often there is no effective regulation of LAs. It is not the parents who contact IPSEA for advice and support who give us most concern but those parents who do not contact us, or indeed those children who have no effective parents – looked after children.

IPSEA survey result:

93.6% of those that responded to this question **strongly agreed or agreed** with IPSEA's view that:

"Under the current SEN framework it is left to individual parents to ensure that an LA is meeting its duty towards a child"

3. Local authorities should be stopped from implementing illegal local SEN policies (including policies which distort or undermine the lawful admissions arrangements to maintained schools or academies by, for example, setting quotas on the number of Statemented children to be admitted), which turn the legal process into a postcode lottery.

IPSEA survey result:

93.8% of those that responded to this question **strongly agreed or agreed** with IPSEA's view that:

“Local authorities should be stopped from implementing illegal local SEN policies (including policies which distort or undermine the lawful admissions arrangements to maintained schools or academies by, for example, setting quotas on the number of statemented children to be admitted), which turn the legal process into a postcode lottery”

A parent told us:

I am most concerned about the need to preserve all the rights children have now. What they really need to do is keep what is good and then implement monitoring to make sure LAs obey the law. There should also be much more support for parents without recourse to expensive lawyers.

A SENCO told us:

LAs continue to have blanket policies and there is no regulation of these. I'd like to see a body to make formal complaints about the LEAs in regards to SEN issues. As a SENCO, I would also like immunity and my job to be protected so I can challenge the authority and give parents all the information they need without fear of losing my job.

Consultation question 41: How can central government enable and support local authorities to carry out their role effectively?

IPSEA's view:

1. At the moment no- one is responsible for ensuring that LAs meet their obligations towards children with SEN. By default the task falls on parents and those organisations in the voluntary sector who advise and support them.

IPSEA survey result:

86% of those that responded to this question **strongly agreed or agreed** with IPSEA's view that:

“At the moment no one is responsible for ensuring that LAs meet their obligations towards children with SEN. By default the task falls on parents and those organisations in the voluntary sector who advise and support them”

2. When parents challenge an LA it is on an individual basis. The SEND Tribunal have no power to compel an LA to change its SEN policy and practice in carrying out its duties, despite having heard repeated evidence on the same issue with the same Authority e.g. on speech and language therapy provision. This is an inefficient use of Tribunal expertise and resources as well as that of the LA. More importantly, the children of parents who either are unaware of the possibility of challenge, or who do not have the resources to challenge decisions, are disadvantaged.
3. Central government need to provide information and training re: the Local Authority's role, so that they can all know their responsibilities , and put into practice what is needed. Financial sanctions should be introduced for Local Authorities that do not comply with their duties in law.
4. It is essential that it is mandatory that a parent with a child who has SEN and someone from the LA's SEN team are included in any Health & Wellbeing Board that covers a geographical area.

A parent told us:

This Green Paper is full of 'understanding' phrases which I find very patronising considering the hidden agenda which seems to be a cap on services in the form of a budget for statements. I am very suspicious (because of previous experience) the current statement of special educational needs and legislation is not being adhered to already - why make changes when all we need is for Local Authorities to adhere to the law as it stands. The worse aspect of the current system is the conflict of interests in assessment - this should be independent, it is clear that there are still breaches in the SEN code of practice as far as assessment to suit available provision in statements and vaguely written ones which hold now legal power when provision is not met.

Code of Practice & role of IEPs

Question 44: What are the ways in which the bureaucratic burdens on frontline professionals, schools and services can be reduced?

1. The statutory guidance contained in the SEN Code of Practice is an essential source of information for parents and professionals. It is clearly written and accessible. Any updating should seek to maintain this status.
2. IPSEA believe that as the main accountability mechanism, the IEP, must be continued, given that it may be the only way both LAs and parents have of ensuring that the huge amounts of money given to schools to support children on School Action and School Action plus or with Statements are actually being spent on meeting those children's individual needs. OFSTED has commented on the lack of transparency where such accountability is concerned.
3. A properly implemented IEP focuses on inputs against outcomes and becomes a living document enabling the effects of strategies and resources to be evaluated and new ones to be implemented on a well documented basis.
4. Parents value IEPs because they give them an opportunity to engage with their child's school, share aspirations and barriers and possible solutions to their child's progress.
5. IPSEA recommends that IEPs, with the key elements: setting targets, recording the support provided and monitoring progress, should be incorporated into the statutory requirements of the single assessment and plan.
6. IPSEA would like the Government to define the specific bureaucratic burdens they feel that professionals are under. We are clear from talking to LA Officers, teaching staff and frontline professionals as well as parents that much confusion is created by the many and varied SEN policies that LAs adopt and develop. These SEN policies do not always reflect the SEN legal framework.

Collaborative working

Question 46: What more do you think could be done to encourage and facilitate local services working together to improve support for children with SEN or who are disabled?

IPSEA's view:

1. Legally enforceable rights to the provision identified by professionals as being needed to support a child's SEN and/or disability.

Providing advice to parents of children with special educational needs

2. Evidence from the introduction of the CAF (Common Assessment Framework) suggests that unless all services involved in supporting a child have a pro-active legal duty to ensure that any provision identified as being needed is actually made then too often it does not happen. Professionals that attend such meetings often do not have the authority to make decisions re the allocation of limited resources which results in commitments being made at meetings in good faith but which are then over-ruled when referred back to more senior colleagues.

Question 57: What are the areas where the voluntary and community sector could have the greatest positive impact on services for children and young people with SEN or who are disabled and their families, and what are the ways we can facilitate this?

IPSEA's view:

1. The greatest role that the voluntary and community sector can play is in supporting children, parents and professionals to understand the system of support available to them and to access it.
2. It is essential that professionals are trained adequately to understand the difference between what the law requires them to do and where that interplays with any locally developed policy.

A parent told us:

There are policies already in place that are supposed to protect children with SEN or disability. Many of the people we trust with our children do not know, understand or care about these policies. Parents work extremely hard with all involved in the statementing process to try to secure the appropriate support for their child. Sadly the statement is often ignored or adapted to suit the school, It is often delivered by staff who have very little knowledge of SEN and co existing conditions that, although may be undiagnosed, are often apparent.

A parent told us:

Changing the system (but not a lot!) will cost a fortune, and take too long, just in terms of retraining thousands of staff. Let's spend the money more wisely, by properly informing parents of their children's rights and properly funding free independent advocacy, not compulsory mediation... It's such a shame to see the government proposing to waste money...

Consultation question 58: How do you think a national banded funding framework for children and young people with SEN or who are disabled could improve the transparency of funding decisions to parents while continuing to allow for local flexibility?

IPSEA's view:

1. It is recognised that many LAs currently use internal banding systems to allocate resources. That is entirely lawful provided such banding does not substitute for a lawful Statement of SEN (i.e. one with proper detail as to what is to be provided) and provided the funds provided are sufficient for schools to make the provision set out in Part 3 of children's Statements both at the time of the issue of the Statement and throughout its maintenance.
2. However, the current SEN legal framework does not permit a decision on the provision required to meet a child's needs to be made on cost grounds.
3. For those children that are supported at the school based stages i.e. School Action or School Action Plus, a national banding funding framework could provide clarity as to what provision they would be expected to receive – especially if this is reflected in a statutory duty to receive the provision outlined in an LA or school's "Local Offer".
4. For those children that need a high level of support, the crafting of a Statement of SEN is very specific: identify a child's needs via assessment; identify the provision needed to meet each of those needs and then look at which school placement can meet those needs. Provision does not have to be 'Rolls Royce' but it must meet a child's needs, whatever the cost. A national banding scheme has to reflect closely the fact that by law every child has to be considered as an individual to ensure that he or she is not forced into a set matrix of provision that is dictated by the funding assigned to a particular band.
5. Banding is an administrative convenience but must be accepted as a guideline only and not take the place of the determination of the provision required to meet individual children's needs.

A parent told us:

We are regularly told that there "is no money left in the pot" for extra support for our son who has ASD. His hours were not quantified on his statement. Such vague statements allow schools to effectively do as they please with SEN budgets. I do not care how much money is or isn't in the imaginary pot, I only care that my vulnerable son receives all the support that he needs to enable him to progress.

A parent told us:

What I really do not understand is that in one breath the Government is saying that they are committed to parents and children being at the centre of the process – the child's needs being central and us owning the process. Then, hidden at the end of the Green paper, they throw in this idea of a national banding funding process. OK. It may only be just an administrative process but for those parents who don't know any better it is just so predictable that LAs will continue to tell us that our child can't get speech & language therapy because they are not "Band G". Is this not all about distributing a finite pot of money?

And finally...

A parent told us:

This is a once in a life-time opportunity to change things for the better for our kids and us as families. PLEASE do not change for the sake of it – to score political points. This is not a quick fix – these changes need to be committed to by all political parties and will need to be developed over many a politician's professional lifetime if we are to get them right. You may well all move on – meanwhile us and our children will be still living with the consequences of what you have done. Take your time. Get it right. Ask us what we think – listen – then act.

Jane McConnell
Chief Executive
30 June 2011