

SEN and Disability Code Consultation Response May 6th 2014

CLOSING DATE MAY 6TH 2014

<https://www.education.gov.uk/consultations/index.cfm?action=consultationDetails&consultationId=1963&external=no&menu=1>

This response <http://edyourself.org/sencodeconsultmayFN.pdf> via <http://edyourself.org/articles/newcode.php>

(NB when I saved my draft response to print it appeared without any paragraphs or other formatting, so I added CAPS LOCK POINT 1, 2, 3 etc to make it clearer. I have also added spaces below for legibility)

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Respondent Information Questions

Please mark the category which best describes you as a respondent.

- Other

I am an independent home education consultant and I run a number of websites <http://edyourself.org/> <http://ehe-sen.org.uk/> and <http://snafu2.org.uk/>

Consultation Questions

Changes made during the passage of Children and Families Bill

1

Does the Code clearly reflect the changes made to the consultation draft to take account of the amendments to the Children and Families Bill to include disabled children and young people in the provisions on identifying children and young people, integrating education, health and care provision, joint commissioning, the local offer and providing information and advice?
(Chapters 1, 2, 3 and 4)

- No Response
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2

Does the Code clearly reflect the changes made to the consultation draft to take account of the amendments to the Children and Families Bill to include children and young people in the local authority duties to provide information and advice? (Chapter 2)

- No Response
-

3

Does the Code clearly reflect the changes made to the consultation draft to take account of the amendments to the Children and Families Bill to provide for local authorities to set out what action they intend to take in response to comments from children, young people and parents on the local offer? (Chapter 4)

- No Response
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4

Does the Code clearly reflect the changes made to the consultation draft to take account of the amendments to the Children and Families Bill to clarify when health and social care is to be treated as special educational provision? (Chapters 4 and 9)

- No Response
-

5

Does the Code clearly reflect the changes made to the consultation draft to take account of the amendments to the Children and Families Bill to require local authorities to include the social care services they must deliver under the Chronically Sick and Disabled person's Act 1970 in Educational Health and Care (EHC) plans? (Chapter 9)

- No Response
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6

Does the Code clearly reflect the changes made to the consultation draft to take account of the amendments to the Children and Families Bill to clarify the duties on local authorities in respect of young people over 18 with SEN. These are to consider whether a young person requires additional time, in comparison to the majority of others of the same age who do not have SEN, to complete his or her education or training, and to have regard to whether educational or training outcomes specified in an EHC plan have been achieved when considering whether or not to cease to maintain the plan? (Chapters 8 and 9)

- No Response
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7

Does the Code clearly reflect the changes made to the consultation draft to take account of the amendments to the Children and Families Bill to include young offenders in assessment and planning duties that are broadly similar to those for other children and young people? (Chapter 10)

- No Response
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8

Does the Code clearly reflect the changes made to the consultation draft to take account of the amendments to the Children and Families Bill to extend disagreement resolution arrangements and mediation to health and social care as well as education? (Chapter 11)

- No Response
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Clarity, layout and accessibility of the Code

Background:

The consultation asked respondents whether the draft Code of Practice was clearly written and easy to understand and whether it was clear from the structure where to find information needed. While there was considerable support for the format and layout, there was also significant comment as follows:

- a need for easier navigation, with paragraph numbers and key information highlighted

- a call for more illustrative examples of professional best practice and case studies
- a need for greater accessibility for children, young people and parents
- a clear demand for guidance materials tailored to specific audiences
- a need to explain the statutory duties more clearly.

The Code has been revised as follows:

- each chapter starts with a summary of what it covers and sets out the relevant legislation
- the key principles which apply across the Code, such as involving children, young people and parents and references to Equality legislation have been moved to an early chapter which focuses on principles
- content for early years, schools and further education has been moved into separate chapters, with an additional chapter focused on preparing for adulthood
- supplementary guides will also be produced for young people and also for parents setting out what the Code means for them and other web-based guides will highlight the key parts of the Code, relevant to different groups of professionals who need to have regard to it
- sources of good practice will also be referenced for practitioners.

9

Do changes to the Code, and the plans to produce supplementary materials, address the responses to the main consultation on clarity, layout and accessibility?

- NO

POINT 1 Everything Related to Home Education Should be Kept Together

It is very confusing to have to flick back and forth across the code to try and find information relevant to home education such as the process for the annual review; transition at 16; and direct payments.

POINT 2 Outcomes

The home education part of the new draft SEN code has this to say about the Annual Reviews of the EHC Plan: "The local authority must review the plan annually to assure itself that the provision set out in it continues to be appropriate and that the child's SEN continue to be met"[10.32]. For more information, the reader is signposted to "Chapter 9" of the new draft code, which is 60 pages long.

Home education is not mentioned in Chapter 9. However, it is likely that the most relevant section of Chapter 9 is 9.173 which deals with Annual Review meetings where a child does not attend school. There is no distinction in 9.173 between Education Otherwise Than At School arranged by the local authority, and home education. (I have made the point elsewhere that Chapter 9 is much too long) 9.173 says "The meeting must focus on the child or young person's progress towards achieving the outcomes specified in the EHC plan."

Nothing in the code or elsewhere says "outcomes" don't apply to home education. This implies that home educators will be held to account for "outcomes" and that the provision will only be deemed acceptable in relation to the "outcomes" in the plan, subject to the inspection and monitoring process of the annual review. However, this is not explicitly stated, and DfE should be asked for greater clarity in the final revised code.

The following examples taken from Freedom Of Information responses, serve to illustrate why home educators might be anxious about "outcomes" and sceptical about "support": "Parents/guardians who elect to home educate their child are effectively opting out of the support available to their child through the school system." (Hackney) "The LA will continue to monitor the education annually" Peterborough. "The policy is that within 20 days of the EHE request being submitted a home visit occurs. If the provision is satisfactory the next visit would occur on an Annual basis, and inform the Annual Review of the Statement of SEN." Torbay

POINT 3 Invitations

9.173 says that "the child's parent or the young person, a local authority SEN officer, a health service representative and a local authority social care representative must be invited [to the Annual Review meeting]...Other individuals relevant to the review should also be invited...and any other person whose attendance the local authority considers appropriate."

In other words, someone from social services may well attend the meeting, even though it is overwhelmingly likely that no services will be provided as home educators are deemed to have opted out and "made their own arrangements" [10.32]. Whilst home educators can make requests/suggestions for who else should attend the meeting, does the decision ultimately rest with the LA?

POINT 4 Do Parents Have Much Say over Who is Asked for Advice?

Home educating parents can also suggest that the LA seek advice and information from the GP or a relevant health professional but is it ultimately up to the LA to decide whether or not to do so? [9.47]

POINT 5 Graduated Approach Applies to Home Education Setting?

The "graduated approach" which replaces School Action and School Action Plus 9.52 and 9.53 gives LAs a reason not to do an EHC plan if the LA judges that the SEN support already provided wasn't right. In other words, the setting might be asked to put different support in place first to see if that works before escalating to an EHC plan. This "graduated approach" of Assess Plan Do Review is a cornerstone of the draft SEN code and is set out in 5.35, 6.40 and 10.43 It's not clear from this latest version of the code how this will work for children who weren't already in the system, for example home educated children and young people. Will home educating parents have to demonstrate all the strategies they have tried to "improve outcomes" before the LA is obliged to consider an EHC plan?

POINT 6 How Can Parent Prevent Information Sharing?

It is not clear how "local protocols" will apply to home educating families. It seems that LAs must discuss with the child and young person and their parents what information they are happy for the local authority to share with other agencies and record what information can be shared and with whom. However, it also seems that the LA can still over-ride the family "for specified purposes or in the interests of the child or young person" [9.205]

The interests of the child or young person include "the provision of information to the child or young person's educational institution, as well as disclosure to any agencies other than the local authority which may be referred to in the plan as making educational, health or social care provision." [9.206] Is it ultimately up to the LA and not the family to decide how much of the plan to disclose?

A question arises as to what prevents the LA from disclosing information regarding social care to education and vice versa, irrespective of whether the home educated child or young person is actually receiving any services

POINT 7 Responsibility Transferred to 16/17 Year Olds?

After reading the new draft SEN code I still don't understand what will happen with 16 and 17 year olds. I happen to have followed the legislative process very closely, so I was already aware of the fact that parents will lose rights once a young person reaches 16, and I went through the code expressly looking for clear guidance on this issue. However, the latest version of the draft code still leaves me very confused.

To begin with I looked for a heading about "young people" or a reference to 16/17 year olds. The first thing I found was a throwaway sentence at 1.8 which directed me to Chapter 6. However, Chapter 6 turned out to have very

little of relevance, so perhaps the reference should have been to Chapter 8 Preparing for Adulthood?

A number of questions still remain unanswered for me:

If nothing is done to alter the situation, will everything default automatically to the young person rather than to the parent?

What is meant by saying parents should be involved "as appropriate"?

Who will decide?

And why does it say "should" and not "must"?

Will parents have to be formally appointed by 16/17 year olds in order to ensure that they are fully included in the process?

Would the appointment process mean that young people had to transfer all rights to the parent?

Is it even possible for 16/17 year olds to appoint a representative to act on their behalf?

Will parents be sent copies of correspondence or will everything just go to the young person?

POINT 8 Chapter 9 Too Long

The revised draft code is much better for having numbered paragraphs but Chapter 9 is confusing because it is far too long. Ipsea has made a helpful suggestion that it could "usefully be broken up into statutory assessment, drafting and finalising Plans, and maintenance of Plans".

POINT 9 Pathfinders

In the Pathfinder evaluation published in June 2013, various examples were given of Direct Payments (pages 129-131) but elsewhere in the same report (page 52), it was stated that only 3 out of 839 children on the Pathfinders were home educated.

FACTS AND FIGURES

FOI responses in 2013 indicated that approximately a thousand home educated children had a statement of SEN. The percentage of home educated children who had a statement of SEN varied among local authorities between zero and 20%, averaging around 5%.

Last year, 28% of home educated children with a statement were primary age, while 68% were secondary age. 14% had moderate learning difficulties; 6% had physical disabilities; 14% had speech communication and language needs; 32% were on the autistic spectrum; 11% had severe or complex

learning difficulties; 20% were previously educated in a special school; 34% had begun home education during the past year; 42% had been home educated for more than 2 years; 17% had been home educated for more than 5 years; while 18% ceased to be home educated last year and went into school.

POSTSCRIPT

There are two further points which people have put to me about home education in the new draft SEN code.

Firstly, it appears that there is still some confusion as to when exactly the authority has a duty to arrange special educational provision if a child is home educated.

Secondly, some people have asked me why there is no explanation of how personal budgets and direct payments apply to a child or young person educated at home. In particular, I have been asked whether a family would be entitled to a personal budget and direct payments where the authority was under a duty to arrange special educational provision.