



Department
for Education



Department
of Health

Consultation Response Form

Consultation closing date: 9 December 2013
Your comments must reach us by that date

**Consultation on Draft 0-25
Special Educational Needs
(SEN) Code of Practice,
Draft Regulations and
Transitional Arrangements**

If you would prefer to respond online to this consultation please use the following link: <https://www.education.gov.uk/consultations>

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes, primarily the Freedom of Information Act 2000 and the Data Protection Act 1998.

If you want all, or any part, of your response to be treated as confidential, please explain why you consider it to be confidential.

If a request for disclosure of the information you have provided is received, your explanation about why you consider it to be confidential will be taken into account, but no assurance can be given that confidentiality can be maintained. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data (name and address and any other identifying material) in accordance with the Data Protection Act 1998, and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Please tick if you want us to keep your response confidential.	<input type="checkbox"/>
Reason for confidentiality:	

Name: Rosalind Grainger	
Please tick if you are responding on behalf of your organisation.	<input checked="" type="checkbox"/>
Name of Organisation (if applicable): HiP (Hackney Independent Forum for Parents and Carers of Children with Disabilities)	
Address: info@hiphackney.org.uk	

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the Ministerial and Public Communications Division by e-mail: consultation.unit@education.gsi.gov.uk by telephone: 0370 000 2288 or via the Department's ['Contact Us'](#) page.

Please mark ONE box which best describes you as a respondent

<input type="checkbox"/>	Parent/Carer	<input type="checkbox"/>	Child	<input type="checkbox"/>	Young Person (16+)
<input type="checkbox"/>	School Headteacher/Teacher	<input type="checkbox"/>	Further Education Principal/Teacher	<input type="checkbox"/>	Special Educational Needs Co-ordinator (SENCO)
<input type="checkbox"/>	Governor	<input type="checkbox"/>	Local Authority	<input type="checkbox"/>	Parent Partnership
<input type="checkbox"/>	Educational Psychologist	<input type="checkbox"/>	Voluntary Organisation	<input type="checkbox"/>	Professional Association/Union
<input type="checkbox"/>	Health Commissioner	<input type="checkbox"/>	Health Professional	<input type="checkbox"/>	Health Provider
<input type="checkbox"/>	Early Years Provider	<input type="checkbox"/>	Social Care Professional	<input type="checkbox"/>	Training/Apprenticeship Provider
<input checked="" type="checkbox"/>	Other				

Please Specify: Independent Parent/Carer Forum (part of the national network of parent/carers forums funded by the DfE)

This response form covers questions on the draft Special Educational Needs Code of Practice, regulations and transitional arrangements. To enable you to identify which questions you wish to answer they have been split as follows:

Questions 1 – 27 cover the draft code of practice

Questions 28 – 42 cover the draft regulations

Questions 43 – 52 cover the transitional arrangements.

DRAFT SPECIAL EDUCATIONAL NEEDS CODE OF PRACTICE

General

1 Is it clear from the structure of the draft Code of Practice where you can find the information you need?

<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	Not Sure
--------------------------	-----	-------------------------------------	----	--------------------------	----------

Comments:

Parent-carers found the code too large, too unwieldy and too difficult to navigate. We printed out several copies to support our consultation with Hackney parents last week and found it difficult to search and cross reference with the regulations as there was no index.

Parent carers without training in SEN law will need expert help to use the code to arrange support for their child. We agree with the recent statement from the Special Educational Needs Consortium that the draft Code does not fulfil its fundamental purpose as statutory guidance

2 Is the guidance clearly written and easy to understand?

<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	Not Sure
--------------------------	-----	-------------------------------------	----	--------------------------	----------

Comments:

As above – we agree with the Special Education Needs Consortium that the Code is not written in a way that would help parents and young people understand what they are entitled to or what they can insist that providers do, and that the draft Code does not tell professionals what they need to do to enable children and young people with SEN to get the most from their education.

This message was overwhelming from our focus group consultation with 20 Hackney parents-carers with children with SEN across the age and disability range. They raised the following points:

The Code is very long. This makes it hard for parents to get hold of it, read it and give feedback. A lot of it is written in quite non-specific terms (for further detail, please see other comments) and generally seems more "woolly" or vague than its predecessor.

It is hard to tell whether this vagueness is a deliberate attempt to muddy the waters and make it harder for parents/carers and their advocates to have a clear picture of what children and young persons are entitled to.

3 Are the statutory duties in the Children and Families Bill and the draft SEN regulations clearly explained?

Yes

No

Not Sure

Comments:

The legal duties in the Children and Families Bill and the draft SEN regulations are not clearly explained.

There must be clear guidance and definition of what 'must', 'should' and 'best endeavours' means within the Code and what the difference means between these imperatives in law.

Much of the Code is written in quite non-specific terms (for further detail see other comments) and generally seems more "woolly" than its predecessor

Definition of SEN –

It is still unclear to parents and carers (or parent groups such as HiP) whether the definition of SEN is adequate or needs further clarification.

In particular, what is the position for a child or young person who does not have classic "learning difficulties" (IQ<70) but a physical disability, not of a type which necessarily "prevents or hinders them from making use of educational facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions" (from page 9 of the draft CoP).

Will these young people be ineligible for a EHC plan? If so, how will their education/health/social care needs be met? This is a matter of some concern to HiP and many other parent-carers and throws considerable doubt on the professed aim of ensuring all disabled children and young people are able to realise their potential

4 Does the guidance provide sufficient focus on the full age range from 0-25 including early years and post-16 as well as school-age children?

<input type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	Not Sure
--------------------------	-----	--------------------------	----	-------------------------------------	----------

Comments: We welcome the extension of age to cover the pre-school and post 16 period. Parents and carers of young people 18-25 are still largely unaware that the Code will affect them and who can advise them about it.

Chapter 1 – Introduction

5 Does Chapter 1 explain clearly the purpose of the Code of Practice, who it applies to and how it applies to them?

<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not Sure
-------------------------------------	-----	--------------------------	----	--------------------------	----------

Comments:

Organisations that must have regard to the code

HiP is pleased the list of agencies and organisations that must have regard to the Code is longer and now includes academies and free schools. However, parts of the list appear to be wishful thinking as there is (so far) no central legal mechanism for requiring health and social care services to fulfil their parts of their EHC. SEN tribunals can only consider and rule on education provision with the plans. We feel this omission is the main factor behind the Code's lack of coherence

There should be a clear reference made here to the requirement to make parents aware of the code and its importance guidance for arranging support for children with SEN. This needs to be put in plain English. Many parents are currently unaware of the code and its importance. To that extent it is 'for' parents and 'applies' to them as well as those who have to pay due regard to it.

The code should say something like: *Local authorities MUST make parents aware of the code and its essential role in arranging support for children and young people with SEN and be advised on where they can find free independent expert help to understanding its contents and provisions'*

Replacement for School Action and School Action Plus - we have not seen anything which explains how children who do have SENs, but who are currently not eligible for a statement (and therefore will presumably not qualify for a new EHC plan) are to be supported, given that School Action and School Action Plus are going. Parents and carers of children in this situation need to be put in the picture and they need to be given clear guidance as to how they can seek the correct support for their child. And who is answerable if this support is not provided?

The new single school based category has no evidence base nor is it supported by parents or professional associations. For some pupils with developmental disorders the SA and SA+ has been a vital as a natural staircase towards increased support as their development needs emerge in the school setting and their educational and social needs diverge from their peers. For others it provides a framework and some protection for pupils who need some support.

Guidance on inclusion

This should be restored to the CoP otherwise mainstream schools under funding pressures will not make efforts to become more inclusive will end up turning away or cherry picking the children with SEN (this is already happening in some mainstream academies).

We are concerned that the weakening of this expectation will disadvantage children and young people who wish to remain in mainstream settings. There will be no clear guidance on whether a school can refuse a child or young person a mainstream education place without an SEN assessment and no recourse in law for children who

wish to be educated in this setting. Many children who could be educated in mainstream with the right support will be potentially forced in to special schools or even worse, into special academies without assessment with no way of challenging the decision.

Chapter 2 - Summary

6 Does Chapter 2 summarise how the principles described there are reflected in the Code of Practice?

<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not Sure
-------------------------------------	-----	--------------------------	----	--------------------------	----------

Comments:

The Code says that participation of parents, carers and young people is important. It should be specified that this must happen both on an individual basis **and by the involvement of parents at a strategic level via parent/carer forums**. Strategic involvement is a much harder concept for providers to grasp, so it needs to be explicitly stated.

Chapter 3 – A Family Centred System

7 Is Chapter 3 clear about the information, advice and support young people in particular may need, and how agencies should work with them and their families?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
---	-----------------------------	-----------------------------------

Comments:

HiP welcomes the greater emphasis on involving parent-carers, children and young people in planning and developing their support.

Involvement of Parent-Carers

Parent-Carers in Hackney have serious concerns about the way in which the new Code seems to suggest that once a child reaches the age of 16, parents and carers "drop out of the picture", so that their views are no longer relevant and their agreement is no longer required.

For example, on pages 87 – 88, discussing the circumstances in which children and young people without an EHC plan can be placed in special schools/post-16 institutions. Many young people aged 16 or over with learning disabilities and/or autism will be much less capable of understanding and making such a decision than their typically-developing peers. There is a risk that young people may not be able to appreciate the bigger picture. Parents fear that these young will be particularly vulnerable to suggestions made by professionals/adviser who are keen to promote particular college, pathway or provision due to local budget constraints or a 'one size fits all' attitude than the overall needs of that young person.

The Code must include a mechanism for fully involving parents/carers of young people with SENs in all decisions, assessments etc where to do so is in the best interests of the young person. Parents and carers should also be notified of all decisions etc, again where it is in the best interests of the young person for them to be involved – even during post 16 planning. It is worth emphasising that this does not indicate that parents are not prepared to 'let go' and enable their children and young people to develop their independence. All parents involved in HiP's consultation were desperate for their children to develop skills and become as independent as possible. We are just fully aware that many of our children are highly susceptible to suggestions or are all too often eager to give the 'right' answers when discussing their futures with careers advisers or others from related agencies involved in transition in order to please them..

HiP supports alternative wording suggested by the **National Network of Parent Carer Forums**

*'There is greater focus on the support **for parents and for children and young people with SEN that enables them to succeed in their education and a recognition of the active role that parents and young people both make to a successful transition to adulthood**'.*

8 Is it reasonable to expect local authorities to provide the advice and support specified in Section 3.3?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
---	-----------------------------	-----------------------------------

Comments:

Advice and support provision

Yes. In addition representatives from parent carer forums MUST be involved in drawing up specifications and making decisions about who is awarded the contract to ensure that the service is independent, appropriate, impartial and accessible. Organisations who only have experience in generic information and advice provision are unlikely to be able to up to the task of providing information in a way that empowers parents and reduces stresses associated with securing suitable support for their children or fully understanding the complexities of SEN law.

9 Does the Code provide an accurate description of key working?

No. It confuses key working approaches, key working and advocacy. Only those families in receipt of an EHC plan and in the most difficult circumstances will ever receive the support of a named key worker. This leaves the majority of families with no help to navigate the SEN system. It is not fair to give the impression that families might receive the benefit of a key worker when in reality this is extremely unlikely to happen.

10 a) The 'Independent Supporters' described in Chapter 3 are intended to provide support for children, parents and young people through the Education, Health and Care assessment and planning process.

Do you agree that this sort of support should be available to children, young people and parents if they ask for it?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
---	-----------------------------	-----------------------------------

Comments: Some IPS are better than others and cannot be a substitute for fully qualified lawyers, specialist teachers, health or social care professionals. It is important that IPS are supported by a competent organisation like Parent Partnership and that there is a process for independent evaluation of their work, continuing education, and for concerns about competence to be taken seriously.

10 b) What might help ensure such support is available to families that need it?

Comments: Professionals involved with families at critical points, eg diagnosis, assessment etc, should ensure that parents know they can access an IPS if they so wish.

Chapter 4 – Working Together Across Education, Health and Social Care

11 Does Chapter 4 describe clearly how the new joint commissioning arrangements will support children and young people with special educational needs?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Sure
------------------------------	--	-----------------------------------

The overview explains clearly why working together across services is so important. But the diagram at Figure 1 illustrating the Joint Commissioning Cycle leaves parent/carer forums out of the picture. Unless the involvement of parent/carer forums is explicit, there will not be the culture change necessary to involve us at a strategic level.

In the section headed 'Establishing Effective Partnerships' a duty is placed on LAs to review its SEN provision and social care provision *consulting* a range of partners including parents of children with SEN. We feel that this should be done by engaging parents and carers at a strategic level too.

Whenever we have discussed the idea of joint commissioning, parents have told us that they do not trust Education, Health and Social Care to work effectively together in the best interests of their children, only to argue about who can get away with paying the least. It will take effort on the part of the professionals involved to understand each other's perspectives.

12 Is the role of the Designated Health Officer described clearly?

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Not Sure
------------------------------	-----------------------------	--

We did not discuss this issue

Chapter 5 – The Local Offer

13 Does Chapter 5 describe clearly the purposes of the local offer?

<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not Sure
-------------------------------------	-----	--------------------------	----	--------------------------	----------

Comments:

Chapter 5

The terms 'participation' or 'co-production' should replace 'consultation' throughout this chapter.

Hackney's Local Offer task and finish group has involved parents via HiP right from the first meeting and we appreciate that producing and maintaining the LO is an enormous task for any LA. It would have been very useful to see a working model of a LO, but we did not succeed in finding one online or even when we attended our local Pathfinder event.

The local offer must be something more intuitive than a directory. It should suggest options to the user, should direct the user to their local parent forum, and should suggest what to do if you can't find anything at all of relevance, don't understand what you've found etc. It must be easy to find, navigate, access and comment on (in relation to services) and their experiences should be available to other parents.

A log in facility or cookies so that it remembers users would be helpful, and some way of saving results to look at again later, either by email or some other means.

HiP parents believe the local offer should also include:

- ⌚ SEN exclusion figures for each school,
- ⌚ the current number of pupils with SEN on the roll
- ⌚ the types of SEN they cater for; how they cater for those needs and which external providers they buy in to support young people with SEN.
- ⌚ Information on the SEN training credentials and experience of staff and teachers is also essential to help parents and young people to make informed decisions.
- ⌚ year on year SEN funding details for the borough and for individual schools and the numbers of children with EHC plans in each.
- ⌚ What parents can do if the advertised provision is not available when the school or other entry in the local offer is contacted
- ⌚ Information about out of borough schools (including independent residential schools, where Hackney parents have sent their children only after appealing to the SEN tribunal)
- ⌚ How the effectiveness of the local offer will be assessed and monitored by Ofsted to check that it is up to date and well maintained.
- ⌚ Include the LA's commitment to working in partnership with their parent/carer

forum

14 Is the guidance clear about what local authorities and their partners must do to develop, publish and review the local offer?

Yes No Not Sure

Comments: We worry that the LO will be out of date as soon as it is published and that there will not be funding available to update it frequently enough or to correct errors.

Chapter 6 – Early Years, Schools, Colleges and Other Education and Training Providers

15 Does Chapter 6 make clear the importance of involving children, parents and young people in decision making?

Yes No Not Sure

Comments:

'best endeavours' needs to be defined.

There needs to be a consistent process by which children in receipt of SEN support will have their needs recorded, provision specified, outcomes identified and progress reviewed. Otherwise parents won't know what to expect.

We refer you to the issues we have raised around the diminution of the role of parent-carers in helping young people make decisions post 16 when their psychosocial age is less than their actual age and they need more time to develop their independence skills.

16 Is the guidance clear about what education providers should do to identify and support children and young people of different ages to achieve good outcomes?

Yes

No

Not Sure

Comments:

Chapter 7 – Assessments and Education, Health and Care Plans

17 Is Chapter 7 clear about how to carry out assessment and planning for children and young people 0-25, including helping children and young people prepare for adult life?

Yes

No

Not Sure

Comments:

"EHC plans **must** be focused on the outcomes the child or young person seeks to achieve across education, health and care" (page 92). Parents want to know who will set the "outcomes". There were particular concerns these outcomes may be subject to manipulation by schools/educational establishments. What happens if a school disagrees with parents?

Outcomes are mentioned again on page 103 stating that they must be SMART and that the plan must be clear how the specified provision or support will help the child or young person achieve the outcomes). It is clear that parents are going to have to become very involved indeed in the whole process.

It is still not clear how the Health and Care aspects are to be delivered, how the different agencies are to work together, and who is to have specific responsibility for what. There will still be three separate systems, despite the introduction of what is being badged as a unified plan. Parents are worried about how health and social care needs are going to be covered.

Person centred planning

The CoP must ensure that this is done properly by trained facilitators and not expect teachers to do this without proper training

Personal budgets

This section seems very unclear. For example education funding is discussed on pages 118 – 119 but it really isn't readily comprehensible to parents or young people. Parents are worried that what is presented as "greater freedom of personal choice" will just end up making parents who are already stressed and busy, that much busier as they struggle to administer personal budgets as well as everything else. It will be very important the Local Offer makes it clear which services are available to all children and young persons and which can only be accessed by those with personal budgets/are not available to those with personal budgets.

There is a concern that as more and more people take up personal budgets, those who are able to take advantage of personal budgets will get the best services, whilst the general provision withers away. In other words, will personal budgets operate to take responsibility away from local authorities to provide services generally? However, it may also be the case that having a personal budget will allow the child or young person to access a particular specialist service which is not available generally (eg music therapy in Hackney, which is only currently available if you have a personal budget).

When LAs consider a request for a statutory assessment

Under the new draft Code, when the local authority is considering a request for a statutory assessment, it does not have to ask for representations and written evidence at this stage. (It does have to consult the child's parent, or the young person, as soon as practicable following a request for assessment.) HiP believes that the local authority should be under a duty to ask for representations and written evidence at this stage. Otherwise, there is no obligation on them to actually go out and look for

evidence of the matters listed at b – g on page 94.

Data protection and consent to share information

Creating a health, education and social care plan will mean that a number of different agencies are involved. The draft Code says that local authorities **must** discuss with the child's parent or young person what information they are happy for the local authority to share with other agencies. Parents are agreed that they do need to have this control over what information is shared. Those who are responsible for the Code should consider the impact of data protection regulations in this area. Even if parents permit certain information to be shared, where services are contracted out to private providers, it may be the case that those private providers will be unwilling/unable to share information because of the data protection requirements in their own contracts with the local authority.

Timings for parental consideration of draft EHC plans

The draft Code says that a parent or young person **must** be given at least 15 days to consider draft EHC plan and give their views on it, including requesting an educational institution and confirming if they would like a personal budget. We do not believe that this 15 day period will be long enough in all cases so there needs to be more flexibility.

Notices and draft plans

There is no requirement for the local authority to issue a notice with the draft plan making it clear that it is not the final plan and that the parent or young person has the right to ask for changes to it. Similarly, there is nothing about giving the parent or young person the right to ask for a meeting on the draft EHC plan and (unlike now) the 15 day period doesn't start from any such meeting. Both of these requirements should be added in to the draft Code.

What EHC plans will look like

In our view, it is very important that the new Code should set out a model or template EHC Plan. Otherwise we could have every local authority writing its own version which would make it very hard to achieve clarity for parents, advocates and young people themselves. This will also be an issue if the child is placed in a school in a different local authority area or moves to another local authority.

Content of plans

There appears to be scope for muddle in terms of how the plans are written. It is not clear how provision which could fall within two camps (eg health and education) will be dealt with (the exception is speech & language therapy which the Code says should normally be recorded as educational provision unless there are exceptional reasons for not doing so). Parents need greater clarity on this.

Specifying and quantifying

The new Code has much less detail on the way provision has to be quantified. For example, it doesn't make it clear that the EHC plan has to specify how many hours of provision. Parents and their advocates need to have a Code that provides the same degree of clarity that is provided by current case law.

18 Is the guidance clear about the importance of engaging children, young people and their parents in decision making on assessment, planning and reviews?

Yes No Not Sure

Comments: The guidance emphasises engagement of children and young people throughout but as we have mentioned before, it is not always in the best interests of the young person for their carer to drop out of the picture as soon as they are 16.

The Code should **insist** on parent/child participation in their EHC plan. However, parents may feel intimidated about involving themselves in complicated meetings with confident professionals, and therefore vote with their feet by absenting themselves from discussion.

19 Is the guidance on the content of Education, Health and Care Plans helpful?

Yes No Not Sure

Comments: Transport should be included as standard when drafting an EHC plan.

The right for parents to request a particular school is mentioned in the Regulations but needs to be restated in the Code.

Carers support provision should also be detailed in the plan

Parent forums must be involved in reviewing and testing the plans each year.

20 Is the guidance appropriate and relevant to professionals across education, health and care?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
---	-----------------------------	-----------------------------------

Comments :As stated above, most parents did not feel confident that professionals could work together. Interestingly however, the parents of children who had received therapies such as OT and physiotherapy whilst visiting the Disabled Children's social work team or attending portage sessions at the integrated Child Development Centre were much more positive about the possibility, because they had seen how well staff could cooperate, given the opportunity.

21 Does the guidance adequately reflect the essential features of the *Inclusive Schooling* guidance which is being replaced?

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
------------------------------	-----------------------------	-----------------------------------

Comments: We did not look at this

22 Does the guidance cover the necessary features of the *Learning Difficulty Assessments* guidance which is being replaced?

Yes

No

Not Sure

Comments: We did not look at this.

Chapter 8 – Children and Young People in Specific Circumstances

23 Does Chapter 8 provide sufficient information about support to be provided for children and young people in the specific circumstances described?

Yes

No

Not Sure

Comments: Many children with SEN who are home educated are in that position because the support they received in school failed to meet their needs and the relationship with school irretrievably broke down.

Relations between home educators and local authorities can sometimes be difficult. Home educators fear the new CoP may lead to local authorities trying to impose on the families rather than working with them.

Local authorities should work with the families of children with known SEN or disabilities and support parents to meet their needs. LA must work with health and social care to support their needs and to help children achieve their outcomes even if they are home educated. Parent-carers who home educate fear local authorities will avoid naming home education on the EHC plans so they do not have to arrange provision. The Local Authority must help arrange any therapies or other support the home educated child is diagnosed as needing even where they believe that the child's needs could be met by a school. The CoP must address this and restate the parent's right to choose.

24 Are the duties of local authorities and others towards children and young people in specific circumstances explained clearly?

Yes

No

Not Sure

Comments: see above

Chapter 9 – Resolving Disputes

25 Does Chapter 9 provide sufficient support and information to help parents and young people understand the different routes for appeals and complaints?

Yes

No

Not Sure

The requirement to obtain a certificate before being able to appeal appears to be an unnecessary addition of red tape to an already stressful process. Parent should be offered mediation and we are sure that they will take this up if they feel it will result in appropriate support for their child. Appeal is never considered lightly by parents if there are other ways of securing the right support for their child. They should not be made to 'go through the motions' of considering it.

Appeals can be made against individual areas of provision in an EHC plan but the SEND Tribunal is only relevant to the education provision in the plan and provided by the Local Authority. What about the health and social care? This approach is disparate and unwelcome.

There needs to be a coordinated appeals process through a single point of access and which offer equity in terms of rights across all areas of EHC plans.

With regard to disputes – there should be one single co-ordinated point of access. The meaning of "should" needs to be a lot clearer.

Parent-carer forums should be involved in commissioning mediation and dispute resolution services to make sure they are suitable for parent-carers and children including writing the specification and on procurement panels. We are interested to know how the government believes dispute resolution or mediation service can be truly impartial if it is being commissioned by the local authority? Surely impartiality is compromised by the mere fact that the LA is paying their wages? Only parent carer representation throughout the commissioning process can ensure that it is as impartial as possible. It is vital that the information and advice provision is separate from the dispute resolution and mediation services. In addition the information and advice provision/support must be entirely independent of the local authority to ensure the confidence of parents who use the service.

Our big concern is how can parents challenge poor school based provision for children with SEN if they do not have an EHC plan? There is no recourse for these children apart from looking for a new school. Already there are disincentives in the new funding arrangements which militate against children with SEN getting what they need. [This article in the Guardian](#) explains the problem well. The Code must bolster the rights of children and parents to hold the school and LA to account where provision is under par, inappropriate, inadequate or underfunded.

26 Is sufficient guidance given on what makes effective disagreement resolution and mediation services?

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
------------------------------	-----------------------------	-----------------------------------

Comments: We did not consider this.

Any Other Comments

27 Please provide any further comments on the draft Code of Practice here.

Comments:

We welcome the opportunity to re-think the SEN system and the hard work of the Department for Education and its partners but we worry that, in particular, the abolition of School Action and School Action plus (at a time of slashed budgets across education, health and social care) will result in children slipping through the net, especially if their parents do not have the ability to understand what should happen to identify and then meet their child's needs.

We are also sure that unless the participation of parents at a strategic level is specifically stated within the Code, LAs will not take our views on board, or 'consult' with an uncritical parent known to them personally who can only talk about their individual experience. The following arguments are often put forward by professionals as reasons not to engage with a forum:

1. *The forum is not representative of parent/carers and is simply a group of the same pushy, middle-class mums*

In answer to this we would state that, just as a union representative is accepted to be speaking on behalf of their membership, a forum member able to attend meetings must always bear in mind, so far as is possible, the brief she has been given by her steering group and by the forum as a whole. It is difficult to find parents free in the daytime who are confident enough to attend meetings, understand the content, and then have their say and deal with the response. The SEN changes are very complicated and understanding the Code and its relevance to previous legislation is a mammoth task.

Our steering group therefore consists of parents who are almost all university-educated and we are mindful that this is unlikely to change. However, we still do everything we can to inform and educate all parents and ascertain their views.

2. *'You should trust the professionals to feed back your views and act on them—you (parents) do not need to be there when decisions are made' – quote from Paediatrician at a Pathfinder discussion event, Nov 2013*

We do trust the majority of professionals/providers we meet, but there have been occasions where our feedback has not reached the ears of anyone who could do anything about the relevant issues, or where our ideas have been listened to, but then not acted on or misrepresented. We think this happens because some professionals are still unable to see parents as experts.

DRAFT SPECIAL EDUCATIONAL NEEDS REGULATIONS

The Special Educational Needs (Local Offer) Regulations (Clause 30 and chapter 5 of the draft SEN Code of Practice)

28 Do the draft regulations set out clearly what local authorities are required to do to prepare, publish and review their local offer?

<input type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not Sure
Comments:					

The Special Educational Needs (SEN co-ordinators) Regulations (Clause 62 and chapter 6 of the draft SEN Code of Practice)

29 Do the draft regulations set out clearly the requirements on schools in relation to the qualifications and experience, role, functions and responsibilities of their Special Educational Needs Co-Ordinator (SENCO)?

<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	Not Sure
--------------------------	-----	-------------------------------------	----	--------------------------	----------

Comments:

The Special Educational Needs (Information) Regulations (Clause 65 and draft SEN Code of Practice)

30 Do the draft regulations set out clearly what information schools are expected to publish about their arrangements for identifying, assessing and supporting children with special educational needs?

Yes

No

Not Sure

Comments:

Remaining in a special school or post-16 institution without an Education, Health and Care plan Regulations (Clause 34 and chapter 7 of the draft SEN Code of Practice)

31 Are the draft regulations clear about the circumstances in which a child or young person without an Education, Health and Care plan may remain in a special school or special post-16 institution following an assessment of their needs?

Yes

No

Not Sure

Comments:

32 Are the draft regulations clear about what should happen where a child or young person without an Education, Health and Care plan remains in a special school or special post-16 institution following a change in their circumstances?

Yes

No

Not Sure

Comments:

**Education (Special Educational Needs) (Assessment and plan) Regulations
(Clauses 36, 37, 44 and 45 and chapter 7 of the draft SEN Code of Practice)**

Are the draft regulations clear about what action a local authority should take regarding:

33 a) Education, Health and Care assessments?

Yes

No

Not Sure

Comments:

33 b) Education, Health and Care plans?

Yes

No

Not Sure

Comments:

33 c) Timescales for Education, Health and Care plans?

Yes

No

Not Sure

Comments:

33 d) The transfer of Education, Health and Care plans?

Yes

No

Not Sure

Comments:

33 e) Reviews and reassessments?

Yes

No

Not Sure

Comments:

33 f) Ceasing to maintain Education, Health and Care plans?

Yes

No

Not Sure

Comments:

34 Are the draft regulations clear about which institutions can be approved for the purposes of requests to be named in an Education, Health and Care plan and the matters the Secretary of State will take into account in giving and withdrawing his approval?

Yes No Not Sure

Comments:

The Special Educational Needs (Personal Budgets and Direct Payments) Regulations (Clause 49 and chapter 7 of the draft SEN Code of Practice)

35 Are the draft regulations clear about the arrangements for seeking a Personal Budget and the local authority's duties in respect of Personal Budgets?

Yes No Not Sure

Comments:

36 Are the draft regulations clear on the arrangements for direct payments?

Yes

No

Not Sure

Comments:

The Special Educational Needs (Appeal) Regulations (Clause 51 and chapter 9 of the draft SEN Code of Practice)

37 Are the draft regulations clear about the circumstances in which appeals may be brought?

Yes

No

Not Sure

Comments:

The Special Education Needs (Mediation) Regulations (Clause 52 and chapter 9 of the draft SEN Code of Practice)

38 Are the draft regulations clear about how arrangements for mediation are intended to work?

<input type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not Sure
--------------------------	-----	--------------------------	----	--------------------------	----------

Comments:

The regulations may cover “requiring a local authority to pay reasonable travel expenses and other expenses of a prescribed description, up to any prescribed limit”.

39 a) What expenses do you think it would be reasonable for the regulations to cover?

Comments:

39 b) Should there be prescribed limits and, if so, how much should they be?

Yes

No

Not Sure

Comments:

The Special Educational Needs (Children's Rights to Appeal Pilot scheme) Order (Clause 54)

40 Does the draft Order set out reasonable arrangements for local authorities to pilot giving children the right to appeal to the Tribunal?

Yes

No

Not Sure

Comments:

41 Will this provide a sufficient basis on which to decide whether to extend the right to appeal across England?

Yes

No

Not Sure

Comments:

Any Other Comments

42 Please provide any further comments on the draft regulations here.

Comments:

TRANSITIONAL ARRANGEMENTS

Transferring Children and Young People with Statements of SEN and Learning Difficulty Assessments to Education, Health and Care Plans

43 Some children and young people will be undergoing special educational needs assessments on the current system on 1 September 2014. Should that assessment result in a statement/Learning Difficulty Assessment or an Education, Health and Care plan? Please explain the reason for your opinion.

<input type="checkbox"/>	Statement/Learning Difficulty Assessment	<input type="checkbox"/>	Education, Health and Care Plan	<input type="checkbox"/>	Not Sure
--------------------------	--	--------------------------	---------------------------------	--------------------------	----------

Comments:

Pace of Transition

44 Do you agree that the overall period for transition from statements of SEN to Education, Health and Care plans should be three years? Please explain the reason for your opinion. If you do not agree, please say what timeframe you think would be appropriate.

<input type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not Sure
--------------------------	-----	--------------------------	----	--------------------------	----------

Comments:

45 Do you agree that Learning Difficulty Assessments should be phased out within two years? Please explain the reason for your opinion. If you do not agree, please say what timeframe you think would be appropriate.

Yes

No

Not Sure

Comments:

The Process for Transition

46 Do you agree that local authorities, following consultation with young people and parents, should determine the best point in any given year to transfer a statement of SEN/Learning Difficulty Assessment to an Education, Health and Care plan, and that this should replace the usual annual review?

Yes

No

Not Sure

Comments:

47 Do you agree that where a child or young person makes the transfer from a statement of SEN/Learning Difficulty Assessment to an Education, Health and Care plan, their plan should be written using the principles set out in section 7.9 of the draft SEN Code of Practice?

Yes

No

Not Sure

Comments:

48 Do you agree that the right to request an Education, Health and Care Plan should be limited to new referrals during the three year transition period? If not, why not?

Yes

No

Not Sure

Comments:

Phasing the Transition

49 a) Do you agree that government should establish a broad framework setting out the slowest acceptable rate of transfer from statements of SEN to Education, Health and Care plans? If not, why not?

Yes

No

Not Sure

Comments:

49 b) If yes, which of the two proposed frameworks for transfer from statements of SEN to Education, Health and Care plans do you support? Why do you support this option?

Option 1: Transfer at end of key stage

Option 2: Transfer at end of current phase of education

Not Sure

None of the above

Other (please specify)

Comments:

50 Do you agree that young people with Learning Difficulty Assessments should be able to request to transfer to an Education, Health and Care plan at any point during the proposed two year transition period? If not, why not?

Yes

No

Not Sure

Comments:

Implementing the Local Offer

51 Which approach to implementing the local offer should be adopted? Please explain why.

<input type="checkbox"/>	Option 1: Introduce all local offer requirements from September 2014	<input type="checkbox"/>	Option 2: Introduce all local offer requirements from April 2015	<input checked="" type="checkbox"/>	Option 3: Introduce the local offer progressively from September 2014
<input type="checkbox"/>	Not Sure	<input type="checkbox"/>	None of the above	<input type="checkbox"/>	Other (please specify)

Comments:

Any Other Comments

52 Please provide any further comments on the transitional arrangements here.

Comments:

53 Please let us have your views on responding to this consultation (e.g. the number and type of questions, whether it was easy to find, understand, complete etc.).

We were hampered by our local authority's failure to appoint or second a member of staff to head the SEN changes project. With the responsible person suddenly going off sick and the leader of 2 other projects in hospital there was nobody to do the SEN work and it was largely due to the parent forum to try and ascertain public opinion, consult with members who could not come to the relevant SEN forum, and consider getting access to the parents of severely disabled children. With no parent liaison worker employed by the borough, this has meant many hours of additional voluntary work.

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

Please acknowledge this reply.

x

E-mail address for acknowledgement:

Here at the Department for Education we carry out our research on many different topics and consultations. As your views are valuable to us, please confirm below if you would be willing to be contacted again from time to time either for research or to send through consultation documents.

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
---	-----------------------------

All DfE public consultations are required to meet the Cabinet Office [Principles on Consultation](#)

The key Consultation Principles are:

- ⌚ departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before
- ⌚ departments will need to give more thought to how they engage with and consult with those who are affected
- ⌚ consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy; and
- ⌚ the principles of the Compact between government and the voluntary and community sector will continue to be respected.

Responses should be completed on-line or emailed to the relevant consultation email box. However, if you have any comments on how DfE consultations are conducted, please contact Carole Edge, DfE Consultation Coordinator, tel: 0370 000 2288 / email: carole.edge@education.gsi.gov.uk

Thank you for taking time to respond to this consultation.

Completed responses should be sent to the address shown below by 9 December 2013

Send by post to: Ministerial and Public Communication Division (CSDSD Team), Department for Education, Area 1C, Castle View House, East Lane, Runcorn, Cheshire WA7 2GJ.

Send by e-mail to: SENCodeOfPractice.CONULTATION@education.gsi.gov.uk