Centre for Studies on Inclusive Education
supporting inclusion, challenging exclusion

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Caroline McElwee
Committee Assistant
Education Committee
House of Commons
7 Millbank
London SW1P 3JA

Tuesday 9 October 2012

Dear Ms McElwee,

I write in response to the Education Committee's call for evidence on the proposed reform of provision for children and young people categorised as having special educational needs. Thank you for inviting evidence as part of the pre-legislative scrutiny process; we hope the Committee will attend to the issues raised in this submission.

The Centre for Studies on Inclusive Education has been at the forefront of developments in education for 30 years. Set up in 1982, the CSIE has extensive experience of working to remove barriers to learning and participation for all children and young people. The Centre has been involved in a range of national and local government initiatives and has produced resources that have become popular with education practitioners throughout the world. Such a time-honoured track record affords us a unique perspective and we welcome this opportunity to share this with you.

CSIE is a member of the Special Educational Consortium (SEC) and endorses the evidence jointly submitted by the Every Disabled Child Matters campaign (EDCM) and SEC. In addition, we wish to bring to your attention two key issues:

1. **Some of the draft clauses seem to be inconsistent with current policy, legislation and social values.**
   Draft clauses 13(2)(b) and 15(3) represent thinking which seems inconsistent with: the Department for Education's stated policy of parental choice of school; to its, and that of other government Departments, commitment to disability equality as stipulated by the Equality Act 2010; and to disabled people's right to be part of mainstream life and institutions. We suggest that these draft clauses are removed, so that they do not undermine parental choice or compromise children's rights.

2. **The term "special educational needs" seems to have outlived its function.**
   Repeated criticisms of the term had so far been met with the argument that it cannot be abolished because it is embedded in law. The current law reform provides an excellent opportunity to replace this term with alternative, more appropriate, terminology.

We outline below CSIE's recommendations for action and our rationale for them.

1. **Draft clauses inconsistent with current policy, legislation and social values.**
We recommend that clauses 13(2)(b) and 15(3) are removed from draft legislation.

Extracts from draft legislation highlighting clauses suggested for removal

13 Children and young people with EHC plans

(1) This section applies where a local authority is securing the preparation of an EHC plan for a child or young person who is to be educated in a school or post-16 institution.

(2) In a case within section 19(5) or 20(2), the local authority must secure that the plan provides for the child or young person to be educated in a maintained nursery school, mainstream school or mainstream post-16 institution, unless that is incompatible with-

(a) the wishes of the child's parent or the young person, or

~~(b) the provision of efficient education for others.~~

15 Children with SEN in maintained nurseries and mainstream schools

(1) This section applies where a child with special educational needs is being educated in a maintained nursery school or a mainstream school.

(2) Those concerned with making special educational provision for the child must secure that the child engages in the activities of the school together with children who do not have special educational needs, ~~subject to subsection (3).~~

~~(3) Subsection (2) applies only so far as is reasonably practicable and is compatible with-~~

~~(a) the child receiving the special educational provision called for by his or her special educational needs,~~

~~(b) the provision of efficient education for the children with whom he or she will be educated, and~~

~~(c) the efficient use of resources.~~

Rationale for removing clauses 13(2)(b) and 15(3) from the draft legislation

a) **Legislation needs to be made relevant to the current context**

The 1981 Education Act introduced the duty to educate all children in mainstream schools, as long as: this reflected parental wishes, did not hinder the education of other pupils and was compatible with the efficient use of resources. This was introduced in the context of some children having been considered "ineducable" just 10 years previously (the *Education (Handicapped Children) Act 1970* transferred the responsibility for providing for children categorised as "educationally subnormal (severe)" from health authorities to local education authorities.) The 1993 Education Act added a condition that the education received must be appropriate to the child's needs; the 1996 Education Act, consolidating all previous education laws, maintained all four conditions. In the context of a national move towards greater disability equality, the *Special Educational Needs and Disability Act (SENDA) 2001* removed two of the previous four conditions and stipulated that all children should be educated in the mainstream, as long as this is consistent with their parents' wishes and with the efficient education of other children in the school. SENDA 2001 continues to determine school placements today. More than ten years on, in the context of the

Equality Act 2010 and the government's unconditional commitment to disability equality, attempting to limit disabled children's right to a mainstream education seems to us inappropriate and anachronistic.

b) Legislation needs to reflect the government's stated political will

The government has chosen to make type of school a matter of parental choice. If the promise of parental choice is genuine, however, no barriers should be introduced to parental choice being honoured. In other words, the law only needs to state that children and young people will be educated in the mainstream, as long as this is compatible with the wishes of the parent or the young person. Adding any further condition to that of parental choice would be the same as admitting that, for some parents, choice of school will not be honoured. In other words, it would make the government's promise of parental choice hollow.

It is widely understood that the efficient education of other children depends on how teaching and learning are organised in a school. In some parts of the world there are no separate special schools; all children are educated in the mainstream. If some UK schools are concerned that the presence of one child will compromise the efficient education of others, they should be supported to develop their capacity to provide for the full diversity of learners; not be told that they don't have to do it.

c) Legislation needs to be consistent with international instruments which the UK has ratified.

The sub-clauses suggested for removal are inconsistent with:

- the government's commitment to the UN Convention on the Rights of the Child, Article 23 of which is specifically concerned with disabled children. Of particular relevance is the General Comment no. 9 (2006) of the UN Committee on the Rights of the Child, which states: "The Committee emphasizes that the barrier is not the disability itself but rather a combination of social, cultural, attitudinal and physical obstacles which children with disabilities encounter in their daily lives. The strategy for promoting their rights is therefore to take the necessary action to remove those barriers."
- the government's ratification of the UN Convention on the Rights of Persons with Disabilities, Article 24 (Education) which stipulates an inclusive education at all levels. The interpretive declaration clearly states: *"The United Kingdom Government is committed to continuing to develop an inclusive system where parents of disabled children have increasing access to mainstream schools and staff, which have the capacity to meet the needs of disabled children."*

d) Legislation needs to be clear and unambiguous

Wording that is ambiguous or subject to interpretation is likely to confuse, at best, or be abused, at worst. The condition that the education of a disabled child should not compromise the efficient education of others has repeatedly been (ab)used by schools resisting change. The case of Mossbourne academy, attempting to refuse admission of a high achieving pupil who has cerebral palsy, on the grounds that it would compromise the education of other children, is just one recent example.

2. **Selecting more robust and functional terminology.**
We recommend that new legislation does not use the term "special educational needs", for the following reasons:

a) Weak definition

The term "special educational need" first appeared in law in the 1981 Education Act, which stated that children should be identified as having special educational needs if they have "a learning difficulty which calls for special educational provision to be made for them". This definition still holds today and appears in the revised Code of Practice (2001). It has repeatedly been criticised as inadequate and, in the words of Baroness Warnock in 2005, is "the purest vicious circle you will ever know". She added: "Well, that is not much of a definition but it is the only definition there is." More than 30 years on, the term may only seem acceptable by virtue of its longevity.

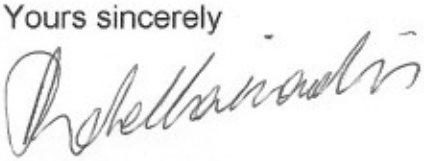
b) Potential harm to young people's well-being

Labels of "special educational need" draw attention to perceived differences, in ways that allow for similarities with peers to be overlooked. This, in turn, encourages children to be seen, and to see themselves, as significantly different (often inferior) from their peers. No matter how constructive the learning support that comes as a result of labelling, the stigma of difference can be harmful. The 2010 Ofsted report "A statement is not enough" provides clear evidence that many children and young people are being identified as having "special educational needs" as a direct result of the educational setting they find themselves in. Applying a label that implies within-child deficit seems to us inappropriate.

At a time of such radical law reform, we hope that the government will take the opportunity to establish a new culture of making educational provision for "all children". If the Department for Education believes that a particular group of children and young people has to be defined, and separate provisions articulated for them, a clear alternative seems to be the term "disabled children and young people" which can rely on the definition of disability which exists in the Equality Act 2010. The Green Paper which has led to the draft legislation seems to concur with this. It had clearly identified the accomplishments of the "Achievement for All" programme (p.65) and recognised that a culture of high expectations, coupled with personalised school-based support, has led to a declassification of children previously identified at School Action. In such instances, the Green Paper appropriately pointed out, "the label itself is no longer necessary".

Please feel free to contact me at the above address, or at artemi@csie.org.uk, should you want to discuss any of the above points further. Thank you for taking these important points into consideration.

Yours sincerely



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