



Children and Families Bill –the problems

Debs writes:

Last week, I had the pleasure of listening to Jane McConnell (IPSEA's Chief Executive) speak at the Towards a Positive Conference.

As Jane spoke, I realised that the messages about the Bill are not getting out – either people think the changes don't affect them or the changes just won't happen.

However, **if you have a child or young person aged 0 to 25 with ANY additional needs**, then you need to take five minutes out of your busy day (and as we are parents too, we know how chaotic our days can be) but **the changes being proposed WILL affect you** and not all of the proposed changes will help families.

This week we will be sharing with you the changes you need to be aware of and also saying how you can take action. Please share these posts with your friends and colleagues.

Which proposed changes will reduce or remove your current rights?

Duty to Assess SEN: At present, there is a PROACTIVE duty to identify the needs of children and young people with SEN via assessment: "Proactive = Acting in advance to deal with an expected difficulty".

In the Children and Families Bill (in its current form), this has been reduced to a duty to identify. "Identify = To ascertain the origin, nature, or definitive characteristics". There is no duty on the LA to be proactive. This is a weaker duty on the LA and will cause issues for many parents who are just entering our Special Needs Jungle looking for help and support for their child.

We need the DfE to ensure that LAs are proactive in identifying needs.



Time Limits: At present, your LA has a maximum of six weeks from receiving the request for statutory assessment (i.e. starting the statementing process) to decide if they will assess and then they have a further 10 weeks to decide whether they will issue a statement.

The Children and Families Bill, in its current form, will not provide a time limit by which LAs need to make a decision about whether they will issue a Education Health and Care Plan (EHCP). Once they decide to issue, there will be a time limit of 20 weeks (from the initial request) to issue, but as a mum who has gone through this process four times (once to be turned down), I can remember how anxious I was after my application had gone in, waiting to see if they would agree to assess.

Then, again, the stress I felt when I was waiting for the decision as to whether they would issue a statement. However, I had taken advice and knew that there was a time frame in which the LA had to make a decision and these dates were clearly marked on my calendar.

I cannot imagine the pressure that parents starting the process under the Children's and Families Act will face without the security of time limits. Yes, some LAs will do this promptly and will act fairly but as we all know, in the real world, there are also many, many LAs who won't.

We need the DfE to be prescriptive in this. This Bill is supposed to make our life less stressful, not more!

Education, Health & Care Plans: At present, the law says that a statement has to be in a standard format. As set out in the SEN regulations it has to "be in such form and contain such information as may be prescribed". However, the Children and Families Bill, in its current form, no longer requires regulations to prescribe a standard form for EHCP. Basically this means each LA can produce their own version.

Currently Part 2 of the statement has to state the educational needs of the child. Part 3 has to state the provision to meet the educational needs in part 2. The provision must be specific and also quantified.

If LAs can produce their own version of EHCP with no regulations about what they have to put in there – what can I say? We would all love to live in an ideal world where every LA would do everything possible to meet the needs of every child and

no LA would even dream of spending valuable resources on very expensive legal representation to do battle with parents on their behalf.

Unfortunately, however, we all have to live in the real world - with budget cuts, lack of resources, lack of working in partnership and in some areas, total lack of empathy and of course, the hugely expensive legal representation that the majority of parents cannot compete against.

We need the DfE to regulate the content of EHCPs and ensure that the educational, health and care needs of our children and young people along with the educational, health and care provision to meet those needs is in every EHCP.

Annual Reviews: Currently, there is a duty on LAs to inform parents, children or young people of the outcome of the Annual Review. Once this is communicated, parents and children/young people can appeal to the SEND tribunal if they are unhappy. However, the Children and Families Bill, in its current form, no longer has this duty. So, LAs don't, in theory, have to tell you.

In addition, there are current duties such as enabling parents to participate in the decision making; the requirement to obtain up to date information before an Annual Review and share it with parents; parents to be able to make their views known and for those to be circulated; the compulsory attendance of professionals at the review meeting at the key stages of a child/young person's education and transition arrangements out of education.

Guess what? Yes, I think you are starting to get the general idea – there is no duty for any of the above in the Children and Families Bill.

We need the DfE to address this. Once again, some LAs and educational settings will do all of the above without legislation in place but so many more will only do what they absolutely have to.

If you want to know how to take action, please visit [IPSEA's website](#)

We will be posting soon about some other changes which will reduce or remove your current rights and some outstanding issues with the proposals of the Children and Families Bill.

We recently wrote about some of the **changes being proposed** in the **Children and Families Bill** that will not benefit families. We looked at the duty to identify SEN, the annual review, the time limits and also the format of the Education Health and Care Plan (EHCP).



Today, we want to raise your awareness of other issues with the proposed changes and would like to thank Jane McConnell and all at **IPSEA** for helping to raise awareness of these.

Admission to Special Academies:

At present any child with SEN but without a statement must be educated in a mainstream school. In order to attend a Special School, a child must have their needs assessed and the LA then have a duty to fund the provision identified by the assessment. This, in principle, protects children being placed in potentially inappropriate schools. There are no exceptions to this in the current legislation.

This principle still exists in clause 34(2) of the proposed Bill but an exception has been introduced. Special Academies (including Free Schools), will now be able to admit children or young people with SEN permanently into the school without them having an assessment or an EHC Plan in place – if they are given permission by the Department for Education. Now, in theory, this sounds great. Getting your child into a special academy placement without having to go through the statutory assessment process (especially as the new Bill doesn't put time limits on the process). However, there are two issues with this:

1. It undermines the principle that mainstream schools **MUST** be enabled to make provision for **ALL** children without a statement/EHCP and also **MOST** children with statements/EHCs – so if a mainstream school knows there is a Special Academy nearby, there will be a strong temptation to point the parents in their direction, rather than take the child themselves and have to cater for their needs. So no aspiration necessary for the mainstream school to improve their teaching to include children with SEN with or without a statement or EHCP; and
2. If a child with SEN is admitted to a Special Academy without EHCP – what happens when things go wrong? What if the Academy cannot meet the needs of the child? What if the child, due to no assessment of needs, is placed in the wrong Academy? There is no duty for the LA to fund the provision without an EHCP and the parents will have nothing to challenge the school or LA with if there is no EHCP. What about the Health and Care provision? If no assessment or EHCP,

how will the school and family know they are meeting the Health and Care needs of the child? Yes, there will be minimum standards that all schools must adhere to – but let's be honest, have you ever tried to find your LA's minimum standards and if successful, actually make sense of them? There is of course the NHS constitution and the Children's Act but very often, to access the Social Care side of support, a statement is currently needed so no EHCP could, in theory mean, no access to that support.

We need the DfE to seriously consider this option. Having an assessment ensures that the child's needs are accurately recognised and provision put in place.

Re-assessment of Needs:

At present, a re-assessment is the same as an assessment. If a child or young person's needs change, then a further assessment can be requested and if agreed, then the LA has to comply with the statutory assessment duties. This includes time limits, consulting with the professionals named in the Regulations (education professionals, educational psychologist, social services and health services).

However, in the proposed Bill, a new concept of re-assessment is being introduced. LAs will be allowed to decide what format a re-assessment takes. There will no longer be the same duties to consult and obtain evidence from the professionals named above and they can also choose to review just one area of the EHC Plan.

Also, there is no duty for the LA to conclude the process of re-assessment at the two points which would trigger a right of appeal to the SEND Tribunal (i.e. when the LA decides not to issue an amended EHC Plan or when the LA issues a new EHC Plan with which the parent disagrees).

So basically, if your child's needs change, the LA can re-assess but may only reassess one part of the Plan, e.g. the health part but no need for them to reassess the Education and Care part of the Plan. As we all know, each of these impacts on the other which is why the idea of an EHC Plan was so popular with parents. One plan that looked at their child holistically, no need to tell your story more than once, everyone working together, etc. So why have a joint plan, why jointly commission, why fund "Working in Partnership" workshops if once the EHC Plan is published, any re-assessment reverts back to individual agencies.

If you are not happy with the proposed amended EHC Plan or if the LA decides not to issue an amended EHC Plan, then the proposed Bill (in its current form) does not give you any right to appeal to the SEND Tribunal.

Again, this Bill is introducing changes which, if we are honest, are based on every LA existing in a world we don't live in. Yes, in an ideal world, LA's would never not re-assess, they would always produce an amended Plan if the child's needs changed, the plan would always look at the child's need in every aspect of their life and the LA would unreservedly support families if their current school did not meet the needs of their child. However, we live in the real world.

We need to take action now, before the Children and Families Bill becomes the Children and Families Act. If you want to know how to take action, please visit the [IPSEA](#) website