

# DE consultation on the draft Special Educational Needs (SEN) Regulations

17 January 2021

CSSC welcomes the opportunity to comment on the draft special educational needs regulations and the draft Code of Practice which are required in order to support the implementation of the SEN Framework in schools. CSSC is mindful that special educational needs provision is an important priority for schools and that significant strategic change is underway. CSSC notes that the Education Authority (EA) is currently consulting on a draft area planning framework for special schools and a draft framework for specialist provision in mainstream schools. CSSC has consulted with controlled nursery schools, primary schools, post-primary and special schools to ensure that this and other responses on matters pertaining to SEN are representative of the views of the controlled sector. CSSC shares the significant concerns expressed by controlled schools in relation to their ability to respond to pupils’ needs within the current system as presently managed and resourced. Practitioners who include senior leaders and SENCos have highlighted several priority areas to address which are not limited to the following: -

* the need for increased early identification and intervention,
* delays in accessing relevant support at the current Stage 3 of the Code of Practice,
* delays in the issuing of a completed statement,
* providing for the needs of children with SEN within the current economic climate
* the need for Learning Support Coordinator and whole staff training that meets the increasing complexity of need and which is informed by the views and experience of practitioners.

Mindful of the significant work that is required to ensure that the needs of children with SEN are appropriately met, CSSC welcomes the establishment of a SEND Programme Board which will co-ordinate the different strands of identified SEND development work. CSSC welcomes the opportunity to contribute to the Programme Reference Group which will inform the Programme Board’s priorities and represent the views of relevant stakeholders.

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CSSC is particularly encouraged by the commitment made by the Programme Board to secure practitioner engagement which CSSC considers crucial to ensuring that any evaluation of the interventions to support children with SEN is informed by the views of practitioners as to what constitutes the most effective practice.

1. **Do you agree that the proposed experience requirements for LSCs are sufficient for them to fulfil their role?**

From our engagement with senior leaders within controlled schools the general consensus was that the proposed experience requirement for the role of Learning Support Co-ordinator (LSC) is sufficient for them to fulfil their role. Concerns were expressed, however, that the three year experience requirement could disadvantage candidates suited to the role who, while having less than three years’ experience of working with children with special educational needs, have qualifications specific to SEN which would equip them for the role. CSSC would emphasise that a recurring message from Principals during consultation was that full and regular training for LSCs is crucial and should be the main enabler for allowing the individual to fulfil the requirements of the role.

Some schools referred to the difficulty in appointing to this role and CSSC notes that this was a concern highlighted in consultation responses received by DE on the draft SEN regulations in 2016, especially in the context of small and/or rural schools and that in many circumstances the role is one assumed by Principals. While CSSC comments further on this issue in response to DE’s focus on the role in the consultation on the draft Code of Practice it would be remiss of CSSC not to highlight it in this context.

The status of LSCs within a special school is one which DE should consider further. Not all special schools have SENCos which is the current title still in use in the majority of schools.

Even those which do have SENCos highlighted that each teacher in a special school fulfils this role and that to elevate one individual above all of the other teachers who carry out the responsibilities attached to this role would not be favoured. One school indicated that the role has been created so that the individual, who is also a member of the Senior Leadership Team, can carry out the important role of engaging with and co-ordinating the input of external agencies, including Health and Social Care Trusts which is crucial to the support provided by special schools for their pupils. Further clarity is needed in relation to this role within special schools.

1. **Do you agree with the proposal to introduce a maximum upper time limit for the EA to issue a completed Statement?**

Senior leaders of controlled schools across all phases of education agreed with the introduction of a maximum upper time limit for the EA to issue a completed Statement.

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Schools are very much aware of the importance of early identification and early intervention to support the needs of children with SEN. Schools expressed frustration at delays in accessing the necessary support at all stages of the Code of Practice and referred to the significant work involved in engaging with concerned and frustrated parents to reassure them that the school is doing all it can to progress support for their child. Schools referenced delays in accessing relevant information from Health and Social Care Trusts as one of the reasons pupils were often not issued with a completed Statement within the statutory timeframe and also referred to delays in accessing written information from Health and Social Care Trusts to support the process of Annual Review. This is a concern across all phases of education but CSSC would also draw attention to the specific concerns highlighted by leaders of nursery schools and units. It is crucial that the information received by health and education during the 0 to 3 framework of provision is shared with the teaching and support staff who will provide for the child once they enter their pre-school year.

CSSC understands that the EA Early Years SEN Panel is working to identify children who require a statutory assessment prior to their pre-school year and that referral is made by an educational psychologist or a paediatrician. CSSC welcomes these efforts to strengthen partnership working however, is aware of concerns regarding regional inconsistencies in terms of access to health visitors which can result in failure to identify a child with special educational needs and to provide the appropriate interventions prior to their pre-school year. CSSC also notes that identification and early years or school-based intervention has been highlighted as a priority for the DE/EA SEND Programme Board and welcomes the Board’s acknowledgement of the importance of early identification and intervention. CSSC would also note that delays in issuing a completed Statement can have a detrimental impact on a school’s ability to resource the appropriate interventions for pupils with SEN. The leaders of pre-school settings noted that the statutory assessment process is so lengthy that pupils often do not receive the additional support which results from the issuing of a Statement until they are in P1 or later meaning that the pre-school setting has had to support what are in some cases increasingly complex needs with additional classroom assistant hours and external support at significant cost to their budgets. CSSC would highlight the current challenging economic climate and how within this context schools across all phases of education are faced with difficult decisions in relation to what provision they can put in place for their pupils.

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CSSC notes that the 22 week statutory timeframe was set following consultation in 2016 on a proposed timeframe of 20 weeks and that subsequent concerns expressed by Health and Social Care Trusts regarding their capacity to meet this target led to the amended statutory timeframe of 22 weeks. CSSC would contend that the amended statutory timeframe of 22 weeks is an ambitious timeframe but is an acknowledgement of the need for early identification and intervention to support the needs of children with SEN. CSSC welcomes

the 34 week maximum upper time limit to the issuing of a completed Statement and notes the associated exceptions to issuing the Statement within the statutory timeframe.

1. **Where an annual review of a Statement is taking place in any year a meeting is not required, do you agree that the parent or young person over compulsory school age can ask for a meeting?**

CSSC notes the significant work involved in planning for annual review, preparing for the meeting, inviting written representations and seeking advice. While the draft Code of Practice states that an annual review meeting is only required in the final year of a Key Stage and during the year a child attains the age of 14, CSSC understands that a school must still prepare an annual report and submit it to the EA. Schools agree that where an annual review of a Statement is not required the parent or young person over compulsory school age can ask for a meeting. While some leaders and SENCOs agreed that where no significant change is required a meeting could potentially be unnecessary, many were of the view that the annual review process and the associated meeting with parents and professionals, including members of EA, is beneficial in developing provision for the child or simply as confirmation that the school and the relevant pupil support services are responding appropriately to the needs of the child. Controlled school leaders confirmed that schools will always accommodate requests from parents to meet in relation to provision for their child and that regular constructive engagement with parents of children with special educational needs is considered a priority. CSSC also notes that it is the specific right of a parent, as outlined in Section 2 of the draft Code of Practice, to make representations (or further representations) about the content of a Statement.

Post-primary SENCOs referred to the significant paperwork attached to the annual review process and referred to an administrative process which often involves duplication of the information required by EA and previously submitted in other formats to Statutory Operations. CSSC notes the views expressed by the EA SEND Implementation Team that the three new stages of the draft Code of Practice will eradicate much of the duplication of information required by Statutory Operations to progress through the current stages of the Code of Practice.

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CSSC also notes that digitisation of the process with online referrals made possible and the Personal Learning Plan hosted on Schools’ Information Management System (SIMS) is intended to further refine the system and allow for improved sharing and storing of information between schools and the EA. This will also allow Health to access relevant records thereby potentially improving the ability to meet statutory timeframes. CSSC would, however, highlight the continued lack of access that nursery schools have to SIMS and would emphasise that facilitating this access should be a priority for the Department of Education (DE).

In respect of the requirement for nursery schools to submit their annual review reports to the EA in January the professional opinion of leaders of controlled nursery schools is that this is much too early in the academic year and it would be more appropriate to submit the report during the third term. The change in children during the second or third term is crucial to consider and will inform the transition to the most appropriate P1 placement.

This time also supports parents in deciding if their child should be educated in a special school or in a mainstream setting. While CSSC understands the potential negative implications of this for EA’s management of the admissions process it is important that these views are considered and that DE and EA consider steps which could mitigate the potential disruption of the admissions process.

1. **Do you agree with the introduction of time limits for the EA to inform the parent or young person over compulsory school age of the outcome of the annual review of a Statement?**

In our engagement, controlled schools agreed with the introduction of time limits for the EA to inform the parent or young person over compulsory school age of the outcome of the annual review of a Statement. In discussing the annual review process, post-primary Principals teaching children from a variety of Local Government Districts noted that the deadline for submission of annual review documentation varies across the legacy education and library boards and highlighted the need for consistency in these arrangements.

Concerns were raised across all phases about delays in receiving a response from the EA in relation to the outcome of an annual review and senior leaders noted how this can lead to distress for parents and delays in implementing the required changes in provision for children with SEN.

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1. **Do you agree with the proposed list of people who can assist and support a young person (child over compulsory school age) to exercise their rights within the SEN Framework?**

In our engagement controlled schools were in agreement with the proposed list of people who can assist and support a young person (child over compulsory school age) to exercise their rights within the SEN Framework. CSSC notes that the original consultation on the draft SEN regulations prohibited the assistance and support of a legal representative and welcomes the subsequent amendment to this decision based on the consultation responses received in 2016. Responses in 2016 also highlighted the lack of clarity in relation to who would fund the support required by a child and CSSC notes that the current draft regulations provide no further clarity on this issue. This should not be a cost to schools.

1. **Do you agree with the proposed list of people who can raise a question about a young person’s lack of capacity to exercise their rights within the SEN Framework?**

In our engagement controlled schools were in agreement with the proposed list of people who can raise a question about a young person’s lack of capacity to exercise their rights within the SEN Framework. Examples of pupils who are in denial about their specific need and therefore reluctant to engage with the Annual Review process were sited. Within this context it was considered important for others invested in the young person’s education to be able to question the young person’s lack of capacity to exercise their rights within the SEN Framework.

1. **Do you agree with the timescales regarding the mediation process?**

In our engagement controlled schools expressed agreement with the timescales regarding the mediation process. CSSC understands that the intention of mediation is to settle disputes and reach agreement between parties without recourse to tribunal. CSSC notes that responses to the consultation initiated in 2016 highlighted concerns that the proposed timescales of three working days for a parent to indicate they wished to pursue mediation did not allow enough time for parents to reflect on the issue of concern and to decide if mediation represented an appropriate option. CSSC welcomes the Department’s introduction of a four week timescale and believe this is more realistic.

Conversations with special school Principals about mediation raised other related issues of concern which CSSC feels are important to raise in this response. Special school leaders expressed specific concerns about the conduct of tribunals and believe that much more needs to be done to prepare staff for the difficult experience of attending tribunal. While it is the school leaders’ understanding that the conduct of these tribunals should be non-confrontational this is not their reported experience. Principals expressed the view that the

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briefing provided by the EA barrister was, in their opinion, often insufficient and they felt they were left to prepare their own defence. CSSC recommends that consideration is given to monitoring and evaluating the support provided to school representatives at tribunal to ensure that what is naturally a difficult process for all involved does not impact on their emotional health and well-being.

1. **Do you have any other comments you would like to make on the draft SEN Regulations?**

CSSC is conscious that consultation on the draft SEN regulations and the draft SEN Code of Practice is a key step in the full implementation of the SEN Framework. Conscious of schools’ challenged contexts in managing the many complexities posed by the current pandemic, CSSC would urge the Department of Education to ensure that schools are fully supported in implementing the SEN Framework. While capacity building is always key in allowing schools to meet the needs of all pupils it must be acknowledged that wider system change is required to allow for more effective interventions. Controlled schools, conscious of their duties to meet the needs of all learners, have worked diligently within their schools and in collaboration with other schools to build capacity and to develop specific expertise.

Schools now need to be assured that the school based provisions they make for the children and young people they support will be enhanced by interventions from Education and Health and Social Care Services. Consistent and regular engagement with practitioners to inform this system wide change is crucial to allow for change that is responsive to pupil need and allows all children and young people with special educational needs to progress and achieve improved outcomes.

CSSC is willing to discuss its response to this consultation.