



# **Children and Families Bill Part 3 – Special Educational Needs**

## **House of Lords Second Reading 2<sup>nd</sup> July 2013**

### **Briefing by the Down's Syndrome Association**

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## **Children and Families Bill – Briefing for House of Lords second reading**

As the Children and Families Bill receives its second reading in the House of Lords, the Down's Syndrome Association continues to have serious concerns about the impact of this legislation on children and young people with Down's syndrome and their families.

### ***About the Down's Syndrome Association***

The Down's Syndrome Association (DSA) provides information and advice on all aspects of Down's syndrome to people with Down's syndrome (DS), their families and professionals. It is a Registered Charity established in 1970 and has a membership of over 20,000. Down's syndrome is the most common form of learning disability caused by a chromosome abnormality. About 1 in every 1000 babies born each year has the condition. All of these children will have some degree of learning difficulty ranging from mild to severe. Each will vary as widely in their development and progress as other children. Generally speaking, children with DS develop more slowly than their peers and the developmental gap between DS children and their peers widens with age. Research has identified characteristic strengths and weaknesses. Being aware of how these factors facilitate and inhibit learning will inform the provision of appropriate support. Some factors have physical implications; others have cognitive ones. Many have both.

### ***A missed opportunity***

We believe that the Bill in its present form falls short of the original aspirations of the Green Paper and that it fails to deliver a unified and consistent system:

- **across Education, Health and Social Care.** This remains an education driven system and there is still no duty to deliver the social care provision in the plan. The requirements for health and social care to be involved in assessments and reassessments have been weakened. There is also no single point of redress for parents.
- **across the country.** The local offer does not guarantee what parents can expect from schools and local services, perpetuating a 'postcode lottery' of provision. The new EHCPs will not have to follow a standard national format.
- **across the age range.** Although Education, Health and Care Plans will be available for children and young people from age 0 to 25 we have concerns that the extension beyond compulsory school age will not meet the expectations of parents. Unlike for schools, there is no duty to ensure that young people in colleges take part in mainstream activities. There is also a loophole making it easier for local authorities to deny education to young people over 18.

## ***Remaining concerns***

The DSA is a member of the Special Educational Consortium and we fully share the concerns expressed and elaborated in their separate briefing, in particular that the Bill as it stands:

- undermines current legal entitlements
- is overly focused on education and fails to bring disabled children and young people within scope of the legislation
- does not deliver joined up plans promised by the Green Paper
- does not place a duty on local authorities to deliver social care services identified in EHC Plans
- does not provide a single point of appeal
- gives a 'get out' for local authorities delivering support to young people over 18
- fails to make the Local Offer properly accountable
- removes the current distinction between School Action and School Action Plus in the draft Code of Practice

## ***Young people in transition***

In addition we wish to highlight a number of issues that are of particular importance to children and young people with Down's syndrome and illustrate these with cases from our helpline. These focus on young people in transition, a fact that is particularly relevant with the extension of the system to age 25.

### **Clause 32 – advice and information**

The requirement in this clause for advice and information for parents and young people is welcome. It does not however go far enough. The bill does not contain details of the information and advice that is to be offered. To be effective and trusted by parents, the service should be independent of the local authority.

The need for advice and information is particularly important at transition as young people begin to move in different directions as they approach adult life. Many will also be seeking the involvement of social care for the first time. Changes to the requirements for careers advice have meant that there is currently a lack of information available for this age group and parents and young people are not given a full range of options. Provision is patchy around the country.

In the bill as it stands, the legal rights that belong to parents of children of compulsory school age then pass to young people once they are over compulsory school age. In the light of this, the duty in clause 32 should be extended to include the requirement for an independent advocacy service for young people. All young people with Down's syndrome will have at least some degree of learning disability and will need support in making decisions. Young people's experience will be limited; they will require someone to support them in finding out about available options and to coordinate support.

### **Clause 35 - inclusion**

Clause 35 replicates the provision in s 317 (4) of the 1996 Education Act. It places a duty on mainstream schools to ensure that children with SEN take part in the activities of school along with pupils who do not have SEN. This only applies to maintained nursery schools and mainstream schools. Given the extended age range of 0-25, this should be extended both to providers of relevant early years education, i.e. publicly funded under the early years entitlement, and also to institutions in the further education sector.

A growing number of young people with Down's syndrome are now included in mainstream secondary school. On progression to college they may find themselves on discrete courses for students with Learning Difficulties and Disabilities without the opportunity to be included in a wider peer group as they were at school.

Evidence from calls to our helpline suggests that some young people who are successful included at secondary school find their options severely limited when they move onto college. We have learned of examples of young people and their parents being told that their only option is a general course for people with learning difficulties, often with little chance of progression. Extending the general inclusion duty to cover colleges would help extend the possibilities.

On a related point we note that clause 62 put a duty on mainstream schools and maintained nursery schools to designate a member of staff as SEN Co-ordinator but that this duty does not extend to institutions in the further education sector.

### **Clause 36 and 37 assessments and plans**

#### **Clause 44 – reviews and reassessments**

We remain concerned that this will not be a joined up system across health, education and social care.

Many children and young people with Down's syndrome will have additional health needs and the majority will have social care needs particularly as they approach adulthood. It is vital for both health and social care to be involved in any assessment or reassessment as well as education. This is necessary even if, as may be the case with social care, the young person does not have prior contact with the service.

Draft illustrative regulations associated with clauses 36, 37 and 44 do not give sufficient safeguards that this will happen. Reassessments in particular will not require the full range of professional advice.

We are particularly anxious about reviews and reassessments that may take place at the point when young people leave school and move to FE. Evidence from our helpline suggests that parents are not aware of the importance of input from health and social care at this stage. This has resulted in young people being refused places at independent specialist colleges because of the lack of evidence from social care. The new provisions will not improve this situation.

**Clause 42 duty to secure special educational provision**

We are pleased to see that there is now a duty on relevant commissioning bodies to secure health provision specified in the plan. However we remain concerned that the LA's duty to arrange provision has not been extended to cover social care. Again this is particularly relevant to young people with Down's syndrome moving out of a school setting who will require holistic provision in further education.