

# Education Bill

**NCB Briefing for Second Reading in the House of Lords –  
14 June 2011**



**Contact:**

**Sally Cole, Senior Policy Officer** tel: 020 7843 6013; email [scole@ncb.org.uk](mailto:scole@ncb.org.uk)

---

## **Summary**

The National Children's Bureau (NCB) believes that schools should be at the heart of their communities, meeting the diverse needs of children and families, acting as a channel to enable families to engage with their communities and access the services they need, and picking up the children who may fall behind.

Regrettably, overall we feel that the Bill fails to promote and indeed protect the strategic relationship that schools must have with their local community. We have significant concerns about the way in which the measures in the Education Bill diminish the strategic oversight of the education system in a local area (for example, through the removal of schools from the duty to cooperate, and removal of the requirement to have an admissions forum), and the way in which it chips away at hard-won parental rights (for example, through changes to independent appeal panels and the powers of the school adjudicator, and the removal of the right to complain to the Local Government Ombudsmen).

We welcome the extension of the free offer to two-year-olds from disadvantaged families, and seek clarification on other measures including the revised school inspection framework.

---

## **1. Introduction**

NCB is the leading support and development body for the children and youth sector in England. We bring together agencies from the voluntary, statutory and private sector, across education, health, care, youth justice, and all other agencies meeting the needs of children, young people and families. As part of this role, NCB convenes the Special Educational Consortium (SEC) and the Early Childhood Forum (ECF), and hosts the Anti-Bullying Alliance.

NCB areas of interest in the Education Bill include:

- Schools and the duty to cooperate
- Early years – the extension of the free offer
- School exclusions and changes to the independent appeal panels
- Ofsted inspection framework

---

## **2. Schools and the duty to cooperate**

Clause 30 of the Education Bill removes maintained schools, non-maintained special schools, city technology colleges and academies, and FE Colleges from section 10 of the Children Act 2004 [children's services in England: cooperation to improve well-being] – the legislative basis for the children's trust partnership. Regulations to s.17 and 17A of the Children Act 2004 (Children and Young People's Plans) were revoked as of 31 October 2010.

As a general principle, NCB believes that it is logical to expect services that have a commissioning as well as a delivery function to want to take an active part in the **strategic planning of local services**. We believe that part of the rationale for extending the duty to cooperate to the educational establishments listed above was to ensure that all relevant bodies were consulted during the development of the joint local plan. By removing the duty, schools, academies, FE colleges and other educational establishments lose the right to be consulted in the development of local strategic planning for children and young people. That is a matter of concern for NCB.

NCB therefore **does not support the removal of the duty to cooperate**. However we do believe that the worst risks of its **removal could be mitigated by introducing a separate new duty for educational establishments to cooperate in regards to vulnerable children including disabled children and children with SEN**, and we will be supporting amendments to this effect.

This is particularly important given the recent proposals in the SEN and Disability Green Paper which seek to create better partnership working across health, education and social care services. NCB shares the concerns of the Special Educational Consortium that the removal of schools' duty to cooperate sends the wrong message about the Government's intentions on partnership working for disabled children and children with SEN. There is a risk that this could undermine the potential benefits of the Green Paper.

---

### **3. Early years**

Clause 1 of the Bill amends Section 7 of the Childcare Act 2006 to enable local authorities to provide early years provision free of charge for different groups of children as defined in regulations, allowing government to fulfil its commitment to extend free provision to disadvantaged two-year-olds.

NCB and the Early Childhood Forum welcome the extension of free early education places to two-year-olds from disadvantaged families. A wealth of research<sup>1</sup> shows that good quality early childhood services improve outcomes for all young children, including developing their social skills and cognitive and emotional development. Key findings of the Effective Provision of Pre-school Education<sup>2</sup> research project identified that disadvantaged children benefit

---

<sup>1</sup> For example, UNICEF (2009) The childcare transition: a league table of early childhood education and care in economically advanced countries. (Innocenti report card)

[http://www.unicef.ca/portal/Secure/Community/502/WCM/HELP/take\\_action/Advocacy/rc8.pdf](http://www.unicef.ca/portal/Secure/Community/502/WCM/HELP/take_action/Advocacy/rc8.pdf)

<sup>2</sup> Sylva, K and others (2004) The effective provision of pre-school education (EPPE) project. Final report. DfES/Institute of Education, University of London.

significantly from high quality pre-school experiences, especially when in a setting with children from a mix of social backgrounds.

- Although it is likely that the **definition of 'disadvantage'** will be an income-based measure (ie, eligibility for free school meals), this commitment provides an opportunity to extend free early years provision to other groups of young children who would benefit from early education places at the age of two: eg disabled children, children with special educational needs (SEN), looked after children, and children with English as an additional language. **Does the government intend that these children will be covered by the extension of the free offer?**
  - We seek clarification regarding whether any criteria will be put in place to ensure that the free provision for very young children will be of high quality. For example, **will the government ensure that local authorities recruit high quality childminders** for this work as their one-to-one service can be especially beneficial for very young and disadvantaged children?
- 

#### **4. School Exclusions**

Clause 4 amends Part 3 of the Education Act 2002 to introduce new exclusions provisions for England, with regulations outlining the exclusion process, as well as the powers and functions of the new review panel.

In 2008/9, there were around 6550 permanent exclusions from primary, secondary and special schools, representing 0.09% of the total number of pupils in schools. The rate of permanent exclusion from academies was 0.31%. In 2008/09, there were 640 appeals lodged by parents against the permanent exclusion of their child. Of the appeals heard, 25% were determined in favour of the parent and, of these, reinstatement of the pupil was directed for 39%.<sup>3</sup>

NCB is very disappointed that independent appeals panels are being replaced by a less powerful **review panel and process**. Reinstatement happens in a very small number of cases. We can find no evidence that reinstatement procedures are being abused or instructions to reinstate taken lightly. Where a student has been unjustly excluded from their school it is only right that they should be able to return. To deny such a remedy is counter to the principles of natural justice.

- We urge close **monitoring of the proposed power of the review panel to direct reconsideration of the exclusion** to make sure that it proves robust enough to challenge schools that may be behaving precipitately or unfairly – ie, does that power lead to a reconsideration of the evidence, changes in the school, or even reinstatement of the pupil.

---

<sup>3</sup> Department for Education (July 2010) Permanent and fixed period exclusions from schools and exclusion appeals in England 2008/09.

We welcomed the **Schools White Paper proposals to pilot a new approach to permanent exclusions**<sup>4</sup> where schools will be responsible for finding and funding alternative provision for excluded pupils through either collaboration with other schools to provide suitable places, or buying suitable places from the local authority or other provider. We would also support the White Paper proposal that schools be held accountable for the pupils they exclude by including the academic performance of excluded pupils in their performance tables.

We continue to have concerns about the **appeals process as it applies to academies**, since they lie outside the review, or indeed appeal, panel process. Instead, the Academy Trust is required to make arrangements for enabling appeals against exclusion in accordance with the functions assigned to the local authority.

- Could the government outline **how the changes in the Bill will affect the exclusion appeals system used by academies?**
- 

## **5. Ofsted Inspection framework**

Clause 40 replaces section 5 of the Education Act 2005 to provide areas on which the Chief Inspector must report, including pupil achievement, the quality of teaching, leadership and management, and pupil behaviour and safety. In addition, in reporting on the quality of education, the Chief Inspector must consider: the spiritual, moral, social and cultural development of pupils; and the extent to which the education meets the needs of pupils, specifying in particular disabled pupils and/or those with special educational needs.

NCB welcomes the focus on different groups of pupils. including gender, ethnicity, pupils eligible for free schools meals and the pupil premium, looked after children, and gifted and talented pupils.

However we are concerned that the inspection report criteria does not reflect the role of schools in promoting children's wellbeing in their day to day lives. For example, effective school health initiatives have been shown to have a positive impact on pupils' health and behaviour, and can be particularly effective in improving young people's knowledge of health issues<sup>5</sup>.

- **How would the Government see the role of schools promoting pupils' physical, emotional and mental health being reflected in inspections?**

---

<sup>4</sup> Department for Education (2010) The importance of teaching. Paras.3.37-3.39.

<sup>5</sup> Lister-Sharp D, Chapman S, Stewart-Brown S, Sowden A (1999) *Health promoting schools and health promotion in schools: two systematic reviews* Health Technology Assessment HTA NHS R&D HTA Programme