



SEC briefing on Academies Bill – important change to the law

SEC concerns at the beginning of the Academies Bill

There were three separate issues which SEC identified as needing to be addressed in regards to the SEN framework and its application to academies:

- Academy funding agreements - which govern academies' actions – do not give parents legal rights and cannot be used to directly obtain remedy. Even where the statements contained in a funding agreement are clear regarding the Code of Practice, it is unclear whether academy funding agreements can offer parents the same right to redress and protection that the legislation covering maintained schools does.
- Existing academy funding agreements only require academies to adhere to certain parts of Part IV of the Education Act 1996 – for example, academies do not have a duty to inform a child's parent because it is considered that their child has special educational needs (s317A EA1996).
- There are a number of amendments to legislation that have been built over time to strengthen the overall effectiveness of the SEN system - for example, maintained schools must ensure that their Special Educational Needs Coordinator is a qualified teacher with appropriate training. Many of these requirements do not apply to academies.

Recent developments

At Committee stage (23 June), the minister stated that he wanted to create 'parity' between the responsibilities of maintained schools and academies in regards to children with special educational needs and that the Government would seek to amend the bill at report stage to achieve this. This important statement was a result of some very significant pressure applied by peers who had been very well briefed by SEC members. The minister has also met with peers on a number of occasions to specifically address support for children with SEN in academies.

At report stage the minister tabled the following amendment:

Page 2, line 9, at end insert—

“() Academy arrangements in relation to a school within subsection (5)(a)(i) must include provision imposing obligations on the proprietor of the school that are equivalent to the SEN obligations.

() “The SEN obligations” are the obligations imposed on governing bodies of maintained schools by—

(a) Chapter 1 of Part 4 of EA 1996 (children with special educational needs), and

(b) regulations made under any provision of that Chapter.”

This amendment states that all academy funding agreements must include details of their obligations in regards to children with SEN – the ‘SEN obligations’. These obligations are to mirror the governor’s duties contained in Part IV of the Education Act 1996. In speaking to the amendment the minister stated:

“The purpose of this government amendment is simple; it is to ensure that the obligations placed on academies in respect of SEN mirror those placed on maintained schools. I said early on in Committee that I could not see in principle why one set of state-funded schools should treat children with SEN any differently from another set of state-funded schools.

We could have ensured parity through the funding agreement alone. However, we decided to go further. This amendment acknowledges the particular concerns that have been raised in relation to SEN and will therefore put into the Bill a requirement that academy arrangements-either funding agreements or grants-must contain provisions that impose obligations that are equivalent to those that are imposed on maintained schools in Part 4, and in regulations made under Part 4, of the Education Act 1996. This means that no funding agreement could omit these provisions unless further primary legislation were made to remove these requirements.

In practical terms, the amendment imposes additional obligations on academies to: inform parents that their child has SEN and of the special educational provision being made; accept the naming of the academy on a child's statement; and appoint as a SENCO a person who is a qualified teacher. Moreover, new SENCOs will have to undertake prescribed training. It will apply to any new academy and to any existing academy that enters into new funding arrangements.”

Reaction

After lengthy discussions between the SEC parliamentary group and officials, we believe that this amendment is an important move towards parity between academies and maintained schools and makes it much clearer – by placing a requirement on the face of the bill – that an academy is expected to behave as if they were a maintained school in meeting the needs of children with SEN. All future academies must include the key SEN duties placed on governing bodies of maintained schools and there have been very clear ministerial statements that academies are expected to meet the needs of children with SEN in exactly the same way as other schools. All future academies will also have to follow the SENCo and information regulations.

This amendment does not address the underlying issue that SEC has raised about academies: that academy funding agreements do not give parents the same rights to redress as maintained schools governed by the law. Our goal was to have academies covered by the law and we have therefore not achieved everything we wanted. The Government was unwilling to apply the law directly to academies, possibly because this would set a precedent and lead to a gradual erosion of academies status as independent schools. Nonetheless, the progress we have made since the bill was introduced is significant.

The key issue will now be creating parity in terms of complaints and redress. Currently, our thinking is that parity could possibly be created through a statutory academies complaints procedure that is accessible to parents, has clear and binding timescales, and has sufficient expertise to understand the needs of children with SEN and disabilities and the legal framework, including case law, which applies to SEN in maintained schools. If we can achieve parity in the complaints procedures before the bill receives Royal Assent we will be very close to having achieved our ultimate goal of ensuring academies have the same responsibilities for, and are fully accountable to the parents of, children with SEN and disabilities.