

## **Title of the policy strand or area**

### *Consultation on Giving Children and Young People a Right to Appeal*

## **Description of the policy strand or area**

1.1 The consultation explores giving children and young people a right to appeal decisions regarding exclusions and special educational needs (SEN) assessments and statements and to make disability discrimination claims. It will also explore the support which may be needed to take forward such appeals and claims, and considers the support young people from age 16 may need when taking forward an admissions appeal.

1.2 The consultation will support vulnerable children: disabled children and children with SEN and asks how best to support Looked After Children to avoid and manage permanent exclusions from school.

1.3 The Department is seeking, through the consultation, the views of children and young people, children's organisations, parents, parents' organisations, governing bodies and governors' organisations, Tribunal and independent appeal panel members, local government, school and care staff, unions and professional bodies; and the voluntary and charitable sector.

1.4 The consultation will consider:

- the principle of giving children and young people from age 16 the right to appeal decisions about their permanent exclusion from school,
- the principle of giving children and young people the right to appeal SEN statements and assessments and to make claims about disability discrimination, the age of young people to do so and the level of understanding of children and young people to effectively exercise these rights and whether a competency measure is required;
- whether existing systems are sufficient to support children and young people in exercising these rights, and the new right for young people to appeal against decisions on admissions from age 16;
- handling disagreement between parents, children and young people about appeals; and,
- how Looked After Children can be better supported to avoid or manage permanent exclusion within the secondary school environment.

1.5 The consultation is exploring at what secondary school age children and young people should have the right to appeal SEN statements and

assessments and to make claims in relation to disability discrimination to the First-tier Tribunal.

## **The evidence base: key facts and findings**

2.1 Quantitative evidence in the education system is derived from administrative data collected by the DCFS, for example from local authority returns, the annual schools census, national curriculum tests, the awarding bodies in relation to educational qualifications, the database of teacher records, individualised learning records (ILR), the national information system for vocational qualifications (NISVQ), and the Connexions service; and from regular surveys based on representative samples such as the Labour Force Survey (LFS), the Youth Cohort Study (YCS), the National Learner Satisfaction Survey (NLSS), the work of the Office for National Statistics (ONS), and the Longitudinal Study of Young People in England (LSYPE).

### **Permanent Exclusions**

2.2 In 2006/07 there were 8,860 permanent exclusions in England of which 1,050<sup>1</sup> appeals were lodged by parents against their child's permanent exclusion, and 970 of these were heard. Of the appeals heard, almost 25 per cent were determined in favour of the parent, and of these, reinstatement of the pupil was directed for almost 40 per cent of cases.

2.3 **SEN & Disability:** Evidence shows that 70% of permanent exclusions are of pupils with SEN, and hence by allowing a child right of appeal, we are giving an additional voice to those with SEN.

2.4 Some 28% of Looked After Children have SEN statements compared to 2.8% of pupils nationally: Looked After Children are more likely to be permanently excluded than their peers.

2.5 **Ethnicity:** Permanent exclusion rates are higher than average for Travellers of Irish Heritage, Gypsy/Roma, Black Caribbean, Black Other and White/Black Caribbean pupils<sup>2</sup>. In a sample of 50 secondary schools selected (based on a sample of LEAs with a range of proportions of minority ethnic pupils and a range of permanent exclusion rates), both permanent and fixed term exclusion rates were higher amongst Black pupils (data available from 33 of these schools). In 34 percent of the sample supplying data, Black pupils received fixed term exclusions at twice the rate of other pupils<sup>3</sup>.

2.6 **Gender:** Boys account for 80 percent of permanent exclusions and three quarters of fixed term exclusions.

2.7 **Summary:** Evidence shows that boys, in particular those from ethnic

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<sup>1</sup> <http://www.dcsf.gov.uk/rsgateway/DB/SFR/>

<sup>2</sup> DCFS (2004), *Ethnicity and Education*

<sup>3</sup> Parsons et al. (in press). *Minority Ethnic Exclusions and the Race Relations (Amendment) Act 2000*, DfES, RR616.



minority backgrounds are more likely to be excluded than girls. We believe that by giving young people and children the right to appeal from age 16 would give a vital voice to boys, as well as girls. Allowing young people age 16 to appeal will bring them into line with the current admissions appeals age. We will consider carefully responses to the consultation.

### **Appeals and Claims to the First-tier Tribunal (SEND)**

**2.8 SEN & Disability:** In 2007/08 First-tier Tribunal (SEND) data<sup>4</sup> shows 3392 appeals were registered with some 1040 going through to a hearing and a decision issued.

**2.9** In 2007/08, 145 disability discrimination claims<sup>4</sup> were registered with some 80 going through to a hearing with a decision being made.

**2.10 Ethnicity:** On the SEN side in 2007/08 only 15% of appeals came from non white parents. The numbers were Bangladeshi 4, Black African 57, Black Caribbean 54, Black Other 35, Chinese 12, Indian 35, Pakistani 42, White 2203, Other 148, Not completed 802. On the disability side 13% of claims were from non white parents. The numbers were Bangladeshi 0, Black African 1, Black Caribbean 3, Black Other 1, Chinese 1, Indian 2, Not completed 24, Other 4, Pakistani 0, White 79.

**2.11** Black Caribbean and Black Other boys are twice as likely to have been categorised as having behavioural, emotional or social difficulty as White British boys (identified as having a special educational need and being supported at either School Action Plus or through a statement)<sup>2</sup>

**2.12** Pakistani pupils are two to five times more likely than White British pupils to have an identified visual impairment or hearing impairment (identified as a special educational need of School Action Plus or statement)<sup>2</sup>.

**2.13** Pupils with English as an additional language are slightly less likely to be identified with a special educational need (7.2 percent compared to 8.3 percent of pupils with English as a first language) and are less likely to be classified as having a specific learning difficulty, behaviour, emotional and social difficulties or an autistic spectrum disorder. However, they are more likely to have an identified speech, language or communication need. The finding that EAL pupils are half as likely to be labelled as having a Specific Learning Difficulty could be because their learning difficulty is seen as a result of their EAL status rather than a primary and specific learning difficulty<sup>2</sup>.

**2.14 Gender:** Boys are more likely than girls to be identified as having special educational needs: seventy per cent of children with identified SEN are boys; boys are more likely than girls to attend special schools, nine times as likely as girls to be identified with autistic spectrum disorder; and are four times as likely as girls to be identified as having a behavioural, emotional and

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<sup>4</sup> Sendist Annual Report 2007-08 at <http://www.sendist.gov.uk/FormsGuidance/annualReports.htm>



social difficulty (BESD).

2.15 On the disability side, there is no claim breakdown by the sex but generally in SEN and disability there are more boys than girls.

2.16 **Summary:** While there is no conclusive evidence that there is a significant number of appeals which are not being appealed to the First-Tier Tribunal but which should be, we are aware that there are concerns that this might be the case, particularly in the cases of looked after children living with foster parents or in children's homes.

### **Support, including for admissions appeals**

2.17 Admissions appeals policy was established through the Education and Skills Act 2008. However, support for young people taking forward such appeals is explored through this consultation alongside support for exclusion and the First-tier tribunal.

2.18 **Gender:** Post-16 participation rates vary by gender: girls are more likely to stay on in full time education at age 16 (82 per cent of girls compared with 72 per cent of boys). Girls are also more likely to be entered for A-Levels than boys (54 percent of entries are female), in contrast to the 1950s and 1960s when only a third of A-Level entries were female.

2.19 **Summary:** Any policies arising from the consultation will improve equality, particularly for those with SEN, disabled young people, black children and boys, and children in care who may not have a parental representative to support their interests, by supporting fairness for all. We will consider carefully responses to the consultation.

## **Overall Conclusion and Next Steps**

3.1 By giving children the right to appeal we hope to ensure that these children have the same level of access (either through their parents or themselves) to the appeals process, improving fairness where their parents or carers are unable or unwilling to appeal.

3.2 An adverse impact is unlikely, and on the contrary the policy has the clear potential to have a positive impact by reducing and removing barriers and inequalities that currently exist.

3.3 We expect Looked After Children, particularly boys and those with SEN, to benefit from the proposals.

3.4 These issues have a particular impact on disabled children, black children, boys, and those with SEN. Also these groups are less likely to participate in government consultations. We shall therefore ensure that our consultation reaches these young people, their parents and relevant campaigning organisations. We will do this by producing a child friendly

version of the consultation document and by identifying stakeholders who can help us reach these groups of children. We will consider carefully responses to the consultation.

3.5 We shall analyse returns to the consultation and will publish the Government response within three months of the consultation closing date as per statutory requirements.

