



## **Review of Special Educational Needs and Inclusion**

**Response to Ministerial briefing on 16 May 2012 and 13 June 2012**

**6 July 2012**

### **Introduction**

1. In June 2010, the Equality Commission submitted a response to the Department of Education's ('the Department') consultation on *Every School a Good School - The Way Forward for Special Educational Needs*<sup>1</sup>.
2. In April 2012, we also submitted a response to the Department's *Summary Report of Responses to the Consultation on Every School a Good School - The Way Forward for Special Educational Needs and Inclusion and the associated Equality Impact Assessment*.<sup>2</sup> This Department's report set out the broad direction of travel and key proposals for taking forward its policy in this area.
3. We met with the Department to discuss our response to the summary report in more detail and have also, along with other key stakeholders, met with the Minister and the Education Committee in order to highlight our views in relation to the Department's review of SEN. We also sent a briefing to the Education Committee in April and May 2012.

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<sup>1</sup> Commission response to the Department's consultation on *Every School a Good School - The Way Forward for Special Educational Needs*, 2010,

<http://www.equalityni.org/archive/pdf/FinResptoESAGTheWayForwardforSENandInclus.pdf>

<sup>2</sup> Commission response to Department's Summary report of responses to SEN review, April 2012, [www.equalityni.org](http://www.equalityni.org)

4. We welcome the Department's recent response (29 June 2012) to us regarding the recommendations we set out in our April 2012 submission (noted above).
5. Following on from the Ministerial briefing on 16 May 2012 to the Education Committee we have set out below additional recommendations which we are of the view require consideration. This submission takes into account the Minister's briefing to the Education Committee on 13 June 2012 and the Department's 29 June response to our April 2012 recommendations.

### **Executive Summary**

6. In summary, the Commission:-

- welcomes the Department's proposal to develop guidance for schools on bullying of children with SEN/disabilities and would welcome the opportunity to liaise with the Department in relation to this draft guidance;
- seeks confirmation from the Department that steps to tackle bullying and promote positive attitudes towards disabled children will be taken across all educational settings that the Department funds;
- recommends that the Department targets training at individuals with key roles in supporting children with SEN/disabilities; such training to include awareness raising of disability issues; the need to promote positive attitudes towards disabled children; and rights and obligations under the UNCRPD and the disability equality legislation;
- recommends that, not only should ELBs/ESA have a duty to outline the range of supports available to schools and to SEN pupils but they must also have sufficient resources to ensure that such supports are delivered to SEN pupils within a reasonable timeframe;

- recommends the retention of the current full annual review process and that steps are taken to ensure that such reviews are carried out in a comprehensive and robust manner;
- seeks clarification from the Department as to whether or not there will be specific timelines for reviewing Personal Learning Plan (PLPs). The Commission recommends that PLPs are reviewed at least annually.
- recommends, as regards the additional duty on schools to provide auxiliary aids and services for disabled pupils, that following a public consultation, these changes are introduced to SENDO 2005 as part of the legislative changes to SENDO 2005 which will be required in order to implement the Department's review of SEN;
- recommends that the Department, in conjunction with OFMDFM, addresses legal gaps in protection for disabled pupils in schools against discrimination and harassment;
- recommends that additional rights of appeal for children, if implemented, are not restricted to appeals in relation to SEN but should equally apply to disability discrimination claims against schools;
- will liaise further with the Department as regards the potential imposition of a statutory duty upon parents to avail of DARS prior to a case being heard at SENDIST, as well as a statutory duty on all parties to participate in dispute resolution. We will also liaise further with the Department as regards the development of a cost-effective model for future funding.

## **Recommendations**

We have set out below a detailed explanation of our recommendations, as well as the rationale underpinning these recommendations.

### **Positive attitudes towards disabled pupils**

7. In general, it is essential that the outworkings of the SEN review result in an effective system that ensures that the needs of all children with SEN, ranging from those who require a small amount of support to those with the greatest needs, are met. As highlighted in our previous submission to the Department, we support and welcome many of the Department's proposals in relation to a revised SEN framework.
8. In addition, we further welcome a number of the proposals highlighted by the Minister in his briefing to the Education Committee on 16 May 2012.
9. In particular, we welcome the Department's proposal to 'promote increased awareness of disability and a culture of raised expectations for children with SEN across schools'. We further welcome the commitment to emphasise the rights of the child in a revised statutory Code of practice, within the context of the UNCRC and UNCRPD.
10. We also welcome the Department's proposal to develop guidance for schools on bullying of children with SEN/disabilities, as indicated in its recent letter to the Commission.
11. In light of our role, along with the NI Human Rights Commission, as the independent mechanism tasked with promoting, protecting and monitoring implementation of the UNCRPD, as well our strategic focus in promoting equality of opportunity and good relations in education, we would welcome the opportunity to liaise with the Department in relation to this draft guidance.
12. It is important that steps to tackle bullying and promote positive attitudes towards children with SEN (as well as other disabled children) are taken across all educational settings that the Department funds (including pre-school) and we seek confirmation

from the Department that such steps will be taken across all educational settings that it funds.

13. As highlighted in our submission in April 2012, Article 8 of the UNCRPD places obligations on State Parties to raise awareness of the issues affecting disabled people and to combat stereotypes and prejudices and specifically to 'make sure that schools and other places of learning teach respect for the rights of disabled people.'
14. We welcome the Department's proposals in relation to building the capacity of teachers and the wider school workforce in order to enhance their ability to meet the needs of children with SEN.
15. In order to underpin the proposed guidance for schools on tackling bullying of children with disabilities, and as part of the proposed steps to build capacity, we recommend that the Department targets training at individuals with key roles in supporting children with SEN/disabilities; including teachers, early identification officers, class room assistants, Learning Support Co-ordinators, Board of Governors, as well as forming part of initial teacher training.
16. In particular, **we recommend that this training includes awareness raising of disability issues; the need to promote positive attitudes towards disabled children; and rights and obligations under the UNCRPD and the disability equality legislation.**

### **Sufficient resources**

17. We welcome the Minister's proposal to strengthen the statutory duty on Boards of Governors so as to ensure that SEN provision, as appropriate, is made in schools, or the child referred to external support at an early stage. We also welcome the Minister's indication in his briefing in May 2012 to ensure that three (rather than two) levels of support will be available to meet the needs of children with SEN.
18. We note it is further proposed in terms of level-two support to schools, that the ELB/ESA will have a statutory duty to set out the offer of services that they will routinely make available to schools.

19. As the Department is aware, a recent Judicial Review decision by the High Court in *L's application*<sup>3</sup> highlighted the importance of stage three support (in the form of external specialist). In particular, the Judge highlighted that he considered that 'action on a child's learning difficulty is sufficiently urgent to require prioritisation in any case where a failure to act will make the difficulty more severe or more entrenched than would otherwise be the case. Where this would be so, the failure to use the power of intervention actively contributes to the seriousness of the learning difficulty and increases the likelihood that it will eventually require statutory assessment.' The Judge concluded that such a result was 'inconsistent with the SEN system'.
20. The case highlights not only the importance of specialist support for children at stage three but also the need for such intervention to be delivered within a reasonable time.
21. **We recommend that, not only should ELBs/ESA have a duty to outline the range of supports available to schools and to SEN pupils but they must also have sufficient resources to ensure that such supports are delivered to SEN pupils within a reasonable timeframe.**

### **Annual Review of Co-ordinated Support Plans (CSPs)**

22. In the Ministerial briefing, the Minister has indicated that it is proposed that a full annual review of CSPs will take place for all children at transfer between phases of education, at Key Stages and transition points in advance of leaving school.
23. It is proposed that in order to introduce a less bureaucratic approach to the annual review process in all other interim years a statutory two-step process would be introduced. As part of this process, it is proposed that the ELBs/ESA would write to the parent and the school to ask if they feel the current provision is meeting the child's needs and if they consider a full statutory annual review is necessary. It is proposed that if either the parent or the school felt the provision was

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<sup>3</sup> L's application [2012] NIQB 18

not meeting the child's needs, that a full statutory annual review would be required.

24. Whilst we recognise the additional burden primarily placed on schools in terms of both time and cost in carrying out a full annual review, we remain concerned that, apart from the above-mentioned times, a full annual review will not automatically take place and must be triggered by either the parent or the school.
25. The annual review provides an important opportunity for both the child with SEN, the parent and the school to assess the degree to which outcomes and targets set in CSPs are being achieved and whether or not additional support is required.
26. In line with **Article 7** of the UNCRPD, it provides an additional opportunity for a disabled child to have his/her voice heard. The Commission, recommends that the Department considers whether or not the proposed changes to the annual review process is 'in the best interests of the child' as set out in Article 7 of the UNCRPD. We consider our recommendation to be in keeping with the proposed approach of the Department as set out in its recent letter; in particular, its commitment to 'ensure that emphasis is given to the right of the child to express their views about their education and that such opportunities should be facilitated by schools and ELBs, particularly when drawing up PLPs and CSPs.'
27. A review, carried out in a comprehensive and robust manner, with effective involvement from all parties, has the potential to identify additional or changed needs relating to the child with SEN which may have occurred over the previous 12 months.
28. In addition, it is clear from the Department's report that according to ETI reports, 18% of primary schools and 38% of post primary schools inspected in 2010/11 did not have arrangements to identify, assess and meets the needs of SEN pupils to a sufficiently high standard. The annual review process adds an extra opportunity both for parents and schools to assess whether or not it is sufficiently identifying, assessing and meeting the needs of SEN pupils.
29. We are also concerned that parents may experience additional barriers which may make it difficult, or less likely that they will

specifically request an annual review: for example, due to lack of awareness/knowledge of the process; language difficulties, etc.

- 30. We recommend the retention of the current full annual review process and that steps are taken to ensure that such reviews are carried out in a comprehensive and robust manner.**

## **Review of PLPs**

31. In his Ministerial briefing on 16 May 2012, the Minister has indicated that “schools would be required to regularly review the progress of children with PLPs and revise provision where necessary.” It is also proposed that a revised statutory Code of practice will provide guidance on the content, management and review of PLPs.
32. We welcome the Department’s proposals to ensure a greater emphasis on targets and outcomes as regards PLPs. We also welcome the fact that schools would be required to consider the views of the child and the parent in the completion and review of a PLP.
- 33. We seek clarification from the Department as to whether or not there will be specific timelines for reviewing Personal Learning Plan (PLPs). The Commission recommends that PLPs are reviewed at least annually, in line with our previous recommendation as regards the timeline for the review of CSPs.**

## **Independent appeal of PLPs**

34. The Department indicated in its original consultation document that an appeal of a PLP drawn up by a school would be to the Board of Governors. The Minister has also indicated to the Committee for Education that if a parent is not satisfied with a decision of a teacher in relation to a PLP they can approach the Board of Governors.<sup>4</sup> The Ministerial briefing in May 2012 indicates that disputes between

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<sup>4</sup> Ministerial briefing to Committee for Education, 13 June 2012.

schools and parents in relation to PLPs would first be brought to a statutory Dispute Avoidance and Resolution Service (DARS). It further indicates that if parents remain concerned that the provision is not meeting the child's need, then they have the right to request that a statutory assessment be undertaken by the ELB/ESA.

35. It is essential that safeguards are put in place in order to ensure that any appeals mechanism resolves appeals quickly and in a transparent manner. Whilst we recognise that parents have the right to request a statutory assessment in the event that they consider their child's needs are not met, we have concerns that this may not ensure a quick resolution of concerns and may delay important interventions or support which are urgently required.
36. The Commission has also concerns that the Board of Governors may not be sufficiently independent (or be perceived by parents or others to be sufficiently independent) to hear appeals.
37. An effective appeal system is particularly important due to the fact that it is likely that the Department's proposals will result in a significant increase in the number of SEN children with PLPs.
38. **We recommend that the Department considers a more independent avenue for parents to appeal against a PLP assessment other than to the Board of Governors of the school.**

### **Strengthening protection for disabled pupils in school**

39. In our response submitted in April 2012, we highlighted the need for legislative changes to both the Disability Discrimination Act 1995 (DDA 1995) and the Special Educational Needs and Disability Order 2005 (SENDO 2005).
40. In particular, we recommended that SENDO 2005 is amended in order to place an additional duty on schools to provide auxiliary aids and services for disabled pupils, where reasonable. In addition, we also recommended that the current residual duty on the Education and Library Boards under SENDO 2005 in relation to the making of reasonable adjustments for disabled pupils or prospective pupil is extended so that it includes a requirement to provide auxiliary aids

and services. These recommendations are in line with changes due to be implemented in Great Britain under the Equality Act 2010 in September 2012.

41. The Commission also highlighted a range of other legislative reforms to both the Disability Discrimination Act 1995 and SENDO 2005; further details of which are set out in *Strengthening Protection for Disabled people: Proposals for reform*.<sup>5</sup>
42. We welcome the fact that the Department has, as indicated in its recent letter, passed our recommendations to the Special Education Team which holds the policy lead for children with a disability; on the basis that they are outside the remit of the SEN review. We also recognise that the introduction of such legislative changes to SENDO 2005 would need to be subject to a separate consultation by the Department.
43. As regards the additional duty on schools to provide auxiliary aids and services for disabled pupils, **we recommend that, following a public consultation, these legislative changes are introduced to SENDO 2005 as part of the legislative changes to SENDO 2005 which will be required in order to implement the Department's review of SEN.**
44. In relation to wider legislative reform of the Disability Discrimination Act 1995 and SENDO 2005, we note that the Minister indicated in his briefing to the Education Committee in May 2012 that "responsibility for considering changes to the DDA definition of disability rests with OFMDFM and is not within the remit of the review of SEN and inclusion."
45. We recognise that responsibility for changes to the DDA 1995 is the responsibility of OFMDFM, including responsibility for changes to the definition of disability. However, primary responsibility for ensuring

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<sup>5</sup> *Strengthening protection for Disabled people: Proposals for reform-Summary*, March 2012, ECNI, [www.equalityni.org](http://www.equalityni.org)

effective protection for disabled children in schools against disability discrimination under SENDO 2005 rests with the Department.

**46. We recommend that the Department adopts a holistic approach to addressing the needs of disabled children (including those with SEN) in schools.**

47. It is important to stress that the majority of recommendations raised by the Equality Commission in terms of reform of the DDA 1995 and SENDO 2005 (as they apply to disabled children in schools) have already been implemented in Great Britain under the Equality Act 2010.

48. It is of note that the Commission's recent Equality Awareness Survey 2011<sup>6</sup> showed that there is strong backing amongst the public who were surveyed for equality laws to be strengthened to match those in Great Britain.<sup>7</sup>

**49. We recommend that the Department, in conjunction with OFMDFM, addresses legal gaps in protection for disabled pupils in schools against discrimination and harassment.**

## **Reform of SENDIST**

50. We welcome the Department's commitment to liaise with the Department of Justice (DoJ) in relation to the concerns we raised as regards the practices and procedures of SENDIST; so as to ensure that they do not restrict access to justice for disabled children, including those with SEN.

51. We further welcome the fact that the Department will consider 'the outcome of pilots in England and Wales in order to enable the child to appeal to tribunal about SEN matters'. We note, for example, that the

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<sup>6</sup> *Do you Mean Me? Discrimination: Attitudes and Experience in Northern Ireland*, ECNI, June 2012, <http://www.equalityni.org/sections/default.asp?secid=7>

<sup>7</sup> 77% of respondents agreed or strongly agreed with this statement, while only 3% disagreed or strongly disagreed.

pilot scheme in Wales includes not only an appeal in relation to SEN but also claims of disability discrimination.

- 52. We recommend that in considering these matters in Northern Ireland, that the Department gives consideration to not only enabling the child to appeal in relation to SEN matters, but also to claims of disability discrimination against schools.**

### **Accessibility Strategy and plans**

53. We welcome the fact that the Department has passed our request for clarification on accessibility strategies and accessibility plans to its Investment and Infrastructure Directorate, and we look forward to receiving a response in the near future.

### **Funding and dispute resolution**

54. Finally, we note the Department's proposal that further work needs to be done by ELB/ESA to determine a cost-effective model for future funding and that the Review of the Common Funding Scheme will consider whether or not a SEN factor should form part of the funding allocated to schools under LMS budgets. We will liaise with the Department further as these proposals are developed.
55. We also note that the Department is considering the imposition of a statutory duty upon parents to avail of DARS prior to a case being heard at SENDIST, as well as a statutory duty on all parties to participate in dispute resolution.
56. Clearly this approach differs to the resolution of other forms of disputes; for example, employment disputes where there is no requirement placed on litigants to avail of dispute resolution services prior to lodging an Industrial Tribunal claim. It will be noted that no such requirement is proposed under the Department for Employment and Learning's current discussion paper on Employment Law.<sup>8</sup>

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<sup>8</sup> Employment Law: Discussion Paper, May 2012, DEL, [www.delni.gov.uk](http://www.delni.gov.uk)

57. In addition, it is important that such a requirement does not cause further delays in terms of meeting the needs of the child with SEN and that the dispute resolution process can be resolved within the time limit for lodging a complaint to SENDIST. Again, we will liaise with the Department further as these proposals are developed.

**Equality Commission  
July 2012**