

**Response by the Equality Commission for Northern Ireland
to the Consultation by the Education Authority on a
*Proposed Framework of Future Provision for Children in
the Early Years with Special Education Needs***

May 2018

1 Executive summary

- 1.1 The Commission welcomes the publication of a proposed framework for future provision for children in the early years with special educational needs (SEN).
- 1.2 We also welcome that the Authority has considered their obligations under both the Disability Discrimination Act 1995 and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) throughout the development of the Proposed Framework.
- 1.3 The Commission welcomes the emphasis that has been placed on early intervention, quality of support provision and the importance of parental support.
- 1.4 The Commission welcomes the Authority's overall conclusion that the proposals in their totality are considered as positively impacting on young people aged 0-4 years old with special educational needs and their carers.
- 1.5 The success of this framework will be dependent on adequate financial resourcing, robust mechanisms for data collection and the strategic evaluation of interventions and outcomes to ensure effectiveness and consistency of service. The Commission would welcome further clarity on how this will be achieved.

- 1.6 We note that the draft Equality Impact Assessment identified a number of action points to address issues identified relating to disability; gender; marital status and persons with dependants; religion, political opinion and ethnicity; respectively.
- 1.7 The Commission agrees with the Authority's assessment that the reduction in provision to some children anticipated under proposal 6 will potentially have an adverse impact on the children and carers impacted. We therefore welcome the fact that this concern is being explored with stakeholders during this consultation process.
- 1.8 The success of this framework will be dependent on adequate financial resourcing, robust mechanisms for data collection, the strategic evaluation of interventions and outcomes to ensure effectiveness and consistency of service. The Commission recommends the Authority provides clarity on how this will be achieved.
- 1.9 The Commission also **recommends** that the Authority:
- Takes steps to ensure that the framework does not include any deliberate retrogressive measures and meets UNCRPD State Party obligations to take effective measures towards the realization of the rights of disabled children to the maximum of its available resources.
 - Clarifies how related / ongoing issues such as communication, transportation and assessment backlogs have been taken into consideration and how they will be monitored when developing the proposed framework.
 - Clarify the Terms of Reference for the proposed Early Years Panel and what mitigating actions will be taken to ensure that the current backlog and delays are not compounded by any transition.
 - Clarify steps taken to address and monitor communication needs for people whose first language is not English.
 - Clarifies the Early Years Practitioner role in the context of existing SEN support and steps taken to ensure that all Teachers and Assistants receive comprehensive and appropriate training in Special Education Needs.

2 Introduction

- 2.1 The Equality Commission (the Commission) for Northern Ireland welcomes the opportunity to comment on the Education Authority's (EA) on a Proposed Framework of Future Provision for Children in the Early Years with Special Education Needs
- 2.2 The Commission is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on fair employment and treatment, sex discrimination and equal pay, race relations, sexual orientation, disability and age.
- 2.3 The Commission's remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998 (Section 75) and to promote positive attitudes towards disabled people and encourage participation by disabled people in public life under the Disability Discrimination Act 1995.
- 2.4 The Commission's general duties include: working towards the elimination of discrimination; promoting equality of opportunity and encouraging good practice; promoting positive / affirmative action; promoting good relations between people of different racial groups; overseeing the implementation and effectiveness of the statutory duty on relevant public authorities; keeping the legislation under review.
- 2.5 The Commission, with the Northern Ireland Human Rights Commission, has been designated under the United Nations Convention on the rights of Persons with Disabilities (CRPD) as the independent mechanism tasked with promoting, protecting and monitoring implementation of CRPD in Northern Ireland.
- 2.6 We are responding to the consultation with a view to promoting awareness of Convention rights relevant to the proposed framework.

Context

- 2.7 The proposed Framework of Future Provision for Children in the Early Years with SEN is based on a two phase programme of provision for children aged 0 to 4 years, and their families. The proposed framework embraces the needs of children, not just in relation to early years placements in special schools, but the wider needs of children and parents as they commence a journey from early assessment to support and targeted intervention.
- 2.8 The principles and associated proposals underpinning the Framework are based on a developmental model of service delivery and provision for children in the early years with SEN.
- 2.9 The Policy outlines a proposed Framework of Future Provision for Children in the Early Years with special educational needs (SEN). The key aim of the proposed Framework is to implement a high quality early years special education service across EA which is focused on children with the most complex needs, for whom a more intensive form of support is required. The aim is to provide enhanced consistency across all special school early years settings, which facilitates progressive steps towards equal access and provides targeted support, in line with the needs of the individual child.
- 2.10 The framework will aim to implement a high quality early years' special education service across EA which is focused on children with the most complex needs, for whom a more intensive form of support is required.
- 2.11 The framework will benefit:
- pre-school age children (in pre-school year), including those with a recognised disability, who have been assessed as requiring a special school placement.
 - children who are not yet of pre-school age (0-3 years), as arrangements to enable these children to access EA Early Years SEN support services, as well as other identified support, will provide earlier intervention for children and their families.

Identified impacts

- 2.12 Following an Equality Impact Assessment the EA have concluded that the proposals in their totality are considered as positively impacting on young people aged 0-4 years old with special educational needs. In addition to reform of provision for 3 and 4 year olds, more focus is being paid and additional support also given to young people aged 0-3 years and their parents.
- 2.13 A number of action points have been made to address issues identified relating to gender; marital status and persons with dependants; religion, political opinion and ethnicity; ethnicity; and disability respectively.
- 2.14 Under proposal 6, the Authority is proposing to establish consistent access arrangements and provision for children in the early years who require a special school place to ensure that the programme of offer across these settings is equitable and will meet the needs of children in their pre-school year.
- 2.15 It is maintained that these provisions will be available for 'a minimum of 15 hours per week' which represents an increase in provision for the majority. Whilst it is acknowledged that the establishment of Early Years SEN centres and the enhanced consistency in special school provision are both positive outcomes for children and young people with SEN, the 'minimum of 15 hours per week' provision under proposal 6 may be considered a reduction for some, and thus considered an adverse impact. This will be explored with stakeholders during the consultation process.

Specific Comments

- 2.16 The Commission welcomes the publication of a proposed framework for future provision for children in the early years with special educational needs (SEN).
- 2.17 The Commission also welcomes the inclusion in the consultation document of reference to the United Nations Convention on the Rights of People with Disabilities and an acknowledgement of General Comment No 4 (2016) on inclusive education; Article 7, Children; Article 8, Awareness-raising; and Article 25, Education¹.
- 2.18 The Commission welcomes the Authority's overall conclusion that the proposals in their totality are considered as positively impacting on young people aged 0-4 years old with special educational needs and their carers.
- 2.19 We also welcome the fact that the Authority has considered its obligations under both the Disability Discrimination Act 1995² and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) throughout the development of the Proposed Framework and are engaging with disabled people directly through the drafting of the Framework and the draft Equality Impact Assessment.
- 2.20 The proposed framework outlines a number of measures that are anticipated to have a positive impact on both children with SEN and their carers. These include: more opportunities for early intervention (through the Early Years Inclusion Service) and extension of the continuum of options available (through creation of Early Years SEN Centre's and additional support to mainstream early years settings).
- 2.21 The Commission broadly welcomes the proposals and will address each one specifically in turn. With regard to the overall proposed framework we want to highlight a number of factors.
- 2.22 The Commission welcomes the emphasis that has been placed on early intervention, quality of support provision and the importance of parental support.

¹ www.ohchr.org | [Convention Rights for Persons With Disabilities](#)

² www.legislation.gov.uk | [Disability Discrimination Act 1995](#)

- 2.23 A range of stakeholders participating in the recent Assembly All Party Group on Learning Disability meeting convened to consider the document highlighted issues with current arrangements including reports of significant communication issues and assessment backlogs / delays. **We therefore recommend that the Authority sets out more clearly how such issues have been taken into consideration and how they will be monitored when developing the proposed framework.**
- 2.24 One issue raised through this process related to transportation difficulties and SEN children regularly reaching premises late or having to leave early. It is unclear whether this issue has been considered in this process. **We therefore recommend that the Authority sets out how this issue is taken into consideration and how they it be monitored when developing the proposed framework.**
- 2.25 The 2017 Report on Special Education Needs prepared by the Northern Ireland Audit Office³ identified that, over the 2015-16 period, 79 per cent of statements of SEN were completed outside the statutory time limit and that the reasons for delays must be closely monitored if improvements are to be achieved.
- 2.26 Inconsistencies in the identification of children with SEN persist. Delay in the completion of statements remains a major issue, yet only limited information could be provided as to the reasons behind these continued delays.
- 2.27 The Audit Office also found that there has been no strategic evaluation of the support provided to SEN children to ensure the best outcomes in terms of effectiveness in the provision of support or value for money in terms of economic efficiency.
- 2.28 The success of this framework will be dependent on adequate financial resourcing, robust mechanisms for data collection, the strategic evaluation of interventions and outcomes to ensure effectiveness and consistency of service. **The Commission recommends that the Authority provides clarity on how this will be achieved.**

³ www.niauditoffice.gov.uk | special-educational-needs

- 2.29 The proposed measures to provide opportunities for early intervention, extended continuum of options and additional support to mainstream early year settings are all consistent with the State Parties commitment on the right to inclusive education under Article 24 of the UNCRPD (and General comment No. 4)⁴.
- 2.30 We acknowledge that the proposed framework seeks to strike a balance between consistency and equal access and the need to provide differentiated support in line with the individual and changing needs of each child.

Proposal 1: Communication

- 2.31 The Commission broadly welcomes the set of communication proposals to improve access to information for parents and provide clarity in relation to the programme of offer.
- 2.32 **The Commission recommends that the Authority clarify the Terms of Reference for the proposed Early Years Panel and what mitigating actions will be taken to ensure that the current backlog and delays are not compounded by any transition.**
- 2.33 **The Commission recommends that the Authority clarify the steps that will be taken to address and monitor the communication needs for people whose first language is not English.**

Proposal 2 & 3: Partnerships and Support

- 2.34 The Commission broadly welcomes proposals related to strengthening partnerships and strengthening support preceding the pre-school year.

⁴www.un.org | convention-on-the-rights-of-persons-with-disabilities

Proposal 4: Additional Support to mainstream Pre-school settings.

- 2.35 The Commission broadly welcomes proposals regarding the provision of additional Education Authority assistance professional and practical in-school support.
- 2.36 This includes the enhancement of support from the Early Years SEN Inclusion Service and the recruitment of Early Years Practitioners to provide additional support across mainstream pre-school settings on a regional basis.
- 2.37 At the recent All Party Working Group on Learning Disability (APWGLD) the Education Authority addressed concerns that these Practitioners would replace Class Room Assistants working directly with specific SEN Children. The Authority confirmed that the proposed Practitioners would fulfil a different and additional role to Class Room Assistants.
- 2.38 **The Commission recommends that the Authority clarifies how Early Years Practitioner roles will enhance existing SEN classroom support and also what steps will be taken to ensure that all Teachers and Class Room Assistants receive comprehensive and appropriate training in Special Education Needs.**

Proposal 5: Extension of the Continuum of Mainstream Pre-School Provision

- 2.39 The Commission notes that a number of criteria will be identified when determining the locations of the proposed Centres. We welcome that consideration will also be given to the community and ethnic background of pupils and their family to ensure a welcome environment for all.
- 2.40 The proposal raises a number of issues for clarification. The Commission therefore recommends that the Authority takes steps to clarify the following: a) the process for referral to the Early Years Panel; b) the threshold criteria for acquiring a placement; and c) the process for identifying 'children with more significant needs'.

Proposal 6: Special School Provision

- 2.41 The Commission agrees with the Authority's assessment that the reduction in provision to some children anticipated under proposal 6 will potentially have an adverse impact on the children and carers impacted. We also welcome the fact that this concern is being explored with stakeholders during this consultation process.
- 2.42 **The Commission recommends that the Authority takes steps to ensure that the framework does not include any deliberate retrogressive measures and furthermore meets with UNCRPD State Party obligations to take effective measures towards the realization of the rights of disabled children to the maximum of its available resources.**
- 2.43 It is difficult to see how any reduction in the number of hours of support provision made available to some children would be compatible with the requirements of CRPD, in particular:
- Article 7.2 which states that 'In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration'.
 - Article 24 1 (b) which '*States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to ...The development by persons with disabilities of their personality, talents and creativity, as well as their physical and mental abilities, to their fullest potential*'.
 - Article 4.2 which deals with resources and the principle of progressive realisation. This obligation is also articulated within the International Covenant for Economic Social and Cultural Rights (ICESCR) and the United Nations Convention on the Rights of the Child (UNCRC).
- 2.44 In a submission to the Northern Ireland Assembly, the Strategic Leadership Forum for Special Schools (SLFSS), a body that represents special school principals and governors, said they "totally disagree" with a relaxation in hours which would "hold back and restrict the development of children with complex needs" and have a range of adverse impacts. These include:

- A limited time to deliver any planned education activities after a pupils "medical and complex needs" and other needs including "nappy changes" are addressed;
- Less time to help children exhibiting "severe to challenging behaviour";
- No time to help children learn feeding skills, as under the new model "children are unable to stay for lunch";
- Restricting delivery of speech language therapy, physiotherapy and occupational therapy to children⁵.

2.45 Article 4.2 of the Convention states that: '*With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law*⁶'.

2.46 The UN Committee on Economic, Social and Cultural Rights has stated that "*Any deliberate retrogressive measures ... would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources*"⁷

2.47 The UNCRPD Committee General Comment on Inclusive Education states that: "Public and private educational institutions and programmes must be available in sufficient quantity and quality. States parties must guarantee a broad availability of educational places for learners with disabilities at all levels throughout the community"⁸.

2.48 The Commission welcomes the commitment made by the Authority at the recent meeting of the All Party Working Group on Learning Disability clarifying that the proposed emphasis is

⁵ See: <http://www.bbc.co.uk/news/uk-northern-ireland-35750654>

⁶ www.un.org | convention-on-the-rights-of-persons-with-disabilities

⁷ [CESCR General Comments No. 3, The Nature of States Parties' Obligations \(Fifth session, 1990\), U.N. Doc. E/1991/23, para 9.](#)

⁸ [UNCRPD Committee General Comment on Inclusive Education, para 21](#)

on a minimum of 15 hours and that SEN children assessed as requiring additional hours of support provision will receive it.