

# SPECIAL EDUCATIONAL NEEDS AND INCLUSION

## Introduction

The term 'special educational needs' (SEN) is defined in legislation as 'a learning difficulty, which calls for special educational provision to be made'<sup>1</sup>. 'Learning difficulty' means that a child has significantly greater difficulties with learning than the majority of children of their age, and/or has a disability which hinders their use of everyday educational facilities. 'Special educational provision' means educational provision which is different from, or additional to, the provision made generally for children of comparable age<sup>2</sup>.

NICCY has consistently highlighted critical issues impacting on children and young people with SEN, calling on Government and relevant agencies to devise and implement appropriate and effective policies and to provide timely support and services to all children and young people who require them. In 2008, NICCY's comprehensive review of children's rights highlighted a range of problems and challenges in the protection, promotion and implementation of children's rights in Northern Ireland<sup>3</sup>. Specific concerns were identified regarding the rights of children with SEN, including; the capacity of some mainstream schools to meet the needs of these children, a lack of early identification and intervention regarding SEN, an inability to address the increasingly diverse and/or complex nature of SEN and an absence of adequate funding, training and support.

NICCY has continued to provide advice to Government, through consultation responses, committee evidence, sustained engagement with Ministers, MLAs, senior departmental and agency officials and through its 2010 'Make It Right' campaign<sup>4</sup>.

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<sup>1</sup> Department of Education (1996). The Education (Northern Ireland) Order, Article 3(1).

<http://www.legislation.gov.uk/nisi/1996/1919/contents>

<sup>2</sup> [http://www.deni.gov.uk/sen\\_categories.pdf](http://www.deni.gov.uk/sen_categories.pdf)

<sup>3</sup> Northern Ireland Commissioner for Children and Young People (NICCY) (2008). *Review of Children's Rights in Northern Ireland*. Belfast, NICCY.

<sup>4</sup> NICCY launched the 'Make It Right' campaign in 2010 to mark the 20<sup>th</sup> anniversary of the United Nations Convention on the Rights of the Child (UNCRC). A series of policy and campaign briefings relating to key policy issues affecting children and young people were published during the year. These sought to inform a wide audience about the issues and support children and young people to campaign for Government action to address child rights violations in Northern Ireland.

Over the last ten years, NICCY's Legal and Investigations team has also responded to a broad range of enquiries and complaints regarding SEN, including delays and difficulties in the statementing process, access to classroom assistants and the lack of independent advice and support for parents of children with SEN. The team has worked on behalf of parents and children to resolve these and other problems and to call for improved provision for those requiring support and services.

### **Monitoring and Challenging Provisions for Children and Young People with Special Education Needs: NICCY's recent work**

In 2012, NICCY commissioned a scoping report into transitions arrangements for young people with learning disabilities, moving to adult services<sup>5</sup>. The review assessed the arrangements in Northern Ireland against international child rights standards, and an analysis of the evidence revealed many inconsistencies, weaknesses and gaps across a range of areas including health and social care, family support, employment, training and education. NICCY disseminated the findings and recommendations to a wide range of stakeholders, including the NI Executive, MLAs, educationalists, parents, statutory agencies and NGOs. The Report findings have been referenced in a number of NI Assembly debates and Assembly Committee sessions<sup>6</sup>. NICCY has challenged policymakers to address a number of key recommendations in the Report, namely the need to enhance statutory duties regarding the transitions planning process, to ensure there is one fully integrated planning process which includes effective collaboration between agencies, particularly education and health and which takes proper account of the views of young people. The Department of Education's current proposals to introduce new SEN and Inclusion legislation offer an important opportunity to address the gaps in provision and to enhance the current arrangements for young people who are approaching this important transition stage.

### **Department of Education's Review of Special Educational Needs and Inclusion**

The Department's review of SEN and inclusion has been a protracted process. This commenced in April 2006, and was intended amongst other things, to 'address the bureaucracy attached to the current SEN framework, the increase in the number of

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<sup>5</sup> NICCY (2012). Review of Transitions to Adult Services for Young People with Learning Disabilities. Belfast, NICCY.

<sup>6</sup> <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-12-13/22-April-2013/#5>  
<http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/April-2013/Inquiry-into-Careers-Education-Information-Advice-and-Guidance-in-Northern-Ireland-NICCY-Briefing/>

children with SEN with or without a statement, and inconsistencies and delays in assessment and provision'<sup>7</sup>. A formal consultation on 'Every School a Good School - The Way Forward for Special Educational Needs and Inclusion', was then conducted between August 2009 and January 2010<sup>8</sup>. Two years later, in January 2012, a summary report of the consultation responses was published and the Department then engaged with key stakeholders, including NICCY, to discuss the emerging issues. In May 2012, the Minister presented a policy paper to the NI Assembly Education Committee for consideration. The policy proposals were then outlined in a Policy Memorandum Paper which was agreed by the NI Executive in July 2012.

The detailed plans include proposals to replace the current statement of SEN with coordinated support plans (CSPs), to reduce the five-stage process to three stages and to place a legislative duty on boards of governors to ensure personal learning plans (PLPs) are put in place for children with SEN; these would replace individual education plans within the current SEN framework. Further proposals aim to develop schools' capacity to provide for children with SEN, and to implement a number of pilot projects that will aim to improve early identification and assessment of needs in early years' settings. Plans to improve the interface between education and health sectors are also outlined. NICCY has closely monitored the development of the Department's policy proposals to ensure that these promote and safeguard the rights and best interests of the children likely to be impacted. To this end, NICCY has engaged in a number of strategic activities to highlight the Commissioner's concerns and to persuade the Department to review and amend elements which she believes are particularly problematic.

In February 2012, NICCY produced a detailed advice paper, setting out a series of recommendations<sup>9</sup>. This paper was disseminated widely and submitted to the Department of Education. In response, the Department provided comprehensive feedback, addressing each of NICCY's queries and the Minister for Education also gave a detailed response.

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<sup>7</sup> Department of Education (NI) (2009). *Every School a Good School: The Way Forward for SEN and Inclusion* p.ii. Bangor, DE.

<sup>8</sup> [http://www.deni.gov.uk/review\\_of\\_special\\_educational\\_needs\\_and\\_inclusion.htm](http://www.deni.gov.uk/review_of_special_educational_needs_and_inclusion.htm)

<sup>9</sup> NICCY (2012). *Advice to the Department of Education regarding proposals for progressing the Review of Special Educational Needs and Inclusion* (NICCY:Unpublished Paper).

NICCY then worked collaboratively with a range of key statutory and non-statutory agencies, also concerned about the Department's proposals, co-ordinating a joint working strategy, which included direct engagement with the Minister. The success of this approach was acknowledged by the agencies and the Minister.

In response to specific calls made by NICCY, the Minister revised two significant aspects of the SEN and inclusion proposals, namely that, the two-level process proposed would be extended to three levels and that the transitional period of two years outlined in the 2009 consultation, would be extended to five years. The Minister also credited NICCY and other organisations with persuading him to seek implementation in the long-term of the right to appeal to the Special Educational Needs and Disability Tribunal (SENDIST) for young people<sup>10</sup>. The Minister also directed his officials to consult with children and young people on the right to appeal to SENDIST.

NICCY is continuing to focus on this important issue and to engage with key agencies. Following publication of the draft Code of Practice and legislation, NICCY intends to publish a response paper and to work towards ensuring the best possible provision for all children and young people with SEN.

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<sup>10</sup> <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2011-2012/May-2012/Review-of-Special-Educational-Needs-Ministerial-Briefing/>