

## Special Educational Needs and Disability Bill – SEND (Bill 46/11/-16): Further Advice.

### FAO: NIA Education Committee

This paper is further to NICCY’s work and advices already submitted in relation to Special Educational Needs and Inclusion to date.

NICCY’s role is to ‘safeguard and promote the rights and best interests of children and young people’ having ‘due regard’ to the UNCRC. It is on this basis, NICCY makes this further submission to the Education Committee. As previously stated, NICCY has a duty to review the adequacy and effectiveness of law, practice and services as they relate to children and young people, therefore we wish to emphasise that the opportunity to improve delivery and outcomes for those with special educational needs and/or disabilities is taken through a strong and robust Bill placing relevant duties on the Education Authority and Schools.

### Application of Principles by the Department in framing subordinate legislation:

NICCY welcomes the inclusion of the ‘voice’ of the child in decision making (UNCRC Article 12) in Clause 1 of the Bill recommending it and/or subordinate legislation should explicitly reflect the UNCRC’s fundamental principles i.e. Articles 2, 3, 6, and 12 – non-discrimination, best interests, life and fullest development and the inclusion of the child’s voice / views.

Clause 1 as stated above, requires the Education Authority to have regard to the views of the child in the exercise of its functions however, it also states that this is to be done ‘so far as reasonably practicable’. This should be removed as it undermines and dilutes the right of the child to have their views taken into account. It is more appropriate to reference the previous articles above – particularly as we are dealing with our most vulnerable children and young people. It is vital that the legislation creates a robust framework for the ensuing Regulations and Code of Practice.

In the context of this Bill, the overarching principles set out above are key as are, specifically, Articles 23, 28 and 29<sup>1</sup> as well as the UN Convention on the Rights of

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<sup>1</sup> UNCRC Articles 23, 28 and 29

Persons with Disabilities (UNCRPD) principles within Articles 5, 7, 9, 10, 17 and specifically Article 24<sup>2</sup> as it relates to education.

NICCY would recommend a change from 'may' to 'shall' to ensure robustness of implementation e.g.s in relation to Clauses 3 (3) (2A); (4) 8ZA (1); 7 (2)(10); 8(7); 9(2) (3) (4); 10 (2).

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23.1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

23.3. Recognizing the special needs of a disabled child..... to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development.....

28.1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity

29.1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

<sup>2</sup> UNCRPD Article 24 refers:

States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning directed to:

The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;

The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;

Enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure that:

Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;

Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

Reasonable accommodation of the individual's requirements is provided;

Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;

Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

## Intent and Objectives of the Bill

DE – in the ‘Explanatory and Financial Memorandum’ attached to the Bill - sets out the policy intent and objectives of the revised SEN Framework as ‘child focused’ - which is welcome though should be referenced in the Bill/subordinate legislation - and to:

1. *maintain an inclusive ethos within schools*; This is a vital principle as the original intent stated this was a ‘special educational needs and inclusion review’ and was raised with NICCY at a recent meeting with CDSA meeting. Inclusion i.e. addressing the needs of ALL children and young people with special educational needs and/or disabilities, has to be real and meaningful;
2. *ensure early identification, assessment and intervention/provision*; Key are effective services in achieving the child’s full potential in learning/social & life skills development;
3. *ensure that the special educational needs of children are met in a timely fashion*; NICCY has previously commented on delays in assessment and support services provision and welcomes the intention to address these;
4. *reduce bureaucracy*; again this is welcome if it ensures focus on support service provision for the child;
5. *build the capacity of schools to address the SEN of most children*; Schools should address the SEND needs of ALL children;
6. *put a clear focus on learning and outcomes for pupils with SEN ensuring that the views of pupils and parents are considered*; This is welcome though a robust interpretation of the phrase ‘so far as reasonably practicable’ should be in the best interests of the child;
7. *ensure transparency and accountability for resources and outcomes*; This is key in providing assurance to stakeholders (see later).

## Regulations and the Code of Practice:

NICCY has previously stated that it is difficult to provide fully informed comment about the clauses of the Bill which will impact on children and young people without sight of the content of the proposed Regulations. In addition, NICCY has concerns that due to the legislative process relating to the passage of Regulations, there may be less scope to influence the content of Regulations. It will be vitally important in the development of Regulations which relate to the Bill that there is adequate consultation on the Regulations at the earliest possible stage, including direct consultation with children and young people.

Reference is made to amendments to secondary legislation and revised statutory code of practice throughout the proposed legislation - as they pertain to amendments to the Education (NI) Order 1996 and Special Educational Needs and Disability (NI) Order 2005 - to which the Authority and Boards of Governors ... will have regard. It is important that the Education Authority and Boards of Governors give these the necessary 'weight' therefore NICCY recommends 'due regard'. It is crucial that appropriate importance is placed then on ensuring adherence to the Regulations and Code of Practice in 'translating' the Bill and indeed the 'spirit' of the Bill into practice.

We understand the Code of Practice will reflect a 3 stage process – rather than the previous 5 – it is hoped this will reduce bureaucracy and ensure speedier timescales in identification of need / intervention of support services.

### **Time periods for assessment**

These should be explicitly referenced. Timescales should apply to educational psychology and health assessments as these form the basis of specifying and quantifying the support services required to meet the needs of the child. Specification and quantification details within the Statement/CSP and indeed the PLP are crucial if we wish to ensure successful outcomes. As in England, the educational and health needs of the child are included.

### **Access to Educational Psychology: access/reports/statements**

The number and availability of Educational Psychologists and delays in assessment and subsequent provision put in place, has been identified as a major concern by NICCY and indeed parents and NGOs during this process. It is of concern that Officials in their recent session with the Committee stated there were sufficient numbers.

### **Inter-departmental Co-operation**

Clause 4 of the Bill refers. The need for greater co-operation between health and education professionals has been highlighted on a number of occasions by NICCY and indeed other stakeholders. The proposed Children's Services Co-operation Bill (CSCB) is a further opportunity to embed such practice as this would establish a mandatory obligation / statutory duty to co-operate.

The PHA are currently working on the role of the Allied Health Professionals in special educational needs which should contribute to same.

NICCY met over the summer period, with parents and experts to discuss the need for such co-operation in relation to children and young people who have an acquired brain injury - ABI<sup>3</sup>; (acquired brain injury can occur as a result of accident, illness, poisoning, stroke or tumour).

### Transitions

NICCY has highlighted the need for a '1 Child 1 Plan' approach. Each Personal Learning Plan (PLP) and/or Statement/Co-ordinated Support Plan (CSP) should include all agencies' service/input in relation to the child's needs. One 'plan' should pertain in respect of each child; this should 'follow' the pupil to their place of education on transition between each, including into further education / training. Again this supports the need for interdepartmental co-operation particularly as/when departmental remits change due to the upcoming reconfiguration of Government Departments.

### Appeals / Mediation

NICCY welcomes the inclusion of the rights of pupils with disabilities to have opportunities for redress including those over compulsory school age.

Bill Clauses 7-12 refer: NICCY would as with other references throughout the Bill recommend a change from 'may' to 'shall' to ensure robustness of implementation. It is to be welcomed (Clause 10) that rights previously exercisable by a parent within the SEN framework now includes a new right for a child over compulsory school age to appeal to the tribunal.

### Resources

We appreciate as stated, that the Review is 'not about saving money or reducing budgets', but rather has 'a strong focus on delivering an efficient and effective system within the resources available to schools and the Authority'.

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<sup>3</sup> Recent meeting by NICCY with 'Talking Heads' parents and experts, in relation to acquired brain injury (ABI). ABI can occur as a result of accident, illness, poisoning, stroke or tumour. Parents and experts emphasised the need for co-operation between health and education to input to CSPs/Statements going forward, taking on board the need for medical input/understanding of condition and how that manifests and the necessity that it be addressed in a holistic, child centred way.

The SEND Bill is an opportunity to do this and the importance of the Regulations/Code of Practice to effectively address the needs of Children and Young People was highlighted.

NICCY was informed of an upcoming piece of work in relation to Young People in Hydebank where there are a disproportionate number of Yg People affected by ABI.

It is vital that we avoid inequalities in provision and access to services / support services and that there is transparency and accountability in resource allocation by the Education Authority and Schools. (*see next*).

### **Education Authority Annual SEND Provision Plan**

The Education Authority have a responsibility to produce an annual plan on SEND. It is vital that the implementation of this is monitored effectively and that resource allocation set against this transparent i.e. a Resource Allocation Plan should be integral to the overall SEND Plan.

### **Duties on Boards of Governors**

The duties on Boards of Governors should be robust. Training of, and support for, Governors is vital in terms of the increasing duties being placed on them including their legal functions, necessary interaction with LSCs / Senior Leadership Team (SLT). NICCY has previously called for LSCs to be members of the SLT – given the numbers of Children and Young People with SEN / Statements/CSPs – to perform this role effectively.

### **In conclusion**

NICCY has welcomed the opportunities presented by a single Education Authority in standardising the approach and provision in meeting the needs of Children and Young People with special educational needs and/or disabilities<sup>4</sup>.

NICCY is also keen to see that during this ‘transition’ phase towards the implementation of the SEND Act, Regulations and Code of Practice that opportunities to standardise and improve existing SEND services/support are taken in ‘good practice preparation’ for same.

NICCY will continue to engage with all relevant authorities and bodies including the Minister, Committee, the Department, Education Authority, NGO providers and of course children, young people and their families. It is our intention to continue to scrutinise and provide advice on the regulations<sup>5</sup> and code of practice when they are made available.

Should the Committee wish to discuss further please do not hesitate to contact us.

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<sup>4</sup> At a recent meeting with CDSA, the need for consistency in application was again raised.

<sup>5</sup> It is vital that these are given due scrutiny by the Committee and Stakeholders.