

Peter Weir
Minister for Education
Department of Education
Rathgael House,
43 Balloo Road,
Rathgill, Bangor
BT19 7PR

By e-mail

7 July 2020

Dear Peter,

**Re: Coronavirus Act 2020 Temporary Modification of Education Duties (No.9)
Notice (Northern Ireland) 2020**

I am writing to you following a letter from your officials 6 July 2020 seeking NICCY's advice on the requirement for the Continued Modification of Education Duties, as per the above Notice.

As you will be aware, over the last few months I have repeatedly voiced my concern about the impact of the Temporary Modification of Education Duties on statutory SEN operations, supports and services; the fact that this will undoubtedly exacerbate the already extensive delays and waiting times for statutory assessment, and will impact on the processes for reviewing and appealing Statements of Special Educational Need. Of much greater concern is the impact on children, young people and their families, who have received little to no provision during the crisis, and continue to face barriers in accessing the supports that they are entitled to due to the continued modification of duties. This has had profoundly detrimental effects on the education, health and wellbeing of children with SEN and disabilities, as well as on parents, carers and siblings; many of whom have informed us that they are at breaking point.

NICCY recognises that the education and health sectors are operating in unprecedented times and that resources have had to be diverted to deal with the crisis. I also do not underestimate the planning and preparation required to ensure the safe reopening of our schools. Nonetheless, this does not absolve the relevant authorities of their obligation to

protect the rights of children and young people.

We have repeatedly expressed concern about the lack of clarity surrounding ‘best endeavours’; that no minimum requirements were, to my knowledge, outlined to the EA, health and social authorities, and schools on the delivery of ‘best endeavours’, nor has DE established a mechanism for monitoring what has, in fact, been delivered since the Modification Notice came into effect at the start of April. The full impact on children and young people is not yet known; this has been exacerbated by a lack of consultation on the ongoing renewal of the Modifications Notice.

In our recent [advice](#) on the DE Guidance for Reopening Special Schools, we called for clarity on ‘best endeavours’; for information on how the negative consequences of the modifications will be addressed e.g. backlog for statutory assessment and statements; and plans for the revocation of the Notice. **I reiterate the need for these calls to be addressed.**

Furthermore, I restate my deep opposition to the proposal that, on return to school, “the full range of service provision may not be offered as set out in an individual’s statement of SEN but will be delivered on a best endeavour duty”. The suggestion that children and young people’s needs will not be met in accordance with what they are legally entitled to is unconscionable. **The full range of services must be reinstated for schools’ reopening. This must not be impacted by a continuation of the modifications.**

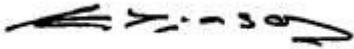
NICCY notes that the most recent Notice provides a rationale for the continued modification of duties, as did the previous No. 7 Notice. However, this in itself raises concerns about the implications on the SEN system and its ability to meet the needs of children and young people; I draw particular attention to the ‘significant backlog’ referenced in the latest Notice. The longer that the statutory obligations are diluted to ‘best endeavours’ the greater the impact on the delay for children, which is deeply worrying.

Whilst we welcome that the Department has deemed that some provisions in the previous No. 7 Notice do not require continued modification, I am greatly concerned that the majority of modifications still apply. To be clear, any assessment of the proportionality and appropriateness of continued modification must comprehensively consider the impacts on children and their families, and the risks to their education, health, and wellbeing as a result of their needs not being met. The priority must now be on ensuring the full resumption of services and fulfilling the statutory obligations to children and young people

with SEN.

Please do not hesitate to contact my office if you would like to discuss these matters further.

Yours sincerely



Koulla Yiasouma
Commissioner

CC Derek Baker, Permanent Secretary
Ricky Irwin, Director, Inclusion and Wellbeing