



## **Project Specification**

# **Children's Rights Based Review of Special Educational Needs Provision in Mainstream Schools**

### **Introduction**

The Northern Ireland Commissioner for Children and Young People (NICCY) was created in accordance with 'The Commissioner for Children and Young People (Northern Ireland) Order' (2003) to safeguard and promote the rights and best interests of children and young people in Northern Ireland. In carrying out these functions, paramount consideration must be given to the rights of the child or young person, having particular regard to their wishes and feelings and to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

Under the Commissioner's founding legislation, The Commissioner for Children and Young People (Northern Ireland) Order 2003, the Commissioner has a statutory duty keep under review the adequacy and effectiveness of services provided for children and young persons by relevant authorities.<sup>1</sup>

NICCY plans to carry out a Children's Rights Based Review of Special Educational Needs (SEN) Provision in Mainstream Schools. We are interested in gathering evidence about the extent of SEN in mainstream schools; whether needs are being met; children's and young people's and their parents'/carers' and school's experiences of accessing services for SEN; the types of SEN services and supports young people have accessed or attempted to access; and the impact this has had. As the review will focus on children on the SEN register the target age range for the review will be up to 19 years old.

More than 79,000 pupils in schools have some form of SEN; this is 23.0% of the entire school population. Of this, more than 17,800, or 5.2% of pupils, have a Statement of SEN (a formal document detailing a child's learning difficulties and the support to be provided after a statutory assessment has been carried out for the child).<sup>2</sup>

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<sup>1</sup> Article 7(3), The Commissioner for Children and Young People (Northern Ireland) Order 2003

<sup>2</sup> Statistical Bulletin 2/2018 Annual enrolments at schools and in funded preschool education in Northern Ireland, 2017/18, Department of Education, Revised 17<sup>th</sup> July 2018.

The number of pupils with special educational needs has been steadily rising, with more than 2,800 pupils with any needs and 800 additional pupils with statements compared to last year.<sup>3</sup>

Legislation for children with special educational needs in Northern Ireland is contained within the Education (Northern Ireland) Order 1996 (the 1996 Order) and the Special Educational Needs and Disability (Northern Ireland) Order 2005 (the 2005 Order), supported by Codes of Practice and a number of Statutory Rules. The current system for the identification, assessment and statementing of children with SEN was introduced in 1986, in line with legislation in England and Wales.<sup>4</sup> It was updated by Part II and Schedules 1 and 2 of the 1996 Order. The 1996 Order provides a legal framework for the assessment of, and provision for, SEN. It requires the Education Authority (EA) in Northern Ireland, to identify, assess and make provision for children with SEN within their area. It also provides a definition of SEN.

The vast majority of children with SEN attend mainstream schools and their needs are expected to be met within the school through reasonable adjustments and support. The costs associated with providing for them are primarily funded from school budgets.

Where a child has more complex needs and the help needed cannot reasonably be provided within the normal resources available to a school, the EA will consider making a formal statement of SEN which sets out the child's needs and the special help required.

The Department of Education has provided guidance for Education Authority and schools in the form of a Code of Practice on the Identification and Assessment of Special Educational Needs and also a Supplement to the Code of Practice, effective from 1 September 2005, which was produced as a result of SENDO. Schools, Boards and Health and Social Services Authorities must consider the advice given in the Code of Practice when deciding what they should do to contribute to meeting the needs of children with special educational needs.

The Code of Practice addresses the identification, assessment and provision made for all children who may have special educational needs at some time in their school

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<sup>3</sup> *Ibid.*

<sup>4</sup> O'Connor, U., McConkey, R., Hartop, B. (2005) "Parental views on the statutory assessment and educational planning for children with special educational needs" *European Journal of Special Needs Education* Vol. 20, No. 3, pp. 251-269

careers, or even earlier.

Below is an excerpt from the EAs website which outlines the stages of the Code of Practice.

### **Stages of the Code of Practice – Education Authority<sup>5</sup>**

#### **Stage 1**

This part of the Code of Practice is led by your child's class teacher. An action plan will be written to identify your child's difficulties and list the actions the teacher will put in place to address the identified difficulties. The teacher will put in place strategies which may include additional teacher attention. The actions will normally take place over a period of time (possibly one or two terms). Your child's progress will be monitored and a termly review will take place. Following the review, the following decisions may be made:

Remove the pupil from the SEN register

Continue at Stage 1

Move to Stage 2

#### **Stage 2**

This stage is led by the school's Special Educational Needs Coordinator (SENCO). An Individual Education Plan (IEP) will be drawn up by the school. As a parent, you will be asked to sign the IEP to show your agreement and commitment to the plan. Further strategies will be used by the school to address your child's special educational needs, including use of the Resource to Support Children with Special Educational Needs and the school may offer more individualised support e.g. literacy support either within class or withdrawal from class.

Stage 2 support will also be provided over a period of time (possibly two terms) to enable the strategies to be put in place, give them time to work so they can be monitored and evaluated. The IEP should be reviewed with parents on a termly basis or more frequent if required. Following the review the school can decide to:

Remove the pupil from the SEN register

Move back to Stage 1

Continue at Stage 2

Move to Stage 3

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<sup>5</sup> <http://www.eani.org.uk/frequently-asked-questions/special-educational-needs-sen/stages-of-the-code-of-practice/>

### **Stage 3**

The school will continue to be responsible for the pupil's SEN's and will also seek outside help which will be dependent on the pupil's Special Educational Needs e.g. learning or medical. This may involve your child being referred to:

Stage 3 support services

Educational Psychology Service

Health & Social Care Trust/Allied Health Professionals

Your child's progress will be monitored and the following can be considered:

Remove the pupil from the SEN register

Move back to Stage 1 or Stage 2

Continue at Stage 3

Move to Stage 4

### **What happens if my child is still struggling?**

If your child is not making progress, the Education Authority, working with parents, school and other agencies, may consider carrying out a Statutory Assessment of your child's Special Educational Needs. A Statutory Assessment is only necessary in a very small minority of cases and a request for a statutory assessment does not always lead to a statement of special educational needs.

### **Stage 4**

#### **Statutory Assessment?**

A Statutory Assessment is a formal and detailed process to find out what your child's special needs are, and what additional help they may need in school.

During Statutory Assessment, important decisions are involved that may shape your child's schooling for some time to come and the process cannot be rushed. The decisions must be based on comprehensive information. While the Education Authority is carrying out Statutory Assessment your child should continue to receive help and support from the school until the assessment process is completed. You can also ask the school or the educational psychologist for advice as to how you can help your child meanwhile.

The Education Authority will consider all of the available information and decide whether or not an assessment is required. If the decision is not to proceed with a

Statutory Assessment you will be informed of the reasons for the decision in writing. If you do not agree with the decision you will be given details on how to appeal to the Special Educational Needs and Disability Tribunal.

### **Stage 5**

Stage 5 of the Code of Practice refers to the time when the Education Authority makes and maintains a Statement of Special Educational Needs on a child.

### **The Special Educational Needs Coordinator**

The Code of Practice (Section 2.12) sets out that all mainstream schools should have a designated teacher (known as the Special Educational Needs Coordinator, or SENCO) who is responsible for the day to day operation of the school's Special Educational Needs policy. This includes liaising with teachers, parents and other relevant professionals, maintaining the school's Special Educational Needs Register, and ensuring that all teachers are trained to meet the Special Educational Needs of pupils in the school.

There is no legal duty upon the health services to provide for the educational needs of children if requested to do so by the education authorities as under Article 14 of the Education (NI) Order 1996 the duty to assist education authorities is subject to resources. As a result there is a lack of consistent co-operation between health and education authorities in the provision made for children with SEN both in mainstream and in special schools. There have historically been problems with the co-operation of Government Departments in meeting the needs of children and young people with SEN. The Children's Services Co-operation Act (Northern Ireland) 2015 however, now places a statutory duty to co-operate on Government Departments in the provision of children's services. Unfortunately as part of this duty, there is only an 'enabling power' to share resources in the provision of children's services, rather than an obligation. There are concerns about this as Government Departments are already allowed to pool resources. There is a similar obligation on health and education authorities to co-operate with regard to children with SEN. This provision which is awaiting implementation is found under Article 4 of the Special Educational Needs and Disability (Northern Ireland) Act 2016 (SEND Act).

A review of SEN has been ongoing since 2006. The **SEND Act** received Royal Assent on 23<sup>rd</sup> March 2016. The Department of Education has also consulted on its SEND

Regulations,<sup>6</sup> which will support the Act and a public consultation on the SEND statutory Code of Practice is expected in the coming months.

NICCY has highlighted the disparate approach which has been taken by the Department as it has been difficult to make fully informed comment about the entire Framework as a whole.

## **Children's Rights Standards**

The UNCRC is a set of legally binding minimum standards and obligations in respect of all aspects of children's lives which the Government has ratified and must comply with in the discharge of its functions. The Northern Ireland Government Departments, including the Department of Education (DE) and its arm's length bodies, are obliged to comply with the obligations under the UNCRC by virtue of being a devolved administration of the UK Government, the signatory to the UNCRC.

There are a number of UNCRC articles, Committee recommendations and Committee General Comments which are relevant to the review of SEN. Articles 28 and 29 are the main UNCRC articles which relate to education. Article 28 outlines the right to education, whereas Article 29(1), which details the aims of education, adds a qualitative dimension to the general right to education under Article 28. Article 29(1) reflects the rights and inherent dignity of the child; it insists on the need for education to be child-centred, child-friendly and empowering and highlights the need for educational processes to be based upon the principles outlined in Article 29(1). General Comment 1 on the Aims of Education<sup>7</sup> provides insight into the obligations on Government under Article 29(1) of the Convention. According to the UNCRC Committee's General Comment on Article 29 of the Convention – a statement of its meaning and objectives - education must be child-centred, child-friendly and empowering.<sup>8</sup> The goal is to strengthen the child's capacity to enjoy the full range of human rights, to promote a culture which is infused by appropriate human rights values and to empower the child through developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence. In this context, 'education' goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, whether individually or collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society.

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<sup>6</sup> May 2016.

<sup>7</sup> United Nations Committee on the Rights of the Child, General Comment No. 1 (2001) 'The aims of education' CRC/GC/2001/1.

<sup>8</sup> *Ibid.*

Other articles are also relevant, including the 4 principles of the Convention. The UNCRC principles require the Government to ensure that children are not discriminated against - Article 2; their best interests are upheld - Article 3; they develop to their maximum potential - Article 6; and they are able to meaningfully participate in all aspects of their lives - Article 12. General Comment 1 on the Aims of Education<sup>9</sup> also highlights a number of other Convention articles which are relevant to the fulfilment of the aims of education as detailed under Article 29 of the Convention.<sup>10</sup> These include, but are not limited to, the rights and responsibilities of parents (Articles 5 and 18), freedom of expression (Article 13), freedom of thought (Article 14), the right to information (Article 17), the rights of children with disabilities (Article 23), the right to education for health (Article 24) and the linguistic and cultural rights of children belonging to minority groups (Article 30).

With regard to the funding of education for children with SEN, Article 4 of the UNCRC states that,

*“States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.”*

The Committee’s General Comment No 5. on General measures of implementation of the UNCRC,<sup>11</sup> is clear that children should be visible in budgets and that analysis of resources for children should take place to ensure that States are fulfilling their obligation to allocate resources to the maximum extent in order to ensure the realization of children’s rights. In addition, it outlines the obligation on States to ensure that budget decisions which will impact on children are made with the best interests of the child as a primary consideration. It states that,

*“The Committee needs to know what steps are taken at all levels of Government to ensure that economic and social planning and decision-making and budgetary decisions are made with the best interests of children as a primary consideration and that children, including in particular marginalized and disadvantaged groups of children, are protected from the adverse effects of economic policies or financial downturns.”<sup>12</sup>*

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<sup>9</sup> *Ibid.*

<sup>10</sup> Para 6, *Ibid.*

<sup>11</sup> General Comment No.5: General Measures of Implementation of the Convention on the Rights of the Child, UN Doc CRC/GC/2003/5.

<sup>12</sup> *Ibid*, para 51.

The UN Committee also recommended that,

*“...the State party, in accordance with article 4 of the Convention, allocate the maximum extent of available resources for the implementation of children’s rights...”*<sup>13</sup>

It highlighted the need to invest in children by Governments, stating that investment in children is a,

*“...widely accepted best guarantee for achieving equitable and sustainable human development and a fundamental requirement for social and economic priorities of any government.”*<sup>14</sup>

The Committee went on to recommend that the Government,

*“a) make children a priority in the budgetary allocations as a means to ensure the highest return of the limited available resources; and make investment in children visible in the State budget through detailed compilation of the resources allocated to them;*

*b) consider using rights-based budget monitoring and analysis, as well as child impact assessments on how investments in any sector may serve “the best interests of the child.”*<sup>15</sup>

The Committee on the Rights of the Child has recognised the importance of holding States to account with regard to their obligations to invest in children to deliver their rights under the Convention. The Committee is currently working on expanding on what is meant by the General Measures of Implementation of the Convention and is taking forward work with a view to drafting a new General Comment on public expenditure or public investment in infancy and childhood to implement the rights of the Convention. It is proposed that this General Comment will include indicators to measure the extent to which States are meeting their obligations. In addition, the Human Rights Council has recognised the importance of investing in children and has adopted a resolution, *“Investment in the rights of the child”*<sup>16</sup> which affirms the high economic and social returns of investment in children and stresses the importance of resource allocation and spending for the promotion and protection of children’s rights.

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<sup>13</sup> *Ibid*, para 19.

<sup>14</sup> CRC (2007) Day of General Discussion “Resources for the rights of the child – Responsibility of States”, Para 27.

<sup>15</sup> *Ibid*, para 30.

<sup>16</sup> 27<sup>th</sup> March 2015

Article 2 of the First Protocol to the European Convention on Human Rights (ECHR) as incorporated by the Human Rights Act 1998, also provides that no one shall be denied the right to education. This has been interpreted by the European Court of Human Rights to mean that every child is entitled to access *effective* education. Moreover, taken together with Article 14 ECHR - the non-discrimination principle - the right to access available educational facilities must be secured to all children without discrimination.

Also of relevance is the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which was ratified by the UK Government on 8<sup>th</sup> June 2009. Article 5 provides that persons with disabilities shall have equal access to all the protections afforded by the law. Article 7 provides that all children with disabilities shall have full enjoyment of all human rights and fundamental freedoms; that their best interests shall be a primary consideration and that their voices shall be heard in all matters concerning them. Article 24 provides the right for persons with disabilities to access an inclusive education system at all levels.

### **Special Educational Needs Northern Ireland Audit Office Report**

The Northern Ireland Audit Office (NIAO) published a report into special educational needs in June 2017.<sup>17</sup> The Report found that:

- The educational achievements of children with SEN are improving. Fewer are leaving school with no formal qualifications and more are going on to further and higher education.
- In 2015-16, 79% of statements of SEN were completed outside the statutory time limit of 26 weeks. The report states that EA told the NIAO that this is mostly due to valid exceptions permitted in legislation relating to delays in receiving advice from the health sector, but could not provide a detailed breakdown.
- Annual expenditure on SEN is increasing and in 2015-16 was over £250 million. Of this, £217 million is EA expenditure. The NIAO found inconsistencies between the figures held by the Department and the EA in relation to spend on SEN and were unable to get a complete breakdown of the costs.
- There are variations in the methods used by schools to identify children requiring additional support despite the knowledge that early intervention makes a real difference

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<sup>17</sup> Special Educational Needs, Report By The Comptroller And Auditor General, 27th June 2017.

to life chances and may result in lower spend in meeting that child's needs as they grow up.

- The costs associated with providing support for children with SEN without a statement are not ring-fenced and are primarily funded from school budgets. The small sample of schools visited to compile the Report highlighted the difficulties faced in managing the significant, and growing, number of children with SEN within existing resources. For some schools this may not be sustainable.
- At present over 17,000 statements of SEN are reviewed each year at an annual cost of around £6 million. 80% of statements remain unchanged.
- The provision of a classroom assistant (at an annual cost of £55 million) is often considered as a key form of support given to children with a statement of SEN yet their impact, or that of any other support provided, has not been evaluated at a strategic level.
- There has been no strategic evaluation of the support provided to children with SEN to ensure the best possible outcomes. 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.
- As a result of the NIAO's review, they conclude that neither the Department nor the EA can currently demonstrate value for money in terms of economy, efficiency or effectiveness in the provision of support to children with SEN in mainstream schools.
- The Department of Education commenced a review of SEN in 2006, in response to a number of concerns. More than 10 years have passed and the outworking of the process is not yet complete. To date the Department has spent more than £2.4 million on the review.

### **An Overview of SEN Issues in Mainstream Schools**

NICCY is aware that the EA plans to review Support for Children with SEN in Mainstream Schools. In 2015/16, the Education Authority's expenditure on supporting children with SEN in mainstream school reached almost £90m. This has risen significantly over the past ten years, due to the implementation of the Special Educational Needs and Disability Order (2005). The EA plans to start engaging with schools in this area and is also planning to engage with post-primary schools regarding

alternative models of support, rather than ‘adult assistant’ hours. Classroom assistants were a subject of concern for the young people who participated in NICCY’s ‘Your Voice Matters’ project. Some of those who previously had support from classroom assistants felt that this hadn’t fully met their needs and they had no opportunity to have a say in the way they were helped. Participants said,

*“My classroom assistant hours reduced every year, I had no say in what classes I needed help with so I ended up getting help in the classes that I could cope with on my own.”*<sup>18</sup>

*“The classroom assistant just did my work for me. She didn’t help me try and understand so I wasn’t learning anything.”*<sup>19</sup>

Participants also felt that there isn’t enough support for young people with SEN transitioning from school to further education. One participant stated,

*“There’s no support in further education for SEN/dyslexia which means having to drop out of courses.”*<sup>20</sup>

The EA carried out a consultation on ‘Future Provision for Children in the Early Years with Special Educational Needs’.<sup>21</sup> One of the proposals in this consultation relates to Additional Support in Mainstream Pre-school Settings. There is an emphasis in this proposal on, “...additional EA professional and practical in-school support to meet the needs of children with SEN,” in order to enable mainstream pre-school settings to meet the increased demand of children who have a diverse range of SEN. Also included in this proposal is the intention to recruit Early Years Practitioners’ to the ‘Early Years SEN Inclusion Service’. NICCY understands that these Practitioners will have appropriate training to provide additional support across mainstream school settings. NICCY also understands that these Early Years Practitioners will **replace** Classroom Assistants for children in the Early Years.

It is NICCY’s understanding from discussions with EA officials that Early Years Practitioners will be EA employees and will generally be deployed as required to work with groups of children, rather than on a one to one basis. NICCY has a number of concerns about this proposal, not least with regard to children who need one to one support and children who require continuity of provision. It will be vital that Early Years

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<sup>18</sup> Your Voice Matters Because You Matter, Fieldwork Report, NICCY, December 2015.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> May 2018

Practitioners can build relationships of trust with and sufficient knowledge of the needs of the children in their care. This will require permanence of placement of Early Years Practitioners and continuity of provision beyond the age of 6. If permanence of placement and continuity of provision is not what is being proposed by the EA, it is likely that this will create additional stress for very young and vulnerable children with SEN in school.

Parenting NI has highlighted the views of parents expressed through its engagement with parents on the education system in Northern Ireland that much more should be done to integrate SEN pupils into mainstream education.<sup>22</sup>

Evidence from individual cases dealt with through NICCY's legal advice line has highlighted a number of concerning trends with regard to the operation of the SEN system. The top priority issue in any engagement with the Education Authority (EA) on SEN continues to be the imposition of quotas or time allocation relating to the number of children that schools can refer to Educational Psychology (EP) for a statutory assessment. When NICCY has raised this issue with EA we have been repeatedly told that if schools need additional EP time they should request it and it will be received. We have also been told that there is no shortage of EPs in Northern Ireland and that the number of EPs here compares favourably to other UK regions. This is not NICCY's experience and we are concerned about the impact that the imposition of time allocations is having on the ability of children and young people to enjoy their right to education. The imposition of set allocations of educational psychology time to schools mean that only those children viewed by schools as 'most in need' are referred for educational psychology assessments. As a result, many children not considered as most in need are waiting unacceptably long periods of time for referrals which adversely impacts on their education. In most cases, a diagnosis of SEN is required to enable children and young people to access services which would support them in education. However, without an assessment of SEN, services cannot be accessed. There are particular concerns about children and young people with milder learning difficulties and SEN who are not a priority for schools when making referrals given the needs of children are being pitted against each other for priority attention and assessment by an EP. NICCY has experience of children waiting to be referred to an EP for an assessment for a number of years. This is likely to be the case with huge numbers of children with less severe SEN and learning difficulties and the impact on their education needs to be examined. Many parents are then in a position where a private assessment is their only option at significant cost which is then not accepted by the EA,

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<sup>22</sup> Educational Inequalities and Inclusion Position Paper Response, Parenting NI, July 2017.

despite being carried out by the same EP in many cases who carry out the EA assessments.

Statements of SEN have become vague and therefore unenforceable, in terms of specified provision. Evidence shows that in some cases Educational Psychologists' recommendations are not being taken on board and progressed by the Education Authority e.g., recommendations with regard to the most appropriate school for a child. NICCY is also aware of the increasing standardisation of groups of children where provision is allocated based on their 'category of need', as opposed to their individual needs. Evidence shows a marked move away from 'specification and quantification' e.g. including in statements the support/services necessary and total number of assistance hours a child requires by the Education Authority, which is in breach of the requirement for specificity in statements imposed by Article 16 of the Education (NI) Order 1996. In addition, we have concerns raised previously with EA about the lack of data which they hold with regard to SEN. This can be illustrated by the following Assembly Question asked by Kellie Armstrong, MLA.

***“To ask the Minister of Education to detail the number of children referred to an educational psychologist broken down by (i) Education Authority region; and (ii) primary or post-primary sector, in each of the last five academic years.***

*The Education Authority has advised that they cannot provide this data with confidence given the recent changes with its Educational Management System upgrade.”<sup>23</sup>*

NICCY is extremely concerned about the ability of the EA to effectively and efficiently plan and provide SEN services without having access to even the most basic data on children's needs and projected numbers in relation to SEN.

NICCY's casework experience shows that some children with SEN and /or disabilities are being “informally” excluded from school in Northern Ireland. There are no formal appeal rights to challenge informal exclusion from school as the practice is potentially unlawful. Informal exclusions are not being properly documented, resulting in such exclusions being a hidden problem with no data collection hampering knowledge about the scale of the problem. This problem is exacerbated further by a failure to commence an appeals mechanism against formal suspension.<sup>24</sup>

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<sup>23</sup> [AQW 5149/16-21](#) written AQ's, week ending 28<sup>th</sup> Oct 2016

<sup>24</sup> Article 33 Education & Libraries (NI) Order 2006.

## A Rights Based Service Review

It is proposed to carry out a rights based review of SEN in mainstream schools, highlighting some of the more serious issues for children with SEN when accessing education. There are a range of issues as highlighted above which impact on the educational experience of children with SEN which vary based on school placement. This will involve carrying out survey engagement with Principals / SENCOs, gathering data about the types and severity of diagnoses of SEN over a number of years, speaking to children and parents about the assessment process, EPs re' time allocation, their ability to sufficiently support schools and changes to the EP role, getting information from EA around time allocation etc. Areas which should be the focus of the report will be determined through engagement with a range of stakeholders. It will be vitally important in carrying out this work that a body of advocates are established and NICCY is supported in its work by a broad range of influential stakeholders, including elected representatives. It is proposed to set up an external advisory group to advise on the work from NICCY's Educational Inequalities Advisory Group.

As a rights based review a central aim of this piece of work will be to explore the challenges to realising children and young people's rights with respect to SEN Provision in mainstream Schools and where possible, identify solutions or recommendations for removing or reducing these obstacles. The information gathered through this review will be used to develop a set of recommendations for all those responsible for commissioning, planning and delivering SEN services in mainstream schools. It is also the intention that this work will provide guidance that the education system can use to deliver on its obligations as set out by the UNCRC and to positively address issues raised by the Committee on the Rights of the Child in relation to Northern Ireland's compliance with the Convention.

The work will be guided by relevant children's rights standards which we will use to benchmark our findings and assess services and experiences against. There are two relevant sets of children's rights standards which NICCY plans to use to do this and these have been merged so as to arrive at the most suitable set of children's rights standards for this area of work.

The UNCRPD Committee's General Comment No.4 on the Right to Inclusive Education (Art. 24 - UNCRPD)<sup>25</sup> contains useful children's rights standards with regard to what is expected of members states in the provision of an "inclusive education" for children with

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<sup>25</sup> January 2016

disabilities. In addition, the UN Committee on the Rights of the Child's General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)<sup>26</sup> also contains 6 key standards which primarily relate to healthcare but can easily be translated to education. In the interests of ensuring that the standards children should expect in education where health needs may also be an issue, these standards have been merged and will be the children's rights benchmark for this work.

These are:-

- 1. Availability:** adequate facilities and services must be in place to meet the needs of all children and young people. Education must be available to people with disabilities at all levels.
- 2. Accessibility:** there must be equal access to services for all children without discrimination of any kind. Educational institutions and programmes must be accessible to everyone, without discrimination, including buildings, information and communication tools, the curriculum, educational materials, teaching methods, assessments and language and support services, with a particular focus on universal design.
- 3. Acceptability:** facilities and services and the form and substance of education must be designed and delivered in a person-centred way i.e. respectful of children's needs, expectations, views, cultures and languages.
- 4. Adaptability:** the education environment must be adaptable for people with disabilities. People with disabilities should be able to attend primary and secondary schools in the communities where they live and include accessible transportation. People with disabilities must be provided with reasonable accommodation to they can have access to education on an equal basis with others.
- 5. Quality / Impact:** children and young people should be offered a quality of service which adequately meets need, is appropriate and which improves well being. This includes choices regarding evidence based interventions and adequately skilled and trained staff to offer child specific support.

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<sup>26</sup> February 2013

6. **Participation:** whether the views of children and young people are gathered, seriously considered and taken into account in their own education and in the development of policy and services.
7. **Co-operation:**<sup>27</sup> whether there is timely and appropriate co-operation and integration of services to ensure a holistic approach is taken to need. This includes between schools and education bodies, NGO's and the statutory sector and between education, health and other relevant agencies and Government Departments.

## **Aims of the Review**

The aims of this review are to:

- Enable children and young people (through their parents, guardians and advocates) to share their direct experiences of accessing or trying to access services and support for SEN in mainstream schools and the impact of that journey;
- Identify barriers which prevent children and young people from fully realising their rights to an effective education in the content of SEN provision in mainstream schools;
- Identify good practice and produce recommendations for improving services and access to services, which are informed by children and young people and their parents / carers and professionals, directed at key government departments and agencies;
- Present the findings of the report and recommendations to relevant Government Departments and agencies and request regular monitoring information on progress made against the report's recommendations; and
- Increase public awareness of children's rights and in particular children and young people's rights to access services and supports to enable them to realise their right to an effective education.

## **Review Questions**

The Review aims to address the following:

1. Are children with SEN having their learning needs assessed and met in mainstream schools in Northern Ireland, with specific reference to:

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<sup>27</sup> This is particularly important now given the new statutory duties to co-operate set out in the SEND Act (2016) and the Children's Services Cooperation (NI) Act 2015.

- a. Educational Psychology (EP) assessments;
  - b. Access to EA funded services;
  - c. Provision in schools;
  - d. The advice provided by staff in school based and health and social care professionals and parents/carers views;
  - e. Capacity building in schools to enable all staff to effectively meet the needs of all pupils;
  - f. Transitions; and
  - g. Annual Review.
2. If the learning needs of children with SEN are not being met in mainstream school in Northern Ireland, what are the reasons for this?
  3. What is the impact of EP assessment delays and / or not being referred for an EP assessment having on:
    - a. the education of children;
    - b. the whole child, their parents / carers and families.
  4. Carry out an examination of the role of the EP in schools with regard to the proportion of their time spent on carrying out statutory assessments and other tasks.
  5. Are there any changes in the types of children's assessed SENs and any associated conditions/diagnoses in light of the current 5 stage SEN Code of Practice over time due to time allocation and EP referral policy with specific reference to:
    - a. Less severe conditions going undiagnosed or diagnosed later;
    - b. Less severe conditions being diagnosed via private EP assessment.
  6. Carry out an examination of the private EP assessment route, with specific reference to:
    - a. Whether private EP assessment reports are accepted by the EA;
    - b. What is happening if private EP assessment reports are not being accepted by the EA;
    - c. The number and cost of private EP assessment reports ;
    - d. The types of SEN diagnoses in private EP assessment reports and EP statutory assessment reports.

7. Identify best practice in meeting the needs of children and young people with SEN in mainstream schools. This could include through gathering the views of children and young people, their parents and/or carers and professionals, an examination of other jurisdictions and /or engagement with the special school sector in Northern Ireland.

## **Scope of the Review**

The engagement of young people and their parents will be challenging as the group we wish to engage with are children who may be waiting on an assessment or who are being refused an Educational Psychology referral by their child's school. In addition, children may be unaware of their suspected SEN. However, where possible we will engage with children and young people as part of the Review within NICCY's Corporate Ethical Guidance Policy. Given the prevalence of SEN in the general school population, we intend to commission our initial engagement with parents.

The scope of the study is to consider type of experience, age range, and living situations / settings; we will target:

1. Children and young people's experience of accessing support and services for SEN in mainstream schools. This will include those who have not been prioritised for an educational psychology referral, as we want to understand the options when a child who requires a statutory assessment is not referred for one and the circumstances under and to what degree this is happening. As stated above, engagement with children with a suspected SEN may raise ethical concerns and it is envisaged that engagement will primarily be done through their parents and teachers. We will however endeavor to engage with children directly where possible and in line with NICCY's Corporate Ethical Guidance Policy;
2. It will include the experiences of children and young people in mainstream schools and - as their main advocates in education generally, but with regard to SEN specifically - their parents / carers will be a key group for engagement;
3. Key professionals working with children with SEN, including Principals, SENCOs and Educational Psychologists, EA support service staff and health and social care professionals involved in assessing / diagnosing children's health and development needs;
4. As the review will focus on children on the SEN register the target age range for the review will be up to 19 years old.

## Methodology

The key strands of the review are set out below.

1. A questionnaire will be used to capture the views of Principals / SENCOs with regard to meeting the learning needs of children and young people in mainstream schools with SEN and the current challenges schools face in meeting their needs.
2. Follow up focus groups / interviews with Principals / SENCOs teasing out some of the issues raised in the questionnaire and gathering more detailed information about SEN provision in mainstream schools, the challenges faced and good practice.
3. A questionnaire will be used to capture the views of Educational Psychologists (EP) with regard to meeting the needs of children and young people in mainstream schools with SEN and the current challenges that they face in meeting their needs. This will also focus on the changing role of the EP.
4. Follow up interviews / focus groups with EPs, teasing out some of the issues raised in the questionnaire and gathering more detailed information about SEN decision-making and types of SEN provision in mainstream schools, the challenges faced and good practice. Also what role any advice provided by health and social care professionals may have had in helping shape SEN decision making and provision in mainstream schools and non-educational support for children in this respect.
5. Engagement (commissioned) with parents / carers of children with SEN or who may have SEN attending a mainstream school. This engagement will aim to gather the views of parents about their and their child's experience of accessing or trying to access services or support for SEN in mainstream schools.
6. Analysis and mapping of available official statistical information on the operational aspects of SEN and a breakdown of budgetary spend on SEN. This should also include information on the types and extent of SEN in mainstream schools, the numbers and types of SEN categorisation and conditions/diagnoses over time, the referral source for statutory assessment, the numbers of private assessments and types of diagnoses and issues to consider with regard to recommended SEN provision in mainstream school settings. NICCY's procedures for requesting information from relevant authorities will be followed.

## **Stakeholders from whom evidence will be requested**

### **Parents / Carers**

Parents /Carers / corporate parents\* (social workers) are often the people who seek help on the young people's behalf.

### **Principals / SENCOs**

Questionnaire and follow up interview / focus group engagement will take place with Principals and SENCOs.

### **Educational Psychologists**

Questionnaire and follow up interview / focus group engagement will take place with private and EA employed Educational Psychologists.

### **EA and DE**

Statistical information and data will be required from both the EA and DE.

### **Health and Social Care Professionals**

Workshop / Focus Group engagement with a sample of Medical professionals including Community Paediatricians/GPs and Occupational Therapists, Speech and Language Therapists and CAMHS Clinical Psychologists who have provided advice to schools/Educational Psychologists for children with SEN or suspected as having SENs.

### **NGOs and Other Education Stakeholders**

Workshops / meetings and focus groups may be useful with regard to NGOs who advocate on behalf of children with SEN and other education stakeholders who have carried out work on SEN e.g. NIAO.

## **Project Team**

### **Professional Advisory Group**

The role of the advisory groups needs to be considered but should include giving their views on the draft ToR and Methodology etc.

### **Children and Young People Advisory Group**

We can involve the NYP education sub-group but we also need children and young people with experience of accessing or trying to access SEN support in mainstream school.

## Ethical Considerations

Engagement with children and young people with SEN or who may have SEN attending a mainstream school will be considered as part of this work. Such engagement would aim to gather the views of children about their experience of accessing or trying to access services or support for SEN in mainstream schools. However, there may be ethical considerations with regard to engaging with young people given the fact that they may be unaware of a suspected SEN or may not have the information required. This will be considered further for possible work following this work.

NICCY's Corporate Ethical Guidance Policy will be followed, this involves completion of an ethical approval process in which external ethics reviewers provide advice and support before the review begins.

## Signposting

- Resources / signposting will be made available following engagement with children, young people and their parents / carers, including where legal action / complaints may arise i.e. NICCY's legal and investigation team, external agencies etc.

## Timeframe

Key milestone dates for the review are set out below:

May - June 2018	Principals questionnaire developed and circulated.
August - Dec 2018	Setting up Advisory Group and meetings with key stakeholders to finalise the Methodology and Terms of Reference.  Analysis of Principals questionnaire.  Commissioning parental engagement.  Initial engagement with AEP and questionnaire developed.  Interviews with Principals / SENCOs.
Jan- June 2019	Programme of engagement and evidence gathering with professionals, parents and children and young people across Northern Ireland.

June – Nov 2019	Interim findings produced.
Nov 2019 – March 2020	Final report completed.
March 2020	Final Report and Dissemination - <ul style="list-style-type: none"><li>• Formal Launch.</li><li>• Media Engagement Strategy.</li><li>• Social media.</li></ul>

For further information please contact Natalie Whelehan, NICCY's policy lead on Education by Email [Natalie@niccy.org](mailto:Natalie@niccy.org) or Telephone 02890 316385.