



Response

DE Policy Proposals Consultation

Every School a Good School 'The Way Forward for Special Educational Needs and Inclusion'

November 2009

Introduction

The Children with Disabilities Strategic Alliance (CDSA) brings together organisations from across the children's sector and the disability sector. It is jointly chaired by Children in Northern Ireland and Disability Action.

CDSA wants to ensure that policy impacting on the lives of children and young people with disabilities is informed by their needs and circumstances and promotes and protects their rights. The Alliance has developed a Manifesto which aims to:

- Promote the rights and best interests of children and young people with a disability;
- Raise awareness of the exclusion experienced by children and young people with disabilities in their daily lives; and
- Recommend actions that will help address the barriers they encounter

The Manifesto will be launched at an event in the Long Gallery, Parliament Buildings on Monday 7th December 2009.

CDSA welcomes this opportunity to respond to DE Policy Proposals Consultation Document '*The Way Forward for Special Educational Needs and Inclusion*'. The Alliance has actively considered the DE policy proposals and this response captures the common issues of concern identified in our deliberations throughout the consultation period. We have raised many of these concerns with the Assembly's Education Committee through direct representations to the Committee. Individual members of CDSA may, of course, respond to the consultation document.

CDSA is extremely concerned by the lack of clarity and detail surrounding the outworking of potentially far reaching and significant proposals that would fundamentally alter special educational needs provision as currently exists. We would highlight that this has led to uncertainty and great concern and anxiety for the children, parents and families whom CDSA members work with and represent.

Member organisations within CDSA are acutely aware of the frustration experienced by children and parents in accessing and receiving adequate, appropriate and effective provision for special educational needs. Prior to considering the specific detail of the DE proposals, CDSA would highlight the deficiencies which exist in the current system and which we believe will not be addressed and could be further compounded by the current proposals.

Deficiencies within the current assessment and statementing process

CDSA is of the strong view that the reform process must go further than simply re-branding the existing process. DE must address the failings of the current system. Currently many children experience long delays within the statementing process. Delays experienced in the process have ranged from 56 days (SELB) up to 158 days (SEELB) for Stage 3 and 4; coupled with inadequate numbers of educational psychologists, this has resulted in unacceptable waiting lists.

At present there is only a statutory timeframe for Stage 4 (assessment) and Stage 5 (statement issued). Indeed delays in reports being forwarded by non-educational services can mean that, despite statutory time limits, these are not always adhered to.

In addition difficulties have also arisen when the quantity and type of provision, such

as Speech and Language Therapy and Occupational Therapy is not made explicit within Part 3 of the statement.

DE must address these failings by:

- Integrating a **statutory timeframe for assessments**, particularly the in-school phase and crucially teachers need more support to provide a timely response to children's needs.
- Instigating and leading a **review with regard to the number of Educational Psychologists** and developing a plan to reduce and respond appropriately to the 2000 children currently awaiting assessment¹.
- Ensuring a **co-ordinated approach between ESA/ELBS and Health and Social Care Trusts to ensure access to required services** in all educational settings such as Speech and Language Therapy, Occupational Therapy and other support services such as IT and transport. Furthermore, there must be a requirement on other partners partaking in the process to do so in a timely and responsive manner so that a child can access the required provision to meet his/her needs as promptly as possible.
- Fundamentally, legislative provision on special educational needs must stipulate that in exercising all duties and functions the over-riding principle guiding for education authorities must be the **best interests** of the child as set out in article 2 of the UNCRC. Article 2 provides:

"1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

There are also specific concerns relating to the involvement, engagement and participation of children and young people in the existing system:

Although guidance in the current Code of Practice on SEN recommends that the views of children and young people are sought and taken into account, children with special educational needs do not have a legal right to be heard for example when appeals are made to the SENDIST.

Representation and advocacy services for children with SEN have no legislative basis and are not funded by the DE. In addition legal aid is not available for representation at SENDIST, or for the cost of obtaining independent expert evidence to support an appeal.

The regional Inter-Board Dispute Avoidance Service (DARS) is currently under-used by the public. There are concerns that the primary reason is public perception that this service is not fully independent from the ELBs.

CDSA would advocate that children with disabilities, including children with special educational needs, are empowered and supported to give their views and have them given due weight throughout the SEN process. This can be ensured by **enshrining article 12 of the UNCRC in SEN legislation** (also supported by article 7 of the UN Convention on the Rights of Persons with Disabilities). Article 12 provides:

¹ Northern Ireland Assembly Question 12.090.09 (AQW 7891/09)

“1. State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

It should be noted that last October (08) when the UN Committee on the Rights of the Child delivered its Concluding Observations and Recommendation on Great Britain and Northern Ireland implementation of the UN Convention on the Rights of the Child, it noted in particular that *“insufficient action has been taken to ensure the rights enshrined in article 12 to children with disabilities”*². Furthermore, the Committee recommended that Government *“ensures that children who are able to express their views have the right ... to appeal to the special educational needs tribunal”*.³

CDSA would also advocate for **fully resourced independent advocacy and representation services** for children with special educational needs.

A statutory **right of appeal to the SENDIST** must be granted, supported by publicly funded legal aid.

In addition, targeted actions are needed to build the trust and awareness of the Dispute Avoidance and Resolution Service to **promote and encourage its use**.

Consultation with Children with Special Educational Needs and their Parents

At this point CDSA would welcome information from DE on plans for direct engagement with children, young people and their parents. We would highlight this is crucial in line with the Department’s obligations under article 12 of the UNCRC and Section 75 of the NI Act 1998. We understand that the process of commencing engagement has only begun in the last number of weeks and we would highlight that this is extremely unsatisfactory given that according to Equality Commission Guidance on Implementing Section 75 engagement must commence from the outset of the policy development process, indeed at the pre-consultation stage, in order for public bodies to ensure meaningful engagement that can impact positively on the shaping of policy proposals.

Concept of Additional Learning Needs

DE have stated that the concept of **Additional Learning Needs** will not replace SEN, rather it includes SEN.

CDSA would not support a re-definition of SEN. Our concern is that by broadening the scope of this agenda, the proposals are compromising the required focus on SEN and could in fact lead to a dilution of the current statutory entitlement for children with special educational needs. The origins of the review process indicated the need to address the deficiencies of the current statutory framework and identify and address those areas/aspects of the framework that are failing children with special

² CRC/C/GBR/CO/4 para 32

³ CRC/C/GBR/CO/4 para 67

educational needs.

CDSA acknowledges that our education system must address and respond to the diversity of learning needs of all children and young people. We recognise that the groups of children listed within the concept of additional needs experience barriers to learning which must be addressed. Indeed children with special educational needs may, in addition, face additional barriers to learning that are, for example due to family circumstances or not having English as their first language. It should be noted, for example, that 23% of the children in our care system have statements of special educational needs⁴ and over half (51%) of Irish Traveller children have special educational needs⁵.

Members would caution, however, against creating an environment where one group of vulnerable children is vying against another for the extra support and resources both desperately need. We believe that the current proposals fail to reflect the distinct needs, circumstances and current legal entitlement of children with special educational needs.

Early Identification and Intervention

CDSA welcomes a focus on **early identification and intervention**, however we would highlight that this assumes that identification and early intervention will start at and be within a pre-school or school setting. For most disabled children the identification will take place at or shortly after birth and the early intervention (including from education) needs to and can take place as early as possible, often before attendance at formal education settings. The consultation document is unclear how children identified from birth or in their early years are to access the early intervention support they need or how an assessment which takes place before a child attends an educational setting will be taken into account within the proposed framework.

Personal Learning Plans

CDSA would highlight that the proposed Personal Learning Plan would be a key document containing all that will be required to meet and deliver appropriate support. It is imperative that such a document is regularly reviewed within an agreed timeframe, so that the appropriateness of the outcomes and the effectiveness of interventions can be closely monitored. Where interventions fail to help a child progress as expected, the review should result in alternative, more appropriate learning interventions to be put in place or act as a trigger for a statutory assessment leading to the possibility of what is currently delivered through special educational needs provision.

CDSA welcomes the fact that DE recognises the need for proper implementation of these plans, but are concerned that no consideration has been given to the consequences of failure to implement the Plan properly. Again the issue of child and parent involvement, and consultation on the process of arriving at and implementing the PEP has not been addressed in the consultation document. CDSA is gravely concerned that there is no indication within the proposals that there would be an appeal mechanism associated with the PLP that could be accessed by children and their parents if they are not satisfied with the content and/or ultimate effectiveness of

⁴ DHSSPS: Publication of 'Outcome indicators for looked after children in Northern Ireland year ending 30 September 2008'

⁵ NI School Census 08-09

the plan. This is a fundamental consideration which must be integral to any proposal to amend or replace the current IEP.

Education other than at school

CDSA notes and shares the concerns regarding the number of children with statements of SEN who are in alternative education provision. According to DE EOTAS figures from October 2008, of the 847 children in EOTAS provision, 34% (288) had statements of SEN.

CDSA is particularly concerned that some of these children in AEP will have been suspended and expelled from mainstream school, and indeed, we note the significant and increasing numbers of children with statements of SEN who are suspended or expelled from school. For the academic year 2006/07, a total of 45 pupils were expelled from school and 18 (40%) of these pupils had SEN. This is the highest percentage of pupils with SEN expelled from schools for the previous five academic years⁶.

With regard to suspension and expulsion the UN Committee on the Rights of the Child in its 2002 Concluding Observations noted its concern “at the still high rate of temporary and permanent exclusion from school affecting amongst other groups of children ... disabled children”. The Committee recommended that Government “undertake all necessary measures to remove the inequalities in exclusion rates between children from different groups” (para 45-46).

In 2004 a DE consultation on change to suspension and expulsion procedures proposed that pupils with a statement of Special Educational Needs (SEN) should not be expelled from school⁷. CDSA would strongly advocate for a review of current education policy on suspensions and expulsions, with separate guidance in relation to special educational needs. Pupils with challenging behaviours rather than face suspension or expulsion should have a statement review before action is taken. Their needs could be re-assessed and more support and guidance on managing challenging behaviour provided to schools to give greater understanding of needs.

CDSA does believe that it is helpful to the child or parent that a school is required to demonstrate that every effort has been made to sustain the school placement through its own resources and the use of co-operative working with other local schools and agencies. As recommended by the ETI Research Briefing on AEP there is clearly a need for earlier identification of children’s problems and more preventative work in schools, including specific support for children with special educational needs.

We would strongly support the proposal that the school would take responsibility for the pupil and be accountable for future outcomes. In practical terms this would require schools to provide full and accurate referral information relating to the young person. It also means that ELBs/ESA must ensure that staff in AEP settings are properly equipped and supported to deliver the common curriculum. Currently young people in AEP provision report “*problems relating to the value in the labour market of the curriculum and qualifications on offer*”. This report by Kilpatrick et al (2007) also noted difficulties for staff attempting to deliver elements of the Common Curriculum within AEPs, most notably ad-hoc and unsustainable funding and a lack of access to

⁶ AQW 2960/09 In 2002/03 21% of those pupils expelled from school had SEN; this figure rose to 35% in 2004/05 and fell again to 30% in 2005/06 before rising to its highest level of 40% in 2006/07.

<http://www.niassembly.gov.uk/qanda/2007mandate/writtenans/2008/081212.htm>

⁷ DE (2004). Suspension and Expulsion Procedures. Proposals for Change. Bangor: DE.

training and resources and “no systematic or coherent support for the wider system, even though they are dealing with the most disadvantaged and vulnerable people in our society”. As observed by the NICCY rights review (2008) the fact that children and young people who are educated in AEP cannot avail of the same opportunities as their peers in mainstream education is in clear contradiction with a non-discriminatory rights-based approach to education provision. CDSA supports the conclusion reached by the NICCY review and agrees that it is imperative that AEP be properly funded, resourced and managed to enable staff to meet all the needs of children and young people being educated within these environments and to offer them every educational opportunity that they would have in mainstream education⁸.

Training and Development

CDSA is concerned that in recent times over 2000 children have been awaiting special needs assessment and suggests that this points to a lack of confidence in schools in providing the extra support that some children need. CDSA also suggests that there is a need for more specialists and specialist support services. CDSA would strongly advocate that there is a need to increase the level of outreach/support services available to schools and teachers.

Furthermore, CDSA welcomes recognition of the expertise and knowledge of special school staff and acknowledges the advantages of utilising their experience to advise and support mainstream staff. We believe, however, that this must be delivered in a planned way, ensuring that children in special schools are not placed at a disadvantage and that special school staff are trained to provide this support.

In addition, there is also a need to increase the number of specialist staff across all sectors and ensure that every school has access to appropriate specialist knowledge or expertise. In England the Lamb Enquiry has recommended training for teachers requiring each school or clusters of schools to have a level of second-tier expertise on SEN to improve early intervention.

While investment in capacity building is important, investment needs to be recurrent to address any skills and knowledge gaps within school learning communities in relation to SEN, a particular disability, learning disability, or need.

CDSA notes that the Department has recognised the implications for teacher training and indicated that training should be directed toward enabling teachers to support children at all levels, enabling them to understand generic issues and providing them with a range of strategies and resources for intervention. However, CDSA is particularly concerned that the document does not refer to the importance of training around specific disabilities or conditions or the interventions which may be most helpful. Nor do these proposals consider the impact of the current large class sizes or the increasing diversity of learning needs in classes which teachers will be required to respond to.

CDSA notes that the consultation document does recognise that “*principals and governors, for example, may require further support in developing their understanding of how to generate, collate, and then interpret relevant data relating to the achievements of individual and groups of children*”⁹. We welcome this recognition and while achievement in terms of educational attainment is captured for some groups of vulnerable children, data is not sufficiently disaggregated, as there is

⁸ NICCY (2008) Children’s Rights Rhetoric or Reality: A Review of Children’s Rights in NI 2007-08

⁹ DENI (2009) Policy Proposals Consultation The Way Forward for Special Educations Needs and Inclusion, para 8.4

limited specific information on educational outcomes of disabled children and young people. This is extremely concerning given the significant gaps in attainment levels between those with a disability and their non-disabled peers. For example, from the limited data that is available, we do know that 48% of deaf children in Northern Ireland get 5 GCSE's A-C in comparison with 64% of their hearing peers, equating to a 16% gap¹⁰. In terms of population, 44% of disabled people have no qualifications compared to 18% of people without disabilities, while 12% of people with disabilities have a higher education qualification compared to 26% of people without disabilities¹¹. DE must support schools by developing a robust system to collect and provide both qualitative and quantitative disaggregated data on educational outcomes for children with sen and/or a disability, learning disability or need.

CDSA notes the proposal to replace SENCOs with Learning Support Co-ordinators. We would support LSCs being part of the senior management team and a non-teaching staff member to fulfil the role of LSC adequately. We note, too, that DE proposes that, as part of the pre-implementation phase, a key activity would be preparing LSCs for lower level diagnostic testing¹². CDSA has concerns regarding the extent of expertise and support current SENCOs have, and does advocate that for such a pivotal position a comprehensive training programme must be developed; key building blocks for such a programme must include disability awareness training, training on specific conditions and disabilities as well as training on children's rights and disability rights.

Co-ordinated Support Plans/The Outworking of the Proposed Model

CDSA notes that within the school based stages of the current SEN process children with SEN have no enforceable legal right to provision, the main legal duty rests on a school's Board of Governors to '*use their best endeavours*' to make provision. In the absence of a legally enforceable right to provision one of the major concerns relating to the school based stages of the existing SEN process is the length of time which children can spend at these stages without making progress. CDSA draws attention to the 2005 DE Research Report on Parental Attitudes to Statutory Assessment and Statementing Procedure on Special Educational Provision which reported that 63.4% of parents who responded, reported their child had been experiencing difficulties for longer than 2 years prior to start of the assessment period. However, the current proposals do not recognise or seek to address this failing of the process. CDSA would recommend that a statutory timeframe is introduced for the school based stages of the SEN process, which incorporate the Individual Education Plans, so that children can receive the provision required to meet their needs in a timely and appropriate manner. Again we would highlight the need for a right of appeal or redress should the school fail to intervene quickly or effectively.

In relation to the proposed 'within school plus external support' stage, there is some indication that a parent could make a referral for external support (para 13.7), however the role of parents is not made clear and transparent within the proposals, and brings into question the level of genuine commitment that exists to ensuring that parents are recognised, respected and treated as equal partners in planning for their child's education. The proposals also suggest that at the 'within school plus external support' stage, the proposed MG would have a role in providing an evaluation of the support needs of the child and a number of key considerations are outlined at para 13.6; CDSA believe, however, that there is a failure to recognise that the views of

¹⁰ DENI (2006) School Leavers Survey. Bangor. ETI

¹¹ ECNI (2007). Statement on Key Inequalities in NI. Belfast ECNI

¹² Ibid para. 18.4

children and parents are central to ensuring that any evaluation of the support needs of a child is properly and fully informed .

CDSA has grave concerns on a number of levels regarding the proposal to replace statutory statements of SEN with statutory co-ordinated support plans (CSPs). At stage 4 of the current process parents can request a statutory assessment of their child's needs. It is unclear whether this right to request an assessment would be contained within the proposed new process and precisely at which point it would operate. In fact, it would appear from the proposals that the MGs would be the 'keeper' in terms of determining if and when a statutory assessment process could commence (para 13.8). Stage 4 is recognised as a critical tool for parents and schools, as refusal to provide a statutory assessment is one of the grounds for appeal to the SENDIST. CDSA would be concerned by and opposed to any proposal that would bring a reduction in appeal rights for parents and children.

CDSA notes the proposed criteria for access to the proposed Co-ordinated Support Plan – these will be provided '*solely for those children with SEN who face complex or multiple barriers to learning which significantly and adversely, affect (or could reasonably be expected to affect) their educational development in the long term and who require frequent access to a diversity of multi-agency services external to the school*'.

We have grave concerns that this shift from statements to CSPs will in fact result in a reduction in legally enforceable rights to provision. We would highlight that the proposed criteria for grant of a CSP closely resemble the legal definition of 'disability', a threshold which many children with SEN who currently have a statement, will not be able to meet. Therefore children who currently have enforceable legal rights to provision will lose these rights under these restrictive new proposals. We would highlight that in fact the proposals on CSPs suggest a change in the definition of SEN which is wholly unnecessary and will unduly restrict access to provision. CDSA would be entirely opposed to any proposal that would change the definition of SEN and prevent vulnerable children accessing the provision that they are currently entitled to receive.

CDSA also notes the proposal to 'move away' from the current statutory annual review process to a review of CSPs at 'more dynamic trigger points', for example, at the end of key stages, when the child is moving to another school or at the request of a parent or existing school¹³. The consultation document highlights that the annual review process is seen by many as being time consuming and costly and, yet in many cases, does not result in any change in provision. However, we would highlight that for parents the annual review presents a vital opportunity to ensure the statement remains relevant and effective and that their child is receiving the provision specified in the statement. We would highlight the findings of a 2005 DE Research Report on '*Parental Attitudes to Statutory Assessment and Statementing Procedure on Special Educational Provision*' which reveal that of parents who responded:

- 72.7% said the 'annual review was helpful';
- 75.8% said 'a review was needed annually even if needs remained unchanged';
- **63.9% said they 'would be unhappy if the review was held at key times'**

Parents must be properly informed and their engagement in the annual review process enabled and supported, so that the process can be used to maximum effect. We would be concerned that in moving away from the annual review process this

¹³ Para 10.5

would reduce the opportunity to secure change to statutorily enforceable documents that may not be operating effectively and would further reduce parents rights to appeal where the statement is not operating effectively and delivering the required provision to meet their child's needs. Again CDSA would be entirely opposed to any proposals that would see a reduction in parents' appeal rights. In fact we would call for a strengthening of appeal rights and would highlight to DE the Lamb Inquiry Report on '*Quality and clarity of statements*'¹⁴ which noted concerns that annual reviews were not conducted with the rigour necessary to assure everyone that children were making the anticipated progress. The Lamb Inquiry has recommended that there should be a right of appeal, where following an annual review the local authority decides not to amend a statement. CDSA would strongly advocate for this right of appeal to be incorporated into the annual review process.

CDSA would also highlight that for the annual review process to operate effectively it is imperative, in line with UNCRC article 12, that children and young people are supported and enabled to input their views on their needs and the provision that would help them to progress with their education. The Lamb Inquiry Report on '*Quality and clarity of statements*' noted that the participation of children and young people in the process was 'rare'. Yet, through meeting with children and young people, the experience of the Inquiry was that their insights into what can help them to learn and what hinders their learning is critical in informing the process of statutory assessment and drawing up of the statement¹⁵.

CDSA recognises the importance of improving the learning outcomes for children with SEN and disabilities within the current process, however this must not detract from the much needed emphasis on the specific provision that is required to meet a child's assessed needs. There must be equal emphasis placed on all of the critical elements within a statement with the provision to be provided to meet needs explicitly outlined and linked to relevant learning outcomes.

In relation to the proposed introduction of CSPs¹⁶, CDSA notes that where a child is assessed as not requiring a CSP transitional arrangements will allow for the provision made for him/her to be preserved as a minimum for a further two years from the date that the ELB/ESA makes that decision. There is no indication that during this period should needs change that provision would be adapted to meet these needs and with an apparent cut off point in place, no clarity as to the position should the child need further ongoing provision beyond the cut off point.

Furthermore, while this transition and decision making process is taking place a child's current entitlement through the statement of special educational needs will be effectively 'frozen', therefore should a child's needs change, whether that is an increase or decrease in need, the provision will remain as is for a period of up to 2 years. CDSA believes this is a wholly unsatisfactory approach which may jeopardize a child's right to the extra educational support they need.

Transition Points

CDSA welcomes the emphasis and focus given to transition points within the consultation document; this is a critical and ongoing area of concern for children and young people.

¹⁴Lamb Inquiry Special Educational Needs and Parental Confidence Report on '*Quality and clarity of statements*' para 35,42 www.dcsf.gov.uk/lambinquiry

¹⁵ Lamb Inquiry Special Educational Needs and Parental Confidence Report on '*Quality and clarity of statements*' para 31-32 www.dcsf.gov.uk/lambinquiry

¹⁶ Para 18.6

CDSA firmly agrees that at transition points the transfer of existing knowledge of the child's strengths and difficulties is essential, and we would highlight that such a process should be carefully regulated by agreed protocols, which build in appropriate safeguards to protect children and young people with a disability and/or SEN. We note the proposal that pre-school and schools should have effective arrangements in place for the sharing of information relating to the child; however we would highlight that this proposal must be more all encompassing of the wide range of transitions that a child/young person will make throughout their life.

CDSA does have significant concerns regarding the transition services that are currently available for disabled children and those with special educational needs. Young people with a disability are faced with limited choices in the transition from school in comparison to their non-disabled peers. Currently the support that children receive is variable in terms of the **preparation** and **planning** for their transition. Children and young people with disabilities and special educational needs are not routinely involved in these decisions that affect their lives and while we do welcome the recognition that there *"should be an explicit recognition of the strengths, abilities, wishes and needs of the child"* we wish to see explicit provision made for the incorporation of the views of the child in transition planning in line with both article 12 of the UNCRC and section 75 of the NI Act 1998. It is crucial that parents are also recognised as key partners in transition planning.

Ongoing concerns around current transition arrangements and options should be addressed. We are concerned that geographical inconsistencies in the provision of the service continue to exist and would highlight that this is an issue which must be urgently tackled jointly by the new education and health authorities, ESA and the RHSCB respectively. Furthermore, we would suggest that rather than simply *'improved communication/links between the transition officers from both health and social care and education'*¹⁷ there must be a coming together of these crucial aspects of the transition process, with joint planning and commissioning of transition services that would produce a more effective and efficient use of resources directed toward delivery of agreed transition outcomes which have been set in consultation with children and young people with disabilities and their parents/carers. A multi-agency transition service for disabled young people aged 14-25 is needed in every area to ensure intensive, person centred support at this critical time so that they have a range of real options to enable them to reach their potential and look forward to their future with confidence.

CDSA believes that there is an urgent need for an inter-departmental approach to transitional planning, with the development of a commonly agreed operating model of delivery with shared values and principles across all sectors for all disabled children.

CDSA warmly welcomes the opening up of the Transition Support Service to include any pupil with SEN (not just those with statements as currently under the CoP) but urges DE to ensure that this is accompanied by additional resources to meet this increased need.

Developing Effective Partnerships

CDSA does believe that an effective partnership between the ELBs/ESA, RHSCB and the voluntary and community sectors will be essential to ensuring an adequate

¹⁷ Para 11.6

and holistic response to the needs of children with SEN, a disability, learning difficulty or need.

We do note that while currently the ELBs hold statutory responsibility for identifying, assessing and meeting the educational needs of children with SEN, under Article 14(4) Education (NI) Order 1996 there is a statutory duty upon HSC Trusts to cooperate with the ELBs in providing therapy services. However, this duty to co-operate is made contingent on the availability of Trust resources. We believe this in fact operates to 'exempt' the Trust from co-operating and therefore we would strongly advocate that the legislation should be, amended to require Trusts to co-operate by making provision for assessed needs.

In recognition of the importance of cross-sector working it is highlighted in the consultation document that *'it will be essential that the ELBs/ESA and the RHSCB and HSC Trusts are bound by further agreements (such as memoranda of understanding or service level agreements) to jointly and effectively plan, commission, deliver and monitor, with the resources allocated, a joined up education and health and social care service to children with barriers to learning'*¹⁸. We do note, however, that this is not a specific policy proposal. The consultation document does further suggest that should these *'agreements'* fail to deliver *'accessible and consistent support'*, then the respective departments may need to consider placing an appropriate statutory duty on the relevant organisations.

CDSA does not believe that *agreements* could be sufficiently robust to produce the level of joined up working that would be required to deliver shared outcomes for children. There are clearly issues around the enforceability of agreements, and in relation to effective responses to deal with failure to comply. CDSA would strongly support a statutory duty to jointly plan, commission, deliver and monitor a joined up education and health and social care service.

When considering joint planning and commissioning of health, social care and education services, it would also be relevant and timely to consider how joint identification and assessment of need might be facilitated and enabled, ensuring that disabled children and young people receive the extra support they need in a timely and consistent manner.

- **Multi-Disciplinary Groups**

CDSA welcomes the concept of 'multi-disciplinary working'. However, we would strongly advocate that as a way of working it should flow from and be underpinned by a statutory duty to co-operate led by health/social care and education. We suggest, too, that expertise beyond statutory sector should be integrated and given a place as an equal partner. It is essential that the professional expertise, skills and knowledge in existence within the voluntary and community sector is recognised and included; noting that this is a key element of a broad range of existing cross-sectoral and multi-disciplinary fora.

CDSA does note the very substantive role proposed for the Multi-Disciplinary Groups, and while not precisely and clearly outlined in the consultation document, it would appear that the proposed functions of MGs would include:

CDSA believe that it is unclear from the proposals what the relationship would be between the ELBs/ESA and the MGs, it is vitally important that parents should also

¹⁸ Para 12.17

be able to make referrals or appeal to multi-disciplinary groups, given that parents and schools will not always agree on the needs of a child. Parents need to know who they can hold to account for their child's education provision.

At this point, CDSA believes there must be further detailed consideration and indeed engagement and consultation with key stakeholders, including parents, on the concept of multi-disciplinary working.

Partnerships with Parent/Carer

CDSA members work with and represent large numbers of parents and families. We are concerned that many parents have not been made aware of the proposed policy reforms, and only recently, at a late stage in the consultation process, are parents becoming aware of the proposals. Parents are now extremely anxious and concerned by the implications of these proposals for their children's educational opportunities.

DE's failure to prepare and put in place a comprehensive strategy to engage and consult with parents from the earliest stages of the review process through to the development of policy proposals is an abject failing on the part the Department and calls into question just how genuine the Department is with regard to working in partnership with parents to build their confidence in the education system and special educational needs provision.

We would highlight that from pilot projects undertaken as part of the Lamb Enquiry into SEN in England, it has been demonstrated that the more parents are involved the greater parental confidence in the SEN process is.

With regard to the current guidance in the Code of Practice on working in partnership with parents/carers and children, we are concerned that this is not consistently delivered and adhered to. We would suggest that 'guidance' on this issue is not a sufficient response, there must be a statutory obligation which recognises parents as equal partners in their child's educational journey, with a vital input and contribution to make. Therefore mechanisms must be developed to secure their involvement and engagement at all stages of their educational journey, through school and where relevant through statutory assessment and provision.

Providing timely, accessible and relevant information to parents on the education process and on the statutory assessment process and SEN provision is a key factor in supporting and enabling parents to effectively engage, participate and gain confidence in the system. We would highlight to the DE the HM Treasury and DCSF '*Aiming High for Disabled Children*' report which resulted in a series of policy initiatives and investments in children with disabilities and their families. One element was the 'National Core Offer' which set out expectations for how disabled children and their families will be informed and involved as their child's needs are assessed and provided for. The Core Offer presents standards for service providers in relation to information and transparency, assessment, participation and feedback. The Lamb Enquiry has considered the Core Offer in its review of SEN in England and noted its wider impact beyond the provision of information, touching as it does on aspects of interaction between parents and carers and schools. The Lamb enquiry has recommended that the principles of the Core Offer are extended to provide a framework for engagement by schools and children's services with parents of children with special educational needs.

CDSA would strongly recommend that the DE consider the standards of the Core Offer and develop a framework that would guide the engagement of schools and

wider children's services with all parents, with a particular component considering engagement with parents of children with special educational needs.

Specifically in relation to the regional Inter-Board Dispute Avoidance Service (DARS) we note that this is currently under-used by the public. There are concerns that the primary reason is public perception that this service is not fully independent from the ELBs.

CDSA notes that the consultation document indicates that the DARS is to remain and indicates that it supports the recommendation from ETI's (2008) DARS Survey. We would suggest that there should be firm proposals to address these recommendations which include independent premises, DARS manager to be responsible for the budget and for staff recruitment. However, we do note that the survey report does not recommend any change in powers. CDSA would highlight that targeted actions are needed to build trust in and awareness of the Dispute Avoidance and Resolution Service to promote and encourage its use.

- **Partnerships with the Child**

CDSA welcomes the explicit recognition of Articles 12 and 13 of the UNCRC. There is a suggestion that schools and others bodies would be *required* to give due weight and consideration to the views of the child, in accordance with the age and maturity of the child, in all decisions about their education. However, there is limited evidence by way of firm policy proposals in the consultation document that would actually require the views of the child to be sought and listened to as part of the reformed SEN process i.e. this crucial consideration has not been explicitly and effectively dealt with in the proposed reforms either at school based stages or indeed as part of the statutory SEN assessment and provision process.

CDSA would again reiterate our specific concerns relating to the involvement, engagement and participation of children and young people in the existing SEN system and indeed in their educational experience as a whole.

While guidance in the current Code of Practice on SEN recommends that the views of children and young people are sought and taken into account, children with special educational needs do not have a legal right to be heard for example when appeals are made to the SENDIST.

Furthermore, representation and advocacy services for children with SEN have no legislative basis and are not funded by the DE. In addition legal aid is not available for representation at SENDIST, or for the cost of obtaining independent expert evidence to support an appeal.

CDSA would strongly advocate that articles 12 and 13 of the UNCRC are enshrined in SEN legislation (this is also supported by article 7 of the UN Convention on the Rights of Persons with Disabilities). This should have the positive effect of encouraging and facilitating the creation of a culture within schools and other education bodies where children's views are regularly and routinely sought and listened to through a variety of structures and methods, both formal and informal, and reflected in planning and provision for their education.

Article 12 provides:

"1. State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of

the child.

2. For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

Article 13 provides:

“1. The child shall have the right to freedom of expression; the freedom shall include the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print, in the form of art, or through any other media of the child’s choice.

2. The exercise of these rights may be subject to certain restrictions, but these will only be such as is provided by law and are necessary
(a) For the respect of the rights or reputations of others; or
(b) For the protection of national security or public order, or of public health or morals

When the UN Committee on the Rights of the Child delivered its most recent Concluding Observations and Recommendations on Great Britain and Northern Ireland implementation of the UNCRC in October 2008, it observed that “insufficient action has been taken to ensure the rights enshrined in article 12 to children with disabilities”¹⁹. The Committee recommended that Government “ensures that children who are able to express their views have the right ... to appeal to the special educational needs tribunal”.²⁰

CDSA would urge DE to give its urgent attention to these recommendations and take forward their implementation expediently by granting a statutory right of appeal to the SENDIST. This must be supported by publicly funded legal aid.

CDSA would also advocate for fully resourced independent advocacy and representation services for children with special educational needs.

Partnerships with the Voluntary Sector

With regard to the MG we note that it is proposed that representation would be restricted to education and health and social care professionals, with no recognition of the role and contribution of voluntary sector partners. It should be noted that the voluntary sector has long been recognised as a key and equal partner on a wide and diverse range of multi-disciplinary networks.

Furthermore, CDSA is concerned that in considering partnerships with the voluntary sector²¹ DE propose an entirely minimalist and indeed a flawed understanding of the concept of genuine partnership – ‘in order that voluntary organisations can play an effective role, it is proposed that ELBs/ESA, the proposed RHSCB and schools should regularly involve, where appropriate, the voluntary sector in training courses and the exchange of relevant information’. (own underlining)

CDSA would draw DE’s attention to *The Compact between Government and the Voluntary and Community Sector in Northern Ireland (DHSS 1998)* which set out the

¹⁹ CRC/C/GBR/CO/4 para 32

²⁰ CRC/C/GBR/CO/4 para 67

²¹ DE Policy Proposals Consultation Document Every School a Good School The Way Forward for Special Educational Needs and Inclusion para 12.30

framework of values and principles upon which genuine partnership can be built.

Voluntary organisations across the children's sector and disability sector have a long and proven track record of working alongside children with disabilities and their families in creative and innovative ways, both at the level of universal and specialist provision. There is a unique relationship between these organisations and those children and families they work with and for. These organisations should be recognised for their expertise and their contribution valued, as an equal partner with a crucial contribution to make across all aspects of policy and practice development, commissioning and delivery of services for children with disabilities, including with children with special educational needs.

Funding Arrangements

CDSA notes that currently the allocation of resources for children with statements in mainstream schools is based on the needs of the individual child and the provision that has been identified for them. We note, too, that DE proposes greater delegation of SEN funding currently distributed by ELBs to mainstream schools, a fixed part of the budget for SEN will be allocated to schools regardless of need, based on the assumption that every school has to have at least some facilities for pupils with special needs. CDSA would strongly advocate that for Board of Governors and Principals to account properly for the effective use of SEN funding, it must be ring-fenced to ensure monies are used specifically for SEN provision and not re-directed to other areas of schools budgets. CDSA is also concerned at the proposal to use the current TSN formula to allocate this additional funding to schools since TSN does not recognise that children and young people with disabilities live in all communities and in families across the socio-economic spectrum.

CDSA is concerned that as a result of greater delegation/a re-deployment of SEN central resources from ELBs/ESA to schools, schools would be expected to meet the vast majority of their pupils' *additional* needs²². This implies that a SEN budget that is already under pressure and recognised as insufficient in meeting assessed needs, would be stretched to cover a wider breadth of need, which clearly disadvantages both children with SEN and children with additional needs and fails to recognise the statutory requirement to make provision for children with SEN. Rather than simply shifting responsibility for existing monies, there needs to be more monies invested in the system to ensure access to an effective education for children with SEN, a disability, learning difficulty or need. Furthermore, while monies may be available for capacity building, the proposals have not been fully costed and the required monies secured for implementation. At a time of increasing pressure on government finances there is no certainty that current budgets will be protected, much less enhanced.

CDSA would advocate for targeting of resources toward children with special educational needs so that they have equal opportunity to access and benefit from education in all settings, including mainstream schools..

CDSA would argue that any proposals for changing the allocation of funding for special educational needs or developing a separate LMS delegated funding arrangement for special schools must be the subject of full public consultation. Clearly key stakeholders must be involved in the early stages of developing and assessing the feasibility of options.

CDSA notes that as part of the review DE has looked at the consistency of

²² Para 15.3

assessment, equality of access and the continuity and quality of provision across the 5 ELBs. We understand that consistency of delivery has been an issue of concern when considering the role of the ELBs, however, with proposals for more responsibility to go from ELBs to schools, there would be more decision makers, hence increasing the potential for even greater levels of inconsistency in provision, and potentially also increasing the likelihood of parents and schools coming into conflict which could threaten the necessary focus on ensuring outcomes that are in the best interests of children.

CDSA does note that while all schools have a responsibility for children with special educational needs, ELBs/ESA have specific responsibility for children with statements of special educational needs. The proposals, however, would see schools having more responsibility for identification and provision for children currently identified as having special educational needs, and would reduce the number of children formally assessed, therefore the ELBs/ESA would be operating a reduced level of statutory provision.

Our concerns regarding the delegation of responsibility to schools are considerably heightened given that schools have not been designated as public bodies for the purposes of Section 75 of the NI Act 1998. Therefore schools are not obliged to ensure equality of opportunity for all children when carrying out their functions, including assessing the impact of all school policies. This is particularly alarming given that further and higher education institutions are required to ensure young disabled people, including those with special educational needs, are afforded equality of opportunity throughout their educational experience. Schools must urgently be designated as public bodies to ensure that they also have a statutory obligation to provide equality of opportunity for all children, including children with special educational needs, throughout their school life.

DE has proposed that during the pre-implementation phase, school indicators would be developed for addressing the barriers to learning and has highlighted these as a method by which to guard against inconsistency in provision. CDSA would welcome more information on the development of indicators and would highlight that in the development of any indicator set these must be sufficiently disaggregated to capture distinct information relating to children with special educational needs and identify potential adverse impact and discrimination. CDSA notes that in England Government through the Special Educational Needs (SEN) Information Act (2008) is required to publish information about children with special educational needs and we would advocate that a similar approach is taken here to collate and report on the situation of children with special educational needs²³.

Proposed Phased Introduction of the Policy

CDSA notes that the phased implementation of proposals is linked to the availability of resources. It is also noted that DE has acquired funding for the '*commencement of finalised proposals*', however, '*full policy proposals can only be implemented as, and when, the resources become available in both education and social care sectors*²⁴'

To commence with the implementation of proposals, in the absence of any surety or certainty that sufficient resources to complete implementation would become available is foolhardy. We would strongly urge DE to ensure, prior to commencing policy change of any nature in this area, that it has secured and indeed ring-fenced

²³ http://www.england-legislation.hmsso.gov.uk/acts/acts2008/ukpga_20080011_en_1

²⁴ DE Policy Proposals Consultation Document Every School a Good School The Way Forward for Special Educational Needs and Inclusion Para 15.3

the resources which will be required for full and comprehensive implementation. This would be a much more sensible approach rather than dealing with a situation where policy implementation has commenced and is then left hanging in the balance, dependent on securing further resources from a dwindling central pot. Such a situation would be utterly unsatisfactory for children and families and would create further disillusionment and frustration for these families. Furthermore, CDSA assumes that DE would be bidding into the next CSR for resources and with the widely predicted cuts to public expenditure which are ahead, it is less than certain as to whether the Department would be successful in bidding for the required resources.

Equality Considerations

In restricting access to SEN provision and in effect removing from some children their current legal entitlement to SEN provision these proposals would clearly adversely impact on the promotion of equality of opportunity for these very vulnerable children. CDSA would suggest that the EQIA process has been progressed in the absence of full and proper information on the proposals. Therefore we would advocate that DE begin again with the EQIA process in consultation with key stakeholders, in particular, children and young people with disabilities and their parents so that the process is informed by a thorough analysis and understanding of the proposals and their implications for future provision of SEN.

CDSA would request that the DE provides information on the system it intends to use to analyse responses to this consultation process including the degree of weight which will be attributed to both individual and organisational responses. This is a vital element to drawing conclusions from responses and progressing with identified areas for immediate action. For this reason, we would appreciate information both on the system itself and on its operation for the purposes of analysis.

Conclusion

CDSA trusts that the DE will find our submission constructive and helpful in determining the way forward with future planning and provision for special educational needs.

CDSA is keen to continue to actively engage with the DE with a view to addressing the failings of the existing SEN process and identifying ways in which the process could be improved and enhanced so that children and young people with disabilities and their parents feel included and respected as key partners in the change process, acknowledging that ultimately children, young people and their parents are those best placed to determine how effective the system is in enabling their child to enjoy their educational experience and reach their full potential.