

Response from the Special Educational Needs Advice Centre (SENAC) on the invitation to submit views on the Special Educational Needs (SEN) Regulations (Northern Ireland) 2026

SENAC is charitable organization providing independent advice, information and advocacy for parents on the statutory SEN system.

Survey Questions:

1. Is the information provided accurate? Yes
2. Is the information complete? Yes
3. Do you foresee unintended / unanticipated consequences? Yes, as outlined below.
4. Any other matters you wish to raise. Outlined below.

There are several changes to the Regulations which raises concern that the implementation of these amendments may result in unintended consequences compromising the intent of the SEND reform to ensure children and young people receive assessment and timely interventions and support.

Part IV Assessments

Advice to be sought by the Authority

Parental Advice:

The removal of 'parental advice' within Regulation 9, from the list of those the Education Authority are required to seek advice from to inform a Statutory Assessment and subsequent Statement of SEN is most concerning. The current Regulations require EA to seek parental advice, which in equal terms with the other 'Advices' informs the Assessment and Statement in relation to the special educational needs of the child (Part 2 of the Statement) and the objectives and SEN provision required to meet those needs (Part 3 of the Statement). Removing parental advice from 'the required advice' weakens the evidential base for a fair determination by the EA on Statutory Assessment, identifying SEN, and SEN provision.

Parents may interpret this change as an indication that their insight and perspective as parents to advise on the needs of their child at this key decision-making stage of Assessment and Statementing is no longer considered of equal value or necessity compared to the other 'Advices'. The Programme for Government 2024-27 and the Minister of Education's SEND Reform Agenda both highlight the imperative need to rebuild parental trust and confidence in the SEN system and that partnership with parents is fundamental to the reform. Removing the regulatory requirement on EA to seek parental advice may negate any gains on building parental confidence and may be perceived as diminishing and devaluing parental input. Although the EA will consult with parents, children and young people during the Assessment and parents can still make representations on the draft Statement this does not replace the regulatory status of the inclusion of parental advice in those listed as mandatory advice.

SENAC would advocate for a recommendation that the amended Regs revert to the inclusion of parental advice within those listed as 'required advice'.

Healthcare Professional Advice

Concern remains regarding the risk of children and young people missing out on services and interventions due to the retention of the optional requirement at EA's discretion to seek other Healthcare advice as part of the Statutory Assessment. As a discretionary requirement only, this may enable the limiting of the extent of other health advice and compromise the intention of the SEND Act (NI) 2016 to strengthen EA's duty to seek assistance from Health and Social Care Bodies.

Advice to be Sought by the Authority Reg 9 (9)

SENAC are concerned this Regulation regarding updated educational, medical or psychological advice does not need to be sought if all parties are satisfied it is not needed, may be problematic, risking decisions on needs and support being reliant on advice that may be outdated.

Upper Time Limit for the Statementing Process and Valid Exceptions

SENAC are concerned about the extent of the maximum upper limit within the Statementing processes. A key aim of the SEND framework review and reform was to reduce bureaucracy and unnecessary procedural delay so children can receive their Statement of SEN and the prescribed support more quickly. The revised 22-week timeframe adopted by the Department of Education was mainly to provide additional time for input from Health. This reflected concern at the time of the previous public consultation on the Draft Regulations that delays in obtaining Health advice was one of the primary causes of late Statements. Introducing an upper limit may risk allowing health and other advice to be delayed up to the maximum number of weeks as introduced in these Regulations. If the upper time limit is overused this risks undermining the aims of SEN reform, runs counter to early intervention, and may be incompatible with statutory duties on cooperation between Health and Education in meeting the needs of children with SEN. There is a risk application of valid exceptions could become routine or the norm in a process intended to be completed within 22 weeks. Avoidable delay that does not benefit the child must not be enabled. Unnecessary delay in supporting children with SEN and disabilities creates further barriers to education. Safeguards should be introduced within EA's statutory operations to ensure delays are minimised, closely monitored, transparent, reported, and addressed through systematic improvement where needed. The Regulations in this section are complex, and we welcome the regular monitoring of the application of valid exceptions and any further guidance produced. If safeguards are implemented to prevent misuse of valid exceptions this may enable achieving the intended 22-week completion of the process to the benefit of those children reliant on this process to access the required SEN support.

Part V: Statements of SEN: Schedule 2 Format of Statements.

Concern remains regarding the inclusion of Health and Social Care provision within Part 6 of Statements which is not subject to the duty to specify and quantify provision or an appeal right. The clarification from DE that such provision can be included in either Part 3 or Part 6 of the Statement dependent on individual circumstances if the provision is educational in nature and will be determined by the EA will result in the continuing challenges parents face to ensure their child can access all the provision required within Part 3 of the Statement. It is concerning DE recognise this is a complex issue and subject to interpretation but do not ensure the Regulations address this more satisfactorily. Given the complexity, SENAC would support further action on the scrutiny points as suggested within the 2026 NI Assembly Research and Information Service Briefing Paper relating to transparency and consistency in EA determinations, the criteria used by EA, and DE response where concern exists that provision in Part 6 of the statement should more appropriately be placed in Part 3.

Part 3 Special Educational Provision

The inclusion of the reference to ‘the school’s special educational provision for the child (from within its own resources) ...’ within Part 3 of the Statement, Special Educational Provision, raises some concern. This wording should not be interpreted in a way that implies it is the school rather than the EA which has the duty to arrange **all** the SEN provision as set out in Part 3 of a child’s Statement. This should not risk any uncertainty or ambiguity in practice in relation to responsibility for the SEN provision and its implementation. The school is not subject to the legislative duty for SEN provision within Part 3 of the Statement. The Regulations should reiterate the responsibility is EA’s as per Article 16 (5)(a) of the Education Ni Order 1996, as amended by the SEND Act 2016: *‘Where the Authority maintains a statement under this Article—the Authority (i) shall arrange that the special educational provision indicated in the statement is made for the child.’*

Part VII: Mediation and Appeals.

SENAC’s view is that the Regulations in respect of mediation and appeals require further clarity in respect of the process and timescales and how the mediation process and the statutory Appeal processes will effectively interact, along with the need for further measures to ensure the processes are fully clear and understood. While SENAC welcomes the removal of the timescale in relation to a parent contacting the Mediation service and obtaining a certificate, parents are still under a time burden in relation to lodging an appeal. If parents are required to obtain a mediation certificate prior to lodging an appeal, the two-month deadline to appeal may be missed. Parents can struggle to meet the two-month appeal window. Parents frequently describe the appeal process as stressful and exhausting and without the support of organisations like SENAC may not have proceeded with an appeal. Acquiring a mediation certificate places an additional procedural burden on parents to have to engage with another agency, understand and consider the option of mediation, and acquire a certificate while preparing their appeal. This concern is based on our experience providing an independent SEND Tribunal Advice and Representation Service for many years and the

experience of those parents accessing our support. The language of certificates and mediation may be alienating for families who may themselves have SEN or who are feeling overwhelmed. Some parents may struggle with the prospect of mediation, particularly following a lengthy period of engagement, negotiation and discussion with the EA before reaching the point of appeal. For some, this may be too much. They may delay contacting the mediation service or decide they cannot continue with the appeal. Mediation places an additional step, with no assurance or guarantee that it will lead to the changes a child needs at school. Changes which can only be secured through an appeal. Parents may perceive this as another hurdle in an already complex and lengthy process. There remains a risk of delay or an inadvertent loss of appeal right, causing further delay in securing provision for a child and compounding the educational disadvantage they are already experiencing.

Given our concerns we would welcome action on the suggested scrutiny point within the 2026 NI Assembly Research and Information Service Briefing Paper to seek *‘further clarity on the guidance and processes that the DE intends to develop, alongside the EA, Department of Justice and Tribunal Service, to ensure that the introduction of a mediation certificate does not add unnecessary bureaucracy or reduce accessibility for families.’*

Other Matters

Draft Code of Practice

SENAC has been concerned about the operational application of many aspects of the draft Code of Practice in schools and SEN decision making while the 1998 Code of Practice remains the only legally operational statutory guidelines. This has occurred before any proper time, and scrutiny has been given to the new Draft Code which has changed since the public consultation in 2021. Embedding the draft Code in practice means any scrutiny or concerns that may be raised would be more challenging to affect changes. The Draft Code is complex and requires proper time and attention to be scrutinised before commencement to ensure it will support and enable the needs of the children and young people.

There seems to be a shift in language used within the draft Code in relation to special education provision, ordinary provision etc. This risks confusion or lack of understanding within schools to identify when a child requires SEN provision. Neither the Regs nor the Code should enable any scope in understanding the terms for SEN and SEN provision which have a legal definition in the primary legislation and as such is the only language and definition that can be applied. Such confusion can lead to children not being properly identified as having SEN and requiring SEN provision. SENAC has previously seen this occur for some children where the legal definition of SEN has not been understood or applied correctly.

As an independent advice organisation our contact with schools and parents has concerned us that the intention to commence the revised Code of Practice in September may be unwise given the many challenges schools are facing, concerns expressed by head teachers and schools about the range of changes being implemented and the lack of confidence in the readiness of the school’s workforce.

We would urge such concerns to be listened to and allow proper time for consideration and scrutiny of the draft Code.

Thank you for consideration of SENAC's views and comment.