



Education Manifesto

Looking to the Future for Special Education Needs

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Introduction

In November 2009 CDSA launched a Manifesto for Children with Disabilities¹. Education and in particular Special Educational Needs is an area that features prominently in the Manifesto reflecting the barriers and obstacles that children with a disability and/or SEN and their parents encounter in pursuing an effective education through which children and young people with disabilities can reach their full potential.

CDSA has actively engaged with and responded to the DENI Consultation on SEN and Inclusion. We appreciate that following the close of consultation the Department is undertaking detailed analysis of the responses to the consultation and we look forward to viewing a summary of the analysis of responses in the near future.

In the interim period CDSA has developed this paper as a solution focused approach to charting a way ahead for SEN provision where the vision is of an education system where children, young people and their parents are partners with schools and education authorities in securing the best educational outcomes for children with a disability and/or SEN.

Additional Educational Need and Special Educational Need

CDSA recognises the importance of ensuring that all children have access to a quality Education.

CDSA recognise that Additional Educational Need is an important concept and that all children may experience periods when they require additional support from the Education System.

CDSA believes that those pupils currently served by the Special Education system have a right to have their Special Educational Needs met and that the Department of Education, the Educational and Skills Authority and

¹ Children with Disabilities Strategic Alliance (2009) *Manifesto*. http://www.ci-ni.org/working_in_partnership.aspx?dataid=330491

Schools must recognise the nature of those needs separately from Additional Educational Needs.

Commentary: This would effectively recognise the importance of meeting the long term and permanent educational needs of children with Disabilities by keeping them as a separate category. The Department of Education proposals on Special Education and Inclusion proposed a new definition which amalgamated Special needs with temporary Additional Needs.

Children with Disabilities are Rights Bearers

Children with disabilities must be recognised as rights bearers in relation to the provision of education. Proposals for the reform of Special Education must be compliant with the principles and provisions of the UNCRC, the ECHR and UNCRPD.

In any reformed Special Educational Needs system, it is essential that parents and young people are made aware of their rights with reference to the UN and other Conventions cited above and to rights under the Special Educational Needs and Disability Order.

Domestic and international Instruments relevant to the rights of children with disabilities which any Special Education scheme should be compatible are:-

Human Rights Act 1998

With the introduction of the Human Rights Act 1998, which came into effect on 2nd October 2000, most of the provisions of the European Convention on Human Rights became incorporated into our domestic law in Northern Ireland.

Article 6(1) of the Human Rights Act 1998 provides that it is unlawful for a public authority to act in a way which is incompatible with a Convention right.

Article 7(1) of the Act affords a complainant the right to seek a legal remedy for a breach of his or her Convention rights in a local court or tribunal.

European Convention on Human Rights

Article 2, Protocol 1 of the ECHR sets out the Right to Education, as follows:

‘No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions’.

The right to education set out in the first sentence of Article 2 is that of the child. The parent’s right to respect for their convictions in the second sentence is subsidiary to the right of the child.

Article 2 has been interpreted by the courts to provide the right to an ‘effective education’ and to ensure a right of equal access to the means of instruction existing within the State at a given time².

Article 14(ECHR) deals with the prohibition of discrimination:

‘The enjoyment of these rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status’.

² Holub and Holub v SSHD [2001] ELR 401

Article 14 of the Convention is not a free-standing legal right but it may be argued in conjunct with another Convention right, for example, with Article 2, Protocol 1 above.

The United Nations Convention on the Rights of the Child

The guiding principles of the UNCRC are set out in Articles 2, 3 and 12 of the Convention, which include a non-discrimination clause (Article 2); the States duty to ensure that in all actions concerning children, the best interests of the child shall be a primary consideration (Article 3); and the child's right to participate meaningfully and to have their opinion taken into account in any procedure affecting the child.

Article 12 of the UNCRC – ‘The Voice of the Child’:

‘State parties shall ensure 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’

The right of participation enshrined in Article 12 UNCRC should be taken into account at all stages of the procedure for identification and assessment of a child's special educational needs and the prescription of suitable provision to meet the child's needs. The Code of Practice recommends the involvement of the child in the decision-making processes in paragraphs 1.7, 2.28, 2.29, 2.48, 2.67, 3.59, 6.37, 6.49 and 6.50.

The Supplement to the Code also has a section referring to the ‘views of the child’ at paragraphs 1.18 – 1.20.

Article 23 – The rights of children with disabilities:

‘State parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community

Recognising the special needs of the disabled child, assistance extended...shall be designed to ensure that the disabled child has effective access to and receives education, training... opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his/her cultural and spiritual development'

The wording of Article 23 strongly promotes social integration and active participation in the community for children with disabilities, particularly through educational opportunities. Schools are required to pro-actively promote the inclusion of children with special educational needs and disabilities in all activities within the school environment. Additional protections are afforded to children with disabilities in domestic legislation under the Special Educational Needs and Disability (Northern Ireland) Order 2005.

Concluding Observations of the United Nations Committee on the Rights of the Child³

The Committee noted in its concluding observations relating to the views of the child that 'there has been little progress in enshrining Article 12 in education law and policy. Furthermore, the Committee is concerned that insufficient action has been taken to ensure that the rights enshrined in article 12 are applied to children with disabilities'.⁴

With particular reference to children with disabilities and Article 23 UNCRC, the Committee welcomed the initiatives taken by the State both at national and local levels to improve the lives of children with disabilities. However, the Committee registered concern that:

- a) There is no comprehensive national strategy for the inclusion of children with disabilities into society;

³ Committee on the Rights of the Child Forty-ninth session, Consideration of Reports submitted by State parties under Article 44 of the Convention, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, (CRC/C/GBR/CO/4 20th October 2008)

⁴ Ibid. Page 7, paragraph 32

- b) Children with disabilities continue to face barriers in the enjoyment of their rights guaranteed by the Convention, including in the right to access health services, leisure and play.⁵

In light of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and the Committee's general comment No 9 (2006) on the rights of children with disabilities, the Committee made the following recommendations:

- a) Take all necessary measures to ensure that legislation providing protection for persons with disabilities, as well as programmes and services for children with disabilities, are effectively implemented;
- b) Develop early intervention programmes;
- c) Provide training for professional staff working with children with disabilities, such as medical, paramedical and related personnel, teachers and social workers;
- d) Develop a comprehensive national strategy for the inclusion of children with disability in society;
- e) Undertake awareness raising campaigns on the rights and special needs of children with disabilities, encourage their inclusion in society and prevent discrimination and institutionalization;
- f) Consider ratifying the International Convention on the Rights of Persons with Disabilities and its Optional Protocol.⁶

United Nations Convention on the Rights of Persons with Disabilities

With reference to recommendation (f) above, the UK Government ratified the UNCRPD on 8th June 2009.

Article 7 (UNCRPD) deals with rights of children with disabilities and also their right to participate in any decisions affecting them. It provides as follows:

⁵ Ibid. Page 12, paragraph 52

⁶ Ibid. Page 13, paragraph 53

1. State Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.
2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.
3. State Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right’.

Article 24 (UNCPRD) deals specifically with the rights of persons with disabilities to education. It states that persons with disabilities should ‘receive the support required, within the general education system, to facilitate their effective education’. The Convention requires State Parties to ‘enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community’. This article also requires State Parties to ensure that ‘effective individualised support measures are provided in environments that maximise academic and social development, consistent with the goal of full inclusion’.

Appropriate measures are identified to ensure the education of children and include facilitating the learning of Braille, sign language, alternative script, augmentative and alternative modes of communication suitable to the individual, orientation and mobility skills, peer support and mentoring.

Commentary : While the Department of Education proposals on Special Education and Inclusion mention responsibilities under Human Rights conventions, other UN instruments, UN Committee comments and particularly the newly ratified Convention on the Rights of People with Disability must have a strong influence on the development of a Departmental policy.

Inspections and Quality Assurance

CDSA believe that there should be an enhanced role for the Education and Training Inspectorate in monitoring/evaluating/inspecting the system going forward.

The Lamb Inquiry in England has been instructive in developing the concept of an inspection and quality assurance regime that focusses on children with disabilities. In particular :-

The Inquiry proposed an explicit statutory duty on Ofsted to report on how well schools are meeting the needs of pupils with special educational needs and disabilities as part of school inspection

Subsequently, a revised inspection framework was introduced in September 2009 to give a new priority to the learning outcomes of children with special educational needs and disabilities (see <http://www.ofsted.gov.uk/content/download/9632/106774/file/The%20evaluation%20schedule%20for%20schools%20Jan%202010.pdf> .).

The Report also proposed that inspectors should receive training on SEN and disability and that Ofsted review the pool of inspectors with skills in particular areas of SEN and disability.

Also HM Inspector's Report on the Introduction of the ASL Act in Scotland recognised the importance of quality assurance in the provision of Special Education, one recommendation being that Authorities , "Develop quality assurance arrangements to ensure that plans for young people are acted on and monitor whether the action taken has made a difference to families and young people."

(See HMIE report on ASL

http://www.hmie.gov.uk/documents/publication/B53740%20HMIE%20A5_P3.pdf)

Commentary: The Department of Education proposals on Special Education and Inclusion also suggest a strong role for Inspection. The Lamb Review has gone beyond this and recognised that inspection of special education provision requires specialist training and a revised framework for such inspections.

Assessment and Statementing

CDSA believes that children with a disability can be best served by a multi-disciplinary practice that starts with diagnosis of the disability and develops a pathway whereby those children can access appropriate services, including Education. The responsibility for initiating the pathway should lie with the agency that performs the diagnostic assessment, subsequently, other agencies will develop person centred service / support plans, once they are informed of the diagnosis by the pathway.

Consequently, the Department should agree a clear policy of early intervention and develop anticipatory practice in its policy on Assessment and Statementing for Special Educational Need. Where possible, children should not have to fail first before intervention can be agreed.

Where a child's needs change, the Special Education process must be flexible enough to respond in a timely, pro-active manner either at annual review or when concerns are first raised.

The Department's policy should recognise the current code of practice whereby some children with disabilities can have a statement from as young as two years of age and contact with Teaching Specialists from 18 weeks of age. The Department should aim to offer intervention and anticipate needs at the earliest possible stage.

Commentary: The Department of Education proposals on Special Education and Inclusion concentrate on in-school assessments. Crucially, this misses those assessments that are carried out by specialist staff prior to the child reaching school age. The proposals must recognise the importance of such early intervention, and the importance of agreeing support packages in advance of those children reaching school.

Child/Parent and School Relationships

Good relations between parent (or carer), child, school and Board/ESA are crucial to the success of children and young people within the Special Education system. The contribution of parents and children is not currently properly recognised, respected and valued within the current system. Evidence that some annual reviews are being scheduled to take just ten minutes, raises particular concern

It is essential that processes to enhance child and parental / carer involvement and parental education are part of proposals to reform the Special Education System and that training in participatory practice is offered to Teachers.

Commentary: The Department of Education proposals on Special Education and Inclusion will depend upon the relationship between school and parent. This relationship has been considered at length by the Lamb Review from which important lessons may be gleaned.

Special Education Panels

It is essential that the Department review the make-up and representation on ELB Special Education panels. Membership of panels is heavily weighted toward Board staff. To make the process more transparent and ensure accountability within the process there should be

- an independent chair.

- a parent advocate and/or representation from the voluntary sector.
- The process must be seen to be transparent, with recording of meetings and all documents or notes from the process made discoverable to parents.
- Training should be provided to panel members in areas such as budgetting, disability awareness, participatory practice and others.

Commentary: The Department of Education proposals on Special Education and Inclusion do not make clear the method by which SEN decisions will be made at (current) Board Level. They suggest that Multi-disciplinary groups may have a role. Special Education Panels who currently make decisions have been criticised for not being transparent and having no- parental involvement.

Specialist Support in Schools

Every school should be able to quickly and readily access specialist support and help. CDSA is concerned that there is an over-reliance on Educational Psychologists and consequently there are bottlenecks in the assessment system..

The Department needs to recognise the crucial role of specialist teachers and address concerns raised over DE's reference in the SEN Review policy proposals to the 2006 Ofsted Report, "Inclusion: does it matter where pupils are taught?"

DE's interpretation of the reference within the footnote of the report was stated in the policy proposals as '*a key factor for progress is the involvement of an experienced and qualified teacher.*' This is not an accurate representation of the Ofsted report and has created concern among many of the families our organisations support.

A specialist teacher in the context of the Ofsted report refers to one who has '*experience and qualifications across a range of learning disabilities*

and difficulties.’ While many teachers in Northern Ireland may have gained experience of teaching children with SEN in professional practice there is a lack of teachers with specialist qualifications. The Ofsted report refers specifically to those teachers with qualifications across a range of learning disabilities. All teachers are qualified to teach but not all are qualified to teach children with diverse and complex learning difficulties and disabilities and this was the distinction implied by the Ofsted report.

One of the key recommendations of the Ofsted report was to *‘provide more opportunities for specialist training in teaching pupils with learning difficulties in general and for particularly complex difficulties.’*

The need for specialist teachers is recognised in many aspects of disability and SEN.

EG: Rose Report 2009 ‘Identifying and Teaching Children and Young People with Dyslexia and Literacy Difficulties’ recommended that The Department of Children, Schools and Families fund teachers to undertake accredited specialist training for children with dyslexia.

To address this, an audit needs to be undertaken by DE to identify the number and specialisms of teachers in Northern Ireland and ensure access to specialist teachers in all areas of disability and SEN.

CDSA believes that more attention must be given to the training needs of LENCOS, teaching assistants, and classroom teachers who manage teaching assistants. In particular LENCO’s should have training in participatory practice with children and parents.

CDSA believes that there is scope for the establishment of teams of LENCOS to operate across a group of schools, with each LENCO developing different specialisms and supporting other LENCOS?

Commentary: The Department of Education proposals on Special Education and Inclusion recognise the role of experienced teachers. It is, however, essential to emphasize the importance of teachers with specialist experience of a range of educational disabilities and to promote their training.

Links with Health and Social Care

CDSA believes that Children with a disability should have access to services that enhance their education and challenge them to succeed. In this, the relationship between education and health is crucial. The Department of Education (DE) and the Department of Health, Social Services and Public Safety (DHSSPS) should commit themselves to the closest possible partnership in order to best meet the needs of children with Special Educational needs.

Service planning is at the core of any such partnership approach. The DHSSPS must analyse the extent and level of HSC contribution in relation to SEN, while both Departments must collaborate to develop indicators of the present and future levels of service provision required to meet Special Educational needs. Such partnership work will significantly improve the life chances and be a key factor in improving outcomes for children with disabilities.

The aim for DE and DHSSPS would be to reach a stage whereby DHSSPS services would be written into a CSP or PLP, and DHSSPS would be legally accountable for the provision of those services through a statutory duty to co-operate.

The development of legally enforceable obligations is the key to creating the effective partnership which is crucial to the success of the proposals made within the Department of Education's consultation document. The current relationships between education and library boards and health and social care trusts are not effective in practice due to the fact that the

education and library boards have the legal responsibility for arranging special educational provision to a child with a statement, which may include therapies provided by the health and social care trusts. Currently, the health and social care trusts are legally obliged to comply with requests from the education and library boards only to the extent that resources are available to meet these requests.

It is proposed that the Education and Skills Authority, the Regional Health and Social Care Board and the health and social care trusts are to be “bound by agreements to plan jointly”. It is unclear from the consultation document what form these agreements will take, how flexible they will be, whether they will be legally enforceable or what procedures shall be put in place to complain should the agreement not produce full co-operation between these bodies.

It is the view of CDSA that neither “memoranda of understanding” nor service level agreements” will be sufficient to deliver an effective wrap-around service based on the “team around the child approach”.

It is critical that the partnership is not solely funding led as this will dilute the statutory protection of children’s rights as currently framed under Article 12 and 14 of the Education (Northern Ireland) Order 1996.

CDSA recommends that current legislation be repealed to introduce a fortified statutory duty upon the RHSCB and the HSCT’s to comply with requests by the ELB’s and the ESA which is not dependent on resources but rather is needs-based.

Commentary: The Department of Education proposals on Special Education and Inclusion recognise the importance of joint work with Health and Social Services in Special Needs Education. It is essential that as well as guaranteeing Educational services, that Health and Social Services offer entitlement to services as part of the Statement or IEP.

School based stages : Individual Education Plans / Personal Learning Plans

CDSA believes that it is essential that children with a disability and parents are involved in drafting IEP / PLPs and in setting targets to measure progress.

A significant majority of children will rely on IEPs/PLPs. Currently there are no statutory entitlements associated with the IEPs and proposed PLPs, therefore there is no accountability and no re-dress should these fail to ensure a child makes the intended progress.

CDSA believes that there should be a statutory process in school based stages that is outcome driven and provides parents with rights to challenge schools through the education authority where outcomes are not being met in the timeframe set. CDSA is particularly interested in the suggestion in the Lamb Review in England that all plans should be appealable at review.

Commentary: The Department of Education proposals on Special Education and Inclusion offer no appeal at IEP / PLP level. It is essential that the appeal mechanism is open to both levels of Special Educational Need, as suggested by the Lamb Review.

Coordinated Support Plans (CSPs)

Impact of ASL Act

As the Department of Education have proposed introducing Coordinated Support Plans similar to those introduced in Scotland following the Education (Additional Support for Learning)(Scotland) Act 2004 recent evidence from Scotland on the impact of the changes provides a valuable opportunity for the Department to examine the experiences in Scotland.

The Inspectorate of Education in Scotland published a report on the implementation of the ASL Act in 2007. The findings within the report echo

many of the concerns expressed during the SEN Review public consultation period about CSPs:

- **The concern regarding reducing the number of children with CSPs:** The report states *'A third of authority-based staff and most parents and staff from voluntary agencies were concerned at the low number of CSPs which had resulted from the procedures for managing transition from Records of Need to coordinated support plans. In most schools, head teachers and classroom teachers felt that the number of children and young people with CSPs is too low.'*
- **The need for clearly defined terms and criteria:** the report indicates that a weakness of CSPs is the variations in interpreting and applying the criteria. This is a worrying aspect. This must be addressed before similar criteria are applied in NI. Consistency must be assured to provide equality of provision and access to services. The report states: *'Most authorities were unclear about whether the terms complex or multiple meant the same as significant.'*
'A significant number of key staff in authorities believed mistakenly that where a child or young person's needs were being met within the school and existing resources, they did not meet the requirements of a CSP.'
- **Working in partnership with parents and consulting the children.** The report demonstrates that policy in Scotland has not fully achieved this and concerns were also expressed that progress was needed to ensure parents understood their rights under any new policy or legislative changes. *'Most authorities had not made parents sufficiently aware of advocacy and of their rights within the new legislation.'*
'Approaches to consulting with and involving children and young people who lacked capacity to make their views known were not well developed.'

'Almost all authorities did not involve or consult with children and young people sufficiently on their levels of their own rights, seeking

their views on provision and discussing the nature of support for their learning.'

Within Northern Ireland there must be a clear strategy from DE on directing schools how to promote and encourage a model of parent/school partnership particularly at a time of policy change.

It is also important that DE ensure that appropriate planning measures are used to ensure that early intervention is built into CSP's and that staff capacity building in advance of a child's presentation at school is recognised as part of that process

Commentary: The Department of Education proposals on Special Education and Inclusion suggest there should be a reduction in the numbers of CSP / Statements. Reducing CSP / Statements is effectively a reduction in parental rights. Rather parents should be supported, and trained to seek the best for their children. Children should also be involved in quality assuring services.

Testing in School Based Stages

CDSA has some concern that it may not be appropriate for SENCOs to conduct all diagnostic testing in the School based stages. The key concern is that they will not be viewed as independent of the school, and that their decision making could be influenced by resource considerations.

There are also concerns that tests used by Educational Psychology are not adjusted for individual disabilities. There should be a review of such testing to consider best practice.

Securing Accountability

CDSA believes that lines of accountability are not clearly defined under the proposals for the way forward. In particular the role of the Multidisciplinary Group (MG) is not clearly defined; will it have an overseeing role in Special Education cases; will there be appeal rights to the MGs?

It may be of value to have the opportunity for a parent to refer their child's case to the MG for appeal. There is a clear need to provide some form of challenge to schools that can act as an initial adjudicator, and encourage consistency of approach. There is also an issue about maintaining an independent approach to SEN matters.

CDSA would expect that ESA / Boards will retain ultimate accountability and they should they be able to intervene when the school is failing in its SEN responsibilities and ask how the school is spending its SEN budget. An example would be where a school decides not to offer particular provision to a child.

Commentary: The Department of Education proposals on Special Education and Inclusion are limited in their discussion of accountability of school decisions. It is essential that this is clarified.

Funding

CDSA believe that there is not sufficient clarity as to the mechanism by which funding for Special Education can best be made available to schools in the proposals.

CDSA believe that funding for Special Education should be accessed separately by the school. It should also apply to the specific needs of the child and follow the child.

CDSA believe that funding should be fully accountable as Special Education funding, ring-fenced solely for Special Education purposes and that decisions on spend be transparent and verifiable.

CDSA would be concerned that Special Education funding that is spread too widely across all schools will tend to place those schools catering for significant populations of Special Education Needs pupils in some difficulty meeting their obligations.

Commentary: The Department of Education proposals on Special Education and Inclusion suggest that schools should be funded through LMS Budgets. There are no suggestions in the proposals as to criteria by which this would be agreed, or what would happen when, for instance, a child transfers to a school mid year.

Link to Consultation Document:

<http://www.deni.gov.uk/index/pre-school-education-pg/16-draft-early-years-strategy-consult-pg.htm>Draft Early Years (0-6) Strategy Consultation

Glossary

ASL	Additional Support for Learning
CDSA	Children with Disabilities Strategic Alliance
CSP	Coordinated Support Plan
DE	Department of Education
DHSSPS	Department of Health, Social Services and Public Safety
ECHR	European Convention on Human Rights
ESA	Education and Skills Authority
ELB	Education and Library Board
H&SCT	Health and Social Care Trust
LENCO	Local Educational Needs Co-ordinator
LMS	Local Management of Schools
MG	Multidisciplinary Group
PLP	Personal Learning Plan
RHSCB	Regional Health and Social Care Board
SEN	Special Educational Needs
SENCO	Special Educational Need Coordinator
UNCRC	United Nations Convention on the Rights of the Child
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities