



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Response to Public Consultation on a Future
Framework of Educational Provision for Children
in the Early Years with Special Educational
Needs in Northern Ireland**

24 May 2018

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Summary of Recommendations

The Northern Ireland Human Rights Commission (NIHRC):

- 9.0 Welcomes the proposed rights framework, as a means to remove barriers and progressively realise the right to education for children with special educational needs.**
- 10.0 Recommends reference to human rights standards and the statutory obligations of the relevant public authorities would strengthen the proposed approach. It is recommended that the right to education and its five guiding principles (best interests of the child, non-discrimination, reasonable accommodation, accessibility and inclusive education) are clearly referenced where relevant throughout the Framework document and its Programme of Provision.**
- 11.0 Recommends that the Framework document clarifies that the necessary resources will be available and effective, respecting the principles of progressive realisation, using maximum available resources, non-retrogression and non-discrimination. The Framework document should reflect the NI Audit Office's 2017 recommendations on effective provision and monitoring of resources for children with special educational needs.**
- 12.0 Recommends that the Framework document should make provision for effective consultation with and participation of disabled persons organisations, this includes in the Joint Education/Health Working Group for Early Years SEN Provision, the Early Years SEN Forum, and any other relevant forums.**
- 13.0 Recommends that the Framework document refers to the effective data collection and disaggregation of data where relevant.**
- 22.0 Recommends that the best interests of the child should be referenced in the following places: in the 'Principles Underpinning the Proposed Framework' section (pages 3-4), particularly under the 'child-centred' principle and the 'partnership working' principle; in the Framework Proposal 3**

(page 8) when determining the 'appropriate support'; in the Framework Proposals 4 (page 9) and 5 (page 10) in relation to 'assessed need'; and in the Framework Proposal 6 (page 11).

31.0 Recommends that non-discrimination should be referenced in the following places: in the 'Principles Underpinning the Proposed Framework' section (pages 3-4), particularly under 'equity of access in relation to the programme of support in special schools'; in the Framework Proposals 4 (page 9) and 5 (page 10) when referring to support; and in the Framework Proposals 6 (page 11) when referring to special school provision.

38.0 Recommends that reasonable accommodation should be referenced in the following places: in the Framework Proposal 2's (page 7), particularly under the 'flexible provision to meet pupil need' principle; in the Framework Proposal 1 (page 6) regarding the methods of liaising and communicating on SEN; in the Framework Proposal 3 (page 8) in determining the 'appropriate support'; in the Framework Proposals 4 (page 9) and 5 (page 10) in terms of what constitutes support; and in the Framework Proposal 6 (page 11).

44.0 Recommends that the Framework document ensures that all advice, information and support is available in accessible formats and effectively communicated in accessible manners. To reflect this accessibility should be referenced in the following places: in the 'Principles Underpinning the Proposed Framework' section (pages 3-4), particularly the 'effective communication' principle; in the Framework Proposal 1 (page 6); in the Framework Proposal 3 (page 8), particularly concerning the programme of offer; in the Framework Proposals 4 (page 9), 5 (page 10) and 6 (page 11); and in the Framework Proposals 4 (page 9), 5 (page 10) and 6 (page 11), particularly concerning supporting and developing links between home and school/Early SEN Centres.

56.0 Recommends that in the 'Principles Underpinning the Proposed Framework' section (pages 3-4) the 'inclusive' principle elaborates on what is meant by inclusive education and a sense of how it will be achieved in practice.

57.0 Recommends that in the 'Principles Underpinning the Proposed Framework' section (pages 3-4) the 'partnership working' principle includes reference to ensuring the members of the partnerships are effectively trained on special educational needs.

58.0 Welcomes the emphasis on strengthening partnerships with health and social care, as well as statutory, voluntary and other early years providers to develop more integrated provision and support for children and young people with special educational needs. We recommend that in the 'Principles Underpinning the Proposed Framework' section (pages 3-4) the 'effective transition' principle references that effective transition is aimed at ensuring children reach their full human potential, with a sense of dignity and self-worth. This includes setting out a sense of how this will be undertaken in practice.

59.0 Recommends that in the 'Principles Underpinning the Proposed Framework' section (pages 3-4) that the 'effective transition' principle elaborates that 'the advice of those professionals who know them' is grounded in respect for human rights, fundamental freedoms and human diversity.

60.0 Recommends that the Framework Proposal 3 (page 8) clarifies that the focus of appropriate support is to provide inclusive education. Framework Proposals 4 (page 9) and 5 (page 10) should state that 'assessed need' should reflect inclusive education. Additionally, Framework Proposal 6 (page 11) should reference inclusive education.

- 1.0 The Northern Ireland Human Rights Commission (NIHRC) pursuant to Section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights. In accordance with this function the following statutory advice is submitted to the Education Authority in response to its consultation on a future framework of educational provision for children in the early years with special educational needs in Northern Ireland.
- 2.0 The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights, as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe (CoE) and United Nations (UN) systems.¹ The relevant regional and international treaties in this context include:
- European Convention on Human Rights 1950;²
 - UN International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR);³
 - UN Convention on the Rights of the Child 1989 (CRC);⁴ and
 - UN Convention on the Rights of Persons with Disabilities 2006 (CRPD).⁵
- 3.0 In addition to these treaty standards, there exists a body of 'soft law' developed by the human rights bodies of the CoE and UN. These declarations and principles are non-binding but provide further guidance in respect of specific areas. The relevant standards in this context include:

¹ The Northern Ireland Executive (NI Executive) is subject to the obligations contained within the specified regional and international treaties by virtue of the United Kingdom (UK) government's ratification. In addition, the Northern Ireland Act 1998, Section 26(1) provides that "if the Secretary of State considers that any action proposed to be taken by a Minister or Northern Ireland department would be incompatible with any international obligations... [s]he may by order direct that the proposed action shall be taken". The NIHRC further recalls that the Northern Ireland Act 1998, Section 24(1)(a) states that "a Minister or Northern Ireland department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act... is incompatible with any of the Convention rights".

² Ratified by the UK in 1951.

³ Ratified by the UK in 1976.

⁴ Ratified by the UK in 1991.

⁵ Ratified by the UK in 2009.

- CoE Committee of Ministers Recommendation on the Participation of Children and Young People Under the Age of 18;⁶
- CoE Parliamentary Assembly Resolution 2039 on Equality and Inclusion for People with Disabilities;⁷
- CoE Parliamentary Assembly Resolution 2064 on Equality and Inclusion for People with Disabilities;⁸
- UN Committee on Economic, Social and Cultural Rights, General Comment No 5;⁹
- UN Committee on Economic, Social and Cultural Rights, General Comment No 13;¹⁰
- UN Committee on the Rights of the Child, General Comment No 7;¹¹
- UN Committee on the Rights of the Child, General Comment No 9;¹²
- UN Committee on the Rights of the Child, General Comment No 14;¹³
- Concluding Observations of the UN Committee on the Rights of the Child to the UK;¹⁴
- UN Committee on the Rights of Persons with Disabilities, General Comment No 4;¹⁵ and
- Concluding Observations of the UN Committee on the Rights of Persons with Disabilities to the UK.¹⁶

Rights-based approach

4.0 The right to education is protected in ECHR, Protocol 1 Article 2, the ICESCR, Article 13, and the CRC, Article 28. These standards require the

⁶ CM/Rec(2012)2, 'Recommendation of the Committee of Ministers to Member States on the Participation of Children and Young People Under the Age of 18', 28 March 2012.

⁷ Resolution 2039(2015), 'CoE Parliamentary Assembly Resolution on Equality and Inclusion for People with Disabilities', 30 January 2015.

⁸ Resolution 2064(2015), 'CoE Parliamentary Assembly Resolution on Equality and Inclusion for People with Disabilities', 30 January 2015.

⁹ 'Committee on Economic, Social and Cultural Rights – General Comment No 5: Persons with Disabilities', 1 January 1995.

¹⁰ E/C.12/1999/10, 'Implementation of the International Covenant on Economic, Social and Cultural Rights – General Comment No 13: The Right to Education', 8 December 1999.

¹¹ CRC/C/GC/7/Rev.1, 'General Comment No 7: Implementing Child Rights in Early Childhood', 20 September 2006.

¹² CRC/C/GC/9, 'General Comment No 9 – The Rights of Children with Disabilities', 27 February 2007.

¹³ CRC/C/GC/14, 'General Comment No 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art 3, Para 1)', 29 May 2013.

¹⁴ CRC/C/GBR/CO/5, 'Committee on the Rights of the Child – Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 3 June 2016.

¹⁵ CRPD/C/GC/4, 'General Comment No 4(2016) on the Right to Inclusive Education', 25 November 2016.

¹⁶ CRPD/C/GBR/CO/1, 'Concluding Observations on the Initial Report of the United Kingdom of Great Britain and Northern Ireland', 29 August 2017.

Education Authority to take “deliberate, concrete and targeted steps towards the full realisation of the right to education”.¹⁷

- 5.0 The right to education, as an economic, social and cultural right, is to be progressively realised. This means that it should be achieved “expeditiously and effectively as possible” using the maximum available resources and there should be no deliberate retrogression.¹⁸ The prohibition on discrimination is an immediate obligation.¹⁹ The NIHRC refers to the NI Audit Office’s report in June 2017 that concluded “neither the Department [of Education] nor the Education Authority can currently demonstrate value for money in terms of economy, efficiency or effectiveness in the provision of support to children with SEN in mainstream schools”.²⁰ This report provided a number of recommendations aimed at effective provision and monitoring of resources for children with SEN.²¹
- 6.0 At the heart of the CRPD is the principle “nothing about us, without us”.²² This is particularly evident in the CRPD, Article 19, that requires State Parties to:
- recognise the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community.
- 7.0 The CoE Parliamentary Assembly states that organisations representing people with disabilities should be closely consulted and actively involved in the development of policies and measures for disabled persons.²³
- 8.0 The UN Committee on the Rights of the Child encourages “States Parties to monitor the availability of and access to quality services that contribute to young children’s survival and development, including through systematic

¹⁷ E/C.12/1999/10, ‘Implementation of the International Covenant on Economic, Social and Cultural Rights – General Comment No 13: The Right to Education’, 8 December 1999, at para 43.

¹⁸ E/1991/23, ‘UN Committee on Economic Social and Cultural Rights General Comment No 3: The Nature of States Parties’ Obligations’, 14 December 1990, at para 9. See also ‘Committee on Economic, Social and Cultural Rights – General Comment No 5: Persons with Disabilities’, 1 January 1995, at para 9; E/C.12/1999/10, ‘Implementation of the International Covenant on Economic, Social and Cultural Rights – General Comment No 13: The Right to Education’, 8 December 1999, at paras 31, 43 and 44; CRPD/C/GC/4, ‘General Comment No 4(2016) on the Right to Inclusive Education’, 25 November 2016, at paras 30, 39 and 40.

¹⁹ Ibid.

²⁰ NI Audit Office, ‘Special Educational Needs’ (NIAO, 2017), at 3.

²¹ Ibid, at 5-6.

²² OHCHR, ‘UN leads the way on disability rights’, 24 September 2012.

²³ Resolution 2039(2015), ‘CoE Parliamentary Assembly Resolution on Equality and Inclusion for People with Disabilities’, 30 January 2015, at para 4.3.

data collection, disaggregated in terms of major variables related to children's and families' background and circumstances".²⁴ The Committee stressed that "comprehensive and up-to-date quantitative and qualitative data on all aspects of early childhood" is important "for the formulation, monitoring and evaluation of progress achieved, and for assessment of the impact of policies".²⁵

9.0 The NIHRC welcomes the proposed rights framework, as a means to remove barriers and progressively realise the right to education for children with special educational needs.

10.0 Reference to human rights standards and the statutory obligations of the relevant public authorities would strengthen the proposed approach. It is recommended that the right to education and its five guiding principles (best interests of the child, non-discrimination, reasonable accommodation, accessibility and inclusive education) are clearly referenced where relevant throughout the Framework document and its Programme of Provision.

11.0 The Framework document should clarify that the necessary resources will be available and effective, respecting the principles of progressive realisation, using maximum available resources, non-retrogression and non-discrimination. The Framework document should reflect the NI Audit Office's 2017 recommendations on effective provision and monitoring of resources for children with special educational needs.

12.0 The Framework document should make provision for effective consultation with and participation of disabled persons organisations, this includes in the Joint Education/Health Working Group for Early Years SEN Provision, the Early Years SEN Forum, and any other relevant forums.

13.0 It is recommended that the Framework document refers to the effective data collection and disaggregation of data where relevant.

Best interests of the child

14.0 The CRC states that the best interests of the child should be a primary consideration.²⁶ Specific to children with disabilities, the CRPD, Article

²⁴ CRC/C/GC/7/Rev.1, 'General Comment No 7: Implementing Child Rights in Early Childhood', 20 September 2006, at para 12.

²⁵ Ibid, at para 39.

²⁶ Article 3, Convention on the Rights of the Child 1989.

7(2), confirms that “in all actions concerning children with disabilities, the best interests of the child shall be a primary consideration”. Furthermore, the UN Committee on the Rights of Persons with Disabilities “affirms that the best interests of the child must be the basis on which education policies and provisions are determined”.²⁷

15.0 The CRPD, Article 7(3), requires the relevant authorities to:

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 realise the right.

16.0 This extends to all decisions, actions, inaction or failure to take action that directly or indirectly affect children.²⁸ It “does not only include decisions, but also all acts, conduct, proposals, services, procedures and other measures”.²⁹ The CoE Committee of Ministers confirmed, “there is no age limit on the right of the child or young person to express her or his views freely”. Thus “all children and young people, including those of pre-school age... have a right to be heard in all matters affecting them, their views being given due weight in accordance with their age and maturity”.³⁰

17.0 The content of the child’s best interests “must be determined on a case-by-case basis”. It is a “flexible and adaptable” concept that “should be adjusted and defined on an individual basis, according to the specific situation of the child or children concerned, taking into consideration their personal context, situation and needs”.³¹

18.0 A child’s best interests considers their well-being and development, this includes “their basic material, physical, educational and emotions needs, as well as needs for affection and safety”.³² A child’s situation of vulnerability, such as disability, should also be considered. The UN Committee on the Rights of the Child noted:

²⁷ CRPD/C/GC/4, ‘General Comment No 4(2016) on the Right to Inclusive Education’, 25 November 2016, at para 47.

²⁸ CRC/C/GC/14, ‘General Comment No 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art 3, Para 1), 29 May 2013, at paras 17-19.

²⁹ Ibid, at para 17.

³⁰ CoE, ‘Explanatory Note on CM/Rec(2012)2, ‘Recommendation of the Committee of Ministers to Member States on the Participation of Children and Young People Under the Age of 18’ (CoE, 2012), at 6.

³¹ CRC/C/GC/14, ‘General Comment No 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art 3, Para 1), 29 May 2013, at para 32.

³² Ibid, at para 71.

authorities and decision-makers need to take into account the different kinds and degrees of vulnerability of each child, as each child is unique and each situation must be assessed according to the child's uniqueness. An individualised assessment of each child's history from birth should be carried out, with regular reviews by a multidisciplinary team and recommended reasonable accommodation throughout the child's development process.³³

19.0 The UN Committee on the Rights of the Child has indicated that capacities of the child will evolve and that this should be considered.³⁴ This requires assessing "the physical, emotional, education, and other needs as the specific moment of the decision", but also considering "the possible scenarios of the child's development, and analyse them in the short and long term".³⁵ Thus, "decisions should assess continuity and stability of the child's present and future situation".³⁶

20.0 If the rights of other persons are in conflict with the child's best interests, the UN Committee on the Rights of the Child confirms:

authorities and decision-makers will have to analyse and weigh the rights of all those concerned, bearing in mind that the right of the child to have his or her best interests taken as a primary consideration means that the child's interests have high priority and not just one of several considerations. Therefore, a larger weight must be attached to what serves the child best.³⁷

21.0 Specific to education, it is in the best interests of the child "to have access to quality education, including early childhood education, non-formal or informal education and related activities, free of charge".³⁸ The UN Committee on the Rights of the Child has stressed that "early childhood education is of particular relevance for children with disabilities as often their disabilities and special needs are first recognised in these institutions".³⁹ Therefore, early intervention "is of utmost importance to help children to develop their full potential".⁴⁰

22.0 The best interests of the child should be referenced in the following places: in the 'Principles Underpinning the Proposed Framework' section (pages 3-4), particularly under the 'child-

³³ Ibid, at para 76.

³⁴ Ibid, at para 84.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid, at para 39.

³⁸ Ibid, at para 79.

³⁹ CRC/C/GC/9, 'General Comment No 9 – The Rights of Children with Disabilities', 27 February 2007, at para 65.

⁴⁰ Ibid.

centred’ principle and the ‘partnership working’ principle; in the Framework Proposal 3 (page 8) when determining the ‘appropriate support’; in the Framework Proposals 4 (page 9) and 5 (page 10) in relation to ‘assessed need’; and in the Framework Proposal 6 (page 11).

Non-discrimination

23.0 The ECHR, Article 14, requires the right to education to be upheld without discrimination. This provision states:

the enjoyment of the 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.

24.0 The Convention on the Rights of Persons with Disabilities (CRPD), Article 7(1), states “States 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”. The CRPD, Article 24(1), further requires that the right of persons with disabilities to education is recognised “without discrimination and on the basis of equal opportunity”.

25.0 The CRC, Article 2(1), requires States to:

respect and ensure the rights set forth in the [CRC] to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

26.0 The European Court of Human Rights (ECtHR) confirmed that the principles of universality and non-discrimination are “fundamental principles” in the exercise of the right to education.⁴¹ This should be considered in light of the principle of reasonable accommodation.⁴²

27.0 The ECtHR has elaborated that the appropriate domestic authorities have a wide margin of appreciation (ie discretion) in allocating educational resources. It stated that:

⁴¹ *Cam v Turkey* (2016) ECHR 206, at para 64.

⁴² *Ibid*, at para 65.

it is not unaware that every child has his or her specific educational needs, and this applies particularly to children with disabilities. In the educational sphere, the Court acknowledges that reasonable accommodation may take a variety of forms, whether physical or non-physical, educational or organisational, in terms of the architectural accessibility of school buildings, teacher training, curricular adaptation or appropriate facilities. That being the case, the Court emphasises that it is not its task to define the resources to be implemented in order to meet the educational needs of children with disabilities. The national authorities, by reason of their direct and continuous contact with the vital forces of their countries, are in principle better placed than an international court to evaluate local needs and conditions in this respect.⁴³

28.0 However, the Court continued:

that it is important for the States to be particularly careful in making their choices in this sphere, having regard to the impact of the latter on children with disabilities, whose particular vulnerability cannot be overlooked. It consequently considers that discrimination on grounds of disability also covers refusal to make reasonable accommodation.⁴⁴

29.0 The UN Committee on the Rights of the Child stated “the lack of appropriate education... discriminates against [children with disabilities] by denying them job opportunities in the future”.⁴⁵ The Committee warned, “social stigma, fears, overprotection, negative attitudes, misbeliefs and prevailing prejudices against children with disabilities remain strong in many communities and lead to the marginalisation and alienation of children with disabilities”.⁴⁶

30.0 The UN Committee on the Rights of Persons with Disabilities has specifically recommended the UK government, in close consultation with organisations of persons with disabilities, especially organisations representing children and young persons with disabilities:

strengthen measures to monitor school practices concerning enrolment of children with disabilities and offer appropriate remedies in cases of disability-related discrimination and/or

⁴³ Ibid, at para 67.

⁴⁴ Ibid, at para 68.

⁴⁵ CRC/C/GC/9, ‘General Comment No 9 – The Rights of Children with Disabilities’, 27 February 2007, at para 8.

⁴⁶ Ibid.

harassment, including deciding upon schemes for compensation;⁴⁷ and

provide sufficient, relevant data on the number of students both in inclusive and segregated education disaggregated by impairment, age, sex and ethnic background, and further provide data on the outcome of the education reflecting the capabilities of the students.⁴⁸

31.0 Non-discrimination should be referenced in the following places: in the 'Principles Underpinning the Proposed Framework' section (pages 3-4), particularly under 'equity of access in relation to the programme of support in special schools'; in the Framework Proposals 4 (page 9) and 5 (page 10) when referring to support; and in the Framework Proposals 6 (page 11) when referring to special school provision.

Reasonable accommodation

32.0 The CRPD, Article 24(2)(c), requires that the relevant authorities ensure that "reasonable accommodation of individual's requirements is provided" in fulfilling, protecting and respecting disabled persons' right to education. Article 24(2)(d) states that disabled persons should "receive the support required, within the general education system, to facilitate their effective education".

33.0 Reasonable accommodation is defined by the UN Committee on the Rights of Persons with Disabilities as:

necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.⁴⁹

34.0 Reasonable accommodation "relates to an individual and is complementary to the accessibility duty".⁵⁰ What is reasonable is determined by the context of each individual case.⁵¹ It should take fully into account and

⁴⁷ CRPD/C/GBR/CO/1, 'Concluding Observations on the Initial Report of the United Kingdom of Great Britain and Northern Ireland', 29 August 2017, at para 53(b).

⁴⁸ Ibid, at para 53(c)(iii).

⁴⁹ Article 2, Convention on the Rights of Persons with Disabilities 2009.

⁵⁰ CRPD/C/GC/4, 'General Comment No 4(2016) on the Right to Inclusive Education', 25 November 2016, at para 29.

⁵¹ Ibid, at para 28.

respecting the requirements, cultures, views and languages of persons with disabilities.⁵²

35.0 Reasonable accommodation is enforceable from the moment a request for such accommodation is made.⁵³ It should be adaptable, meaning that the required reasonable accommodations should be accessible and implemented.

36.0 Some practical steps that should be taken include consideration of the individual's needs and consideration of the specific accommodations required to meet any special educational needs.⁵⁴ Some examples of reasonable accommodation are:

personal assistance, in particular, teachers trained in methodology and techniques, including appropriate languages, and other forms of communication, for teaching children with a diverse range of abilities capable of using child-centred and individualised teaching strategies and appropriate and accessible teaching materials, equipment and assistive devices, which State parties should provide to the maximum extent of available resources.⁵⁵

37.0 The extent "to which reasonable accommodation is provided must be considered in the light of the overall obligation to develop an inclusive education system, maximising the use of existing resources and developing new ones".⁵⁶ However, "using a lack of resources and the existence of financial crises to justify failure to make progress towards inclusive education violates [the CRPD,] Article 24".⁵⁷

38.0 Reasonable accommodation should be referenced in the following places: in the Framework Proposal 2's (page 7), particularly under the 'flexible provision to meet pupil need' principle; in the Framework Proposal 1 (page 6) regarding the methods of liaising and communicating on SEN; in the Framework Proposal 3 (page 8) in determining the 'appropriate support'; in the Framework Proposals 4 (page 9) and 5 (page 10) in terms of what constitutes support; and in the Framework Proposal 6 (page 11).

⁵² Ibid, at paras 22-24.

⁵³ Ibid, at para 28.

⁵⁴ *Cam v Turkey* (2016) ECHR 206.

⁵⁵ CRC/C/GC/9, 'General Comment No 9 – The Rights of Children with Disabilities', 27 February 2007, at para 65.

⁵⁶ CRPD/C/GC/4, 'General Comment No 4(2016) on the Right to Inclusive Education', 25 November 2016, at para 28.

⁵⁷ Ibid.

Accessibility

39.0 The CRC, Article 23(4) requires that information on education aimed at improving capabilities and skills, and widening experiences should be disseminated and accessible.⁵⁸ To fulfil these requirements it is necessary to:

develop and effectively implement a comprehensive policy by means of a plan of action which not only aims at the full enjoyment of the rights enshrined in the Convention without discrimination, but which also ensures that a child with disability and her or his parents and/or others caring for the child do receive the special care and assistance they are entitled to under the Convention.⁵⁹

40.0 The CRC, Article 28(1)(d), provides educational and vocational information and guidance should be "available and accessible to all children".⁶⁰

41.0 The CRPD, Article 24(2), requires that the relevant authorities ensure that "persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live".⁶¹

42.0 The UN Committee on the Rights of the Child has specifically recommended the UK government:

on access to quality early childhood development services, allocate sufficient human, technical and financial resources for the development and expansion of early childhood care and education, based on a comprehensive and holistic policy of early childhood development, with special attention to the children in the most vulnerable situations.⁶²

43.0 The UN Committee on the Rights of Persons with Disabilities has specifically recommended the UK government "set up initiatives raising awareness about and support to inclusive education among parents of children with disabilities".⁶³

⁵⁸ Article 23(4), Convention on the Rights of the Child 1989.

⁵⁹ CRC/C/GC/9, 'General Comment No 9 – The Rights of Children with Disabilities', 27 February 2007, at para 13.

⁶⁰ Article 28(1)(d), Convention on the Rights of the Child 1989.

⁶¹ See *also* CRPD/C/GC/4, 'General Comment No 4(2016) on the Right to Inclusive Education', 25 November 2016, at para 21.

⁶² CRC/C/GBR/CO/5, 'Committee on the Rights of the Child – Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 3 June 2016, at para 72(f).

⁶³ CRPD/C/GBR/CO/1, 'Concluding Observations on the Initial Report of the United Kingdom of Great Britain and Northern Ireland', 29 August 2017, at para 53(c)(ii).

44.0 The Framework document should ensure that all advice, information and support is available in accessible formats and effectively communicated in accessible manners. To reflect this accessibility should be referenced in the following places: in the 'Principles Underpinning the Proposed Framework' section (pages 3-4), particularly the 'effective communication' principle; in the Framework Proposal 1 (page 6); in the Framework Proposal 3 (page 8), particularly concerning the programme of offer; in the Framework Proposals 4 (page 9), 5 (page 10) and 6 (page 11); and in the Framework Proposals 4 (page 9), 5 (page 10) and 6 (page 11), particularly concerning supporting and developing links between home and school/Early SEN Centres.

Inclusive education

45.0 The core message of the CRC, Article 23, "is that children with disabilities should be included in society".⁶⁴ This provision requires special protections for disabled children. It recognises "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".⁶⁵ This includes recognising "the right of the disabled child to special care".⁶⁶

46.0 This involves encouraging and ensuring "the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child".⁶⁷ This assistance should be:

provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training... in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.⁶⁸

47.0 The CRPD, Article 24(1), requires that there is:

⁶⁴ CRC/C/GC/9, 'General Comment No 9 – The Rights of Children with Disabilities', 27 February 2007, at para 11.

⁶⁵ Article 23(1), Convention on the Rights of the Child 1989. See also Resolution 2064(2015), 'CoE Parliamentary Assembly Resolution on Equality and Inclusion for People with Disabilities', 30 January 2015, at para 4.3.

⁶⁶ Article 23(2), Convention on the Rights of the Child 1989.

⁶⁷ Ibid.

⁶⁸ Article 23(3), Convention on the Rights of the Child 1989.

an inclusive education system at all levels and life long learning directed to:

- a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
- c) Enabling persons with disabilities to participate effectively in a free society.⁶⁹

48.0 The CRPD, Article 24, requires “an inclusive education system at all levels” for persons with disabilities.⁷⁰ Article 24(2)(a), states that disabled persons should not be “excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability”. This provision is subject to a reservation by the UK government, meaning that the UK does not deem itself bound by this provision. This is on the basis that “the General Education System in the UK includes mainstream, and special schools”.⁷¹ However, in making this reservation the UK government clearly stated “it is committed to continuing to develop an inclusive system where parents of disabled children have increasing access to mainstream schools and staff, which have the capacity to meet the needs of disabled children”.⁷² Article 24(2)(e), further requires that “effective individualised support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion”.

49.0 The CRPD, Article 24(3), requires that persons with disabilities are enabled to “learn life and social development skills to facilitate their full and equal participation in education and as members of the community”. This requires facilitating the learning of different forms of communicating, such as Braille, alternative script and sign language.⁷³ It requires appropriate measures to be taken to “employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education”.⁷⁴ This training

⁶⁹ Article 24(1), Convention on the Rights of Persons with Disabilities 2009.

⁷⁰ CRPD/C/GC/4, ‘General Comment No 4(2016) on the Right to Inclusive Education’, 25 November 2016, at para 8.

⁷¹ Available at: <http://indicators.ohchr.org/>

⁷² Ibid.

⁷³ Articles 24(3)(a)-24(3)(c), Convention on the Rights of Persons with Disabilities 2009.

⁷⁴ Article 24(4), Convention on the Rights of Persons with Disabilities 2009.

should “incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities”.⁷⁵

50.0 The ECtHR stated that inclusive education is “the most appropriate means of guaranteeing” universality and non-discrimination.⁷⁶ The UN Committee on the Rights of the Child identified that:

inclusive education should be the goal of educating children with disabilities. The manner and form of inclusion must be dictated by the individual educational needs of the child, since the education of some children with disabilities requires a kind of support which may not be readily available in the regular school system.⁷⁷

51.0 Inclusive education is defined as “a set of values, principles and practices that seeks meaningful, effective and quality education for all students, that does justice to the diversity of learning conditions and requirements not only of children with disabilities, but for all students”.

52.0 Inclusive education “should not be understood or practiced as simply integrating children with disabilities into the regular system regardless of their challenges and needs”.⁷⁸ Inclusion is different to exclusion, segregation and integration. It involves:

a process of systematic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and the environment that best corresponds to their requirements and preferences.⁷⁹

53.0 Inclusive education requires “close cooperation among special educators and regular educators”.⁸⁰ The “schools’ curricula must be re-evaluated and developed to meet the needs of children with and without disabilities”.⁸¹ It

⁷⁵ Ibid.

⁷⁶ *Cam v Turkey* (2016) ECHR 206, at para 64.

⁷⁷ CRC/C/GC/9, ‘General Comment No 9 – The Rights of Children with Disabilities’, 27 February 2007, at para 66.

⁷⁸ Ibid. See also CRPD/C/GC/4, ‘General Comment No 4(2016) on the Right to Inclusive Education’, 25 November 2016, at para 11.

⁷⁹ CRPD/C/GC/4, ‘General Comment No 4(2016) on the Right to Inclusive Education’, 25 November 2016, at para 11.

⁸⁰ CRC/C/GC/9, ‘General Comment No 9 – The Rights of Children with Disabilities’, 27 February 2007, at para 66.

⁸¹ Ibid.

also requires “modification in training programmes for teachers and other personnel involved in the educational system”.⁸² There is a:

need to have well-trained teachers and other professionals working in different education-related settings, as well as a child-friendly environment and appropriate teaching and learning methods, taking into consideration that education is not only an investment in the future, but also an opportunity for joyful activities, respect, participation and fulfilment of ambitions. Responding to this requirement and enhancing children’s responsibilities to overcome the limitations of their vulnerability of any kind, will be in their best interests.⁸³

54.0 The UN Committee on the Rights of the Child has specifically recommended the UK government:

set up comprehensive measures to further develop inclusive education, ensure that inclusive education is given priority over the placement of children in specialised institutions and classes, and make mainstream schools fully accessible to children with disabilities;⁸⁴ and

enhance its efforts to reduce the effects of the social background or disabilities of children on their achievement in school and to guarantee the right of all children to a truly inclusive education in all parts of the State party, including for newcomer children without experiences of formal education.⁸⁵

55.0 The UN Committee on the Rights of Persons with Disabilities has specifically recommended the UK government, in close consultation with organisations of persons with disabilities, especially organisations representing children and young persons with disabilities:

develop a comprehensive and coordinated legislative and policy framework for inclusive education, and a timeframe to ensure that mainstream schools foster real inclusion of children with disabilities in the school environment and teachers and all other professionals and persons in contact with children

⁸² Ibid.

⁸³ CRC/C/GC/14, ‘General Comment No 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art 3, Para 1), 29 May 2013, at para 79.

⁸⁴ CRC/C/GBR/CO/5, ‘Committee on the Rights of the Child – Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland’, 3 June 2016, at para 56(b).

⁸⁵ Ibid, at para 72(a).

understand the concept of inclusion and are able to enhance inclusive education;⁸⁶

develop and implement policies aimed at... setting up an independent monitoring mechanism to assess the situation of children with disabilities in school, particularly those facing bullying, through reliable indicators;⁸⁷ and

allocate resources for education of children with hearing impairment, their families and others, such as classmates or co-workers in British Sign Language and tactile language.⁸⁸

- 56.0 It is recommended that in the 'Principles Underpinning the Proposed Framework' section (pages 3-4) the 'inclusive' principle elaborates on what is meant by inclusive education and a sense of how it will be achieved in practice.**
- 57.0 We welcome the emphasis on strengthening partnerships with health and social care, as well as statutory, voluntary and other early years providers to develop more integrated provision and support for children and young people with special educational needs. It is recommended that in the 'Principles Underpinning the Proposed Framework' section (pages 3-4) the 'partnership working' principle includes reference to ensuring the members of the partnerships are effectively trained on special educational needs.**
- 58.0 It is recommended that in the 'Principles Underpinning the Proposed Framework' section (pages 3-4) the 'effective transition' principle references that effective transition is aimed at ensuring children reach their full human potential, with a sense of dignity and self-worth. This includes setting out a sense of how this will be undertaken in practice.**
- 59.0 It is recommended that in the 'Principles Underpinning the Proposed Framework' section (pages 3-4) that the 'effective transition' principle elaborates that 'the advice of those professionals who know them' is grounded in respect for human rights, fundamental freedoms and human diversity.**
- 60.0 It is recommended that the Framework Proposal 3 (page 8) clarifies that the focus of appropriate support is to provide inclusive education. Framework Proposals 4 (page 9) and 5 (page 10) should state that 'assessed need' should reflect inclusive**

⁸⁶ CRPD/C/GBR/CO/1, 'Concluding Observations on the Initial Report of the United Kingdom of Great Britain and Northern Ireland', 29 August 2017, at para 53(a).

⁸⁷ Ibid, at para 21(c).

⁸⁸ Ibid, at para 47(c).

education. Additionally, Framework Proposal 6 (page 11) should reference inclusive education.

Contact Us

www.nihrc.org | info@nihrc.org | +44 (0)28 9024 3987
Temple Court, 39 North Street, Belfast, BT1NA

