

Advice to the Education Authority on its Draft Framework for Specialist Provision in Mainstream Schools and Draft Special Schools Area Planning Framework

April 2021

1. Introduction

The Northern Ireland Commissioner for Children and Young People (NICCY) was created in accordance with 'The Commissioner for Children and Young People (Northern Ireland) Order' (2003) to safeguard and promote the rights and best interests of children and young people in Northern Ireland. Under Articles 7(2) and (3) of this legislation, NICCY has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people.

Under Article 7(4), NICCY has a statutory duty to advise any relevant authority on matters concerning the rights or best interests of children and young persons. The Commissioner's remit includes children and young people up to 18 years, or 21 years, if the young person has a disability or experience of being in the care of social services. In carrying out her functions, the Commissioner's paramount consideration is the rights of the child or young person, having particular regard to their wishes and feelings. In exercising her functions, the Commissioner has to have due regard to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

NICCY's vision for education is one where the education received by all children in Northern Ireland is of the highest quality and which develops every child's personality, talents and abilities to their fullest potential. NICCY has long expressed the view that there is a pressing need for meaningful reform of the SEN Framework in a manner which ensures better outcomes for children and young people. Recent years have shone further light on the fundamental flaws in the current system and the myriad issues preventing children who have, or may have, special educational needs from enjoying their right to an effective education. There have been excessive delays in the assessment and statementing process and in too many cases children with SEN have not been receiving the support they need in a timely fashion. Such issues have become all the more prevalent in recent years, with evidence highlighting the need for systemic reform to ensure the

needs of children with SEN are met in both mainstream and special school settings. This includes '*Too Little, Too Late*'¹, NICCY's review of SEN provision in mainstream schools which highlighted the endemic barriers in the system preventing children and young people with SEN and disability reaching their full potential. The Review revealed persistent delays in accessing specialist supports at all stages of the SEN process; significant inconsistencies across the region in relation to the accessibility of specialist provision in mainstream schools; and poor quantity and quality of supports and services for children with SEN. Other recent reviews have added to the evidence base for systemic change, including the Public Accounts Committee², 'Northern Ireland Audit Office's SEN Impact Review³, the EA's Improvement Plan and the DE SEN Learner Journey Project.

Whilst there is a critical and urgent need to fundamentally reform the SEN system, NICCY wishes to acknowledge the commitment and action being taken by the Education Authority (EA) to address the current and historic issues with the system, including through the SEND Strategic Development Programme Board and the current Frameworks being consulted upon.

NICCY welcomes the opportunity to provide advice to the EA on its proposed future educational provision for children with SEN across special schools and specialist provisions in mainstream schools in Northern Ireland. Whilst NICCY recognises that the EA is consulting separately on the draft Special Schools Area Planning Framework and draft Framework for Specialist Provision in Mainstream Schools, the scope of the consultations and nature of questions posed is consistent. Therefore, this paper combines NICCY's response to both consultations.

We wholly agree with the rationale for change and the overarching objectives of both Frameworks. It is imperative that, through the new Frameworks, there is (1) improved availability, accessibility and consistency in specialist provision in mainstream schools across Northern Ireland; and (2) greater level of consistency in special school provision across the region. In turn, this must ensure equality of opportunity; greater stability for

¹ NICCY (March 2020) '*Too Little, Too Late*', A Rights Based Review of Special Educational Needs Provision in Mainstream Schools. Available at: www.niccy.org/senreviewreports

² Public Accounts Committee (2021) Report on Impact Review of Special Educational Needs. Available at: [Report on Impact Review of Special Educational Needs \(niassembly.gov.uk\)](https://www.niassembly.gov.uk/sites/niassembly.gov.uk/files/242135%20NIAO%20Special%20Education%20Needs_FnI%20Lw%20Rs%20%28complete%29.pdf)

³ NI Audit Office (2020) Impact Review of Special Educational Needs. Available at: https://www.niauditoffice.gov.uk/sites/niao/files/media-files/242135%20NIAO%20Special%20Education%20Needs_FnI%20Lw%20Rs%20%28complete%29.pdf

pupils with SEN; increased capacity to meet current and projected demand for places; and, critically, improved outcomes for children with SEN across special schools and mainstream settings.

Both the draft Framework for Specialist Provision in Mainstream Schools and the Special Schools Area Planning Frameworks are overarching, strategic documents which focus on the EA's vision; guiding principles; and rationale for change. It is difficult, however, given the high level and somewhat vague nature of the plans, to make detailed and comprehensive comments on the proposals. It is unclear how the vision set out in both Frameworks will be realised and the nature of the resource to be provided to make it a reality.

Whilst we welcome that EA Officials met with NICCY in February 2021 to hear our views and queries about the proposals, given NICCY's statutory duties and powers under 'The Commissioner for Children and Young People (Northern Ireland) Order (2003)' and the critical nature of these Frameworks in improving access to provision for our most vulnerable children and young people in Northern Ireland, we look forward to having the opportunity to provide further advice to the EA on the specifics of the proposals. Furthermore, it will be vitally important that there is open and comprehensive consultation on the specifics of plans relative to both Frameworks with a range of stakeholders in line with section 75 of the Northern Ireland Act 1998. This should include consultation with parents and direct consultation with children and young people with SEN in both mainstream and special school settings, as the group which will be most impacted upon by changes to the provision of education in Northern Ireland. This is all the more critical in light of parental mistrust of the system, as evidenced by the findings of 'Too Little, Too Late', and the long-standing perception that there is a lack of effort and opportunity provided by EA, schools and services, to involve children and young people, and their parents, in the SEN process.

One aspect of the proposals which NICCY feels lacks sufficient detail, is the pilot being undertaken under the draft Framework for Specialist Provision in Mainstream Schools. As NICCY understands it, the aim of the pilot, undertaken by EA on behalf of Department of Education (DE), is to develop, test and agree a new process that will expedite the establishment, closure or change of specialist provision in mainstream settings without the necessity to publish a Development Proposal, as is the current requirement. NICCY warmly welcomes greater expediency and a reduction in delays in the establishment of

specialist provisions. We recognise that the Development Proposal process is lengthy and takes at least a year from inception to approval. We are therefore in favour of more agile planning and delivery in relation to the type and number of specialist provisions required in mainstream schools across Northern Ireland.

However, we are concerned at a lack of specificity in proposals regarding the alternative processes that are being trialled by the EA through the pilot. The proposals set out the rationale for the pilot and associated objectives, which include:

- the development of a new more streamlined and efficient process to establish, close or change specialist provision in mainstream schools;
- ensuring that the new process provides opportunity for interested parties to have their views considered before final decisions are taken; and
- defining how the process will operate in practice including linkages with publication of an annual published plan of arrangements for SEN (as per Section 2 of the new SEND Act).

There is a significant lack of information in the proposals regarding the specific processes to be trialled through the pilot. Whilst it is noted that this would negate the need for a Development Proposal at the same time it ‘would retain the robust detail required for this process.’ It is not clear what this means in practical terms, as there is no explanation given of the details that will be retained, and those that will be no longer necessary.

The EA proposals do, however, note that if the pilot is adopted, the establishment of specialist provision in mainstream schools would be through consultation on an annual published plan of arrangements for SEN, in line with requirements under the Special Educational Needs and Disability (SEND) NI Act (2016).

NICCY has some concerns about how this process will be managed and the level of scrutiny to be built into the consultation process, particularly in case of school closures. It is not entirely evident if this will be the only process through which decisions regarding the establishment, closure or change of specialist provision are made. **Full transparency must therefore be provided regarding the proposed new process of establishing, changing or closing of specialist provision and how this will affect children with special educational needs (both current and future pupils).**

2. United Nations Convention on the Rights of the Child (UNCRC)

This paper outlines obligations on the EA to ensure both Frameworks embed children's rights and cites the most relevant international and local policy and legislative contexts. We reflect on the rationale for change; the current lack of provision; the EA's vision and guiding principles in progressing the Frameworks; and the outlined criteria.

Our advice is framed in the context of the UNCRC, in ensuring that systems and processes are rights compliant, and remove the barriers to ensuring children's and young people's right to education.

The UNCRC is a set of binding minimum standards and obligations in respect of all aspects of children's lives which the Government has ratified and must comply with in the discharge of its functions. The Northern Ireland Government Departments and Agencies are obliged to comply with the obligations under the UNCRC by virtue of being a devolved administration of the UK Government, the signatory to the UNCRC. There are a number of UNCRC articles, Committee recommendations and Committee General Comments which are relevant to the draft Frameworks. Articles 28 and 29 are the main UNCRC articles which relate to education. Article 28 outlines the right to education, whereas Article 29(1), which details the aims of education, adds a qualitative dimension to the general right to education under Article 28. Article 29(1) reflects the rights and inherent dignity of the child; it insists on the need for education to be child-centred, child-friendly and empowering and highlights the need for educational processes to be based upon the principles outlined in Article 29(1).

General Comment 1 on the Aims of Education⁴ provides insight into the obligations on Government under Article 29(1) of the Convention. According to the UNCRC Committee's General Comment on Article 29 of the Convention – a statement of its meaning and objectives - education must be child-centred, child-friendly and empowering.⁵ The goal is to strengthen the child's capacity to enjoy the full range of human rights, to promote a culture which is infused by appropriate human rights values and to empower the child through developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence. In this context, 'education' goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable

⁴ United Nations Committee on the Rights of the Child, General Comment No. 1 (2001) 'The aims of education' CRC/GC/2001/1.

⁵ *Ibid.*

children, whether individually or collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society.

Other articles are also relevant in the context of the current consultation, not least the 4 principles of the Convention. The UNCRC principles require the Government to ensure that children are not discriminated against - Article 2; their best interests are upheld - Article 3; they develop to their maximum potential - Article 6; and they are able to meaningfully participate in all aspects of their lives - Article 12. General Comment 1 on the Aims of Education⁶ also highlights a number of other Convention articles which are relevant to the fulfilment of the aims of education as detailed under Article 29 of the Convention.⁷ These include, but are not limited to, the rights and responsibilities of parents (Articles 5 and 18), freedom of expression (Article 13), freedom of thought (Article 14), the right to information (Article 17), the rights of children with disabilities (Article 23), the right to education for health (Article 24) and the linguistic and cultural rights of children belonging to minority groups (Article 30).

To ensure children's rights are embedded within the proposed developments, **it is NICCY's recommendation that the two Frameworks explicitly articulate the UNCRC, the protection and promotion of children's rights, and give special consideration to the outlined Articles and General Comments.** Moreover, to ensure that the Frameworks are truly child's rights compliant, **we strongly recommend that the EA engages in a Child's Rights Impact Assessment (CRIA)** as previously shared with EA. The CRIA Framework examines the potential impacts on children and young people of laws, policies, budget decisions, programmes and services as they are being developed and, if necessary, suggests ways to avoid or mitigate any negative impacts. It focuses on how children's rights may be affected by the decisions and actions of governments, institutions and others in the areas of law, policy and practice. Impacts are measured against the rights set out in the UNCRC, its Optional Protocols, and other international human rights treaties. By conducting a CRIA, the EA will be able to assess the extent to which both Frameworks deliver on EA's child's rights obligations.

3. Northern Ireland Policy and Legislation in context of the Rights of the Child

NICCY notes that the EA's draft Frameworks are part of a wider Area Planning strategy that has been reflected in the 'Providing Pathways - Strategic Area Plan for School

⁶ *Ibid*

⁷ *Ibid*, para 6.

Provision 2017-2021' and the associated Action Plan for Primary, Post Primary and Special Schools (2019-2021), as well as the upcoming second Strategic Area plan, which we understand is due to be published in June 2022 for commencement in September 2022.

We also recognise that EA's proposals sit within the wider context of the Special Educational Needs and Disability Act (Northern Ireland) 2016, revised Regulations and new Code of Practice. The new legislation contains critical clauses which, when fully commenced, will have significant implications for the new EA Frameworks. Of particular note is Section 1 of the SEND Act, which came into operation on the 18th December 2020. This introduces new duties on the EA, so far as is reasonably practical, to seek and have regard to the views of the child, and places a requirement on schools and the EA to support children and young people as active participants in making decisions about managing their special educational needs. In the context of the current consultation, it reinforces the obligation on the EA to directly engage the views of children, young people, and their parents on the detailed proposals regarding the Special Schools Area Planning Framework and Framework for Specialist Provision in Mainstream Schools. Furthermore, the requirement on EA to have regard to the participation of the child in decisions affecting them, and to be required to provide the information and support necessary to enable the child's participation in those decisions, is critical in ensuring fulfilment of Article 12 of the UNCRC and should be regarded as a central tenet of the EA consultation processes going forward.

Co-operation between health and education authorities in meeting the needs of children and young people with SEN and disabilities is critical in facilitating the fundamental reform essential to the current SEN system and must be at the heart of the EA's proposals. Once Section 4 of the SEND Act comes into operation, we expect that it will lead to much needed improvement in co-operation between education, health and social care authorities in identification, assessment and making provision for children with SEN. Furthermore, it must be noted that the Children's Services Co-operation Act (Northern Ireland) 2015 (CSCA) places a statutory duty to co-operate on Government Departments in the provision of children's services in order to promote children's well-being. The CSCA makes a commitment to children's rights in line with the relevant provisions of the UNCRC in the delivery of children's services to improve the well-being of children and young people in Northern Ireland, this obligation is particularly important within the context of this proposed framework and outcomes in the NI Executive's Children

and Young People Strategy.

NICCY notes that the new SEND Code of Practice (The Code) sets out guidance aimed at improving inclusion within education for those children with special educational needs (SEN) and/or those with a disability. The Code of Practice also sets out obligations on the EA to produce an accessibility strategy which:

- increases the extent to which children with a disability can participate in the schools' curriculum (controlled schools);
- improves the physical environment of schools for increasing the extent children with a disability can take advantage of education and associated services provided or offered by schools; and
- improves the delivery of information to children with a disability.

Whilst NICCY has some concerns about the content and language of this particular section of the draft Code as per NICCY's submissions to the Department of Education⁸, it is important that EA's proposals for specialist provision in mainstream schools deliver on the obligations as per the new SEN Framework.

A final, key piece of legislation, which we are disappointed not to see reflected in the EA proposals, is the Addressing Bullying in Schools (Northern Ireland) Act 2016, which is due to come into operation from 1 September 2021. This legislation is essential in the context of the current proposals in light of the risk to children with SEN, particularly in mainstream settings, becoming socially isolated within their specialist units and by virtue of being separated, potentially vulnerable to bullying. **NICCY recommends that the EA explicitly references the Act and its implementation in the context of effective inclusion.**

4. Current lack of provision

NICCY recognises that the draft Special Schools Area Planning Framework and the draft Framework for Specialist Provision in Mainstream Schools have been developed amidst rising numbers of pupils with SEN, and suspected SEN, and increased complexity of need across school settings. According to 2019/20 data, the population of pupils enrolled in schools in Northern Ireland is 349,500⁹. 67,000 pupils have some form of SEN, representing almost 20% of the entire school population. The number of pupils with a

⁸ NICCY advice to the Department of Education on its [SEN Regulations and Code of Practice \(niccy.org\)](http://niccy.org)

⁹ NISRA (2020) DE Special Educational Needs, 2019-2020 Key Statistics [Special Educational Needs 2019-2020.pdf \(education-ni.gov.uk\)](http://education-ni.gov.uk)

Statement of SEN is 19,200, 11,000 of which attend a mainstream primary or post primary school, however, a further 6,174 pupils are currently enrolled in special schools. Alongside the increase in numbers, there is an emerging trend relating to an increase in the complexity of pupil need and the profile of pupils requiring a special school or specialist placement. As reflected in the consultation documentation, this has a direct impact on the size of classes as reduced pupil: adult ratios are required in many circumstances. Children often require medical and therapeutic input from Allied Health Professionals in Health and Social Care Trusts and from across other support services within the EA. It is evident that there is increased pressure on the Staff and on accommodation requirements within special schools, as often reported to NICCY.

The EA consultation documentation depicts a stark picture of increased demand for special school and specialist provision but, most critically, limited and disparate provision to meet that need in both mainstream and special school settings. These issues have been exacerbated by uneven provision across Northern Ireland, legacy issues arising from poor capital investment, and gaps in the availability of special schools and specialist provision within mainstream schools across the region. In NICCY's experience, this has resulted in significant delays and challenges in children and young people gaining a place, as well as inappropriate and unsuitable placements, sometimes requiring significant daily travel by pupils.

Whilst there are currently 40 special schools in Northern Ireland, it is recognised in the EA consultation papers that there is significant variation in the type of provision offered, with some Local Government Districts offering a greater range of provision than others. Similarly, in some areas there are no specialist classes in mainstream schools or the provision is very limited. NICCY has repeatedly voiced concern about the inconsistency and lack of available specialist provision. The statistics presented in the consultation documentation depict an extremely alarming situation where, at present in some local district areas (Ards and North Down, Fermanagh and Omagh), there is no specialist provision in mainstream post-primary schools. Regionally, the EA outlines significant gaps and limited provision in areas such as moderate learning difficulties support and only Belfast provides post-primary Social, Behavioural and Emotional Well-Being classes (SBEW). This is extremely concerning given there are almost 15,000 children identified as having SBEW difficulties, of which just under 5,000 pupils are statemented.¹⁰ The majority

¹⁰ NISRA (2020) DE Special Educational Needs, 2019-2020 Key Statistics [Special Educational Needs 2019-2020.pdf \(education-ni.gov.uk\)](https://www.education-ni.gov.uk/-/media/assets/statistics/special-educational-needs-and-disability/sen-statistics/2019-2020-key-statistics-special-educational-needs.ashx)

of districts do not provide Social Communication Units and Education Centres for Physical Difficulties; many do not provide Autism Specialist Class units and in post-primary provision, only Antrim caters for Hearing Impairment Classes.

As identified in the consultation documentation, from 2015, the EA has funded 14 resource provisions classes across primary and post-primary schools to meet the needs of pupils with cognition and learning needs, and separately autism, to address some of the local pressures in relation to the absence of approved specialist provision in some areas¹¹. A further 30 resource provision classes have been established across primary and post primary schools for the 2020/21 academic year. Currently, only 1,900 statemented pupils attend specialist classes within mainstream schools. In NICCY's experience, a significantly greater proportion of the 11,000 statemented pupils in mainstream education would benefit from attending specialist provision. In the absence of such provision, children and young people's needs are not being met in an appropriate or timely manner which has resulted in negative impacts on learning, development and wellbeing. Whilst NICCY notes that the EA has funded teachers and classroom assistants to support pupils where formally approved provision is not available, we note that this is a temporary measure to be reviewed 'in the near future'. **We seek assurances as to when such a review will be undertaken; it is imperative that this provision is evaluated to ensure that it is meeting the needs of children and young people in absence of specialist provision.**

Within the consultation documentation, the EA has outlined the challenges in seeking to deliver a greater level of consistency in special schools and specialist mainstream provision. NICCY does not underestimate the challenges that the EA faces in realising its vision of providing children with equality of opportunity, pathways leading to positive outcomes, and the highest quality experiences in schools. Nonetheless, it goes without saying that these are critical dimensions of the educational experience that must be realised by all children and young people. NICCY strongly agrees with the EA that greater equity of access should be an immediate priority and that children should not be disadvantaged by their postcodes or backgrounds. However, there are still significant gaps in provision. **It is imperative that the EA provides regular, transparent information on how these gaps will be managed, and children and young people's needs met, whilst the Frameworks are being developed and implemented going forward.**

¹¹ EA (2020) Consultation Documentation – Draft Framework for Specialist Provision in Mainstream Schools and Draft Framework for Specialist Provision in Mainstream Schools – Pilot

5. EA Vision and Guiding Principles

NICCY welcomes the EA's acknowledgement of the need for systemic change to ensure they meet every child's best interests and for a greater focus on equity, consistency and accessibility of special school and specialist provision in mainstream settings across the region now and in the future.

Both consultation documents set out the vision for the draft Special Schools Area Planning Framework and the draft Specialist Provision in Mainstream Schools Framework; there is generally strong alignment across the Frameworks. In both sets of proposals, the vision is articulated as 'consistency in the education and interventions offered'; 'close to where children live'; 'for all ages and stages of development'; 'flexible to meet changing educational, physical and medical needs'.

NICCY largely welcomes the outlined vision in both Frameworks. We are especially supportive of the proposal to introduce consistency in education and interventions to children with SEN in both mainstream and special schools across Northern Ireland. As evidenced in the previous section, the disparate provision across the region is a significant shortcoming of the current system and must be addressed as a matter of urgency. However, as previously reflected, **there is the need for significantly more detail in subsequent action and delivery plans in order to enable informed comment on the proposed Frameworks.** For instance, if provision and capacity of mainstream schools is to be consistent, the EA must clearly explain how it will invest regionally to ensure equity of access given the current lack of provision in some geographical areas.

NICCY is aware of concern amongst some parents that to enable consistency in approach will require amalgamation of school estates, resulting in large special 'Super Schools'. NICCY understands that parents' concerns largely stem from a perceived risk of schools becoming 'institution like' buildings, offering little to no inclusion within their community or with peers. In addition, some parents are nervous that the best practices of smaller, more concentrated, schools will be lost; this concern was particularly prevalent in 2018 in relation to the Belfast SEN Area Plans¹². The EA must engage robustly with parents to build trust and seek consensus on future provisions.

NICCY is largely supportive of the proposal that all children with SEN should be able to

¹² [Statement from Koulla Yiasouma, NI Commissioner for Children and Young People on the EA's Proposals to Reconfigure the Special Schools Estate in Belfast \(niccy.org\)](#) (2018)

attend a school close to where they live. As it stands, too many children are required to travel significant journeys each day (often to the detriment of their physical and mental wellbeing) to attend a school that meets their needs. NICCY has received reports of children who not arriving at school on time to begin classes at 9.00am because of transport issues. We therefore agree that the proposed future provisions should curtail this. However, NICCY is concerned that presently the EA cannot guarantee that a child's closest special school will be the best to accommodate their needs. **We therefore caution that a vision where 'children attend school close to where they live' is only appropriate if this school is the most appropriate to the child's needs and best interests.**

While proposals for consistency of provision for children with SEN and reduced travel times are welcome, children with SEN have a range of needs and a complexity of service requirements to ensure that they develop to their maximum potential. It will be vital to the achievement of this that there is a sufficient degree of flexibility with regard to the services that are made available within the school. As such, NICCY welcomes recognition of the need for '**flexibility to meet changing educational, physical and medical needs**' within the Frameworks' vision, however, requests further detail on what this means in practical terms and what resource will be provided to schools to ensure that provisions are tailored to children's evolving needs.

In order to adequately meet the needs of all children with SEN in both special schools and specialist units in mainstream schools, **NICCY reinforces that specification of need within Statements is essential**. It is imperative that all Statements are unequivocal regarding the needs of each individual child. There is also a great deal of expertise which has developed in a range of SEN areas within particular schools. **NICCY stresses that expertise and necessary specialisms must not be lost at the expense of a move towards consistency of service provision**. We would again reiterate the need for decisions about children's educational experience to be made with the best interests of the child as a paramount consideration; meeting the specific needs of each individual child must be the basis upon which decisions about reform of the system are taken.

We welcome the EA's vision to ensure an inclusive education for pupils with SEN availing of specialist provision in mainstream settings, providing opportunities for education alongside mainstream peers where appropriate. However, we welcome further detail on how schools will facilitate this effectively, whilst ensuring pupils' needs are met.

In order to truly meet the EA's vision in providing the best educational experiences, the

Frameworks need to lead a culture change - moving away from a diagnoses/statement led process, to a more inclusive system led by the needs of children. Furthermore, to ensure that 'every child receives the best start in life' (PfG), children who require access to specialist supports and services should be able to do so at the earliest opportunity, including those who are yet to receive a Statement. NICCY is concerned that the Framework for specialist provision in mainstream schools lacks detail on how the needs of children with SEN, but without a Statement, are to be sufficiently met in school settings. NICCY welcomes recent information provided by EA that ¹³, as of the start of April 2021, there was no child waiting beyond 26 weeks for a statutory assessment. However, delays in the system have had an extremely detrimental impact on the educational experiences of children and young people with Special Educational Needs. **We seek assurances from the EA that the delayed statementing process will not limit access to services or support which individual pupils require within their educational settings.**

Guiding Principles

We largely welcome the guiding principles expected to influence the EA's work in progressing the vision, specifically that the approach is child-centred, inclusive, outcomes focused, evidence improved, equitable, and transparent. **In addition, it is imperative that the EA's approach is founded on the promotion, protection and realisation of children's and young people's rights.** To make this a reality, NICCY strongly recommends that the following child's rights indicators are incorporated within the EA's proposals. These should be used to assess the adequacy of SEN provision in both mainstream specialist provision and special schools in meeting children's learning needs and facilitating their right to an effective education.

1. **Availability:** adequate facilities and services must be in place to meet the needs of all children and young people. Effective education must be available to people with disabilities at all levels.
2. **Accessibility:** there must be equal access to services for all children without discrimination of any kind. Educational institutions and programmes must be accessible to everyone without discrimination. This should include buildings, information and communication tools, the curriculum, educational materials, teaching methods, assessments and language and support services, with a particular focus on

¹³ Periodic meeting between NICCY and the EA, 1st April 2021

universal design.

3. **Acceptability:** facilities and services and the form and substance of education must be designed and delivered in a person-centred way, i.e. respectful of children's needs, expectations, views, cultures and languages.
4. **Adaptability:** the education environment must be adaptable for people with disabilities. People with disabilities should be able to attend primary and secondary schools in the communities where they live and have accessible transportation. People with disabilities must be provided with reasonable accommodation so they can have access to education on an equal basis with others.
5. **Quality / Impact:** children and young people should be offered a quality of service which adequately meets need, is appropriate and which improves wellbeing. This includes choices regarding evidence based interventions and adequately skilled and trained staff to offer child specific support.
6. **Participation:** whether the views of children and young people are gathered, seriously considered and taken into account in their own education and in the development of education policy and services.
7. **Co-operation:** whether there is timely and appropriate co-operation and integration of services to ensure a holistic approach is taken to need. This includes between schools and education bodies, NGO's and the statutory sector and between education, health and other relevant agencies and Government Departments.

6. Criteria

In order to progress and realise the EA's vision, criteria and associated indicators have been developed. In the context of mainstream settings, it is suggested that the criteria will be used to identify the gaps in existing specialist provision in mainstream schools and to identify mainstream schools in which to establish future additional provision. In the context of special school settings, it is intended that the criteria will evaluate the special school estate 'in order to identify need and make suitable provision for future needs of children and young people with special educational needs'.

The criteria are closely connected and largely consistent with the sustainability criteria set out in Schools for the Future: A Policy for Sustainable Schools. Indeed, the consultation documentation reflects that, prior to consideration for specialist provision, all mainstream schools must satisfy the six criteria of the Sustainable Schools Policy. This includes quality educational experience; stable enrolment trends; sound financial position; strong leadership and management by Boards of Governors and principals; accessibility; and

strong links with the community. NICCY has previously expressed concern¹⁴ about the aforementioned criteria, with specific reservation about the criteria regarding financial position and enrolments. With regards the former, it is acknowledged that school budgets are constrained and will likely remain so into the future, particularly given financial pressures arising from the Covid-19 pandemic. While NICCY appreciates the challenges that the EA faces with regard to reduced budgets for public services, it seems discriminatory that some mainstream schools may not have the option of being considered for specialist provision should they have experienced reductions in budget.

With regard to enrolment figures, within our previous advice to the EA¹⁵, we highlighted concern that this criterion has the potential to disadvantage rural populations where smaller school populations are more prevalent. This is particularly concerning given the current inequity of specialist provision across urban and rural settings. **We reiterate the need for decisions about children's lives to be made with their best interests as a paramount consideration. All children should have the right to reach their maximum potential, through additional specialist supports where required. Therefore, it is not acceptable that some smaller schools may not be eligible for specialist provision if they do not meet this criterion.**

NICCY recognises that the EA has redefined the indicators associated with the Sustainable Schools Criteria, in order to facilitate identification of mainstream schools in which to establish additional suitable provision. Whilst enhancements to the criteria and associated indicators are welcome, **we reiterate that the criteria must not be limiting nor reduce the scope of expansion of specialist provision in mainstream schools.**

We note and welcome the addition of one criterion to the draft Framework for Specialist Provision in Mainstream Schools, namely, 'a clear commitment to inclusion'. NICCY strongly welcomes the addition of this criterion. Inclusive education is not a marginal issue but is central to the achievement of high quality education for all learners, and to overcoming barriers to children's and young people's rights to an effective education. Furthermore, inclusive education is essential to achieve social equality and is a constituent element of lifelong learning¹⁶. We note that the associated indicators to this criterion

¹⁴ NICCY 2016: Advice to the EA on its Consultation on Providing Pathways; Draft Strategic Area Plan for School Provision 2017 -2020

¹⁵ Ibid

¹⁶ Policy Guidelines on Inclusive Education, UNESCO 2009, p.4:

include '*Commitment to work within a developed common framework of training for teaching and non-teaching staff in the provision so that the learning outcomes of pupils can be maximised*' and '*Inclusion in mainstream activities and learning is both promoted and supported*'.

NICCY wishes to see more defined and concrete indicators of inclusion. For example, this may include evidence that:

- a) Schools actively seek to identify and remove barriers to learning and participation;**
- b) Inclusion is a process by which schools develop their cultures, policies and practices to include children with SEN and/or a disability;**
- c) Children, young people, and their parents are consulted with and have the opportunity to inform decisions that affect them;**
- d) Appropriate staff training, strategies and reasonable adjustments are put in place and reasonable steps taken so that all children with SEN and/or a disability can be successfully included in mainstream education.**

Furthermore, recent research on children's rights and inclusion reflects the need to achieve a rights-compliant transition from segregated to inclusive education settings that does not, in the process of so doing, rescind the rights of the minority of children with the most profound disabilities currently in segregated schools¹⁷. In facilitating a truly inclusive educational experience, the research suggests that the need for a 'whole systems' approach, a 'whole educational environment', a 'whole persons' approach, supported teachers, respect for and value of diversity, a learning-friendly environment, effective transition, recognition of partnerships and monitoring.¹⁸

NICCY welcomes further detail on how schools' adherence to this criterion will be measured and any supports provided by schools to facilitate this inclusive ethos. Whilst we strongly welcome the intention to increase capacity within mainstream schools to enable the inclusion of children with SEN, NICCY seeks assurance from the EA that the provision of specialist units will be age appropriate, for example, first year students should

¹⁷ Bronagh Byrne (2019): How inclusive is the right to inclusive education? An assessment of the UN convention on the rights of persons with disabilities' concluding observations, International Journal of Inclusive Education, DOI: 10.1080/13603116.2019.1651411

¹⁸ United Nations, Committee on the Rights of Persons with Disabilities. 2016. General Comment 4: The Right to Inclusive Education. Geneva: UN. UN/CRPD/C/GC/4.

not be studying alongside final year students because they both have special educational needs.

Criteria specific to the draft Special Schools Area Planning Framework

Whilst the Sustainable Schools Policy criteria is not to be applied to special schools in the same way as is proposed for mainstream settings (i.e. to be eligible for consideration for specialist provision), nonetheless, the EA has proposed a series of largely similar criteria to identify and accommodate present and future needs of pupils across special schools. Consistent with the criteria relative to specialist provision in mainstream settings, the criteria in the draft Special Schools Area Planning Framework includes: quality educational experience; strong leadership and management by Board of Governors and Principals; accessibility; and strong links with the community. In terms of differences, we note that the special schools criteria includes a requirement for stable placement trends, whereas, the mainstream criteria reflects the need for stable enrolment trends. The most notable difference is that special schools criteria reflects a requirement for 3 – 19 provision, whilst the mainstream criteria includes a ‘clear commitment to inclusion’.

NICCY recognises the distinction in the criteria, however, wishes to reinforce that inclusion is paramount for all children with a special educational need, regardless of setting, including to support transitions for special school leavers at age 19. By virtue of a pupil attending a school from 3-19 years old, there is the risk of exclusion from society which can lead to challenges transitioning to adult services. NICCY welcomes the EA’s attempt to reduce unnecessary and often disruptive transitions for children with a special educational need, by the ‘stable schools placement’ criterion. Equally, the transitions from children services to adult services is often described by young people and their parents as a ‘cliff edge’ and must be addressed within both Frameworks.

Therefore, NICCY recommends recognition of the risk of exclusion of pupils with SEN in special schools, and the need for robust planning to facilitate the transition of pupils within and from special schools. As part of this, the proposals should highlight the obligations of schools working with allied health professionals from early years right through children’s services and ensuring a seamless transition to adult services for children with SEN as referenced in the Children and Young People’s Strategy¹⁹. **The EA’s targeted criteria on strong links with the community is welcomed by NICCY, but must be monitored to**

¹⁹ NI Executive CYPS (2020) [final-executive-children-and-young-people-s-strategy-2020-2030 \(education-ni.gov.uk\)](https://www.education-ni.gov.uk/final-executive-children-and-young-people-s-strategy-2020-2030)

ensure the links are meaningful and within the children's best interests.

Of particular relevance to the Draft Special Schools Area Planning Framework is NICCY's 'Review of Transitions to Adult Services for Young People with Learning Disabilities (2012)²⁰. This report identified variations in the availability and adequacy of transition planning across (the legacy Education and Library Boards and Health and Social Care Trusts). It also highlighted the lack of appropriate information regarding options and support available to young people with disabilities and their families as young people were leaving school, the inadequacy of interagency working between education and health and social care professionals, as well as between the statutory and voluntary sectors.

The report also raised concerns that the revised SEN and inclusion proposals would lead to a reduction in provision, and statutory protection for children and the lack of statutory obligations surrounding the transitions process for young people without statements was also raised. The Report also identified a failure to take young people's views into account. Eight years on and despite the amalgamation of the ELBs into the EA the issues covered in this report are sadly still as relevant today as when they were published.

NICCY recommends that both draft Frameworks should identify clear pathways for a seamless transition for children leaving their school (and children services) into adult services, ensuring the best interests of the child is upheld.

7. Ensuring meaningful consultation with children and young people

As previously noted, Section 1 of the SEND Act came into operation on 18th December 2020. This introduces new duties on the EA, so far as is reasonably practical, to seek and have regard to the views of the child. Therefore, it is deeply disappointing that there is little mention or indication that the EA has consulted or engaged children and young people with regards the current proposals. This must be addressed when finalising the Frameworks, not least given the new statutory obligations on the EA under the SEND Act, but also as per Article 12 of the UNCRC and the EA's statutory Equality duties under section 75 of the Northern Ireland Act 1998. Both the ECNI's Guidance for Public Authorities²¹ and the EA's approved Equality Scheme²² reinforce the need to take

²⁰ 2012 research, "Review of Transitions to Adult Services for Young People with Learning Disabilities," carried out by Professor Laura Lundy, Dr Bronagh Byrne and Dr Paschal McKeown on behalf of NICCY.

²¹ Pg. 39, Let's Talk, Let's Listen: Guidance for public authorities on consulting and involving children and young people' Equality Commission for Northern Ireland, May 2008.

²² Para 3.2.3., The Education Authority's Approved Equality Scheme, June 2015.

appropriate measures to ensure the removal of all barriers to consultation, including ensuring full participation in any meetings held. Therefore, engagement with children and young people with SEND should include making any reasonable adjustments and the provision of accessible information, to enable the active participation of children and young people in the consultation process.

NICCY requests information from the EA on the level of direct consultation it has or intends to carry out with children and young people in compliance with its statutory equality obligations under the SEND Act, Section 75 of the Northern Ireland Act 1998 and Article 12 of the UNCRC.

8. Equality Impact Assessment

NICCY notes that both Frameworks have been considered in the context of Section 75(1) and Section 75(2) of the Northern Ireland Act 1998. However, given the significance of this consultation document to the delivery of education in Northern Ireland in the future, we would have expected a comprehensive screening process and Equality Impact Assessment to have been carried out and consulted upon at the same time as this consultation. It is extremely disappointing that this is not the case. Given that both Frameworks have profound implications on the provision for children with SEN and/or disabilities, many of whom have repeatedly encountered barriers and delays in accessing education, NICCY struggles to understand how the EA ruled out any ‘negative impacts on any of the equality of opportunities’, and therefore chose not to conduct a full Equality Impact Assessment. NICCY stresses that this must be undertaken as a matter of importance.

Furthermore, we stress the importance of EA engaging in a child’s rights impact assessment to strengthen its commitment to a process that supports a systematic assessment and communication of the impact of a proposal or measure on the rights, needs and interests of children and young people.

9. Concluding Comments

NICCY welcomes the opportunity to provide advice to the EA on the Draft Special Schools Area Planning Framework and Draft Framework for Specialist Provision in Mainstream Schools. We also express our gratitude for the opportunity to meet with EA Officials to discuss issues and queries related to both Frameworks.

The Commissioner calls on the EA to take into account the recommendations made in this submission, which she provides in line with her statutory duty to advise under Article 7(4) of 'The Commissioner for Children and Young People (Northern Ireland) Order' (2003)' and would be happy to discuss any element.