

# Children's Law Centre

BRIEFING PAPER

## **SPECIAL EDUCATIONAL NEEDS AND DISABILITY**

**NORTHERN IRELAND  
ASSEMBLY COMMITTEE  
FOR EDUCATION**



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children's law centre



This briefing document has been prepared by Rachel Hogan BL, SEND Specialist Legal Advisor and Fergal McFerran, Policy and Public Affairs Manager on behalf of the Children's Law Centre. It has been prepared for Members of the Northern Ireland Assembly Committee for Education, in advance of a committee meeting scheduled to take place on Wednesday 6 March 2024, in relation to Special Educational Needs and Disability.

For further information, please contact Fergal McFerran or Rachel Hogan at:

(028) 9024 5704

[fergalmcferran@childrenslawcentre.org](mailto:fergalmcferran@childrenslawcentre.org)

[rachel@childrenslawcentre.org](mailto:rachel@childrenslawcentre.org)

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## INTRODUCTION AND BACKGROUND

**The Children's Law Centre (CLC) is an independent charitable organisation which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and where every child can achieve their full potential.**

We offer training and research on children's rights, we make submissions on law, policy and practice affecting children and young people and we provide a free legal advice, information and representation service. We have a dedicated free phone legal advice line for children and young people and their parents as well as a Live Chat service for young people.

Since its establishment in 1997, CLC has provided free legal advice and information as well as strategic legal representation on a growing and increasingly complex range of issues affecting children and young people under the age of 18.

CLC has developed considerable specialist expertise in Special Educational Needs and Disability (SEND) law across our advice and legal team and through employment of a dedicated SEND Specialist Legal Advisor. SEND casework has become a core part of CLC's work, due to an ever-increasing level of demand for support for children to unable to access their right to education.

Our advice service data shows that in 2011, 35% of the total advice queries we received related to education and 51% of those education queries (377) related to SEN. In 2023, over a decade later, 63% of total advice queries received related to education and 71% of those education queries (1,240) related to SEN.

Importantly, CLC was founded upon the principles enshrined in the United Nations Convention on the Rights of the Child (UNCRC) and leads for the NI NGO sector in co-ordinating the submission of evidence to the United Nations Committee on the Rights of the Child to inform their monitoring and reporting work on the UK's compliance with children's rights standards.

## CLC CASEWORK: DISABILITY DISCRIMINATION

1. In all of the ongoing discussions around Special Educational Needs and Disability (SEND) provision, it is not clear to what extent the promotion and enabling of disability equality is driving the “investment” agenda. Whilst there are increasing numbers of children with complex needs entering mainstream schools, CLC’s legal advice and casework experience strongly indicates a lack of planning and proactivity.
2. Alana – CLC has recently secured High Court Declarations in two judicial review leave applications in relation to the denial of the human right to education for reasons connected to disability. One of these children, “Alana”, who had complex needs and was registered to a special school, was unable to access all but one day of nursery and did not enter full time education in a school until Primary 3 due to lack of suitable transport during the pandemic and whilst restrictions eased for her non-disabled peers. A case study about “Alana” is attached to this briefing paper<sup>1</sup>.
3. Aurelia – CLC’s client, Aurelia, was unable to start Year 8 in a mainstream secondary school for the first four months of this school year for reasons related to her physical disability. She has asked CLC to speak about the extremely hurtful impacts of being treated less favourably than her friends and siblings who were welcomed into local schools whilst she was left behind and eventually had to go elsewhere. Aurelia said, “I want the government to know my name”.
4. **CLC recommends that the “D” in SEND receives much greater priority if our education system is to offer an effective and inclusive education to all children and young people.**

## THE SEND FRAMEWORK

5. CLC provided a briefing paper to all MLAs in advance of the Northern Ireland Assembly motion debate on SEND which took place on 26 February 2024. We have attached that briefing document to this paper and ask that they are read together.
6. During the school year 2022/23, 19% of the school population was registered as having a special educational need (SEN) and 7% of children had a statement of special educational needs<sup>2</sup>. The majority of children with SEN attend mainstream schools (around 90%). Special schools have insufficient capacity to meet the needs of all of the children who may require a place. The EA has been opening "Specialist Provisions within Mainstream" (SPiMs) as a crisis response to a lack of suitable specialist placements.
7. The legal rights of children with special educational needs and disabilities (SEND) are governed by a robust domestic legal framework which is designed to enable early identification, assessment and provision at school as well as protecting disability equality rights. Intervention may include school-based support and, if required, external support from the Education Authority (EA) and/or Health and Social Care Trusts and/or other children's services providers.
8. The key domestic legal rights protections regarding special educational needs and disability equality in education are found within:
  - The Education (NI) Order 1996, as amended.
  - The Special Educational Needs and Disability (NI) Order 2005 (SENDO).
  - The Special Educational Needs and Disability Act (Northern Ireland) 2016<sup>3</sup>.
  - The Children's Services Cooperation Act (NI) 2015.
  - The Autism Act (NI) 2011, as amended.
  - Section 75, Northern Ireland Act 1998.
  - The Human Rights Act 1998.
  - The Education (Special Educational Needs) Regulations (NI) 2005.
  - The Special Educational Needs and Disability Tribunal Regulations (NI) 2005.
9. The above provisions are underpinned by statutory Codes of Practice and are augmented in their protective effect by international conventions, which the UK government has agreed to implement, including the United Nations Convention on the Rights of the Child (UNCRC) and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).



10. After extensive consultation and scrutiny over a prolonged period, a revised SEND framework was developed by the Department of Education (DE). The SEND Act (NI) 2016 was enacted but has not been commenced, with the exception of a small number of provisions. Revised Regulations and Codes of Practice which underpin this revised framework require Assembly scrutiny before they can be implemented. CLC raised significant concerns in March 2021 about the draft revised Regulations and the revised Code but have not yet had sight of any updated versions. It is now unclear what the status of this proposed revised framework is and whether or when the DE intends to implement it.
11. The urgent need to focus upon operational rather than legislative concerns has rightly become a priority. Early intervention at the school-based stages of the Code of Practice has not been funded, managed or developed properly, and this has resulted in the continuously spiraling costs of delayed intervention. The system is reaping what it has sowed, as we can clearly see in multiple reports on SEND.
12. A trend has developed that significant numbers of children with SEND have not even been able to access their most basic entitlement to a school place each September.
13. **CLC recommends that the focus remains upon improvement of the operation of the SEND framework until the point where early intervention and school provision (pre-statutory assessment/statement) is matched to the level of need.**

## EARLY INTERVENTION

14. The SEND framework is designed so that needs are identified and met early, with the majority of the support being delivered at school based stages and with external support if needed but without the need for a statement. The operation of the framework needs to match its design.
15. CLC's view is that significant and sustained investment in early intervention pathways is the only possible way to stabilise the SEND system. Children need a series of potential pathways that they can follow depending upon their presenting needs, and these should not be confined to education support but should include health and social care support. Effective multi-disciplinary team working is key in complex cases.
16. Early intervention includes "early years" intervention to support positive educational outcomes. It also includes being responsive and providing timely intervention for children when needs arise at any age or stage. Schools and EA pupil support services need to have their capacity to respond early significantly built up.
17. **Capacity to identify and provide for SEND at the point of need is the foundation of a successful system. CLC calls for investment in early identification and assessment of special educational needs and for provision of early intervention services which match the needs of children and young people.**



## REPORT OF THE INDEPENDENT REVIEW OF EDUCATION: INVESTING IN A BETTER FUTURE<sup>4</sup>

18. CLC has significant concerns that plans may be in train to dismantle the legislative protections contained within the current operative SEND framework in order to weaken the legal protection it affords to children with SEND. The CLC therefore vehemently disagrees with related proposals put forward by the Independent Review of Education in Chapter 3 of Volume 1 of its report "Investing in a Better Future".
19. The proposals around diluting statutory rights to avoid situations where the SENDIST may simply uphold them, whilst attractive to a public authority as a cost saving measure, are manifestly ill-founded and completely irrational from a children's rights perspective.
20. A dilution of legal rights in a bid to paper over the cracks and aid the appearance of legal compliance by public authorities would represent the ultimate betrayal of children with SEND and their families. This must never be allowed to happen.
21. **CLC believes that intensive scrutiny on the part of the Education Committee of any proposals for legislative change to the SEND framework is a critical safeguard against rights regression for children with SEND.**

## SCHOOL ATTENDANCE

22. CLC is seeing more children who face significant barriers to school attendance at key transition points, including Primary 1, Year 8 and Year 12. Children who were in Primary 7 or Year 8 at the beginning of the pandemic are now sitting their GCSEs. Some parents report that their children are unable to cope with school as it precipitates a response of intense anxiety, with severe impacts upon emotional health and well-being. There appears to be an array of different reasons for non-attendance across CLC's casework, but all of these can be captured as some form of "unmet need".
23. It appears to CLC that there has been a shocking deterioration in the situation of the most disadvantaged children.
24. DE statistics<sup>5</sup> show that in the academic year to June 2023, 96,000 pupils had chronic or severe chronic attendance issues. An additional 100,041 children were in the "at risk" category. These figures are stated to be an improvement on the previous year. This is a truly shocking problem and the long-term consequences for children and young people, as well as for society as a whole, are entirely obvious.
25. It is likely that these statistics are an underestimate the scale of the problem as they may not capture all absent children who are missing parts of a school day or who are physically in school but are not able to access education.
- 26. Collection of comprehensive data, disaggregated by section 75 grouping, is urgently needed, including from affected children and young people and their parents and carers, to help identify the causes of and solutions to the loss of education associated with chronic absence.**

## DE END TO END REVIEW AND EA SEND TRANSFORMATION

27. It is hoped that the DE's ongoing "End to End" review of the SEND processes, in parallel with EA Transformation processes, will enable the SEND framework to begin to deliver at pace at an operational level what it is designed to provide for children with SEND – **early identification and intervention at the point of need which produces positive educational outcomes and promotes equality of opportunity.**
28. CLC has appreciated being involved in DE workshops and in the EA's SEND Transformation Programme Reference Group. There appears to be broad agreement about what the issues are and about the direction of travel, with a focus upon early intervention. There have been opportunities for collaboration across disciplines which is very welcome. CLC reserves its position on the effectiveness of this work pending implementation and evaluation. We await evidence of meaningful progress for children with SEND.
29. We are aware that as a first step, "local integrated teams" are proposed to be rolled out in September 2024 which involve transforming single EA services into localised multi-service teams. The original EA business case plan to have multi-disciplinary teams including health input has been shelved after the transformation programme had its budget cut by 50% for 2023/24. Teams will be limited to EA services only and there will be no pilot and little (if any) opportunity for stakeholder co-design, which is concerning and represents a significant missed opportunity.
30. It is not clear how this approach of creating local integrated teams will significantly increase the availability of intervention that thousands of children with unmet needs may access, particularly in light of the budget cuts.
31. It is imperative that we know what the exact details of the service delivery changes are, how entry/exit criteria are affected, who can seek access, who decides upon granting of access (and when), what the balance is between "whole school" capacity building and individualised support and how outcomes will be measured, evaluated and reported upon.
32. CLC would be guarded about any intervention that is described as "advice and strategies to schools" as schools report to us that is no substitute for specialist intervention e.g. for literacy support. Placing a child on 12 weeks of "advice and strategies to school" may take them off waiting list statistics, but will it make any difference to their educational progress?

**33. CLC recommends that the pupil support services aspect of the transformation of EA services requires close and careful ongoing scrutiny as it is the foundation upon which “pre-statement” early intervention will be built. It would be beneficial to know the exact details of the service delivery changes and what the service providers (e.g. peripatetic teachers) and service users in each service area make of the direction of travel.**

## SUPPORTING SOLUTIONS: CHILDREN'S SERVICES COOPERATION

34. CLC has prepared a separate briefing paper on the Children's Services Co-operation Act (NI) 2015 (CSCA) which is attached to this Committee briefing document.
35. Improving the well-being of children who require multi-disciplinary services is precisely what the Northern Ireland Assembly intended to do in 2015 with this innovative legislation. It is long before time that this intention and ambition is realised with urgent wide-scale action across all departments and children's services providers to fulfil the express purpose of the CSCA.
36. The DE and the EA will not be able to provide early intervention for children with SEND without support from other children's services providers. It is incumbent upon all interested parties to support and enable positive change and to maximise the use and benefit of all available resources, particularly across government departments.
37. The CSCA sets out how to measure well-being, it provides for a mandatory duty of co-operation across all children's services and an enabling power to pool all types of resources including staff, premises and equipment. It enables the creation of pooled funds from which contributing parties can draw. The Department of Finance has regulation-making powers to enable pooling of funds.
- 38. CLC recommends that solutions to the SEND crisis which are available through the CSCA are fully scoped, identified and maximised to enable the holistic needs of children to be fully met through early and effective intervention from the appropriate specialists working together with the child, the school and parents/carers to remove barriers to effective education and to enable full inclusion at school.**

## REFERENCES

- 1 The case study has been anonymised and the child's name has been changed.
- 2 NI School Census 2022/23.
- 3 Only a small number of provisions have been commenced.
- 4 Independent Review of Education: Investing in a Better Future. December 2023. Accessed at <https://www.independentreviewofeducation.org.uk/key-documents/investing-better-future>
- 5 DE Circular 2023/11 – Attendance Guidance and Absence Recording by Schools.

# APPENDICES

## Appendix 1

- [Alana's Story](#)

## Appendix 2

- [Children's Services Cooperation Act briefing paper](#)

## Appendix 3

- [SEND briefing paper](#)



# Children's Law Centre

Rights House  
2nd Floor  
127 - 131 Ormeau Road  
Belfast, BT7 1SH

Tel: 028 9024 5704  
Fax: 028 9024 5679  
Email: [info@childrenslawcentre.org](mailto:info@childrenslawcentre.org)

**CHALKY Freephone Advice Line:**  
0808 808 5678  
[chalky@childrenslawcentre.org](mailto:chalky@childrenslawcentre.org)

**REE Rights Responder**  
#Ask REE at [reerights.com](http://reerights.com)

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