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**Submission to the Common Funding Review Panel  
(commissioned by the Department of Education) in  
relation to the independent review of the Common  
Funding Scheme**

**October 2012**

## 1. Introduction

The Northern Ireland Council for Ethnic Minorities (NICEM) is an independent non-governmental organisation working to promote a society free from all forms of racism and discrimination and where equality and human rights are guaranteed. As an umbrella organisation<sup>1</sup> we represent the views and interests of black and minority ethnic (BME) communities.<sup>2</sup>

Our vision is of a society in which equality and diversity are respected, valued and embraced, that is free from all forms of racism, sectarianism, discrimination and social exclusion, and where human rights are guaranteed.

Our mission is to work to bring about social change through partnership and alliance building, and to achieve equality of outcome and full participation in society.

This submission will expand upon the points raised by NICEM in relation to the Common Funding Scheme at the consultation event in August 2012. The response will be structured in line with the questions raised in the consultation document and answers will be provided to the questions, which have particular relevance for BME pupils. This submission will be primarily informed by research published by NICEM in June 2011 entitled *Promoting Racial Equality in Northern Ireland's Post-primary Schools*.<sup>3</sup> One of the recommendations of that report was to review various aspects of the education system in light of the growing diversity in Northern Ireland. In that vein, NICEM welcomes the Department's initiative to appoint an independent review panel to look at the way in which the current Common Funding Scheme operates.

## 2. Mainstreaming human rights and equality in the education system

NICEM's research highlights some of the barriers, which inhibit high educational attainment among BME students in post-primary schools. A snapshot of such barriers includes admission criteria and accessibility, language, racist bullying and religious education and from NICEM's experience these barriers also exist in primary schools. In NICEM's view, in order to eradicate these barriers it is necessary to mainstream human rights and equality into the education system. This has particular relevance for the review and re-development of the Common Funding Scheme since mainstreaming requires human rights and equality to be taken into account at the earliest possible opportunity, which, in this case, means budget allocations.

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<sup>1</sup> Currently we have 27 affiliated BME groups as full members. This composition is representative of the majority of BME communities in Northern Ireland. Many of these organisations operate on an entirely voluntary basis.

<sup>2</sup> In this document "Black and Minority Ethnic Communities" or "Minority Ethnic Groups" or "Ethnic Minority" has an inclusive meaning to unite all minority communities. It refers to settled ethnic minorities (including Travellers, Roma and Gypsy), settled religious minorities, migrants (EU and non-EU), asylum seekers and refugees and people of other immigration status.

<sup>3</sup> See NICEM, *Promoting Racial Equality in Northern Ireland's Post-primary Schools*, June 2011, available at: [http://nicem.org.uk/uploads/publications/Education\\_report\\_-\\_Final\\_PDF.pdf](http://nicem.org.uk/uploads/publications/Education_report_-_Final_PDF.pdf).

Currently, the Race Relations Order applies to schools in terms of non-discrimination in the provision of education<sup>4</sup> and it also covers the concept of indirect discrimination which is defined as a situation in which people of different ethnic origins are treated in the same way but such treatment puts people of a particular ethnic origin “at a particular disadvantages” unless it is “a proportionate means of achieving a legitimate aim”.<sup>5</sup> The Department of education is a designated public authority under section 75 of the Northern Ireland Act 1998. However, schools are not designated and are therefore not required to have ‘due regard’ to the need to promote equality of opportunity for so-called ‘section 75 groups’, which would cover BME pupils. NICEM is of the view that schools should also be designated under section 75 in order to ensure that providing equality of opportunity plays a central role in the education system. If this were to be the case, it could create a better platform for ensuring equality of outcome for all pupils and therefore, hopefully have an impact on the high levels of under-attainment of BME pupils.

The right to education is enshrined in a number of international human rights instruments.<sup>6</sup> In particular, Articles 28 and 29 of the United Nations Convention on the Rights of the Child (CRC) states that the right to education is to be achieved “on the basis of equal opportunity”. When coupled with the overarching principles of non-discrimination (Article 2 CRC), it is clear that the State is obliged to realise all children’s right to education. In addition, it is recognised that this right is to be achieved “progressively”. The concept of progressive realisation is a well-established principle in human rights law and it means that a child’s full enjoyment of the right to education may be achieved over time. In NICEM’s view, this is a clear mandate for State parties to take a human rights-based approach to budgeting.<sup>7</sup> If human rights (particularly children’s rights as set out in the CRC) are to be mainstreamed this would mean that crucial principles such as the best interests of the child, the voice of the child and non-discrimination would play a role in budget allocations to ensure that all children’s right to education may be effectively realised.

### **3. The Education Funding System**

#### **Question 4: Should any elements of delegated school budgets be ring-fenced?**

Yes. It is essential that the funding aimed at targeting social needs is appropriately ring-fenced. Currently, the budget assigned to schools for BME students is not ring-fenced and can therefore be used for other purposes. This is not conducive to promoting equality of outcome for all children and fully realising all children’s right to education.

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<sup>4</sup>Article 21 Race Relations (NI) Order 1997.

<sup>5</sup>Article 3 Race Relations (NI) Order 1997.

<sup>6</sup>For example, Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). See also, General Comments 11 and 13 of the UN Committee on Economic, Social and Cultural Rights (CESCR).

<sup>7</sup>For more on human rights-based budgeting see QUB School of Law Project: <http://www.law.qub.ac.uk/schools/SchoolofLaw/Research/HumanRightsCentre/ResearchProjects/BudgetAnalysis/>.

Sometimes it is the case, that BME pupils experience barriers that inhibit regular attendance at school. Other pupils may be forced to leave a particular school if they have suffered racial bullying.

If there is a change in circumstances and the need for the funds, which had been allocated for this purpose is no longer there, it is submitted that those funds should not be re-directed into the school budget. In such a case those funds should go back to the central budget as there may be a need to be addressed in another school.

**Question 5: Should all schools run their delegated finances directly and assume the accompanying management responsibilities?**

No. The model proposed affords a lot of responsibility to the Boards of Governors and NICEM's research has highlighted that BME parents have very low levels of representation on such boards. Therefore, effective accountability and governance mechanisms which are accessible to all must be made available and thus it is recommended that schools need to be subjected to independent oversight mechanisms in the distribution of budgets, such as the Ombudsman.

In addition, as highlighted above in order to ensure that equality and human rights are mainstreamed in the education system, it is essential for those considerations to be taken into account at the budgeting stage. Since schools are not designated under section 75 there is no direct obligation to actively promote equal opportunities and this will undoubtedly have an impact on the administration of budgets. Therefore, it is reiterated that schools should be designated under s.75.

#### **4. Delegated Schools Funding: Formula Content**

**Question 9: Do you agree that needs-based factors should be used to target additional funding?**

We strongly agree that needs-based factors should be used so long as they are used appropriately.<sup>8</sup>

**Question 10: Should the following factors continue to be used to target additional funding?**

- A. Children of the Traveller community**
- B. Newcomer pupils**
- C. Children of service personnel**

It is recommended that these factors remain intact. In relation to factor A this should read "traveller and Roma community" to take into account the specific needs of Roma pupils as distinct, albeit similar, from Traveller needs. In relation to factor B, it is necessary to have a more inclusive definition of 'newcomer pupils' to ensure that BME pupils who arrive after the school census has taken place are also provided for.

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<sup>8</sup> See above response to question in relation to ring-fencing.

**Question 13: Do you agree that newcomer pupil funding should be available for a finite period? If yes, how many years would be appropriate?**

Currently, the Aggregated School Budget for each Traveller, Roma and newcomer pupil is based on the annual school census. However, there is no mechanism to take into account newcomer pupils who arrive after the school census.

It is recommended that a mechanism should be put in place to ensure that the needs of all newcomer pupils are adequately met.

**Question 14: Is Free School Meals entitlement the most appropriate indicator to allocate funding associated with social deprivation? If no, what type of indicator would be most appropriate?**

While this may be an appropriate indicator in some circumstances, there is also a possibility that some pupils may fall through the gaps. For example, NICEM's research highlights instances of where culturally appropriate school meals are not provided for. This can have an impact on the uptake of the entitlement by BME pupils. The issue of under-claiming has been raised in the consultation document.

Therefore, it is suggested that additional indicators are put in place to ensure that no pupils fall through the gaps.

## **5. Further Information**

For further information in relation to this consultation response please contact:

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