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NICEM

SUBMISSION

**Consultation on Draft Special Educational Needs
(SEN) Regulations**

DENI

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Introduction

- 1.1 The Northern Ireland Council for Ethnic Minorities (NICEM) is an independent non-governmental organisation. As an umbrella organisation¹ we represent the views and interests of black and minority ethnic (BME) communities.² 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. 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.
- 1.2 Having Special Educational Needs (SEN) can produce barriers to accessing education and exercising agency. Therefore, NICEM welcomes the fact that the Department is producing regulations to allow further participation from persons with SEN and their families in their education.
- 1.3 For BME persons, additional issues, such as the language barrier, compound the standard barriers faced by individuals with SEN. Thus, NICEM welcomes the opportunity to comment on the Department's proposals and ensure that the proposed mechanisms are accessible for all on an equal basis.

Education Authority Plan (Regulations 5 and 6)

- 2.1 It is stated in the consultation document that one purpose of the Education Authority (EA) Plan is to 'provide greater clarity for...parents about what is available'.³
- 2.2 In this context, it is important to consider that 3.15% of the population do not have English as their main language.⁴ Furthermore, the proportion of pupils at special education schools who are identified as 'newcomer', and thus have language needs, has increased fivefold between 2006/07 and 2014/15.⁵
- 2.3 Indeed, newcomer pupils now represent 3.8% of the school population in Northern Ireland (NI).⁶

¹ 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.

² 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 is a political term that 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 united together against racism.

³ Department of Education, 'Consultation on Draft Special Educational Needs (SEN) Regulations' (2016), p.6

⁴ Northern Ireland Statistics and Research Agency, 'Main Language – Full Detail: QS210NI' (2011)

⁵ Department of Education Northern Ireland, 'Newcomer Pupils 2001/02-2014/15' (2015) Available at: < <https://www.deni.gov.uk/sites/default/files/publications/de/Newcomer-Pupils-200102-201415.xlsx> > [Accessed 05/05/16]

⁶ Department of Education Northern Ireland, 'Statistical Bulletin 3/2016: Annual Enrolments at

- 2.4 Therefore, if BME individuals with SEN and their families are to benefit from the information within the EA Plan, then it must be made available in minority languages.
- 2.5 Further regarding the EA Plan, it is noted that draft Regulation 6(3) proposes that the Education Authority would not be required to publish a draft plan for consultation earlier than three years following the previous Plan's publication.
- 2.6 In this regard, it must be highlighted that the school population is in a state of flux. The number of BME students has increased by over 30% since 2010/11 and the number of newcomer pupils has increased by 35% in the same period. As indicated above, this has coincided with a significant increase in the number of newcomer pupils in special education schools.⁷
- 2.7 As this school population continues to change, so too will the needs of the pupils and their families. Therefore, it would be appropriate to continue to consult on the plan's contents on an annual basis. This will allow the plan to remain responsive to additional needs, such as language services and training for staff, as they arise.
- 2.8 NICEM recommends that a Regulation 5(4) be added, reading 'the Education Authority must publish versions of the Plan in key minority languages and make further translations where there is need'.**
- 2.9 It is further recommended that Regulation 6(3) be deleted and Regulation 6(2) be amended to read 'each year, the Authority shall publish a draft plan for consultation by the end of March immediately preceding the school year to which the plan relates'.**

Learning Support Coordinator (Regulations 8 to 10)

- 3.1 Under current proposals, a Learning Support Coordinator (LSC) will be responsible for coordinating provision of education to pupils with SEN within a given school.
- 3.2 In fulfilling this role, it must be considered that BME pupils with SEN, or who are being assessed for having SEN, may have particular needs for a variety of reasons.
- 3.3 Communication difficulties will need to be parsed from lack of exposure to the English language and competence in the pupil's home language will need to be assessed when determining what support is required.⁸

Schools and in Funded Pre-school Education in Northern Ireland 2015/16' (2016) p.14

⁷ ibid p.14

⁸ Manchester City Council Children's Services, 'Minority Ethnic Pupils and Special Educational Needs' (2010), p.10

3.4 Furthermore, ways of mitigating the impact of acclimating to a new culture on any behavioural issues will need to be considered, as well as the changes the pupil is experiencing as a result of entering a different kind of educational system.⁹

3.5 This particularly applies to Roma pupils who may have had variable experience of formalised education for a number of reasons. These include being subjected to segregated education, being misdiagnosed as SEN or being disengaged from education in their home state.^{10 11 12}

3.6 Additionally, if the child is an asylum seeker or a refugee, strategies will need to be developed that ensure a sense of routine, settlement and belonging is fostered.¹³

3.7 These factors must be taken into account when developing strategies to provide for pupils; therefore, LSCs should receive diversity and cultural competence training. Such training will also be vital to preventing cultural misunderstanding from interfering with the identification of pupils' SEN needs, as can occur.¹⁴

3.8 NICEM recommends that a Regulation 8A be added, reading 'The Board of Governors shall ensure that any person designated as learning support co-ordinator by it under Article 8(1)(e) of the 1996 Order receives diversity and cultural competence training'.

Supporting Language Needs

4.1 As indicated above, 3.15% of the population do not have English as their main language and the number of newcomer pupils in both mainstream and special education has increased rapidly over the past number of years.

4.2 Therefore, the language barriers facing SEN pupils and their family members who may wish to engage with the mechanisms outlined in the regulations must be considered.

4.3 Regulations 23(3), 24(3) and 30 refer to the persons who may attend meetings concerning Statements and mediation. In these regulations, it is unclear whether an interpreter may also attend the meeting to facilitate the participation of the person with SEN and their family.

⁹ ibid p.22

¹⁰ Kertesi, G. and Kezdi, G., 'School Segregation: School Choice and Educational Policies in 100 Hungarian Towns' (2013) pp.42-43

¹¹ Eross, G. et al, 'All Against Misdiagnosis: Sociologists, Neurologists, Economists, Psychologists and Special Educators for Inclusion' (2009) p.3

¹² Fazekas, K., Köllô, J. and Uarga, J., 'Green Book for the Renewal of Public Education in Hungary: Round Table for Education and Child Opportunities' (2009) p.132

¹³ op cit n 8 p.25

¹⁴ Lindsay, G., Pather, S. and Strand, S., 'Special Educational Needs and Ethnicity: Issues of Over- and Under-Representation' (2006), pp.108-109

- 4.4 While there is provision for the Authority to invite others as it deems appropriate, allowing language support when needed should be a requirement upon the Authority and not at its discretion.
- 4.5 Also relevant is Regulation 23(2), under which the advice or opinion of the pupil will be sought. It is unclear under these provisions whether the child may utilise language support to facilitate drafting their advice.
- 4.6 In this context, it is notable that Regulation 12(3), on advice sought by the Authority for the purpose of making an assessment, makes provision to allow an advisee to 'consult such persons as it appears to him expedient to consult'.
- 4.7 Throughout the regulations, there are references to notices to be given to the child or parent in various circumstances. However, it is not specified whether or not these notices will be provided in languages other than English where there is a need.
- 4.8 Furthermore, it should be noted that the literacy rates amongst some ethnic groups, such as Travellers and Roma, are particularly low.^{15 16} This has implications for Regulation 4 of the proposed Regulations, which states that any notice given under the Regulations is to be given in writing.
- 4.9 Considering the intention of these Regulations is to ensure the better participation of SEN pupils and their families, it would seem inappropriate and potentially discriminatory to exclusively limit notices to the written form in all instances.
- 4.10 While a written notice is a useful record of notice having been given, this could be accompanied by attempts to contact the individual or family member in person or through telecommunications where appropriate.
- 4.11 NICEM recommends that Regulation 4 be amended to read 'Any notice required to be given by these Regulations shall be in writing and will be accompanied by oral contact where appropriate. Notices will be delivered in non-English languages where this would better facilitate the child or parent's understanding.'**
- 4.12 It is also recommended that a Regulation 23(2A) be added to the regulations, reading 'A person from whom the advice referred to in paragraph (2) is sought may in connection therewith consult such persons as it appears to him expedient to consult'.**

¹⁵ All Ireland Traveller Health Study Team, 'All Ireland Traveller Health Study: Summary of Findings' (2010), p.21

¹⁶ Northern Ireland Strategic Migration Partnership, 'The Integration of Newcomer Children with Interrupted Education into Northern Ireland Schools (A Belfast Based Case Study)' (2014), p.14

4.13 It is additionally recommended that Regulations 23(3). 24(3) and 30 be amended to include the following as a party who shall attend the meeting 'an interpreter, where required'.

Assessing Special Educational Needs

5.1 There are particular obstacles to overcome in identifying whether or not BME children have SEN. In particular, there is the risk that a child may be misdiagnosed as having SEN when they have poor English language skills.

5.2 Guidance developed in England illustrates that fulsome assessment of a BME child with potential SEN must consider additional factors, such as their competence in their home language, the complexity of language spoken in their home, the length of time they have been exposed to English and other factors.¹⁷

5.3 NICEM recommends that a Regulation 16(f) be included in the regulations, reading: 'Factors particular to their ethnic, cultural and/or lingual background, in line with guidance produced in England'.

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¹⁷ op cit n 8 pp.10-15

