

**Response to the Department of Education's consultation  
on the New Admissions Arrangements for Post-Primary  
Schools**

**Children's Law Centre**

June 2005

## **Introduction**

The Children's Law Centre is an independent charitable organisation established in September 1997 which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and 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 run an advice/ information/ representation service. We have a dedicated free phone advice line for children and young people called CHALKY and a youth advisory group called Youth@clc.

Our organisation is founded on the principles enshrined in The United Nations Convention on the Rights of the Child, in particular:

- Children shall not be discriminated against and shall have equal access to protection.
- All decisions taken which affect children's lives should be taken in the child's best interests.
- Children have the right to have their voices heard in all matters concerning them.

From its perspective as an organisation, which works with and on behalf of children, both directly and indirectly, the Children's Law Centre is grateful for the opportunity to make this submission to the Department of Education and to offer assistance in developing the New Admission Arrangements for Post-Primary Schools.

## **General Comments**

### **Consultation**

We welcome the fact that the Department of Education is consulting on its draft New Admissions Arrangements for Post-Primary Schools. We note from your letter dated 8<sup>th</sup> June 2005 that as part of this process the Department commissioned research into the views of children in Year 8 which has taken the form of a series of focus groups involving a sample of 20 schools. We would be grateful if you would provide us with further details of how this consultation took place and whether the Department intends to further consult directly with children and young people as the group who will be impacted upon most by the implementation of the new admission arrangements. Such consultation is essential not only in ensuring compliance with section 75 and the Department of Education's equality scheme, but also in ensuring compliance with your obligations under Article 12 of the United Nations Convention on the Rights of the Child (UNCRC). The UNCRC Committee, in its concluding observations in 2002 expressed concern about the inconsistent application of Article 12, with particular reference to education, stating that,

*"...the Committee is concerned that the obligations of article 12 have not been consistently incorporated in legislation, for example... in education and in protection throughout the State party... The Committee is also concerned that in education, schoolchildren are not systematically consulted in matters that affect them. The*

*Committee notes that groups of children in the State party expressed their feelings that their views are duly taken into consideration.” (Para 29, CRC/C/15/Add.188)*

We note that in your letter dated 8<sup>th</sup> June 2005, the Department states that,

*“Following the consultation, the Department will undertake an analysis of all responses received, which will take on board any equality issues and inform the decision making process. As we move towards finalising the way forward, we will consider the full range of information available to us and fulfil our duties in respect of equality screening and any other forms of screening or proofing deemed necessary.”*

We recently made a response to the Department of Education’s Equality Scheme – Revised Policy Screening and Timetable consultation and raised a number of concerns in relation to the New Admissions Arrangements policy, termed the Open enrolment policy in the Revised Screening document. We would like to request details in respect of how the screening process was carried out in relation to this policy; including the qualitative and quantitative data used to inform the decision making process and the rationale for the Department’s initial conclusion the post-primary school policy should be included in the timetable for EQIA after consultation on the policy. We believe that this is contrary to the letter and spirit of section 75 of the Northern Ireland Act 1998 which intends for equality concerns to be central to the policy decision-making process. This involves consideration of section 75 at the very beginning stages of a policy’s development and implementation. The Equality Commission’s Guidance for Implementing Section 75 of the Northern Ireland Act 1998 states that,

*“1.4 The new statutory duties make equality central to the whole range of public policy decision-making. This approach is often referred to as “mainstreaming”. The Council of Europe has defined mainstreaming as:*

*“the (re)organisation, improvement, development and evaluation of policy processes, so that a[n] ... equality perspective is incorporated in all policies at all levels and at all stages, by the actors normally involved in policy-making”.* (Gender mainstreaming conceptual framework, methodology and presentation of good practices. Council of Europe, Strasbourg May 1998)

It is clear from this that the intention of section 75 is to mainstream equality, making it central to policy decision making. In order for an equality perspective to be central to policy making, it needs to be incorporated in all policies at all levels and stages. This would unequivocally involve incorporation of the principles of equality of opportunity from the beginning of the process and throughout the development and implementation of the policy, not merely at the end of the process when decisions have been taken in relation to the policy with no regard shown to section 75. Because of the pre-consultative nature of the EQIA process it is vital that, where a policy is to be screened in, full and thorough EQIA’s are carried in advance of the consultative process. We recommend that the Department carries out an EQIA on this policy as a matter of urgency.

We also wish to direct the Department to its approved Equality Scheme which states that,

*"2.7 It should be noted that for some months prior to the coming into operation of Section 75 of and Schedule 9 to the Act, action has been ongoing to review the following existing policies:-*

- *Arrangements for School Funding (Local Management of Schools).*
- **Selective Structure of Post-Primary Education; Transfer Procedure Tests.**  
*Promotion of personal and social development of young people through leisure activities.*
- *Maintenance of statutory Northern Ireland Curriculum.*

*2.8 The screening exercise has shown that in relation to each of these reviews an Equality Impact Assessment is required as an **integral** part of the development of any policies which might be proposed as a result of the reviews."* (Our Emphasis Page 11, Equality Scheme for the Department of Education, February 2001)

It is abundantly clear from both the Equality Commission's Guidance and the Department of Education's commitment to ensuring that an EQIA be an integral part of the new post-primary arrangements that the Department should have already carried out an EQIA on this policy. It is essential that the Department determine the possible adverse impact on equality of opportunity prior to the introduction of this policy. We strongly recommend that an EQIA be carried out as a matter of urgency in order to comply with both the Equality Commission's Guidance and the Department's own Equality Scheme. There is also a need to child rights proof this policy against a variety of international standards which are detailed below.

### **International Standards**

Education has long been recognised as a fundamental human right. A number of international instruments exist which guarantee every child the right to an effective education, free from any form of discrimination. The most important of these is the United Nations Convention on the Rights of the Child (UNCRC). The Convention is a set of non-negotiable and legally binding minimum standards and obligations in respect of all aspects of children's lives which the Government has ratified. Under Article 2 of the UNCRC, each Member State undertakes to ensure Convention rights to every child without discrimination on any ground including gender, social origin, property, disability, birth or other status. All children are thus entitled to equal access to education regardless of their social origin or status, their geographical location, their membership of a linguistic, ethnic or other minority, their detention or their disability. Moreover, under Article 2 (2), States also undertake, to take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of their status, activities, or the expressed opinions or beliefs of the child's parents, guardians or family members. Similarly, Article 1 of the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention Against Discrimination in Education prohibits,

*"...any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education"*

It is arguable that the current selection procedure for post-primary education in Northern Ireland is discriminatory within the terms of the UNESCO Convention. For example, children may be discriminated against on the basis of their economic condition or birth, where they come from disadvantaged backgrounds, their parents have underachieved in education and do not have the academic ability nor financial resources to pay for private tuition to support and prepare their children for the transfer procedure examinations. Children from disadvantaged backgrounds may also be discriminated against following the removal of the current transfer procedures in that some school catchment areas may be extremely affluent, resulting in the exclusion of socially disadvantaged children when a school is oversubscribed if the school relies on geography as a criterion for admission. What is also very concerning is the significant differences which exist in educational attainment after the 11-Plus between grammar schools and non-grammar schools. This "grammar school effect" results in pupils who attend grammar schools gaining on average an additional 16 points at GCSE stage. (Gallagher and Smith, *"The Effects of the Selective System of Secondary Education in Northern Ireland"* Department of Education, 2000) Whilst there are various factors which contribute to the differences in results between sectors, this would appear to be disproportionate. The result is an apparent breach of the UNESCO Convention against Discrimination in Education, which includes within its definition of discrimination the subjection of a person or group to education of an inferior standard. There are also concerns about the lower level of educational attainment of particular groups of children, including children with a disability, with research carried out by Kilpatrick & Quinn in 2000 noting the predominance of children with special educational needs in the secondary sector and a lack of special educational needs policies in some schools. Other children from the Traveller community, the Chinese community, the Indian community and other indigenous minority groups in Northern Ireland, may also be discriminated against on the basis of their language and national or social origin. This is of particular concern in light of the Common Funding Formula whereby funding for English as an Additional Language (EAL) provision in schools is still allocated, but is no longer being ringfenced. As a result, many children may not receive specialist provision. This is even more concerning given the fact that the Department has stated in its recently published revised screening document that intends to screen out the provision of EAL services.

Article 28 paragraph 1 of the UNCRC provides that every State party recognises the right of the child to education. With a view to achieving this right progressively and on the basis of equality of opportunity, the State undertakes to adopt a number of measures. Of particular relevance to post-primary education in Northern Ireland are commitments to,

*"Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child and take appropriate measures such as offering financial assistance in cases of need"* (Article 28 (1)(b));

*"...make higher education accessible to all on the basis of capacity"* (Article 28(1)(c) and

*"...make educational and vocational information and guidance available and accessible to all children"* (Article 28 (1)(d)).

The Committee on the Rights of the Child has recognised that the UNCRC is comprised of general principles with broad-ranging implications. In this regard, it has encouraged States to include in their educational policies and legislation a clear commitment to using the Convention's principles on the right to education to inform educational policies. The Department should ensure that the UNCRC forms the basis for all educational policies in Northern Ireland. The Committee on the Rights of the Child, which monitors the implementation of the Convention, has reiterated the relevance and importance of these principles in vindicating the child's right to education and has attached particular importance to the right of the child to be heard and to play an active part in decisions regarding his or her education. (Article 12, UNCRC)

Article 29 of the UNCRC details the aims which education should fulfil and identifies as the primary aim of education the holistic fulfilment of a child's development to their fullest potential. According to Article 29 paragraph 1, State parties agree that the education of the child shall be directed to:

*“(a) the development of the child's personality, talents and mental and physical abilities to their fullest potential;*

*(b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;*

*(c) the development of respect for the child's parents, his or her own cultural identity, languages and values, for the national values of the country in which the child is living, the country from which he or she may originate and for civilisations different from his or her own;*

*(d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;*

*(e) the development of respect for the natural environment.”*

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. (General Comment 1 CRC/GC/2001/1) 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 children, whether individually or collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society.

The UNCRC Committee also stated that were a State to deny a child access to educational opportunities, this might present a failure to comply with the right to education as contained within Article 28 of the Convention. The Committee also went further, stating that any failure to comply with the principle aims of education under Article 29 could potentially have a similar effect in denying a child's right to education. For example, discriminatory practices, including discrimination against children with

disabilities, are in direct contradiction of the requirements in Article 29(1)(a) that education be directed to, *“the development of the child’s personality, talents and mental and physical abilities to their fullest potential”*.

Article 2 of the First Protocol to the European Convention on Human Rights as incorporated by the Human Rights Act 1998 also provides that no one shall be denied the right to education. This has been interpreted by the European Court of Human Rights to mean that every child is entitled to access *effective* education. Moreover, taken together with Article 14 ECHR - the non-discrimination principle - the right to access available educational facilities must be secured to all children without discrimination.

## **Chapter 1 – Context for New Admissions Arrangements**

We note the key educational developments prior to 2010, one of which is pupil profiles. We will deal with pupil profiles in more detail in our response, but wish to briefly highlight our concerns in what we see as inherent risks at this point. There is no requirement for parents to take cognisance of the pupil profiles in determining what is in the child’s best interests. It appears to be a matter for parental discretion as to whether or not a parent accepts their child’s teacher’s assessment of the child’s individual needs. Situations may also arise where teachers feel under pressure from influential parents in relation to the preparation of a child’s profile. We have a number of concerns around pupil profiles and the potential for their use as a form of academic selection. We reiterate our recommendation from our earlier submission to the Post-Primary Review Body on The Review of Post-Primary Education that pupil profiling be thoroughly piloted prior to their introduction so that any concerns may be monitored in practice and remedial action taken as necessary.

We welcome the assertion that the introduction of the new Entitlement Framework,

*“...will end the wide disparity in provision between post-primary schools that exists at present.”* (Para 1.9)

It is encouraging to note the movement towards additional provision of vocational courses in line with Articles 28(1) (b) and (d) of the UNCRC. We welcome the marked shift away from a purely academic focus in all post-primary schools and the fact that the new Entitlement Framework will guarantee pupils greater choice in accessing the most suitable curriculum. This goes some way to ensuring that children receive an effective education as required by Article 2 of the First Protocol to the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and presumably aims to meet some of the requirements of Article 29 of the UNCRC. However, the Entitlement Framework presents a number of challenges to teachers and those tasked with career advice and guidance. It will be of paramount importance that all children in post-primary education have equal access to the same type and number of courses as well as the individual encouragement and attention to ensure that they are able to access these courses, are aware of the implications of courses chosen on their future career path and are participating at the correct level which is most suitable and appropriate for individual development. It is also unclear as to how the introduction of the Entitlement Framework will have the effect of reducing disparities in provision between post-primary schools. We assume that while there will be greater choice in the type and number of courses available, some schools will still be considered more popular and more academically

successful than others. The reduction in disparity of provision has not been elaborated upon and we would like to have more information in relation to the Department's plans to ensure the delivery of a consistent, high-quality standard of education to all children at post-primary level.

We also support the introduction of cooperation and collaboration between schools with the intention of sharing expertise, knowledge and resources to the benefit of pupils. We believe that the decisions around which schools work in partnership with each other should be taken independently with the promotion of equality of opportunity in post-primary education being the fundamental aim so that schools which are viewed as better achieving schools work in partnership with those which are viewed as poorer to ensure high quality education provision for all pupils in post-primary education in accordance with Articles 28 (1) and 2 of the UNCRC. There is also a need to work in co-operation with Further Education colleges to maximise variety in the choice and type of courses offered.

We also note that the Government intends to pilot a number of Specialist Schools in Northern Ireland over the next 5 years. Very little information has been given in relation to these schools and we assume that there will be a consultation process including full Equality Impact Assessment will be carried out prior to these pilots. The Department needs to have regard to their s75 duty and in addition pupils in rural areas when deciding on the location of these Specialist Schools to ensure that Article 29 of the UNCRC as defined by General Comment 1 is complied with so that education is child-centred, child-friendly and empowering (General Comment 1 CRC/GC/2001/1) and also that it is available to all children as per Article 1 of the UNESCO Convention Against Discrimination in Education which prohibits, distinctions, exclusions and preferences based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth in education.

We recognise the fact that almost half of all post-primary schools are currently oversubscribed in Northern Ireland and that admissions criteria must be applied. The Department has outlined the projected fall in demographic trends over the next number of years and has indicated that the projected decline in the number of post-primary school-age children will lead to a reduction in the number of oversubscribed schools. We are of the opinion that while this may be the case for some schools, there will always be popular schools such as the 16% of schools which were oversubscribed by 50% or more, with two schools receiving twice the number of applications for places. It is essential that the Department firmly addresses the issue of oversubscription in such a way that the fairest and most consistent model is adopted across Northern Ireland. While at present there is no statutory duty on Education and Library Boards to monitor the admissions criteria set by each school's Board of Governors, we feel that this role should be extended to ensure consistency in the application of all schools chosen admissions criteria. While oversubscription and competition for places may decrease by 2015, the Department must ensure that there is no discrimination in the allocation of places in post-primary education. This is even more pertinent in light of the massive proposed funding cuts in education of over £30 million. We believe that the proposed funding cuts in education will lead to school closures and serve to further exacerbate the problems which currently exist in disparities in post-primary education provision.

## Chapter 2 – Principles and Objectives

While many of the principles and objectives detailed in Chapter 2 are positive in nature and it is clear that some of the principles and objectives are relevant to compliance with the Department's obligations under UNCRC, there is however an overall absence of a central rights-based approach to the issue of education, which is contrary to international norms. Respect for the rights of the child does not appear to be seen as an end or a legitimate objective in itself and there is a strong emphasis on parental preference and choice, with no reference to the views of the child being heard and taken into account as per Article 12 of the UNCRC. (Para 2.3) This is disappointing given that the UNCRC Committee states in its 2002 concluding observations that the Government must ensure that education legislation and policies reflect Article 12 (para 48a, CRC/C/15/Add.188) and that children not, 'having their say' and having their views taken into account was identified as "...the single most important issue to children in Northern Ireland." ("*Children's Rights in Northern Ireland*," NICCY, 2004 page xxi) There is no reference to the rights of children in the education system, such as their right to enjoy equal access to an effective education, the right to receive a child-centred education and to have his or her rights, particularly the right to be heard and to have their best interests respected while in education. We note the very welcome initial movement towards ensuring that the views of children and young people are taken into account in relation to the formulation of anti-bullying policies in schools through Article 19 of the Education and Libraries (Northern Ireland) Order 2003. We wish to see this right extended throughout all areas of education in an effort to comply with the obligations of the UNCRC.

While the principles do state that there should be no discrimination, direct or otherwise, in education but they do not identify this as the right of every child. There is also a failure to identify the needs and rights of those individual children and certain groups of children who currently do not enjoy equal access, such as children with disabilities, Traveller children, children from linguistic and other minorities. No mention is made of the importance of international standards and children's human rights in education in this context.

One of the Department's objectives at para 2.3 is to,

*"take account of the particular circumstances of pupils with special educational needs."*

This falls far short of the wording of Article 23 of the UNCRC which identifies the rights of children with disabilities and in particular, 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. Among other rights, Article 23 (3) recognises that any assistance extended to children with disabilities shall be designed to ensure that the disabled child has effective access to and receives education, training, rehabilitation services, preparation for employment and recreation opportunities 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.

In relation to the Department's question on page 8 regarding whether these principles and objectives provide a sound basis for the future development of the future admission arrangements, the human rights and equality principles enshrined in the UNCRC and the

other international instruments previously referred to should provide a platform for children's rights standards and should be embraced by the Department in developing the new admission arrangements for post primary education. The standards that have been set under these international treaties provide a starting point and bedrock for the Department to progress from, in order to ensure that children's rights in and to education are protected in the future and the principles and objectives should be amended to reflect this.

### **Chapter 3 – Choosing a Post-Primary School**

We support the emphasis in this section on parental preference and the importance of informed parental choice. This is consistent with Article 5 of the UNCRC which recognises the responsibilities, rights and duties of parents to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of his or her Convention rights. However as previously stated, it is vital that the views of the child are taken into account in choosing a post-primary school in accordance with Article 12 of the UNCRC. We are also concerned in relation to parental preference where this may be in conflict with the child's best interests. The best interests of the child must be the paramount consideration in determining their post primary education and realising their right to education. It appears that parents have overall discretion in choosing a school without a requirement that the views and opinions of the child be taken into account. This is in breach of the UNCRC.

Reference is made to the pupil profile as a means of informing the parent in exercising his/her choice of school. The pupil profile is a useful tool in determining educational achievements as interpreted by individual teachers, but we wish to stress that it should not be used as a form of academic selection. In our submission to the Post Primary Review Body on the Review of Post-Primary Education we stated that pupil profiles should only be made available to post primary schools after a decision has been made regarding the child's transfer. This intention appears to have altered in that at para. 3.5.2. the Department states that,

*"... there will... be an opportunity for individual discussions with potential post-primary schools, which may include discussion of the Pupil Profile"* and para 3.9 states that,

*"Parents should wish to share information in the Pupil Profile with these post-primary schools ..."*

We strongly oppose the use of pupil profiles prior to a decision about choice of school. Pupil profiles should not be available to post-primary schools as there is a high likelihood that they will be used to determine selection. This will have the effect of replacing the current transfer test with another system based on academic selection. Such selection will be more flawed than our current system as pupil profiles are by definition subjective in nature, not only through the teachers comments in the profile, but also through the determinations of those in post-primary schools who interpret what is meant by the profile. This would be a disastrous development and would perpetuate the same human rights violations which have become common place under the current system of selection. We must question the value of this process and the introduction of new admissions arrangements if unregulated pupil profiles can be used to inform the debate between parents and post-primary schools. This will certainly give rise to academic

selection based on pupil profiles which may or may not have been influenced by the child's parents putting pressure on the teacher.

Additionally, there is the potential that parents from higher socio-economic backgrounds may be able to make better use of their child's profile than those from disadvantaged backgrounds, for example, these parents may have more confidence to approach schools and to make representations for selection for admission. Further consideration should be given to how best to avoid this discriminatory effect. Pupil profiles should be piloted thoroughly prior to their introduction so that specific concerns may be monitored and evaluated in practice.

The Department commits at para 3.5.1. to quality assure the system of pupil profiling to ensure that they are consistent across schools and between pupils. This will be a very challenging task and we are of the view that detailed Departmental Guidance for schools and comprehensive training for teaching staff is fundamental. We welcome the Department's commitment to consistency in the system of pupil profiling and also wish the Department to commit to ensuring the consistency of the use of pupil profiles across Northern Ireland to ensure that these profiles do not become a further means of academic selection, replacing the current flawed system that it seeks to address. We agree that monitoring to quality assure the system of pupil profiling is fundamental and would like further information on how the Department aims to carry this out in practice. Reference is made to the fact that parents will receive information to help them interpret the pupil profiles either from ELB's, the CCEA or the Department itself. We wish to emphasise the importance of providing this information in a variety of formats, to ensure that all parents can understand the information and are informed about the effect that their choice, based on this information, will have on the life of their child. There appears to be an onus on the parent to discuss the content of the pupil profile with both the child's primary school teacher and possibly representatives from the child's chosen post-primary school. As a result, the more pro-active the parent, the more informed and prepared they will be for choosing a school and the transition. This will have a negative impact on parents who are from socially disadvantaged backgrounds, particularly with relation to the provision of and reliance on web-based information, which clearly favours those from advantaged backgrounds. The Department needs to take immediate action and invest considerable resources to ensure that those already disadvantaged socio-economically and by the current education system have access to information in a suitable format and are fully aware of the new system and its consequences. This is also the case in relation to post-primary school prospectuses, extensive web-based information, being informed of and during information evenings and making the final choice and the possible application of admissions criteria. Consideration also must be given to the fact that access to open evenings may not be available to all parents for reasons such as availability and affordability of childcare for additional dependents, lack of travel, cost and accessibility of public transport or disability. The Department must make adequate provisions for those parents who have difficulty attending open evenings if this is to become a factor in the new admission arrangements. Further we would have considerable concern that any child would be disadvantaged, as would be the case, by virtue of parental/guardians inability or failure to properly engage in the process. We also have additional concerns about the reliance on the engagement of parents/guardians in relation to the anticipated impact that the new admissions arrangements will have on looked after children, children in the youth justice system and children who are carers. There does not appear to be any provisions in the new admissions arrangements to protect their best interests and their right to an effective

education. We wish to see the needs and best interests of these children and young people addressed as a matter of urgency within the final admission arrangements for post-primary education in Northern Ireland.

#### **Chapter 4 – Pupils with Compelling Individual Circumstances or a Statement of Special Educational Need**

We wish to draw the Department's attention to one of the draft actions in the Draft Children's Strategy under the sub-heading of Additional Needs which refers to the removal of barriers to disabled children and young people entering and remaining in mainstream schools. We assume that this action refers to all of the barriers, other than purely physical barriers, faced by disabled children and young people in relation to mainstream education and also assume that this draft action will have the effect of increasing the number of children with special educational needs entering mainstream post-primary schools. This has not been addressed in the document and presumably will have resource and other implications for the discussion around whether pupils with special educational needs should continue to be supernumerary.

Compelling individual circumstances is important for those children who find themselves requiring additional consideration. It is vital that statutory safeguards are put in place to prevent exploitation by those with capacity to manipulate such a system. It would appear from the business of the Admissions Appeal Tribunals that it is the more influential, educated and affluent parents who exercise their right of appeal against the refusal by a school to admit their child. We support the proposed use of a central panel to consider special circumstances claims in the interests of consistency, objectivity and impartiality. We stress the need for any criteria which may be drawn up to be Equality Impact Assessed before being properly consulted on as per the Equality Commission's Guidelines including directly with children and young people with additional considerations.

#### **Chapter 5 – Admissions Criteria for Oversubscribed Schools**

Again there is a strong emphasis in this section on parental preference and parental choice. As previously stated, it is vital that the views of the child are taken into account, with more focus on pupil consideration in choosing a post-primary school in accordance with Article 12 of the UNCRC. Any discussion of the application of criteria in decision making for schools admissions will have equality implications. The application and definition of criteria currently is varied and inconsistent and as a result, discriminatory and in contravention of the Department's obligations under Articles 2, 3, 28 and 29 of the UNCRC and Article 1 of the UNESCO Convention Against Discrimination in Education. Para 5.4 states that the new menu of admissions criteria should conform to Equality legislation, we would argue that the new criteria should also comply with domestic and international human rights standards and that these should be included.

#### **Family-Focused Criteria – Siblings/Eldest Child**

While we recognise the practical advantages in keeping siblings together we have a number of specific concerns in relation to the operation of these criteria, particularly regarding equality of access to the school of choice. Some children may be discriminated against in situations where:

- Their elder sibling(s) did not attend the school of their preference;
- Their elder sibling(s) had very different individual educational needs; and
- The child is coming from a socially and economically deprived background, his or her parents have low educational achievement and they are the first child in the family to have presented with educational needs which require different educational provision

If this criterion is to be adopted as one of the Department's proposed statutory admission criteria, it is likely that we shall see future legal challenges grounded on the basis of the Department's failure to afford protection in respect of a child's right of equal access to an effective education, as provided under Article 2, Protocol 1, (ECHR), in conjunction with the non-discrimination clause under Article 14 (ECHR). Recognising the link between academic achievement and poverty, this provision will perpetuate generational socio-economic deprivation and consequently is discriminatory under international standards.

### **Community-Based Criteria**

There are issues with the operation of these criteria also, particularly in relation to the possibility of religious discrimination through use of the parish criteria. There are also problems in relation to the demarcation of parish boundaries which will vary considerably. What is most concerning however is the proposed use of feeder schools, which present a number of problems associated with the use of this criteria. Through use of feeder schools in the admissions process, there is the very real possibility that primary schools may become oversubscribed under the new admissions arrangements. There is a strong possibility that primary schools which are the feeder schools for those post-primary schools which are perceived as the most prestigious or high achieving will become oversubscribed. This is particularly worrying given the fact that the Department has published its revised screening document and intends to screen out primary school enrolment. We would argue that an EQIA is necessary in relation to primary school enrolment and we would also warn the Department to prepare for oversubscription in primary schools if feeder schools remain an option. This will only serve to move the problem of oversubscription and inequality further down the line, without any criteria to deal with such an eventuality at primary school level. The possibility for discrimination on grounds of socio-economic background and rural/urban placement is apparent with the use of this criterion. The Department could mitigate some of these concerns by choosing poorer achieving feeder schools for those schools which would be viewed as higher achieving.

### **Geographical Criteria**

Geographical Criteria or proximity to school is already widely used in admissions to primary and Grammar school sectors in Northern Ireland. We have some concerns in relation to distance criteria, particularly in respect of the right of access to a school of preference for children in rural areas. The distance between a child's residence and school should not in our opinion be a deciding factor in respect of the suitability of a school to meet his or her educational needs.

There are also wider concerns that this criterion shall simply replace one form of social segregation in education, namely selection via the transfer procedure, with another form of segregation based on the child's postcode area. Northern Ireland is a society where

there are marked levels of social differentiation in urban areas and if parents and children are prompted by this admission criterion simply to choose the school located nearest to the family home, not only shall the child's right to choose a school which may provide a more appropriate education be jeopardized, but the wider implications may be that the socio economic boundaries in our society will not be addressed through the system proposed. The inevitable population shifts into preferred catchment areas by those with socio-economic resources is already evident and will be exacerbated to the disadvantage of those who are socio-economically deprived, by the inclusion of this criteria.

It is clearly of fundamental importance that the development and application of criteria for entry to schools be informed explicitly by children's rights standards, particularly the right to an effective and appropriate education, and the guiding principles of non-discrimination, best interests of the child and the child's right to be heard.

### **Tiebreakers**

While we recognise that there will always be situations which cannot be resolved with the use of criteria such as those described above, we do not support the use of tiebreakers as a means of determining a child's admission to their choice of post-primary school. The criteria of random choice will have implications in the interests of fairness and distance from school will again have implications for children in rural areas and will inevitably be subject to legal challenge.

### **Format of Menu**

We believe that we cannot make an informed decision about the order of the criteria used to determine admission to post-primary schools without the Department carrying out a full and thorough EQIA on each of the proposed criterion to determine in detail the possible adverse impacts of the criteria. We believe that there is a need to proactively advantage those children who are currently being discriminated against in the education system and would argue for the consideration of a form of social criteria in the interests of equality of opportunity.

### **Conclusion**

The Children's Law Centre is grateful to have the opportunity to comment on the Department of Education's New Admission Arrangements for Post-Primary Schools. We hope that our comments have been constructive and useful to the Department and are more than happy to meet with Department staff to discuss anything in this response. We wish to be kept informed of progress in the development of the New Admission Arrangements for Post-Primary Schools and look forward to the issues raised and questions asked in this response being addressed, taken forward by the Department and hearing from the Department in the near future.