

**Response to the Department of Education's consultation
on the New Post-Primary Arrangements and Proposal
for a draft Education (Northern Ireland) Order 2006**

Children's Law Centre

March 2006

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.

We particularly welcome this opportunity to offer assistance to the Department in relation to the ongoing development of new admission criteria for post-primary schools, arrangements for processing admissions to post-primary schools, the introduction of the curricular Entitlement Framework and the development of new regulations and procedures relating to suspensions and expulsions from school and appeals in relation to these sanctions. The Children's Law Centre has focused our response to this consultation on the proposals for change in the draft Education (Northern Ireland) Order 2006 in relation to these particular issues.

General Comments

Consultation with Children and Young People

We refer back to the Children's Law Centre's response to the Department of Education's consultation on the New Admissions Arrangements for Post-primary Schools in June 2005. In this previous submission, we requested additional information on the consultation that had taken place with children and young people as follows:

'We note from your letter dated 8th 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 8th 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 would like to take this opportunity to reiterate our request that the Department provide us with further details of how the previous consultation with children in Year 8 took place and to request clarification of 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 in accordance with section 75 of the Northern Ireland Act 1998 and Article 12 UNCRC.

Also in June 2005, the Children's Law Centre submitted 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 noted in our submission, dated June 2005, that the Open Enrolment Policy is split into two separate policies relating to primary and post-primary schools. These policies are clearly interlinked but the Department has taken the decision that only the post-primary policy need be included in the timetable for EQIA. While we recognise that there is currently very little over subscription for admission at primary level, we feel that there is a possibility, with the introduction of the new admission arrangements for post-primary schools, that some primary schools may become oversubscribed in the future, particularly if post-primary schools decide to nominate feeder schools and adopt new admissions criteria giving preference to pupils transferring from nominated feeder schools. This is likely to give rise to the over subscription of primary schools which are the feeder schools for those post-primary schools which are perceived as the most prestigious or have a record of high academic performance. There are obvious section 75 implications with the use of any criteria to determine admission to schools and the Department of Education should be preparing for the introduction of new admissions

arrangements for post-primary schools and examining any corresponding affect that this may have in the context of primary school admissions. It is our view that the Department of Education should screen in the primary school enrolment policy and timetable it for EQIA as soon as possible after the introduction of the new admission arrangements for post-primary schools.

We requested 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 that the primary school policy should be screened out for the purposes of an EQIA and that the post-primary school policy should be included in the timetable for EQIA after consultation on the policy. To date, we have not received a response from the Department in relation to our request for the above information.

The Children's Law Centre maintains our position that the Department's decision to wait until the conclusion of the consultation on post-primary admissions arrangements to timetable the policy for EQIA is contrary both 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 and to the Department of Education's statutory duty under section 75 of the Northern Ireland Act 1998. Proper compliance with section 75 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.

At the NICVA briefing on 23rd February 2006, representatives from the Department of Education indicated that the new admissions criteria are yet to be decided by the Department and the contents of the Pupil Profile are currently being developed. We understand that the following processes are to be taken forward over the next year – a pilot of the Pupil Profile is expected to take place; there is to be a consultation on the new admissions criteria proposed by the Department; a consultation on the new suspensions and expulsions arrangements; there is due to be an announcement on the first appointed specialist schools in March 2006 and additional schools will be appointed over the coming year; an information strategy for schools and the public in relation to the use of pupil profiles is also timetabled for this year.

In light of our previously raised concerns regarding the Department of Education's failure to properly discharge its statutory duties under section 75, the Children's Law Centre would impress upon the Department to ensure that screening and equality impact assessments are carried out at the initial stages of each of these policy developments in accordance with the Equality Commission's Guidance and the statutory duties contained within section 75, including direct consultation with children and young people.

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 disability and whether they are looked after children or detained under mental health provisions or under criminal law. 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.

There is a wealth of research highlighting 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 grammar and non-grammar sectors, this would appear to be disproportionate. Statistics show that Northern Ireland post-primary schools produce high success rates for some pupils but, at the other end of the scale, one in five children leave school without a single GCSE attained at grade C or above. The need for educational reform is only highlighted when we consider that the proportion of children leaving school with no GCSE's increased by 1.0 per cent, from 4.6 per cent in 1998/99, to 5.6 per cent in 2003/04. Grammar schools are dominated by middle class pupils from both Catholic and Protestant faiths. NICVA recently conducted some research into the proportion of children from poorer socio-economic backgrounds who attend grammar schools, as defined by the numbers of pupils entitled to free school meals. They concluded with reference to the latest Departmental statistics for 2005/2006 that secondary schools had four times as many pupils entitled to free school meals (28% of all pupils) as grammar schools (7% of all pupils). Within the Protestant community in Northern Ireland, NICVA observed that the statistics pointed to starker levels of inequality, where approximately seven times more children were entitled to free school

meals in secondary schools than in grammar schools.¹ 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.

On this basis, the Children's Law Centre welcomes the decision of the Department of Education to abolish the 11 plus transfer procedure, which we see as the first step in redressing the balance in relation to equality of access to an effective education, for all children.

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, which monitors the implementation of the Convention, 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 has also 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;

¹ See NICVA Briefing Paper The Education (Northern Ireland) Order 2006, at page 5; 'Let's move forward... to a better education for all children – A commentary on the Draft Education Order' , February 2006, written by Paul Mc Gill, NICVA, dated 14th February 2006, at page 3.

(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.

The Children's Law Centre has ongoing 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 ring fenced. 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. In formulating the new admissions criteria and procedures it is fundamental that the Department of Education regards equality of opportunity as its core consideration in order to address such inequalities and ensure equal access to education for all children and young people.

In relation to the new admissions criteria currently being considered by the Department of Education, the Children's Law Centre has concerns that children from disadvantaged backgrounds may also be discriminated against on the basis that house prices in some school catchment areas may be higher, resulting in the exclusion of socially and economically disadvantaged children when a school is oversubscribed if the school relies on geography as a criterion for admission. There is the further possibility of discrimination on the grounds of religion if the criterion of parish catchment area is used by a school to determine its admissions. Similarly, we have concerns in relation to children and young people living in rural areas who may experience discrimination in admission to their school of choice should distance criteria be adopted by post-primary schools. The potential for such discrimination may be exacerbated by cuts in educational funding which may lead to the closure of smaller rural schools which are unable to attract sufficient pupil numbers to ensure their continued financial viability.

We have additional concerns in relation to the use of the Pupil Profile as a 'back door' means of selection by some parents who may approach post-primary school Principals on their child's behalf to attempt to secure a place in a preferred school. We also have concerns in relation to the new 'special circumstances' procedures proposed under the draft Education Order 2006 and would like to see procedural safeguards put in place to ensure that this process is not subject to abuse. In our view the grounds for special circumstances should be tightly prescribed and we would further recommend that any decisions regarding special circumstances should be adjudicated upon by an independent panel of specialists, moving away from the current process, where decisions are made by the Board of Governors of the parent's preferred post-primary school.

CLC Comments on the proposals contained within the draft Education (Northern Ireland) Order 2006

Article 16: Pupils with statements of special educational needs

The Children's Law Centre notes with reference to Article 16 of the draft Education (Northern Ireland) Order 2006 that it is the intention of the Department of Education that children with statements of special educational needs will continue to have their statements maintained by the Education and Library Boards in accordance with Article 16 of the Education (Northern Ireland) Order 1996.

The Children's Law Centre is concerned that if children with statements of special educational needs are required to travel to different schools and/or local FE college during the school day in order to access broader curriculum options, that they will continue to have access to all of the additional support and special educational provision set out within their statement of special educational needs, regardless of where their educational provision is being met. The practicalities of arranging for special educational provision to follow the pupil will have to be worked out between schools and colleges within the same collaborative educational partnership. We would have similar concerns in relation to pupils who are on the Code of Practice for Identification and Assessment of Special Educational Needs (at Stages 1-3) and do not have a statement of special educational needs. We would recommend that guidance be produced by the Department of Education to assist schools and education and library boards in meeting this challenge.

Articles 18 – 22: Introduction of the new curriculum Entitlement Framework

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 and further education colleges with the intention of sharing expertise, knowledge and resources to the benefit of pupils. We believe that the decisions around which schools and FE colleges work in partnership with each other should be taken independently of

the schools, 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 performance schools, 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.

The Children's Law Centre welcomes the proposals to broaden the range of subject choices to all children within the post-primary school sector under the new Entitlement Framework. We note, however, with concern that there is no current commitment to form collaborations or working partnerships to include special education schools, Board EOTAS providers or alternative education projects, some of which are departmentally funded, as part of the new Entitlement Framework process. To ensure equality of educational opportunity for all children, CLC recommends that the Department of Education considers how children and young people who are receiving education outside the post-primary school sector may be afforded the opportunity to access a wider range of subject choices and may equitably share in the benefits of educational reform within the post-primary curriculum.

With particular reference to children with a disability, current proposals fall 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.

Articles 27 – 29: New Post Primary Admissions Arrangements

The Rights of the Child under Article 12 UNCRC

In the new admissions arrangements proposed, 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. 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).

In the draft Education (Northern Ireland) Order 2006, there is no specific 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.

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.

Pupil Profiles

CLC has identified some inherent risks in the use of pupil profiles as a means of informing parental choice in selecting a suitable post-primary school, for example, 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 recommendations from our earlier submissions to the Post-Primary Review Body on The Review of Post-Primary Education and the New Admissions Arrangements for Post-Primary Schools 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 and are pleased to note the Department's intention to do so in the coming year.

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 the Department's consultation on the New Admissions Arrangements for Post-Primary Schools the Department stated that,

"... there will... be an opportunity for individual discussions with potential post-primary schools, which may include discussion of the Pupil Profile" (para 3.5.2)

Paragraph 3.9 also stated 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 and believe that pupil profiles should only be made available to post-primary schools after a decision has been made regarding the child's transfer. 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 negative development as it 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.

It is essential that the Department produce detailed Departmental Guidance for schools and it is fundamental that comprehensive training for teaching staff is provided to ensure consistent application of the use of pupil profiles to ensure that these profiles do not become a further means of academic selection, replacing the current flawed system that it seeks to address. Monitoring to quality assure the system of pupil profiling is fundamental and request further information on how the Department aims to carry this out in practice.

In the use of pupil profiles, we support the emphasis 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 in compliance with Article 12 of the UNCRC.

The Children's Law Centre understands that content of pupil profiles is still under development. We therefore recommend that the Department should directly consult with children and young people as per section 75 of the Northern Ireland Act 1998 and Article 12 UNCRC in relation to the proposed content and future use of pupil profiles as a means of informing choice of post-primary schools. We seek assurances from the

Department of Education that children and young people will be encouraged to play a central role in the formulation of their pupil profile on an annual basis. It is our view that a section of the profile should be designed and dedicated to facilitate meaningful participation by the child and mechanisms should be put in place to ensure that the child's views are given due weight. We would further recommend that both the individual child and his or her parents/carers/guardians will have access to the information provided by the school to the pupil profile before they make their own contributions to the document.

Given the importance and permanency of the pupil profile document as a living record of the child's academic achievements, it is essential that there is an accessible appeals mechanism to challenge the content of the pupil profile and specifically the school's contribution to same where a dispute regarding content arises. Furthermore, the child and his or her parents/carers/guardians should be afforded the opportunity to provide additional information which may be of assistance in completing the pupil profile. This is of particular relevance when one considers that the pupil profile will follow the child throughout his or her educational career.

We wish to emphasise the importance of parents receiving accessible information to help them to interpret the pupil profiles. Such information should be widely circulated by either the ELB's, the CCEA or the Department itself. Such information must be provided 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.

Specialist schools

We also note that the Government intends to pilot a number of specialist schools in Northern Ireland over the next 5 years. We understand that the first specialist schools are to be announced in March 2006 and that over the next year additional schools will be appointed specialist status in particular subject areas. CLC recommends that there should be a consultation process and a full Equality Impact Assessment carried out prior to the commencement of these pilots.

In introducing specialist schools, the Department needs to have regard to their section 75 duty under the Northern Ireland Act 1998 and ensure compliance with Article 29 of the UNCRC as defined by General Comment 1 so that education is child-centred, child-friendly and empowering (General Comment 1 CRC/GC/2001/1). The Department must

also ensure that specialist schools are available to all children as per Article 2 of the UNCRC and Article 1 of the UNESCO Convention Against Discrimination in Education which 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”.

Particular regard must be given to ensure that children living in rural areas are not discriminated against in accessing schools which are appointed specialist status in particular subject areas.

Admission to post-primary school: exceptional circumstances

Compelling individual circumstances will be important for those children who find themselves requiring additional consideration when applying for admission to post-primary school. 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 direct consultation with children and young people with additional considerations

The likelihood of continued over subscription in some post-primary schools

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. Again, CLC has particular concerns in relation to the fairness of

some of the proposed new admissions criteria for children who are living in rural areas. If admissions criteria are to include a criterion relating to distance from the school or a criterion that the child must reside within a school or parish catchment area, rural children are likely to be discriminated against in their access to a preferred school. 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, particularly smaller schools located in rural areas, and serve to further exacerbate the problems which currently exist in disparities in post-primary education provision.

Admissions Criteria for Oversubscribed Schools

With the proposed introduction of new admissions criteria for post-primary schools there is an emphasis 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 participation 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 current application and definition of admissions criteria 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. CLC recommends that the new menu of admissions criteria to be determined by the Department of Education must conform to the Department's statutory duties under section 75 of the Northern Ireland Act 1998, the Equality Commission's Guidance and the Department's own Equality Scheme. We would further argue that the new criteria should also comply with all of the domestic and international human rights standards set out in this response paper.

Family-Focused Criteria – Siblings/Elders 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 as a criterion for admission to post-primary education. 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 has taken an initial decision 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. Consequentially, it is our view that the Department of Education should screen in the primary school enrolment policy and timetable it for EQIA as soon as possible after the introduction of the new admission arrangements for post-primary schools.

Geographical Criteria

Geographical Criteria or proximity to school is already widely used in admissions to both 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 for new admissions criteria

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 criteria 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.

Articles 30 - 33: Suspension and expulsion of pupils from grant aided schools

In June 2004, the Children's Law Centre submitted a detailed response to the Department of Education's public consultation document on suspension and expulsion procedures in Northern Ireland 'Suspension and Expulsion Procedures: Proposals for Change'.

Our response to this previous consultation focused on the effectiveness of the proposals contained within the consultation document in ensuring that children and young people will be heard throughout the suspension and expulsion process; that they are afforded a right of appeal to the relevant appeal processes; and that children and young people's rights in education contained within Article 2, Protocol 1 of the European Convention and the United Nations Conventions on the Rights of the Child are always ensured. We also proposed some additional amendments to the consultation document for consideration by the Department of Education, with the aim of enhancing and protecting the rights of children and young people in the suspension and expulsion process.

With regard to the current consultation on the draft Education (Northern Ireland) Order 2006 and the relevant provisions on suspensions and expulsions we will draw largely on the recommendations previously submitted to the Department of Education by the Children's Law Centre in June 2004.

Concluding Observations of the United Nations Committee on the Rights of the Child in relation to suspensions and expulsions

On 4th October 2002, The United Nations Committee on the Rights of the Child published a detailed report of its concluding observations, following consideration of the Governments report to the Committee regarding its compliance with the rights contained within the Convention in the United Kingdom of Great Britain and Northern Ireland.

Contained within paragraph 46 of this report are the Committee's observations in relation to education. It is of significance that *three* of the principle observations of the Committee are specific to the issues of suspension and expulsion from school. The Committee's three relevant recommendations to the State are as follows:

- a) ensure that legislation throughout the State party reflects Article 12 and respects children's rights to express their views and have them given due weight in all matters concerning their education, including school discipline;
- b) take appropriate steps to reduce temporary or permanent exclusions; ensure that children throughout the State have the right to be heard before exclusion and have the right to appeal against temporary and permanent exclusion, and ensure that children who are excluded do continue to have access to full time education;
- c) undertake all necessary measures to remove all inequalities in educational achievement and in exclusion rates between children from different groups and to guarantee all children an appropriate quality education. (CRC/C/15/Add.188)

Consultation with children and young people

The Children's Law Centre understands that there is to be a further public consultation in relation to the new procedures for suspension and expulsion from grant-aided schools in the coming year. In order for the Department of Education to comply with its statutory duties under section 75 of the Northern Ireland Act 1998, the Children's Law Centre recommends that the consultation document should be produced in a child-friendly format to allow for consultation with children and young people, who are the section 75 grouping most likely to be affected by the proposals contained within the consultation document. Leaflets should also be made available in different formats to include languages other than English, audio format and Braille. We would further suggest that the consultation period be extended for a reasonable period of time to allow for direct effective and meaningful consultation with children and young people to take place.

Departmental scheme specifying procedures for suspensions and expulsions (Article 30)

The Children's Law Centre welcomes the proposal that all schools should be required by law to use the same model scheme for the suspension and expulsion of pupils and that a universal scheme should be prepared by the Department of Education following consultation with all interested parties. We would recommend that a wide consultation

process should take place once the universal scheme has been drafted, which shall include consultation with children and young people, their parents and voluntary and community sector organisations representing children and young people.

The Children's Law Centre does not support the previous proposal contained within 'Suspension and Expulsion Procedures: Proposals for Change' that an employing authority may apply to the Department of Education for approval to detract from or vary its application of the universal scheme. We recommend that the universal scheme should be agreed with all employing authorities in the first instance, otherwise we will return to the current situation where we do not have a uniform approach to suspension and expulsion in all grant aided schools.

Proposals for a common expelling authority

CLC would welcome the creation of a 'common expelling authority'. As it is proposed that all of the existing schemes for suspension and expulsion be unified to produce one 'universal scheme', one body should therefore be responsible for ensuring that proper procedures are followed by all grant-aided schools. The Children's Law Centre recommends that this common expelling authority should take the form of an independent panel, operating in a similar manner to the current Suspensions and Expulsions Panel in the Boards for controlled schools.

In addition to the setting up of this Independent Panel, we would also welcome the introduction of a team of independent assessors who may act as advocates for parents and children throughout the course of the suspension and expulsion process. We feel that this idea, previously raised in the 'Suspension and Expulsion Procedures: Proposals for Change' consultation document, merits further consideration by the Department of Education as a means of ensuring that all parents and particularly children, have access to independent representation.

Appeals against expulsion (Article 31)

CLC would welcome the establishment of a regional and independent expulsion appeal tribunal.

We note that Article 31(5) of the draft legislation provides that the Department of Education shall produce regulations detailing the constitution and procedure of an expulsion appeal tribunal to hear and determine appeals under this Article. The Children's Law Centre recommends that the Department undertake a full Equality Impact Assessment, including direct consultation with children and young people, who are the section 75 grouping most likely to be impacted upon by the proposals contained within the regulations, prior to the issue of these regulations, which will govern the business of the expulsion appeal tribunal.

In June 2004, as part of our response to the previous consultation document 'Suspension and Expulsion Procedures: Proposals for Change' the Children's Law Centre made a number of recommendations to assist the Department of Education in

formulating new regulations for the new expulsions appeal panel. We wish to reiterate some of these recommendations as follows:

- The regulations for the new regional and independent Expulsions Appeal Tribunal should set out the procedures for appeal, to include constitution of the panel, the remit of the panel, criteria to be considered, powers of direction, time limits for hearing an appeal and the procedures for any application for adjournment.
- In relation to the issue of time limits to progress to hearing, it is proposed that appeals should be disposed of 'without delay'. This reflects the current legal position under Schedule 2, Regulation 4(8) of the Schools (Expulsion of Pupils) (Appeal Tribunals) Regulations (Northern Ireland) 1994.
- We would recommend that the regulations introduced to govern the newly constituted tribunal should stipulate that the tribunal should meet to consider an appeal *within 15 days* of the date that the appeal notice is lodged. This would reflect the current legal position in England².
- There may be circumstances where it is appropriate to adjourn proceedings beyond the 15 day time limit proposed. This is most likely in circumstances where information is awaited that should be taken into consideration by the tribunal in reaching a decision. The decision to adjourn should be taken by the tribunal panel or by the Chairperson. The pupil and/or his parents should have a right to request an adjournment.
- In relation to the constitution of the panel, we recommend that there should be a legally qualified Chairperson appointed to the panel on a salaried basis.
- We recommend that all panel members also receive specific children's rights training. Section 9 of the Justice (Northern Ireland) Act 2002 requires lay magistrates to complete a course of training approved by the Lord Chancellor or to give an undertaking in writing before appointment. We would recommend that a similar approach be taken in respect of the training of Independent Panel Members. All panel members and particularly the Chair should be required to complete the training provision offered before taking up their duties.

Matters which the Independent Expulsion Appeal Panel may consider in reaching a decision

The Children's Law Centre recommends that the new regulations stipulate that the panel should consider substantive and procedural issues leading to the decision to expel.

With reference to the English guidance on this issue³, we would propose that the Independent Expulsion Appeal Panel should be in a position to consider the following:

² See DfES Guidance 0354/2004, page 37, paragraph 93.

³ See DfES Guidance 0354/2004, page 40, paragraphs 120 - 125.

- a) On the basis of the evidence submitted and the representations made, the panel should decide whether, on a balance of probabilities, the pupil did what he or she is alleged to have done.
- b) The panel should consider the basis of the principal's decision and the procedures followed by the principal and the Board of Governors, having particular regard to :
 - 1) Whether they complied with the law;
 - 2) Whether they had regard to guidance issued by the Department of Education, the local Education and Library Board, CCMS and the Universal Scheme;
 - 3) Whether they followed the relevant policy documents published by the school;
 - 4) The fairness of the expulsion in relation to the treatment of other pupils involved in the same incident;
 - 5) The panel should consider whether expulsion was the correct disciplinary sanction to impose in the circumstances;
 - 6) The panel should decide whether it is appropriate to order reinstatement of the pupil at school, having particular regard to the best interests of the individual pupil and other pupils at the school.

The child's right to appeal

We recommended in our response to the previous consultation on suspensions and expulsion that the new regulations should address the following issues:

- 1) The child's right to appeal an expulsion to the Independent Appeal Panel.
- 2) The child's right to seek independent representation.
- 3) The child's right to attend the hearing and to speak on his or her own behalf if he or she wishes to do so.

We also strongly recommended that the Legal Services Commission be approached formally by the Department of Education and asked to consider the issue of granting Legal Aid to children and their parents/carers/guardians to enable them to obtain legal advice and representation for expulsion appeals. The current position is that Green Form advice and assistance may be obtained in respect of expulsion appeals. This does not cover the cost of representation at an Expulsion Appeal Hearing.

We note from the proposals contained within Article 31(2) of the draft legislation that 'the relevant person' to take an appeal to the tribunal will be the pupil's parent, in circumstances where the pupil is under 18 years and the pupil him or herself, in circumstances where they have attained 18 years of age. We are most disappointed that there is no provision made in the draft legislation for a child under 18 years of age to take their own appeal to the expulsions appeal tribunal.

We refer back to the observations of the United Nations Committee on the Rights of the Child in relation to suspensions and expulsions and particularly Paragraph 46 (d) of their report, which recommends that the state should:

“take appropriate steps to reduce temporary or permanent exclusions; ensure that children throughout the State have the right to be heard before exclusion and have the right to appeal against temporary and permanent exclusion, and ensure that children who are excluded do continue to have access to full time education.”
(CRC/C/15/Add.188)

The Children’s Law Centre is concerned that some children may be denied the right to appeal in circumstances where their parents do not wish to challenge an expulsion on the child’s behalf. In our view, the failure to introduce an independent right of appeal for children within the new regulations also amounts to a clear breach of Article 12 of the UNCRC.

Appeals against suspension (Article 32)

The current law in relation to school suspensions provides that a child may be excluded from school for a period of up to 45 days, yet there are no procedural rights of appeal open to either parent or child against a decision to suspend. The Children’s Law Centre has grave concerns in relation to this matter, as it would appear to contravene the right to natural justice and due process, under our common law and is in breach of the recommendations of the United Nations Committee on the Rights of the Child.

CLC made the following recommendations for the introduction of procedures to appeal against suspension in our response to the previous consultation ‘Suspension and Expulsion Procedures: Proposals for Change’:

- Legislation should be amended to introduce a right of appeal against suspension from school. The right of appeal would be in respect of a decision to suspend a pupil for any period.
- An independent inquiry panel (perhaps with a similar constitution to the newly constituted Expulsion Appeals Tribunal or as part of it’s new remit) should be set up (by each Education and Library Board or on a regional basis, taking account of the Review of Public Administration) to consider the circumstances surrounding a school’s decision to suspend a pupil from school and adjudicate on the lawfulness of the suspension imposed.
- The panel should be given powers to order reinstatement of a child to school, in circumstances where the suspension is found to be unlawful.
- In accordance with Article 12 of the United Nations Convention on the Rights of the Child, the right of appeal should be accessible to children and young people as well as their parents.
- Parents and children should be given the right to appear at the independent inquiry panel hearing and make any representations accordingly. Parents and children may require representation at the hearing.

- Formation of such a panel would present an alternative form of redress for pupils/parents, to the existing Article 101 complaint process and the right to initiate judicial review proceedings, both of which have been criticised as inappropriate measures by the Department of Education.
- New regulations should be drafted detailing the constitution, procedures and criteria to be considered by the panel in reaching its decision.

We note that Article 32 of the draft Education (Northern Ireland) Order 2006 provides that the Department of Education may produce regulations for appeals against decisions to suspend a pupil from school. The regulations will detail who may appeal; how the appeal is to be heard; grounds of appeal and time-limits for lodging an appeal; and the procedures to be followed by the appeal body to hear and determine appeals under this Article.

The Children's Law Centre recommends that the Department undertake a full Equality Impact Assessment, including direct consultation with children and young people, who are the section 75 grouping most likely to be impacted upon by the proposals contained within the regulations, prior to the issue of these regulations.

We will be most interested in seeing how children's rights under Article 12 of the UNCRC are met by any new arrangements for appeal against suspension.

Education of suspended pupils (Article 33)

Article 33(1) of the draft Education (Northern Ireland) Order 2006 proposes to place the school's responsibility to provide education to a suspended pupil on a statutory footing. Article 33(3) of the draft legislation also proposes to amend Article 86 of the Education (Northern Ireland) Order 1998 to remove the duty upon education and library boards to make exceptional provision for children who are suspended from school.

The Children's Law Centre agrees with current departmental guidance which states that during a period of suspension, the school should set, collect and correct a pupil's work⁴. Indeed, the school should be responsible for the pupil's education for as long as the pupil remains on the school roll and the school is receiving funding to maintain that pupil's education. However, in any circumstance where the school defaults in its duty to provide a suitable education, it is ultimately the responsibility of the relevant education and library board to step in and make suitable educational provision for the child. Therefore, we would support the introduction of the school's responsibility as a statutory duty, provided that this does not in any way dilute the overarching responsibility of the education and library board.

Article 33(2) of the draft legislation provides that in circumstances determined by the Department of Education, the board may make arrangements to assist the Board of Governors of a grant-aided school in providing suitable education for a pupil who is suspended from school. There will always be circumstances where it is impractical for a school to make appropriate provision for a child otherwise than at school during a period

⁴ See 'Pastoral Care in Schools: PROMOTING POSITIVE BEHAVIOUR', page 99, paragraph 159

of suspension. This may be due to a lack of resources available to the school, for example, where a child has a specific learning difficulty, emotional and behavioural difficulties or a statement of special educational needs. It is our view that instead of determining the circumstances where a board may be asked to intervene to provide support for a suspended pupil as an exhaustive list set of or criteria that the school must meet, that there should be a procedure introduced for a school to make application to the board for extra assistance on the basis of each individual child's circumstances and, where appropriate, special educational needs.

Suspensions and expulsions and collaborative working groups

The Children's Law Centre has some concerns in relation to how pupils who are suspended or expelled from school will be affected by the collaborative partnership between their school and other schools and FE Colleges within their local area. For example, with reference to the new arrangements under the curriculum Entitlement Framework:

- If a child is suspended from school, will he/she be able to attend classes in other schools and colleges during his/her period of suspension from their own school?
- If a child is expelled from school, will he/she be in a position to apply for admission to other schools and colleges that are working within a collaborative partnership with his/her old school?
- If a child is admitted to another school within a collaborative partnership, having been expelled from a school also within that collaborative partnership, will the child be able to attend classes in his/her previous school as part of the enriched curriculum? What measures would be put in place to support the pupil and school having to deal with such an arrangement?

We would seek clarification of these matters from the Department of Education at the earliest opportunity.

Funding for new post-primary arrangements

The Children's Law Centre notes from the explanatory memorandum accompanying the draft legislation that £24.7 million is available over the period 2005/06 to 2007/08 to support the phased introduction of key elements of the new arrangements, but that any additional costs will be met from existing budgets. This fails to recognise the current financial crisis in education which is likely to deepen in the period from 2006 through to 2008. The £100 million budget for education posed in the Government's priorities and budget document for 2006-2008 is unlikely to meet the additional costs arising from the proposed educational reforms.

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 and proposal for a draft Education (Northern Ireland) Order 2006. 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 new admission criteria for post-primary schools, arrangements for processing admissions to post-primary schools, the introduction of the curricular Entitlement Framework and the development of new regulations and procedures relating to suspensions and expulsions from school and appeals in relation to these sanctions. We 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.