

Post-Primary Support Team  
Department of Education  
Rathgael House  
Bangor  
BT19 7PR

**For the attention of Mrs Angela Smith, Minister for Education**

6<sup>th</sup> March 2006

Dear Mrs Smith,

We are writing to you in response to the Consultation on Proposal for a draft Education (Northern Ireland) Order to submit the document prepared by the Ulster Human Rights Watch (UHRW) entitled “THE WAY FORWARD, *Diversity, Choice and Equality in Education*, AN ALTERNATIVE TO THE EDUCATION (NORTHERN IRELAND) ORDER 2006”.

The Ulster Human Rights Watch is a major human rights organisation in Northern Ireland. We would ask you to kindly place its response on the Department’s website.

It clearly appears that the Education (Northern Ireland) Order would eventually bring about a complete change of the education system of Northern Ireland in the direction of a comprehensive system of education. However, the consultation is being carried out while there still remain many grey areas in the proposed transformation of the education system.

Indeed, many aspects of the proposed reform are still unknown: the minimum content in relation to all the areas of learning and each key stage has not been specified; the arrangements for assessing pupils in each school year, including a requirement for the cross-curricular skills to be assessed using levels of progression, have not been specified either; the content of the Pupil Profile has not even been determined; the admissions criteria to be used by post-primary schools have not been specified; the way the schools are supposed to collaborate with each other has not been defined and the issue of transport has not been addressed, nor its implications considered.

In these circumstances, the present consultation cannot be deemed to be conducted in an equitable and impartial manner, since all that the reform entails has not yet been exposed to the public. The outcome of this consultation could turn out to be misleading for the people of Northern Ireland and, in any case, should not be used to promote a fundamental change of the education system that is neither necessary nor desired by the overwhelming majority of the people of Northern Ireland.

There is another way forward in order to preserve the very high standard of education being delivered by the present education system of Northern Ireland, while still improving it on the basis of the alternative that we are now submitting to you.

In order to discuss our proposals further we would ask you to kindly grant us an appointment as soon as possible.

Yours sincerely,

W. Wright OBE  
(Chairman)

R.H.Campbell  
(Managing Director)

Document enclosed: "THE WAY FORWARD, *Diversity, Choice and Equality in Education*, AN ALTERNATIVE TO THE EDUCATION (NORTHERN IRELAND) ORDER 2006", Ulster Human Rights Watch, March 2006.

# ULSTER HUMAN RIGHTS WATCH

## THE WAY FORWARD

### *Diversity, Choice and Equality in Education*

#### AN ALTERNATIVE TO THE EDUCATION (NORTHERN IRELAND) ORDER 2006

(March 2006)

##### Guidelines

The present education system is widely recognised as allowing pupils to reach high standards of achievement, and providing a range of educational opportunities to meet the differing needs of pupils. Improving the system does not require fundamental changes, which would on the contrary jeopardize it and eventually destroy it. Furthermore, future measures aimed at increasing the diversity of schools, providing choice for parents and ensuring equality for pupils, must be soundly based on respect for internationally recognised principles.

We will first of all outline (1) the deceptive reform of the education system of Northern Ireland as proposed in the Education (Northern Ireland) Order 2006 before dealing with (2) the fundamental principles of international law on the right to education as a basis for the reform of the education system and (3) the implementation of those principles in the education system of Northern Ireland in order to submit (4) the necessary recommendations for the future of the education system of Northern Ireland.

#### **1. THE DECEPTIVE REFORM OF THE EDUCATION SYSTEM OF NORTHERN IRELAND AS PROPOSED IN THE EDUCATION (NORTHERN IRELAND) ORDER 2006**

The Education (Northern Ireland) Order 2006 is not meant to bring about mere modifications to the education system and put an end solely to academic selection. In reality it would completely change the education system of Northern Ireland to a comprehensive system following the pattern of Marxist ideology based on the delusive notion of “equality of achievement”.

This reform, if passed, will inevitably lead to the end of the academic form of education as delivered by grammar schools, which is widely acknowledged in Northern Ireland, mainland Britain and further afield as being very satisfactory and successful. This reform would also have a detrimental effect on non-grammar secondary schools, which are also performing very well. As the *Working Group* had to recognise, “the current system serves many young people very well”<sup>1</sup>.

The Education (Northern Ireland) Order 2006 is the implementation of the *Working Group*. In order to justify the removal of all forms of selection throughout the education system, which would eventually lead to the suppression of grammar schools, the number of compulsory academic and vocational courses each school would have to deliver has been increased to such an extent that no school on its own could cater for them all. As a result, schools will be forced to collaborate with each other to fulfil their obligation to deliver the Entitlement Framework for all pupils, who will then have the choice from a wide range of academic and vocational courses.

Instead of implementing fundamental changes to the present education system, what is needed first of all is to preserve the positive aspects of the present education system. For many decades grammar schools have been serving their purpose of delivering academic courses of the highest standard and preparing able pupils independently of their socio-economical background so that they can make a contribution to society. There is no need to put an end to grammar schools and the form of education they so successfully deliver.

Transfer from Primary schools to Secondary schools instead of being done by way of a test could be done by way of assessment. Unfortunately this possibility has not been properly considered by the *Working Group*, and Article 9 (4) of the Education (Northern Ireland) Order 2006 clearly indicates that assessment arrangements still have to be put in place. It would be both desirable and feasible to conceive a well-balanced, fair system of assessment drawn up over a period of three years, which on one hand will provide an efficient means of helping parents to make the right decisions for their children’s future and on the other hand will provide schools with the means of determining whether or not pupils applying to be registered would be suited for the form of education they deliver. Such arrangements would be appropriate and most welcome by the overwhelming majority of parents in Northern Ireland.

It has been emphasised by the Department that the proposed reform of the system is based on parents’ and pupils’ choice of course, whether academic or vocational or both. In actual fact, the *Working Group* had to recognise “that choice will not be unfettered”<sup>2</sup> in any year due to the demand for courses and the number of places available. The *Working Group* also admitted that pupils who would want to change their pathway or individual components could do so provided they have the agreement of the school.

What needs to be considered and promoted is vocational and technical education being delivered by non-grammar schools, with some of them being able to evolve as

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<sup>1</sup> Advice from the Post-Primary Review Working Group, page 9.

<sup>2</sup> Advice from the Post-Primary Review Working Group, page 28.

specialist schools, which should be given more opportunities to collaborate much more effectively with other providers, particularly employers.

Different forms of education either academic or vocational and technical provided for by different types of secondary schools could be further enhanced by the possibility given to pupils to transfer from one school to another. Therefore, pupils would be given the choice at some stage of their secondary education to change their orientation and move from secondary schools delivering a vocational education to schools delivering academic courses or vice versa.

The suggested reform, which aims at creating comprehensive schools, has not been properly thought through. As a result, some courses would have to be delivered by other providers than the school where the child is being enrolled. One of the most concerning aspects of the proposed collaboration between schools is that it could result in children attending courses in another school with a completely different ethos. This could prove to be in breach of the international conventions to which the United Kingdom has subscribed.

It also appears evident that travelling from one school to another would be time-consuming, complicated and tiring for the pupils concerned.

To ensure that the needs for vocational and technical courses are properly addressed, public funds should be allocated to the development of that form of education. This will address the issue of the minority of children who leave school with insufficient or without any qualifications.

The proposed Education (Northern Ireland) Order 2006 is only a framework and further important complementary arrangements will have to be made that have not yet been decided upon.

It appears from Article 7 (4) of the Order that the Department still has to set minimum content in relation to all the areas of learning and each key stage. According to Article 9 (4) of the Order, the Department also has to set in place assessment arrangements in relation to pupils in the foundation stage and in key stages 1, 2 and 3. These are precisely the arrangements that should have been properly and fully considered before drafting the Order, since assessment is the proper and satisfactory system to be used for the orientation of pupils towards the academic or the vocational and technical form of education.

The Minister for Education, Mrs Angela Smith, has herself recently acknowledged that in the case of collaboration between schools there will be issues around transport that will need to be addressed but haven't been thought through yet. She has also indicated that the content of the Pupil Profile still needs to be determined and that the timing for handing the Pupil Profile to schools, i.e. before or after places are allocated has not yet been decided. Finally, the Minister admitted that the criteria to be used by over-subscribed schools have not yet been chosen but that a new consultation is to take place later to make decisions on this issue.

## CONCLUSION

The proposed reform is ill-conceived and unnecessary and requires that an alternative be submitted that complies with fundamental principles of international law and that improves the actual education system of Northern Ireland, in addressing its imperfections and ensuring that all children obtain a proper and useful qualification at the end of the compulsory curriculum.

## **2. THE FUNDAMENTAL PRINCIPLES OF INTERNATIONAL LAW ON THE RIGHT TO EDUCATION AS A BASIS FOR THE REFORM OF THE EDUCATION SYSTEM**

Three principles are essential as regards the right to secondary education in international law: (A) the principle of availability of different forms of secondary education, (B) the principle of the State's respect for parents' religious and philosophical convictions, and (C) the principle of equality of opportunity for pupils.

### **A. The principle of availability of different forms of secondary education**

The International Covenant on Economic, Social and Cultural Rights of 16 December 1966 (ICESCR) provides in Article 13(2)(b) that “*secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means...*”.

Article 28(1)(b) of the United Nations Convention on the Rights of the Child of 20 November 1989, also provides that States recognize the right of the child to education, and in order to achieve this right progressively, on the basis of equal opportunity, they undertake in particular to “*encourage the development of different forms of secondary education, including general and vocational education*”, making them available and accessible to every child.

Both these international conventions, which have been ratified by the United Kingdom, emphasize that different forms of secondary education shall be made available and accessible. It is the State's duty to promote and encourage the development of different forms of secondary education and to ensure that they are made accessible.

### **B. The principle of the State's respect for parents' religious and philosophical convictions**

The International Covenant on Civil and Political Rights of 16 December 1966 (ICCPR) in Article 18(4), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in Article 13(3), both provide that “*the State Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to ensure the religious and moral education of their children in conformity with their own convictions.*”

The purpose of both these covenants, which have been ratified by the United Kingdom, was to prevent any country from repeating in the future abuses of the

education system as committed by the Nazis, who had used it as a means of indoctrinating young people.

Article 2 of Protocol No. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>3</sup> states: *“In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the rights of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions”*.

The emphasis is placed on the word *“respect”*, which according to the European Court of Human Rights case law means more than *“acknowledge”* or *“take into account”*<sup>4</sup>. Article 2 of Protocol No. 1 enjoins the State to respect parents’ convictions, be they religious or philosophical, throughout the entire State education programme.

The European Court of Human Rights also held that the second sentence of Article 2 forbids the State *“to pursue an aim of indoctrination that might be regarded as not respecting parents’ religious and philosophical convictions. That is the limit that must not be exceeded.”*<sup>5</sup>

The fundamental right of parents to have their children educated in conformity with their own religious and philosophical ideas must be respected. For this right to be effective, the State must preserve and promote the existence of schools with differing ethos, so that parents have the opportunity to send their children to a school which respects their own religious and philosophical convictions.

### **C. The principle of equality of opportunity**

Article 28(1) of the United Nations Convention on the Rights of the Child provides that States recognize the right of the child to education *“on the basis of equal opportunity”*.

This is a fundamental principle, the purpose of which is to guarantee that no child can be discriminated against on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, economic conditions or birth, in having access to education.

It is the State’s duty to ensure that no discrimination based on any arbitrary criteria could take place within the education system. Difference of treatment applied by public authorities to children is prohibited, except on the basis of merits or needs.

It is therefore proper for a State to have different forms of secondary education for which access is regulated by some form of test or assessment based on the child’s merits. Such a system is not discriminatory but fair in a democratic society. The principle of equality of opportunity is as a result fully respected as long as the process for determining access to any school is fair also. Moreover, if a child has a special

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<sup>3</sup> Commonly known as the European Convention on Human Rights.

<sup>4</sup> Case Valsamis V Greece, 18 December 1996.

<sup>5</sup> Case Kjeldsen, Busk Madsen and Pedersen V Denmark, 7 December 1976.

need, for example children with disabilities or advanced pupils, any measure which addresses that need cannot be deemed to be discriminatory.

### 3. THE IMPLEMENTATION OF THE PRINCIPLES OF INTERNATIONAL LAW IN THE EDUCATION SYSTEM OF NORTHERN IRELAND

On the basis of the principles of international law, the State should (**A**) increase the availability of different forms of secondary education, (**B**) respect parents' religious and philosophical convictions, and (**C**) ensure equal opportunity for pupils.

#### **A. Increased availability of different forms of secondary education**

According to the International Covenant on Economic, Social and Cultural Rights (1966), and the United Nations Convention on the Rights of the Child (1989), it is the State's duty to promote and encourage the development of different forms of secondary education. Therefore the State must not only (1) preserve and develop the existing diversity of forms of education, but make all necessary efforts in order to promote (2) the development of a diversity of schools in secondary education.

##### *1. Diversity of forms of secondary education preserved and developed*

The diversity of forms of secondary education, which is to be found at the present time in Northern Ireland, must be maintained. The academic form of education needs to continue to be supported by the State and other forms of education, either vocational or technical, should equally be sustained by the State. The ability to develop the vocational and technical forms of education to meet the needs of society is a particular challenge which has to be addressed by the State. It appears clearly in the *Advice from the Post-Primary Review Working Group* published in 2004 that the schools which are a matter of concern are not the grammar schools but the non-grammar schools and that the form of education that needs to be developed in Northern Ireland is not the academic form of education but the vocational and technical form of education.

##### *2. Diversity of schools in secondary education*

It has been established that different forms of education are best catered for in different types of schools. Comprehensive schools in England and Wales, which are obliged to deliver all forms of education, have resulted in a fall of standards. Therefore, in the best interest of the pupils, each form of education should be delivered by different types of schools.

In Northern Ireland the majority of schools should continue to cater for children who do not have special needs, such as grammar schools and secondary schools. Grammar schools can continue to deliver an academic education, while other secondary schools should be able to provide a vocational and technical education although still ensuring a basic academic education. It is widely acknowledged that grammar schools serve their purpose very well and this cannot be honestly contested by anyone. However it is accepted that vocational and technical education needs to be improved.

In order to provide for children with special needs, (including the needs of those disabled, educationally backward or advanced,) they should be ensured access to the form of education they require, in an appropriate school. The support of the State for schools which address the needs of advanced pupils would therefore be necessary.

Schools delivering a form of education within the context of a particular philosophy, religion or other purpose (e.g. language), should also be able to look for State support. Initiatives to create further diversity of schools, such as specialists schools as referred to in the *Advice from the Post-Primary Review Working Group*, should be encouraged by the State and equally supported.

The change of the education system as drafted in the Education (Northern Ireland) Order 2006 would lead to the creation of a comprehensive schooling system. It would in the first place transform grammar schools into comprehensive schools and prevent the development of any specialized form of education either academic or vocational and technical.

## CONCLUSION

Availability of diverse forms of education and of schools is necessary for maintaining and improving standards in education and ensuring that the needs of all children are provided for. Diversity is also the condition for providing effective choices for parents and pupils. In addition, respect for the principle of diversity also means that the different types of school will be treated equally and valued equally, as they are all essential parts of the overall system of education, and meeting the needs of pupils across the educational spectrum.

### **B. Respect for parents' religious and philosophical convictions**

According to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention for the Protection of Human Rights and Fundamental Freedoms, it is the State's duty to respect the right of parents to have their children educated in conformity with their own religious and philosophical convictions. The duty of respect sets a limit on the State which cannot be crossed. Thus the rights of parents are protected and the State is bound to abstain from interfering in this matter.

In order for the rights of parents to be effectively exercised, the State must respect the different religions and philosophies which existing schools have already adopted. Parents who choose to register their children in a particular school because they approve its religion and/or philosophy, are entitled to have their rights respected.

If ever the State was to interfere with these schools, because of their religion and/or philosophy, this would certainly infringe on the rights of parents. It is therefore appropriate for each existing school to continue to have a particular religion and/or philosophy, which has been and continues to be considered appropriate and acceptable by parents as the ethos within which their children are educated.

Any initiatives to create further diversity of schools in terms of ethos or religion, should also be encouraged by the State and supported on the principle of respect for the rights of parents in this matter.

Indirectly imposed collaboration between schools is likely to give rise to new difficulties as a result of children having to travel to other schools which may have a different ethos than the one of the school the child is being enrolled with. In order to avoid this kind of situation parents may decide not to enroll their child for certain subjects.

## CONCLUSION

Not only are parents entitled to choose for their children between different forms of education, but they also have the right to choose between the different religions and/or philosophies adhered to by schools. In order for the rights of parents to be respected, diversity of schools with their particular religion and philosophy must be ensured, and equality of treatment guaranteed between the different schools in the best interests of the children.

### **C. Equal opportunity ensured for pupils**

In conformity with the United Nations' Convention on the Rights of the Child, the State must ensure that no child is discriminated against on the basis of arbitrary criteria. However, access to certain forms of education or certain schools can be regulated on the grounds of merits or needs.

The process by which merits or needs are being determined, whether (1) by assessment or (2) by means of a test, must give equality of opportunity to all pupils.

#### *1. Assessment as a common criterion*

In order to determine the capacity and potential of any child, in respect of their admission to any type of school, whether academic, technical and/or vocational, the most reliable means is assessment and only Test-when-ready Computer Adaptive Testing (TCAT) satisfying the international standards will secure a requirement for both assessment and testing.

When confronted with the issue of transfer, the TCAT should become the common criterion and should be enforced by the State. The TCAT could be used for transfer from Primary 7 to Year 8, but it could also be used for transfer during secondary education and particularly for transfer from one form of education to another (e.g. from an academic form of education to a vocational and technical form of education and vice versa), at any stage of secondary education.

The period of assessment to be taken into account should cover the three preceding years. This would mean that the period of assessment for transfer from Primary 7 to Year 8 would cover the years between Primary 5 and 7.

For any transfer occurring at any stage during secondary education from one form of education to another or from one school to another, the period of assessment would also cover the three preceding years. For example, transfer from Year 9 in one school to Year 10 in another school will take into account the years Primary 7, Year 8 and Year 9.

Such an assessment of the pupil's achievements in order to carry out a transfer will be based on a true picture of the pupil's profile and will take into account the pupil's academic as well as practical abilities. It would be used as a common basis in every form of education and at any stage to determine the pupil's needs and requirements from the education system. An appeal against the decision made by a school will be made available before an independent panel.

## *2. Tests as an option in addition to assessment*

Certain schools, whatever form of education they cater for, whether academic, vocational and/or technical, may choose to apply tests at the time of transfer, especially from Primary 7 to Year 8. The transfer process would be regulated by the State. It would be optional and would not allow any school not to take into account the three-year period of assessment. The schools which decide to apply a test would have to take into consideration the results of the test as well as the assessment covering the preceding three years in order to determine a pupil's suitability for admission. An appeal against the decision reached by the school could be made before an independent panel. Tests could be applied for entrance to Year 8 and also to Year 11.

## *3. Criteria used to decide a pupil's admission after completion of assessment and test*

Once the assessment alone or the assessment and test has/have been carried out, and if the school is oversubscribed, the school would have to apply a number of criteria. Each school will determine, under the control of the State, the criteria which it will apply to select pupils. Any decision taken by the school would be open to challenge before an independent panel.

## CONCLUSION

Equality of opportunity between pupils would be ensured by assessment as a common criterion and where applicable by a test and by admission criteria. The equality of opportunity for pupils would be reflected in the equality between the different forms of education and the different schools, whatever form of education is catered for (academic, technical and/or vocational), and whatever the religion/philosophy adhered to.

## **4. RECOMMENDATIONS FOR THE FUTURE OF THE EDUCATION SYSTEM IN NORTHERN IRELAND**

- 1.** Diversity of forms of education (e.g. academic, technical and/or vocational) should be maintained and constantly developed by the State.

2. Diversity of secondary schools, catering for different forms of education, should be maintained.
3. Support from the State for independent schools and the creation of new schools, particularly for children with special needs, should be increased.
4. Diversity of secondary schools with a different ethos, religion and/or philosophy should be protected and respected by the State.
5. Transfer on the basis of assessment as a common criterion should be enforced by the State.
6. When a school, whether it caters for the academic, technical and/or vocational form of education, chooses to implement a test in addition to the assessment, the transfer process should be regulated by the State.
7. The criteria for admission for oversubscribed schools should be determined by the schools themselves, under the control of the State.

## DIVERSITY, CHOICE AND EQUALITY IN EDUCATION

| Interested parties  | <u>Secondary schools</u>   | Parents   | Pupils   |
|---|--|---|--|
| <b>Principles</b>   |  |   |  |
| <b>Availability of different forms of secondary education</b>               | Diversity of forms of education maintained and developed             | <b>C.</b> Choice of forms of education available                        | Equality between the different forms of education in the interest of pupils                      |
| <b>State's respect for parents' religious and philosophical convictions</b> | Diversity of ethos, philosophy and religion of each school respected | <b>D.</b> Choice of ethos, philosophy and religion in schools available | Equality between schools with different ethos, philosophy and religion in the interest of pupils |
| <b>Equality of opportunity</b>  | Diversity of tests and transfers applied                             | Choice of tests and transfers available                                 | Equality between pupils in tests and transfers   |
| <b>INTER-RELATION BETWEEN DIVERSITY, CHOICE AND EQUALITY</b>                |  |   |  |
|   | <b>Diversity</b> the <i>condition</i> for choice and equality        | <b>E. Choice</b> <i>depends</i> on diversity and equality               | <b>Equality</b> <i>sustains</i> diversity and choice   |