



**Belfast Education and Library Board**  
**North Eastern Education and Library Board**  
**South Eastern Education and Library Board**  
**Southern Education and Library Board**  
**Western Education and Library Board**

**Section 75, Northern Ireland Act 1998**

**Results of an Equality Impact Assessment**

**on**

**The Provisional Criteria for Initiating Statutory Assessments  
of Special Educational Need and for  
Making Statements of Special Educational Need**

This document can also be made available, on request, in alternative formats including in large print, in Braille, by e-mail, on computer disc, on audio-cassette and in minority languages to meet the needs of those people who are not fluent in English.

**April 2011**

## TABLE OF CONTENTS

	Executive Summary	1
1	Introduction and Background	3
2	Purpose and Aims of the Provisional Criteria	4
3	Policy Outcomes and Success Indicators	4
4	Consideration of Research and Available Data	5
5	Pre-Consultation Process	6
6	Consultation Process and Outcomes	7
7	Consideration of Responses	8
8	Mitigations	15
9	Rural Proofing	16

## APPENDICES

	<b>Appendix A:</b> School Questionnaire 'Provisional Criteria for Initiating Statutory Assessments of Special Educational Need and for Making Statements of Special Educational Need' (September 2010)	17
	<b>Appendix B:</b> Summative report on the results from the online survey in relation to the 'Provisional Criteria for Initiating Statutory Assessments of Special Educational Need and for Making Statements of Special Educational Need'	20
	<b>Appendix C:</b> Summary of Consultation Responses	49
	<b>Appendix D:</b> Action Plan	64

## EXECUTIVE SUMMARY

The five Education and Library Boards undertook a review of the criteria being utilised across Boards for initiating statutory assessment of a child's special educational needs with the aim of establishing consistency of practice across all five Boards and published the "Provisional Criteria for Initiating Statutory Assessments of Special Educational Needs and for Making Statements of Special Educational Needs" in September 2009.

The provisional criteria provide a common set of Special Educational Needs criteria to be consistently applied across all Board areas and make explicit the ways in which Boards adhere to their legislative requirements and apply the guidance in the Code of Practice on the Identification and Assessment of Special Educational Needs (1998).

The outcomes the provisional criteria seek to achieve are as follows:

1. A common and equitable approach in the assessment of special educational needs across the five Boards;
2. Published criteria for eight areas of special educational needs;
3. Guidance on the statutory assessment of children who do not meet any of the explicit criteria but who are experiencing a complex interaction of special educational needs;
4. Specific guidance on the management of pre-school children with special educational needs;
5. An explicit and transparent process for schools, parents and other service providers;
6. Clarity in the respective roles and responsibilities of schools and Boards in the assessment process leading to a reduction in inappropriate referrals;
7. Clear criteria for all personnel involved in the assessment of children and young people with special educational needs.

This Equality Impact Assessment (EQIA) considers the Boards' duty not to discriminate in respect of affected groups and also how the provisional criteria will promote equality of opportunity and good relations.

It has been preceded and informed by:

- a 'Pre-Consultation Response Pro Forma for an Equality Impact Assessment on the Provisional Criteria for Making Statutory Assessments of Special Educational Needs' in October 2009;
- a questionnaire issued to all grant-aided schools in October 2009;
- a follow-up questionnaire issued to all grant-aided schools in May 2010; and

- a 'Draft Equality Impact Assessment of the Provisional Criteria for Initiating Statutory Assessments of Special Educational Needs and for Making Statements of Special Educational Needs' in June 2010.

In relation to potential adverse impacts the EQIA Panel concurred with the majority view expressed in these consultations that the effect of the provisional criteria on equality of opportunity will be positive, but took cognisance of views expressed in considering the potential impacts identified by respondents.

This final report records the outcomes and responses to a follow-up questionnaire issued to all grant-aided schools in May 2010 and the consultation pro-forma issued with the draft EQIA Report in June 2010. In relation to the follow-up questionnaire to schools, the positive feedback received – almost one year after the start of the operation of the provisional criteria – was even more supportive than the positive responses to the same questions at the beginning of the same school year.

In relation to the 'Draft Equality Impact Assessment of the Provisional Criteria for Initiating Statutory Assessments of Special Educational Needs and for Making Statements of Special Educational Needs' (*June 2010*) a total of six responses were received, two of which contained no criticism of the provisional criteria. This Report sets out detailed responses to the issues raised by the other four respondents.

Evidence from all of the consultation exercises tends to indicate that there may be equality issues with respect to Age, Race (Irish Travellers/Newcomers), Disability and Religion but there is no compelling evidence that this amounts to impacts which are differential, adverse or discriminatory.

The Boards, however, accept that further research is required to confirm that such impacts do not exist in the longer term and reaffirms measures detailed in the Draft EQIA of June 2010 together with additional mitigations as further actions to address these concerns.

These are outlined in the Action Plan contained in Appendix D of this Report.

## 1 INTRODUCTION AND BACKGROUND

Section 75 of the Northern Ireland Act 1998 requires the five Education and Library Boards, in carrying out their functions, to have due regard to the need to promote equality of opportunity between:

- people with different religious beliefs;
- people from different racial groups;
- people of different ages;
- people with different marital status;
- people with different sexual orientations;
- men and women generally;
- people with or without a disability;
- people with or without dependants; and
- people with different political opinions.

In addition, but without prejudice to the duty above, the Boards shall, in carrying out their functions, have regard to the desirability of promoting good relations between people with different religious beliefs, political opinions or racial group.

The requirement for Education and Library Boards to make arrangements for an assessment of a child's special educational needs is prescribed by legislation – specifically the Education (NI) Order 1996 ('the 1996 Order') and the Special Educational Needs and Disability (NI) Order 2005 (SENDO). In addition each Board has a statutory responsibility to make appropriate provision to meet the special educational needs of any child for whom it maintains a statement as set out in Article 15 of 'the 1996 Order'.

Since 1998 the five Boards have applied guidance from the Code of Practice (CoP) on the Identification and Assessment of Special Educational Needs (Department of Education 1998) and subsequently from the Supplement to the Code of Practice (2005) when making decisions about conducting Statutory Assessments and arranging special educational provision. While adhering to the same guidance it has been the case that each Board has been responsible for developing and applying its own criteria for initiating a statutory assessment of a child's special educational need (SEN). In practice Boards have liaised closely in relation to this with the result that the criteria have, in most cases, been similar across the Boards. However in recognising that certain differences had developed over a period of time, the Education and Library Boards' 'Association of Chief Executives', in November 2005, established a working group to review the criteria being used with the aim of establishing consistency of practice across all five Boards. The outcome of the working group's review has been the publication of the document (hereafter referred to as the policy), 'Provisional Criteria for Initiating Statutory Assessments of Special Educational Need and for Making Statements of Special Educational Need' (September 2009).

In this Equality Impact Assessment (EQIA) the five Boards have considered the duty not to discriminate (directly or indirectly) in respect of affected groups and also how the provisional criteria will promote equality of opportunity and good relations. An assessment of the perceived impacts and benefits of the provisional criteria on each

of the Section 75 categories are set out in the following paragraphs. It should be noted however that a change to any aspect of the provisional criteria would be likely to impact on the overall effectiveness of the entire initiative. Therefore, the provisional criteria should be implemented as a whole in order to provide the equality of opportunity, explicitness and consistency of approach the policy aims to deliver across all identified areas of special educational need.

It should be noted that the criteria have been termed 'provisional' in recognition of the fact that they may require amendment should legislative changes be proposed as an outcome of the Department of Education's (DE) Review of Special Educational Needs and Inclusion, or, in the event of the EQIA indicating an unexpected or serious adverse impact on any of the Section 75 categories.

## **2 PURPOSE AND AIMS OF THE PROVISIONAL CRITERIA**

### **2.1 Purpose**

The purpose of the policy is to make explicit the ways in which Boards will put into operation the guidance from the Code of Practice on the Identification and Assessment of Special Educational Needs with reference to the initiating of statutory assessments of special educational need and for making statements of special educational need.

### **2.2 Aims**

The aims of the provisional criteria may be summarised as follows:

- to make explicit the ways in which the Boards apply the guidance from the Code of Practice;
- under Article 4 of 'the 1996 Order' to align the criteria with existing guidance provided in Appendix A of the CoP, DE (1998);
- to provide an explicit and common set of SEN criteria to be consistently applied across all Board areas;
- to cross reference the terms used in Appendix A of the CoP together with the Department of Education's new set of terms as outlined in 'Areas of Special Educational Needs – Recording Children with Special Educational Needs' (2005).

## **3 POLICY OUTCOMES AND SUCCESS INDICATORS**

The outcomes the provisional criteria seek to achieve are as follows:

- 1 A common and equitable approach in the assessment of SEN across the five Boards.

**Indicator** *All children residing and/or attending schools in Northern Ireland will be assessed within a common framework*

- 2 Published criteria for eight areas of SEN including moderate learning difficulties, severe learning difficulties including profound and multiple learning difficulties, specific learning difficulties, social emotional and behavioural difficulties,

physical and/or medical difficulties, hearing difficulties, visual difficulties and speech and language difficulties.

**Indicator** *As published in the document and as evidenced in children's psychology reports and statements of SEN*

- 3 Guidance on the statutory assessment of children who do not meet any of the explicit criteria but who experience a complex interaction of SEN.

**Indicator** *As published in the document and as evidenced in children's psychology reports and statements of SEN*

- 4 Specific guidance on the management of pre-school children with SEN.

**Indicator** *As published in the document and as evidenced in children's psychology reports and statements of SEN*

- 5 An explicit and transparent process for schools, parents and other service providers.

**Indicator** *As published in the document and as evidenced in documentation forwarded to Boards supporting requests for consideration of initiating a statutory assessment*

- 6 Clarity in the respective roles and responsibilities of schools and Boards in the assessment process leading to a reduction in inappropriate referrals.

**Indicator** *Reasonable adjustments and relevant and purposeful measures demonstrated and recorded at Stages 1-3 of the CoP will result in a high correlation between the number of requests from schools for consideration of initiating statutory assessment and those proceeding to the production of a statement as measured by Boards in reporting to DE*

- 7 Clear criteria for all personnel involved in the assessment of children and young people with SEN.

**Indicator** *A reduction in the time taken to approve requests for consideration of a statutory assessment as measured by the Boards*

#### **4 CONSIDERATION OF RESEARCH AND AVAILABLE DATA**

The Code of Practice on the Identification and Assessment of Special Educational Needs (CoP) addresses the identification, assessment and provision made for all children who may have special educational needs at some time in their school careers, or even earlier. The CoP was issued by the Department of Education under Article 4 of the Education (NI) Order 1996 and has been operative from 1 September 1998. In accordance with the Code schools, Boards, and others exercising relevant statutory functions need to be able to demonstrate, in their arrangements for children with special educational needs, that they are fulfilling their statutory duty under Article 4(2) of that Order to have regard to the CoP and, since 2005, to the Special Educational Needs and Disability (NI) Order 2005 (SENDO).

The provisional criteria for initiating a statutory assessment of special educational needs and for making statements of special educational need are therefore based on the guidance on the different categories of SEN as outlined in the CoP. These SEN descriptors are recorded in full in the CoP pages 69-86.

The SEN descriptors in the Code are broadly in line with those used in education authorities across the UK and have been based on the premise outlined in the Warnock Report<sup>1</sup> that while the proportion of children with special educational needs will vary from area to area and from time to time, generally, about 20% of children may have special educational needs at some stage in their school careers. In nearly all cases, these needs will be met by their schools, if necessary with outside help (Stage 3 of the CoP). In only about 2% of cases should the child's needs be such as to require a statement of special educational needs.

## **5 PRE-CONSULTATION PROCESS**

This final EQIA report has been preceded and informed by:

- a 'Pre-Consultation Response Pro Forma for an Equality Impact Assessment on the Provisional Criteria for Making Statutory Assessments of Special Educational Needs', published in October 2009. This pro forma and related briefing paper were aimed at assisting individuals and groups to submit their response on the equality implications of the provisional criteria. Approximately 300 consultees were contacted by email and 58 hard copies of the documentation were issued. Five written responses were received in response with the comments from each of these bodies and the EQIA Panel's responses being detailed in the subsequent report published in June 2010. The report notes that the respondents were, with one exception, of the view that the overall effect of the provisional criteria on equality of opportunity will be positive;
- a questionnaire issued to all grant aided schools in October 2009 inviting initial views on the policy;
- a follow up questionnaire issued to all grant aided schools in May 2010 inviting further views on the policy;
- a 'Draft Equality Impact Assessment of the Provisional Criteria for Initiating Statutory Assessments of Special Educational Need and for Making Statements of Special Educational Need' published in June 2010.

The Boards considered in detail all of the responses received throughout each stage of the pre-consultation process.

In relation to potential adverse impacts the Panel concurred with the majority view that the effect of the provisional criteria on equality of opportunity will be positive but took cognisance of views expressed in considering the potential impacts identified by respondents.

With the comments and responses to the earlier phases of the consultation process having been detailed in the draft report published in June 2010, the remainder of this final report completes this exercise by recording the outcomes and responses to:

- the follow up questionnaire as issued to all grant aided schools as an online survey in May 2010 with a closing date of 30 June 2010;
- the consultation pro forma as issued with the draft EQIA Report in June 2010, with a closing date of 30 September 2010.

## **6 CONSULTATION PROCESS AND OUTCOMES**

### **6.1 Online Survey in Relation to the 'Provisional Criteria for Initiating Statutory Assessments of Special Educational Need and for Making Statements of Special Educational Need' (September 2010)**

A copy of the questionnaire as issued to all grant aided schools in May 2010 is shown as Appendix A, with the related summative report (September 2010) on the results of the online survey shown as Appendix B. In summary, in acknowledging the low response rate from schools, it is noted that all of the questions asked received a high level of positive responses ranging from 80.2 – 94.8%. Significantly this positive feedback, which was provided by schools in the context of operating the provisional criteria for almost a full school year, was even more supportive than the positive responses to the same questions as asked at the beginning of the same school year when the provisional criteria had just been circulated to schools (see draft EQIA report June 2010).

### **6.2 Draft Equality Impact Assessment of the Provisional Criteria for Initiating Statutory Assessments of Special Educational Need and for Making Statements of Special Educational Need' (June 2010)**

A 'Draft Equality Impact Assessment of the Provisional Criteria for Initiating Statutory Assessments of Special Educational Need and for Making Statements of Special Educational Need' was published in June 2010 with a closing date of 30 September 2010. As in the case of the pre-consultation exercise (October 2009) approximately 300 consultees were contacted by email and 58 hard copies of the documentation were issued. A total of six responses were received from:

- The **Children's Law Centre** 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.
- **Disability Action** a pioneering Northern Ireland charity working with and for people with disabilities. They work with their members to provide information, training, transport awareness programmes and representation for people regardless of their disability; whether that is physical, mental, sensory, hidden or a learning disability.
- **Downey House School, Belfast** is part of the Preparatory Department of Methodist College, Belfast. The school and staff regard the support and

contribution of parents as key elements in its success in educating their children in a happy atmosphere to be emotionally well adjusted and self-confident people.

- **Early Years** represents settings from the voluntary and private sectors and Early Years Advisors working alongside the settings.
- The **NAHT** the National Association of Head Teachers (NI).
- **SENAC** (Special Educational Needs Advice Centre) a charity organisation supporting children and young people with special educational needs and their parents. It offers an independent advice, information and advocacy service on the statutory framework of special educational needs provision in Northern Ireland.

A summary of the comments received from each of the six respondents is detailed in Appendix C.

In addition to the above the five Boards were invited, on 9 June 2010, to make a presentation to the Northern Ireland Assembly Education Committee on the 'Good Practice Guidelines and Provisional Criteria for Making Statements and the move to increase provision at Stage 3 of the Code of Practice'.

## 7 CONSIDERATION OF RESPONSES

The **NAHT** and **Downey House** responses contained no criticism of the provisional criteria.

**Disability Action**, in their response, request that ASD is considered as a separate category with specific criteria for this condition. It has normally been the case that the Boards use a functional assessment rather than a diagnostic assessment and in so doing make consideration of how the condition impacts on the child's ability to access the curriculum the determining factor rather than a particular label. However, in noting the increasing numbers of pupils being diagnosed with ASD and the growing number of these children who access Board Services, this issue will be considered by the Boards as requested by Disability Action.

In response to Disability Action's concern that the moderating rating procedures are not clarified under the complex interaction of special educational needs, it should be noted that moderating procedures are in place in all ELB areas and that these vary from Board to Board.

In noting Disability Action's concern as to an appeal mechanism should children fail to access a satisfactory level of support, it should be noted that there is an appeal to the SENDIST if a parent is dissatisfied with the level of support provided.

The **Early Years** response refers to inequality re minority ethnic communities, particularly Irish Travellers, as they are more likely to avail of pre-school provision in the voluntary sector. This may be a matter of parental choice that they have chosen voluntary sector provision. It is acknowledged, however, that currently there are inequalities between the voluntary and statutory sector in relation to processes to

access statutory assessments and statements of special educational needs. These issues are a matter of legislation and are being addressed in the Department of Education Early Years (0-6) Strategy. It should be noted that such concerns impact on children in the voluntary sector regardless of race, religion, etc.

In acknowledging such concerns Boards can give examples of support that is given to the Irish Travelling community e.g. in the SELB and WELB the Traveller Education Support Team liaise with Irish Traveller parents. The Team offers advice and support to Irish Traveller parents, with these parents having support in accessing information.

SENAC is also concerned that children from the travelling communities and pre-school children may be more negatively impacted as there may be less opportunity to collect and gather evidence required to meet the 'provisional criteria'. In practice the Boards report that they have not experienced difficulty when gathering evidence for pre-schoolers and children from the travelling community, with a tried and tested system in place whereby information is shared between ELBs and is quickly transferred when a child moves from one Board area to another. The provisional criteria are based on the Code of Practice (CoP) and as such provide uniformity in interpretation across Northern Ireland. The Boards would contend that the provisional criteria do not comprise their statutory duty but rather refine the generalities of the CoP and provide uniformity of interpretation. This is an improvement on previous practice whereby the five ELBs worked to the CoP but interpreted it differently.

The Early Years response also makes mention that the provisional criteria do not adequately address the needs of children from birth-5 years. The Code of Practice addresses support for children in this age group, i.e.:

*Para 5.3 "Assessment of children under 2 need not follow the statutory procedures which are applicable to assessments of children who are aged 2 and over. Statements will be rare for children under 2 and procedures are not specified in legislation. Individual programmes of support should first be considered according to the child's particular needs. For very young children Boards should consider home-based programmes, or peripatetic services for children with hearing or visual impairment. Some parents may prefer to attend a centre, perhaps in combination with home-based support."*

As noted above there is no statutory obligation on Boards to address the needs of children from birth, this duty starts when the child is aged two years. There is however an obligation on health services to notify a Board about children whom they are concerned about as, through the Health Visitor service, they will be involved with young children. As an example one Board has reported that, in the 2009/10 year, it received 387 referrals to its Educational Psychology Service for pre-school children which resulted in 49 statements for nursery age children and 1 statement for a pre-schooler. This would demonstrate that young children with potential special educational needs are being identified and brought to the attention of the appropriate services. Parents also have the option of making a parental request for statutory assessment.

Furthermore Boards have a range of support services available for pre-school children with special educational needs, including:

- **Specialist nursery placement in early years classes** – for children with the most significant special educational needs.
- **Autism Support Service** – pre-school children may access home-based support as well as intervention in their playgroup or nursery school contexts.
- **Down Syndrome/Inclusion Support Service** – providing advice and support to parents.
- **Traveller Education Support Service** – providing a direct link between Traveller parents and schools or Board services. The Service also communicates with health visitors and other agencies who work with young Traveller children in order to facilitate early intervention should difficulties present.
- **Pre-school Service** – providing support to parents and children.
- **Sensory Advice and Support Service (Vision)** – supporting pre-school children at home and in the nursery or playgroup setting.
- **Sensory Advice and Support Service (Hearing)** – supporting pre-school children at home and in the nursery or playgroup setting.
- **Educational Psychology Service** – psychologists who specialise in the development and education of children and young people from 0 to 19 years.
- **Behaviour Support Team** – supports children with social, emotional and behavioural difficulties.
- **Special Education Field Support Service** – providing information and advice to parents and schools on special educational needs matters.

In addition to the above the five Board website at [www.education-support.org.uk](http://www.education-support.org.uk) provides information for parents on special educational needs in easy to understand language and can be accessed in a number of languages.

The **SENAC** response highlighted a number of concerns that were echoed by the **Children's Law Centre (CLC)** and **Disability Action**. The main areas of concern appear to be both procedural and operational and can be summarised as follows:

### **Procedural**

- The provisional criteria have been in use prior to the implementation of the EQIA exercise.
- When drawing up the provisional criteria the Boards did not include parents and children in the process or in any way take account of their views at the policy development stage.
- The provisional criteria are based on incorrect statistical data.
- The pre-consultation exercise is criticised for its timing and lack of scope.
- The sampling process was flawed.

- Additional stages outside the CoP have been created and applied by Boards to lengthen the process.

It relation to the first point above, as noted in the opening paragraphs of the provisional criteria document as published in September 2009, the goal of achieving common agreed criteria across all five Board areas has been an evolving process which has extended over the past decade. While adhering to the same guidance (from the Code of Practice) it has been the case that each Board has been responsible for developing and applying its own criteria for initiating a statutory assessment of a child's special educational need. In practice Boards have always liaised closely in relation to this important matter with the result that the criteria used have, in most cases, been similar across Boards. Terming the criteria 'provisional' is an indication of this evolving process with the recognition that the consultation process and the potential impact of the Department of Education's Review of Special Educational Needs and Inclusion, which coincidentally was consulted on at the same time as the Boards' consultation on the provisional criteria, may lead to further amendments in the criteria. In response to CLC's concerns it is the Boards' position that they have sought to consult on the provisional criteria at the earliest possible opportunity.

In response to concerns expressed regarding the consultation process the Boards note that an extensive pre-consultation exercise was carried out prior to engagement in the current consultation exercise (ref Section 5 'Pre-Consultation Process'). It has been acknowledged however that further actions need to be taken by the Boards to involve parents and children in the on-going process.

As noted in Section 10 'Mitigations' of the draft EQIA report (June 2010) an outreach initiative to parents and families will seek to address issues around parental inclusion. In addition any future amendment to the 'Good Practice Guidelines' will seek to make the inclusion of parental opinion more explicit in the process.

As regards consulting with young people the complex nature of the provisional criteria poses a real challenge for Boards in striving to engage in meaningful consultation with children and young people with special educational needs. The Boards have sought to respond to this challenge by, for example, initiating consultation with children and young people with SEN in mainstream schools through an exercise conducted in 2008/9 and subsequently published in March 2010. A further pilot exercise was conducted in November 2010 with 25 KS3 special school pupils. The latter is currently being considered with a view to informing a much more extensive consultation process to be carried out across all five Board areas. This demonstrates the Boards' level of commitment to providing a voice to pupils with special educational needs on their educational experience. The overwhelming conclusion of the 2008/9 survey was that the great majority of children with SEN in mainstream schools were happy with their schools. The pilot in special schools tends to support this same conclusion.

In seeking to address the concerns expressed in the draft EQIA consultation the Boards will now, informed by the above mentioned pupil consultation exercises, be considering the most appropriate means of consulting specifically with children and young people in relation to the operation of the provisional criteria.

In noting the viewpoint expressed in relation to the statistical data and sampling process as used in considering the provisional criteria it is the Boards' position that these are robust. In choosing the sample used in the SEN pupil audit the Boards decided to sample pupils across the SEN categories and not the Section 75 categories in order to assess whether or not the provisional criteria were impacting on children with specific special educational needs.

Criticism of the timing and scope of the pre-consultation exercise would seem to relate to incorrect links which have been made between the DE Review of SEN and Inclusion and the provisional criteria document. It should be emphasised that these are two entirely separate processes, the consultation on which happened to have been progressed independently by separate organisations within the same timeframe. It is important to note that consultation and decision making on the two matters has not in any way been connected.

The comment that additional stages outside the CoP have been created and applied by Boards to lengthen the process includes as an example reference to Stage 3c. It is important to note that in fact children at Stage 3c are given immediate access to resources and provision, without the need for statutory assessment, thus making the process easier, faster and less bureaucratic. Rather it is the statutory assessment which lengthens the process. In reality such criteria make resources accessible to schools that would not normally be available. The Boards would disagree with the reference to delay and bureaucracy – rather this is a clear consistent pathway applied by all.

In conclusion it is emphasised once again that the consultation document makes clear that reference to the term 'provisional' encompasses not only the possibility that future legislation may impact upon the proposed criteria but also the fact that the criteria may require revision in the event of the EQIA indicating an unexpected adverse impact on any of the Section 75 categories. The Boards have therefore remained open to the prospect that, having taken into account the views of consultees, a revised view of the provisional criteria may have to be taken.

## **Operational**

- The CLC states that it has first-hand evidence of negative impact following application of the provisional regional criteria.
- The provisional criteria are not user friendly and not easily understood.
- Early Years has concerns about access to statutory assessment for those who have special educational needs but are outside the statutory education sector.
- Promotion of a "formulaic" approach to assessment with less room for the flexibility required to take account of the complex nature of special needs.

Further to the first point above, according to the CLC, adverse impacts identified by them to date since commencement of the application of the provisional criteria include, amongst other things:

1. Reduction of available classroom assistance for a wide range of children
2. Removal of classroom assistance from a wide range of children
3. Increases in the numbers of refusals of statutory assessment

4. Refusal to provide a statement after assessment
5. Increased complexity required for access to assessment and access to statements
6. Cases which would previously have resulted in a statement and clearly warrant a statement are now resulting in a refusal to assess or a refusal to make a statement
7. Reduction in legally enforceable rights
8. Reduction in transport provision being made for children with SEN
9. Reduction in EOTAS provision being made for children with SEN who are out of school for prolonged periods.

The Education and Library Boards do not accept any of the above assertions as correct and would have firm evidence to suggest the contrary in every case.

- In terms of cases going forward for statutory assessment, the numbers across Boards remain steady with a slight increase overall.
- In terms of resources, Boards are committing more resources than ever to meeting children's needs at Stages 3 – 5 of the Code of Practice.
- There has been a steady year on year increase in the number of classroom assistants funded by Boards.
- More appropriate referrals for statutory assessment are now being received.
- There has been no reduction in the provision of transport to pupils with special educational needs.
- With regard to enforceable legal rights these remain as they have always been.
- The evidence put forward by Boards in support of their decision-making may be more robust in terms of clear decision-making criteria, but this does not detract from the enforceable entitlements enshrined in special needs and disability legislation.
- Boards are required to adhere to legislation in relation to access to statutory assessment and access to Statements. This remains the case and has not altered as a result of the introduction of the provisional criteria. As stated in the Code of Practice:  
*“Para 3.20: In considering whether a statutory assessment should be made, Boards should pay particular attention to evidence provided by school and parents about the child's learning difficulties, taking into account the action already taken by the school to overcome these. Decisions must be made in light of all the circumstances of each individual case, in consultation with parents, schools and where appropriate, the child concerned.”*
- Boards are requesting sight of the available evidence from schools as this evidence needs to be viewed to make an informed decision.
- EOTAS provision can be accessed at Stage 3 of the Code of Practice without reference to the provisional criteria.

As regards the user friendliness and clarity of the provisional criteria all schools in the Province, as primary users of the provisional criteria, have been able to avail of

training from their respective Educational Psychology Service aimed at enhancing the understanding and transparency of the provisional criteria. The two school surveys as detailed in Section 5, and which were open to all schools in Northern Ireland, included two specific questions inviting schools to comment on how explicit they found the provisional criteria. In the most recent of these surveys the response rates from schools were 94.8% and 93.8% positive in relation to the two questions asked (see Appendices 2 and 3). In the case of parents, confidence and understanding comes from open communication and effective dialogue. There are formal and informal opportunities for communication at school and Board level through, for example, Education Planning. Officers are always willing to meet with parents and schools to fully explain the processes. In addition, parents have the opportunity to meet with a Dispute Avoidance and Resolution Service (DARS) representative and ultimately take their concerns to SENDIST, if necessary. It is acknowledged however that for many parents the provisional criteria will be viewed as complex, being written in the technical language required by the primary users i.e. schools, the Boards and other relevant agencies such as Health professionals. The Boards will, as a result of this feedback to the draft EQIA, now consider the feasibility of producing a 'user friendly' guide for parents on the provisional criteria and how they are applied.

Concerns expressed in regard to access to statutory assessment for those who have special educational needs but who are outside of the statutory education sector have been addressed in Par 7 of this report.

Finally in response to concerns expressed regarding the promotion of a 'formulaic' approach to assessment the Boards have been careful to emphasise that, in applying the criteria, each Board will, in the vast majority of cases, use those relating to the primary need of the child. In some instances, however, children may present with primary special educational needs that in themselves do not meet criteria for making a statutory assessment, but may nevertheless present with a number of difficulties whose complex interaction may be a significant barrier to learning and to accessing the curriculum. The provisional criteria take account of such cases and underline the requirement to have regard to the complex interaction of needs. This enhances the process of consideration of statutory assessment. Furthermore the criteria B + C for each area of special educational need allows for a flexible approach to individual cases.

The SENDO (2005) enhanced the concept of "relevant and purposeful measures" and "reasonable adjustments" to be made by schools for pupils with special educational needs. This was followed, in conjunction with the provisional criteria, with the Good Practice Guidelines which are intended to be a support to schools during the school-based stages of the Code of Practice. Strategies are offered together with a list detailing resources providing advice and support.

Irrespective of the guidance provided in the provisional criteria documents, Boards and schools must, in line with their statutory duty, continue to have due regard to the guidance contained in the Code of Practice on the Identification and Assessment of Special Educational Needs. The provisional criteria offer assistance in interpreting broad and non-specific guidance. Slavish adherence to the application of the provisional criteria at the expense of meeting a child's genuine need for assessment is not an outcome that Boards would wish to engender. It is for this reason that discretionary elements are included in the process of assessment.

In conclusion it is important to emphasise once again that the provisional criteria document is intended to provide guidance to Boards and schools in their adherence to legislative requirements, having regard to the Code of Practice. Its purpose is also to promote greater consistency of practice across Board areas.

## **8 MITIGATIONS**

Evidence from the pre-consultation, the school questionnaires, the pupil surveys, the Draft EQIA, as well as from DE research tend to indicate that there may be equality issues around Age, Race (Irish Travellers/Newcomers), Disability and Religion but there is no compelling evidence that this amounts to impacts that are differential, adverse or discriminatory. It is accepted however by the Boards that further research is required to be fully confident that such impacts do not exist in the longer term.

Following detailed consideration of the responses received as an outcome of the Draft EQIA (June 2010), the EQIA Panel has reaffirmed the measures detailed in that report (listed below), together with additional mitigations which are also listed as further actions to address these concerns:

- **Monitoring of Referrals**  
All referrals from schools will be monitored as detailed in the Draft EQIA report. This will allow for an annual review of the data and an examination of any evidence of adverse impact across all monitored categories. Findings will be published as part of the EQIA Annual Report. Particular attention will be accorded to those who do not meet the provisional criteria to ensure that any equality issues are addressed.
- **Parental Inclusion and Involvement**  
As well as the closer monitoring outlined above, an outreach initiative to parents and families will seek to address issues around parental inclusion. In addition any future amendment to the 'Good Practice Guidelines' will seek to make the inclusion of parental opinion more explicit in the process.
- **Pupil Consultation**  
Informed by the experience of recent and on-going pupil consultation exercises, the Boards will now be considering the most appropriate means of consulting specifically with children and young people in relation to the operation of the provisional criteria.
- **Irish Traveller Children**  
As well as the closer monitoring outlined above, an outreach initiative to Traveller families will seek to address issues raised by the Traveller Community in relation to the provisional criteria.
- **Newcomer Children**  
As well as the closer monitoring outlined above, an outreach initiative to Newcomer families will seek to address issues raised by the Newcomer Community in relation to the provisional criteria.

- **Children with Recognised Disabilities**  
The position of children with recognised disabilities both with and without SENs will be reviewed.
- **Pre-school Children**  
All referrals of pre-school children will be monitored using the process as detailed in the Draft EQIA report.
- **Religion**  
An annual review of the referral data and an examination of any evidence of adverse impact across all monitored categories will be published as part of the EQIA Annual Report. Particular attention will be accorded to those who do not meet the provisional criteria to ensure that any equality issues are addressed.
- **ASD Criteria**  
Consideration will be given to the development of specific criteria for ASD.
- **User Friendly Documentation**  
Consideration will be given to the feasibility of producing a 'user friendly' guide for parents on the provisional criteria and how they are applied.

## **9 RURAL PROOFING**

The purpose of the rural/regional proofing is to determine whether or not the policy proposal will have a different impact on rural areas than elsewhere.

There is no evidence to suggest that the policy proposal will have an adverse impact on rural communities.

**PROVISIONAL CRITERIA FOR INITIATING STATUTORY ASSESSMENTS OF SPECIAL EDUCATIONAL NEED AND FOR MAKING STATEMENTS OF SPECIAL EDUCATIONAL NEED**

1. Have the provisional criteria been sufficiently explicit on how the Boards have put into operation the guidance from the Code of Practice (COP) on the *identification and assessment of special educational needs*?

**YES/NO**

COMMENTS:

2. Have the provisional criteria been sufficiently explicit on how the Boards have put into operation the guidance from the Code of Practice (COP) on *initiating statutory assessments of special educational need and for making statements of special educational need*?

**YES/NO**

COMMENTS:

3. In your view have the provisional criteria brought a consistency of approach and practice in initiating statutory assessments of special educational need and for making statements of special educational need?

**YES/NO**

COMMENTS:

4. Have the provisional criteria ensured due regard to the need to promote equality of opportunity?

**YES/NO**

COMMENTS:

5. Have you any other comments in relation to the provisional criteria?

Thank you for taking the time to provide your comments.

School: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Principal: \_\_\_\_\_ Date: \_\_\_\_\_



# Summative report on the results from the online survey in relation to the ‘Provisional Criteria for Initiating Statutory Assessments of Special Educational Need and for Making Statements of Special Educational Need’



September  
2010

## **INTRODUCTION**

### **Provisional Criteria for Initiating Statutory Assessments of Special Educational Need and for Making Statements of Special Educational Need**

All schools in Northern Ireland were issued with a copy of the 'Provisional Criteria for Initiating Statutory Assessments of Special Educational Need and for Making Statements of Special Educational Need' in September 2009.

The related Equality Impact Assessment (EQIA) included the issuing, in October 2009, of a short questionnaire to schools seeking initial views on the criteria at the time of their introduction. In the Summer Term 2010, with staff having had an opportunity to gain experience of the provisional criteria in operation it was considered timely to once again ascertain the views of schools using a similar question set as the original questionnaire for comparative purposes.

This report details the responses received from schools to this second survey which went live on the C2K mailing system on 12 May 2010, closing on 30 June 2010. (A report on the initial survey conducted in October 2009 can be found in the Draft EQIA Report June 2010, Chapter 8 listed on each Education and Library Board website).

The five board EQIA Project Team would wish to thank all of those schools which responded to the survey. Your comments will be extremely helpful in informing the EQIA consultation process.

## Contents

<u>Introduction</u> .....	21
<u>Part A: Response Statistics</u> .....	23
<u>Part B: Methodology</u> .....	25
<u>Part C: Quantitative Data</u> .....	25
<u>Part D: Qualitative Data</u> .....	27
<u>Question 1:</u> .....	27
<u>Question 2:</u> .....	27
<u>Question 3:</u> .....	27
<u>Question 4:</u> .....	28
<u>Question 5 - Other Comments:</u> .....	28
<u>Appendix 1 - Question 1 Responses</u> .....	29
<u>Appendix 2 - Question 2 Responses</u> .....	31
<u>Appendix 3 - Question 3 Responses</u> .....	33
<u>Appendix 4 - Question 4 Responses</u> .....	37
<u>Appendix 5 - Question 5 Responses</u> .....	39
<u>Appendix 6 – Participating Schools by Location, Phase and Sector</u> .....	44
<u>Appendix 7 – Participating Schools</u> .....	46

## Part A: Response Statistics

A total of 96 valid responses were received to the survey. The figures for submissions received electronically and on paper are provided below:-

**Figure 1: Response Method**

Method	N	%
Electronic Responses	67	69.8
Paper Responses	29	30.2
	96	100

Given that there were 1228 schools in Northern Ireland at the time of the survey, this represents an overall response rate of 0.078%. In that academics recommend a response rate of at least 40% in order for valid claims to be made about the data received, it is acknowledged that the data from this survey should be treated with some caution.

The largest number of responses was received from schools in the SEELB area (Fig 2). Across the Province most responses were received from primary schools (Fig 3) and from the controlled school sector (Fig 4).

**Figure 2: Education and Library Board Responses**

ELB	No of Responses	Percent
BELB	13	13.5
SEELB	40	41.7
SELB	16	16.7
NEELB	17	17.7
WELB	9	9.4
Total	95	99.0
<i>School not named</i>	1	1.0
Final Total	96	100.0

**Figure 3: School Phase Responses**

<b>School Phase</b>	<b>No of Responses</b>	<b>Percent</b>
Nursery	1	1.0
Primary	61	63.5
Post Primary	28	29.2
Special	5	5.2
Total	95	99.0
<i>School not named</i>	1	1.0
Final Total	96	100.0

**Figure 4: School Sector Responses**

<b>School Sector</b>	<b>No of Responses</b>	<b>Percent</b>
Controlled	59	61.5
Maintained	23	24.0
Voluntary	6	6.3
Grammar	6	6.3
Integrated	6	6.3
Irish Medium	1	1.0
Total	95	99.0
<i>School not named</i>	1	1.0
Final Total	96	100.0

## Part B: Methodology

The data from the electronic survey and paper survey were keyed on to a spreadsheet at the close of the survey. Codes were allocated to each school to identify which board it was from, the phase it covered and the sector represented.

The available quantitative data was transferred to Statistical Package for the Social Sciences (SPSS) version 14 in order to analyse responses.

## Part C: Quantitative Data

Question 1. Have the provisional criteria been sufficiently explicit on how the Boards have put into operation the guidance from the Code of Practice (CoP) on the identification and assessment of special educational needs?

**Figure 5: Question 1 Responses**

	No of Responses	Percent
No	5	5.2
Yes	91	94.8
Total	96	100.0

Question 2: Have the provisional criteria been sufficiently explicit on how the Boards have put into operation the guidance from the Code of Practice (CoP) on initiating statutory assessments of special educational need and for making statements of special educational need?

**Figure 6: Question 2 Responses**

	No of Responses	Percent
No	6	6.3
Yes	90	93.8
Total	96	100.0

Question 3: In your view have the provisional criteria brought a consistency of approach and practice in initiating statutory assessments of special educational need and for making statements of special educational need?

**Figure 7: Question 3 Responses**

	No of Responses	Percent
No	19	19.8
Yes	77	80.2
Total	96	100.0

Question 4: Have the provisional criteria ensured due regard to the need to promote equality of opportunity?

**Figure 8: Question 4 Responses**

	No of Responses	Percent
No	18	18.8
Yes	78	81.3
Total	96	100.0

## **Part D: Qualitative Data**

For each of the areas where comment was encouraged a summary of the main responses has been provided. The full responses are included in the appendices to this document, with key words highlighted in bold and negative comments in red.

### **Question 1:**

Positive comments were largely received in response to this question, with themes of the responses including that the guidance was detailed, clear and explicit. Responses included thanks to the Education and Library Boards for providing clarification. Negative comments included suggestions that the criteria were an attempt to save money, that the training received had been poor and that the criteria were too rigid. In summary, of the 30 written comments received to this question, 22 were positive and 8 were negative.

### **Question 2:**

A total of 29 written comments were made for question two. Analysis reveals that only two of the comments could be regarded as negative. The comments largely highlighted the clarity and succinctness of the criteria, with some commenting that the process had been made clear for schools and that there had been no significant change from previous years. The negative comments largely concerned time and resource issues for schools with some comments highlighting the threshold of IQ required for assessment.

A number of question type issues were raised through comments to this question, including the difficulty in initiating statutory assessment for pre-school pupils and the length of time taken to go through the stages and complete statutory assessment. Training needs were highlighted in three areas - what is good practice, what groundwork do schools need and how many terms progress is needed at each stage? A question was also raised about fast track options.

### **Question 3:**

A total of 51 written comments were made to this question of which 41 could be interpreted as being either positive or raising further questions. The positive comments highlighted the clarity and consistency of the criteria and on occasions welcomed the approach. The negative comments highlighted concern with the time required to move through the stages of the Code of Practice and complete statutory assessment before a pupil receives a statement of special educational needs. Concerns were reported that the criteria may slow the process down or put additional pressure on schools. Two comments highlighted the difficulties experienced by schools when pupils from a different Board attend the school.

In terms of other issues, some comments reported that it was too early to make an informed judgement in terms of the operation of the criteria, whilst others expressed resource and provision concerns including calling for further training. There was a call for all Boards to follow the criteria and have the same approaches to assessment and provision. Comments were also made in relation to parental pressure on the system, and for some flexibility to be exercised rather than rigid approaches being taken.

#### **Question 4:**

A total of 41 written comments were made to this question of which 37 were either positive or raised an issue. There appeared to be a general 'wait and see' approach to the criteria, with most schools welcoming the clarity provided. Concern was expressed in relation to pupils with a complex interaction of needs and those on outreach support in terms of possibly not being provided for in the future. Concern was expressed that Code of Practice monies were no longer available. Three comments were made in relation to parental pressure being brought on schools and boards, with the view being expressed that it had the potential to result in pupils being provided for who may not meet the criteria.

#### **Question 5 - Other Comments**

This question solicited the greatest number of written comments, with 52 responses received of which 41 were positive. The positive comments highlighted consistency and clarity – and one respondent thanked the Boards for their efforts in taking forward the issue of criteria. The negative comments concerned time delays, resourcing and a feeling that more responsibility and work was being placed on schools. Two schools suggested that more consultation should have taken place prior to implementation in September 2009 and that there should have been more awareness raising.

A number of comments were received in relation to access to the Educational Psychology Service and time delays experience. Significantly all of the schools making such comments were from one Board.

Issues were raised in relation to provision for pre-school children and resourcing.

## Appendix 1 - Question 1 Responses

The numbers in brackets at the end of each comment indicate the school. (Note: Appendix 6 details the Board area in which the school is located, along with its phase and sector but not the actual name of the school).

1. The provisional criteria are very **detailed**. It would be difficult to see any omissions. (3)
2. **Clearly** set out criteria enabling me to judge if a child needs to move to stage 3 of the COP. (10)
3. Yes, the explanations in the booklet are quite **detailed** about how to identify pupils. (11)
4. Not from what we can ascertain. (15)
5. Information is **clear** with **explicit** detail on how to identify and assess SEN within school. However, more resources for schools e.g. assessment tools are still needed. (19)
6. Explicit but not adhered to. In many cases criteria too complicated and designed to 'cloud' the code of practice. (24)
7. A good 'tick list' for own schools to have put into place and necessary evidence gathered as a result of this before extra support asked for - a lot of new and older teachers are not aware of board materials on offer esp. for ASD and SpLD. (25)
8. Agree they are explicit, but my concerns still exist that children who would benefit from support for SpLD, ASD, Behaviour etc, even on a short term basis are never going to receive any as assessment criteria so low. Much support is now not available or offered unless on a statement - some children would benefit from early and/or short interventions. (26)
9. Provisional criteria have been sufficient - however, as SENCO I have found that nothing appears to have changed and all work is continuing as it always did. Any 'dealings' with the board has been exactly the same as it has always been. (27)
10. There is more onus on schools to provide relevant and purposeful measures and provide evidence for that. This is already happening. (28)
11. Areas of need **clearly** set out (30)
12. A review of this would need to take place. (31)
13. **Well** set out and explained. (32)
14. The advice given is **clear and explicit**. The booklet is informative and easy to follow and read. (34)
15. Very **comprehensive** Flowchart. (36)

16. Flow chart is provided for stages in the process. Seven areas of Ed Needs are listed and addressed. (40)
17. We had one very badly presented information session on this in Term 1 , we would need more information and clarification (42)
18. It would have been beneficial to have knowledge of this before September. (50)
19. We found it to be **user friendly** and particularly likes that the guidance notes were divided into sub headings according to the difficulty. Read in conjunction with the 'Good Practice Guidelines' this document provided a succinct format to consider when considering a child for statutory assessment. (52)
20. I found the flowchart **clear and easy to follow**. (57)
21. The information is **clear** with **explicit** detail on how to identify and assess SEN within school. However, more resources for schools are still needed, e.g. assessment tools. (58)
22. Over the past Year I have not had any reason to use the guidance. More training and guidance could be given on "Standardised measures of general ability" (60)
23. They are too rigid and may require flexibility to allow for borderline cases. (65)
24. The policy seems to **clarify** the process of identification and assessment for SEN. We do not see any significant changes in our understanding of the process. The inclusion of the section relating to Complex Interaction of Needs appears to offer accommodation to pupils who present with a number of lesser difficulties, yet these in aggregate require a level of provision potentially too demanding in average mainstream school settings. We feel this demand needs to be considered carefully. (67)
25. However there are still too many hiccups which delay implementation of provision at Stage 3. For instance, uncertainty over the format of Spld provision each year, delaying Ed. Psych. consultations and hence application forms being submitted for the Stage 3 services e.g. ASD support service. Additional adult assistance being accessible at stage 3, for possibly temporary periods of time, to provide early intervention for children with high anxieties who are not coping in school, could prevent a wealth of expensive and severe problems later and potentially avoid the need for a statement. Not enough support services available from the Boards e.g. Down's Syndrome, MLD support. Those that exist are ridiculously over stretched, understaffed and underfunded. All this results in schools feeling abandoned with frustrating obstacles being placed in the way of accessing what is really required. (73)
26. The criteria set the complex interaction of needs and set in place **clear** criteria to help us realise children often present more than one type of need. (79)
27. Schools are already doing this but there does appear to be a greater responsibility on SENCOs, rather than the Educational psychologists, to diagnose, produce and include more evidence including all standardised data, in line with the Good Practice

Guidelines, to satisfy the SAR 1. **Training** on low level testing and support from Ed Psy is really needed. (80)

28. The proposals are clearly intended to save money rather than meet children's needs. As such they do not comply in spirit or in fact with the principles of the Code of Practice. (81)
29. Great info sent from board this year on the criteria. (90)
30. We have found the descriptors and layout of the provisional criteria on the identification and assessment of SEN to be **detailed and explicit**, based on the COP. (95)

## Appendix 2 - Question 2 Responses

1. While the criteria are explicit it is very **difficult to initiate statutory assessment for pre-school** children even when it is clear to staff that a child has major and specific difficulties. Some children continue to fall outside the time frame and do not get early intervention. (2)
2. Criteria is **clear** but very low <70 expected in IQ and attainment. (6)
3. Once again very **clear** criteria - easy to follow through - a good guidance when uncertainty creeps in. (8)
4. Yes, they do give details on how they access for SEN children. (9)
5. Information is clear and easy to understand for SENCO, teacher and most importantly the parent. We hope waiting time should now be reduced. (17)
6. Yes, as above. E.g. 1.1 makes it appear that it is a legal criterion for statutory assessment for a child to be through stages 2 and 3. Practice in primary schools now means that some children do not get the support they need until it is too late as the progress through the stages is delayed. (23)
7. A lot of teachers need to see good practice in operation - i.e. what exactly does 'a multi-sensory teaching programme' mean - teachers need to know how to adapt this for their own classrooms i.e. needs ideas so statements can be provided. (25)
8. Criteria has been **sufficiently** explicit - however, all statutory assessments of special educational need and for making statements of SEN has been exactly the same this year as any other year. (27)
9. Sufficiently **explicit**. (28)
10. It has been **clarified** that schools have to have relevant and purposeful measures in place and that adequate progress has not been achieved. (30)
11. The decision making process flowchart **clearly** sets out the process of initiating statutory assessments. (34)

12. All the different types of Learning Difficulty have been addressed in detail. (36)
13. Lists steps required for Board to assess child. \*Lists steps and evidence required by school \* All seven areas addressed. But much more of ground work and evidence the responsibility of the school. (40)
14. It appears to be a lengthy process for mainstream schools. It may take years for a special needs child to get the specialist help he/she needs if this system is adopted. (41)
15. For example: child's FSIQ = 69 i.e. MLD yet breakdown of this showed spiky profile which could potentially go against child in terms of whether statutory assessment will take place. Also ability and attainment at or below 2nd centile. Also a child with multiple and complex needs yet have been advised by EP that case will go before a panel and may not result in Stat Assessment. (47)
16. Guidance now more succinct and **clear** but reflects the COP. (48)
17. There is no time frame indicated for the adequate progress to be made i.e. how many terms failing before next stage? (49)
18. Again it would have been helpful to have prior knowledge of this before its implementation. (50)
19. We found the guidelines to be **very explicit and detailed** and very clearly outlined when it is relevant to initiate statutory assessment. (52)
20. A lot of evidence to be gathered in school for statements - implications for time for schools to do this. (55)
21. The decision making process flowchart is a **very easy** to follow diagram. (56)
22. Again the information is **clear and easy** to understand for the SENCO, teacher and most importantly the parent. It is hoped the waiting time will be reduced by following this system. (58)
23. Criteria **clearly** laid out in document although I have not gone through this process in practice. (60)
24. Decision making process for applying the criteria is very **clear**. Flowchart shows the process concisely. Guidance states what relevant and purposeful measures schools should provide and suggests how to monitor progress of targets set. (62)
25. As above, steps are set out **clearly**, with particular reference to the range of difficulties and special needs presented. (68)
26. It is clear that the school that the school must try to address the needs of the child at stages 1-3. It is clear that evidence must be clear and up to date. IEP'S need to be monitored and reviewed, differentiated teaching in place, SENCo support and use of outside agencies are essential if required. However, the criteria are very complex and detailed. The interpretation of it can be ambiguous - terms such as significant and or complex, adequate progress, etc. Having to apply the criteria will probably be the

only way to familiarise yourself with it. I have attended the half day training provided by SELB but more would help. (79)

27. Again the provisional criteria set out an ever increasing number of hurdles for schools and parents to jump before a child's special educational needs can be supported with additional resources when necessary. Catering for pupils from Stage 1 and Stage 2 within the school are too regimented and do not take into consideration the diverse needs of children. There is no fast track for children who present with severe or complex needs where it is clear that immediate intervention is essential to meet the child's needs. (81)
28. **Great** info sent from board this year on the criteria. Before this I really didn't understand the process. (90)
29. The separate sections reflecting the eight types of SEN have been set out in an easy to access manner. The sequential process for the decision making of statutory assessment is clearly summarised at the outset of the document. The subsequent sections are explicit on the provision and evidence required from school for children at stages 1 -3 of the COP. The criterion for making the Statutory Assessment in terms of A, B, C is **clear** and **explicit** in its terms and progression. (95)

### Appendix 3 - Question 3 Responses

1. No- while the provisional criteria would appear to cover all areas of SEN, the length of time spent in making an initial visit to the school and/or follow up remains too long - 18 months plus. (3)
2. Definitely more **consistency** but there is a need to know what the future will hold and what provision will be available. (4)
3. A major problem for us is that while board schools get one to one tuition at stage 3, we have to wait until stage 5 is complete to access one to one tuition for those entering year 8. This is practical discrimination for stage 3 children entering integrated post primary education. It causes at least a one year delay in provision. (5)
4. Too early to say - would need to be evaluated and reviewed. (6)
5. Yes - more **consistent** approach on my part. (8)
6. I would truthfully say that as a school we have not seen a great difference from before but it is hard to judge. (9)
7. The provisional criteria clarify considerations to be made before a request for statutory assessment is made. We have found the guidelines **useful** in this respect. (10)
8. Students in Statementing process disadvantaged when school board area and home residence differ. Profiles of primary intake (P7) indicate that assessment, referral and provision not applied evenly across board areas. (11)

9. In so much that the baseline for being considered is consistent. (13)
10. Too early to say - more time to put into practice before patters of consistency can be applied. Does 'consistency of approach' mean within the school or across NI as a whole? We would not have sufficient information to make a judgement on the systems level of consistency outside of our school. (14)
11. All schools are aware of the same approach. (15)
12. In my experience I have been aware of the criteria for moving pupils from stage 3 to stage 4 and followed that with the advice of the educational psychologist. (16)
13. System is clear but as an SEELB school with many BELB pupils on our roll - when making a referral to either board about a pupil, things can become duplicated. (17)
14. Advice from Educational Psychologist and medical officer helpful. (18)
15. Time is required to see if process is effective. (19)
16. Still waiting too long for psychologist's visits. Also feel there should be a consultation meeting every term. (22)
17. No - in some cases statutory assessment is still initiated as a basis of panic, or parental pressure. Pupils whose parents do not know the system are therefore discriminated against. (23)
18. Cannot agree entirely with this statement. It is still a process which takes far too long from identifying the needs of the child, putting measures into place as indicated in good practice guidelines then the initiation of statutory assessments. (24)
19. If all schools were to adopt 'good practice guidelines' then there should be no excuses. (25)
20. At least it is now all laid out what 'order' things need to be done. (26)
21. Nothing has changed - everything this year from all agencies (SEELB, Ed psy etc) has been exactly the same as any other year. (27)
22. Guidelines are **clear** and **straightforward**. (28)
23. Designed to bring **consistency**, and can help within a school. Cannot comment about other schools as I do not know. (31)
24. This **consistency** is particularly welcome from schools that have pupils from more than one board area. (32)
25. It is very important that all schools firstly try through expertise, funding and other purposeful measures to improve standards. The guidance material clearly states that when the pupil as a result doesn't make adequate progress then they should advance further through the code of practice. (34)

26. The Key Themes of Commonality, **Consistency and Equity and Equality** have been thoroughly dealt with but will be difficult to implement until ESA comes into operation. (36)
27. A consistency of approach yes - but the idea of consistently applying rigid criteria may not work for every child. Special Educational needs even within any one descriptor is not a 'consistent concept'. A pupil experiencing difficulties may very well present with a baseline profile that suggests no significant problem in relation to ability but clearly something is wrong when that pupil is not attaining or making adequate progress in line with his peers. A prime example of this may be visual processing problems which can be difficult to diagnose. The provisional criteria could therefore rule statutory assessment out and this is a concern. (37)
28. Standard procedure for all. \* Worried about interpretations of terms like "adequate progress" as this will vary from pupil to pupil (and Board to Board?). (40)
29. It will be difficult to ensure a consistency of approach across all schools in the pre statement stages i.e. how standard of individualised Esp., monitoring and reviewing of pupils progress and differentiated teaching. Extensive training and extra resources will need to be put in place. Many children may lose out as teachers will not have the time for all the paperwork involved. (42)
30. Yes to a certain extent, however, it is felt that the number of students being turned down for statements is increasing and this in turn is increasing the numbers at stage three which affects classroom support, exam support, support from learning support assistants and an increasing burden on the shoulders on SENCO who are usually not on the senior management team in school. (45)
31. See response to Q2. (47)
32. Guidance is laid out **clearly** and criteria are **specific** enough to ensure a much more consistent approach. (48)
33. Have ticked no because system would not accept questionnaire without a box ticked but do not feel able to comment either way at this stage. Our experience of the statutory assessment process this school year has not been **positive**. (50)
34. As a school it would be difficult to comment on how the provisional criteria have impacted on all schools. However, it does provide all schools with set criteria which would suggest that there should be **consistency** of approach and provision. (52)
35. There will always be pupils who may not fit particular categories but it does establish a sense of **fairness**. (55)
36. The system is **clear**. However being a SEELB school and having many BELB pupils on our roll when making a referral to either Board about a pupil things can become complicated as to who should carry out the assessment/statement/allocation of classroom assistant hours etc. (58)
37. I have not been involved in initiating statutory assessments in my school since or before the new criteria. (60)

38. It will take longer for this to happen. More time is needed to train teachers, SENCOs, School managers for this. It needs proper training for all staff. (61)
39. The Provisional Criteria has brought a consistency of approach and practise across the five boards. Everyone will be using the same criteria for carrying out statutory assessments, procedures for decision making and the same number of statements will be issued. (62)
40. This is becoming an extremely complex area and while we as a school recognise the need for consistency, when parents demand we initiate an assessment, the decision is taken completely out of our hands. (64)
41. We believe so. (68)
42. Definitely more **consistent** but children are not able to reach the levels of provision they require early enough for it to make a difference. This leaves parents feeling very distressed and concerned and putting pressures on schools which they cannot respond to and an increase in pressure on Board staff in Special Education who are having to field these phone calls. (73)
43. Still great differences between ELB's - although there seems to be a shift. (75)
44. Seems more sensible to have just the one set of criteria for all Boards to follow. (76)
45. Still slow. (77)
46. It is obviously becoming increasingly difficult for children to fulfil these criteria and receive a statement. (78)
47. The criteria used will be the same for all and based on the COP. (79)
48. Hopefully, as a SENCO who has been working with up to 3 ELBs at any one time I look forward to **consistency** of approach, when it happens. This should make my job easier. (80)
49. It would create a consistently slow and cumbersome process for all. (81)
50. Too rigorous an approach to initiating statutory may in fact disadvantage some children - they should be provided as guidelines with options for individual circumstances and need. (82)
51. Teacher and parent judgement needs to be taken cognizance of - also class size and school resources. (93)
52. The **consistency** of approach and practice which will happen as a result of the implementation of the provisional criteria should mean that a child with SEN is treated as equally as any other throughout N.I. This consistency should reassure parents and support teachers. (95)

## Appendix 4 - Question 4 Responses

1. To date no issue has been identified. (1)
2. Not in every case. Educated parents are good at getting their children's needs met by starting the process prior to pre-school. However, other parents do not know what to do and are often unaware of their child's difficulties so they are disadvantaged. (3)
3. For reasons outlined above. (5)
4. Don't know - is it possible that children with health / social issues diagnosed through health service (e.g. ASD) are receiving more support and getting statements easier than children who have solely academic difficulties but need specialised support - perhaps more than stage 3 level? (6)
5. Well, consistency of approach between all the boards does ensure consistency over NI. (9)
6. Equality of opportunity will be easier to obtain with the consistency of approach. (10)
7. As above, also reduction in standardised score level needed to qualify for additional teaching - particularly discriminatory toward able children with dyslexia. (11)
8. I have always felt that equality was promoted in the process for initiating assessment. (13)
9. We assume you mean within our school. Within ours school - yes - it is helping us work towards ensuring due regard. (14)
10. In our school we do see it as equality of opportunity for all children. (15)
11. Criteria are now **clearly** defined and very specific. (16)
12. Area well addressed. (17)
13. No - Pupils kept at stage 3 and therefore denied correct provision. After a year of stage 3 outreach support no progress made - in fact some children going backwards. (23)
14. Cannot agree entirely with this statement. There still needs to be more opportunities i.e. resources to receive extra support for individual children to meet their needs, challenges and support of the parents of these children who are in a mainstream school. (24)
15. Equality of opportunity but only if the teacher takes all bullet points on board. (25)
16. It may try to promote equality of opportunity but many of the children we deal with are not getting the same opportunities as more able or even weaker children as the criteria for getting access to assessment and perhaps therefore support is now so narrow that a good majority of 'needy' children are missing out. (26)

17. Nothing has changed - everything this year has been exactly the same as any other year. (27)
18. The criteria set out a **clear** framework for schools to work within to ensure all pupils can access the curriculum regardless of any barriers to learning. (28)
19. The intention is to be inclusive and support pupils with SEN. Remains to be seen what quality resources schools are able to afford. Code of practice money is no longer available, schools will have to be more selective. (31)
20. Difficult to know for certain - little experience of its implementation as yet! (37)
21. Reasonable adjustments must be made to equipment and access etc. \* all children should progress at levels appropriate to his/her Key Stage. (40)
22. In theory yes but the practical application in so many different schools will be difficult to monitor. (42)
23. See response to Q2. (47)
24. The clarity of criteria promote equality of opportunity making it difficult for discrepancies between boards. (48)
25. Recent experience in this school has shown difficulties for parents who themselves have special needs. When parents do not have the capacity to 'add weight' to the case for their child it is not as forceful. (50)
26. We would refer to this document prior to initiating Stage 3 referral to ensure all possible strategies and adjustments have been applied. This would ensure equality of opportunity within our school. Again it would be difficult to comment on the impact across boards. (52)
27. An in-service session has been conducted on importance of both documents and their emphasis on equal opportunities. (56)
28. This has been well covered. (58)
29. Children with certain severe difficulties will continue to be denied statements due to the nature of their problems not being recognised in the provisional criteria. For example sensory processing difficulties can cause major problems with functioning in the classroom setting. When these difficulties occur alongside other areas of SEN the progress these children make can be severely affected. This is just one example of a lack of equality, suggesting that some types of difficulty are given more consideration than others. The need for a number of criteria or stages of support to be tried before a statement can be obtained can lead to an unacceptable long delay in the process of Statementing for some children who really need it. (59)
30. I am not really in a position to answer this question however the set up of the survey means I must include an answer. (60)
31. This document highlighted the need to put strategies in place if a child is having difficulties e.g. for dyslexia. It gives guidance on appropriate learning opportunities

and support from school staff to endeavour to meet the needs of all children. Reference to Good Practice Guidelines will provide detailed strategies for meeting specific needs. (62)

32. Each case is so unique to each child but the equality does not address nor give due regard to the abilities of schools to resource needs. (64)
33. Children with complex interaction of needs are not being catered for. (65)
34. Re the sections on SEBD in Provisional Criteria and Good Practice Guidelines, we believe that the disruption of learning for other pupils is not given sufficient regard. Suggested strategies are not always feasible in a mainstream secondary school e.g. available space or resources. Effects on other pupils, the concerns of their parents, and additional demands on teachers must not be underestimated. Their opportunity, rights and interests must be given due regard. (68)
35. Parents who pressurise often seem to get services for their child even though they don't meet the set criteria. Criteria should not be overlooked because of the threat of tribunal or be surpassed by legal procedures. (73)
36. The criteria ensure that there is a need to promote equal opportunities for all children. The categories used will be the same for all schools and so there should be no confusion for anyone. (79)
37. Equality would always be a priority in any practice. (80)
38. The provisional criteria are likely to delay access to curriculum for children with special educational needs. (81)
39. In some ways they prevent children from accessing opportunities. (82)
40. Insufficient regard given to teachers' professional judgement. (93)
41. Providing that each child is assessed based on their individual needs and schools appropriately staffed and sufficiently funded to meet the needs, then the theory of the criteria and implementation of the practice should result in equality of opportunity and inclusion for all children. (95)

## **Appendix 5 - Question 5 Responses**

1. Clear and concise approach for SENCOs to follow. Should reduce the need for unnecessary phone calls to the board. (1)
2. There also needs to be the staffing for these criteria to be followed up, e.g. children seen in November 2009 at Psychologists consultation are still awaiting a Stage 3 assessment. If these children receive statements it could be another year before they are processed which means statutory assessment can take up to 2 years from initial consultation with psychologist to final statement. This is not in the best interests of the child. (2)

3. I feel that the provision for SEN for younger pupils has become much poorer - further delayed and in cases non existent. The professionalism of teachers in calling for support is not valued. (3)
4. The criteria mean that schools are being given an increased number of children with SEN without statements - teachers need more support to deal with the increased level of difficulties they are being expected to with on a day to day basis. (6)
5. The whole process is still taking a long tome to work through. (7)
6. Criteria are **well set out** and enable me to follow the step by step procedures which must be followed. Unfortunately we have no Educational Psychologist at present and I'm very frustrated at not being able to follow through at an acceptable pace at stage 3. (8)
7. Some of the forms have changed, some have not. The new forms were in the main ok, but some left very little room for comments, and asked for extra testing which we did not have (language). Would appreciate list of current testing. (9)
8. We **welcome** the document which will hopefully bring consistency of approach to statutory assessment. (10)
9. Access to additional teaching at stage 3 good; Board too quick to remove statements. Disadvantages children on leaving who would benefit from external services; Links between education and health boards inadequate; Transport provision does not meet need. (11)
10. Finance is always going to be the essential factor in providing support. (13)
11. While the provisional criteria are proving to be useful, we do have concerns about the pace at which referrals to SEELB are advanced. The significant delays, between referral by the school and assessment by the ELB are, in our view, putting a number of pupils with complex needs at risk. (14)
12. There has been a **more consistent** approach within the last number of years - evident especially during annual reviews. (17)
13. Time taken from the start of the process to conclusion is too long. Waiting list for Beechlawn is too long. Difficulty in contact Educational Psychology - lack of staff. We thought ASCET would provide continuous support for specific children. (19)
14. It is important to have consistency across the 5 board areas. However, it may not ensure that although children are receiving adequate support as there is too great an expectation on the class teacher to provide for very low ability children. (20)
15. Dyslexic children in is range 85-90 receiving no provision. Discrepancy analysis would be the best criteria. Resources within schools being spread too thinly to cover too many children with SEN. Inadequate training in schools to meet needs. (23)
16. The good practice guidelines are **useful** when trying to put measures in place to meet individual needs of children. (24)
17. **Clear and concise** but need monitored and renewed - to + and - yearly. (25)

18. The provisional criteria are **very useful**. They make clear the whole process and describe what is good practice. 'Good practice guidance' is particularly useful in that it offers practice strategies teachers can use to engage pupils with barriers to learning (and is applicable to all pupils) and sets out clearly what relevant and purposeful details need to be put in place - i.e. a good working document. (28)
19. Training took place late in term 1, some use has been made of provisional criteria. Schools are more accountable with less funding available which could be counter productive. They have to react to the most serious issues usually SEBD. The drive to raise standards means that it is extremely important to support pupils with SEN learning difficulties. SEBD pupils take up a lot of time and this may reduce the time available for learning support. (31)
20. Good practice guidelines contain very **useful** strategies and a helpful checklist. (32)
21. Both resources, Provisional criteria and Good practice guidelines are invaluable. (34)
22. The process remains 'time consuming' and thus there will be a delay for children who require urgent support. (36)
23. Good Practice Guidelines (for school based stages of Code of Practice) - **good** resource for class teachers. (40)
24. The criteria should now ensure that all schools are following an agreed set of guidelines with relation to statutory assessment. It is also very **useful** to have these agreed guidelines when dealing with parental queries. (41)
25. Too much responsibility is being put on the schools to cater for special needs pupils without extra resources and staff. It sounds well in theory but in reality it will increase the planning and paper work of teachers already over burdened with administrative tasks. (42)
26. It has been useful and more equitable that the universal provisional guidelines apply to all schools and the good practice guidelines are useful when checking the approaches tried before referral to Educational Psychology. (45)
27. With a new SENCO appointed in the school this document along with the "Good Practice Guidelines" has proved very **beneficial**. It is easily read and well laid out and provided good guidance for initiating Statutory Assessment. (48)
28. 1. Complex interaction of needs section is not explicit enough with the criteria set. 2. I also feel the school should not have to mark the special educational needs as 1 for primary need and 2 3 etc. this is a very complex issue and only those trained in psychology/medical needs can determine this. (49)
29. I believe there should have been fuller consultation and awareness raising before implementation. A morning session towards the end of September was not sufficient. (50)
30. The 'Good Practice Guidelines' provided staff with reinforcement that the skills and strategies being used were very often what was suggested in this document. We did make reference to the 'reasonable adjustments and relevant and purposeful

measures' lists when considering pupils for referral to the educational psychologist and found it to be a **useful** reference point. (52)

31. When we first completed the survey a response to the questions was positive. Since that time we have had no reason to initiate any proceedings and so we would still support the idea that the recommendations will aid and simplify the proceedings. (54)
32. Slight concern that provision for pupils with difficulties should normally be met within stages 1-3 of the COP. Will the Board be providing more teaching staff to help at Stage 3? Similarly for pupils with social, emotional and behavioural difficulties - need more behavioural guidance/counselling. Will there be limited support from external agencies? Schools need more support especially from EPS. (55)
33. In order to make this a working document its content had to be summarized considerably, picking out the most important bits. This has made it easier to refer to when testing Good Practice Guidelines are also quite wordy. (56)
34. I feel there has been a **more consistent approach** over the last few years with all documentation from SEELB and BELB. This has been very evident especially during annual reviews. (58)
35. The criteria are expressed **clearly** in the document, but I would question whether they go far enough in allowing children who need help to access it. For example in the area of speech and language difficulties, the need to be at or below the 2nd percentile in expressive and / or receptive language skills is too narrow a band - children with these difficulties who do not reach this criterion can still struggle greatly in school and mainstream staff are not trained to cope. Teachers in mainstream schools would need training and funding for additional resources or additional staffing to meet the needs of children left to cope without external support or Statementing. (59)
36. Some conditions are not clearly included in the documentation. It needs constantly worked on by SENCOs and those who work in Special Needs. (61)
37. The new document is useful for SENCOs and class teachers in making improvements to education plans or in making decisions about movement to statutory assessment. It is **useful** for laying out the actions which a school might be expected to carry out at stages 1-3 of the COP. This is a helpful tool which is easy to use. (62)
38. Schools will always need extensive external support in meeting the needs of SEN pupils. (64)
39. Please refer to comments above, children do not always slot into convenient categories. (65)
40. A very **clear** and full document. (66)
41. THANK YOU FOR YOUR CONTIUED SUPPORT TO SCHOOLS WITH REGARD TO THIS VITAL WORK. (72)
42. **Educational Psychology** staff are too thinly spread. You feel you are always battling for their time and attention. This inhibits productive relationships. Once action has

been agreed at a consultation, there is frequently a delay in progress as a result of the other roles and duties of the Psychologists, e.g. transfer assessments, Spld screening, Annual Reviews etc. It is essential that MLD children in mainstream settings receive comprehensive and regular reviews by Psychologists if required; to monitor progress and certainly before transition to secondary education, regardless of whether a change of provision is anticipated. (73)

43. Guidance is more **consistent** and explicit overall. (74)
44. **Good** detail - there is increasing onus on schools to provide at stages 1/2/3 - becoming more difficult with budgets. (75)
45. When will agreed proformas be available for use across the Boards? (76)
46. The whole Statementing process is, in many instances, too slow and takes too long. (77)
47. Whether children meet the criteria or not, schools are only permitted a set number of assessments by the **Educational Psychology Service** in any academic year. Where does this leave schools in terms of other pupils who may need to be assessed? Whilst this may not be the forum to express other concerns there is a worry that there is an agenda to avoid issuing statements. This can have an impact upon the numbers of pupils who may be placed in Learning Support Centres and the resultant viability of such valuable tiers of support. (78)
48. Pre-school and early years children should be able to access assessment places prior to the initiation of statutory as the assessment undertaken may give a more correct profile of the child and their needs. (82)
49. None. It was always understood that it was provisional. (89)
50. The framework in place is **excellent** but does not always take into account the specific needs of the IME + SEN child. (92)
51. The provisional criteria were not consulted on effectively, if at all, with schools. Many children will be outside of the statutory process because of the over reliance on hard data and insufficient reliance on teacher assessment. There number of children left in classes without assistance will rise and teachers will struggle to cope with the ever widening gap in abilities within their classroom. (93)
52. I have found the provisional criteria a **useful** reference alongside the "Good Practice Guidelines". Both documents succinctly detail provision required in school and the practicalities of reasonable adjustments and relevant and purposeful measures. Therefore, for our school, both documents are useful resources within SEN.(95)

## Appendix 6 – Participating Schools by Location, Phase and Sector

No	Board Area	Phase	Sector
1	SEELB	Post Primary	Controlled
2	SEELB	Primary	Controlled
3	SEELB	Nursery	Maintained
4	SEELB	Primary	Controlled
5	SEELB	Post Primary	Integrated
6	SEELB	Primary	Controlled
7	SEELB	Primary	Maintained
8	SEELB	Primary	Maintained
9	SEELB	Primary	Maintained
10	SEELB	Primary	Controlled
11	SEELB	Primary	Maintained
12	SEELB	Primary	Controlled
13	SEELB	Primary	Controlled
14	SEELB	Post Primary	Voluntary Grammar
15	SEELB	Primary	Maintained
16	BELB	Primary	Controlled
17	SEELB	Post Primary	Controlled
18	SEELB	Primary	Controlled
19	SEELB	Primary	Controlled
20	SEELB	Primary	Maintained
21	SEELB	Primary	Controlled
22	SEELB	Primary	Controlled
23		<i>School not named</i>	
24	SEELB	Special	Controlled
25	SEELB	Primary	Controlled
26	SEELB	Post Primary	Controlled
27	SEELB	Post Primary	Integrated
28	SEELB	Primary	Controlled
29	BELB	Primary	Maintained
30	NEELB	Post Primary	Controlled
31	BELB	Post Primary	Grammar
32	SEELB	Primary	Controlled
33	SELB	Primary	Integrated
34	NEELB	Primary	Controlled
35	WELB	Special	Controlled
36	SELB	Post Primary	Maintained
37	SELB	Primary	Controlled
38	SEELB	Primary	Controlled
39	SEELB	Primary	Controlled
40	BELB	Post Primary	Controlled
41	WELB	Special	Controlled
42	NEELB	Primary	Controlled
43	BELB	Primary	Controlled
44	WELB	Post Primary	Maintained
45	BELB	Special	Controlled
46	NEELB	Primary	Controlled
47	WELB	Primary	Controlled

48	SELB	Primary	Controlled
49	SELB	Primary	Controlled
50	SELB	Primary	Maintained
51	NEELB	Primary	Controlled
52	SEELB	Post Primary	Voluntary Grammar
53	SEELB	Post Primary	Voluntary Grammar
54	NEELB	Post Primary	Controlled
55	SEELB	Post Primary	Controlled
56	BELB	Primary	Controlled
57	SEELB	Post Primary	Controlled
58	NEELB	Primary	Controlled
59	SELB	Post Primary	Voluntary Grammar
60	SEELB	Post Primary	Integrated
61	NEELB	Primary	Controlled
62	SEELB	Primary	Controlled
63	NEELB	Primary	Controlled
64	SEELB	Primary	Maintained
65	NEELB	Post Primary	Voluntary Grammar
66	SELB	Primary	Maintained
67	SELB	Primary	Maintained
68	BELB	Primary	Maintained
69	NEELB	Post Primary	Controlled
70	BELB	Primary	Controlled
71	WELB	Post Primary	Integrated
72	SELB	Primary	Integrated
73	NEELB	Primary	Controlled
74	SEELB	Primary	Integrated
75	SELB	Post Primary	Controlled
76	SEELB	Primary	Maintained
77	NEELB	Post Primary	Controlled
78	SEELB	Primary	Maintained
79	NEELB	Post Primary	Controlled
80	BELB	Primary	Maintained
81	SELB	Post Primary	Controlled
82	NEELB	Primary	Controlled
83	BELB	Special	Controlled
84	SELB	Primary	Controlled
85	BELB	Primary	Controlled
86	NEELB	Primary	Controlled
87	WELB	Primary	Controlled
88	SELB	Primary	Maintained
89	WELB	Post Primary	Voluntary Grammar
90	NEELB	Primary	Controlled
91	SEELB	Post Primary	Maintained
92	SELB	Primary	Maintained
93	BELB	Post Primary	Irish Medium

<b>94</b>	SELB	Primary	Controlled
<b>95</b>	NEELB	Primary	Controlled
<b>96</b>	WELB	Primary	Controlled

## **Appendix 7 – Participating Schools**

### **BELFAST EDUCATION AND LIBRARY BOARD**

#### ***Primary***

Glenwood Primary School  
Greenwood Primary School  
Holy Rosary Primary School  
Lowwood Primary School  
Orangefield Primary School  
Stranmillis Primary School  
St Bride's Primary School  
St. Joseph's Primary School

#### ***Post Primary***

Ashfield Girls' High School  
Coláiste Feirste  
Grosvenor Grammar School

#### ***Special***

Clarawood School  
Oakwood School and Assessment Centre

### **SOUTH EASTERN EDUCATION AND LIBRARY BOARD**

#### ***Nursery***

St Luke's Nursery School

#### ***Primary***

Ballycarrickmaddy Primary School  
Ballinderry Primary School, Crumlin  
Ballymagee Primary School  
Cairnshill Primary School  
Castlewellan Primary School  
Convent of Mercy Primary School  
Cumran Primary School  
Holy Family Primary School, Teconnaught  
Londonderry Primary School  
Lisburn Central Primary School  
Magheraberry Primary School  
Millennium Integrated Primary School  
Millisle Primary School  
Newcastle Primary School

St Colman's Primary School  
St Mary's Primary School, Dunsford  
St Patrick's Primary School  
St Patrick's Primary School, Downpatrick  
The Good Shepherd Primary School  
Tonagh Primary School  
Towerview Primary School

***Post Primary***

Blackwater Integrated College  
Dunmurry High School  
Friends' School Lisburn  
Glenlola Collegiate  
Knockbreda Primary School  
Lisnagarvey High School  
Nendrum College  
Newtownards Model Primary School  
Newtownbreda High School  
Priory Integrated College  
Shimna Integrated College  
St Columbanus College  
St Patrick's Grammar School

***Special***

Beechlawn Special School

**SOUTHERN EDUCATION AND LIBRARY BOARD**

***Primary***

Bush Primary School  
Carrick Primary School  
Mullavilly Primary School  
Newtownhamilton Primary School  
Orchard County Primary School  
Orritor Primary School  
Saints & Scholars Primary School  
St Colmcille's Primary School  
St Colman's Primary School  
St Colman's Primary School, Crossgar  
St. Kieran's Primary School  
St. Nicholas' Primary School  
St Patrick's Primary School  
St Patrick's Primary School, Ballygalet  
St. Peter's Primary School

***Post Primary***

Dromore High School  
Kilkeel High School

St Joseph's High School  
St Louis Grammar Kilkeel

## **WESTERN EDUCATION AND LIBRARY BOARD**

### ***Primary***

Drumahoe Primary School  
Gibson Primary School  
Newtownbutler Primary School

### ***Post Primary***

Devenish College Loreto Grammar School  
Portora Royal School  
St. Peter's High School

### ***Special***

Belmont House Special School  
Erne School

## **NORTH EASTERN EDUCATION AND LIBRARY BOARD**

### ***Primary***

Ballycarry Primary School  
Ballycraigy Primary School  
Ballymoney Primary School  
Ballysally Primary School  
Carrickfergus Model Primary School  
D H Christie Memorial Primary School  
Greenisland Primary School  
Kilrea Primary School  
Moyle Primary School  
Millquarter Primary School  
Parkgate Primary School  
Whitehouse Primary School

### ***Post Primary***

Ballee Community High School  
Ballycastle High School  
Dunluce School  
Larne High School

**SUMMARY OF CONSULTATION RESPONSES**

This Appendix summarises the comments received from each of the six bodies which responded to the draft EQIA document.

**Downey House**

The Downey House response considered that the provisional criteria would affect equality of opportunity positively and did not identify any adverse impact on equality or good relations. Nor did it identify any different needs, experiences, issues or priorities in relation to the policy.

**Early Years**

The Early Years response considered that the provisional criteria would affect equality of opportunity negatively in relation to Age and Race.

Early Years believes that the provisional criteria do not adequately address the needs of children from birth-5 years. Early Years has concern as to the lack of clarity as to how the process can be accessed on behalf of young children identified from birth or in the early years of life.

Early Years also has concern as to the adverse impact on younger children outside the funded pre-school programme as they have limited access to assessment and remedial support and have no access to statements of educational need, unlike their peers within the statutory nursery sector. In their view the document in the main only makes reference to statutory nurseries or nursery units within schools. They also claim that mechanisms for referral make no reference to the role of pre-school practitioners outside of the statutory sector.

Early Years sees no acknowledgment of the different levels of capacity, confidence and support for parents in navigating the system on their child's behalf. Some parents e.g. parents from minority ethnic communities, particularly Irish Traveller parents, may encounter additional challenges in accessing information and support. It is therefore of particular importance that early intervention supporting the needs of Irish Traveller children is effectively implemented. Early Years believes that Irish Traveller children will also experience the adverse impact of unequal provision for referral between statutory and voluntary sector settings as they are more likely to avail of pre-school provision in the voluntary sector. This is supported by Toybox project statistics that, in 2009/2010, 31% of Traveller children participating in the Toybox project accessed statutory nursery provision while 69% accessed provision in the voluntary sector.

Early Years is also concerned that this differential impact may adversely affect other groups of children e.g. children accessing Irish Medium pre-school education who are much more likely to do so in the voluntary and independent sectors. Statistics demonstrate that only 10 out of 43 Irish Medium pre-schools in Northern Ireland are in the statutory sector.

In the view of Early Years such adverse impacts could be reduced or alleviated by:

1. Ensuring that pre-school children have special educational needs identified as early as possible by providing access to information and support and clear guidelines for this age group.
2. Ensuring equal access to information and support around referral for pre-school children in the voluntary and private sectors.
3. Developing equitable and respectful partnership with parents and providing access to information and support.
4. Considering the particular needs and barriers to access for Traveller and other children from Minority Ethnic communities.
5. Providing clarification within the guidelines of how the process can be accessed to meet the needs and rights of children from birth-age 5.
6. Providing a range of supported learning opportunities in all settings which will encourage the optimum development of pre-school children with special educational needs.
7. Providing access to learning opportunities for pre-school children with special educational needs, which reflect the experiences and good practice that are appropriate for all pre-school children, regardless of gender, race, culture or type of disability.
8. Providing training and support for Early Years Practitioners working with children with special educational needs.

Early Years point to the good practice model in Warrington Council, England which has a team of Early Years Foundation consultants, part of whose role is as Area SENCO for the private, voluntary and independent sectors. Area SENCO's support staff in the private, voluntary and independent sector who have children with special educational needs.

Early Years identifies the Age and Race categories as having different needs, experiences, issues and priorities in relation to this policy issue.

Early Years holds that children in the voluntary and private sectors have the same needs as those within the statutory school sector whilst the process assumes identification of needs will take place in a school setting and therefore focuses on helping professionals make decisions. Early Years sees little reference to the rights or involvement of parents or the children themselves in the process, or in having their views heard.

Early Years welcomes a consistent approach across the five Education and Library Boards to initiating a statutory assessment of a child's special educational needs and the specific guidance on the management of pre-school children with special educational needs, and guidance for staff in ELBs and HSCTs referring children for statutory assessment. However it believes that the approach outlined falls short of meeting all children's needs in an equitable manner and needs considerable amendment.

## **SENAC**

The SENAC response considered that the provisional criteria would affect equality of opportunity negatively in relation to Age, Dependents, Disability, Gender and Race. SENAC considered that the same categories have different needs, experiences, issues and priorities in relation to this policy issue.

SENAC welcomed any strategy or practice to address the inconsistencies and inadequacies of the system but the use of the 'provisional criteria' raises for them equality impact assessment concerns and reservations expressed within their response.

One of the main concerns is the appropriateness of the use of the 'provisional criteria' by the Education and Library Boards in deciding whether or not to undertake a statutory assessment.

SENAC is concerned that changes in guidance should not be implemented in advance of a formal revision of the current Code. In particular any change to the criteria for statutory assessments should not be applied before a new Code is formally adopted and issued as a revised Code.

Assurance is therefore requested that the Education and Library Boards have not compromised their statutory duty under Article 4 to have regard for the Code of Practice by using criteria that has not been issued under Article 4.

SENAC is also concerned that the 'provisional criteria' should not yet be used in practice to decide whether Boards should initiate a statutory assessment until the results of the EQIA have been fully analysed and assessed in terms of impact.

SENAC accepts that the premise for developing the 'provisional criteria' is to address the inconsistencies among the ELBs. However SENAC raises an ancillary issue: the issue of delay in accessing Stage 3 provision. SENAC believes inconsistencies will still exist if this issue is not addressed regardless of more explicit 'provisional criteria'.

SENAC views that most of the 'relevant and purposeful measures' referred to in the 'provisional criteria' involve Stage 3 provision so the current unacceptable waiting time for access to outreach and external specialist and support services means children are unduly delayed at Stage 3. This in turn impacts on their access to statutory assessment.

SENAC avers that any EQIA of the 'provisional criteria' must recognise that many groups of children are negatively impacted due to these delays and this issue cannot be separated from the application of the 'provisional criteria'. This may be applicable especially to children with autism, aspergers, dyslexia and children with speech and language difficulties as it is many of these children who benefit from Stage 3 provision.

SENAC would welcome information on the extent to which the 'provisional criteria' are currently used to inform decisions about making statutory assessments and issuing statements.

SENAC avers that there is an inherent falsity in producing 'provisional criteria' which rely on exhaustion of 'relevant and purposeful measures' when in practice many children have little opportunity to meet the 'provisional criteria' due to delays in accessing such provision at Stage 3. SENAC accepts that 'this bottleneck' is an obstacle also for the current system under the Code.

SENAC avers that there is not sufficient reference or consideration of Stage reviews, or the length of time a child remains at a stage, particularly Stages 2 and 3. This is important if external support services intervention is delayed as already commented on.

SENAC comments also on an issue regarding children with dyslexia and literacy difficulties. SENAC is concerned about the additional layer of criteria applied for access to Stage 3 provision. This stage is crucial for children with literacy difficulties as often the

expertise is not available in the school and access to Outreach and the Literacy Support Services is the only way a child's needs will be met. They are concerned that the explicit additional layer of criteria for access to Stage 3 provision means the process to Stage 4 becomes more inaccessible.

SENAC is concerned that children from the travelling communities and pre-school children may be more negatively impacted as there may be less opportunity to collect and gather evidence required to meet the 'provisional criteria'.

SENAC however welcomes the initiatives and strategies referred to in the draft EQIA in relation to these groups of children to address this and recognise that this is also a concern in terms of gathering evidence from assessments, individual education plans etc., within the current criteria under the Code.

SENAC welcomes any further discussion and involvement of parents within the EQIA process and beyond and would be delighted to support such initiatives and facilitate any further engagement with parent groups.

### **National Association of Head Teachers (NI)**

NAHT welcomes the establishment of common criteria for initiating statutory assessments for SEN across the five Education and Library Boards.

NAHT concerns do not lie with the criteria; rather it is in their operational practice with which they have grave concerns e.g.

Assumptions that the Revised Curriculum in P1 and P2 negates the need for early intervention by Educational Psychologists are unfounded and will lead to the stalling of the statementing process for many children.

The unavailability of adequate psychology support for nursery settings is also well documented by NAHT members.

NAHT (NI) has generally supported the inclusion process as it has developed in Northern Ireland but is increasingly concerned that, in their view, it is being done 'on the cheap'. Inclusion should not be a means to reduce expenditure and indeed requires additional support in mainstream classrooms to be effective.

### **Children's Law Centre (CLC)**

The Children's Law Centre broadly welcomes the aims of the proposed policy but is of the view that the specific content of the proposed policy has the potential to have a significant negative adverse impact upon equality of opportunity.

CLC outline below what they consider to be the main adverse effects and suggest the types of approaches that could be employed to mitigate these negative effects.

The CLC considers that there is significant adverse impact upon children and young people/persons with a disability and persons with dependents (who are the legal rights holders regarding SENDIST hearings). It is also the case that due to well documented barriers to learning that there will be a significant adverse impact based on race (in particular upon the Irish Traveller community), due to the fact that there is a disproportionate incidence of children with a special educational need and/or disability.

Also it is the view of CLC that the policy proposals fail to introduce sufficient or any positive measures to promote access to equality of opportunity.

CLC views the policy as a policy for regulating distribution of resources within the special education system in a climate where this system is under-resourced. The policy effectively sets specific explicit criteria for access to those resources. It is therefore impossible to assess the impact of this policy upon equality of opportunity under Section 75 of the Northern Ireland Act without taking into account how the explicit criteria impact upon the distribution of resources.

It is the CLC view that a failure to consider resourcing has resulted and will result in a significant adverse impact upon children and young people whose special educational needs have not been or will not be met in a timely manner or at all. This policy cannot properly have been assessed for equality impact in the absence of clear information about the impact of the changes on the costing and budgeting for special educational provision.

The proposed policy, according to statistical analysis, would result in 12.2% less statements. This in itself is a significant adverse impact given the lifelong implications for children and young people who are denied appropriate support as a result of the contents of the provisional criteria.

CLC would have further doubts about the validity of the sampling process due to the fact that the categories of learning difficulty within which the majority of sampled pupils fell and who under the new policy, as compared with the previous Board policies, would lose the right to a statement (as stated on page 18 of the consultation document), is not reflective of the categories upon which they receive queries on a daily basis.

For example, a large proportion of CLC queries relate to social, emotional and behavioural difficulties and specific learning difficulty which is in direct contrast to the findings from the audit sample. Therefore, CLC believe it is likely that the statistical analysis cannot be relied upon to measure the full adverse impact of the proposed policy.

The sampling statistics are skewed in favour of “primary need” and do not reflect the true adverse equality impact of the policy proposals. This is very likely to be the reason for the lack of correlation of the statistical analysis within the proposals with the general observations of the Children’s Law Centre relating to the categories of children who are suffering adverse impact as a direct result of the policy proposal.

The policy proposal that primary need should be recorded places too much emphasis on the artificial concept of “primary need” for schools and for Boards who are trying to administer the policy on a practical level. Undue emphasis on primary need is one of the causes which CLC have observed for refusal of an assessment or statement, despite the fact that within the provisional criteria there is a separate category of “complex interaction of needs”.

The proposed policy should not be used as a tool to start a more subtle process of reducing the number of statements, particularly when the infrastructure is not currently in place to delegate responsibility to schools to provide support for children with special educational needs.

CLC acknowledges that changes are desirable at the moment to remove the inequalities caused by the Boards’ inconsistent application of the 1996 Order and the CoP.

CLC state that it is imperative, in the interest of promoting equal opportunities for the affected Section 75 groups, that unlawful criteria, which are entirely outside the remit of the statutory framework set out, inter alia, in the 1996 Order and SENDO and which are at odds with the spirit of that legislation, are not adopted by the Boards within the proposed policy. For example, the specific, highly damaging criterion which requires children to fall within the bottom 2% of the population in order to access assessment should be removed. It has no basis in statute, no basis in fact and no basis in evidence. It has been derived from the Warnock Report of 1978 and does not relate to the school population in Northern Ireland today. Evidence from DE statistics (for 2008/2009 in the *DENI Statistical Press Release of 26/2/09*), shows that the current level of children who require a statement is at 4.1%. Further it is recognised by the Department that there has been a 50% increase in SEN since 2000.

### **CLC's General Concerns regarding the Conduct of the Draft EQIA**

It is the view of CLC that this consultation on the EQIA is an afterthought rather than a true impact assessment as the policy has in fact been established and implemented for at least one full year to date. This, they state, is evidenced in their daily workload by accounts from parents and schools. It is also made very clear in the minutes of the 13<sup>th</sup> meeting of the North Eastern Primary Principals' Association on 13/10/09 (available on NEELB website) where it is stated that "*Chief Executives gave approval for the implementation of Provisional Criteria and Good Practice Guidelines from September 2009*".

It is stated in the consultation document at page 29 that a major training initiative on applying the "provisional" criteria was rolled out in September 2009 before any consultation took place. This is strong evidence that the requirements of Section 75 cannot be met by this policy as it has been firmly embedded in schools throughout Northern Ireland one year in advance of this consultation on equality impact.

Further it is clear from the introduction to the provisional criteria that the only stated reason they are labelled "provisional" is to cater for legislative amendment which may arise from the SEN and Inclusion review whereas in the introduction to this consultation at page 5 it is stated that they are provisional "*in the event of the EQIA indicating and unexpected adverse impact on any of the Section 75 categories*". It is clear that no regard has been given to equality of opportunity in relation to implementation of this far reaching policy on education.

The significant adverse impacts evidenced at Children's Law Centre since the commencement of the application of the provisional criteria to date include, inter alia:

1. Reduction of available classroom assistance for a wide range of children
2. Removal of classroom assistance from a wide range of children
3. Increases in the number of refusals of statutory assessment
4. Refusal to provide a statement after assessment
5. Increased complexity required for access to assessment and access to statements
6. Cases which would previously have resulted in a statement and clearly warrant a statement are now resulting in a refusal to assess or a refusal to make a statement
7. Reduction in legally enforceable rights
8. Reduction in transport provision being made for children with SEN

9. Reduction in EOTAS provision being made for children with SEN who are out of school for prolonged periods

### **Failure to consult with children and young people**

The ECNI Guidance states that,

*“Consultation should also include those directly affected by the policy to be assessed, whether or not they have a personal interest.”<sup>1</sup>*

CLC therefore wish to request information and details of any direct consultation on, *“The Draft EQIA of the Provisional Criteria for Initiating Statutory Assessments and for Making Statements of Special Educational Need”* which the Boards have undertaken with children and young people as part of this consultation exercise. CLC would specifically request confirmation of the numbers of children and young people consulted, including a breakdown of the numbers of children from each of the Section 75 groups consulted with and the extent of that consultation. CLC would also welcome copies of any child accessible consultation documents used to undertake this consultation.

### **No participation in development of policy by those who will be affected by it**

It is the opinion of CLC that organisations, parents, children and young people and those in general who will be affected by this policy have not been given adequate opportunity to participate in the development of this policy.

The fact that this policy has already been in use for one year is a clear indicator of the fact that little or no regard has been given to the views of those directly affected i.e. the most vulnerable children and young people in our society and their parents who are legal rights holders in SENDIST appeals. The deadline for the pre-consultation responses was Friday 27<sup>th</sup> November 2009. The deadline for the SEN and Inclusion Review responses to DE was Monday 30<sup>th</sup> November 2009. If hundreds of responses were made to the DE consultation on SEN and Inclusion within the same timeframe as this pre-consultation was issued, can the information considered in this draft EQIA be considered to be fully informed and reliable? CLC would suggest the answer is “no”, given the context and timing of the pre-consultation process.

---

<sup>1</sup> Annex 1, 5.1

## **The Boards' stated aims in making this policy are:**

1. To make explicit the ways in which the five Boards apply the guidance from the Code of Practice (CoP);
2. Under Article 4 of "the 1996 Order" to align the criteria with existing guidance provided in Appendix A of the CoP;
3. To provide an explicit and common set of SEN criteria to be consistently applied across all Board areas;
4. To cross reference the terms used in Appendix A of the CoP together with DE's new set of terms as outlined in "Areas of Special Educational Needs – Recording Children with Special Educational Needs".

There are a number of concerns which CLC would wish to raise about the aims of the policy.

Firstly, the guidance in the CoP is intended to operate with a degree of flexibility to fit a multitude of practical scenarios. Many of the children affected by the CoP have complex needs which cannot easily be categorised. There is an inherent danger of creating an adverse impact in terms of equality, if assessing and making statements for children becomes overly formulaic or quantitative in approach due to the wide range of qualitative issues which naturally arise when dealing with the "needs" of such children.

As recognised by the Boards in the aims, one of the difficulties with the running of the current system has been a lack of co-ordination between the five Boards who have all invented their own sets of specific sub-criteria.

These in some respects are entirely outside the parameters and guidelines set by the legislation and the CoP and go some way to indicating the difficulties caused when more and more criteria are added to the system.

For example, additional stages outside the CoP have been created and applied by Boards to lengthen the process, with the effect of delaying the initiation of statutory assessment at Stage 4 and stretching available budgets by avoiding the cost implications of making provision under a statement i.e. example, the addition of Stage 3(a), Stage 3(b) and Stage 3(c). This in the experience of CLC has resulted in considerable delay for many children in accessing the services they are entitled to and goes entirely against the principle of early intervention and equality of access to education.

This short-term cost-saving approach is ultimately more costly to the children and to the education system in the medium to long term.

CLC believe there is a high risk that the provisional criteria are too detailed and are not user friendly or easily understood by parents, schools or interested parties in general. It is of great concern that some of these criteria, created and applied by the Boards to date, which do not currently have any statutory basis and do not provide a level playing field for equal access to special educational provision appear to have made their way into the provisional criteria.

For example, a child with a specific learning difficulty must be performing in the bottom 2% of the population. There appears to be no evidential basis for setting the boundary at 2% and in fact DE statistics show that over 4% of children have a statement of special

educational need. CLC would recommend an immediate review of this policy to accurately reflect the true level of need within the school population.

It is the view of CLC that the current proposed criteria have the potential to add further bureaucracy and delay into the system and to have a major adverse impact upon equal access to education for children with special educational needs and/or disability.

Thus the first aim of the policy, which is sound, may be entirely defeated. CLC would encourage the Boards to consider taking steps to mitigate this adverse impact and ensure that the policy results in clear, consistent pathways throughout the process of application of fair, equitable criteria by the Boards.

Secondly, the CoP does not actually lack clarity. Rather the Boards' use of the necessary inbuilt flexibility in the CoP, in their endeavours to meet seemingly unrealistic budgetary requirements, has resulted in a proliferation of unlawful barriers to the statementing process at Stages 4 and 5.

The Boards rightly seek to ensure that the process is applied more evenly by ensuring all five Boards apply the same criteria in an effort to ensure equality of provision for all children in Northern Ireland. While this general approach is to be welcomed, it is the view of CLC that the proposed criteria appear to be drafted in the spirit of putting the need to safeguard resources ahead of the legal requirement to prioritise provision according to the needs of children.

It is essential, in the safeguarding of the equal rights of all children to access their education, that legal accountability for application of the criteria governing the initiation of statutory assessment and the making of statements, is built firmly upon the established legal principle that decisions should be driven by the needs of the child rather than the availability of resources so that children can access the special educational provision that they actually need.

It is the view of the Children's Law Centre that the criteria are not based on the needs of the child but are resource-driven.

CLC's grave concern about the significant adverse impact of this policy in terms of the creation of bureaucratic barriers to the right of the most vulnerable children in our society to access their education is compounded, in their view, by the juxtaposition of this policy change with the proposed changes in the recent SEN and Inclusion Review. Via this policy, the entire statementing process will be eroded by a process of delegation of responsibility from Boards to schools with a high level of risk that the legal right of parents to access the SENDIST to challenge decisions at Stages 4 and 5 will be very significantly diminished. CLC's views on the SEN and Inclusion policy proposals are fully explained in their response to that consultation which is published on the NI Assembly website at:

([http://niassembly.gov.uk/education/2007mandate/SEN/stakeholder\\_responses.htm](http://niassembly.gov.uk/education/2007mandate/SEN/stakeholder_responses.htm))

If the decision maker cannot effectively be held to account by a child or his/her parent, the system will continue to operate with a high degree of procedural unfairness marked by uneven distribution of resources. This goes against the principle enshrined in s.75 that such policies should promote equality of opportunity.

CLC believe that the details of the provisional criteria are too prescriptive in nature as well as introducing an unreasonable level of detail and complexity into the decision making

process. The very exercise of attempting to create a list of 7 or 8 categories of need illustrates this problem, particularly when one is faced with a factual scenario presented by a parent. It is extremely difficult to navigate the provisional criteria as well as the exceptions which have been drafted to try and ameliorate the difficulties associated with trying to apply these to an actual child. It is simply not possible, from an equal opportunities point of view, to comprehensively define the needs of all children into 7 or 8 categories. It is entirely artificial and unwieldy and is very likely to lead to injustice.

It is the Children's Law Centre's opinion that proper, consistent application of the current law and the guidance contained in the CoP would be most desirable for the production of equal opportunities for all.

## **Policy Outcomes**

The Children's Law Centre disagrees with some of the stated outcomes/success indicators listed on pages 6 and 7 of the consultation document. Firstly, "a common and equitable approach in the assessment of SEN across the five Boards" is very likely in our view to create inequality, as a "common" approach is not necessarily an "equitable" approach.

In CLC's experience, when even one Board tries to apply a criterion in the same way to all children with a special need or disability there is a danger of exclusion of children who are entitled to assistance and also the danger that a failure to make reasonable adjustments, as required under the Disability Discrimination Act and SENDO, shall occur. Positive action is required by Section 75 where equal access will not deliver equality of opportunity for those groups in society who are disadvantaged and require additional help and support to enjoy equality of opportunity. The criteria have to be sound from an equality perspective in the first instance for the desired outcome to have a realistic prospect of achievement.

On a related point it is true to state that *"...even the most elaborate and comprehensive system for conferring and protecting the rights of the individual is unlikely to be fully effective unless, as a last resort, the individual has access to practical means of exercising and, if necessary, enforcing those rights"*<sup>2</sup> In other words appropriate checks and balances by way of appeal rights or informal systems of independent adjudication need to be built in to the criteria so that parents in particular, who are currently rights holders for their children with special educational needs and/or disability can intervene at an early stage if they feel their child may be experiencing inequality in the application of the criteria.

Further, in relation to the outcome regarding a reduction in inappropriate referrals by schools, it is CLC's experience that referrals from schools tend to be appropriate as they know the child and deal with him/her every day. CLC would be interested to know on what information this statement about inappropriate referrals is based and whether there are any appropriate statistics to evidence this? CLC should be grateful to receive any information or documentation supporting the statement regarding inappropriate referrals.

## **How Could Adverse Impacts be Reduced or Eliminated?**

It is the view of CLC that the proposed policy could be used to promote equality of opportunity by meeting the four aims stated therein. However as currently drafted, the provisional policy enshrines and therefore perpetuates the existing significant level of

---

<sup>2</sup> Page 5, *Advocacy* Angela O'Rawe, Tara Caul and Paschal McKeown

negative adverse impact upon children and young people with special educational need and/or disability, contrary to the statistical analysis presented in this draft EQIA.

The mitigating factors outlined on page 42 of the consultation document, whilst very welcome, are rather belated given the current live status of the policy within all schools in Northern Ireland. Parental inclusion and involvement via an outreach initiative will not go far enough to remedy the defects in the policy proposal, which should have been founded on the fundamental principle, stated at paragraph 1.6 of the CoP that partnership with parents is vital.

The following are some suggestions about how the adverse impact could be alleviated and CLC are happy to discuss these further if this would be of assistance to the department in meeting its Section 75 obligations.

- Maintain the flexibility of the “significant and/or complex test” set out in the CoP which is in line with the 1996 Order, and so that it is applied to individuals on a case by case basis using professional judgment and discretion, rather than trying to make it into a “one size fits all” formula. This test should be read literally, in a non-technical fashion and should not contain either implied or explicit qualifications. The 2% precondition which is used to limit the meaning of “significant and/or complex” as a criteria to access assessment access should be removed as it is an unlawful attempt to defeat the intention of the legislature. It is particularly discriminatory against certain categories of SEN where a child might function academically above 2% while exhibiting a range of other very relevant, qualitatively significant, complex needs.
- Any disputes about the application of the “significant and/or complex” test could be made the subject of a time-limited two week non-binding independent adjudication process (see below).
- Children’s Law Centre would recommend the introduction of a time-limited independent adjudication process, as used in Scotland and which could be on a statutory footing, as part of a move to introduce further parental input where there is a dispute about application of the criteria. This would be an excellent tool for ensuring due regard for equality of opportunity as parental concerns can be dealt with fairly and quickly and the adverse effects of the policy proposal could be minimized. A two week time limit is used in Scotland and non-binding recommendations are persuasive and conducive to settlement without appeal.
- Removal of the emphasis on identifying and measuring a child’s primary need in isolation from other needs.
- Build more discretion into the decision making process.
- Full transparency to parents and schools re. decision making process.
- Introduction of the “structured conversation” with parents – a pioneering pilot programme as part of the “*Achievement for All*” policy of department of Children, Schools and Families in England (arising from the Lamb Enquiry) which could have a transformative effect on parent/school relations by ensuring effective participation of parents within all aspects of the process of providing for SEN – see: [downloads.nationalstrategies.co.uk/s3.amazonaws.com/pdf/cebffd55ffc3897f78fcd6deaf59b3](https://downloads.nationalstrategies.co.uk/s3.amazonaws.com/pdf/cebffd55ffc3897f78fcd6deaf59b3)
- Measures to stop and where appropriate reverse the erosion of statutory rights of appeal.

- Maintenance of right of appeal for parents/children at the stage where assessment is refused.
- Remedial action re failure to consult with children and young people.
- Remedial action re failure to consultation with parents.
- All children and young people do not have a shared life experience and positive discrimination and pro-active government policies are required to enable these groups of children and young people to experience equality of opportunity. Positive action is required by Section 75 where equal access will not deliver equality of opportunity for those groups in society who are disadvantaged and require additional help and support to enjoy equality of opportunity. Examples of where positive action will be necessary with regard to these policy proposals include with regard to Traveller children and looked after children who have much higher rates of SEN than children who are not within the Section 75 groupings.

### **Due Regard**

As stated on page 27 of the Equality Commission's Revised Guidance on Section 75 duties, "*having 'due regard'...means that the weight given to the need to promote equality of opportunity...is proportionate to the relevance of the particular duty to any function of a public authority*".

Children and young people who have special educational needs and disability face significant barriers to education (and to societal inclusion in general). Given the particular relevance of the concept of equality of opportunity in relation to the function of ensuring effective education for all, it is the opinion of CLC that the Boards, in discharging the statutory duty to give DUE regard to the impact on S75 groups, will be obliged to attach SIGNIFICANT weight to the need to promote equality of opportunity to improve policy, practice and service delivery within the education system.

The proposed policy will not ensure due regard to the need to promote equality of opportunity through consistent application of criteria for access to special educational resources unless it is linked to positive action.

## Disability Action

Disability Action has welcomed the opportunity to respond to this draft and to aid their response has put the relevant page/paragraph of the draft in brackets at the end of their comments.

### Specific Commentary

- 1 Disability Action would ask the Education and Library Boards to provide them with details of the level of accessibility of its website and whether or not it meets current European Standards.
- 2 Disability Action welcomes the offer of alternative formats, however requests the ELB's to list the range available e.g. large print, audio cassette, Braille, computer disc etc. (Page 3) (See previous/current consultations)
- 3 Disability Action is concerned by the composition of the working group established to review the criteria. Disability Action believes that membership should have been extended to schools, the voluntary/community sector and other relevant stakeholders. (Item 1, Page 5)
- 4 Disability Action has concerns regarding the omission of Autistic Spectrum Disorder from the eight areas of SEN listed. Disability Action would request the ELB's to add Autistic Spectrum Disorder as a separate category.  
  
Disability Action believes that the difficulties encompassed by ASD include social and emotional behavioural difficulties, speech and language difficulties and possibly learning difficulties which makes it more complex in nature to accommodate within a speech and language bracket. (Item 3, Point 2, Page 6)
- 5 Additionally, to the comments at paragraph 9 above Disability Action is concerned that the moderating rating procedures are not clarified under the complex interaction of SEN. (Item 3, Point 3, Page 6)
- 6 Disability Action welcomes the specific opportunity for parents to apply for statutory assessment under the pre-school guidelines. (Item 3, Point 4, Page 6)
- 7 Regarding the SEN descriptors please refer to paragraph 9 above. (Item 4, Page 7)
- 8 Regarding the relevance of marital status Disability Action believes that the ELB's must contact Friends organisation to identify their concerns. (Item 5, Page 8)
- 9 In relation to consideration of resources and available data Disability Action believes that the onus is on ELB's to gather the information in regard to the GTCNI comments. Disability Action would advise that no evidence does not mean no impact indeed Disability Action would advocate the opposite. (Item 5, Page 9)
- 10 Disability Action would question the significance of a "majority view" when only 5 organisations responded. (Item 5, Page 10)
- 11 In relation to the SEN pupil audit whilst welcoming the audit Disability Action is greatly concerned that the total sample size included only those pupils assessed during 1 January 06 – 31 August 06.

Disability Action believes that children with disabilities who are struggling to get a primary statement assessment in particular children with ASD, should have been included within this strategy to determine an accurate sample. (Item 6, Point 2, Page 11)

- 12 To be provided with an accurate picture regarding minimum number of cases on which data was collected Disability Action seeks clarity as to whether the ELB's weighted the various SEN categories. (Item 6, Point 4, Page 11)
- 13 Disability Action is unclear as to whether the ELB's rationale regarding the inclusion of SEN areas resulted in the expected outcome. Disability Action requires further information to enable informed comment. (Item 6, Point 5, Page 11)
- 14 Regarding previous and provisional criteria Disability Action requires further information on the ELB's sampled group to enable informed comment. (Item 6, Point 6, Page 12)
- 15 Disability Action is very concerned that a disability category question was not part of the information sought within the audit. This omission renders this element of the EQIA process open to question in regard to disability. (Item 6, Page 12)
- 16 Regarding disability, Disability Action is very concerned with the ELB's acceptance of the ECNI quote "...there is an extremely limited amount of data available on educational outcomes and the terminology of existing data sets is ambivalent".

Disability Action believes that given this statement the ELB's should have carried out other methods to gather qualitative information to inform this EQIA and the mitigation element.

Again, Disability Action also queries the over emphasis on children who have received medical assessments. (Disability, Pages 13-14)

- 17 Regarding consideration of data and given its comments above Disability Action seeks clarity on the significant level in regard to race/ethnicity in Tables 5, 6, 7, 8 to enable informed comment to be made. Again, the SEN register only encompasses those pupils who have had a formal assessment. (Race, Page 16)
- 18 Regarding the speech and language category Disability Action refers the ELB's to paragraph 9 above and its response to the pre EQIA consultation document, November 2009. (Comment, Page 24)
- 19 Regarding post primary pupils Disability Action would question the ELB's rationale for choosing Stages 3 and 4 given that they are the smallest numeric category. (Table 20, Page 26)
- 20 Regarding multi agency support teams Disability Action is very concerned at the lack of an appeal mechanism should children fail to receive a satisfactory level of support. (Bullet, 2, Page 9)

- 21 Disability Action welcomes the new initiatives and developments to assist in supporting pupils with social, emotional or behavioural difficulties at the earlier stages. (Bullet 5, Page 29)
- 22 Regarding the school consultations Disability Action believes that the questions address only the structure of the guidance and not the content and omissions. (Item 8, Pages 30-33)
- 23 Disability Action strongly disagrees with the ELB's conclusions regarding question 4. In agreement with the school Disability Action has also expressed concerns previously regarding funding, training and access to support and does not believe that these issues cannot be separated from the policy and the necessary implementations. (In response to question 4, Page 32)
- 24 Disability Action has concerns with the ELB's interpretation regarding the 'don't know' (23%) option and therefore requires more information to enable informed comment to be made. (Equality Impacts Identified, Pages 32-33)
- 25 Disability Action welcomes the planned further and fuller exploration of data however requests information on how and when this will be carried out in practice is requested. (Item 9, Page 38)
- 26 Disability Action welcomes the ELB's consideration to add a parental views criterion B in all SEN categories. (Item 9, Page 36)
- 27 Disability Action, given its comments above, welcomes the statement that children with recognised disabilities both with and without SENs will be reviewed however requires information on how and when this will be completed.
- 28 Additionally, Disability Action hopes that this review takes cognisance of and mainstreams the positive social model of disability.

**EQIA: CRITERIA FOR INITIATING STATUTORY ASSESSMENTS OF SPECIAL EDUCATIONAL NEEDS AND FOR MAKING STATEMENTS OF SPECIAL EDUCATIONAL NEEDS ACTION PLAN**

ACTION PLAN POINT	KEY ACTIONS REQUIRED	FOR ACTION BY	OUTCOME REQUIRED	TIMETABLE FOR COMPLETION	REPORT DATES
1	<p><b>Monitoring of Referrals</b></p> <ul style="list-style-type: none"> <li>▪ All referrals from schools will be monitored using the Pro Forma “Education and Library Boards’ Special Educational Needs Criteria Data Collection”</li> <li>▪ An annual review of the data will be conducted</li> <li>▪ Findings will be documented in the Boards’ Annual Review of its Equality Scheme.</li> </ul>	<p>All schools and Educational Psychology Services across the 5 Boards</p> <p>5-Board Group constituted by the Assistant Senior Education Officers</p> <p>Equality Sections of Education and Library Boards</p>	<p>Pro Forma data will be collated for all Stage 3 referrals providing detailed pupil profile information for Equality Monitoring</p> <p>Regional analysis of impact of provisional criteria including any adverse impact across all monitored categories with particular attention to those who do not meet provisional criteria enabling Education and Library Boards to take preventative/ remedial action if required</p> <p>All stakeholders and interested parties will be provided with regular accurate and up-to-date information on equality impact of provisional regional criteria.</p>	<p>Ongoing basis</p> <p>Annually</p> <p>Annually</p>	<p>Quarterly</p> <p>Annually (April 11- March 12)</p>

ACTION PLAN POINT	KEY ACTIONS REQUIRED	FOR ACTION BY	OUTCOME REQUIRED	TIMETABLE FOR COMPLETION	REPORT DATES
2	<p><b>Parental Inclusion and Involvement</b></p> <ul style="list-style-type: none"> <li>▪ An outreach initiative to parents and families will be put in place</li> <li>▪ Review of Good Practice Guidelines to consider any amendments and/or additions necessary</li> </ul>	<p>5-Board Educational Psychology Services/Special Education Services</p> <p>Educational Psychology Services/Special Education Services</p>	<p>Increased inclusion opportunities for participation and accessibility to information will be provided for parents of children where Statutory Assessment is being considered</p> <p>Inclusion of parental opinion will be explicitly added to each section in the event of any updated publication of Good Practice Guidelines</p>	<p>September 11 onwards</p> <p>March 12</p>	<p>Quarterly</p> <p>Annually (April 11- March 12)</p>
3	<p><b>Pupil Consultation</b></p> <ul style="list-style-type: none"> <li>▪ 5 Boards will consider appropriate mechanisms to consult specifically with children and young people in relation to operation of the provisional criteria</li> </ul>	<p>Pupil Personal Development Service/ Special Education Services</p>	<p>A consultation exercise with children and young people will take place across the 5 Boards and findings will be published in the EQIA Annual Report</p>	<p>September 11 - March 12</p>	<p>Quarterly</p> <p>Annually (April 11- March 12)</p>

ACTION PLAN POINT	KEY ACTIONS REQUIRED	FOR ACTION BY	OUTCOME REQUIRED	TIMETABLE FOR COMPLETION	REPORT DATES
4	<p><b>Irish Traveller Children</b></p> <ul style="list-style-type: none"> <li>▪ An outreach initiative to Traveller families will seek to address issues raised by the Traveller Community in relation to provisional criteria</li> </ul>	5-Board Traveller Education Services	Increased inclusion and opportunities for participation will be provided to Traveller families	September 11 onwards	<p>Quarterly</p> <p>Annually (April 11 – March 12)</p>
5	<p><b>Newcomer Children</b></p> <ul style="list-style-type: none"> <li>▪ An outreach initiative to Newcomer families will seek to address issues raised by Newcomer Community in relation to provisional criteria</li> </ul>	Educational Psychology Services/Special Education Services/ Inclusion and Diversity Service	Increased inclusion and opportunities for participation will be provided to Newcomer families	September 11 onwards	<p>Quarterly</p> <p>Annually (April 11 – March 12)</p>
6	<p><b>Children with Recognised Disabilities</b></p> <ul style="list-style-type: none"> <li>▪ Children with recognised disabilities will be reviewed</li> </ul>	Educational Psychology Services/Special Education Services/ other Statutory Services as appropriate	Increased inclusion and opportunities for participation will be provided to Children with Recognised Disabilities	September 11 onwards	<p>Quarterly</p> <p>Annually (April 11- March 12)</p>

ACTION PLAN POINT	KEY ACTIONS REQUIRED	FOR ACTION BY	OUTCOME REQUIRED	TIMETABLE FOR COMPLETION	REPORT DATES
7	<p><b>Pre-School Children</b></p> <ul style="list-style-type: none"> <li>▪ All referrals for pre-school children will be monitored using the Pro Forma “Education and Library Boards’ Special Educational Needs Criteria Data Collection”</li> <li>▪ An annual review of the data will be conducted</li> <li>▪ Findings will be documented in the Boards’ Annual Review of its Equality Scheme</li> </ul>	<p>All Nursery settings and Educational Psychology Services</p> <p>SEN/Equality Sections of Education and Library Boards</p>	<p>Pro Forma data will be collated for all Stage 3 referrals providing detailed pupil profile information for Equality Monitoring</p> <p>Regional analysis of impact of provisional criteria including any adverse impact across all monitored categories with particular attention to those who do not meet provisional criteria enabling Education and Library Boards to take preventative/ remedial action if required.</p> <p>All stakeholders and interested parties will be provided with regular accurate and up-to-date information on equality impact of provisional regional criteria.</p>	<p>Ongoing basis</p> <p>March 12</p> <p>Annually</p>	<p>Quarterly</p> <p>Annually (April 11- March 12)</p>

ACTION PLAN POINT	KEY ACTIONS REQUIRED	FOR ACTION BY	OUTCOME REQUIRED	TIMETABLE FOR COMPLETION	REPORT DATES
8	<p><b>Religion</b></p> <ul style="list-style-type: none"> <li>▪ Data on religion will be monitored using the Pro Forma “Education and Library Boards’ Special Educational Needs Criteria Data Collection”</li> <li>▪ An annual review of the data will be conducted</li> <li>▪ Findings will be documented in the Boards’ Annual Review of its Equality Scheme</li> </ul>	<p>All schools and Educational Psychology Services/Special Education Services/Equality Sections of Education and Library Boards</p> <p>5-Board Group constituted by the Assistant Senior Education Officers</p> <p>Equality Sections of Education and Library Boards</p>	<p>Pro Forma data will be collated for all Stage 3 referrals providing detailed pupil profile information on religion for Equality Monitoring</p> <p>Regional analysis of impact of provisional criteria including any adverse impact across all monitored categories with particular attention to those who do not meet provisional criteria enabling Education and Library Boards to take preventative/ remedial action if required</p> <p>Pro Forma data will be collated for all Stage 3 referrals providing detailed pupil profile information for Equality Monitoring</p>	<p>Ongoing basis</p> <p>Annually</p> <p>Annually</p>	<p>Quarterly</p> <p>Annually (April 11- March 12)</p>

ACTION PLAN POINT	KEY ACTIONS REQUIRED	FOR ACTION BY	OUTCOME REQUIRED	TIMETABLE FOR COMPLETION	REPORT DATES
9	<p><b>Autistic Spectrum Disorder (ASD) Criteria</b></p> <ul style="list-style-type: none"> <li>▪ Consideration will be given to the development of specific criteria for Autistic Spectrum Disorder</li> </ul>	5-Board Inter-board ASD Group/Educational Psychology Services/Special Education Services	5-Board decision regarding need for ASD specific criteria based on analysis of data and impact assessment	June 2012	Quarterly  Annually (April 11-March 12)
10	<p><b>'User Friendly' Documentation</b></p> <ul style="list-style-type: none"> <li>▪ Consideration will be given to the feasibility of producing a 'user friendly' Guide for Parents on the provisional criteria and how they are applied</li> </ul>	5-Board Group constituted by the Assistant Senior Education Officers	Production of a guidance document for parents if feasible	June 2012	Quarterly  Annually (April 11-March 12)