

# SPECIAL EDUCATIONAL NEEDS AND DISABILITY (NORTHERN IRELAND) ORDER 2005

S.I. 2005 1117

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## EXPLANATORY MEMORANDUM

### COMMENTARY ON ARTICLES

#### Part I – Special Educational Needs

##### *Articles 3 to 12 and Schedules 1 and 2*

##### *Article 3: Education in ordinary schools of children with special educational needs*

14. This Article replaces the existing Article 7 of the 1996 Education Order and strengthens the right to an ordinary school place for children with SEN. This seeks to enable greater inclusion and safeguard the efficient education of all pupils.
15. The new Article 7(2) ensures that pupils with SEN but without a statement are educated in ordinary schools. The new Article 7(3) ensures that pupils with SEN and a statement are educated in ordinary schools unless this would be incompatible with parental choice or with the provision of efficient education for other children. This means a Board does not have to provide an ordinary place where parents do not want one. In practice, incompatibility with the efficient education of others is likely to be where pupils present severe challenging behaviour that would significantly disrupt the learning of other pupils or place their safety at risk.
16. New Article 7A(1) sets out the exceptional circumstances in which a child with SEN but without a statement can be educated at a special school. This is if they are being assessed for a statement, or their circumstances have changed suddenly and the Board of Governors, parents, the Board and (when the child is admitted for an assessment) those providing advice agree.
17. [Article 7A\(1\)\(b\)](#) provides that regulations can prescribe circumstances in which a child admitted for the purpose of assessment can remain in a special school after the assessment is carried out.
18. [Article 7A\(2\)](#) ensures that the requirement to educate children with SEN in ordinary schools in Article 7 does not affect the parent's right to express a preference for a grant-aided school (paragraph 5 of Schedule 2) or the provision of special education otherwise than in a grant-aided school (Article 10) in the statement.
19. [Article 7A\(3\)](#) makes it clear that if the Board do not name the parent's choice of grant-aided school in a statement their choice of school is governed by the provision of Article 7(3).
20. [Articles 7A\(4\)](#) and [\(5\)](#) further strengthen the right to an ordinary place by requiring a school, in order to demonstrate that inclusion would be incompatible with the efficient

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education of other children, to show that there are no reasonable steps they could take to prevent the inclusion of a child with a statement from having that effect.

21. [Article 7A\(6\)](#) means that if the Board has named a grant-aided school in a statement the school cannot subsequently rely on the exception in Article 7(3)(b).
22. [Article 7A\(7\)](#) requires Boards of Governors of schools and Boards to heed guidance about Article 7 and Article 7A provided by the Department of Education.

***Article 4: Advice and information for parents***

23. This Article amends the Education (Northern Ireland) Order 1996 by inserting a new Article 21A to place a duty on Boards to make arrangements for providing information on SEN matters to parents of children in their area who have SEN. The new duty does not mean that Boards will have to provide the services themselves they might decide to contract with a provider from the voluntary sector. In making these arrangements Boards must heed guidance issued by the Department of Education.
24. The revised SEN Code of Practice will give guidance on this service. Boards must publicise to parents and schools in their area the fact that the services are available and must inform other interested parties.

***Article 5: Resolution of disputes***

25. This Article amends the 1996 Order by inserting a new Article 21B and provides an additional means of resolving disagreements between parents and Boards and/or Boards of Governors of grant-aided schools.
26. Boards are required to appoint an independent person (who is not part of the school or Board decision-making process) to facilitate the avoidance or resolution of disputes. Boards must take heed of any guidance issued by the Department of Education when making these arrangements.
27. Boards must ensure that parents and schools in their area are made aware of the dispute prevention and resolution arrangements. Boards must also inform such other interested parties as they deem appropriate. Parents who take advantage of these new arrangements will not lose any existing legal rights to lodge an appeal with the SENDIST.

***Article 7: Appeal against content of statement***

28. This Article amends Article 18 of the 1996 Order, giving parents a right of appeal to the Tribunal when a statement of SEN is made, amended, or when a Board determines not to amend the statement following an assessment. This appeal can be against the Board's description of the child's SEN, the SEN provision specified in the statement (including the school named; or if no school is named, that fact).

***Article 8: Unopposed appeals***

29. This Article amends the 1996 Order by inserting a new Article 18A which applies where a Board decides to concede to a parent who has appealed to the SENDIST.
30. Certain types of appeals are to be treated as determined in favour of the parent where the Board has notified the SENDIST that they are conceding. Where an appeal is treated as determined in favour of the parent, Boards will be required to meet the parents' wishes within a period to be set out in regulations. This applies to appeals against a decision by the Board:
  - Not to make a statement of SEN (under Article 17 of the 1996 Order); or
  - Not to make a reassessment of SEN where the child already has a statement (under Article 20 or 20A of the 1996 Order); or

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- Not to substitute a school named in a statement for a different school named by the parents (under paragraph 11(3) of Schedule 2 of the 1996 Order).
31. Appeals against the contents of statements (under Article 18 of the 1996 Order) and appeals against a decision to cease to maintain a statement (under Schedule 2 of the 1996 Order) have been excluded. This is because in these types of appeal, where the statement could be amended in a number of ways, deciding the appeal without a hearing is not always suitable. These types of appeal, where the Board does not contest them, will go to a hearing at which the parent, but not the Board, will be able to attend.

***Article 9: Duty to inform parents where special educational provision made***

32. This Article requires the Board of Governors of grant-aided schools (including nursery schools) to inform parents of children without statements of SEN that special educational provision is being made for their child because it is considered that he has SEN.

***Article 10: Review or assessment of special educational needs at request of responsible body***

33. This Article gives grant-aided schools, (including nursery schools) and independent schools the formal right to ask the Board to carry out a statutory assessment or re-assessment of a registered pupil at the school, in cases where no such assessment or re-assessment has taken place within the previous six months.
34. It places a duty on the Board to decide whether to make an assessment or re-assessment in response to a request from a school and to send a notice to the parent informing them that a request from the school has been made; of the procedure to be followed when making an assessment; the name of an officer of the Board who can provide further information, and of their right to make representations and provide written comments within a specified period.
35. Should the Board decide to assess the child's educational needs, Article 20A(7) requires them to notify the child's parent and the school which made the request. If they decide not to make an assessment, they are required to notify the parent and school of that decision, and the reasons for it under Article 20A(8). They also have to inform the parent of his right to appeal to the SENDIST, and give him any further information as required by regulations.

***Article 11: Duty to specify named school in statement***

36. This Article means the Board does not have to name a school in a child's statement of SEN where the child's parents have made suitable arrangements (typically by paying for a place at an independent school). This potentially frees that place to be taken up by another child.

***Article 12: Statements of Special Educational Needs and Schedule 1: Schedule substituted for Schedule 2 to the 1996 Order***

37. This Article give parents the right to a meeting with the Board when it proposes to amend their child's statement; and to express a preference for a grant-aided school. It requires Boards to send copies of the proposed statement to grant-aided schools that the Board is considering naming in a child's statement, and to other Boards if those schools are in their areas.
38. Paragraph 11 provides for regulations to be made prescribing the time within which the Board must inform a parent of his right to appeal against the refusal to substitute a grant-aided school named in a statement.

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39. Paragraphs 12 and 13 of the new Schedule 2 oblige the Board to continue to maintain a child's statement until the outcome of any appeal against its proposal to cease to maintain that statement is known.

***Article 44 and Schedule 5: Minor and consequential amendments***

40. This Schedule allows the department to make regulations to prescribe the period within which Boards must provide parents with information about their right of appeal against a decision not to make a statement of SEN for their child (Article 17) or not to comply with a request from a parent to make an assessment or re-assessment (Article 20); and about time limits for serving notices under Articles 17 and 20.