
STATUTORY INSTRUMENTS

2005 No. 1117

**The Special Educational Needs and
Disability (Northern Ireland) Order 2005**

PART II

SPECIAL EDUCATIONAL NEEDS

Education in ordinary schools

Education in ordinary schools of children with special educational needs

3.—(1) In the 1996 Order for Article 7 substitute—

“Duty to educate children with special educational needs in ordinary schools

7.—(1) This Article applies to a child with special educational needs who should be educated in a grant-aided school.

(2) If no statement is maintained under Article 16 for the child, he shall be educated in an ordinary school.

(3) If a statement is maintained under Article 16 for the child, he shall be educated in an ordinary school unless that is incompatible with—

- (a) the wishes of his parent, or
- (b) the provision of efficient education for other children.

Education otherwise than in ordinary schools

7A.—(1) Article 7(2) does not require a child to be educated in an ordinary school during any period in which—

- (a) he is admitted to a special school for the purposes of an assessment under Article 15 of his educational needs and his admission to that school is with the agreement of—
 - (i) the board;
 - (ii) the Board of Governors of the school;
 - (iii) his parent; and
 - (iv) any person whose advice is to be sought in accordance with regulations made under paragraph 2 of Schedule 1;
- (b) he remains admitted to a special school, in prescribed circumstances, following an assessment under Article 15 at that school;
- (c) he is admitted to a special school, following a change in his circumstances, with the agreement of—
 - (i) the board;

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- (ii) the Board of Governors of the school; and
 - (iii) his parent.
- (2) Article 7 does not affect the operation of—
- (a) Article 10; or
 - (b) paragraph 5 of Schedule 2.
- (3) If a board decides—
- (a) to make a statement for a child under Article 16, but
 - (b) not to name in the statement the school for which a parent has expressed a preference under paragraph 5 of Schedule 2,
- it shall, in making the statement, comply with Article 7(3).
- (4) A board may, in relation to its ordinary controlled schools taken as a whole, rely on the exception in Article 7(3)(b) only if it shows that there are no reasonable steps that it could take to prevent the incompatibility.
- (5) A board or a Board of Governors may, in relation to a particular ordinary school, rely on the exception in Article 7(3)(b) only if it shows that there are no reasonable steps that either of them could take to prevent the incompatibility.
- (6) The exception in Article 7(3)(b) does not permit a Board of Governors to fail to comply with the duty imposed by Article 16(5)(b).
- (7) Boards and Boards of Governors of grant-aided schools shall have regard to guidance about Article 7 and this Article issued by the Department.
- (8) That guidance shall, in particular, relate to steps which may, or may not, be regarded as reasonable for the purposes of paragraphs (4) and (5).” .

General duties of boards

Advice and information for parents

4. In the 1996 Order, after Article 21 insert—

“General duties of boards

Advice and information for parents

- 21A.**—(1) A board shall arrange for the parent of any child in its area with special educational needs to be provided with advice and information about matters relating to those needs.
- (2) In making the arrangements, the board shall have regard to any guidance given by the Department.
- (3) The board shall take such steps as it considers appropriate for making the services provided under paragraph (1) known to—
- (a) the parents of children in its area;
 - (b) the principals and Boards of Governors of grant-aided schools in its area;
 - (c) the principals and proprietors of independent schools in its area; and
 - (d) such other persons as it considers appropriate.”

Resolution of disputes

5. In the 1996 Order after Article 21A insert—

“Resolution of disputes

21B.—(1) A board shall make arrangements with a view to avoiding or resolving disagreements between boards or Boards of Governors of grant-aided schools (on the one hand) and parents of children in its area (on the other) about the exercise by boards or Boards of Governors of functions under this Part.

(2) A board shall also make arrangements with a view to avoiding or resolving, in each relevant school, disagreements between the parents of a child who is a registered pupil at the school and has special educational needs and the Board of Governors or proprietor of the school about the special educational provision made for that child.

(3) In paragraph (2) “relevant school” means—

- (a) a grant-aided school;
- (b) an independent school which is named in the statement maintained for the child under Article 16.

(4) The arrangements under paragraphs (1) and (2) shall provide for the appointment of independent persons with the function of facilitating the avoidance or resolution of such disagreements.

(5) In making the arrangements, the board shall have regard to any guidance given by the Department.

(6) The board shall take such steps as it considers appropriate for making the arrangements made under paragraphs (1) and (2) known to—

- (a) the parents of children in its area;
- (b) the principals and Boards of Governors of grant-aided schools in its area;
- (c) the principals and proprietors of independent schools in its area; and
- (d) such other persons as it considers appropriate.

(7) The arrangements do not affect the entitlement of a parent to appeal to the Tribunal.”.

Compliance with orders of Tribunal

6. In the 1996 Order after Article 23 insert—

“Compliance with orders

23A. If the Tribunal makes an order, the board concerned must comply with the order before the end of the prescribed period beginning with the date on which it is made.”.

Appeals

Appeal against content of statement

7.—(1) Article 18 of the 1996 Order (appeal against content of statement) is amended as follows.

(2) For paragraphs (1) and (2)—

“(1) The parent of a child for whom a board maintains a statement under Article 16 may appeal to the Tribunal—

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- (a) when the statement is first made,
- (b) if an amendment is made to the statement, or
- (c) if, after conducting an assessment under Article 15, the board determines not to amend the statement.

(1A) An appeal under this Article may be against any of the following—

- (a) the description in the statement of the board's assessment of the child's special educational needs,
- (b) the special educational provision specified in the statement (including the name of a school so specified),
- (c) if no school is specified in the statement, that fact.

(2) Paragraph (1)(b) does not apply where the amendment is made in pursuance of—

- (a) paragraph 11 (change of named school at request of parent) or 13(4)(b) (amendment ordered by Tribunal) of Schedule 2; or
- (b) directions under paragraph 2 of Schedule 13 to the 1986 Order (revocation of school attendance order);

and paragraph (1)(c) does not apply to a determination made following the service of notice under paragraph 3 (amendment by board) of Schedule 2.”.

(3) In paragraph (4)(a) for “paragraph 3” substitute “ paragraph 5 ”.

Unopposed appeals

8. In the 1996 Order after Article 18 insert—

“Unopposed appeals

18A.—(1) This Article applies if—

- (a) the parent of a child has appealed to the Tribunal under Article 17, 20 or 20A or paragraph 11(3) of Schedule 2 against a decision of a board, and
- (b) the board notifies the Tribunal that it has determined that it will not, or will no longer, oppose the appeal.

(2) The appeal is to be treated as having been determined in favour of the appellant.

(3) If an appeal is treated as determined in favour of the appellant as a result of paragraph (2), the Tribunal is not required to make any order.

(4) Before the end of the prescribed period, the board shall—

- (a) in the case of an appeal under Article 17, make a statement under Article 16 of the child's educational needs,
- (b) in the case of an appeal under Article 20 or 20A, make an assessment of the child's educational needs,
- (c) in the case of an appeal under paragraph 11(3) of Schedule 2 against a determination of the board not to comply with the parent's request, comply with the request.

(5) A board required by paragraph (4)(a) to make a statement under Article 16 shall maintain the statement under that Article.”.

Identification and assessment of educational needs

Duty to inform parent where special educational provision made

9. In the 1996 Order after Article 8 insert—

“Duty to inform parent where special educational provision made

8A. If—

- (a) a child for whom no statement is maintained under Article 16 is a registered pupil at an ordinary grant-aided school;
- (b) special educational provision is made for him at the school because it is considered that he has special educational needs; and
- (c) his parent has not previously been informed under this Article of special educational provision made for him at the school,

the Board of Governors of the school shall inform the child's parent that special educational provision is being made for him at the school because it is considered that he has special educational needs.”

Review or assessment of educational needs at request of responsible body

10. After Article 20 of the 1996 Order insert—

“Review or assessment of educational needs at request of responsible body

20A.—(1) This Article applies if—

- (a) a child is a registered pupil at a school (whether or not he is a child in respect of whom a statement is maintained under Article 16),
- (b) the responsible body asks the board to arrange for an assessment to be made in respect of him under Article 15, and
- (c) such an assessment has not been made within the period of six months ending with the date on which the request is made.

(2) If it is necessary for the board to make an assessment or further assessment under Article 15, it shall comply with the request.

(3) Before deciding whether to comply with the request, the board shall serve on the child's parent a notice informing him—

- (a) that it is considering whether to make an assessment of the child's educational needs,
- (b) of the procedure to be followed in making the assessment,
- (c) of the name of an officer of the board from whom further information may be obtained, and
- (d) of the parent's right to make representations, and submit written evidence, to the board before the end of the period specified in the notice (“the specified period”).

(4) The specified period shall not be less than 29 days beginning with the date on which the notice is served.

(5) The board may not decide whether to comply with the request until the specified period has expired.

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(6) The board shall take into account any representations made, and any evidence submitted, to it in response to the notice under paragraph (3).

(7) If, as a result of this Article, a board decides to make an assessment under Article 15, it shall give written notice to the child's parent and to the responsible body which made the request, of the decision and of the board's reasons for making it.

(8) If, after serving a notice under paragraph (3), the board decides not to assess the educational needs of the child—

- (a) it shall give written notice of the decision and of the board's reasons for making it to his parent and to the responsible body which made the request, and
- (b) the parent may appeal to the Tribunal against the decision.

(9) A notice given under paragraph (8)(a) to the child's parent shall—

- (a) inform the parent of his right to appeal, and
- (b) contain such other information (if any) as may be prescribed.

(10) On an appeal under paragraph (8) the Tribunal may—

- (a) dismiss it, or
- (b) order the board to arrange for an assessment to be made in respect of the child under Article 15.

(11) In this Article “the responsible body” means—

- (a) in relation to a grant-aided school, the Board of Governors,
- (b) in relation to an independent school, the proprietor.” .

Duty to specify named school in statement

11. In Article 16 of the 1996 Order (statement of special educational needs), after paragraph (4) insert—

“(4A) Paragraph (4)(b) does not require the name of a school or institution to be specified if the child's parent has made suitable arrangements for the special educational provision specified in the statement to be made for the child.” .

Statements of special educational needs

Statements of special educational needs

12. For Schedule 2 to the 1986 Order (making and maintenance of statements under Article 16) substitute the Schedule set out in Schedule 1 to this Order.

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