

The draft Special Education Needs (SEN) Regulations 202X

A Summary Guide for Parents and Young People

INTRODUCTION

What are regulations?

Regulations are rules made by a government or another authority to ensure people apply the law correctly.

Why do we need new regulations?

Following agreement from the NI Assembly, the Department of Education (DE) has been developing a new Special Educational Needs (SEN) Framework - ('the Framework').

The Framework has 3 parts:

- the Special Educational Needs and Disability Act (Northern Ireland) 2016 ('the 2016 Act');
- a new Code of Practice; and
- new **SEN Regulations**.

The Regulations are part of the SEN Framework that will change the way support is given to children and young people with special educational needs.

This document is a summary of the new Regulations that will replace the Education (Special Educational Needs) Regulations (Northern Ireland) 2005, that are being used now.

There are 52 regulations divided into 9 Parts. This summary explains what the new law will mean for everyone who works with or looks after children and young people with special educational needs, including:

- The Education Authority (EA)
- Schools
- Principals
- Boards of Governors (BoGs)
- Parents
- Children and Young people
- Health and Social Care Trusts (HSC Trusts)

Part I - GENERAL

Regulations 1 & 2

These Regulations give the name of the new legislation.

They also list important words used in the new law and what they mean.

PART II – EDUCATION AUTHORITY PLAN OF ARRANGEMENTS FOR SPECIAL EDUCATION PROVISION

Regulations 3 & 4

The new law states that the EA has a duty to prepare a plan setting out the special education provision it intends to make for children and young people with special educational needs.

Regulations 3 & 4 are about the format of this plan and what it should have in it. The EA needs to consider and make decisions about:

- What type of support is needed for children and young people with special educational needs?
- What training is needed for staff working with children and young people with special educational needs?
- What resources are needed to provide the support needed?
- Who is going to provide it?
- How is it going to be provided?
- When will it happen?

The EA is required to provide information on the evidence it has considered to write its plan including how it sought the views of parents, young people and other relevant professionals.

This plan is to be reviewed by the EA every year.

PART III – BOARDS OF GOVERNORS

Regulations 5 to 8 inclusive

Regulations 5 to 8 set out the new duties of Boards of Governors (BoGs) in ordinary schools and special schools.

If the EA is making special educational provision for a child and that child is absent from school for more than 4 weeks, BoGs must contact the EA and tell them the first date of absence and the date the child returns to school.

In particular, these regulations list responsibilities relating to the learning support co-ordinator (LSC). This is the new name for the current special educational needs co-ordinator (SENCO). BoGs are required to make sure that all learning support co-

ordinators are given enough time and training so that they can do their job properly. They should also be allowed to provide BoGs with regular information about special educational needs matters.

PART IV – ASSESSMENTS

Regulations 9 to 16 inclusive

Some children, who are receiving additional special educational provision from the school or from the school and the EA, may make less progress than expected. In these cases, a Statutory Assessment ('assessment') of a child's special educational needs may be required. These regulations also apply if a request is made for a re-assessment.

Application or referral

The EA may receive a request from a parent, a young person (if they are aged between 16 and 19 years), or a school. Or sometimes the EA will start the assessment process itself based on advice it has received from a Health and Social Care Trust and sometimes from the EA's educational psychology service. Once a request has been received, the EA must let the applicant know that their request is being considered.

Advice and information

The EA has a legal duty to consider every request and if necessary make an assessment. However, it should be noted that, even if the EA decides to make an assessment, it does not mean that a Statement of special educational needs ('Statement') will be made.

This part of the Regulations sets out what the EA must look at when they are considering and/or making an assessment including:

- what advice and information the EA should look at;
- who the EA should seek advice and information from; and
- when the advice and information should be received.

Timeframes

When the EA receives a request for an assessment, the law states it has to complete each stage of the process within a certain time. This section of the Regulations details the important legal timeframes in which the Education Authority is required to:

- consider and decide if an assessment is needed;
- complete an assessment, if one is needed;
- issue a proposed Statement, if having completed an assessment, the EA decide that a Statement is necessary; and
- issue a completed Statement.

However, sometimes for reasons outside their control, the EA may not be able to meet the timeframes. These regulations set out those reasons, (called exceptions), that

may stop the EA from meeting the timeframes. For example, exceptional circumstances affecting the child or advice is needed from the child's school but the school is closed. They also set out what the new timeframes are, if exceptions apply, including a new upper time limit, within which the EA must complete an assessment, based on the advice it has at that point in time. The new upper time limit is new.

A table at **ANNEX A** at the end of this document is a short summary showing the number of weeks the EA has to complete the assessment and statementing process, including if there are exceptions.

PART V – STATEMENTS

Regulations 17 to 22 inclusive

When an assessment has been completed, in some cases but not all, it may be necessary for the EA to make a Statement of special educational needs ('Statement').

Regulations 17 to 22 set out:

- what a Statement should look like;
- what information should be in it;
- what happens when a Statement is reviewed; and
- what happens if a child is at transition stage¹.

Format of Statement

A Statement is a document that details a child's special educational needs and the special educational provision (or support), required to help them reach their expected outcomes. It should state if this is a child's first Statement or if it is an amended one. It must be signed and dated by someone in the EA. The Statement contains seven parts and Schedule 2, at the back of the Regulations, details what should be included in each section.

Annual Review of a Statement

If a child has a Statement, the EA are required to review this at least once every year. This is known as the 'periodic review or 'annual review'. This is to make sure that the support in place for the child is working. This part of the Regulations sets out what the EA and schools are to do to make sure the review process takes place.

The EA writes to the school in September and gives a date for the school to provide a report on the child's progress during that year. If necessary, the school will arrange a meeting beforehand to discuss. Sometimes a meeting is not necessary but there should always be one:

- during each key stage in the child's education (see **ANNEX B**);
- during the year a child turns 14;

¹ Transition stage starts during the year a child turns 14. A transition plan is made preparing the child for the move from childhood to adulthood.

- if the child is preparing to transfer to another school or ;
- if the EA, parent or young person asks for one.

If a meeting is needed, the principal of the school will ask relevant people to attend, including the parent and/or the young person.

The principal will complete the report based on the advice and information received from the parent, young person, teaching staff and any other person he thinks appropriate. The report is then sent to the EA to consider. After listening to everyone's views the EA is required to make a decision on whether the Statement:

- **stays the same;**
- **is changed; or**
- **is stopped.**

First Transition Plan

Regulations 17 – 22 also cover what happens when a child with a Statement is about to turn 14. During that year, a first transition plan shall be prepared by the school. The transition plan helps a child move from childhood into adulthood and make plans for their future.

There should always be a meeting to inform the plan. Health and social care and careers representatives will always be asked to attend a meeting to discuss what should be in the first transition plan. The transition planning meeting should take place at the same time as any annual review meeting and include the report completed by the school principal following the annual review of a child's Statement. Once complete, the first transition plan is approved by a person in the EA. The transition plan will be reviewed annually.

PART VI – CHILDREN OVER COMPULSORY SCHOOL AGE

Regulations 23 to 33 inclusive

Under the new law, young people with special educational needs have new rights. They can make their own decisions about the support they need. To help them do this they can ask a parent, a solicitor or a friend to help them.

Assistance and support

Regulations 23 to 33 explain who young people can appoint to help them and what type of assistance and support they may need help with, to make sure they can exercise their new rights. This may be for example:

- helping with legal advice and representation;
- helping to understand documents;
- helping to complete forms; attending meetings with the young person or on their behalf;
- helping them provide their views; or

- accepting documents on the young person’s behalf.

The EA has a duty to respect and be mindful of any appointment made by the young person and recognise the assistance and support being given to them.

Lacking capacity

If there is any doubt about a young person’s ability to make decisions and a question is raised with the EA, the EA is required to find out if the young person ‘has capacity’ to understand. Young people should be provided with all necessary support to help them understand before the EA makes a decision on capacity.

These regulations explain what the EA should consider in this regard and gives what is meant by ‘lacks capacity’ and ‘unable to make a decision’.

If the EA make a decision that a young person does lack capacity and is unable to exercise his legal rights, an alternative person, (who must be age 18 or over), or a parent can act on the young person’s behalf. This section of the Regulations sets out what they must consider and do, to make sure that any actions taken are in the best interests of the child.

PART VII – MEDIATION AND APPEALS

Regulations 34 to 40 inclusive

Mediation is new. It can be used in certain cases where the EA issue a decision that has a right of appeal to the Special Educational Needs and Disability Tribunal (‘Tribunal’). It aims to provide parents and young people with an informal way of resolving disputes so that they do not need to go to the Tribunal.

However, even though some decisions carry a right of appeal to the Tribunal, it should be noted that some cannot be the subject of mediation. The table at **ANNEX C** gives a list of appealable decisions and states if mediation can be used.

Regulations 34 – 40 explain what the EA must do if a person can and wishes to, pursue mediation.

When the EA issue a decision, they must tell the parent or young person what they can do if they disagree with that decision. It must include information about:

- the contact details of a mediation adviser;
- the timescales to ask for mediation;
- the timescales to appeal; and
- ask what issues are in dispute.

Timescales

This section gives details of the timescales as mentioned above. If they are considering mediation or an appeal to the Tribunal, the parent or young person must

contact a mediation adviser within a specific number of weeks. The mediation adviser will explain how mediation works and the parent or young person can now decide if this is the route they wish to go. They do not have to confirm with the mediation adviser if they wish to pursue mediation (or not pursue, as the case may be) at this stage.

Once contact has been made, the mediation adviser is required to issue a mediation certificate to the parent or young person within 2 days.

Mediation Meeting

If a parent or young person wants mediation, the mediation adviser will arrange a meeting, again within certain timescales, between the interested parties. An independent mediator, who must not work for the EA, will attend the meeting and a representative of the EA must attend as well. The mediation meeting is a way for all parties to discuss the issues and hopefully find a way forward which is in the best interests of the child. If an agreement can be reached, the mediator will record this in writing and share with the parties within 3 days of the meeting.

Appeals

If a parent or young person does not wish to go to mediation or, following mediation issues still cannot be agreed, the parent or young person can appeal to the Tribunal. However, anyone wishing to appeal to the Tribunal must have obtained a mediation certificate (subject to exceptions – see Annex C), from the mediation adviser beforehand.

It should be noted that:

- mediation is only an option if the EA decision carries a right of appeal;
- a mediation adviser cannot arrange mediation if a parent or young person does not make contact on time;
- a mediation adviser cannot issue a mediation certificate if a parent or young person does not make contact on time; and
- a person cannot appeal to the Tribunal if they do not have a mediation certificate (subject to exceptions – see Annex C).

PART VIII – COMPLIANCE WITH TRIBUNAL ORDERS AND UNOPPOSED APPEALS

Regulations 41 to 42 inclusive

If a parent or young person decides to appeal, the Tribunal will make a decision once it has listened to evidence from all parties concerned.

Regulations 41 and 42 refer to a table called Schedule 3 in the Regulations. This table sets out the timescales that the EA must:

- comply with any decision made by the Tribunal: or
- take action, if the EA no longer opposes the appeal.

PART IX – REVOCATIONS AND TRANSITIONAL ARRANGEMENTS

Regulations 43 to 52 inclusive

Regulations 43 to 52 set out

- the name of the law that is being replaced i.e. the Education (Special Educational Needs) Regulations (Northern Ireland) 2005;
- what the EA must do in the meantime while changes are being made; and
- the timeframes it must adhere to while changes are being made.

Timeframes for EA to complete Assessment and Statementing Process

What has the EA to do?	When has it to do it?	When has it to do it if exceptions apply?	What is the maximum <u>upper timeframe</u> the EA has to comply?
EA has to consider and decide if an assessment is needed	Within 4 weeks (from the date request received)	Within 6 weeks (from the date request received if exceptions apply)	N/A
The Regulations for these timeframes are →	Regulation 14(4)	Regulation 15(2)	-
EA has to complete an assessment (if one is needed)	Within 8 weeks (from deciding that an assessment is needed)	Within 12 weeks (from deciding that an assessment is needed if exceptions apply)	Within 14 weeks (from deciding that an assessment is needed based on the advice and information available to them at this point in time)
The regulations for these timeframes are →	Regulation 14(8)	Regulation 15(6)	Regulation 15(12)
EA has to issue a proposed Statement (if having completed an assessment, the EA decide that a Statement is necessary)	Within 4 weeks (from completing assessment)	Within 4 weeks (from completing assessment - no exceptions)	Within 4 weeks (from completing assessment - no exceptions)
The regulations for these timeframes are →	Regulation 14(10)	Regulation 14(10)	Regulation 14(10)
EA has to issue a completed Statement	Within 6 weeks (from date of issue of proposed Statement)	Within 10 weeks (from date of issue of proposed Statement, if exceptions apply)	Within 10 weeks (from date of issue of proposed Statement, if exceptions apply)
The regulations for these timeframes are →	Regulation 14(15)	Regulation 15(15)	Regulation 15(15)

Key Stages in the NI Curriculum

Foundation Stage	Year1
	Year 2
Key Stage 1	Year 3
	Year 4
Key Stage 2	Year 5
	Year 6
	Year 7
Key Stage 3	Year 8
	Year 9
	Year 10
Key Stage 4	Year 11
	Year 12

Section 2 of The Education (Northern Ireland) Order 2006 defines the above key stages of the curriculum for pupils of compulsory school age.

There is no key stage for pupils over compulsory school age (Years 13 & 14) but these years are usually referred to as Post-16.

Mediation, Mediation Certificates and Appealable Decisions

EA Decision	Mediation can be used	Right of appeal to the Tribunal	Mediation certificate needed
➤ The EA decides not carry out a statutory assessment following a request from a parent, young person or school	Yes	Yes	Yes
➤ The EA decides not to make a Statement (including for those children who are under 2 years of age).	Yes	Yes	Yes
➤ The EA's decision on the content of a Statement (when a Statement is first made or at the annual review stage). The content in the Statement that can be appealed is: <ul style="list-style-type: none"> ○ the EA's description of a child's special educational needs in a Statement ○ the special education provision detailed in a Statement ○ if a request (from a parent or young person), to change the school named in the Statement, is denied ○ the school or other institution named in a Statement ○ the type of school or institution named in a Statement ○ if no school or institution is named in a Statement 	Yes Yes Yes No No No	Yes Yes Yes Yes Yes Yes	Yes Yes Yes No No No
➤ The EA decides not to amend a Statement following the annual review of the Statement.	Yes	Yes	Yes
➤ The EA decides to cease to maintain a statement.	Yes	Yes	Yes