1985 No. 365

EDUCATION

Education (Special Educational Needs) Regulations (Northern Ireland) 1985

Made . . . . . *30th December 1985*

Coming into operation . . . . *1st January 1986*

The Department of Education, in exercise of the powers conferred on it by paragraphs 2(1), 2(3), 6(1) and 6(2) of Schedule 7A(**a**) to the Education and Libraries (Northern Ireland) Order 1972(**b**) and of every other power enabling it in that behalf, hereby makes the following regulations:

Citation and commencement

1. These regulations may be cited as the Education (Special Educational Needs) Regulations (Northern Ireland) 1985 and shall come into operation on 1st January 1986.

Interpretation

2.—(1) In these regulations a reference to representations made, or evidence submitted, by a child's parent is a reference to representations made, or written evidence submitted, under paragraph 1(1)(*d*) of Schedule 7A to the Order except that, where such representations have been made orally, any reference thereto is a reference to a written summary of those representations which the parent has accepted as accurate.

(2) In these regulations "health and social services board" has the same meaning as in the Health and Personal Social Services (Northern Ireland) Order 1972 and any reference to a health and social services board is, in relation to a particular child, a reference to the health and social services board in whose area that child lives.

(3) In these regulations "medical practitioner" has the same meaning as in the Health and Personal Social Services (Northern Ireland) Order 1972.

(4) In these regulations "the Order" means the Education and Libraries (Northern Ireland) Order 1972.

Notice of decision to make an assessment

3. Where under paragraph 1(3)(*a*) of Schedule 7A to the Order a board notifies the parent of a child of its decision to make an assessment it shall send a copy of the notification to the health and social services board.

Advice generally

4.—(1) For the purpose of making an assessment a board shall, in the case of the child concerned, seek—

(*a*) educational advice as provided in regulation 5;

(*b*) medical advice as provided in regulation 6;

(*c*) psychological advice as provided in regulation 7; and

(**a**) Inserted by S.I. 1984/1156 (N.I. 6) Art. 16(2)
(**b**) S.I. 1972/1263 (N.I. 12)

(*d*) any other advice which the board considers desirable in the case in question for the purpose of arriving at a satisfactory assessment,

subject, however, to regulation 12.

(2) The advice sought under paragraph (1) shall be written advice relating to—

(*a*) the educational, medical, psychological or other features of the case (according to the nature of the advice sought) which appear to the board to be relevant to the child's educational needs (including his likely future needs);

(*b*) how those features could affect the child's educational needs; and

(*c*) the provision rendered requisite by those features of the child's case, whether by way of special educational provision or non-educational provision additional thereto requisite if the child is properly to benefit therefrom.

(3) A person from whom advice is sought under paragraph (1) may in connection therewith consult such persons as it appears to him expedient to consult; and he shall consult such persons, if any, as are specified in the particular case by the board as persons who have relevant knowledge of, or information relating to, the child.

(4) When seeking a person's advice under paragraph (1) a board shall furnish him with copies of—

(*a*) any representations made by the parent; and

(*b*) any evidence submitted by, or at the request of, the parent.

Educational advice

5.—(1) The educational advice referred to in regulation 4(1)(*a*) shall, subject to paragraphs (2) and (3), be sought from a qualified teacher being—

(*a*) the principal of a school which the child has attended at some time within the preceding 18 months, or

(*b*) if advice cannot be obtained as aforesaid (because the child has not attended a school or otherwise), a person whom the board is satisfied has experience of teaching children with special educational needs or knowledge of the differing provisions which may be called for in different cases to meet these needs.

(2) The advice sought of a principal as provided in paragraph (1)(*a*) shall, if the principal has not himself taught the child within the preceding 18 months, be advice given after consultation with a teacher who has so taught the child.

(3) Where it appears to the board, in consequence of medical advice or otherwise, that the child in question is—

(*a*) deaf or has a significant hearing impairment, or

(*b*) blind or has a significant visual impairment,

and the person from whom advice is sought as provided in paragraph (1)(*a*) or (*b*) is not qualified to teach deaf or, as the case may be, blind pupils, then the advice sought shall be advice given after consultation with a person who is so qualified.

(4) In this regulation—

(*a*) the expression "qualified teacher" means a teacher who is recognised by the Department of Education as a person qualified to teach in grant-aided schools in Northern Ireland or as a qualified peripatetic or supply teacher;

(*b*) any reference to a person qualified to teach deaf or blind pupils is a reference to a person who is so qualified to be employed in such schools as a teacher of a class for deaf or, as the case may be, blind pupils,

and the provisions as to consultation contained in paragraphs (2) and (3) are without prejudice to each other or those of regulation 4(3).

Medical advice

6. The medical advice referred to in regulation 4(1)(*b*) shall be sought from a fully registered medical practitioner who is either designated for the purposes of this regulation by a health and social services board or is nominated by it in the case in question.

Psychological advice

7.—(1) The psychological advice referred to in regulation 4(1)(*c*) shall be sought—

(*a*) from a person regularly employed by the board as an educational psychologist, or

(*b*) from a person, in the case in question, engaged by the board as an educational psychologist.

(2) The advice sought of a person as provided in paragraph (1) shall, if that person has reason to believe that another psychologist has relevant knowledge of, or information relating to, the child, be advice given after consultation with that other psychologist.

(3) The provisions as to consultation contained in paragraph (2) are without prejudice to those of regulation 4(3).

Matters to be taken into account in making an assessment

8. When making an assessment in the case of a child a board shall take into consideration—

(*a*) any representations made by the child's parent;

(*b*) any evidence submitted by, or at the request of, that parent;

(*c*) the advice obtained in the case under regulation 4; and

(*d*) any information relating to the health or welfare of the child furnished by or on behalf of a health and social services board.

Mandatory reassessment

9. Where a board maintains a statement in respect of a child whose educational needs have not been assessed since before he attained the age of 12 years and 6 months then, within one year from the day on which he attains the age of 13 years and 6 months, the board shall reassess those needs.

Contents and form of statements

10.—(1) A statement of a child's special educational needs, made under Article 25B(1) of the Order, shall also—

(*a*) specify the special educational provision (in terms of facilities and equipment, staffing arrangements, curriculum or otherwise) which the board intends to arrange to meet those needs;

(*b*) without prejudice to the generality of sub-paragraph (*a*), specify either—

(i) the type of school which the board considers would be appropriate for the child and, if it considers that a particular school would be so appropriate, the name of that school, or

(ii) if the board considers it appropriate that the child should be provided with education otherwise than at a school, particulars of the provision which it considers would be appropriate;

(*c*) specify any additional non-educational provision—

(i) which, unless proposed to be made available by the board, it is satisfied will be made available by a health and social services board or some other body, and

(ii) of which, in its opinion, advantage should be taken if the child is properly to benefit from the special educational provision specified under sub-paragraphs (*a*) and (*b*) above, and

(*d*) set out the representations, evidence, advice and information taken into consideration under regulation 8.

(2) A statement shall be in the form set out in the Schedule hereto and shall be authenticated by the signature of a duly authorised officer of the board concerned.

Restriction on disclosure of statements

11.—(1) Subject to the provisions of the Order and of these regulations, a statement in respect of a child shall not be disclosed without the parent's consent except—

(*a*) to persons to whom, in the opinion of the board concerned, the statement should be disclosed in the educational interests of the child;

(*b*) for the purposes of any appeal under paragraph 5(9) of Schedule 7A to the Order;

(*c*) for the purposes of educational research which, in the opinion of the board concerned, may advance the education of children with special educational needs, if, but only if, the person engaged in that research undertakes not to publish anything contained in, or derived from, a statement otherwise than in a form which does not identify any individual concerned including, in particular, the child concerned and his parent;

(*d*) on the order of any court or for the purposes of any criminal proceedings; or

(*e*) for the purposes of any investigation under the Commissioner for Complaints Act (Northern Ireland) 1969(**a**) (investigation of maladministration).

(2) The arrangements for keeping statements shall be such as to ensure, so far as is reasonably practicable, that unauthorised persons do not have access to them.

(3) In this regulation any reference to a statement includes a reference to any representations, evidence, advice or information which is set out therein under regulation 10(1)(*d*).

Children moving from one board area into another

12.—(1) This regulation shall apply where a child in respect of whom a statement is maintained moves from the area of one board (''the old board'') into that of another (''the new board'').

(2) The old board may transfer the statement to the new board and shall do so at the request of that board.

(3) Where the statement has been transferred as aforesaid and—

(*a*) the new board, being of the opinion mentioned in Article 25(2) of the Order, under paragraph 1(1) of Schedule 7A thereto, serves notice on the child's parent that it proposes to make an assessment, and

(*b*) the transferred statement was made within the period of 3 years immediately preceding the date of the notice,

then, with the written agreement of the parent, the educational, medical or psychological advice which the new board is required to seek by regulation 4(1) may be sought from the old board instead of as provided in regulation 5, 6, or 7 and accordingly, in such case, any reference in regulation 4(3) or (4) to a person from whom advice is sought shall be construed as a reference to the old board.

(**a**) 1969 c. 25 (N.I.)