

# The State of SEN Statements

Children with Disabilities Strategic Alliance



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# Introduction

Children with Disabilities Strategic Alliance (CDSA) believes in an education system which addresses barriers to learning experienced by children and young people with a disability; delivers effective special educational needs provision and values children, young people and their parents as partners with schools and education authorities in achieving the best educational outcomes for each child with a disability and/or special educational needs.

“He is just a different child, so happy, enjoying school again”  
Parent comments after changes to Statement.

CDSA has taken a particular interest in the Department of Education's Review of SEN and Inclusion, having produced an Education Manifesto and met with the Minister for Education, the Northern Ireland Assembly Education Committee, the Commissioner for Children and Young People in Northern Ireland, the Equality Commission for Northern Ireland, and the Northern Ireland Human Rights Commission to press the case for children with disabilities



and special educational needs (SEN). CDSA is concerned to ensure that children with disabilities and SEN in Northern Ireland can avail of the SEN support and services to which they are entitled.

In our experience CDSA members have dealt with thousands of parents across Northern Ireland who have concerns about the level and type of support available to children with disabilities and SEN.

This paper relates specifically to the needs of children with disabilities and SEN and the educational provision required to meet those needs as detailed in the Statement of Educational Need.

For parents of children with a disability and SEN, the approach to their child's first day at school is bound up with

*“My child is now happily attending school” Parent comments after changes to Statement.*

more than the usual anticipation and excitement of new school bags, pencil cases and a school year full of possibilities. For many, there is also the additional concern about how the school will respond to the very particular needs of their child: will ramps allow access throughout the school, will the promised radio aids be available for their deaf child, will their child require one to one adult assistance, will the promised speech and language support



The principal reason for the production of this report is CDSA's recognition that the statutory process for identification, assessment and provision of services for children with disability and SEN is becoming increasingly operationally deficient,

## CDSA continues to recognise the importance of specification

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and quantification of the support services which the child is to receive in Part 3 of the Statement as being core to guaranteeing the provision of SEN services. It is a matter of considerable concern that imprecise and ambiguous wording in Statements has become the norm over the past number of years to the degree that there is systematic failure to specify and quantify provision. Every stage in the statutory process which results in the production of a Statement, from the request for statutory assessment to the decision to make a Statement and the drafting and finalisation of the wording of that Statement has also become less transparent and more bureaucratic, often resulting

in delay with some parents having to resort to one or more sets of formal legal proceedings to ensure legal compliance with and protection of children's rights.

Members of CDSA have a unique perspective in relation to the writing of Statements across all Education & Library Board (ELB) areas, having been involved with supporting many parents over the last number of years.<sup>1</sup>

Experience of engagement with parents and ELBs, suggests that draft Statements now rarely include sufficiently detailed specification or quantification of services, and, without support, parents may risk agreeing to a legally unenforceable document



CDSA, as a consequence of this recognition, decided to pull together case studies of Statements that were seen to change between the Draft Statement and the Final Statement, or Final Statements that changed as a result of Annual Review or the

commencement of a legal challenge by way of appeal to the Special Educational Needs and Disability Tribunal (SENDIST). The case studies are an indication of the impact that quantification and specification have on the range of services provided to children with disabilities and SEN. However, they also clearly demonstrate the importance of the Statement in terms of upholding the legal rights of the child and providing access to appeal rights and legally enforceable remedies for parents who are unhappy with the provision offered to their child.





# The Issue: Current Practice

The legal entitlement to the education provision set out within a Statement provides an incomparable opportunity to put in place the resources, interventions and specialist support that would not be available to the child without a Statement.

“...our main concern is everything in the Statement is very general and open ended, this concerns us as this is a pivotal opportunity to get the core help that can deliver for my child” Parent.

The Statement is drawn up following a rigorous statutory assessment process which identifies in detail the individual needs of the child. This process is currently completed within 18 weeks and the draft Statement should be informed by the content and detail of all of the reports compiled by the relevant professionals involved with the child.

The comprehensive nature of this statutory process is to ensure that the content of the Statement is accurate, detailed,



In our experience, when drafting Statements all 5 ELBs systematically fail to quantify

The most common practical example of failure to specify is that on the first draft of any Statement in any ELB where adult assistance is to be part of the provision, the wording will read: "access to a level of adult assistance determined by the Board..." Such wording is virtually meaningless in terms of setting out what a child is entitled to

“I received a statement today, I am so grateful for all your help I would not be in this position now if it wasn’t for your help.” Parent comments on help received from SENAC.

# Did You Know?

## The Legal Context

When an ELB decides that a child requires a Statement of Special Educational Needs, it acquires legal responsibility for ensuring that the child receives the provision specified in the statement.

I've always gone to an ordinary school and I was doing really well until they took my physical help away at the beginning of P7. No-one was allowed to help me walk anymore and I ended up sitting in my wheelchair all day at school" Child.

Under **Article 16(3)(b) of the Education (NI) Order 1996**, the ELB has a particular statutory duty to “**specify** the special educational provision to be made” to meet the child’s special educational needs. **Paragraph 1.7 of the Code of Practice<sup>4</sup>** on the Identification and Assessment of Special Educational Needs provides as an “Essential Practice” that statements should be “clear and thorough”. **Paragraph 4.21 of the Code of Practice** provides that statements should “**normally** be specific, detailed

<sup>4</sup> ‘Code of Practice on the Identification and Assessment of Special Educational Needs’ (Department of Education: Operative date 1st September 1998) at Para 4.21



It is also clear from the decision in **Bromley**<sup>6</sup>, that cases where the child's needs dictate that specification on a statement should not include quantification of the

Lady Justice Hale in the case of **IPSEA –v- Secretary of State for Education and Skills**<sup>8</sup> stated that “the statement has to clearly spell out the provision appropriate to meet the particular needs of, and objectives identified for, the individual child. It must be addressed to the needs of the child rather than to the needs of the system....The Code requires precision as a general

8 [2003] EWCA Civ 7 (approved by Morgan J, as he then was, in the case of C, McD & McG, cited above)



"I felt that no-one listened to me and that because I was only a child I was just stuck with what adults decided for me... now I know that my opinion does count after all." Child.

rule, but provides for flexibility where this will best meet the needs of the child...It remains the case that vague statements which do not specify provision appropriate to the identified special educational needs of the child, will not comply with the law".

The ongoing systematic failure to properly specify educational provision hinders the ELBs in carrying out their statutory duties to identify, determine and make provision for children with special educational needs. This prevents children with special educational needs from accessing their legal entitlements and compromises the effectiveness of the Statement.

A lack of quantification can also undermine the protections and rights built into the SEN system for parents to be consulted and their right to appeal to the Special Educational Needs and Disability Tribunal (SENDIST).

When 2 children within the same class have statements, even if they are for quite



It is the ELB's responsibility to determine the type and level of provision required for each individual child, and once this is established any change in provision for that individual child should be made compliantly with all the safeguards built into the legislation, regulations and Departmental guidance. Where unspecified 'packages' are put in place by the ELBs the risk is that such 'packages' of support may be reduced or removed without notice, and therefore without triggering the normal consultation and appeal rights which the system confers on the child's parents. We fundamentally object to this practice.

“There was a lot of hard work and effort by lots of people... legal stuff, lots of letters and meetings and a Tribunal. We even thought we’d have to go to court, but thankfully it’s all been sorted out”.  
Child.

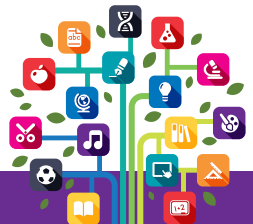




# Child Rights Context

Government is obliged to ensure that children with disabilities and SEN have access to their human rights (including education) on an equal basis to other children, under Article 7 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD). Under Article 24(2) in realising this right, States Parties shall ensure that:

- a. Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
- b. Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
- c. Reasonable accommodation of the individual's requirements is provided;
- d. Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;



- e. Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

In particular, under the UNCRPD, it is clear that legal obligations towards children with a disability extend to education in the widest sense to ensure that they can attain full inclusion, participation and integration within the general education system and within society in a manner

which enables children to reach their full potential.

The case studies that follow demonstrate that a specific, quantified Statement enables many children with disabilities and SEN to successfully attend school and to experience greater inclusion and participation in school activities as they are guaranteed the level and type of provision necessary to meet their individual needs and to facilitate their inclusion within the school community.



# What is Needed

Fundamentally, a Statement of SEN is about **individual need** and creating the conditions and support for learning for **the individual child** within their school alongside ensuring that the child can be included in all aspects of school life.

Effective use of support across the whole class or school is not the purpose of a Statement. Our experience of working with families and children with disabilities and SEN over many years has confirmed to us that a Statement which contains specified and quantified provision is both effective and enforceable, strengthening a child's legal right to an effective education.

CDSA seeks assurance that the legislation and the Code of Practice governing the new framework shall be accompanied by statutory guidance which reinforces the duty to specify and quantify provision. Education authorities should be directed to adhere to legislation and guidance, including the drafting of specified and quantified Statements as part

of the normal operation of the SEN system, without being requested or challenged to do so. There should be no attempt to dilute or remove the requirement to specify and quantify in the revised Code of Practice.

**CDSA calls upon the  
Department of Education to  
issue legislation and a revised  
Code of Practice  
which ensures:**





# Case Studies

The case studies which follow contain examples of the initial vague wording of provision contained within Statements and crucially the modification of terminology to the Statement to include specification and quantification following intervention and challenge from our advisors and advocates on a child's behalf.

Supporting children with disabilities and SEN to receive legally compliant Statements, setting out the specific provision to which they are entitled, is one of the core demands of our member organisations. In almost all cases where specification and quantification are requested from the ELBs, changes are made to the Statement. Improving Statements in this way complies with children's legal rights under the statutory system; it also strengthens the enforceability of the Statement and guarantees the individual provision that enables equality of opportunity for a child to meet their full potential.





<b>ORGANISATION:</b>	Children's Law Centre
<b>TYPE OF STATEMENT:</b>	Final
<b>DISABILITY TYPE:</b>	Cerebral Palsy
<b>TYPE OF CASE STUDY:</b>	No Quantification/ Change following challenge

#### **CASE OUTLINE:**

This case involved a nursery school child who was provided a full time classroom assistant for education purposes and to ensure physical safety. Another child in the class received a statement and the first child had to share his assistance, so that his provision was in fact reduced by 50% without notification to his parents. Neither child had quantified hours of classroom assistance.

#### **HOW THE CHILD WAS AFFECTED:**

The child was unable to access the curriculum or to be included in activities without 1-1 assistance at all times. His health and safety was put at risk at times when he was unsupervised.

#### **DETAIL OF HOW THE STATEMENT WAS CHANGED:**

"Full time 1-1 adult assistance"

#### **HOW THE STATEMENT WAS QUANTIFIED AND SPECIFIED IN FIRST INSTANCE:**

"Access to additional adult assistance determined by the Board..."







#### HOW THE CHILD WAS AFFECTED:

The child was out of school for one year and was unable to access a suitably specialised educational placement to meet her very complex needs arising from autism.

#### DETAIL OF HOW THE STATEMENT WAS CHANGED:

Full time 1-1 classroom assistance; Speech and language therapy one hour per week; Occupational therapy to be provided in school and reviewed at least once per month ; IEP with clear targets and set objectives so that progress is evidence based; 6 weekly multi-professional reviews; Part 4 was amended to provide a placement in a suitable special school.



<b>ORGANISATION:</b>	Children's Law Centre
<b>TYPE OF STATEMENT:</b>	Draft
<b>DISABILITY TYPE:</b>	Autism, OCD & a Neurological Disorder
<b>TYPE OF CASE STUDY:</b>	No Quantification/ Change following challenge

#### **CASE OUTLINE:**

This case involved a 16 year old boy who had been out of school for over a year and was coming to the end of compulsory education with no qualifications despite having ability to gain GCSEs. He was on Stage 3 throughout primary and secondary school and had numerous school placements. He was provided with no education whatsoever for well over one year despite entitlement to home tuition.

#### **HOW THE STATEMENT WAS QUANTIFIED AND SPECIFIED IN FIRST INSTANCE:**

"Access to additional assistance determined by the Board"; access to unnamed "programmes, activities, experiences" to enhance/develop various named skills; "access to advisory support" from the ASD service. No other particular type of assistance specified and none of the provision was quantified.



#### HOW THE CHILD WAS AFFECTED:

The child received no education for over a year. Education Welfare was involved but did not take any action. Home tuition was refused despite legal entitlement. The child's mental health, social development and educational attainments were negatively impacted.

#### DETAIL OF HOW THE STATEMENT WAS CHANGED:

The statement was amended to include a relevant medical diagnosis; to highlight significant difficulty with written tasks and to provide for occupational therapy assessment and input in relation to handwriting, sensory processing and auditory processing issues. Part 3 included access to "assistive technology" and a scribe for all written tasks. Part 3 included "full time 1-1" classroom assistance. Part 4 was amended to provide a placement in a specialist ASD unit.



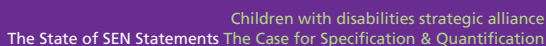
**TYPE OF CASE STUDY:** No Quantification/  
Change following challenge

This case involved a grammar school child with a physical disability who required physical help and physical activity, including physiotherapy, to ensure her ability to maintain posture and prevent discomfort so that she could maintain concentration, preserve mobility and to ensure inclusion and full participation at school. CLC represented the parents and child at a full hearing and a review hearing at SENDIST.

Physiotherapy categorised as non-educational being placed in Parts 5 & 6. Trust Physiotherapist to visit school once, at the start of the school year.

The child's difficulties escalated to the point where she suffered pain and discomfort; she felt no one was listening to her and her grades fell significantly. She became acutely aware of her disability. After her educational provision was properly secured, her grades were significantly improved, in keeping with her academic ability and she was much better enabled to participate at school.

Part 3 of the statement (educational provision) was amended to include a “physical activity programme for one hour per day” at school. This included a floor exercise and stretching programme for two days per week; physiotherapy from a private physiotherapist in school on one day per week and swimming on the other two days of the week.





The child's difficulties escalated to the point where he needed psychiatric care. After his educational provision was properly specified and quantified, his situation improved and he is now doing very well at school.

The addition of 25 hours classroom assistance per week from an assistant trained in ASD; 5 hours supervisory assistance; differentiated curriculum; Occupational Therapy moved out of Part 6 (“Non-Educational Provision”) and specified/quantified as 1-1 sessions with review in “Educational Provision” in Part 3 of the statement; provision of an individualised sensory diet; redesign of the IEP.



**TYPE OF CASE STUDY:** No Quantification

Changed to include the specific reference to 25hrs classroom assistance and regular speech and language therapy.





**TYPE OF CASE STUDY:** No Quantification

**ORGANISATION:** SENAC

**TYPE OF STATEMENT:** Draft

**DISABILITY TYPE:** ADHD/Speech & Language Difficulties

**TYPE OF CASE STUDY:** No Quantification

**CASE OUTLINE:**

Child was not progressing due to her learning difficulties as a result of a complex interaction of needs and was assessed for a statement.

**HOW THE STATEMENT WAS QUANTIFIED AND SPECIFIED IN FIRST INSTANCE:**

No quantification of access to adult assistance.

**HOW THE CHILD WAS AFFECTED:**

Child had difficulty focusing on task and concentrating and was considerably behind peers in learning, speech and language support was inconsistent. Following quantification of provision within the statement progress was evident.

**DETAIL OF HOW THE STATEMENT WAS CHANGED:**

Final statement was changed to 15 hours classroom assistance and speech and language support quantified.







Access to full time adult support throughout the day.

Teacher of the Deaf support -  
time scale of provision and form  
of intervention detailed.

Individual structured speech and language programme included for the first time.



**TYPE OF CASE STUDY:** No Quantification

Bi-lateral Moderate / Severe hearing loss with conductive overlay. Hearing Aids and sign language, significantly delayed speech, expressive speech may be unintelligible to those unfamiliar.

Opportunities to lip read and use sign where appropriate. Access to full time Adult support. Access to Teacher of the Deaf. Daily testing of audiological equipment.



#### HOW THE CHILD WAS AFFECTED:

Child and family using sign language at home and requested Sign Support at school. Parents did not believe that offer of Sign language was sufficient. Also concerned that Teacher of the Deaf hours were not quantified. Parents and child happy with the decision once the statement was changed.

#### DETAIL OF HOW THE STATEMENT WAS CHANGED:

Teacher of the Deaf hours were specified. Sign Language support for the child to be provided in the school, including level of sign language qualification.



**TYPE OF CASE STUDY:** No Quantification



## Notes

[illegible]

## Notes

[illegible]

THE FOLLOWING ORGANISATIONS SUPPORT THIS CALL:





Children with Disabilities Strategic Alliance

**FOR FURTHER INFORMATION ON CDSA PLEASE CONTACT:**

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