

**DRAFT WITNESS STATEMENT OF
NICCY MODULE 2C UK COVID
INQUIRY**

Certificate of Exhibit KY/40 – INQ

Peter Weir
Minister for Education
Department of Education
Rathgael House,
43 Balloo Road,
Rathgill, Bangor
BT19 7PR

By e-mail

17th August 2020

Dear Minister,

**Re: Coronavirus Act 2020 Temporary Modification of Education Duties (No.10)
Notice (Northern Ireland) 2020**

I am writing to you following a further letter from your officials seeking NICCY's advice on the requirement for the Continued Modification of Education Duties, as per the above Notice.

I have made my opposition to the continued modifications clear on repeated occasions, including in my letter of the 7th July in response to the same request. I express my deep disappointment at the renewal of the Temporary Modifications Notice on the 30th July and the fact that this was again made without addressing concerns about the impact on children with SEN. As the school re-opening date draws closer, I am deeply concerned that as a result of the ongoing modifications, significant numbers of children will not have been assessed, not received a school placement, nor have had a review of their statement and therefore the appropriate services may not be available. I reiterate that the Notice must be revoked before schools' re-open and that the full range of services set out in a child's statement must be in place for school re-start. This is ever more imperative as the date for schools' re-opening draws closer.

I also express my frustration at the timing of your Department's request for comment on the requirement for the continued modification of education duties; on both occasions this request was made after the respective Notices (No. 9 and No. 10) came into effect. I also

strongly disagree with the finding in the Equality and Human Rights Screening for Coronavirus Act 2020 Temporary Modification of Education Duties Notice (Northern Ireland) 2020 that the policy has a 'neutral impact' on the children and young people's rights as set out in the UNCRC. For it is apparent that the modification of SEN duties does not protect children and young people's fundamental rights including Protection from Discrimination (article 2); Best Interest as the Paramount Consideration (article 3), Right to have a say (article 12), and Right to Education (articles 28 and 29).

Since issuing my previous letter, I remain concerned that there is still a lack of clarity surrounding 'best endeavours'; that no minimum requirements were, to my knowledge, outlined to the EA, health and social authorities, and schools on the delivery of 'best endeavours', nor has DE established a mechanism for monitoring what has, in fact, been delivered since the Modification Notice came into effect at the start of April. I wish to highlight that, in contrast, the Department of Health has put in place a system to measure the exercising of the Children's Social Care (Coronavirus) (Temporary Modification of Children's Social Care) Regulations (NI) 2020, and that NICCY has seen the detail of the June Monitoring Report. It is highly disappointing that a similar system has not been developed for the temporary modification of SEN duties, nor the detail shared with my office and other stakeholders.

In my previous letter, I emphasised that any assessment of the proportionality and appropriateness of continued modification must comprehensively consider the impacts on children and their families, and the risks to their education, health, and wellbeing as a result of their needs not being met. I am not aware of any such assessment being undertaken, therefore, the true impact of the modifications is still unknown.

All calls that I have previously made still stand and must be addressed as a matter of urgency. This includes clarity on 'best endeavours'; for information on how the negative consequences of the modifications will be addressed e.g. backlog for statutory assessment and statements; and plans for the revocation of the Notice. Once again, I restate my deep opposition to the proposal in the special schools guidance that, on return to school, "the full range of service provision may not be offered as set out in an individual's statement of SEN but will be delivered on a best endeavour duty". The suggestion that children and young people's needs will not be met in accordance with what they are legally entitled to is unconscionable. **The full range of services must be reinstated for schools' reopening. This must not be impacted by a continuation of**

the modifications.

I stress that the utmost priority must now be on ensuring the full resumption of services and fulfilling the statutory obligations to children and young people with SEN.

Please do not hesitate to contact my office if you would like to discuss these matters further.

Yours sincerely

Personal Data

Koulla Yiasouma
Commissioner

CC Derek Baker, Permanent Secretary
NR Director, Inclusion and Wellbeing
NR Special Education Team