

A statement regarding educational provision in  
mainstream school for children with Down  
Syndrome

December 2012



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**Ombudsman for Children**

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**Ombudsman for Children's Office**

Millennium House, 52 – 56 Great Strand Street, Dublin 1, Ireland

## **Part 1 – Introduction**

### **The Ombudsman for Children’s Role and Remit**

1.1 The Ombudsman for Children’s Office provides a statutory independent impartial complaints handling service. The investigatory functions and powers of the Office are set out in Sections 8-16 of the Ombudsman for Children Act 2002. This provides that the Office may investigate the administrative actions of a public body, school or voluntary hospital where, having carried out a preliminary examination, it appears that the action has or may have adversely affected a child and where those actions come within the ambit of Sections 8 (b) or 9 (1) (ii) of the 2002 Act.

1.2 The Office can receive complaints directly from children and young people or any adult on their behalf. The Ombudsman for Children may also initiate an investigation of her own volition where it appears to her, having regard to all the circumstances, that an investigation is warranted.

1.3 The Office aims to carry out investigations and to make recommendations which are fair and constructive for all parties. In the context of an investigation, the Office is neither an advocate for the child nor an adversary to the public body.

1.4 In accordance with Section 6(2) of the Act, the Office is obliged to have regard to the best interests of the child and in so far as practicable, to give due consideration, having regard to the age and understanding of the child, to his or her wishes.

1.5 The principal issues to be addressed through an investigation are:

1. Whether the actions of the public body has, or may have had, an adverse affect on the child involved or other children; and
2. Whether those actions were or may have been:
  - i. taken without the proper authority;
  - ii. taken on irrelevant grounds;
  - iii. the result of negligence or carelessness;
  - iv. based on erroneous or incomplete information;
  - v. improperly discriminatory;
  - vi. based on undesirable administrative practice; or
  - vii. otherwise contrary to fair and sound administration.

### **The Complaints**

1.6 In September 2009 and May 2010, the Office received separate but similar complaints. The complaints were made by two mothers on behalf of two children with Down Syndrome. The complaints related to the education of the children, both of whom were attending mainstream primary schools, and the actions of the Department of Education and Skills (hereafter referred to as the Department) in regard to the decision not to include Down Syndrome as a low incidence disability in Department criteria for resourcing and the implications this has for children with Down Syndrome and their specific educational needs.

1.7 Details of the specific cases are not included for reasons of confidentiality.

### **Explanatory Note:**

1.8 Resource teaching is teaching that is provided to children with special needs in addition to ordinary classroom teaching. It is provided in order to allow children with special needs to achieve their educational potential in a mainstream setting.

1.9 The current system for allocating resource teaching to children with special needs involves the use of categories of special need. The category of special need a child is assessed as belonging within sets the parameters for the additional teaching resource to be allocated in respect of the child. The categories of special need that form the basis of allocation of resource teaching hours in primary schools are set out in Department of Education Circular SP ED 02/05 which was issued for the purpose of providing guidance for mainstream primary schools.

1.10 Under the current system, a child who is assessed as having a mild learning disability may receive resource teaching support from block allocations of resource hours that are made to schools by the Department. The system whereby schools are allocated block hours in order to cater for the needs of children within certain categories of special need is known as the General Allocation Model (GAM). Under the GAM, blocks of resource hours are given to schools at a level that is calculated with reference to the size of the schools and other factors such as gender and socio-economic disadvantage within the school. These block hours are allocated to schools to cater for the needs of children with high incidence special needs. For children assessed as being within other categories of special need, known as low incidence categories of special need, individual allocations of teaching hours are made to schools in respect of the specific child so assessed. Under the arrangements set out in Circular SP ED 02/05, Down Syndrome is not included as a

specific category of special need recognised for the purpose of allocating resource teaching hours to individual children.

1.11 Information from the schools received during the course of the examination and investigation indicated that the children who were the focus of the complaints in this case were both receiving resource teaching hours under GAM at the time the complaints were made. The resource teaching the children were receiving was as a result of having been assessed as being within the mild learning disability category of special need.

1.12 Both complainant mothers contended that the special needs of their children arising from Down Syndrome are quite different from those arising from a mild learning disability. Both mothers asserted that the current system for allocating resource teaching does not take account of the multiplicity of special needs that arise for children with Down Syndrome. Both mothers stated that they felt Down Syndrome should be recognised as a category of special need giving rise to individual allocations of resource teaching hours.

### **The Investigation**

1.13 Having conducted a preliminary examination of the complaints in this case, the Office determined that the actions of the Department in administering provision for the special educational needs of children with Down Syndrome attending mainstream primary schools (a) involved or may have involved one or more of the administrative failings outlined in Section 8 of the Ombudsman for Children Act 2002; and (b) that the actions of the Department in this regard affected or may have affected, in an adverse way, the complainant children or other children with Down Syndrome attending mainstream primary schools. On this basis, a decision was made to conduct an investigation into the actions of the Department in accordance with the statutory mandate of the Ombudsman for Children.

1.14 As part of this investigation the Office utilised powers under Section 10 (1) (a) (ii) of the Ombudsman for Children Act 2002 to carry-out an own volition investigation. The investigation in this regard looked at the adverse affect actions of the Department had or may have had both on the complainant children and on other children with Down Syndrome attending mainstream primary schools.

1.15 This investigation focused on the actions of the Department relating to the administration of provision for the special educational needs of children with Down Syndrome attending mainstream primary schools.

1.16 In the course of the investigation, as well as obtaining information from the complainants, the Office sought information from the Department and held an investigation meeting. The Office also sought information from the schools attended by the children and held separate investigation meetings with them.

1.17 This statement has been prepared in accordance with Section 13 (2) of the Act, which requires the Ombudsman for Children to produce a statement outlining the results of an investigation. In accordance with the Act, this statement is for distribution to the public body under investigation, the complainant, other relevant parties involved in the investigation and any other persons to whom she considers it appropriate to send the statement.

1.18 A copy of the draft statement was sent to the Department of Education and Skills in accordance with Section 13 (6) in order to provide them with an opportunity to consider the findings and representations in relation to same. The response received has been considered and where appropriate amendments or responses have been incorporated into the statement.

### **Findings and Conclusions**

#### **Special Education Review Committee (SERC) and the categories of special need**

2.1 Provision of resource teaching is a key measure whereby the special educational needs of children are addressed in mainstream schools. Resource teaching (also variously referred to as learning support or supplementary teaching) may be provided to children with special needs on a one-to-one basis or within small groups with other children with compatible special needs; and it may occur within the mainstream classroom setting or away from it.

2.2 The current arrangements for determining the level of resource teaching hours to children with special educational needs in mainstream primary schools are based on categories of special need. In allocating resource teaching hours for children with special needs, reference is had to the category of special educational need a particular child is assessed as being within. The categories of special need currently in use are set out in the Department's guidance to primary schools provided under Circular SP ED 02/05.

2.3 In 2002, Department Circular SP ED 08/02 provided for a supplementary *note for professionals* in order to *assist psychologists and other professionals and bring about*

*consistency in approach and equity in allocation of resources.* This note advised professionals that *generally*, in the case of children with an assessed syndrome, where there is a general learning disability, *resource teaching support will be allocated to schools in line with hours allocated to pupils assessed as being within the same IQ band – moderate/severe/ profound general learning disability*". From 2005, under SP ED 01/05 and SP ED 02/05 however it is additionally specified that where a child with an assessed syndrome *has a general learning disability, resource teaching support will be allocated to schools in line with hours allocated to pupils assessed as being within the same IQ band – moderate/severe/ profound general learning disability*" or on the basis of any other low incidence disability.

The Office notes that the word *generally* that allows for the exercise of some flexibility was dropped from the framework that governed the allocation of resources to children with an assessed syndrome in 2005.

The Office further notes this 2005 change coincided with a transfer of functions to the NCSE a body that circular 01/05 states is *required to observe Departmental Policy*. By changing the basis on which support is provided from an approach that initially allowed for a broad consideration of the nature and degree of a child's special education needs to an approach that tied the level of resources allocated to the IQ band in which the child's learning disability places them, the children so affected effectively lost a basis upon which their hours might have been decreed in line with a broad consideration of psychological or other specialist reports and became explicitly confined to receiving hours in line with the IQ level or any other low incidence disability. In this regard, DES advises that the practice was that resources were provided based on the range of disability categorisation to which their level of condition fulfilled i.e. mild, moderate, general learning disability, etc. Successive circulars however, indicate that children of a mild general learning disability with an assessed syndrome, but without another low incidence disability, went from a situation where their needs could have been assessed on the basis of multiple needs to a more limiting consideration of their needs.

### **Department Circular SP ED 02/05 and Introduction of the General Allocation Model (GAM)**

2.4 In 2005 the Department published SP ED Circular 02/05 which concerns the *Organisation of Teaching Resources for Pupils who need Additional support in Mainstream Primary Schools*. It is addressed to Boards of Management, Principal

Teachers, all Teaching Staff in Primary Schools. The Circular opens with a statement of its purpose as follows:

*“The main purpose of this circular is to provide guidance for mainstream primary schools on the deployment and organisation of teaching resources that were allocated recently under the general allocation model. Reference is also made in this circular to the deployment of additional teaching resources that are allocated to schools for the support of individual pupils with low incidence disabilities. (The various categories of low incidence disability are listed in Appendix 1.)”*

2.5 As noted in para 1.10 Department of Education Circular SP ED 02/05 introduces the General Allocation Model (GAM). The introduction of the GAM changed the way resource hours were administered in respect of certain categories of special need. In order to allow schools provide resource teaching to children in high incidence categories of special need, block allocations of teaching hours are now made to their schools by the Department under the GAM. Schools are allocated resources for children assessed as being within a *low incidence* category of special educational need on the basis of individual applications which are administered by the NCSE on behalf of the Department. These teaching hours are received by schools *in addition* to block hours they receive under the GAM and are allocated to schools to cater for the needs of specific individual children who are subject of the application.

2.6 The block allocations of resource teaching hours provided to schools by the Department under the GAM are used to cater (a) for children who are eligible for learning support teaching by virtue of being at or below the 10<sup>th</sup> percentile in standardised tests of reading or mathematics; and (b) children with learning difficulties including pupils with mild speech and language difficulties, pupils with mild social or emotional difficulties, and pupils with mild co-ordination difficulties, and children who are assessed as having a high incidence category of special need.

2.7 The Department states that GAM hours are allocated to schools on the basis that 13% of the school population will have special needs that require support under the Model. The level of allocations made to schools under the GAM therefore depends on the size of the school, with some weighting provided in respect of the gender of the school’s pupils and the greater incidence of learning difficulties in designated disadvantaged schools.

2.8 The Department states that children within high incidence categories of special educational need do not receive a different level of resourcing by virtue of being catered



for under the GAM than would have been the case under a system of individual allocation; and that it is merely the process by which the allocation is made that differs, rather than the allocation itself. However, without detailed information regarding the prevalence, distribution and level of need of children catered for under the GAM, the Office is unclear as to the basis for such a broad assertion. The Office notes that children being catered for from a general allocation may receive a different level of resource than they would under a model based on individual allocations if the level of the hours available to a school failed to take account of the level of actual need of pupils enrolled.

2.9 The Department states that at the time of the introduction of the GAM, there probably was consultation with the NEPS and other Education Partners regarding the GAM and low incidence categorization, but that no discussions or consultations relating to the issue of including Down Syndrome as a category of low incidence under the GAM occurred at that time.

### **Operation of the GAM**

2.10 In making provision for children with special educational needs, schools exercise certain key responsibilities. Where a child with special educational needs attends a mainstream primary school, that school plans and delivers an individual education plan for the child; makes necessary syllabus adaptations and takes appropriate steps to include the child; and within the parameters of allocations made by the Department, structures resource teaching to be given to the child.

2.11 Guidance regarding the organisation of teaching resources; assessment of children's needs; preparation of individual education plans; implementation of individual education plans and monitoring of pupils' progress in schools, is provided in a number of official documents that have been made available to schools. Support is also available to schools in providing for the special education needs of children from the Special Education Support Service (SESS), the National Educational Psychological Service (NEPS), and the National Council for Special Education (NCSE).

2.12 Individual schools enjoy discretion to structure resource teaching for children with special needs catered for under the GAM. In response to the draft statement the Department provided information on recent changes to the system of GAM allocation under Primary Circular 07/2012 which are due to be operational from September 2012 and will allow some clustering of GAM hours between schools. However, individual schools are

ultimately constrained to operate in accordance with the level of resources determined by the GAM formula.

2.13 The Department states that allocations of resource teaching hours to schools under the GAM are made on the basis of the level of applications for support in the relevant categories received prior to its introduction in 2005. It is noted therefore that GAM allocations are based on information that is several years old. One of the changes that will be affected to the GAM from September 2012 will bring GAM allocations in line with current enrolments levels in schools.

2.14 The Department systematically collects basic information regarding special educational need in its annual school census. This included the numbers of children in each school catered for under GAM and low incidence categories of special need. The Department was unable to provide information regarding children with Down Syndrome who are catered for under the GAM. The Department stated that it does not monitor what children receive under the GAM in terms of teaching resources. In response to questioning by the Office regarding the methods to determine the experience and educational progress of children catered for under GAM, the Department stated that the progress of these children is monitored locally by the school teachers and parents. The Department indicated that since the introduction of GAM, it had not compiled a report relating to the experience of children with Down Syndrome and it had not compiled a report monitoring the adequacy of teaching supports provided to them.

### **Review of the GAM**

2.15 The Department commenced a review of GAM in March 2008 which it completed sometime between September 2010 and February 2011. The methodology for this review consisted of a questionnaire that was sent to the Education Partners. The Education Partners included the National Council for Special Education (NCSE), the National Educational Psychology Service (NEPS), the Irish Primary Principals Network (IPPN), Irish National Teachers Organisation (INTO), and the Schools' Inspectorate.

2.16 While it is understood that the review itself was completed around the end of 2010/early 2011, measures arising from its recommendations have yet to be implemented. The Department states that it is not possible to give a definitive time frame for the implementation of review recommendations but that it is the intention that planned adjustments to GAM allocations should take effect from September 2012.

2.17 When the GAM was introduced in 2005, the Department indicated that a review would happen after three years of operation. While the review of GAM commenced approximately 3 years after its introduction, the review itself took nearly 3 years to complete. Arising from the review of GAM, some general changes to hours provision are due to take effect in September 2012 having recently been announced under Primary Circular 07/2012.

### **Appropriateness of GAM Provision to the Needs of Children with Down Syndrome**

2.18 Under the system for allocating resource teaching hours to children with special needs, Down Syndrome is not recognised as a specific category of special need. Children with Down Syndrome may receive resource teaching hours by virtue of belonging to a category of special need recognised under the current system. For example a child with Down Syndrome may however suffer from a visual impairment of sufficient severity to give rise to an individual allocation of resource teaching under that category. One low incidence category of special need is for children with an assessed syndrome accompanied by a disability that puts them within one other low incidence category. In this respect, it can be observed that children with Down Syndrome may receive an allocation of hours under a category that takes account of their having an assessed syndrome but only in circumstances where they also have a disability that is explicitly recognised as *low incidence*.

2.19 Children with Down Syndrome who are not assessed as belonging to a low incidence category of special need may be assessed as belonging to a *high incidence* category of special need that gives rise to resource teaching under the GAM rather than individually allocated hours. The Department advised that many children with Down Syndrome fall into the mild general learning disability category. This Office understands that children in the mild learning disability category of special need are catered for under the GAM.

2.20 It is apparent that in the course of the review of the GAM, a number of Education Partners, including the NCSE, NEPS, IPPN and the INTO called attention to provision for children with Down Syndrome in mainstream schools.

2.21 This Office notes that while the four Education Partners concerned raised matters of very serious concern regarding provision for children with Down Syndrome in mainstream schools, the Department did not provide any information regarding substantive and effective action taken on foot of this significant development. While the Department did not disclose the dates that these issues emerged, the Office notes that by letter of 18<sup>th</sup>

January 2011, the Department indicated that the issue of the re-classification of Down Syndrome had been raised and considered as part of the GAM Review *prior* to October 2010. No information was provided to indicate that any consequent consultations or actions of a substantive and effective nature were put in train with a view to addressing the serious matter raised in the best interests of the children concerned.

2.22 The Office is of the view that the Education Partners concerned are well positioned to advise authoritatively with regard to educational provision for children with Down Syndrome in mainstream primary schools. The fact that these authoritative bodies, along with bodies representing the teaching profession, each called attention to this issue represented a compelling case for implementation of early and definitive action, in the best interests of children with Down Syndrome, within the context of the then ongoing GAM Review.

2.23 The information provided indicates that the extent of the Department's response to-date to the emergence of these views is to recommend that research be conducted into whether there is a sound and equitable basis for the classification of Down syndrome as a low incidence category of special need.. The Department has made it known to the Office that the review overall concludes that the GAM is a successful model and is supportive of children with high incidence special educational needs. In response to the draft statement, the Department drew attention to the recommendation for research, contained in the GAM review as being made on foot of the concerns raised and that it was intended that this recommendation will be considered in 2012 as part of the process to re-adjust the GAM. The Department also noted that it had previously advised that a request had been made for policy advice from the NCSE regarding this matter. This Office was not provided with any details of the Department's request for policy advice from the NCSE. As set out previously the NEPS and NCSE had called attention to the provision for children with Down Syndrome in mainstream schools during the GAM review, which took place between 2008 and 2010. The Department did not disclose the dates as to when this was raised but has indicated that it was prior to October 2010 when the Down Syndrome Ireland submission was received. The Department informed this Office in October 2011 that as part of the GAM review the advice of NCSE, NEPS and the Inspectorate will be sought on the Down Syndrome Ireland Submission and the issue of resources outside the GAM. In response to the draft statement in April 2012 the Department advised that the NCSE has been asked to provide the recommended research and that NEPS and the Inspectorate will be asked to contribute to this process. The Office remains concerned that

no information was provided to suggest that timely substantive and effective action had occurred in response to the concerns raised.

2.24 In the extract from the GAM review provided, the Department states that issues raised regarding provision for children with Down Syndrome are outside the scope of the GAM Review report and would require expert analysis within the Department in consultation with the NCSE. The Office questions the basis of the determination by the Department that the inadequacy of GAM to meet the need of a cohort of children as raised in the course of the GAM review should be outside the scope of the report of that review. The basis of this determination seems particularly questionable given the following information:

- The Department advised that there were no Terms of Reference for this Review but a review methodology;
- The Review's methodology included a question pertaining to the changed arrangements under the GAM for children with high incidence needs and asked *has this been of assistance in supporting pupils with special educational needs;* and
- The Education Partners clearly considered that this issue was within scope and was a legitimate or necessary subject for comment.

2.25 In light of the authoritative and clear questioning by NCSE, NEPS, and the IPPN of the fundamental approach to current provision for children with Down Syndrome in mainstream primary schools, the Office considers that a recommendation to embark on research after a review lasting almost three years, with no definitive action taken to progress the matter in the interim period, is a cause for serious concern. Given the information provided and the particular knowledge and responsibilities of the NCSE and NEPS, the Office considers it reasonable to draw an inference that the views disclosed are based on a sound body of professional knowledge and experience. In light of that, it considers that the Department should have readily available, or accessible, to it the necessary information to determine the issue of whether or not there is an equitable basis for the classification of Down Syndrome as a category of special need.

### **The Down Syndrome Ireland (DSI) Submission**

2.26 DSI is an organisation of people with Down Syndrome, their parents, and guardians. It has been in existence since 1971 and has over 3,000 member families. DSI aims to improve the lives of people with Down Syndrome in Ireland.

2.27 In October 2010, the Department received a submission from DSI which called for a re-evaluation of the current approach to supporting children with Down Syndrome in mainstream schools. The DSI submission suggested that the current approach to allocating resource teaching was failing to meet the educational needs of children with Down Syndrome, particularly those being catered for under the GAM.

2.28 The submission pointed out that SP ED 02/05 stated that the GAM was intended to provide hours for children *other than those with complex and enduring needs*. The submission contended that Down Syndrome is a complex and enduring need. It highlighted that children diagnosed with Down Syndrome only qualify for low incidence hours where they are assessed as having an additional low incidence disability. It contended that under the current system for allocation of resource hours, the cluster of associated difficulties experienced by children with Down Syndrome is not being taken into account when allocations of resource teaching hours are being made.

2.29 The submission contended that children with Down Syndrome have learning needs that are distinct from children with similar cognitive capacity. The submission alluded to research indicating that Down Syndrome carries specific speech and language difficulties. In this regard, it was pointed out that under the current system, children with Down Syndrome assessed as having speech and language difficulties are precluded from receiving resources specifically in respect of specific speech and language disorder given the requirement for an IQ score in the average. The submission also referred to evidence that Down Syndrome carries specific auditory memory difficulties, specific motor skills delays and physiological difficulties with educational consequences. While the submission acknowledged the benefits of inclusive education for children with Down Syndrome, it called on the Department to ensure that adequate supports were provided to ensure the full benefit of inclusion could be realised.

### **Findings on the Department's Administrative Actions**

(1)

2.30 The Office notes that the Department conducts an annual schools census that collects certain information regarding provision for special educational needs in primary schools. It further notes in addition to schools, other bodies such as the NCSE collect information relating to provision for special educational needs.

2.31 The Office notes with concern that in response to its requests for information, the Department was unable to provide detailed information regarding the profile of children catered for under the GAM; information regarding the level and structure of resource teaching provided to children under the GAM; and information relating to the progress of children, including those with Down Syndrome, in response to resource teaching provided under the GAM. The Office draws the inference that the Department has not made necessary administrative arrangements to inform itself adequately about the progress of children with Down Syndrome catered for under the GAM nor the adequacy of the Model to their particular special needs. The Office finds that the actions of the Department in this regard are contrary to fair and sound administration.

(2)

2.32 The Office notes that in the methodology set out for the GAM review no time frame was set for its completion. The review was commenced within 3 years after GAM was instituted but itself took almost 3 years to complete.

The Office notes that children with Down Syndrome are catered for under the GAM. The Office finds that the actions of Department in failing to set and manage time frames for the efficient completion of the review of the GAM are contrary to sound administration.

(3)

2.33 In October 2011, the Department informed the Office that it intended seeking the views of NCSE, NEPS and the Schools' Inspectorate regarding the submission it had received from Down Syndrome Ireland in October of the previous year. The Office notes the significant time lapse between the Department receiving the submission and seeking the views of the parties identified.

2.34 In the course of the review of the GAM, Education Partners raised issues regarding current provision for children with Down Syndrome in mainstream schools. While the matters raised by these Education Partners regarding appropriateness of current provision for children with Down Syndrome in mainstream schools were of a fundamental nature, the Department gave no information in the investigation to indicate that it had initiated any proportionate or definitive action to address the matter in an efficient or effective manner.

2.35 On the information provided to it, the Office draws the inference that the Department's response to this matter was by way of inclusion of a recommendation for research in the report of the GAM review. As referenced in paragraph 2.23, the Department advised in April 2012 that the NCSE has been asked to provide this research.

The Office considers that the significant delay by the Department in initiating substantive, definitive action to follow-up the serious matter raised by Education Partners and Down Syndrome Ireland referred to in 2.20-2.23, relating to provision for children with Down Syndrome under the GAM is contrary to fair and sound administration.

### **Findings on Adverse Effect**

2.36 This investigation looked at the actions of the Department in administering provision for the special educational needs of children with Down Syndrome attending mainstream primary schools. The Office notes that Down Syndrome is not recognised as a category of special need for the purposes of the organisation of teaching resources for pupils who need additional support in mainstream primary schools. It also notes that Down Syndrome is associated with a cluster of disabilities that bear on the engagement of children at educational level. It further notes that the arrangements governing the organisation of teaching resources include no specific measures to ascertain, and relate resource allocation to, the individual needs of such children in a manner similar to that which applies to children whose disability is recognised as a specific disability category.

2.37 The issues raised by the complaints in this case related to the non inclusion of Down Syndrome as a low incidence category of special need and concern regarding the issues of equity and fairness this raises given the multiplicity of disabilities that children with Down Syndrome have. The concern relates to the resultant implications for these children in relation to the adequacy and definitive commitment of provision of resource teaching to them. When investigating the actions of the Department, the Office, in accordance with its statutory mandate, considered the affect the actions of the Department had, not alone on the two children concerned, but also more generally on children with Down Syndrome attending mainstream primary schools.

2.38 It appears to this Office that changes in the framework for allocating resources to children with assessed syndromes resulted in a change for children with Down Syndrome whereby the resources that could be allocated to them became more rigidly tied to a determination based on their IQ (See 2.3). The Office notes the many disabilities that bear on the children at the centre of the complaints received and the impact these have on their education. It further notes the views of Down Syndrome Ireland that Down Syndrome is a complex and enduring need. It is also mindful that SP ED 02/05 expressly states that the GAM is intended to cater for the needs of all pupils, other than those with complex and enduring needs. It is also noted that children with Down Syndrome do not form an homogenous group and require consideration of needs on an individual basis. The Office



considers that for children with Down Syndrome there is a potential for loss of opportunity given the lack of adequate consideration given to the cluster of needs for such children attending mainstream primary school. This arises from the absence of a mechanism to take proper cognisance of, and relate specific provision of supports to, the cluster of disabilities bearing on their individual capacity to engage in their education. The Office considers that the failure to take such administrative actions as would specifically recognise and address the cluster of needs of children with Down Syndrome adversely affects them as regards their capacity to engage to the fullest possible extent in mainstream primary schooling.

2.39 In the course of the investigation, the Department stated that children with Down Syndrome are not discriminated against under the current system for allocating resource hours and that children with Down Syndrome may receive resource teaching through GAM or under one of the categories of special need set out in SP ED 02/05. The Office notes that the information received in this investigation indicates not that the current system expressly singles out children with Down Syndrome but rather that it fails to do so as their needs befit and as the authoritative advice of a number of Education Partners, as well as Down Syndrome Ireland, has highlighted to the Department. In this regard, the Office has also noted the Department's position that the progress of children in receipt of additional support in mainstream primary schools was not subject to monitoring by it and was represented as a matter for the individual schools and parents.

2.40 It is the consistent experience and view of this Office that the time taken to recognise and initiate steps to remedy adverse affect is particularly critical where the needs of children are concerned. In this regard, the Office finds that actions of the Department in the administration of provision for the special educational needs of children with Down Syndrome attending mainstream primary schools adversely affected such children. In particular, the Office considers that the following administrative actions by the Department have resulted in an adverse affect in the form of undue delay in recognising and initiating steps to address the impact on fullest possible educational inclusion that may arise from the cluster of disabilities associated with children who have Down Syndrome. The particular actions are as follows

- failing to establish and maintain arrangements to fully inform itself about the progress of children with special educational needs, including children with Down Syndrome;
- failing to set and manage time frames for the expeditious completion of review of GAM; and

- failing to initiate timely and definitive follow-up of fundamental issues raised by Education Partners and Down Syndrome Ireland concerning provision for children with Down Syndrome attending mainstream primary schools.

2.41 In response to the draft statement, the Department stated that it did not accept that *any administrative action taken by the [it] had any adverse effect on the children concerned*. The Department stated that any categorisation of Down Syndrome may not necessarily increase the resource teaching time received by the children. In this regard the Department notes that *provision of 3 hours individual allocation for a child under a low incidence category would be the same as a child receiving 3 hours allocation under GAM*. The Department also states *likewise if the low incidence allocation was set at 2.5 hours per week, which was the allocation for children with mild general learning difficulty prior to the introduction of GAM, as set out in DES Circular 08/02*.

2.42 The Office has considered the Department's response to the draft statement finding of adverse effect, specifically in regard to the level of resourcing. However, in this context the Office notes that adverse effect is not measured solely against the situation of children with Down syndrome prior to the introduction of GAM but is measured against a resource allocation system administered in accordance with sound administrative practices including adequate monitoring and review of provision and response to issues that emerge. The concerns identified through this investigation relate to the actions of the Department specifically in regard to the mechanisms for adequate monitoring and review of the provision made for children with special educational needs including children with Down Syndrome, and the failure to initiate timely and definitive follow up of the issues raised concerning provision for children with Down Syndrome as referenced at paragraph 2.41. The Office remains of the view that this resulted in undue delay in recognising and initiating steps to address the impact on fullest possible educational inclusion that may arise from the cluster of disabilities associated with children who have Down Syndrome and that this has resulted in a potential loss of opportunity for such children as set out in paragraph 2.39.

The Office finds that the actions of the Department as set out have adversely affected children with Down Syndrome.

## **Investigation Conclusions**

Following conclusion of this investigation, pursuant to Section 13 of the Ombudsman for Children Act 2002, this Office found that that the administrative actions of the Department of Education and Skills taken in provision for the special educational needs of children with Down Syndrome attending mainstream primary schools come within the ambit of Section 8 of the Act:

- Section 8 (a) has adversely affected children with Down syndrome generally
- Section 8 (b) (vi) have been based on an undesirable administrative practice and (vii) contrary to fair and sound administration.

#### **Part IV- Recommendations**

With regard to allocation of resource teaching hours, the Department has stated that the review of policy in the area may only be conducted in the context of resources that are available to the Department; competing demands on teacher numbers, and the Government's Employment Control. The Office is cognizant that these are important factors in the shaping and operation of measures that have as their objective assisting pupils who need additional support in mainstream primary schools. The Office notes that other important considerations to be taken properly into account by such measures include equity, efficacy, and transparency.

The actions of public bodies should conform to basic standards of administrative competence and fairness, which is even more relevant in times of fiscal difficulty. The Office is statutorily mandated to investigate their actions in this regard where these involve adverse affect on children. In this investigation, the Office has made findings in respect of the actions of the Department as provided for by the provisions of the Ombudsman for Children Act 2002. Arising from those findings and in accordance with the Act, the Office makes the following recommendations to the Department of Education and Skills:

- 1. Immediately establish the adequacy of provision including the method of delivery for children with Down Syndrome in mainstream education and make public the outcome of this including any proposed measures, to include related implementation timescales.**
- 2. Publish the report of the GAM Review and the actions in progress or planned to implement the recommendations arising, together with related implementation timescales;**

**3. Address the absence of arrangements to centrally monitor the impact of the additional support measures on the educational progress of children with special needs, including Down Syndrome;**

**4. Review procedures whereby fundamental issues that emerge in respect of the categories of special need can be considered and dealt with in a timely manner.**

**Postscript**

The Department of Education has accepted the Ombudsman for Children's recommendations and is positively engaged in progressing them. **In keeping with the usual process, a follow up date has been set in order to review the progress made in relation to the recommendations.**