



Northern Ireland

Public Services

Ombudsman

Investigation Report

Investigation of a complaint against a Primary School

NIPSO Reference: 202000283

The Northern Ireland Public Services Ombudsman

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The Role of the Ombudsman

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities, and on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

The Ombudsman must also consider whether maladministration has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. A remedy may be recommended where injustice is found as a consequence of the failings identified in a report.

Reporting in the Public Interest

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

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Case Reference: 202000283

SUMMARY

I received a complaint about the education of a primary school pupil with special educational needs (SEN). The pupil had autism, attention deficit hyperactivity disorder, dyspraxia, visual and auditory processing difficulties, hypermobility of the hands, dyslexia and dyscalculia. The pupil's parents complained the school failed to follow a Statement of Special Educational Needs (Statement) that was in place to enable their child to access the school curriculum. They said the school did not provide the education and support which they considered their child was entitled to receive. They also said the school did not inform them that their child had drawn '*disturbing images*' in class. They regarded this as a safeguarding issue because they considered the drawings were a sign of his unhappiness at school.

I obtained all relevant information, including the pupil's Statement, the Individual Education Plan (IEP) produced by the school, guidance and policies relating to the education of pupils with SEN and, those relating to communication with parents in relation to safeguarding.

My investigation found that the school failed to:

- apply SMART(E)¹ targets to the pupil's IEP, a requirement of the Education Authority guidance and the school's own SEN policy;
- provide one to one support for the pupil in accordance with his Statement;
- produce adequate records to enable the investigation to determine whether literacy and numeracy IEP targets were monitored and reviewed;
- produce adequate records that demonstrated differentiation of the pupil's work; and
- comply with its safeguarding policy in relation to communicating with the parents when the '*disturbing*' drawings were discovered.

¹ A SMART(E) target is used to help guide goal setting. SMART(E) is an acronym for *Specific, Achievable, Realistic, Measurable, Timed, Evaluated*

I considered these failures constituted maladministration which caused the injustice to the complainants of frustration and anxiety as they worried whether their child was receiving the support he required.

I recommended that the Chairman of the Board of Governors should apologise to the complainants in writing and conduct an audit of SEN-pupil records to confirm that:

- IEP targets are SMART(E);
- written evidence of IEP-target monitoring and review is compiled;
- written evidence of teaching / lesson planning is retained; and
- staff are reminded of the communication requirements of the school's safeguarding policy where a pupil's behaviour gives cause for concern.

The BoG accepted the findings and recommendations highlighted in the investigation report.

THE COMPLAINT

1. This complaint is about the education and support provided to a pupil with special educational needs (SEN) between September 2019 and January 2020 inclusive. It is also about how the school communicated with the parents in relation to 'disturbing' drawings the pupil made.

Background

2. The pupil was first assessed as having learning needs in 2016. By September of that year he had progressed to Stage 5 of the Five Stage Model of Assessment And Provision, as set out in the Department of Education's Code of Practice on the Identification and Assessment of Special Educational Needs, September 1998.
3. The pupil progressed from P3 to P4 in September 2019. The school day for P4 classes began at 09:05 and ended at 15:00, a total of 29 hours and 35 minutes per week. Therefore, pupils at this age and stage spent just under 30 hours per week at school.
4. On 11 October 2019 the complainants removed the pupil from school due to their concerns about the level of education and support he was receiving.
5. On 4 November 2019 the pupil returned to his P4 class.
6. On 23 January 2020 the complainants removed the pupil from school and he subsequently attended an alternative school.

Issues of complaint

7. I accepted the following issues of complaint for investigation:

Issue 1

Whether the school appropriately implemented, monitored and reviewed the pupil's IEP for the period September 2019 to January 2020 inclusive.

8. The investigation of this issue included:

- whether the IEP targets were required to be SMART² targets;
- whether one to one support for the pupil was in line with his Statement;
- whether the IEP literacy and numeracy core targets were implemented, monitored and reviewed; and
- whether differentiation of work was implemented, monitored and reviewed.

Issue 2

Whether the school communicated with the parents, in line with required procedures, in relation to the pupil's drawings of 'disturbing images'.

INVESTIGATION METHODOLOGY

9. To investigate this complaint, the investigating officer obtained from the Board of Governors (BoG) all relevant documentation together with its comments on the issues the complainant raised.

Relevant Standards and Guidance

10. To investigate complaints, I must establish a clear understanding of the standards, both of general application and those specific to the circumstances of the case. I also refer to relevant regulatory, professional, and statutory guidance.
11. The general standards are the Ombudsman's Principles³:
 - The Principles of Good Administration
 - The Principles of Good Complaints Handling
12. The specific standards and guidance referred to are those which applied at the time the events occurred. These governed the exercise of the administrative functions of those individuals whose actions are the subject of this complaint.
13. The specific standards and guidance relevant to this complaint are:
 - The Education (Northern Ireland) Order 1996 (1996 Order);
 - The Department of Education Circular 1987/26 – Teachers' pay and conditions of service, June 1987 (Jordanstown Agreement);

² A SMART target is used to help guide goal setting. SMART is an acronym that stands for Specific, Measurable, Achievable, Realistic, and Timed.

³ These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

- The Department of Education's *Code of Practice on the Identification and Assessment of Special Educational Needs*, September 1998 (Code of Practice);
- The Department of Education's *Supplement to the Code of Practice on the Identification and Assessment of Special Educational Needs*, September 2005 (Supplement);
- The Education Authority's *A Handbook for the Special Educational Needs Co-ordinator*, May 2019 (SENCo Handbook);
- The School's Special Educational Needs Policy; and
- The School's Child Protection and Safeguarding Policy, September 2019 (the school's safeguarding policy).

I make reference to the specific standards and guidance in the *Analysis* sections of this report.

14. In investigating a complaint of maladministration, my role is concerned primarily with an examination of the administrative actions of the body. It is not my role to question the merits of a discretionary decision. That is unless my investigation identifies maladministration in the listed authority's process of making that decision.
15. I did not include all information obtained in the course of the investigation in this report. However, I am satisfied I took into account everything I considered relevant and important in reaching my findings.
16. A draft copy of this report was shared with the complainant and the BoG for comment on factual accuracy and the reasonableness of the findings and recommendations.

THE INVESTIGATION

Issue 1

Whether the school appropriately implemented, monitored and reviewed the pupil's IEP for the period September 2019 to January 2020 inclusive.

Detail of Complaint

17. The complainants said the IEP did not contain specific targets for the pupil against which his progress could be monitored. They said the targets were 'vague' and were not in accordance with his Statement. They said the IEP was of little value in supporting the pupil. The pupil's mother refused to sign the IEP because it did not have SMART targets / goals; she considered it to be inadequate for the pupil's needs.
18. The complainants said the school did not provide the level of one to one support stipulated in the pupil's Statement. They claimed that, at times, the relevant staff were used to provide support to other children and, one to one cover during lunch breaks did not occur.
19. Referring to the school's records, the complainants said the pupil did not receive adequate literacy and numeracy teaching. For example, they said the pupil completed only three pages of handwriting in a 16-week period and, the school gave the pupil only one week of numeracy assessment in a 16-week period.
20. The complainants said the pupil's work was not always differentiated to reflect his ability. The pupil's mother described homework set in September 2019 as '*beyond difficult and spellings were ridiculously hard for him.*'

Evidence Considered

Legislation/Policies/Guidance

21. I considered the following legislation/policies/guidance:
 - 1996 Order;
 - Jordanstown Agreement;
 - Code of Practice;
 - Supplement;
 - SENCo Handbook; and

- the school's SEN policy.

BoG response to investigation enquiries

SMART targets / goals

22. The BoG said:

'While this management tool is specifically used extensively in the education sector for budgeting and planning it is not generally used in personnel issues and child development, however aspects of it often influence goal setting in these softer issues. This is the prism through which the application of Smart targets should be considered in an IEP or similar. [The pupil's] IEP was developed in conjunction with AAIS⁴ and was devised to help develop his independence within mainstream classroom and his social interaction with his peers. These areas were reflective of his needs identified through teacher observation and with support from AAIS. The IEP has clearly identified targets and opportunities for improvement, that while not strictly adhering to SMART targets, are clearly defined.'

23. The BoG also quoted George T Doran, a US⁵ proponent of SMART target / goals: *"Management Goals and Objectives". Doran explained "It should also be understood that the suggested acronym doesn't mean that every objective written will have all five criteria".'*

24. The SENCo⁶ drafted the IEP including the literacy and numeracy targets, contained therein, and invited input from the pupil's mother. The SENCo said, if parents are *'not happy'* they are encouraged to get in touch to *'discuss and review the IEP'* with the SENCo. The SENCo said the pupil's mother *'sent an email'*⁷ in which she set out her objections to the IEP and stated she *'would not be signing'* the version that had been shared with her. The BoG said this version was shared with the pupil's mother after a meeting, arranged to agree the IEP, which was attended by the parties and a representative from the EA's AAIS. The BoG said a further meeting was arranged the following month, but the pupil's mother was unable to attend.

⁴ Autism Advisory Intervention Service (part of the Education Authority)

⁵ United States of America

⁶ Special Educational Needs Co-ordinator - a member of the teaching staff with responsibility for special educational needs within the school

⁷ 4 October 2019

One to one support

25. The BoG said the pupil received a total of 30 hours per week of one to one support. This consisted of 12 hours provided by a Classroom Assistant (CA) plus 18 hours provided a General Assistant. On the *'infrequent occasions'* when one of these members of staff was sick, the Principal organised cover. Each school day, CA's were present in school from 08:30 to 15:30 *'approximately'*.
26. The BoG said that *'assistance and supervision was provided for [the pupil] during lunchtime'* and *'such assistance reflected the desire to improve the child's social and inter-personal skills.'* The CA would stay with the pupil during lunchtime except for a 15-minute break. During this break, supervisors *'would assist'* the pupil or *'call for [the] Classroom Assistant if needed'*.

Literacy and numeracy targets

27. The BoG said the class teacher and the parents monitored the pupil's *'Home school link'* book, which was a daily record for all. This book was available if the SENCo and/or Principal required it for record keeping.
28. The BoG said the pupil's mother had previously informed the school that the pupil had *'joint hypermobility in his fingers, thumbs and wrists, to the extent that his thumbs pop in and out of their sockets when writing.'* In a previous complaint to the school, the pupil's mother had said the pupil *'cried at night about sore hands and being tired.'* The BoG said that *'when the P4's were given a page or 2 to complete, [the pupil] was given one or two lines to complete before he got a reward. A short and focussed approach was more beneficial to him and less tiring.'*
29. In response to a specific complaint that the pupil only had one numeracy assessment in a 16-week period, the BoG said *'P4 Numeracy Assessments (PTM⁸) are carried out in May'*.
30. The Principal's response to a specific complaint about weekly assessments scores included:
'Weekly spelling tests are used to support the teacher in helping the pupils in their

⁸ Progress Test Maths – assesses a pupil's mathematical skills and concepts.

phonological development. We mark each week but we do not keep a record of their weekly spelling score.'

'Monitoring does not always have to be physical recording of test results.'

'In context with the IEP, [the pupil's] parents received all documents relating to his school work, which show evidence of the IEP in everyday action.'

31. The SENCo said:

- *'Progress was monitored daily through various methods.'*
- *'As with all IEP's, the class teacher and the classroom assistant follow the strategies and advice to achieve the targets.'*
- *'The needs of the whole child are addressed not just measurable outcomes.'*

Differentiation

32. The SENCo said *'[the pupil's] work and how he approached his work had to be differentiated in accordance with his needs and capabilities.'*

33. The class teacher said:

'Tasks were differentiated when required, for [the pupil's] homework and classwork. The homework was carefully set at his ability and anything with more of a challenge had handwritten notes added to his work, or notes added to state how much he had to complete per page per night. Homework was reflective of areas that [the pupil] had already covered in class.

Classwork was differentiated by various means: Same group content with reduced writing and oral answering for the rest of the task; group discussion tasks, lesson introductions/plenary's completed on interactive whiteboard.

Very frequently, tasks had to be altered to suit the mood of [the pupil] at the time, ie, Whiteboards would be used for ticks or crosses to answer closed questions, [the CA] or I would scribe answers for [the pupil] when required.

[The pupil's] lessons were short and tailored for him to allow the traffic light/first and then strategies to be employed, short task to be completed and then his chosen reward given.'

Relevant BoG records

34. The investigating officer considered:

- the IEP that applied for the period of complaint (provided by the BoG;

- a Statement maintained since July 2016 and amended on 22 July 2019 and 20 November 2019. Both documents referred to educational provision for the pupil which included 10 hours Classroom Assistance per week plus 20 hours General Assistance per week. Both documents listed literacy and numeracy among the objectives set for the child's development. Both documents said *'detailed records should be maintained outlining [the pupil's] progress in relation to his Individual Education Plans.'*
A highlighted extract from the SEN is attached at appendix three.

Other information considered

SMART targets

35. Referring to paragraph 24 of the draft investigation report, the complainants said they were *'never once invited to discuss targets.'*
36. Referring to paragraph 48 of the draft investigation report, the complainants provided a copy of correspondence⁹ which the pupil's mother *'handed'* to the teacher, six days after refusal to sign the pupil's IEP. The complainants produced this as *'evidence'* of their attempted involvement in relation to IEP target-setting.

Information computer technology (ICT)

37. Referring to paragraph 28 of the draft investigation report, the complainants said they did not see differentiation *'simply as giving the child less to do therefore giving him less opportunities than the others. This is only satisfactory when all other accommodations to allow him to access the curriculum at the same level as most have been exhausted by following all recommendations of his statement.'*
38. The complainants highlighted a reference to ICT in the extract of the pupil's SEN, appendix three, which referred to how the pupil's special educational provision and the objectives set would be met. The list of provisions included *'access to alternative methods of recording and presenting [the pupil's] work including the use of ICT.'* Noting the reference to the pupil's difficulties with writing (paragraph 28 of draft report) the complainants saw ICT as an important means of assistance to help the pupil in his literacy and numeracy work, and to assist with differentiation of work.

⁹ Appendix five

39. The complainants said *'some schools have excellent use of digital technology for SEN children'*. They said as soon as the pupil moved to a different school, *'his new school immediately provided him with an iPad, Clicker docs (a predictive text software), Nessy programme for dyslexics and Mathletics programmes.'* The complainants did not believe the school under investigation used the ICT resources available to support the pupil's literacy and numeracy work, including use in differentiation.
40. The BoG accepted the findings contained within the draft investigation report and undertook to implement all the recommendations. The BoG referred to *'the professionalism, commitment and care provided by the staff to this pupil which extended beyond the 30 hours weekly provision'* but, acknowledged that *'the lack of robust record keeping has left [them] unable to fully demonstrate how this child was supported and the level of progress the pupil was making.'*

Analysis and Findings

SMART targets / goals

41. The first Principle of Good Administration *'Getting it Right'* includes that public bodies should *'act in accordance with policy and guidance'* and *'take account of established good practice'*. There are several sources which provide direction for IEP target setting.
42. The school's SEN policy¹⁰ includes the following:
- *'Individual Education Plans will be devised at each stage (2-5) of the Code of Practice to ensure effective target settings'*. The policy specifies that *'SMART Targets are drawn up for the IEP/Plan of Action . . . '*
 - *'targets are set and agreed with the parents/child/class teacher'*
 - *'Targets will be monitored for progression'*
 - *'When children have been placed on the register¹¹ their progress will be regularly monitored and reviewed by the class teacher, SENCo and the Principal . . .'*

¹⁰ Required by Article 9 of the 1996 Order

¹¹ Code of Practice, para 2.19 - *Schools should keep a register of all children with special educational needs, recording the steps taken to meet those needs and the progress which has resulted.*

43. Paragraph 2.67 of the Code of Practice includes the following:
'Specific targets should be set for all aspects of the education plan . . .'
44. Paragraph 2.57 of the Code of Practice specifies that the IEP should set out *'the targets to be achieved in a given time'*.
45. Case Study 2 in the accompanying Supplement further helps clarify what is meant by *'targets'*:
'Ensuring that realistic and suitable targets are set for the child to enable him/her to complete tasks independently and on time'.
46. The SENCo Handbook states that *'All targets should be SMART(E) Specific Measurable Achievable Realistic Time-Bound Evidence Based'*
An extract from the handbook which provides more detail is included at appendix four.
47. During the investigation, the Education Authority (EA) advised this Office that *'Individual Education Plan targets are required to be SMART targets.'* (EA bold)
48. Given the numerous indicators in the school's policy, the Code of Practice and Supplement, and the EA's guidance, I am satisfied that IEP targets were required to be SMART. I extended this to SMART(E) considering the EA guidance.
49. The pupil's IEP for school year 2019-2020 contained three core targets:
- *Literacy - 'Develop independent reading of text with expression and understanding'*
 - *Numeracy - 'To present information and results in a clear and organised way.'*
 - *To play co-operatively in a group situation with his peers.*
50. Although this wording may be specific, I do not consider it meets the criteria for SMART(E) targets. It is not linked to a timescale and no measure is included. Therefore, it is unclear how it would be known when the pupil had met a target, or how quickly the pupil was expected to meet a target. These deficiencies also cast doubt over how the pupil's progress could be monitored; the imprecise wording precludes any measure of how close the pupil was to meeting the target at any given point.

51. In addition, there are no other details to further explain the target or provide examples of what achievement of the target would look like. I consider that further details would have provided opportunity to associate other SMART(E) criteria into the target.
52. I acknowledge the school's assertion that a SMART target does not have to satisfy every letter in the acronym. However, I do not consider the IEP targets for this pupil are sufficient to allow their use as SMART(E) targets. I can appreciate why the pupil's mother considered the targets were '*vague*'.
53. Taking account of policy, guidance and established good practice, I do not consider the IEP targets set for the pupil met the first Principle of Good Administration, '*Getting it Right*'. I am satisfied the failure to use SMART(E) targets in the pupil's IEP constituted maladministration. I therefore uphold this element of the complaint.
54. Having stated the view that the targets were inadequate, the pupil's mother sent a follow-up letter, appendix five. I accept this letter as evidence of communication with the school to attempt to address the difficulties they had with the IEP. I note the school arranged a subsequent meeting with the parents to further discuss the IEP targets. However, the matter was not resolved. I consider that, in the interests of the pupil, there was an obvious opportunity for both school and parents to continue in dialogue until agreement had been reached. According to the EA, seeking the parents' views is one of the '*key elements*' of an IEP. It is unfortunate that agreement was unable to be reached in this case.

One to one support

55. The first Principle of Good Administration '*Getting it Right*' includes that public bodies should *take 'reasonable decisions, based on all relevant considerations.'*
56. Based on the educational provision and support specified in the Statement, the pupil required 30 hours of additional assistance per week while at school, both in and outside the classroom, to meet his educational needs and the associated objectives. Since school hours for a P4 class were less than 30 hours per week (29 hours and 35 minutes) it is reasonable to conclude that the Statement effectively entitled the pupil to continuous one to one support during the school day.

57. The complainants believed this level of support was not provided. They claimed the pupil's CA was used to provide support to other pupils, although no evidence was produced. They said the pupil had drawn '*disturbing images*' in his workbook over a period of weeks, but they had not been informed. This led them to question whether continuous one to one support was happening, or whether staff were paying any attention to what the pupil was doing. (The issue of the drawings is considered at paragraph 87 of this report.)
58. I do not consider the unsubstantiated claim that the CA was used elsewhere, or a failure to inform the complainants of the '*disturbing images*', are sufficient to establish that one to one support was not being given. However, I note the school acknowledged the pupil did not receive one to one cover for a 15-minute period during every lunch break. This amounts to one hour and 15 minutes per week where one to one cover was not provided in accordance with the Statement. The 30-hour entitlement was sufficient to cover the school day in its entirety.
59. Given this relatively short period of time, I would accept that the practical solution the school identified could perhaps have been agreed beforehand with the parents, by consent. However, I found no evidence that the school had engaged with the parents about the matter. In the absence of an arrangement being agreed between the parties, I do not consider it was reasonable to interfere with the pupil's entitlement in this way.
60. I appreciate the school may have sought to strike a balance between its responsibilities; I note the school were conscious of observing staff breaks in line with employment rights and, '*supervisors*' in the lunch hall were asked to keep a watch on the pupil. However, while it was correct for the school to comply with staff entitlements, there was also an obligation to comply with the pupil's Statement. I do not consider the daily 15-minute gap in one to one support met the first Principle of Good Administration, '*Getting it right*'. I am satisfied this is a failure which constitutes maladministration and I therefore uphold this element of the complaint.

Literacy and numeracy

61. The first Principle of Good Administration '*Getting it Right*' includes that public

bodies should *'act in accordance with policy and guidance'* and *'take proper account of established good practice'*. The third Principle of Good Administration, *'Being open and accountable'* includes that public bodies should keep proper and appropriate records.

62. When the pupil was withdrawn from school in January 2020, and upon request, the school provided the complainants with the pupil's workbooks. These workbooks were submitted to this office with the complaint. The school referred to the material provided to the complainants as *'evidence of the IEP in everyday action'*.

Implementation

63. In relation to literacy, for the period covered by the complaint, the investigating officer found material in the pupil's workbooks which demonstrated the pupil had been taught spellings, comprehension, handwriting, journalling and reading. In relation to numeracy, the investigating officer found evidence of mental maths tests and written mathematical calculations recorded in the pupil's workbooks. I accept this provides evidence that the IEP was implemented in terms of the literacy and numeracy core targets.

Monitoring

64. According to the school's SEN policy, *'when children are identified as having a special educational need . . . their progress will be regularly monitored . . .'* From the IEP, the literacy targets were to be monitored by *teacher and CA observation, AR¹² quiz results and feedback during guided reading sessions*. The numeracy targets were to be monitored by *teacher and CA observation, book scoop, marking, 1:1 support and self and peer assessment*.
65. I examined the pupil's Home-School Diary, also referred to as the *'Home school link book'* in the school's reply to the complaint. The BoG response referred to this material as a source of evidence that the pupil's work was monitored for the period of complaint. There is a loose page for every day the pupil attended the school. The pages facilitated a daily means of written communication between the teacher and the parents. The teacher's record for each day consisted of one or two brief sentences. Examples of the notes made by the teacher include:

¹² Accelerated Reading

9 Sept 2019 - *'[The pupil] completed some English work with support after discussion time.'*

10 Sept 2019 - *'[The pupil] worked hard during mental maths today and was eager to answer out.'*

11 Sept 2019 - *'[The pupil] used his writing slope today completing work with support. Traffic light system in place and being used – [the pupil] liked this.'*

66. Together, I consider the diary and the pupil's workbooks provide evidence that the school implemented literacy and numeracy core-target work between September 2019 and January 2020. I accept that the pupil's own workbooks could be described as evidence of data collection relevant to the pupil's work for the period in question. However, the investigation did not find evidence of analysis for the purposes of assessing the pupil's progress towards meeting the core targets for literacy and numeracy that had been set in his IEP. I consider it is only through such analysis that assessment can be made of the pupil's attainment or otherwise of the set goals. No record has been offered by the school of any analysis that may have been undertaken to assess the pupil's progress. The absence of such a record has made it difficult for me to be clear on the extent, if any, to which the pupil's progress towards the IEP goals was monitored.
67. The SENCo Handbook¹³ refers to the '*Class Teacher SEN file*' which should contain a '*record / summary*' of '*scores / observations*' relevant to the pupil; a '*record of monitoring*' of the pupil's IEP and '*examples of evidence of progress of targets*'. The SENCo Handbook also refers to '*EP Monitoring*' as part of the '*SEN Record Keeping Checklist*'. The checklist includes that the class teacher's SEN file should contain '*CA observations for Stage 5 pupils*'. In addition, the EA's '*SENCo Year Plan*' includes that school's should '*complete monitoring and evaluation of IEPs and provide feedback*', this activity being suggested for October time. The investigation did not find evidence of these records.
68. Where the pupil's work was not written, it is reasonable to expect some form of written notes of one to one support or observations made to associate the pupil's performance with the IEP targets for the purpose of monitoring his progress.

69. I noted above that the first Principle of Good Administration '*Getting it Right*' includes that public bodies act in accordance with policy and guidance and take account of established good practice. In light of the policy, guidance and examples of good practice highlighted, I am not persuaded that adequate records were kept which demonstrate monitoring of the pupil's progress towards the literacy and numeracy core targets. I therefore consider the school failed to follow the first Principle of Good Administration. The lack of records is also indicative of a failure to observe the third Principle of Good Administration which underscores the need for public bodies to create and maintain records of decisions.
70. The third Principle is a key principle of good administration. To comply with this principle, adequate and contemporaneous records must be retained of matters considered by the public body, decisions made and the reasons for the decisions including the weight given to relevant factors. Without such records being maintained it is difficult for a public body to defend its actions and the decisions it makes when challenged. It can also have the effect of diminishing the public's confidence that decisions made are not arbitrary and outside of due process.
71. I consider that these failures constitute maladministration. I therefore uphold this element of the complaint.

Review

72. According to the school's SEN policy, '*when children are identified as having a special educational need . . . their progress will be . . . reviewed at the end of each term.*' During the investigation the school provided a copy of the IEP with two pages attached, one of which was headed *Education Plan Review*. On examination, the pages were undated, and the core targets listed therein resembled core targets from the previous year's IEP (2018-19) namely '*To develop tracking skills*' and '*To develop reading skills*'. I do not consider this to be relevant evidence that the pupil's IEP for 2019-20 was reviewed.
73. Moreover, whilst the pupil's IEP commenced in September 2019 (the start of the term one) it was marked for review half way through term two, that is February 2020. I consider this is contrary to the policy.
74. The school provided no documentary evidence that the IEP was reviewed during

the period of complaint. As indicated in paragraph 70, without the maintenance of adequate records, it is more difficult for a public body to defend its actions and the decisions it makes when challenged. It can also have the effect of diminishing the public's confidence that decisions made are not arbitrary and outside of due process.

75. The SENCo Handbook suggests that '*Term One IEPs*' should be reviewed in January and evidence should be collected to support this. The school's SEN policy included that '*Education plans are devised on a termly basis (or more frequently if required)*'. Both the EA guidance and the school's SEN policy wording conflicts with a review date of February 2020, which was marked on the pupil's IEP. Although no specific date in February 2020 was indicated, this meant that any review of the pupil's progress, or the continued relevance of the core targets, could not have been applied to the beginning of term two, January 2020.

76. I consider this is indicative of a failure to follow the SEN policy which is contrary to the first Principle of Good Administration '*Getting it Right*'. The lack of records is also indicative of a failure to follow the third Principle of Good Administration relating to record-keeping. I consider this constitutes maladministration. I therefore uphold this element of the complaint.

Differentiation

77. The third Principle of Good Administration, '*Being open and accountable*' includes that public bodies should keep *proper and appropriate records*.

78. In any school classroom, different pupils have different levels of ability. When planning lessons, a teacher must take account of this to ensure pupils in these different ability groups are allocated work proportionate with their capacity. In order that the top, middle and bottom groups are, together, given appropriately challenging work, differentiation of work is essential. I therefore appreciate that differentiation is commonplace in all classrooms, possibly more so in a small school where, due to limited resources, pupils of different ages may be taught together.

79. It follows that work allocated to a SEN pupil should also be differentiated. I note the Code of Practice states that class teachers should '*provide or arrange special help*

with the normal curriculum framework, exploring ways in which increased differentiation of class work, alternative teaching and learning strategies or different classroom organisation might better meet the child's needs'. The school's SEN policy adds that the class teacher should 'put education plans into practice... [and] organise the work of the classroom so that there is appropriate differentiation of work according to the children's needs.'

80. The policy further states that the class teacher will decide how they will differentiate, for example:
- *by task*
 - *by input*
 - *by outcome*
 - *by texts/resources used*
 - *use of classroom / domestic assistants as directed by the class teacher*
 - *the teacher will also keep in mind: the intended learning outcomes, success criteria, range of abilities, teaching strategies, pace of the lesson and progression.*
81. The investigating officer found some evidence of differentiation. For example:
- Spellings were pitched at an easier level, though I note this occurred in response to concerns raised by the pupil's mother in September 2019.
 - Entry by the teacher in the pupil's Literacy book dated 17 September 2019 referring to a word puzzle – *'[The pupil] answered these questions on the whiteboard'*. I consider this is a basic example of a different teaching and learning strategy being used with the pupil.
 - Entry by teacher in spelling book dated 29 November 2019 – *'(The sales will be on today) [The pupil wanted to try the other group's dictated sentence. I did not discourage this.'* I consider this is an indicator that the pupil was given a dictated sentence which was different to that which other ability groups in the class were given.
82. The BoG were clear that the pupil was given differentiated work *'when required'*. The class teacher referred to various means by which teaching was differentiated for the pupil. For example, *'reduced writing'*, *'oral answering'* and use of *'whiteboards'*. In contrast the complainant said the pupil's schoolbooks *'rarely were differentiated in school'*. A lack of evidence of differentiation in schoolbooks may

perhaps be explained by the means of differentiation employed in the classroom; for example, if ICT resources were used to differentiate the pupil's work. However, the evidence presented by either party is insufficient for a decision to be made on whether differentiation of work was adequately implemented, monitored and reviewed.

83. I consider that a clearer indication of the differentiation of work would have been apparent from the teaching notes / lesson plans for the period of complaint. I am aware that, in accordance with the Jordanstown Agreement, teachers' duties include '*planning and preparing*' lessons. I would therefore expect to find lesson plans for this pupil's class containing learning objectives for the different ability groups in the class, including those with an IEP. I consider it is not unreasonable to expect this material to include reference to the relevance and use of ICT resources. The school did not provide teaching plans or group worksheets for the period September 2019 to January 2020.
84. As indicated in paragraph 74, without the maintenance of adequate records, it is more difficult for a public body to defend its actions and the decisions it makes when challenged. It can also have the effect of diminishing the public's confidence that decisions made are not arbitrary and outside of due process.
85. In the absence of this material, I do not consider there is sufficient evidence to satisfy me that differentiation of the pupil's work was adequately implemented, monitored and reviewed. I consider the lack of records represents a failure to comply with the third Principle of Good Administration and constitutes maladministration. I therefore uphold this element of the complaint.

Injustice

86. As a consequence of the maladministration identified in relation to Issue 1, I consider the complainants experienced the injustice of frustration and anxiety as they sought assurance that their child was given the support set out in his Statement, to which he was entitled. I consider the maladministration also led to a loss of opportunity for the complainants to access full and accurate records in pursuit of that assurance.

Issue 2

Whether the school communicated with the parents, in line with required procedures, in relation to the pupil's drawings of 'disturbing images'.

Detail of Complaint

87. The complainants said the pupil completed many drawings of disturbing images in class which went un-noticed by those who were supervising his work. They claim the school failed to communicate with his parents and relevant authorities regarding the drawings. The pupil had filled five drawing books from September 2019 to the time he was removed from the school on 23 January 2020.

88. Images drawn in the books included¹⁴:

- *A mouth shouting 'Spellings'*
- *Hard, deep scribbles that could only be done in a 'rough, distressed manner'*
- *the pupil shouting 'NO!'*
- *Pages that had been 'stabbed' with a pencil 'upwards of 20 times'*
- *swords / daggers*
- *drawings of 'broken hearts'*
- *An 'eye crying'*

Evidence Considered

Legislation/Policies/Guidance

89. I considered the following policy:

- the school's safeguarding policy.

BoG response to investigation enquiries

90. The BoG said that, in January 2019, the pupil's mother had asked the SENCo that only positive comments be written into the home / school book¹⁵ to encourage the pupil. It was agreed that any negative issues would be reported verbally.

91. When the class teacher identified '*disturbing drawings*' in the pupil's workbook '*and other associated concerns*' she reported these to the SENCo.

92. In December 2019, the SENCo met with the pupil's mother and '*verbally outlined*

¹⁴ Descriptions applied by complainants

¹⁵ Two-way written daily communication about the pupil between school and home.

her concerns around the disturbing drawings'. The SENCo also informed the pupil's mother that the pupil had been overheard saying *'I'm going to kill myself'*. The pupil's mother *'indicated that [the pupil] was extremely interested in Harry Potter and this probably attributed to the talk of killing and explained the drawings.'*

Relevant school records

93. The school's safeguarding policy focuses on the identification of abuse and the procedures that must be followed when abuse is discovered or suspected. The policy notes that *'staff . . . see children over long periods and can notice physical, behavioural and emotional indicators . . .'* The member of staff must ensure they do several things including:
- *refer concerns to the Designated/Deputy Teacher for Child Protection; and*
 - *act promptly.*
94. The policy lists pupil behaviour(s), including changes in behaviour, which may be an indicator that the child may be the subject of abuse. Staff are required to be alert to the policy as they observe a pupil's behaviour.

Analysis and Findings

95. The first Principle of Good Administration *'Getting it Right'* includes that public bodies should *'act in accordance with policy and guidance'* and *'take proper account of established good practice'*. The third Principle of Good Administration, *'Being open and accountable'* includes that public bodies should keep *proper and appropriate records*.
96. While this element of the complaint is concerned with an alleged failure by staff to raise concerns about changes in the pupil's behaviour, communicated by his drawings, there is no allegation of any form of abuse.
97. Nonetheless, staff would be expected to be aware of the policy and act when a pupil displayed these behaviours. I consider there is a degree of discretion involved in terms of when a teacher might decide there has been a change in a pupil's behaviour which may give cause for concern. I consider there is also an element of discretion for staff in deciding when drawings the pupil made in their workbook are

abnormal or indicative of a problem.

98. I acknowledge that drawings of the nature the complainants described may indeed have been indicative of a problem, especially if these continued over a period. There are no dates on the workbooks containing the drawings but there are five books which, in terms of quantity alone, may be suggestive of a longer period. However, by way of balance, the school said that the pupil's mother had offered the explanation that her son was '*extremely interested in Harry Potter*'. An email, dated 2 December 2019, from the pupil's mother to the Principal said '*He [the pupil] watches a lot of Harry Potter and kills animals in Minecraft¹⁶*', though this comment sought to explain the pupil's talk that day '*that he was going to kill himself*'. I would accept that the existence of apparent reasonable explanations may make the decision about when to invoke the school's safeguarding policy less clear to a member of staff.
99. In this case, that point came when the pupil was overheard saying they were going to kill themselves. According to the policy, where staff have concerns about a pupil they should '*report these concerns immediately to the Designated Teacher and full notes should be made. These notes should be factual, objective and include what was seen, said, heard or reported. They should include details of the place and time and who was present and should be given to the Designated Teacher.*'
100. It is clear from the records there was no suggestion of abuse or indeed abuse by a parent. However, I am satisfied that the policy required the parent(s) to be informed immediately when suspicions were raised. The policy states:
'Unless there are concerns that a parent may be the possible abuser, the parent will be informed immediately.'
- I note the pupil's mother was informed on the day the pupil was overheard making these comments. However, other than a record which the SENCo compiled, there is no evidence that the staff member who directly witnessed the incident made any written record of the facts. I consider this is a failure to comply with the school's safeguarding policy and the first Principle of Good Administration which highlights the importance of acting in accordance with policy. The lack of records is also indicative of a failure to follow the third Principle of Good Administration which

¹⁶ A computer game with creative and survival modes

underscores the importance of keeping good records. I consider this constitutes maladministration.

101. Turning to the drawings, the investigation did not find evidence to support the school's claim that the pupil's parents were informed that staff were concerned. There was no written record of any concerns and no written record of the SENCo being informed of any concerns. Moreover, the pupil's mother refutes the school's account that she was informed of the drawings at the same time she was informed the pupil had been overheard saying '*he was going to kill himself*'.
102. Neither did the incident form, completed by the SENCo on 2 December 2019, make any reference to the '*disturbing drawings*' about which the class teacher and SENCo had concerns. The school did not offer any other documentary evidence of these concerns or the action taken as a result of these concerns.
103. I consider this is a further failure in record-keeping which is contrary to the school's safeguarding policy and the third Principle of Good Administration, and constitutes maladministration.

Injustice

104. As a consequence of the maladministration identified in relation to Issue 2, I consider the complainants experienced the further injustice of frustration and anxiety as they sought assurance that proper process was followed to safeguard their child. I consider the maladministration also led to a loss of opportunity for the complainants to access full and accurate records in pursuit of that assurance.

CONCLUSION

105. I received a complaint about the adequacy of educational support provided to a pupil with a Statement. Following assessment, I investigated the implementation, monitoring and review of the pupil's IEP and communication with the pupil's parents in relation to '*disturbing drawings*' produced by the pupil at school. I upheld the complaint for the reasons outlined in this report. I consider the failures conflicted with the first and third Principles of Good Administration and constituted maladministration.

106. I consider the maladministration caused the complainants the injustice of frustration and anxiety as they sought assurance that:

- their child was given the support set out in his Statement, to which he was entitled; and
- proper process was followed to safeguard their child.

I also consider the maladministration caused the complainants the injustice of loss of opportunity to access full and accurate records in pursuit of that assurance.

Recommendations

107. I recommend the Chairman of the Board of Governors provides to the complainants a written apology in accordance with NIPSO's 'Guidance on issuing an apology' (June 2016), for the injustice caused as a result of the maladministration identified (within **one month** of the date of this report).

108. I further recommend for service improvement and to prevent future recurrence the BoG conducts an audit of SEN-pupil records to confirm that:

- IEP targets are SMART(E);
- written evidence of IEP-target monitoring and review is compiled;
- written evidence of teaching / lesson planning is retained; and
- staff are reminded of the communication requirements of the school safeguarding policy where a pupil's behaviour gives cause for concern.

109. I recommend the BoG implements an action plan to incorporate these recommendations and provides me with an update within six months of the date of my final report. The BoG should support its action plan with evidence to confirm it took appropriate action (including, where appropriate, records of any relevant meetings, training records and/or self-declaration forms which indicate that staff read and understood any related policies).

110. I welcome the BoG's acceptance of the recommendations and their positive view of this process as *'an opportunity to upskill staff, improve communications and deliver an overall improved experience for pupils with SEN and their parents.'*

MARGARET KELLY
Ombudsman

June 2023

PRINCIPLES OF GOOD ADMINISTRATION

Good administration by public service providers means:

1. Getting it right

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

2. Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

3. Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.

4. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

6. Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.

PRINCIPLES OF GOOD COMPLAINT HANDLING

Good complaint handling by public bodies means:

Getting it right

- Acting in accordance with the law and relevant guidance, and with regard for the rights of those concerned.
- Ensuring that those at the top of the public body provide leadership to support good complaint management and develop an organisational culture that values complaints.
- Having clear governance arrangements, which set out roles and responsibilities, and ensure lessons are learnt from complaints.
- Including complaint management as an integral part of service design.
- Ensuring that staff are equipped and empowered to act decisively to resolve complaints.
- Focusing on the outcomes for the complainant and the public body.
- Signposting to the next stage of the complaints procedure, in the right way and at the right time.

Being customer focused

- Having clear and simple procedures.
- Ensuring that complainants can easily access the service dealing with complaints, and informing them about advice and advocacy services where appropriate.
- Dealing with complainants promptly and sensitively, bearing in mind their individual circumstances.
- Listening to complainants to understand the complaint and the outcome they are seeking.
- Responding flexibly, including co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

Being open and accountable

- Publishing clear, accurate and complete information about how to complain, and how and when to take complaints further.
- Publishing service standards for handling complaints.

- Providing honest, evidence-based explanations and giving reasons for decisions.
- Keeping full and accurate records.

Acting fairly and proportionately

- Treating the complainant impartially, and without unlawful discrimination or prejudice.
- Ensuring that complaints are investigated thoroughly and fairly to establish the facts of the case.
- Ensuring that decisions are proportionate, appropriate and fair.
- Ensuring that complaints are reviewed by someone not involved in the events leading to the complaint.
- Acting fairly towards staff complained about as well as towards complainants.

Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Providing prompt, appropriate and proportionate remedies.
- Considering all the relevant factors of the case when offering remedies.
- Taking account of any injustice or hardship that results from pursuing the complaint as well as from the original dispute.

Seeking continuous improvement

- Using all feedback and the lessons learnt from complaints to improve service design and delivery.
- Having systems in place to record, analyse and report on the learning from complaints.
- Regularly reviewing the lessons to be learnt from complaints.
- Where appropriate, telling the complainant about the lessons learnt and changes made to services, guidance or policy.