

John Swinney, MSP  
Cabinet Secretary for Education & Skills  
Scottish Government  
St. Andrew's House,  
Regent Road,  
Edinburgh,  
EH1 3DG

24<sup>th</sup> April 2017

Dear Mr Swinney,

### **Healthcare Needs in Schools guidance consultation**

Thank you for providing me with the opportunity to respond to this consultation. Given my office's involvement on the working group which developed the draft guidance, I am not going to respond to every question in the consultation. However, I would like to make some general points.

I am pleased that this guidance has been reviewed and that it has been framed from a rights perspective. This review was long overdue, particularly given the impact of the presumption of mainstreaming, which has led to children with increasingly complex medical needs being educated in mainstream settings, as well as the changes to legislation over the last 15 years. As the title of research commissioned by my office and published in 2013 states, there should now be "No barriers to medication in school"<sup>1</sup>.

Our research found that a significant number of parents, almost a third, felt that their child's healthcare needs were not always met at school. We continue to hear of cases where parents have been asked to attend school to meet their child's needs, or where children have been unable to attend school as a result of no arrangements being in place. I hope that the new guidance will ensure roles and responsibilities to provide this support are clearer and that more children will receive the support to which they are entitled. I am pleased that the scope of the guidance has been broadened to include other forms of healthcare need. This reflects the increasing complexities of the healthcare needs present in schools of all types of schools in Scotland.

My office's research also found that parents were often not aware of the rights their children had, outlined in the Equality Act 2010, to reasonable adjustments to enable them to attend school. I am concerned that the limited references to reasonable adjustments within the new draft guidance fail to address this and would urge you to revise it to ensure that the importance of the Equality Act 2010 and the reasonable adjustments duties are reflected throughout the guidance. It is particularly important that these duties are reflected in Chapter 2 of the guidance, which sets out roles and

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<sup>1</sup> <https://www.cypcs.org.uk/ufiles/No-Barriers-to-Medication-at-School.pdf>

responsibilities. It is this legislation which now underpins children's rights in this area, as arrangements for most healthcare needs would be considered a reasonable adjustment. The new guidance needs to be explicitly state that the Equality Act places the responsibility for addressing healthcare needs on education authorities, as outlined in the EHRC's Technical Guidance for Schools in Scotland<sup>2</sup>.

I note that the draft guidance does not address the issue of which members of local authority staff should be responsible for meeting individual needs. I feel that this is not something which can be addressed through national guidance, as it needs to be agreed between education authorities and their staff. Nonetheless, reliance on voluntary arrangements and non-availability of staff often creates a barrier to children's needs being met and thus to their attendance in school. It is the responsibility of education authorities to put in place arrangements to meet this need and I urge Scottish Government to encourage them to put in place robust arrangements locally.

Finally, the revised guidance does not address issues relating to intimate care. As with healthcare needs, the number of children with intimate care needs in mainstream schools has increased as a result of the presumption of mainstreaming. However, Enquire report that they receive a considerable number of enquiries relating to this, including from parents whose children have been left in soiled clothing as a result of no arrangements being in place to meet their needs. This is not acceptable. There is an urgent need for national guidance to be produced relating to all aspects of intimate care, including menstrual management. It must make it clear that, as with healthcare needs, education authorities have an obligation under the Equality Act to put in place arrangements to meet these needs.

Thank you again for the opportunity to comment on this consultation and for allowing my office to contribute to this review.

Yours sincerely



**Tam Baillie**

Children and Young People's Commissioner Scotland

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<sup>2</sup> <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-schools-scotland>