

Children's Rights Alliance Submission to the Department of Education and Science in relation to the Education for Persons with Disabilities Bill 2002

February 2003

Introduction

The Children's Rights Alliance welcomes the opportunity to make a submission in relation to the Education for Persons with Disabilities Bill 2002. The Alliance is a coalition of 72 non-governmental organisations concerned with meeting the needs and safeguarding the rights of children in Ireland. The Alliance works to secure the full implementation in Ireland of the principles and provisions of the UN Convention on the Rights of the Child, to which Ireland has been a State Party since 1992.

Education is a powerful tool in overcoming poverty, marginalisation and in promoting equality within society for people with disabilities. Barriers to accessing education can hinder the ability of people with disabilities to reach their full potential and to fully integrate into society.

The Alliance welcomes the introduction of legislation aimed at making further provisions for the education of children and young people with disabilities. While there are many positive elements in the Bill, the Alliance recommends that a number of amendments be made to strengthen the rights of children and young people with disabilities to access meaningful education suitable to their needs.

Recommendations

1. UN Convention on the Rights of the Child

The Minister for Education and Science must ensure that the Education for Persons with Disabilities Bill 2002 is in full compliance with the principles and provisions of the UN Convention on the Rights of the Child. In ratifying the Convention, Ireland agreed to ensure the full realisation by all children of all the rights stipulated in the Convention.

The legislation should reflect the four fundamental principles of the Convention:

- Respect for the best interests of the child (Article 3)
- The right of all children to life, survival and development (Article 6)
- Participation: the right of all children to express their views freely on all matters affecting them (Article 12)
- Non-discrimination: the right of all children to enjoy all the rights in the Convention without discrimination (Article 2).

These four principles have particular relevance to children with disabilities. The **best interests** of children with disabilities are often not respected due to financial considerations. The **development** of children with disabilities is often hindered by a lack of medical, educational and support services. As children with disabilities are commonly considered to be incapable of making valid judgements, their **views** are typically ignored. Children with disabilities often suffer **discrimination** in accessing their rights.

Articles 28 and 29 of the Convention outline the child's right to education. Article 28 states that:

“States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall... [among other things]... take appropriate measures such as the introduction of free education and offering financial assistance in case of need;... take measures to encourage regular attendance at schools and the reduction of drop-out rates.

Article 29 focuses on the aim of education. States Parties agree that education should be directed to *“the development of the child's personality, talents and mental and physical abilities to their fullest potential”* and the development of respect for human rights, for different cultures and for the environment. Education should prepare a child *“for responsible life in a free society... .”*

Article 23 of the Convention outlines the rights of children with disabilities. It states that:

States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

The article continues by drawing particular attention to the State's obligation to children with disabilities:

Recognizing the special needs of a disabled child, assistance... shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

2. National Children's Strategy

The Minister for Education and Science should also ensure that the Education for Persons with Disabilities Bill 2002 promotes the goals and objectives of the National Children's Strategy. The Strategy was launched by the Government in November 2000 to advance the implementation in Ireland of the UN Convention on the Rights of the Child. The Strategy lays out a set of objectives and commitments to improve the

quality of life for all children in Ireland over a ten-year period. The Strategy aims to achieve the following three National Goals:

1. Children will have a voice in matters which affect them and their views will be given due weight in accordance with their age and maturity.
2. Children's lives will be better understood; their lives will benefit from evaluation, research and information on their needs, rights and the effectiveness of services.
3. Children will receive quality supports and services to promote all aspects of their development. The Strategy recognises that all children have a basic range of needs and that some children have additional needs.

Of particular relevance to this legislation are Objective B which states that "Children will benefit from a range of educational opportunities and experiences which reflect the diversity of need" and Objective J which states that "Children with a disability will be entitled to the services they need to achieve their full potential".

3. Report of the Commission on the Status for People with Disabilities

The Education for Persons with Disabilities legislation should provide for and facilitate the implementation of the outstanding recommendations of *A Strategy for Equality, the Report of the Commission on the Status for People with Disabilities.*, in particular the recommendations in relation to education.

4. Report of the Disability Legislation Consultation Group

The legislation should incorporate the recommendations relevant to education contained in the report of the Disability Legislation Consultation Group, *Proposals for Core Elements of Disability Legislation* (February 2003). The Alliance endorses this report and believes its principles should be applied to the Education for Persons with Disabilities Bill 2002 as well as the proposed Disabilities Bill.

5. Compatibility and Integration of Disability Legislation

The Education for Persons with Disabilities Bill and the Disability Bill must be fully compatible and, where necessary, integrated. There must be, for example, a common definition of disability. It is vital that no gaps exist between the two pieces of legislation in their response to the needs and rights of both children and adults with disabilities. Issues of assessment, service coordination (including appropriate supports) and assessment reviews in relation to both educational and non educational needs will be critical in the operation of the two pieces of legislation. A coordinated approach to assessment and service provision across relevant Government Departments must be put in place.

6. Proposed Amendments to the Bill

The Alliance recommends that the following amendments be made to strengthen the Bill:

Section 1

The definition of the “child” should be amended to include all children from birth to 18 years of age. The lowering of the age limit from three years to birth is consistent with UN Convention on the Rights of the Child and with other national legislation. It is also consistent with the remit of the Centre for Early Childhood Development and Education, which aims to develop and co-ordinate early childhood education for children from birth to six years of age, in pursuance of the objectives of the White Paper *'Ready to Learn'*.

The Alliance believes that it is essential that the legislation should apply to all children with disabilities from the time of their birth in order to maximise the child's opportunity to access and benefit from education. Registration of a child with the National Council for Special Education, regardless of the child's age, should immediately trigger a process of assessment leading to the design and adoption of an Education Plan, which in turn should result in the provision of services and support to the child.

Section 3

The child and his or her parent/s should be informed of and consulted at each stage of the process.

A statutory right to an assessment of need should be established specifying a timescale to facilitate intervention at the earliest possible time.

Section 3(1) should be amended to enable other interested parties such as the child, their parent/s or class teacher to inform the principal of their opinion of the special educational needs of the child and to request the principal to take appropriate action.

Section 3(2) assumes that all students begin their education in mainstream primary schools. There is no mention of other educational and care facilities, pre-school facilities or special schools.

Developing Education Plans

Greater clarity if needed regarding the criteria that will be used to determine whether an Education Plan will be prepared by the principal of the child's school under Section 3(4) or by a special educational needs organiser at the request of the principal under Section 3(7).

Section 9 empowers the special educational needs organiser to convene a multidisciplinary advisory team in relation to the preparation of an Education Plan. This team includes the child's parent/s and allows for consultation with the child. The Alliance recommends that Section 3(4) should be amended to create a situation similar to that which occurs under Section 9. The new role of the principal should be to facilitate the preparation of the Educational Plan, in partnership with the child (where appropriate), his or her parent/s, the special educational needs organiser and an independent multidisciplinary team. Specific timescales for each action should be stated in the legislation.

Section 6

The wording of Section 6 should be clarified to require the Council to automatically cause an assessment to be carried out following the receipt of a notice under Section 4 and following an application under Section 5.

Section 7

The phrase a 'statement of the findings' of the assessment referred to in Section 7(5) should be clarified to determine if it refers to a copy of the full assessment report and any recommendation or an abridged text.

Section 8

Section 8 should be amended to include a periodic review of the registrants' details, including changes in the nature and extent of the child's disability.

A code of practice and confidentiality measures should be introduced to govern the registration of children with special educational needs.

Section 10

Section 10(10) should be deleted. Since there is no legal requirement that young people without disabilities leave secondary education at the age of 18 years, there should be no analogous age-based requirement placed on young people with disabilities.

Section 10(2.f) should be amended to include a review of the goals of Education Plans within specific timescales.

Section 11

Section 11(2) should contain a provision whereby the review report is also made available to the child (where appropriate and in a manner that is appropriate to the child) and his or her parent/s.

Section 15

Section 15(1) should be amended to reflect the definition of the child to include all children from birth to 18 years of age and that early intervention will be provided for all children identified and assessed as in need of early intervention. This section should set clear timeframes and assign responsibility to the Department of Education and Science for delivering early intervention for children.

Section 16

Section 16 should be amended to include the person concerned and his or her parent/s as decision makers in subsections 1, 2, 3, 4 and 6, and hence references to these two groups can be deleted in subsection 8. .

There is a need for further provisions (or separate legislation) to clarify the eligibility of students with disabilities to access second level (or special) education once they reach the age of eighteen years. This should include provisions to support persons with disabilities over the age of 18 in higher, further or continuing education. It should also include provision for transition services which promotes movement from ordinary school or special school to a range of post school activities, based on the individual's needs.

Section 19

Clarity is needed on the relationship between the proposed Department of Education and Science National Council for Special Education Register, the disability databases

being developed by the Department of Health and Children and the databases of the Health Research Board. Failure to address this issue could undermine accountability and lead to widespread chaos and confusion among children, parents, educators and other providers.

Section 20

Section 20(3) should be amended to include persons with disabilities, their parents and/or representatives.

Section 21

Section 21(4) should be amended to include a provision whereby the Minister shall have regard to the desirability of including on the consultative forum persons who themselves experience disability, their parents and/or representatives. The Minister shall also have regard to the desirability of such gender balance in the membership of the Council as he or she considers appropriate and determines, from time to time, when making appointments to the Council under this section.

Section 30

Section 30(10) should be amended to include a provision whereby the Council shall have regard to the desirability of including on a committee persons who themselves experience disability, their parent/s and/or representatives.

Section 36

It should be clearly established that the primary responsibility for the entitlement to and provision of educational support services to children and young people under this legislation rests with the Department of Education and Science, although they may contract in services supplied by the Health Boards, such as Speech and Language Therapy.

Section 36 should be amended to place a statutory requirement on health boards to provide an assessment of need and a statutory entitlement to the services that are required flowing from that assessment. Towards that end, subsections 3.a and 3.c in Section 36 should be struck from the Bill.

Other Issues

1. Behavioural Difficulties

Provisions should be made to address the issues of intervention, discipline, suspension or expulsion from school of children and young people who display challenging behaviour and the related issue of early school leaving.

2. Tracking

A mandatory tracking system should be established to monitor the outcomes for each child. The responsibility for this system should be clearly assigned.

3. Training of Personnel

A section on the provision and standard of training of personnel should be added. This would include the development guidelines, codes of practice and standards and would clarify the qualifications required by special educational needs organisers which are to be laid out by the Council.

4 Specific Timescales

There are a number of areas where a timescale should be specified to protect against excessive delay. These include Sections 3, 4, 7 and 9 in relation to the assessment of children and Section 12 in relation to the appeals procedure.

5 Curriculum

To accommodate students with disabilities at various educational levels, the curriculum should allow for flexibility, additions and adaptations. A system of standards should be applied to all specialist schools and the option of access to mainstream certification should be available to those in special education settings. A fair and appropriate system of examining, testing and assessment should be provided.

6. Legislative Review

The operation of the legislation should be reviewed within five years.