3. RIGHT TO EDUCATION

Every child in Ireland has the right to access education and to be educated. The aim of the right to education goes beyond academic achievement to the development of the child’s personality, talents and abilities to their fullest potential, and to providing them with the tools to live a full and responsible life within society.

*Summary of Articles 28 and 29 of the UN Convention on the Rights of the Child*
TEEN AWARDED €5,500 OVER DISCRIMINATION BY SCHOOL

The Anglo-Celt, 23 August 2016

A 17-year-old Oldcastle boy who suffers from cerebral palsy has been awarded €5,500 after his former school discriminated against him by not allowing him to bring his assistance dog to school. […]

An equality officer of the WRC [Workplace Relations Commission], Orlaith Mannion, found Knocktemple NS had, based on their ‘Just say No’ policy towards allowing dog access, taken an ‘obfuscating and close-minded approach to the request’ by the Melia family. […]

The letter [to the family] stated that Luke would have to stop bringing Aidan to the school until the board had decided on the matter.

As a result, Luke’s parents, Pauline and Brendan, have decided to home-school their child. […]

At the time, Luke’s father Brendan said his son’s life had been ‘transformed’ by the arrival of Aidan, which helped his son’s mobility.

He told The Anglo-Celt: ‘We used to worry about him falling backwards and hitting his head against a pipe or a radiator but now if he wobbles backwards, the dog stops and they steady themselves up.’ […]

Equality Officer Ms Mannion stated that while the school had been correct to pose questions, the law requires educational establishments to do all that is reasonable to accommodate the needs of a person with a disability.

In its ruling, the WRC has now ordered that the school redraft its policies so that they are in compliance with the law. […]

3.1 Educational Disadvantage

GOVERNMENT COMMITMENT

A Programme for a Partnership Government commits to:

> Publish a new School Completion Strategy.
  
  **Progress: Limited**

> Publish a new updated Action Plan for Educational Inclusion within 12 months, narrow the gap between DEIS and non-DEIS schools, and examine how students outside of DEIS can be better supported.
  
  **Progress: Some**

‘Educational Disadvantage’ receives a ‘D’ grade in Report Card 2017. Neither the School Completion Strategy nor the Action Plan for Educational Inclusion has yet been published though the Plan is expected in early 2017. However, there is no clear plan as to how students experiencing educational disadvantage outside of the Delivering Equality of Opportunity in Schools programme will be supported.

Every child has a right to education on the basis of equal opportunity.259 The UN Committee on the Rights of the Child has provided that the goal of education is to ‘empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence.’260 The Committee states that education goes beyond formal school to embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society.261 States are required to take measures to ‘encourage regular attendance at schools and the reduction of drop-out rates.’

Every child has a right to education on the basis of equal opportunity.

**School Completion:** Better Outcomes Brighter Futures: The National Policy Framework for Children and Young People 2014-2020 commits to ‘implement strategies to improve school engagement and reduce incidences of […] early school-leaving through engaging parents in schooling, strengthening transitions, […] and fostering inclusive school environments where all pupils flourish, irrespective of social and ethnic background or disability.’262 One of the goals under the Action Plan on Education, launched in September 2016, is to continue to improve retention rates at second-level with the aim of increasing the current rate of 82.7 per 100.

260 UNCRC ‘General Comment No. 1 on Article 29(1) the Aims of Education’ (2001) CRC/GC/2001/1 para 2.
261 ibid.
262 UN Convention on the Rights of the Child, A/RES/44/25 (20 November 1989) Article 28(e)
Work on the School Completion Strategy is to begin at the end of 2017. The development of the Strategy will be led by the Department of Children and Youth Affairs in conjunction with the Department of Education and Skills. Work on the DEIS review and reform of the School Completion Programme under the Educational Welfare Service will lay the foundations to work on the Strategy.

Significant progress has been made in improving school completion rates, with the most recently available data showing that 7,572 young people left school early in 2011, a drop of 34 per cent over the previous decade. The data makes positive reading but there continues to be a cohort of young people who, for a myriad of reasons, disengage with formal education and whose needs are not catered for in the mainstream system. In line with the guidance from the UN Committee, the new School Completion Strategy must go beyond formal education and provide additional support and educational alternatives for all young people, of all abilities and backgrounds and ‘embrace the broad range of life experiences and learning processes’ that allow children to flourish.

Casting the net of the School Completion Strategy wider than the School Completion Programme is positive. The new Strategy is an opportunity for the Government to make a real difference in the educational outcomes for vulnerable children and young people. While the Programme will benefit from ongoing reform, a more holistic approach taking account of the DEIS review, the forthcoming Educational Inclusion Action Plan, the School Meals Programme, mental health supports and the wider school environment for example would take account of the needs in all aspects of the child’s life that impact their school experience. This will involve a coordinated response with responsibility lying across a number of Government departments. Young people, particularly those who have completed their education early or who are at risk of leaving school early should be consulted in advance of the publication of a new Strategy. The Strategy should be outcomes-focused, encourage evidence-based decision-making, be adequately funded and accompanied by an implementation plan with clear timelines and measurable outcomes. Publication of the Strategy should be prioritised to ensure that another group of young people does not fall through the cracks of the education system.

Educational Disadvantage: In Ireland, a person’s socio-economic background remains a strong determining factor in their educational attainment. A person is three times more likely to go on to higher education if their parents have higher education than someone whose parents have not completed secondary level education. The rapid expansion of education in recent decades and the removal...
of tuition fees have benefited most socio-economic groups in accessing higher education. These developments have not had a significant impact on the entry rate of students from under-represented lower socio-economic groups such as Traveller, Roma and migrant children. Better Outcomes, Brighter Futures commits to ‘consider the recommendations of the review of the DEIS Programme and use it as a platform for the new initiatives to deliver better outcomes for students in disadvantaged areas’ and to ‘strengthen social inclusion measures and re-invigorate efforts to improve educational outcomes among, and integration of, Travellers, Roma and migrant children and young people.’

The Action Plan on Education commits to publishing and implementing an Educational Inclusion Action Plan that will include a school support programme, an assessment framework for resource allocation and a monitoring and evaluation framework. The Action Plan on Education also aims to improve the learning outcomes of learners at risk of or impacted by educational disadvantage. The Plan notes that ‘inclusive education’ is a fundamental need in our education and training system and that while progress has been achieved, ‘significant challenges remain’ if children and young people from different backgrounds are to be supported to experience educational success.

The DEIS programme is the State’s main policy to tackle educational disadvantage and it has been found to positively impact on disadvantage in education. Since the formal ending of its initial cycle in 2008, there has been uncertainty related to the future of DEIS. A process to review ‘all aspects of DEIS’ began in 2015 which includes the potential for increased integration of services provided by other Departments and Agencies with the view to improving effectiveness. The review is expected to include targeted measures in areas such as new networks of DEIS teachers and schools to share learning outcomes and the improvement of the integration of schools and other State supports within communities. A new assessment framework is being developed to assess schools for inclusion in the Programme. In a positive move, children from a sample of DEIS schools were consulted as part of the DEIS review and this, together with the outcome of a broader consultation, will be considered in drawing up the Educational Inclusion Action Plan.

The deadline to publish the Educational Inclusion Action Plan by the end of 2016, as outlined in the Action Plan on Education, has not been achieved and it is now expected to be published in 2017. It is disappointing that the commitments in the Educational Inclusion Action Plan will be implemented ‘as resources allow.’ Dedicated and adequate funding should be committed to achieve its aims given that addressing

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275 ibid. Such groups include those from skilled manual, semi-skilled unskilled manual and non-manual groups.
277 ibid. Commitment 2.22.
279 ibid 2, 3.
280 ibid.
283 Minister for Education and Skills, Richard Bruton TD, Written Answers, Delivering Equality of Opportunity in Schools Scheme, 29 November 2016 [36891/16].
284 Communication received by the Children’s Rights Alliance from the Department of Education and Skills, 20 January 2017.
286 Communication received by the Children’s Rights Alliance from the Department of Education and Skills, 20 January 2017.
287 ibid.
educational disadvantage is a goal of the Action Plan on Education. Implementation of the Plan is due to begin in the 2017/2018 school year.291

A Programme for a Partnership Government also commits to narrowing the gap between DEIS and non-DEIS schools, and to examine how to better support students outside of DEIS. A ‘significant proportion’ of disadvantaged students attend non-DEIS schools.292 The Educational Inclusion Action Plan is expected to use ‘small areas’ census data to identify schools in disadvantaged areas that fall outside of the DEIS Programme.293 However, children who experience educational disadvantage due to their socio-economic background but do not attend a school in a disadvantaged area will remain beyond the reach of supports such as the Home School Liaison Programme, the School Completion programme and planning supports.294 It is unclear how the Government intends to address the additional support needs of these children as it sets out in its commitment and the new Educational Inclusion Action Plan must make provision for these children.

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292 Emer Smyth et al, Review of the School Completion Programme, Research Series Number 44 (ESRI 2015) 79.
293 Carl O’Brien, ‘Plan to make education accessible to those from poorer backgrounds’ Irish Times (Dublin, 14 December 2016).
Educational Disadvantage

Immediate Actions for 2017

PUBLISH THE ACTION PLAN ON EDUCATIONAL INCLUSION WITHOUT DELAY AND PROVIDE DEDICATED FUNDING FOR ITS IMPLEMENTATION.

The promised Action Plan on Educational Inclusion should be long-term, adequately resourced and accompanied by an implementation plan with clear targets, timelines, expected outcomes and details of how they are to be achieved.

ENSURE THAT THE NEW SCHOOL COMPLETION STRATEGY CONSIDERS THE DIVERSE NEEDS OF THE CHILD IN ALL ASPECTS OF THEIR LIVES AND THAT THIS IS REFLECTED IN A COORDINATED CROSS-DEPARTMENTAL APPROACH. IT SHOULD INCLUDE CONSULTATION WITH CHILDREN AND YOUNG PEOPLE.

The new School Completion Strategy provides the Government with a real opportunity to improve the life outcomes for vulnerable children by helping them achieve their educational potential at school. To achieve this, the Government must be ambitious in its approach and examine all aspects of the lives of the young people who fall out of the education system early through a cross-departmental approach. The Department of Children and Youth Affairs must consult with young people in school as well as early school-leavers to inform the development of the new School Completion Strategy.

ENSURE THAT SUPPORTS ARE MADE AVAILABLE TO CHILDREN WHO EXPERIENCE EDUCATIONAL DISADVANTAGE BUT WHO DO NOT ATTEND DESIGNATED DEIS SCHOOLS.

A significant number of children from disadvantaged backgrounds but not living in DEIS designated areas fall outside of the reach of Programme supports. Priority should be given to ensure that measures are in place to support these children.
3.2 Diversity in Schools

GOVERNMENT COMMITMENT
A Programme for a Partnership Government commits to:

> Work with stakeholders to facilitate the phased transfer of Catholic schools to new patrons, where support of communities exists and to consider new approaches.
  
  Progress: Limited

> Increase the number of non-denominational and multi-denominational schools to 400 by 2030.
  
  Progress: Some

> Publish new School Admissions and Excellence legislation and enact this legislation for the beginning of the school year 2017.
  
  Progress: Some

‘Diversity in Schools’ receives a ‘D’ grade in Report Card 2017. The Government is to be commended for its commitment to increase diversity in schools. However, new plans on the transfer of existing schools from religious patrons are not fully based on the best interests of children and lack transparency and independence. In addition, the ‘baptism barrier’ has been protected rather than removed in the new school admissions legislation leaving children of minority or of no faith facing discrimination.

Every child has a right to education ‘on the basis of equal opportunity’ and the right to respect for their freedom of thought, conscience and religion. Children have the right to be free from discrimination of any kind, irrespective of, amongst other things, the child’s or their parent or guardian’s religion or beliefs. The State is under a duty to ‘take all appropriate measures’ to ensure that the child is protected against all forms of discrimination based on their beliefs or expressed opinions. In 2016, the UN Committee on the Rights of the Child encouraged Ireland to promote the establishment of non-denominational or multi-denominational schools and to amend existing legislation to eliminate discrimination in school admissions.

In the academic year 2016/17, 96 per cent of primary schools have a religious patron with 89.7 per cent under the patronage of the Catholic Church. At post-primary level 52.3 per cent of schools have a religious patron, with 48.5 per cent of these under Catholic

296 ibid Art 14(1).
297 ibid Art 2.
298 UNCRC ‘Concluding Observations Ireland’ (2016) CRC/C/IRL/CO/3-4 para 64(a).
299 Communication received by the Children’s Rights Alliance from the Department of Education and Skills, 23 January 2017.
In the Action Plan on Education 2016-2019, the Government commits to working with stakeholders to facilitate the process of reconfiguration under an agreed roadmap for a phased transfer of Catholic schools to new patrons where the support of communities exists.

**Divestment/Reconfiguration:** The previous Government established a Forum on Patronage and Pluralism in the Primary Sector in 2012 to examine how the education system could best provide a sufficiently diverse number and range of schools nationwide for children of all religions and none. It recommended divestment of patronage to take place on a phased process. Progress on divestment has been slow and rather than actual divestment of property to another patron, in many cases, schools are housed in temporary accommodation, some with no guarantee of a long-term building. Just two schools are now in properties given over by the Catholic Church.

In the Action Plan on Education 2016-2019, the Government commits to working with stakeholders to facilitate the process of reconfiguration under an agreed roadmap for a phased transfer of Catholic schools to new patrons where the support of communities exists. In conjunction with the proposed new multi- and non-denominational schools, the Minister for Education and Skills, Richard Bruton TD, has pointed to the phased transfer of Catholic schools to new patrons as part of the vision of achieving greater diversity in schools. He is to be commended for seeking new approaches to progressing divestment and reconfiguration. Although he met with a broad range of stakeholders on this issue, there was little action on the ground in 2016 and progress remained effectively stalled.

In January 2017, the Minister announced a plan aimed at ‘providing more multi-denominational and non-denominational schools across the country’ through the transfer of existing schools from religious patronage. The plan sets out a two phase process for the identification of existing schools for transfer and where it is shown that there is a level of demand to justify the transfer, the implementation phase will begin. This model will continue alongside the previous amalgamation and closure model. With regard to the process for the decision on patronage of the new multi- and non-denominational schools, a statement from the Minister provided that ‘the existing landlord... will decide what multi-denominational patron to

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300 ibid.
301 The Department of Education and Skills provides that two types of primary schools are categorised as multi-denominational:
1. Schools that do not provide religious education as formation, during the school day, but do provide education about religions and beliefs. 2. Schools that provide education about religions and also provide some faith formation for different denominations, depending on parental requests, during the school day, over a 3 or 4 week period. Department of Education and Skills, ‘Diversity of Patronage’ <http://bit.ly/2llAaq7> accessed 1 February 2017. Definitions can also be found at this address for denominational and inter-denominational patronage.
305 ibid 105.
308 Minister for Education and Skills, Richard Bruton TD, Written Answers, School Patronage, 16 November 2016 [35019/16].
309 ibid.
311 ibid.
transfer to.\textsuperscript{312} This is at odds with the constitutional rights of parents to decide the type of school their children attend.\textsuperscript{313} Given that the vast majority of primary schools are under the patronage and ownership of one denomination,\textsuperscript{314} decisions on patronage should be undertaken by an independent body to ensure a more transparent and independent approach.

Publicly funded education should be based on the rights and needs of children, in particular the best interests of the child, rather than those of patrons. The plan should be re-stated to take this into account when providing for the transfer of existing schools from religious patronage to other patrons. While the rights and needs of patrons and children may well overlap in many cases, the best interests of the child should always be the starting point and the decision-making process on patronage should be transparent, independent and fair. The wishes of parents and families should be central to any plan in this area in line with Article 42 of the Irish Constitution. Plans for consulting with parents should be more comprehensive\textsuperscript{315} and provision should be included for meaningful consultation with children and young people.

**Non- and multi-denominational schools:** In 2016, the UN Committee recommended that the State ‘expeditiously undertake concrete measures to significantly increase the availability of non-denominational and multi-denominational schools’.\textsuperscript{316} Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014-2020 commits to ‘expand the provision of multidenominational schools where parental demand exists’.\textsuperscript{317} A Programme for a Partnership Government specifies a target of 400 multi- and non-denominational schools by 2030 which is reiterated in the objectives of the Action Plan on Education, launched in September 2016.\textsuperscript{318} The Action Plan provides that the Government will ‘map out new approaches to reach the target’ by the end of 2016.\textsuperscript{319} The Government has set itself an ambitious target which effectively breaks down to a figure of 18 new schools to be opened per year including in 2016.\textsuperscript{320} However, since the process began in 2012, a total of 10 schools have been opened under the patronage divestment process.\textsuperscript{321} Under the Action Plan, the target to open five more by the end of September 2016 (three under the patronage process and two under reconfiguration) has been achieved.\textsuperscript{322}

Greater clarity will be required as to how the target of 400 schools is to be reached. Transfer of existing schools from religious patronage is expected to account for one third of this figure.\textsuperscript{323} Details of how the remaining two thirds are to be achieved should be set out in clear phases of development with stated timelines and funding streams and involve all patron

\textsuperscript{312} ibid.

\textsuperscript{313} Irish Constitution, Art 42.3.1°. This provision states that ‘The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.’

\textsuperscript{314} The Forum on Patronage and Pluralism in the Primary Sector, Report of the Forum’s Advisory Group (Department of Education and Skills 2012) 63.

\textsuperscript{315} It appears that pre-school parents will be asked to fill out a survey but no other plans have been set out such as public meetings, written submissions or focus groups – all options set out in Department of An Taoiseach ‘Reaching Out, Guidelines on Consultation for Public Sector Bodies’ (2004) <http://bit.ly/2iJFX5I> accessed 1 February 2017, 13-18.

\textsuperscript{316} UN CRC ‘Concluding Observations: Ireland’ (2016) UN Doc CRC/C/IRL/CO/5-4 para 64(a).


\textsuperscript{319} ibid 44.


\textsuperscript{321} ibid.

\textsuperscript{322} In the Action Plan, under the objective heading ‘establish 400 new multi-/non-denominational schools’, it includes a commitment to three new schools under the patronage process and two reconfigured schools to be opened in Q3 of 2016 Department of Education and Skills, Strategy Statement Action Plan for Education 2016-2019 (DES 2016) 44.

bodes. In addition, given that there are currently 108 multi-denominational primary schools in the country,\(^{324}\) and no non-denominational schools at either level, it will be important to ensure that any new school divestment model includes not just multi-denominational but also non-denominational schools. Any new approach must explicitly ensure that all children are treated equally regardless of the religious or non-religious beliefs of the child and their family.

**School Admissions:** The Equal Status Acts 2000-2012, which prohibit discrimination on religious and other grounds, provide an exemption that allows schools of a particular religious ethos to give preference to students of that religious denomination, or refuse admission to students of other or no religion in order to preserve the school's ethos.\(^{325}\) This is often referred to as the 'baptism barrier' which arises because of the high proportion of schools of a Catholic ethos and the lack of alternatives for families of different or no faiths. It can mean that where schools are oversubscribed, preference in school admission is given to children who can present a baptismal certificate.\(^{326}\) Research from EQUATE has found that one in four parents who baptised a child, did so to get them into a local school.\(^{327}\) This shows the lengths that parents are prepared to take to enrol their child in a nearby school which is often publically funded. In 2016, the UN Committee encouraged the State to amend the 'existing legislative framework to eliminate discrimination in school admissions, including the Equal Status Act'.\(^{328}\) Better Outcomes, Brighter Futures commits to reducing discrimination and intolerance of all types experienced by marginalised groups including those from religious minorities.\(^{329}\)

The Government has committed to enact legislation on school admissions in 2017 though this will not apply to admissions for that academic year.\(^{330}\) The Education (Admission to Schools) Bill 2016 was published in July 2016 fulfilling one part of the commitment, but it relates solely to school admissions and does not address the issue of 'excellence'. The aim of the 2016 Bill is to 'increase the transparency and fairness of school admissions'.\(^{331}\) Amongst other things, it proposes to ban school admission waiting lists which will ensure that parents who move to a new area are not placed at a disadvantage. It will also ban admission fees. However, the Irish Human Rights and Equality Commission has noted that the Bill 'makes no change to the underlying substantive law on how a school may select students for admission'.\(^{332}\) The Bill explicitly bans discrimination in school admissions including on religious grounds but the exemption set out above under the Equal Status Acts is protected under Section 7 of the proposed legislation.\(^{333}\) This amendment allows for the continuation of de facto discrimination based on religious ethos and maintains the 'baptism barrier'.

In November 2016, the Minister for Education and Skills stated that the 'baptism barrier' issue will be addressed separately from the Education (Admission to Schools) Bill under an Equal Status Bill\(^{334}\) which the Government has agreed will proceed to the second stage in June 2017.\(^{335}\) In early 2017, he initiated a public consultation based on four potential options to address the 'baptism barrier' issue.\(^{336}\)

While the Minister for Education and Skills has stated publicly that this issue is ‘not put on the long finger’,\(^{337}\)
it is disappointing that this issue is not being dealt with under the Education (Admission to Schools) Bill 2016. The renewed focus to this area by the Minister is welcome but it seems likely that another group of young children will potentially face discrimination before their first day of school. While the complexity of the issue is acknowledged, it should no longer be used as a reason to deny children access to publicly funded education on an equal basis.
Diversity in Schools

Immediate Actions for 2017

RE-STATE THE PLAN FOR THE TRANSFER OF EXISTING SCHOOLS FROM RELIGIOUS PATRONAGE FOR PUBLICLY FUNDED EDUCATION TO ENSURE THAT ITS STARTING POINT IS THE BEST INTERESTS OF CHILDREN.

Proposals to provide for the transfer of existing schools from religious patronage for publicly funded education should be based on the rights and needs of children rather than those of patrons. The decision-making process on patronage should be transparent, independent and fair. Current proposals to survey parents of pre-schoolers should be enhanced to ensure a more comprehensive consultation that includes the views of children and young people.

PUBLISH A PLAN TO INCREASE THE NUMBER OF MULTI- AND NON-DENOMINATIONAL SCHOOLS TO 400 BY 2030.

A clear plan involving all patrons and setting out the phases of development with timelines and a monitoring structure is required to provide greater clarity on how the target is to be achieved. Ensure that non-denominational schools are an explicit part of the plan. It should also identify how many of the schools are to be primary and post-primary.

URGENTLY AMEND THE EQUAL STATUS ACTS 2000-2012 AND THE EDUCATION (ADMISSION TO SCHOOLS) BILL 2016 IN ADVANCE OF ENACTMENT TO ENSURE THAT NO CHILD FACES DISCRIMINATION ON THE BASIS OF RELIGION WHEN ACCESSING PUBLICLY FUNDED EDUCATION.

The exemption provision in s 7(3)(c) of the Equal Status Acts allows schools of a particular religious ethos to give preference to students of that religious denomination, or to refuse admission to students of other or no religion in order to preserve the school’s ethos. It should be amended to ensure that no child faces discrimination on the basis of religion when accessing publicly funded education. Section 7 of the proposed Education (Admission to Schools) Bill 2016 should be amended to remove this protection.
3.3 Disability and Additional Needs in Education

GOVERNMENT COMMITMENT
A Programme for a Partnership Government commits to:

> Examine the adequacy of current special education access and funding provision.
  **Progress: Some**

> Consult with stakeholders with regard to how best to progress sections of the Education of Persons with Special Educational Needs Act 2004 that were introduced on a non-statutory basis.
  **Progress: Some**

> Introduce a new in-school speech and language service at primary level and to support children in early years.
  **Progress: Limited**

'Disability and Additional Needs in Education' receives 'C+' grade in Report Card 2017. This grade reflects the range of positive developments for special needs education in 2016 including the largely positive review of the new model for resource allocation and investment in additional teaching posts to support its rollout. There is no clear roadmap as to how or when the Education for Persons with Special Educational Needs Act 2004 will be implemented and the introduction of new in-school speech and language service is at the early stages of development.

Every child has a right to education regardless of their needs or ability.\(^{338}\) The aim of this right is to 'empower the child by developing his or her skills, learning and other capabilities, human dignity, self-esteem and self-confidence'.\(^{339}\) It goes beyond formal school to embrace a wide range of life experiences and learning processes to enable children 'to develop their personalities, talents and abilities and to live a full and satisfying life within society'.\(^{340}\) States must ensure, as a priority, that children with disabilities 'have equal opportunities to participate fully in education and community life, including by the removal of barriers that impede the realisation of their rights'.\(^{341}\) Children with special educational needs have a right to individualised support and reasonable accommodations to ensure that they can be reasonably accommodated in the

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\(^{338}\) UNCRC 'General Comment No. 9 on the rights of children with disabilities' (2006) UN Doc CRC/C/GC/9 para 62. All children up to the age of 18 have the right to primary Education in Ireland under Article 42 of the Irish Constitution.

\(^{339}\) UNCRC 'General Comment No. 1 on The Aims of Education Article 29(1)' (2001) UN Doc CRC/GC/2001/1 para 2.

\(^{340}\) ibid.

\(^{341}\) UNCRC 'General Comment No. 7: Implementing child rights in early childhood' (2006) UN Doc CRC/C/G/CC/7/Rev.1 para 36(d).
In addition to rights in education, like other children, children with special education needs and disabilities have the basic right to development and the State must ensure that every child’s right is vindicated to the maximum extent possible, regardless of their ability.343 Children should not face discrimination because of a disability.344

In 2016, the UN Committee on the Rights of the Child recommended that Ireland ‘adopt a rights based approach to disability’, ‘establish a comprehensive strategy for the inclusion of children with disabilities in mainstream education and the encouragement of their autonomy’ and that the State should ‘train and employ a sufficient number of specialised teachers and professionals in order to provide special needs education support’.345 The Ombudsman for Children selected children with disabilities as one of four key strategic areas of work for his office over the next three years. On education for children with disabilities, the Ombudsman highlighted that ‘[a]ny child with a disability which may make him/her vulnerable should be protected through a rights based approach in public administration’.346

Access and Funding Provision for Special Education: A Programme for a Partnership Government commits to examine the adequacy of current special education needs access and funding provision. The majority of students with special educational needs attend mainstream schools with additional supports.347 The National Council for Special Education (NCSE) has found that the number of students receiving low-incidence (such as physical disability, hearing impairments and autism) supports in mainstream schools has increased from 38,000 in 2011 to 45,700 in 2014.348 The expenditure of the Department of Education and Skills on special education in 2016 was €1.5 billion, which represents 17.8 per cent of the gross budget for education and training, and an increase of 320 per cent since 2004.349

Currently, provision of low-incidence special educational needs is based on a diagnostic or medical approach.350 This has proved problematic for a number of reasons.351 First, it meant that families, who cannot afford to get a private diagnosis immediately, have had to wait for their professional assessment and experience delay in accessing supports. It means that there was a risk that children were being diagnosed for the purposes of resource allocation and being labelled with a disability just to receive extra teaching support. Children were receiving the same level of support despite a spectrum of ability and disability and there was no systematic assessment of outcomes for students to whom resources were allocated.352 In spite of a high level of spending in this area, it is clear that the existing model has a number of deficiencies and that children from lower socio-economic backgrounds faced inequality in accessing services, as highlighted in Report Card 2015.

In 2013, the NCSE recommended that a new model be developed based on the profiled need of each school,
without the need for a diagnosis of disability. A new model for resource allocation was successfully piloted in 2016 in 47 schools by the Department of Education and Skills. A review of the pilot has been completed and the overall response from teachers, students and parents was positive. For example the review found that there was increased flexibility and autonomy because by the model allocates resources based on need. The review found that there are still some outstanding challenges, in particular in relation to the high level of support required by pilot schools to assist with teachers’ continuing professional development in the areas such as target setting and monitoring of students’ progress. The review provides that it would be difficult to provide this level of support to all schools. It notes that of most concern is that some schools reported a lack of impact of the new model where no additional teaching resources were granted which may have implications for the overall allocation of resources for students with special educational needs.

While the Minister has said the review included the views of parents and the learning experiences of pupils were taken into account, it is not clear if children with educational needs or disabilities were consulted directly in this process. In broadly welcoming the model, Inclusion Ireland has noted that the model does not provide an independent appeal mechanism for parents if they feel their child has not been allocated an adequate amount of hours. Complaints can only be made to the principal or Board of Management who will have made the original decision. Parents should have the right to a final appeal to an independent body in the allocation of resources under the new model.

The Minister for Education and Skills, Richard Bruton TD and his predecessor Jan O’Sullivan TD are to be commended for following the recommendation of the NCSE and taking the necessary steps to develop the new model to address inequalities in access to special educational needs supports. The NCSE has welcomed the introduction of the new model hailing it a ‘better and more equitable way of allocating teaching resources for students with special educational needs’. It is expected to be introduced across mainstream primary and post primary schools from September 2017. Budget 2017 provided an additional 900 teaching posts to support the introduction of the model and for the recruitment of an additional 115 additional Special Needs Assistants (SNAs) from January 2017. Ensuring that the necessary posts are available to support the roll-out of the new model is welcome.

A number of positive developments took place in other areas of special educational needs in 2016 including exceptional arrangements for students with Downs Syndrome being retained under the new model, a review of the SNA scheme and the launch of the Better Start Access and Inclusion Model (AIM) by the Department of Children and Youth Affairs which provides supports designed to ensure that children with disabilities...
can access the Early Childhood Care and Education programme.366

These developments and policy advices from the NCSE in recent years such as those relating to the education of children with autism, special educational needs and with challenging behaviour arising from severe emotional disturbance/behavioural disorders will inform the assessment of the adequacy of current special educational needs access and funding provision.367

It is worth noting that the many positive developments this area in 2016, there are a number of challenges continue to exist. Cuts to resource hours for students with special educational needs made in 2011, amounting to 15 per cent less hours, have not been restored.368 As noted above, additional supports are welcome but they will only go some way to covering hours lost. In addition, the NCSE has found that, while most schools welcome and enrol children with special educational needs, some erect overt and/or ‘soft’ barriers to prevent or discourage parents from enrolling their children in the schools.369 These exclusionary practices cannot be permitted in any publicly funded education system.


367 Communication received by the Children’s Rights Alliance from the Department of Education and Skills, 3 February 2017.


370 A number of sections of the EPSEN Act have been progressed on a non-statutory basis. The Minister noted that the Department of Education and Skills has introduced measures to provide for educational plans to be prepared for all students accessing Special Needs Assistant (SNA) support. Minister for Education and Skills, Richard Bruton TD, Written Answers, Special Educational Needs Services Provision, 19 October 2016 (31092/16).


372 Education for Persons with Special Educational Needs Act 2004, s 2. This section, which has been commenced, provides that ‘a child with special educational needs shall be educated in an inclusive environment with children who do not have such needs unless the nature or degree of those needs of the child is such that to do so would be inconsistent with— (a) the best interests of the child as determined in accordance with any assessment carried out under this Act, or (b) the effective provision of education for children with whom the child is to be educated’


374 World Conference on Special Needs Education Access and Quality, The Salamanca Statement and Framework for Action on Special Educational Needs, (UNESCO 1994). The UN Committee on the Rights of the Child has stated that inclusive education should be the goal of educating children with disabilities. The manner and form of inclusion must be dictated by the individual educational needs of the child, since the education of some children with disabilities requires a kind of support which may not be readily available in the regular school system. UNCRC ‘General Comment No. 9 on the rights of children with disabilities’ (2009) UN Doc CRC/C/CON/9, para 66.

375 Communication received from the Department of Education and Skills further to a bilateral of the CSF Pillar on 4 November 2015.

376 Consultation on the Education for Persons with Special Educational Needs Act 2004: A Programme for a Partnership Government commits to consult with stakeholders on the progression of provisions of the Education for Persons with Special Educational Needs (EPSEN) Act 2004 that were introduced on a non-statutory basis.371 The commitment was reiterated in the National Action Plan for Education published in September 2016, which sets a deadline for consultation by the end of 2016.375

The EPSEN Act 2004 is the key statute providing for the education of children with special needs.373 It provides for ‘inclusive education’, in line with the UN Convention on the Rights of Persons with Disabilities373 and the Salamanca Statement on Principles, Policy and Practice in Special Needs Education.374 Though the EPSEN Act was enacted more than 12 years ago, key provisions of the legislation remain unimplemented and the full education rights of children with disabilities and special educational needs remain unfulfilled.

In 2008, due to budgetary constraints, the Government deferred implementation of the Act.375 While a number of provisions of the legislation have been introduced such as those to enable the NCSE to be placed on a statutory footing,376 provisions that would confer on children a statutory entitlement to an educational
assessments, individual educational plans and delivery of services on foot of the individual plans, remain unimplemented. 377

A commitment was made under Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014-2020 to ‘prepare and implement a plan, guided by the NCSE policy advice, on how aspects of EPSEN Act can be implemented, including prioritising access to an individual education plan and implementing the recommendations of the NCSE’. 378 Placing these provisions on a statutory footing would mean that children would have a right to redress if they find that their rights have not been vindicated. In October 2016, the Minister stated his intention to bring into effect many of ‘the good ideas contained in the EPSEN Act’ and progress EPSEN on a non-statutory basis ‘through policy developments across a range of areas, in conjunction with NCSE policy advice. The Minister has stated that legal advice to the Department indicates that the EPSEN Act, as it is currently constituted, may not be implemented on a phased, or age cohort, basis.’ 379 A clear roadmap to fulfil the full range of rights of children with special educational needs should be urgently developed.

The Department of Education and Skills has indicated that consultations have taken place in recent years in relation to the new model and the implementation of the EPSEN Act and that consultation took place over two days in January 2017 with disability and parent representative groups as well as education partners. 380 It is unclear if further consultations are planned in line with the commitment in this area with regard to how best sections of the EPSEN Act that were introduced on a non-statutory basis can be progressed.

In-school speech and language service: A Programme for Partnership Government commits to introduce a new in-school speech and language service at primary level and to support children in early years. Speech and language services are currently provided by the Health Service Executive (HSE). It has been reported that there are variations in waiting lists and HSE responses across the country and that some parents have to pay privately for diagnosis and treatment because poor access in the public system means that early intervention is not always possible. 381 Internationally, children with speech and language difficulties are the largest single group of all children with special needs. 382 Research indicates that speech and language difficulties are among the most common neuro-developmental disorders of childhood, 383 although its prevalence in Ireland is unclear. 384 However, the preschool years are the time when speech and language difficulties typically first reveal themselves. 385 Children whose speech and language difficulties are resolved by the age of five are unlikely to experience long-term effects, while children whose difficulties are not resolved by this time are likely to experience long-term academic and/or social difficulties. 386 Therefore in-school speech and language services in early years and at primary level would be a positive step. The location of speech and language therapy in the school is particularly important because it has been shown to

377 Minister for Education and Skills, Richard Bruton TD, Written Answers, Special Educational Needs Services Provision, 19 October 2016 [31092/16].
378 Department of Children and Youth Affairs, Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014-2020 (DYCA 2014) commitment 2.21. It also commits to ‘continue to provide timely access to educational and therapeutic supports for children who are identified as having special needs’.
379 Minister for Education and Skills, Richard Bruton TD, Dáil Debates, Special Educational Needs Services Provision, 19 October 2016 [31092/16].
380 Communication received by the Children’s Rights Alliance from the Department of Education and Skills, 19 October 2016 [31092/16].
381 Kitty Holland, ‘Over 15,000 people waiting for speech assessment’ Irish Times (Dublin, 3 May 2016).
382 ‘Dublin South-West Inner City NEYAI Consortium, Preschoolers Get Talking and Communicating (Dublin South-West Inner City NEYAI Consortium, n.d.).’
383 Noirin Hayes et al, Evaluation of the Early Years Programme of the Childhood Development Initiative (Childhood Development Initiative 2013) 17.
384 ibid.
385 Dublin South-West Inner City NEYAI Consortium, Preschoolers Get Talking and Communicating(Dublin South-West Inner City NEYAI Consortium, n.d.).
386 Noirin Hayes et al, Evaluation of the Early Years Programme of the Childhood Development Initiative (Childhood Development Initiative 2013) 17.
promote accessibility of services, increase attendance rates and facilitate collaboration between educational and health staff.\(^{387}\)

Internationally, children with speech and language difficulties are the largest single group of all children with special needs.

The National Action Plan for Education reiterated the commitment to increase speech and language therapy support and the Department of Education and Skills further committed to commence discussions with the HSE and the Department of Health to develop an implementation plan by the end of 2016.\(^{388}\) The implementation plan will provide a timeline for the fulfilment of the commitment and identify what actions will need to be taken.\(^{389}\) It is important that this implementation plan will encompass Early Years Services with both universal and targeted approaches.

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389 Minister for Education and Skills, Richard Bruton TD, Dáil Debates, Speech and Language Therapy Provision, 16 November 2016 [35021/16].
Disability and Additional Needs in Education

Immediate Actions for 2017

INTRODUCE AN INDEPENDENT APPEALS MECHANISM FOR FAMILIES UNDER THE NEW RESOURCES ALLOCATION MODEL.
Families should have an independent appeals mechanism under the new model for resources allocation parents if they feel their child has not been allocated an adequate amount of hours.

DEVELOP A CLEAR ROADMAP TO FULFIL THE FULL RANGE OF RIGHTS OF CHILDREN WITH SPECIAL EDUCATIONAL NEEDS AND CONSULT DIRECTLY WITH CHILDREN WITH SPECIAL EDUCATIONAL NEEDS.
Clarity should be provided to children with special educational needs as to the rights and remedies they are entitled to and under which they can have redress. They should be consulted directly as part of this process.

DEVELOP AND PUBLISH THE IMPLEMENTATION PLAN TO INTRODUCE IN-SCHOOL SPEECH AND LANGUAGE SERVICE AT PRIMARY LEVEL.
In order to progress this commitment, the implementation plan to introduce in-school speech and language service at primary level should be published without delay.