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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

Chapter Grade:

C+



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"Ireland can lead the way when the right funding and policies are in place." None of this would be possible without the hard work of all of our dedicated teachers, helping pupils to reach their full potential, narrowing the gap of disadvantage. #Education #Teachers

7 Nov 2018



1.1 Educational Disadvantage

Section Grade:

C

➔ Government Commitment

A Programme for a Partnership Government commits to:

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**

Publish a new School Completion Strategy.

▶ **Progress: Steady**

'Educational Disadvantage' receives a 'C' grade in *Report Card 2019*, the same as last year's grade. The new *DEIS Plan* was published in 2017 and work is underway to progress the actions set out under the Plan. The gap in retention rates between DEIS and non-DEIS schools remained the same over the past year. A review into out-of-school education provision was completed and a taskforce on the reform of the School Completion Programme was established.

Every child has a right to education and should have an equal opportunity to participate in education.¹ The UN Committee on the Rights of the Child has stated 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.'² The Committee further states that education goes beyond formal schooling 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.³ States are required to take measures to 'encourage regular attendance at schools and the reduction of drop-out rates'.⁴

1 UN Convention on the Rights of the Child, A/RES/44/25 (20 November 1989) Art 28.

2 UNCRC General Comment No. 1 on Article 29(1) the Aims of Education (2001) CRC/GC/2001/1 para 2.

3 Ibid.

4 UN Convention on the Rights of the Child, A/RES/44/25 (20 November 1989) Art 28(e).

► Educational Disadvantage:

In Ireland, a person's socio-economic background remains a strong determining factor in their educational attainment. A person is almost three times more likely to go on to higher education if their parents have higher education than someone whose parents have not completed primary-level education.⁵

Since 2005, the Delivering Equality of Opportunity in Schools (DEIS) Programme has been the State's main vehicle for supporting children who experience educational disadvantage. *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014–2020* 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'.⁶ It also commits 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'.⁷

The *DEIS Plan 2017*, promised in the *Action Plan for Education 2016–2019*,⁸ was published in February 2017.⁹ The Plan, replaces the 2005 plan and sets out the Government's vision for social inclusion in education policy with over 100 actions to support its goals.¹⁰ Work has started on the implementation of almost 90 per cent of the actions.¹¹ The Plan provides that improved data allows the identification of schools to be more responsive to the demographic and other changes in an area and this is expected to facilitate the aim of more closely matching resources to identified need.¹² The schools brought into the DEIS programme in 2017 have not been included in the School Completion Programme because the necessary resources to include the schools have not yet been allocated to Tusla's Educational Welfare Service.¹³ No further schools have been included or



upgraded in the DEIS programme since September 2017¹⁴ and no new schools will be included in the programme until work to enhance the quality of the data is complete.¹⁵ In the 2018/2019 academic year, 896 schools (698 primary and 198 post-primary) are included in the DEIS programme.¹⁶ There was no additional DEIS specific allocation for Budget 2019.¹⁷

The gap between DEIS and non-DEIS schools has narrowed in terms of academic achievement, in particular in mathematics and reading, but the performance of DEIS schools still falls below the overall achievement levels in other schools.¹⁸ Improved retention rates to Leaving Certificate in DEIS schools are evident, with the gap between DEIS and non-DEIS schools halving between the 2001 and 2011 entry cohorts, falling from 16.8 to 8.5 per cent.¹⁹ However, the average rate of school completion for

5 Central Statistics Office, 'Census of Population 2016 – Profile 10 Education, Skills and the Irish Language, <<https://bit.ly/2FjtGyG>> accessed 23 January 2019.

6 Department of Children and Youth Affairs, *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014–2020* (DCYA 2014) Commitment 2.16.

7 Ibid Commitment 2.22.

8 Department of Education and Skills, *Action Plan for Education 2016–2019* (DES 2016) 60.

9 Department of Education and Skills, *DEIS Plan 2017* (DES 2017).

10 Ibid 6, 10.

11 Communication received by the Children's Rights Alliance from the Department of Education and Skills, 11 January 2019.

12 Department of Education and Skills, *DEIS Plan 2017* (DES 2017) 11.

13 Communication received by the Children's Rights Alliance from Tusla, 24 December 2018.

14 Communication received by the Children's Rights Alliance from the Department of Education and Skills, 11 January 2019 and communication received by the Children's Rights Alliance from the Department of Education and Skills, 4 February 2019.

15 *ibid.*

16 *ibid.*

17 *ibid.*

18 Department of Education and Skills, *DEIS Plan 2017* (DES 2017) 24.

19 Department of Education and Skills, 'Retention Rates of Pupils in Second-Level Schools: 2011 Entry Cohort' (DES November 2018) <<https://bit.ly/2FHpQWN>> accessed 15 January 2019.

DEIS schools continues to fall below that of non-DEIS schools.²⁰ While it is positive that more pupils in DEIS schools than ever before aspired to third level education and had similar aspirations to children in other schools, it is concerning that fewer of them actually expected to be able to go to college.²¹

A Programme for a Partnership Government also commits to examining how to better support students outside of DEIS, given that a 'significant proportion' of disadvantaged students attend non-DEIS schools.²² The reduction in pupil/teacher ratios in non-DEIS post-primary schools to 19:1 will go some way towards supporting disadvantaged pupils.²³

► School Completion:

In the context of a general improvement in second-level retention rates, the stated policy aim is to increase the rate of 84.4 per cent in DEIS schools to the national norm of 90.2 per cent, by 2025.²⁴ Overall, Ireland has the third highest completion rates for girls at 92 per cent and the second highest for boys at 90 per cent 'among countries and economies with comparable data' in the OECD.²⁵ However, this means that consistently one in every ten boys in Ireland leaves school with no qualification. In March 2018, the Department of Education and Skills (DES) launched a review on current and future provision of out-of-school education, a commitment in the *DEIS Plan 2017*.²⁶ The review aimed to 'identify the needs of the cohort of children who have disengaged with the mainstream education system or are at risk of doing so'.²⁷ The review was carried out by a Working

Group chaired by the Department, including representatives from Tusla and the Education and Training Board sector and a report was being finalised by the Working Group at year's end.²⁸ It provides an opportunity to consider the availability of alternative forms of education provision for young people who leave school without a qualification, and to provide financial support to them and ensure that alternatives are seen as a legitimate part of second level education. The views of early school leavers who disengaged with mainstream education should inform the review.

The School Completion Programme (SCP) was established in 2002 by the Department of Education and Skills as part of the DEIS programme building on the earlier Early School Leaver Initiative (ESLI). The programme was expanded in 2005/2006 when additional schools were included in the DEIS programme. The aim of SCP is to increase the numbers of young people staying in primary and second-level schools and, in doing so, improve the numbers of pupils who successfully complete the Senior Cycle, or equivalent. In 2014, the SCP came under the remit of Tusla, the Child and Family Agency.

The SCP is one of three main strands of the Educational Welfare Service (EWS) of Tusla aimed at promoting school attendance, participation and retention. These are the statutory Educational Welfare Service, the Home School Community Liaison scheme (HSCL) and the SCP. The SCP has 124 local projects and operates in 467 primary schools and 224 post-primary schools nationwide.²⁹ SCP funding in the 2018/19 academic year is over €24.7 million.³⁰ The SCP is a targeted support programme that focuses on students most at risk of early school leaving and young people of school going age not attending an appropriate educational setting. Each SCP prepares an Annual Retention Plan outlining the identified needs in its catchment area. It also sets out the interventions and supports it plans to provide such as breakfast clubs, in-school learning supports and interventions, homework clubs, after school and holiday provision.³¹

20 *ibid.*

21 Lauren Kavanagh, Susan Weir and Eva Moran, *The evaluation of DEIS: Monitoring achievement and attitudes among urban primary school pupils from 2007 to 2016* (Educational Research Centre 2017) 37.

22 Emer Smyth et al, *Review of the School Completion Programme*, Research Series Number 44 (ESRI 2015) 79.

23 Department of Education and Skills, 'Circular 0009/2018 Approved Allocation of Teaching Posts 2018/19 School Year' <<https://bit.ly/2GhrYFN>> accessed 13 December 2018.

24 Department of Education and Skills, *Strategy Statement Action Plan for Education 2016–2019* (DES 2016) 28.

25 OECD, 'Ireland' in *Education at a Glance 2017: OECD Indicators* (OECD Publishing 2017). The rate of retention in 2018 was 85 per cent for DEIS schools (2011 entry cohort) compared to the national norm of 93.5 per cent. Department of Education and Skills, *Retention Rates of Pupils in Second-Level Schools 2011 Entry Cohort* (DES 2018) 8.

26 Department of Education and Skills, *DEIS Plan 2017* (DES 2017) Action 88.

27 Department of Education and Skills, 'Minister Bruton announces consultation on Out of School Education Provision' (15 March 2018) <<https://bit.ly/2pwDnGd>> accessed 23 January 2018.

28 Communication received by the Children's Rights Alliance from the Department of Education and Skills, 24 January 2019.

29 Communication received by the Children's Rights Alliance from the Department of Children and Youth Affairs, 21 December 2018.

30 Communication received by the Children's Rights Alliance from the Department of Children and Youth Affairs, 8 February 2019.

31 Communication received by the Children's Rights



In Ireland, a person's socio-economic background remains a strong determining factor in their educational attainment. A person is almost three times more likely to go on to higher education if their parents have higher education (...)

There has been a general improvement in second-level retention rates in recent years. In the 2017/2018 school year, a total of 94,647 young people engaged with the SCP through both targeted and universal supports and of these, 24,899 received targeted provision.³² The most recent figures available show that of the cohort of young people who enrolled in first year in 2011, 92 per cent completed the Leaving Certificate in 2016 and 2017.³³

The Economic and Social Research Institute produced a review of the SCP in 2015.³⁴ It found that existing evaluation reports have not assessed the SCP or focused on measuring the kinds of outcomes for students on which the programme focuses, such as school engagement and socio-emotional development.³⁵ The DES inspectorate research on DEIS planning has not commented on the SCP in an evaluative way and notes that such an evaluation may not be possible given the complexity of the programme, the age groups and varying locations involved.³⁶ A focus on improving the quality and effectiveness of the programme to meet the needs of different groups of children in a measurable way as part of the reform of the SCP could be considered. In addition, it will be important to monitor the mechanisms for the intake of students to the SCP to ensure a new model captures children most at risk of early school leaving.

The *DEIS Plan 2017* reiterated the Government's commitment to the publication of a new strategy to improve school retention rates and set a target date of Q3 2017 for it to be published.³⁷ Although there is clear progress in relation to participation and retention rates in Ireland, it has become apparent that a coordinated policy platform is required to underpin the future development and direction of these key services at a national level. In light of this, the Minister for Children and Youth Affairs, Dr Katherine Zappone TD established a Task Group in 2018 with terms of reference and a time-line for the development of a succinct and purposeful policy blueprint.³⁸ This group

comprises representatives of the Department of Children and Youth Affairs, Department of Education and Skills, Tusla and stakeholders from the respective areas of the Educational Welfare Services.³⁹

The key output of this Task Group is the preparation of the policy blueprint which will set out a clear platform and process for the development of the EWS, including the SCP.⁴⁰ It is intended to be responsive to existing and emerging needs; reflective of relevant policies/initiatives being progressed by the Department of Children and Youth Affairs, Tusla and the Department of Education and Skills; and informed by the perspectives of practitioners who work at the front-line of service delivery.⁴¹

Alliance from Tusla, 24 December 2018.

32 Communication received by the Children's Rights Alliance from the Department of Children and Youth Affairs, 14 February 2019.

33 Communication received by the Children's Rights Alliance from the Department of Children and Youth Affairs, 8 February 2019.

34 Emer Smyth et al, *Review of the School Completion Programme*, Research Series Number 44 (ESRI 2015).

35 *ibid* 133.

36 *ibid*.

37 Department of Education and Skills, *DEIS Plan 2017* (DES 2017) 12.

38 Communication received by the Children's Rights Alliance from the Department of Children and Youth Affairs, 8 February 2019.

39 *ibid*.

40 *ibid*.

41 *ibid*.

Educational Disadvantage Immediate Actions for 2019



Continue to implement the DEIS Plan and monitor its efficacy in improving outcomes for pupils.

Ensure that an adequate monitoring and evaluation system is put in place with tangible indicators to monitor ongoing implementation, in order to improve and adapt the system and ensure continuous improvement of the DEIS scheme.



Produce the Policy Blueprint for the EWS and begin implementation of actions in 2019.

Complete the work of the task group for the development of the EWS into the future. Produce the Policy Blueprint and begin implementation of the actions contained therein with a focus on improving the quality and effectiveness of the educational welfare services in delivering outcomes that meet the needs of different groups of children in a measurable way.



Publish the outcome of the review on current and future provision of out-of-school education.

The review of out-of-school education provision is an opportunity to consider the availability of alternative forms of education provision for young people who leave school without a qualification and to provide financial support to them and ensure that alternatives are seen as a legitimate part of second level education.

1.2 Religious Diversity in Schools

Section Grade:

B-

➔ 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: Slow**

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

▶ **Progress: Good**

'Religious Diversity in Schools' receives a 'B-' grade in *Report Card 2019*, an improvement on last year's 'C-' grade. This reflects the removal of the baptism barrier and other barriers to school admissions in the Education (Admission to Schools) Act 2018. While the number of multi-denominational primary and post-primary schools increased slightly in 2018, there is no long-term plan as to how the Government's target will be achieved. There have been welcome efforts to improve the collection and processing of parental preference on school patronage but existing patrons still make decisions on the divestment of schools to new patrons rather than decisions being based on the best interests of children.

Every child has a right to education 'on the basis of equal opportunity'⁴² and the right to respect for their freedom of thought, conscience and religion.⁴³ Children have the right to be free from discrimination of any kind, irrespective of, amongst other things, the child's or a parent's 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.⁴⁴ In 2016, the UN Committee on the Rights of the Child encouraged Ireland to promote the establishment of

42 UN Convention on the Rights of the Child, A/RES/44/25 (20 November 1989) Art 28(1).

43 *ibid* Art 14(1).

44 *ibid* Art 2.

non-denominational or multi-denominational schools and to amend existing legislation to eliminate discrimination in school admissions.⁴⁵

► Non- and multi-denominational schools:

The UN Committee's 2016 recommendation called on the State to 'expeditiously undertake concrete measures to significantly increase the availability of non-denominational and multi-denominational schools'.⁴⁶ A non-denominational school is defined as a school under the patronage of a secular body with a secular ethos.⁴⁷ Multi-denominational schools 'do not provide religious education as formation, during the school day, but do provide education about religions and beliefs'.⁴⁸ Both *A Programme for a Partnership Government* and the *Action Plan on Education 2016–2019* commit to a target of 400 multi- and non-denominational schools by 2030.⁴⁹

The majority of publicly funded schools in the Irish education system are denominational in nature with 94.4 per cent of primary schools in the 2018/19 academic year having a religious patron. 90.3 per cent of all primary schools remain under the patronage of the Catholic Church and 4.1 per cent are run by minority religions.⁵⁰ At post-primary level, 47.9 per cent of denominational schools are run with a Catholic ethos with a further 3.7 per cent run with another denominational ethos.⁵¹ There are over 3,000 primary schools, of which 119 are multi-denominational, and 17 are described as inter-denominational but in four counties in Ireland, there is no alternative to denominational primary school provision.⁵² There are 44 multi-denominational post-primary schools.⁵³

A total of nine (four primary and five post-primary) new multi-denominational schools were established in 2018.⁵⁴ In April 2018, the Government announced that 42 new schools (26 primary and 16 post-primary)

would be established between 2019 and 2022 with a view to providing up to 20,000 new places.⁵⁵ The Department of Education and Skills runs a patronage process to determine who will operate each new school and this is open to all patron bodies and prospective patrons.⁵⁶ As part of this, a process to determine parental preference of pre-school children in each area is also underway, which the Minister for Education and Skills has stated will be a key determinant of the patron for each school.⁵⁷ Other determinants include parental preferences in relation to the language of instruction of the schools and the extent of diversity in the area.⁵⁸ With the aim of making the collection and processing of parental preferences more efficient, an Online Patronage Process system was rolled out in 2018, which is a welcome measure.⁵⁹ The patronage process for 4 new post-primary schools to be established in 2019 has been completed and in November 2018, the Minister for Education and Skills, Joe McHugh TD invited applications for the patronage of 12 new primary schools due to open in September 2019.⁶⁰

Based on current population growth trends, new schools will account for circa one third of the additional multi-denominational schools required to hit the target of 400 schools by 2030.

► Divestment/Reconfiguration:

The Forum on Patronage and Pluralism in the Primary Sector, established in 2011, examined how the education system could best provide a sufficiently diverse number and range of schools nationwide for children of all religions and none. From 2013–2018, only 11 schools were divested to multi-denominational patrons, with agreement reached on a further school to be established in September 2019.⁶¹ However, 14 towns in which

45 UNCRRC 'Concluding Observations Ireland,' (2016) CRC/C/IRL/CO/3-4 para 64(a).

46 *ibid.*

47 The Forum on Patronage and Pluralism in the Primary Sector, *Report of the Forum's Advisory Group* (DES 2012) 5.

48 *ibid.*

49 Department of Education and Skills, *Action Plan for Education 2016–2019* (DES 2016) 42.

50 Communication received by the Children's Rights Alliance from the Department of Education and Skills, 8 January 2019.

51 *ibid.*

52 *ibid.*

53 *ibid.*

54 Communication received by the Children's Rights Alliance from the Department of Education and Skills, 11 January 2019.

55 Department of Education and Skills, 'Minister Bruton announces plans to establish 42 new schools over the next 4 years' (DES, 13 April 2018) <<https://bit.ly/2zZLX6p>> accessed 9 January 2019.

56 Communication received by the Children's Rights Alliance from the Department of Education and Skills, 11 January 2019.

57 *ibid.*

58 Communication received by the Children's Rights Alliance from the Department of Education and Skills, 8 January 2019.

59 Department of Education and Skills, 'Minister Bruton announces plans to establish 42 new schools over the next 4 years' (DES, 13 April 2018) <<https://bit.ly/2zZLX6p>> accessed 9 January 2019.

60 Department of Education and Skills, 'Minister invites applications for patronage of 12 new primary schools to be established in 2019' (DES 8 November 2018) <<https://bit.ly/2S2KLX7>> accessed 8 January 2019.

61 Communication received by the Children's Rights Alliance from the Department of Education and



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families chose Educate Together as a patron in the last parental preference consultation in 2012/2013 are still waiting for their 'divested' school. This should be urgently addressed as part of this process.⁶²

In January 2017, the Government announced the New Schools Reconfiguration process to provide more multi-denominational and non-denominational schools.⁶³ This involves the relevant Education and Training Board reporting on the level of demand for a new choice of school patronage within areas identified for survey. Transfers would then be managed by existing patrons in conjunction with schools communities and prospective patron bodies.⁶⁴

The Schools Reconfiguration Process is intended to move from the identification of schools phase into the implementation phase, which will involve consultations with local schools communities on accommodating demand through

the transfer of patronage of existing schools to new multi or non-denominational patrons.⁶⁵

The transfer of existing schools from religious patronage under the School Reconfiguration process, phase 1 of which commenced in May 2018, is aimed at meeting the majority of the target.⁶⁶ However, it remains unclear how the Government's target will be achieved given the slow pace at which reconfiguration is progressing. A clear plan involving all patrons and setting out the phases of development, with timelines and a monitoring structure is required to provide clarity for communities and families. Non-denominational schools should be an explicit part of the plan as well as the number of schools which are to be primary and post-primary.

The decision-making power afforded to the current landowner to determine the multi-denominational patron to which a school will be transferred is at odds with the constitutional rights of parents to decide the type of school their children attend.⁶⁷

Skills, 8 January 2019 and 18 January 2019.

62 Communication received by the Children's Rights Alliance from Educate Together, 8 January 2019.

63 Department of Education and Skills, 'Minister Bruton announces new plans to accelerate provision of multi- and non-denominational schools' (30 January 2017) <<http://bit.ly/2kOoRsL>> accessed 23 January 2019.

64 *ibid.* Communication received by the Children's Rights Alliance from the Department of Education and Skills, 4 January 2019.

65 Minister for Education and Skills, Joe McHugh TD, Written Answers, School Patronage, 16 October 2018 [42500/18].

66 Communication received by the Children's Rights Alliance from the Department of Education and Skills, 8 January 2019.

67 Irish Constitution, Art 42.3.1°. This provision states that 'The State shall not oblige parents in violation of their conscience and lawful



Based on current population growth trends, new schools will account for circa one third of the additional multi-denominational schools required to hit the target of 400 schools by 2030.

Given that the vast majority of primary schools in the country are under the patronage and ownership of one denomination, decisions on patronage should be undertaken by an independent body to ensure a more transparent approach.

► School Admissions:

In 2016, the UN Committee recommended that the State amend the 'existing legislative framework to eliminate discrimination in school admissions, including the Equal Status Act'.⁶⁸ *Better Outcomes, Brighter Futures* commits to reducing discrimination and intolerance of all types experienced by marginalised groups including those from religious minorities.⁶⁹ In July 2018 the Education (Admission to Schools) Act 2018 was signed into law. The Act aims to 'increase the transparency and fairness of school admissions'⁷⁰ by amending the Equal Status Acts 2000–2015 to remove the provision that enables denominational schools to use religion as an eligibility criterion for school admissions or 'baptism barrier'. This has been a recurring recommendation in this *Report Card* series and is a very welcome development.⁷¹ The Act also provides for children of minority religions to access the school of their faith or similar faith on a priority basis⁷² but this is only relevant if the school is oversubscribed.⁷³

The Act bans school admission fees or contributions, except for fee charging secondary schools, boarding sections of boarding schools or post leaving certificate and further education courses run by secondary schools.⁷⁴ These key provisions were commenced in 2018.⁷⁵

However it should be noted that while these provisions are very positive, children whose parents are members of a minority or no religion will continue to have little choice in the type of school to which they can send their children. It is likely that many of these children will continue to be educated in schools that promote a particular ethos for their entire educational experience. This is also because of the integrated nature of the curriculum and the fact that few schools have the facilities or personnel to facilitate children opting out of denominational teaching.⁷⁶ This makes the achievement of the Government's target to increase the number of multi-denominational and non-denominational schools highly consequential for those families.

preference to send their children to schools established by the State, or to any particular type of school designated by the State.'

68 UNCRRC 'Concluding Observations: Ireland' (2016)

UN Doc CRC/C/IRL/CO/3-4, para 64(a).

69 Department of Children and Youth Affairs, *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014–2020* (DCYA 2014) Commitment 5.6.

70 Department of Education and Skills, 'New law will make process of school admissions easier for children and parents – Minister Bruton' (DES, 6 July 2016) <<http://bit.ly/2kDywjM>> accessed 6 December 2016.

71 Education (Admissions to Schools) Act 2018, s 11.

72 *ibid.*

73 Department of Education and Skills, 'Minister Bruton commences key provisions in Education (Admission to Schools) Act, 2018' (DES, 3 October 2018) <<https://bit.ly/2RXUT32>> accessed 13 December 2018.

74 Education (Admission to Schools) Act 2018, s 9(64).

75 Department of Education and Skills, 'Minister Bruton commences key provisions in Education (Admission to Schools) Act, 2018' (DES, 3 October 2018) <<https://bit.ly/2RXUT32>> accessed 13 December 2018.

76 The Forum on Patronage and Pluralism in the Primary Sector, Report of the Forum's Advisory Group (DES 2012) 83.

Religious Diversity in Schools

Immediate Actions for 2019



Review the plan for the transfer of existing schools from religious patronage to ensure that decisions are made in the best interests of children.

Proposals to provide for the transfer of existing schools from religious patronage to other patrons 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. Children and young people should be consulted.



Publish a plan to increase the number of multi- and non-denominational schools to 400 by 2030.

A 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.

1.3 Disability and Additional Needs in Education

Section Grade:

B-

➔ Government Commitment

A Programme for a Partnership Government commits to:

Examine the adequacy of current special education access and funding provision.

▶ **Progress: Complete**

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: Some**

'Disability and Additional Needs in Education' receives 'B-' in *Report Card 2019*, the same as last year's grade. This reflects the additional resourcing for Special Needs Assistants (SNA) in Budget 2019 and the publication of the findings of the comprehensive assessment of the SNA Scheme. **The pilot project to provide in-school and pre-school language therapy services is welcome. The enactment of the Education (Admission to Schools) Act 2018 includes a power to compel a school to make additional provision for the education of children with special educational needs.**

Every child has a right to education regardless of their needs or ability.⁷⁷ 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'.⁷⁸ The right extends 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'.⁷⁹ 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

77 UNCRRC 'General Comment No. 9 on the rights of children with disabilities' (2006) UN Doc CRC/C/GC/9 para 62. All children in Ireland up to the age of 18 have the right to primary education under Article 42 of the Irish Constitution.

78 UNCRRC 'General Comment No. 1 on the Aims of Education Article 29(1)' (2001) UN Doc CRC/GC/2001/1 para 2.

79 *ibid.*

their rights'.⁸⁰ Children with special educational needs have a right to individualised support and reasonable accommodations in the general education system.⁸¹

In 2016, the UN Committee on the Rights of the Child recommended that Ireland 'adopt a rights based approach to disability'.⁸² Furthermore, the Committee recommended that Ireland 'establish a comprehensive strategy for the inclusion of children with disabilities in mainstream education and the encouragement of their autonomy' and 'train and employ a sufficient number of specialised teachers and professionals in order to provide special needs education support'.⁸³

Ireland ratified the UN Convention on the Rights of Persons with Disabilities (UNCPRD) on 20 March 2018.⁸⁴ It recognises the rights of people with disabilities to an education that is inclusive, free from discrimination and directed to the 'full development of the human potential and sense of dignity and self-worth... the development... of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential and enabling [them] to participate effectively in a free society'.⁸⁵

► 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.⁸⁶ The number of students receiving low-incidence supports (for physical disabilities, intellectual hearing impairments and autism) in mainstream schools was 43,600 in 2016.⁸⁷ Budget 2019 provides the Department of Education and Skills with €1.8 billion for special education, which represents almost 20 per

cent of the education budget, and an approximate 43 per cent increase in spending provision since 2011.⁸⁸

In September 2017, the new resource allocation model based on the profiled need of each school, without the need for a diagnosis of disability⁸⁹ was introduced across primary and post primary schools.⁹⁰ An analysis of the need for a new model can be found in *Report Card 2018*.⁹¹ The new model is welcome, however there is an outstanding issue when the parents and the school disagree as to the support allocated to a child. Under the new model, resources are allocated to schools to reflect their profiled needs and the school decides whether and how much support a child needs. If a parent is unhappy with their child's support allocation they have no way to seek a review or to appeal the decision other than to go back to the school who is the original decision-maker and make their case.⁹² The Department of Education and Skills plays no direct role in appealing the allocation and recommends that if a parent continues to be concerned with the level of support their child receives, having raised it with the class teacher and school principal, they should take it up with the school's Board of Management.⁹³ The new model encourages dialogue between parents and schools but has the potential for tension if the parents and school ultimately disagree with no further recourse available to the family. The new model is expected to 'provide a greater level of autonomy for schools' in how they manage additional teaching supports⁹⁴ and is expected to result in a better use of resources and this is welcome. However, parents should be provided with an independent and transparent process in which to express their concern and seek further support for their child.

In September 2018, an additional 800 SNA posts were introduced bringing the total number of

80 UNCRC 'General Comment No. 7: Implementing child rights in early childhood' (2006) UN Doc CRC/C/GC/7/Rev.1 para 36(d).

81 UN Convention on the Rights of Persons with Disabilities A/RES/61/106 (3 May 2008) Art 24.

82 UNCRC 'Concluding observations on the combined third and fourth periodic reports of Ireland' 29 January 2016 UN Doc CRC/C/IRL/CO/3-4, para 48.

83 *ibid*, para 47.

84 UN Convention on the Rights of Persons with Disabilities A/RES/61/106 (3 May 2008).

85 *ibid* Art 24.

86 Department of Education and Skills, *Review of the Pilot of a New Model for Allocating Teaching Resources to Mainstream Schools to Support Pupils with Special Educational Needs* (DES 2016) 1.

87 Communication received by the Children's Rights Alliance from the Department of Education and Skills, 6 December 2017.

88 Department of Education and Skills, Minister Bruton commences key provisions in Education (Admission to Schools) Act, 2018. <<https://bit.ly/2RXUT32>> accessed 13 December 2018.

89 Department of Education and Skills, *Review of the Pilot of a New Model for Allocating Teaching Resources to Mainstream Schools to Support Pupils with Special Educational Needs* (DES 2016) 3.

90 *ibid*.

91 Children's Rights Alliance, *Report Card 2018* (Children's Rights Alliance 2018) 23 - 24.

92 Department of Education and Skills, 'A New Model for Allocating Special Education Teaching Support to Mainstream Primary Schools, Quick Reference Guide for Parents/Guardians, <<https://bit.ly/2N31Jmj>> accessed 14 January 2019.

93 *ibid*.

94 Department of Education and Skills, *DES Circular 0013/2017 for primary schools* (DES 2017) 2.

SNAs to 15,000.⁹⁵ At the end of 2018, the number of special education teachers in mainstream schools was 13,395.⁹⁶ Budget 2019 provided for the recruitment of an additional 950 SNAs and 101 new teachers in special education classes.⁹⁷

The National Council for Special Education (NCSE) published its findings of the comprehensive assessment of the SNA Scheme in May 2018.⁹⁸ The review highlighted the many 'positive and worthwhile features' of the SNA Scheme.⁹⁹ Key findings include the potential for a better model to support students with additional care needs resulting in better outcomes¹⁰⁰ and gaps in the support system relating to critical elements of the system.¹⁰¹ Overall the Scheme has positive features but is a blunt instrument to deal with the very wide range and variety of needs, age ranges, developmental stages and school settings.¹⁰² The Departments of Education and Skills; Health; and Public Expenditure and Reform are considering the review and are working to develop an implementation plan and a governance and accountability framework with detailed costings of proposals for Government.¹⁰³

The NCSE has previously highlighted that some schools erect overt and/or 'soft' barriers to prevent or discourage enrolment of children with special educational needs, by suggesting to parents that a different school is more suitable or has more resources for supporting students with additional needs.¹⁰⁴ Key provisions of the Education (Admission to Schools) Act 2018 relating to special educational needs were commenced in December 2018. This provides the Minister for Education and Skills with

the power to compel a school to make additional provision for the education of children with special educational needs after consultation with the NCSE, the Board of Management and the school's patron.¹⁰⁵ While this is a positive measure, concerns have been expressed that the Act may place undue burden on parents navigating the application, refusal and appeals processes of numerous schools before the NCSE intervenes to compel a school to take a child.¹⁰⁶ If the parent then does not agree with the school designated by the NCSE, they have no way to appeal such a decision. A child should be facilitated to attend their local school or the same school as their siblings.

► Consultation on the Education for Persons with Special Educational Needs (EPSEN) Act 2004:

A Programme for a Partnership Government commits to stakeholder consultation on the progression of the EPSEN Act 2004. It is the key statute providing for the education of children with special needs,¹⁰⁷ and provides for 'inclusive education', in line with the UNCRPD¹⁰⁸ and the Salamanca Statement on Principles, Policy and Practice in Special Needs Education.¹⁰⁹ Despite its enactment more than 14 years ago, key provisions of the EPSEN Act 2004 remain unimplemented and the full education rights of children with disabilities and special educational needs remain unfulfilled. For commentary on the implementation of the Act see *Report Card 2018*.

95 Minister for Education and Skills, Richard Bruton TD, Written Answers, Special Educations Needs Staff Data, 29 May 2018, [23337/18].

96 Communication received by the Children's Rights Alliance from the Department of Education and Skills, 11 January 2019.

97 Department of Education and Skills, 'Main Features of Budget 2019: Education & Skills, Information Note, Department of Education and Skills 9 October 2018' <<https://bit.ly/2NDn18H>> accessed 13 December 2018.

98 National Council for Special Education, *Comprehensive Review of the Special Needs Assistant Scheme A New School Inclusion Model to Deliver the Right Supports at the Right Time to Students with Additional Care Needs March 2018, NCSE Policy Advice Paper No. 6* (NCSE 2018).

99 *ibid* 20.

100 *ibid* 27.

101 *ibid* 24.

102 *ibid* 20-21.

103 Communication received by the Children's Rights Alliance from the Department of Education and Skills, 11 January 2019.

104 National Council for Special Education, *Supporting Children with Special Educational Needs in Schools, NCSE Policy Advice Paper No. 4* (NCSE 2013) 90.

105 Education (Admission to Schools) Act 2018, s 8, commenced on 3 December 2018 by SI No. 396/2018.

106 Inclusion Ireland, 'Inclusion Ireland gives cautious welcome to passing of Education (Admissions to School) Bill' <<http://www.inclusionireland.ie/admissiontoschoolbillpasses>> accessed 10 July 2018.

107 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'.

108 UN Convention on the Rights of Persons with Disabilities A/RES/61/106 (3 May 2008) Art 24.

109 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' (2006) UN Doc CRC/C/GC/9, para 66.



Despite its enactment more than 14 years ago, key provisions of the EPSEN Act 2004 remain unimplemented and the full education rights of children with disabilities and special educational needs remain unfulfilled.

The Government's commitment to consult on the EPSEN Act does not go far enough and falls short of the *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014–2020* commitment to 'prepare and implement a plan, guided by the National Council for Special Education (NCSE) policy advice, on how aspects of EPSEN Act can be implemented'.¹¹⁰ Without full commencement of the Act, measures progressed on a non-statutory footing run the risk of being removed at any time by a change in policy and children will have no right to redress.

Other consultations have taken place for example with education partners and stakeholders on the development of the new allocation model for special education teachers introduced in September 2017, as part of the development and implementation of policy advice papers through the NCSE¹¹¹ and as part of the comprehensive review of the SNA scheme.¹¹²

► In-school speech and language service:

A Programme for a Partnership Government commits to introduce a new in-school speech and language service at primary level and to support children in their early years. The HSE provides speech and language services. Internationally, children with speech and language difficulties are the largest single group of all children with additional needs.¹¹³ These difficulties are among the most common neuro-developmental disorders of childhood,¹¹⁴ although the prevalence in Ireland is unclear.¹¹⁵ Typically, these difficulties first become apparent in a child's pre-school years.¹¹⁶ Where they can be resolved by the age of five, a child is unlikely to experience long-term effects, whereas the later the intervention, the more likely the child is to experience long-term academic and/or social difficulties.¹¹⁷ Therefore, the introduction and location

of in-school speech and language services in early years and at primary level is particularly important.¹¹⁸

Reports of variations in waiting lists and HSE responses for initial speech and language assessments across the country have resulted in some parents paying privately for diagnosis and treatment.¹¹⁹ Poor public access means that early intervention may not take place. In May 2018, the Ministers for Education and Skills, Children and Youth Affairs, and Health, and the HSE launched a pilot project to provide in-school and pre-school language therapy services to be managed by the NCSE.¹²⁰ It aims to explore a model of tailored therapeutic supports that allow for early intervention in speech and language and occupational therapy within 'educational settings'.¹²¹ In Phase One, 150 schools and pre-schools will test the model over the 2018-2019 school years with a budget of €2.25 million¹²² and will be evaluated in terms of possible extension.¹²³



110 Department of Children and Youth Affairs, *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014–2020* (DCYA 2014) Commitment 2.21.

111 Communication received by the Children's Rights Alliance from the Department of Education and Skills, 11 January 2019.

112 *ibid.*

113 Dublin South-West Inner City NEYAI Consortium, *Preschoolers Get Talking and Communicating* (Dublin South-West Inner City NEYAI Consortium 2013).

114 Noirin Hayes et al, *Evaluation of the Early Years Programme of the Childhood Development Initiative* (Childhood Development Initiative 2013) 7.

115 *ibid.*

116 Dublin South-West Inner City NEYAI Consortium, *Preschoolers Get Talking and Communicating* (Dublin South-West Inner City NEYAI Consortium 2013).

117 Noirin Hayes et al, *Evaluation of the Early Years Programme of the Childhood Development Initiative*

(Childhood Development Initiative 2013)7.

118 Child Development Initiative, 'Chit Chat: Early Intervention Speech and Language Therapy Model and linkages to the Education Sector' <<http://bit.ly/2k1HrMM>> accessed 13 February 2017.

119 Kitty Holland, 'Over 15,000 people waiting for speech assessment' *The Irish Times*, 3 May 2016.

120 Department of Education and Skills, 'Government launch new project to bring specialised therapists into schools and pre-schools' (DES, 14 May 2018) <<https://bit.ly/2AYutHX>> accessed 13 December 2018.

121 *ibid.*

122 *ibid.*

123 Communication received by the Children's Rights Alliance from the Department of Education and Skills, 11 January 2019.

Disability and Additional Needs in Education

Immediate Actions for 2019



Develop and publish detailed costings for implementing the EPSEN Act in full with a view to commencing all of its provisions in 2019.

The rights of children with special educational needs should be placed on a statutory footing by implementing the EPSEN Act 2004.



Develop and publish the implementation plan to roll-out the recommendations of the NCSE on the comprehensive assessment of the SNA Scheme.

The implementation plan should be developed alongside the governance and accountability framework. Detailed costings of proposals for Government to improve and enhance the SNA Scheme should be developed to inform Budget 2020.