

## **Children's Futures Campaign Asks**

### February 2021

Due to the ongoing detrimental impact of school closures on children from primary school age right up to young people preparing to take the Leaving Cert, the Children's Rights Alliance is calling on the Government and all actors to work together to protect our children's futures and deliver five key asks:

- **Immediately reopen all special schools in line with public health advice**  
The State should ensure it meets its constitutional obligations to provide education to all children with special educational needs by providing full-time education for these children.
- **Reopen all schools in line with public health advice and ensure that schools are able to remain open**  
Schools should reopen as a matter of priority in line with public health advice. The Government should put in place an action plan agreed with education partners to prevent further school closures in the event of ongoing or rolling lockdowns.
- **Develop and provide a suite of interventions to address learning loss experienced by all children and young people over the last 12 months**  
Specific interventions should be developed to support children and young people to catch up. This could include funding and resources to provide summer programmes.
- **Immediately clarify the options for students sitting the 2021 Leaving Certificate**  
Provide Leaving Certificate students with a choice of sitting a written exam or receiving calculated grades in a fair manner. We know the Leaving Cert causes stress and can have a detrimental impact on students' wellbeing and mental health even in normal times. The uncertainty for 2021 Leaving Cert students is exacerbating levels of stress and mental health concerns. Providing a clear path will help to reduce these concerns for young people.
- **Ensure that the best interests of children are central to decision-making and develop a whole of Government approach to address the impact of Covid on children and young people**  
The development of the upcoming National Policy Framework for Children and Young People to follow *Better Outcomes, Better Futures*, should provide a strategy for recovery in the context of the negative impact that Covid-19 has had on our children and young people, including those who are disadvantaged, those with special educational needs and those who are at risk of harm or neglect. The Government needs to ensure that the best interests of children are at the heart of all decisions about our children's futures and that their voices are heard, particularly in relation to education.

## The Context

In Ireland, almost one million children are enrolled in schools across the country.<sup>i</sup> On 6 January 2021, the Government decided that all schools – including special schools – were to close, in response to the third wave of the COVID-19 pandemic.<sup>ii</sup> The consistent guidance from the National Public Health Emergency Team (NPHE),<sup>iii</sup> including immediately prior to the decision, was that schools themselves ‘are safe environments, with very little evidence of transmission within schools’.<sup>iv</sup> NPHE advised that schools themselves did not pose a risk of further community transmission, but the levels of mobility and linked activity that the reopening of schools would generate.<sup>v</sup> Early years settings and school-age childcare services have remained open for vulnerable children and children of essential workers in line with public health advice.<sup>vi</sup> In Northern Ireland schools have remained open for children with special educational needs, vulnerable children and children of essential workers.<sup>vii</sup>

Special schools partially re-opened on 11 February with only half of the pupils able to attend at any one time, meaning that some children are in school one week but at home the following week while their classmates attend school. All children in special classes in mainstream primary schools are due to return to school from 22 February.<sup>viii</sup> The Department of Education has put in place additional supports including a programme of home-based teaching or care supports to for pupils with complex needs which can be used for four weeks between 11 February and the end of April. A teacher or Special Needs Assistant (SNA) can provide this home-based support, in addition to the remote teaching provided by the pupil’s school, at evenings and weekends for five hours each week up to a total of 20 hours. The measure is not compulsory and families, teachers and SNAs can choose to take part in it.<sup>ix</sup> Children attending Special Classes at Post-Primary schools are also due to return on 22 February.<sup>x</sup> There is no confirmed date yet for when other groups of children will return to school.

## A Child’s Right to Education

The UN Convention on the Rights of the Child (UNCRC) affords every child the right to education which aims to maximise the child’s ability and opportunity to participate fully in their society.<sup>xi</sup> The closure of schools, even with the provision of online learning for those in a position to access it, has significant implications for the right to education as guaranteed by the Constitution of Ireland and the UNCRC.

Article 42.4 of the Constitution of Ireland explicitly states that ‘the state shall provide for free primary education’. However, the Supreme Court has interpreted this to mean that the State does not have to provide free primary education directly but can instead outsource it to third parties.<sup>xii</sup>

The Irish Courts have accepted that if the State fails to provide any infrastructure for a child with special educational needs to avail of free primary education, this constitutes a breach of the positive obligation on the State under Article 42.4.<sup>xiii</sup> Except in the extreme situation where no provision is made, the State will satisfy its constitutional obligations as long as some education is provided which is ‘adequate’<sup>xiv</sup> and is ‘appropriate to meet the needs of children with [special] needs’.<sup>xv</sup> In these circumstances education is understood to comprise ‘such advice, instruction, and teaching as will enable him or her to make the best possible use of his or her inherent and potential capacities, physical, mental, and moral; however limited those capacities may be’.<sup>xvi</sup>

Under Covid-19 restrictions, no educational provision was made for certain cohorts of children. First, and most obviously, children with special needs for whom online learning is not practicable, did not receive any educational provision at all before the special schools reopened on 11 February. Those in mainstream schools who fall into this category may still not be receiving any teaching that is suitable for their needs. This appears to fall short of the State’s obligations under the Constitution. Secondly, online education for mainstream primary students as currently provided assumes that the IT facilities and adult supervision are available for the child to make use of the online educational provision. This may not be possible for many children. For example, there may not be enough electronic devices in the home for the child and any adults

working from home to each have access to a device. Where a child's caregiver is an essential worker the necessary level of adult supervision for a child to engage with online learning may be absent. These factors suggest that there are also mainstream primary pupils who are currently receiving no educational provision.

## Impact of School Closures on Children and Young People

**Educational Inequalities:** The closure of schools exacerbates pre-existing social and educational inequalities and the move to learning online will have the biggest impact on disadvantaged children, making it harder for them to 'catch up'.<sup>xvii</sup> During the initial school closure in 2020 principals and teachers in schools parts of the Delivering Equality of Opportunity in Schools (DEIS) programme reported much lower levels of student engagement in remote learning than in non-DEIS schools.<sup>xviii</sup> These groups are likely to need additional supports when schools resume.<sup>xix</sup> The Society of St Vincent DePaul (SVP) has noted that many children and young people living in poverty have not been able to keep up with their schoolwork through home schooling because they do not have space or the right technology for online learning.<sup>xx</sup> Children and young people who were already at risk of disengaging with education, are at greater risk of falling further behind.

**Child Welfare and Protection:** The isolation caused by school closures increases the risk of serious neglect going unnoticed as teachers and schools are often on the front line of protecting the most vulnerable children.<sup>xxi</sup> The Child Care Law Reporting Project (CCLRP) has observed that the Children First approach whereby teachers, early years providers and youth workers have a responsibility to 'identify and report concerns about children at risk is likely to be significantly hindered during this pandemic as children are now indoors and "invisible" to these mandated professionals'.<sup>xxii</sup> Children are unable to confide in teachers and may not have the privacy and space to phone Childline for help and advice.<sup>xxiii</sup> The National Educational Psychological Service (NEPS) also highlighted the impact of school closures and social distancing on vulnerable young people as these measures 'cut off access to key protective factors for their mental health/wellbeing (school support structure, friendships, physical activity) and has increased exposure to key risk factors (difficulties within family relationships/structures)'.<sup>xxiv</sup>

**Children with Disabilities:** The closure of schools has had a profound impact on children with disabilities. During the first lockdown, many parents reported significant regression in their child's learning and behaviour, with behaviours of concern a particular issue for many. For example, parents reported lack of sleep, self-injuring behaviour, loss of basic living skills and tantrums.<sup>xxv</sup> Since schools have closed again many parents have contacted Inclusion Ireland with similar concerns as their children are experiencing greater levels of distress, self-injuring behaviour and disengagement.<sup>xxvi</sup>

**Leaving Certificate:** Research carried out in relation to Leaving Certificate students in 2020 found an overall decline in their wellbeing during the school closures as well as a perceived workload adding to their stress levels.<sup>xxvii</sup> The NEPS also identified additional risks to mental health and wellbeing in the context of the disruption to the Leaving Cert in 2020 due to the 'uncertainty in relation to revised examination arrangements' and highlighted that students 'may struggle to adjust and cope'.<sup>xxviii</sup>

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- i Department of Education, *Education Indicators for Ireland December 2020* <<https://bit.ly/3pejCjA>> accessed 12 February 2021, 6.
- ii Department of Education 'Minister Foley confirms that schools will remain closed to students' (Press Release), 7 January 2021.
- iii Letter from Chief Medical Officer to Minister for Health re: Covid (30 December 2020) <<https://bit.ly/3aeaBTm>> accessed 25 January 2021.
- iv Letter from Chief Medical Officer to Minister for Health re: Covid (5 January 2021) <<https://bit.ly/2LQtYIU>> accessed 25 January 2021.
- v Letter from Chief Medical Officer to Minister for Health re: Covid (5 January 2021) <<https://bit.ly/2LQtYIU>> accessed 25 January 2021.
- vi Minister for Children, Equality, Disability, Integration and Youth, Roderic O'Gorman TD, Dáil Debates, Written Answers, Early Childhood Care and Education, 3 February 2021 [5180/21].
- vii NI Direct, Coronavirus (COVID-19): advice on schools, colleges and universities <<https://bit.ly/3tQYxiy>> accessed 12 February 2021.
- viii The Department of Education, 'Ministers Foley and Madigan welcome agreed plan for return to in-school learning for children with special educational needs at primary level' (Press Release) 1 February 2021.
- ix The Department of Education, 'Ministers Foley and Madigan welcome agreed plan for return to in-school learning for children with special educational needs at primary level' (Press Release) 1 February 2021.
- x The Department of Education, 'Ministers Foley and Madigan welcome agreed plan for return to in-school learning for children with special educational needs at primary level' (Press Release) 1 February 2021.
- xi UNCRC General Comment No. 1 on Article 29(1) the Aims of Education (2001) CRC/GC/2001/1 para 12.
- xii *Crowley v Ireland* [1980] IR 102. In *O'Keeffe v Hickey* [2009] 2 IR 302 Hardiman J observed (p.312) that 'The distinction between "providing for" and "providing" lies at the heart of the distinction between a largely State funded but entirely clerically/administered system of education on the one hand and a State system of education on the other'.
- xiii *O'Donoghue v Minister for Education* [1996] 2 IR 20, 72 [editor's note]. (emphasis added). This duty on the State was later interpreted, in *Sinnott v Minister for Education* [2001] 2 IR 545, as only requiring provision of free primary education for children with special needs up to the age of eighteen.
- xiv *O'Carolan v Minister for Education and Science* [2005] IEHC 296.
- xv *O' C v Minister for Education and Science* [2007] IEHC 170.
- xvi *O'Donoghue v Minister for Education* [1996] 2 IR 20, 65 (emphasis added).
- xvii Merike Darmody, Emer Smyth And Helen Russell, *The Implications Of The Covid-19 Pandemic For Policy In Relation To Children And Young People* (ESRI 2020) < <https://bit.ly/3jJhSh3>> accessed 12 February 2021, 41.
- xviii Merike Darmody, Emer Smyth And Helen Russell, *The Implications Of The Covid-19 Pandemic For Policy In Relation To Children And Young People* (ESRI 2020) < <https://bit.ly/3jJhSh3>> accessed 12 February 2021, 41.
- xix Merike Darmody, Emer Smyth And Helen Russell, *The Implications Of The Covid-19 Pandemic For Policy In Relation To Children And Young People* (ESRI 2020) < <https://bit.ly/3jJhSh3>> accessed 12 February 2021, 42.
- xx Society of St Vincent DePaul, *Mitigating the Impact of School Closures on Disadvantaged Students* (National Social Justice Committee 2021) <<https://bit.ly/3tR0Diq>> accessed 12 February 2021, 2.
- xxi The Child Care Law Reporting Project, *Case Reports 2020 Volume 2*, Introduction <<https://www.childlawproject.ie/publications/>> accessed 12 February 2021.
- xxii The Child Care Law Reporting Project, *Observations on Concerns for Vulnerable Children Arising from the Covid-19 Pandemic* <<https://bit.ly/3qjBv1J>> accessed 12 February 2021. In one stark example, a child was hospitalised with infections caused by a head lice infestation as the staff did not have any contact with the child when classes went online and were not able to intervene at an early stage like they had in the past. See the Child Care Law Reporting Project, *Case Reports 2020 Volume 2* <<https://www.childlawproject.ie/publications/>> accessed 12 February 2021.
- xxiii The Child Care Law Reporting Project, *Observations on Concerns for Vulnerable Children Arising from the Covid-19 Pandemic* <<https://bit.ly/3qjBv1J>> accessed 12 February 2021.
- xxiv National Educational Psychological Service, *The Wellbeing and Mental Health of Young People in Ireland: Factors for Consideration for the Leaving Certificate Examination in the context of the Covid-19 Pandemic: Advice from the National Educational Psychological Service (NEPS)* (Department of Education and Skills & NEPS 2020) 2.
- xxv RTE, 'Our children are the forgotten ones in any road map' - Parents call for reopening of schools (6 June 2020) <<https://bit.ly/2N20Xuj>> accessed 12 February 2021.
- xxvi Inclusion Ireland, *Submission to the Oireachtas Disability Matters Committee* (2021) 6.
- xxvii Aibhín Bray et al, *Post-primary Student Perspectives on Teaching and Learning During Covid-19 School Closures: Lessons learned from Irish Students in schools in a Widening Participation Programme*, (Trinity Access and the School of Education 2020) 2.
- xxviii National Educational Psychological Service, *The Wellbeing and Mental Health of Young People in Ireland: Factors for Consideration for the Leaving Certificate Examination in the context of the Covid-19 Pandemic: Advice from the National Educational Psychological Service (NEPS)* (Department of Education and Skills & NEPS 2020) 2.