

Plan for Places

Forward Planning for the Provision of Schools Places for Children with Special Educational Needs: A Children's Rights Issue

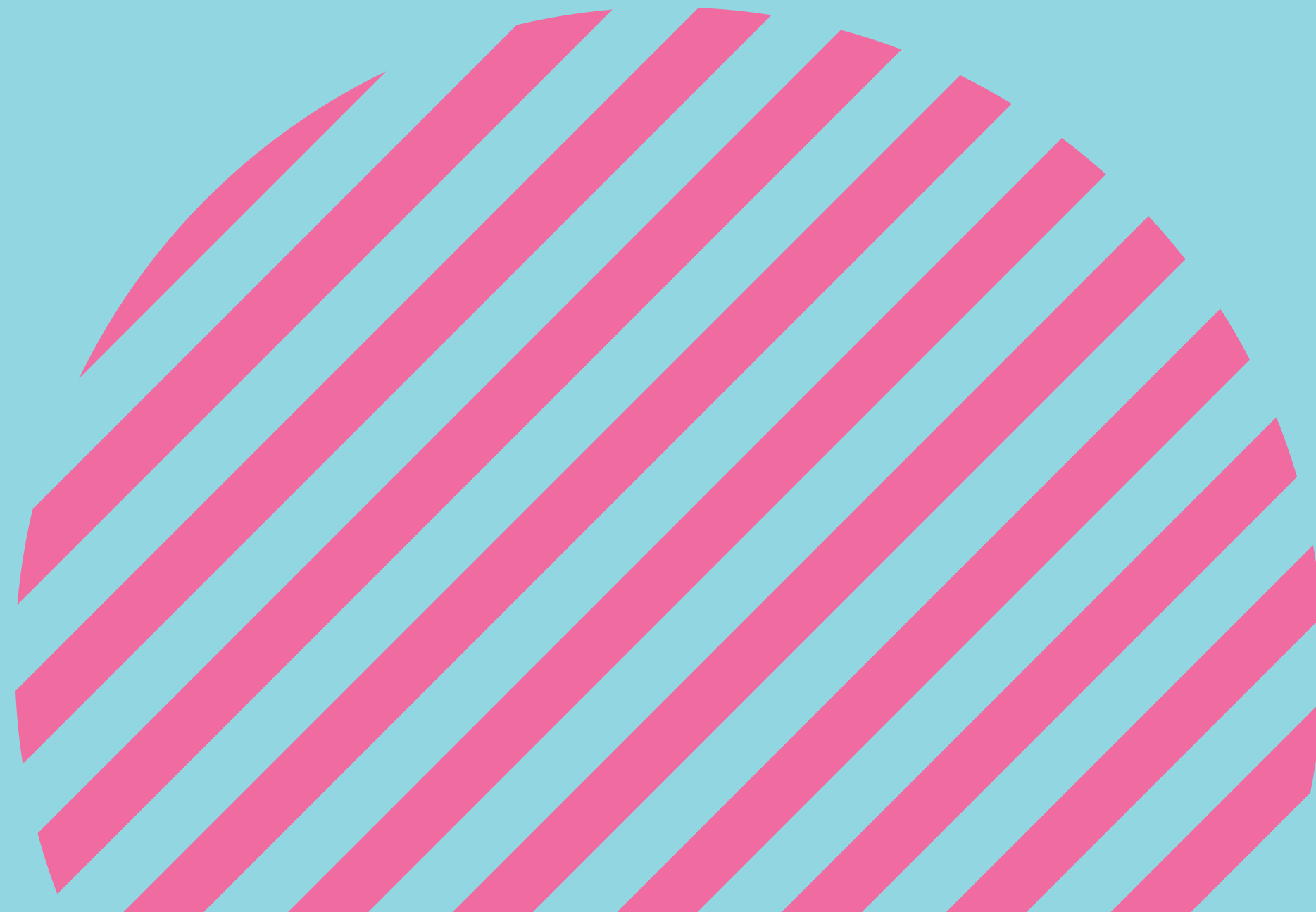


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1. Foreword from Dr. Niall Muldoon, Ombudsman for Children

I initiated this report, Plan for Places, in anticipation of the review of section 37A of the Education Act 1998 that is currently underway, and following complaints to our Office in relation to children with Special Educational Needs (SEN) not being able to secure appropriate school places at both primary and post-primary levels in a timely manner, close to their homes. This situation is a clear failure on the part of the State, which has an obligation to respect, protect and fulfil the right to education of every child. In undertaking this piece of work, we set out to understand how the State plans for the provision of school places for children with SEN and, with that, why parents can experience significant difficulties in securing a suitable school place locally for their children.

We engaged with the Department of Education (DE) and the National Council for Special Education (NCSE) and I must thank them for their openness and co-operation throughout the past 12 months. We also met with parents, school principals, lawyers, academics, advocacy groups, statutory and non-governmental organisations to get their understanding of the planning process and the impact that a lack of a school place can have on a child and family. I want to thank them too for the crucial input they made to our work to prepare this report.

The DE has increased funding for many aspects of education provision for children with SEN. Furthermore, the DE has undertaken significant work to improve data collection and cross unit working in this area over the past two years. While this is to be welcomed and has led to more school places

becoming available for this cohort of children, there still appears to be a 'mismatch' between the forecast need and the actual provision of school places for children with SEN.

Despite the data available to the DE and its work to forecast need, there are clearly shortfalls in the system's capacity to provide suitable places in a proactive and timely manner for a knowable population of students with SEN within, and set to enter, the education system. As a consequence, the system is in a reactive position when situations arise where parents highlight that they cannot secure an appropriate school place for their children. In this regard, we have observed that where a child has a diagnosis and recommendation for a specialist placement, the system can lag in its response. For children who live in provision 'black spots', most notably Dublin and Cork, the system can fail in its response. That such failings occur is not acceptable.

The policy advice on Special Schools and Special Classes, as promised by the NCSE in 2019, has still not been produced. I am concerned that this delay is adding to the ongoing segregation of children with SEN from mainstream education, which is contrary to the State's obligations under the UN Convention on the Rights of Persons with Disabilities (CRPD) to provide for an inclusive education system. I am also concerned that if the Department continues to generate solutions that contain some element of separation, then it will become increasingly difficult to unwind them in the future, regardless of what the NCSE's policy advice recommends.

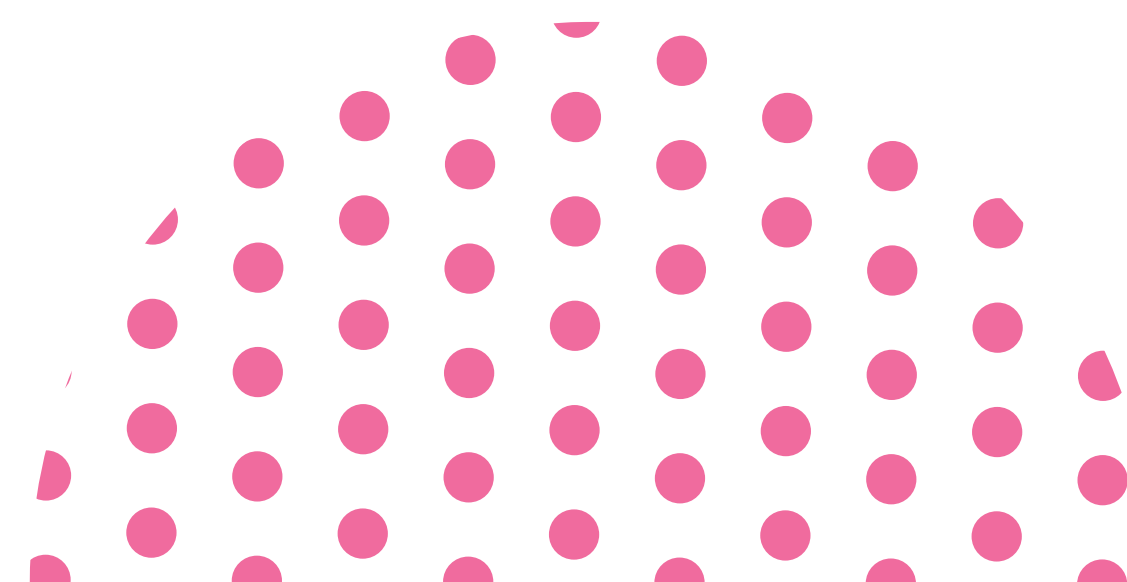
All decisions made and actions taken from this time forth should be about building a strong, inclusive education system, which is fully supportive of all our children equally. While I acknowledge the significant investment made to date, we need to reimagine the education system as a whole if children with SEN are to fully enjoy their right to education. In doing so, we need to approach inclusivity as a process rather than seeing it as a fixed attainable ideal. In this regard, the CRPD Committee envisages full inclusion to be the ‘result of a process of continuing and pro-active commitment to eliminate barriers impeding the right to education, together with changes to culture, policy and practice of regular schools to accommodate and effectively include all students’.

A very positive recent development in this area is the involvement of the Department of an Taoiseach, which is now co-ordinating the provision of coherent structures to enable children and young people to access therapeutic assessments and supports. This will involve joint working between the Departments of Education, Health (including the HSE) and Children and is going to be crucial in helping these children maximise their potential within the education system.

Such co-operation between Departments should also be evident in the review of legislation in this area. The Education for Persons with Special Educational Needs Act 2004 (EPSEN Act) and Section 37A of the Education Act 1998 are currently under review. It is my hope and expectation that the review of the EPSEN Act will have due regard to relevant provisions of the Disability Act 2005 given that these two pieces of legislation were designed to work in concert with one another. That different Departments have responsibility for these pieces of legislation should not be a barrier to the Disability Act being considered in the context of the review of the EPSEN Act.

The decentralised nature of our education system means that, while the DE has a lead role to play, it is dependent to a very considerable degree on the agreement of school patrons, boards of management and principals in providing school places for children with SEN. Due to the autonomy afforded to schools in the Irish education system, the DE is unable to insist that a school opens a special class or accepts extra students with SEN. I have spoken since 2015, including to the UN Committee on the Rights of the Child, about the need to recalibrate the balance between central Government oversight of education and schools’ autonomy. This recalibration needs to occur in order to ensure that the State assumes an appropriate level of responsibility for advancing and protecting children’s rights within the education system.

We also need to ensure that every school is appropriately resourced to provide education to the children in their local area. In addition, we need to expect that they will provide education to all local children. That is key to realising inclusivity. All children grow up together, go to school together, play together, and help each other, while learning about their various differences – that is the future I would like to see. This process could be started within the current blackspots and then rolled out nationwide in a systematic way in the coming years. This will take leadership at both political and departmental levels. It will also require leadership from school patrons, boards of management and staff within every school in the country. Children with SEN deserve to fully realise their right to education, and to do so close to home, just like their brothers, sisters and neighbours.



2. Statement from the Department of Education and NCSE

The Department of Education and the National Council for Special Education (NCSE) welcomes the Report of the Ombudsman on forward planning for special education placements and will work with stakeholders in relation to the implementation of the recommendations as quickly as possible. The recommendations build on many of the strategic initiatives already put in place, particularly in the last 2 years, to support and expand special educational needs (SEN) provision in schools throughout the country.

Special Educational Needs School Places Policy

The Department is committed to delivering an education system that is of the highest quality and where every child and young person feels valued and is actively supported and nurtured to reach their full potential. The Department strives to ensure that every child has access to an educational experience that is appropriate to their needs and supports both their academic and personal development. Our policy, which is set out in the Education of Persons with Special Educational Needs Act 2004 (EPSEN) is that children with SEN should be educated in mainstream placements with additional supports provided as appropriate. Where children require more specialised educational settings, such as special classes or special schools, the Department and NCSE ensures that the necessary resources and supports for such placements are provided in line with the needs of the child. The active collaboration of school communities to this end, is essential in order to ensure a welcoming and supporting environment for

students with SEN in our schools. The importance of this environment to each child and their families cannot be overstated.

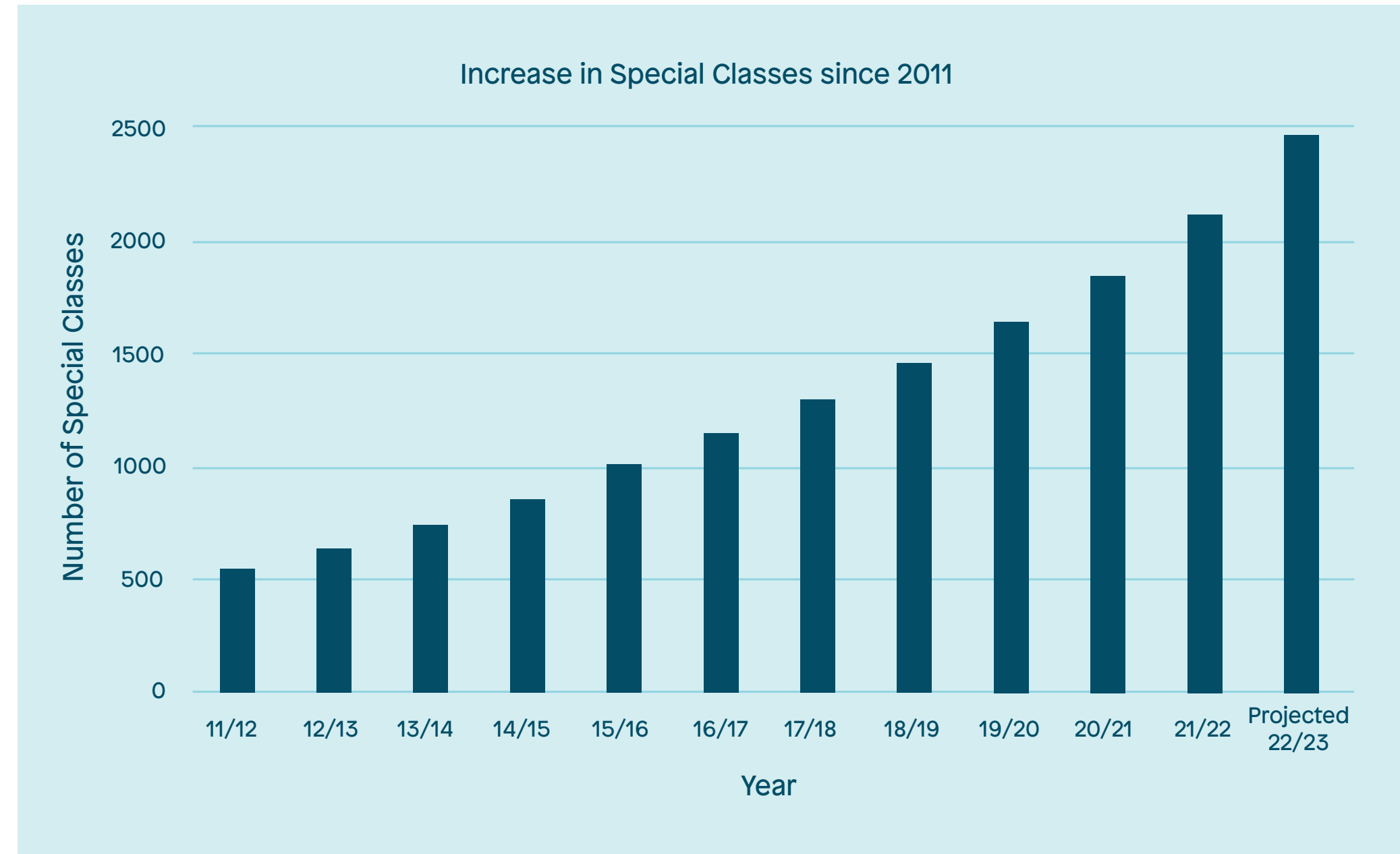
Within this context, providing for an appropriate school placement for every child with SEN in a timely and supported manner is a key priority for the Department and the NCSE. The NCSE is statutorily responsible for planning and coordinating provision at both a local and a national level and advising the Department in this regard. The Department continues to work closely with the NCSE and other key stakeholders in relation to the short-term requirements for special class and special school places and also the more strategic and longer term requirements.

In addition, the Department and NCSE, in forward planning of school places for children with SEN, is aware of the need to have a broader understanding of issues in the area of disabilities including any changes to incidence rates of SEN or changes to assessment processes, including the assessment of need operated by the HSE which may impact on demand for education placements. The strategic planning process which has been created by the Department and NCSE in recent years is adaptive to changes in this regard to ensure that children can access appropriate school places as needed.



Special Educational Needs School Places Delivery

Over the last decade, the number of special classes in the State has increased almost 5 fold, as is clear in the figure below.



Continuing to add capacity in schools to support SEN provision is a key priority in the rollout of the National Development Plan (NDP) with a particular emphasis at post-primary level and includes:

- Permanent accommodation for 292 special classes and additional capacity for 122 classrooms in 22 special schools delivered during NDP period 2018 to 2021.

- A further 700 projects currently progressing under the NDP which will deliver over 1,300 new SEN classrooms and 200 replacement SEN classrooms catering for approximately 7,800 SEN pupils across primary and post primary; almost 100 of these projects are currently on site which will ultimately deliver classroom spaces for almost 1,000 additional SEN pupils
- Taken together, this will enable
 - new, additional or modernised accommodation at over 50% of our special schools; and
 - 60% of our post-primary schools either have an existing special class or have a project on the School Building Programme which will provide SEN accommodation;

Strategic initiatives in place which support capacity building for SEN provision:

- Enhanced arrangements in place, particularly over the last 2 years, for planning and coordination of SEN provision requirements involving Department, NCSE and key stakeholders such as Patron and Management Bodies. This utilises the Department’s Geographic Information Management System (GIS) to support a strategic and coordinated approach to planning and delivery of SEN provision. This includes “real-time” data on capacity across the school system.
- Updated technical guidance for building projects involving SEN provision including guidance on reconfiguration of existing accommodation

- Future proofing at post-primary level with the incorporation of 4 special classes in all new 1,000 student post-primary schools and other large-scale projects and pro-rata for medium to smaller schools.
- Strategic engagement with Spiritan Education Trust in relation to SEN provision at its school sites including its post-primary schools in the fee-charging sector.
- Modular Accommodation Framework put in place by the Department in early 2021
- Expansion of existing planning exemptions for provision of additional accommodation at existing school sites

The Department is working actively with the NCSE and other key stakeholders including School Patrons and Management Bodies to provide additional special classes and special school places for the 2022/23 school year so that the remaining gaps in provision from the current provision of circa. 99% to the full 100% is achieved as quickly as possible. As part of forward planning, the Department also continues to look at opportunities to enhance how children with SEN are supported while awaiting a school place.

A number of pro-active initiatives have been put in place to enhance forward planning processes and add additional special school / special class capacity particularly in areas of concern identified by the Department and NCSE – namely Dublin and Cork. These include two new special schools in Cork (one established in September 2021 and another to be established in late 2022). Additional special schools places for September 2022 in Cork in Carraigline Community Special School, St. Killians Special School and St. Gabriel's Special School.

In Dublin two new special schools were established in recent years - Danú Community Special School in Dublin 15 and Our Lady of Hope School in Crumlin, Dublin 12. Additional capacity is also planned across a number of other special schools including Stewards Hospital, Casa Caterina School in Cabra and special schools under the patronage of St. Michael's House;

Of particular importance is the strategic engagement between the Department, Spiritan Education Trust and Cheeverstown Special School which will see a new special school established in late 2022 in existing accommodation at the Templeogue College campus. Further expansion at this school will include provision for the existing pupils in the Cheeverstown Special School. The overall objective is that Templeogue College Campus will include modern permanent provision for this special school to enable it to cater for up to 150 pupils when completed. This will be a major expansion of capacity in South Dublin and will be a significant step in future proofing the long-term requirements. Other significant initiatives to expand capacity are envisaged as part of ongoing engagement with the Spiritan Education Trust.

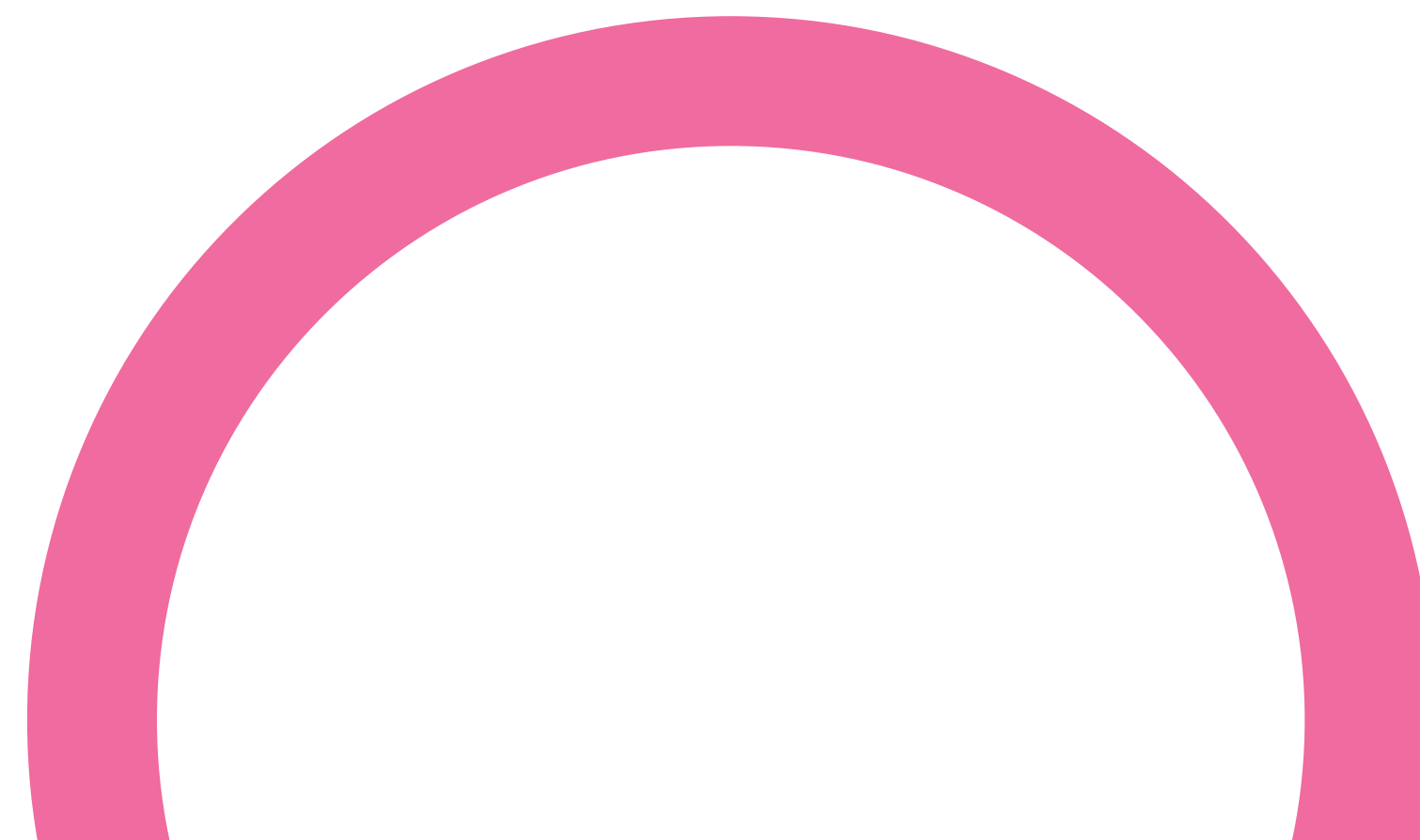
It is also important to note that NCSE's team of Advisors continue to support all schools, and in particular will target a bespoke programme of support and advice to the new special schools and, as required, in the special schools where provision is expanding.

3. About the Ombudsman for Children's Office

The Ombudsman for Children's Office (OCO) is an independent statutory body established under the Ombudsman for Children Act, 2002 (2002 Act). Under the 2002 Act, the Ombudsman for Children has two core statutory functions:

- to promote the rights and welfare of children; and
- to investigate complaints made by or on behalf of a child concerning the administrative actions of public bodies, which have had, or may have had, an adverse effect on the child.

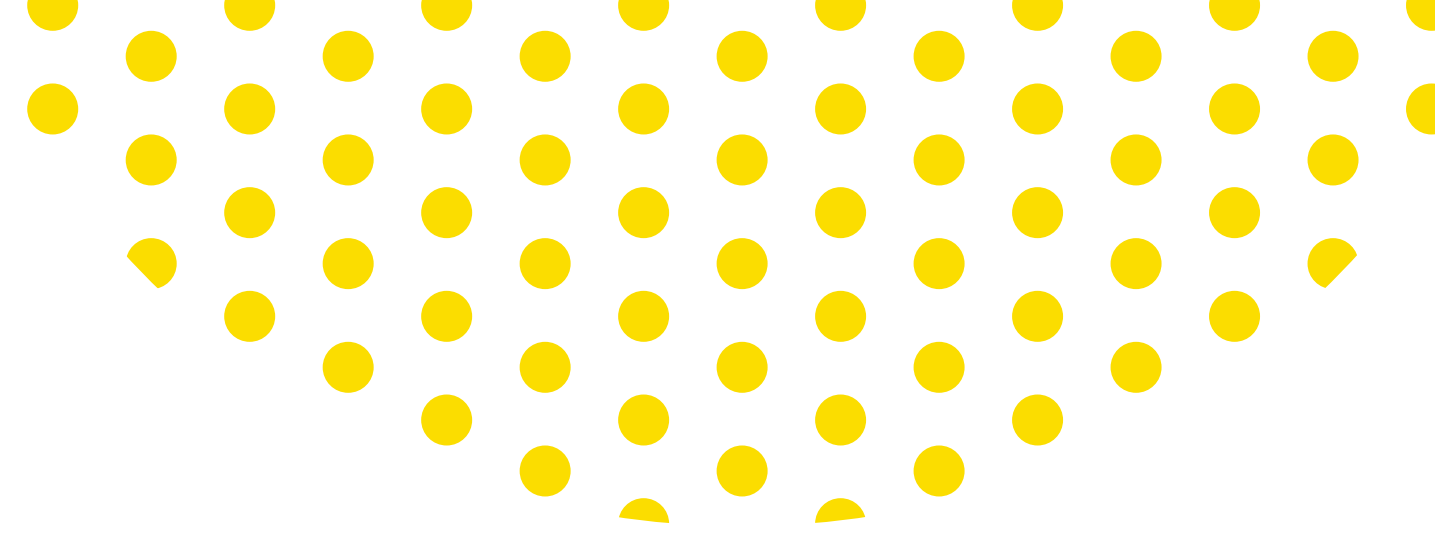
The Ombudsman for Children is appointed by the President of Ireland and reports directly to the Oireachtas in relation to the exercise of these statutory functions.



4. About this Report

In 2021, having regard to the OCO’s statutory function to promote children’s rights and welfare, the OCO decided to initiate a dedicated piece of work focused on the issue of forward planning of school places for children with Special Educational Needs (SEN). The OCO had received several complaints from parents about the lack of sufficient and appropriate local school places for their autistic children in Dublin, Cork, and Clare.

A key objectives of the OCO’s Strategic Plan 2022–2024 is to systematically identify and highlight measures required to promote access to, and participation in, education on the part of children with disabilities on an equal basis with other children. We are also committed to promoting an innovative and child centred education system that is accessible to all and helps all children to reach their potential. The OCO is of the view that any failure to include children with SEN within the mainstream school system, for any reason other than to facilitate their effective education, constitutes discrimination.



As such, we have produced this report to:

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| <ul style="list-style-type: none"> • Set out the challenges experienced by children with SEN in accessing mainstream school settings, special classes (including autism classes), and special schools at primary and post-primary level nationally; | <ul style="list-style-type: none"> • Set out the Department of Education’s (DE) forward planning process and outline issues that may be contributing to a situation where families are not guaranteed an appropriate school place for their child with SEN in a timely manner; |
| <ul style="list-style-type: none"> • Provide a children’s rights perspective on the situation, with reference to relevant children’s rights provided for under national law, as well as under European and international standards; and | <ul style="list-style-type: none"> • Propose how the issues identified might be addressed in a manner which ensures that children with SEN can enjoy their right to education without discrimination and on an equal basis with other children. |

For the purposes of this report, we implemented a desk-based review and analysis of relevant documentation, and conducted 13 semi-structured virtual interviews with 27 individuals, including representatives from the DE, NCSE, and NEPS.

The report's publication coincides with several Government initiatives, including:

- The Minister for Education's review of section 37A of the Education Act 1998 (1998 Act), due at the end of 2022. Under section 37A, the Minister for Education has the power to direct a school to provide additional provision for children with SEN.
- The Minister of State with responsibility for Special Education and Inclusion's review of the Education for Persons with Special Educational Needs Act 2004 (EPSEN Act) expected to be completed in early 2023.

We hope that this report will inform the Minister's reviews of Section 37A and the EPSEN Act, encourage a more child-centred and transparent approach to decision-making in this area, and support public bodies to fulfill their obligations to realise the rights of children with SEN within an inclusive system.



Level of Need

For the purposes of this report, the OCO estimates that 25% of the total student population have a SEN, and 1.55% of the total student population are autistic. According to the NCSE, 2% of all students are schooled in separate environments from their neurotypical peers i.e., either a special school or a special/autism class.

Forward Planning

The OCO recognises that the growth in investment in this sector by the DE indicates a strong commitment to respond to the needs of children with SEN. However, what the OCO has observed through its interactions with the DE and its adjacent agencies is a willingness to respond to, rather than a concerted effort to plan for, a knowable population of students with SEN within, and set to enter, the education system. In May 2022, Taoiseach Micheál Martin referred to this as 'an absence of pro-activity in the system'.

The DE has demonstrated to the OCO that it has the data to forecast the children with SEN school population. Despite this, the current arrangement with the NCSE still requires children with SEN to present themselves to the local SENO before Local School Planning Area (LSPA) capacity is put in place.

In circumstances where approximately 4,000 children await a diagnostic assessment to get a school place, some 15,500 children travel outside of their locality each day to attend specialist provision, another 1,455 students are in receipt of Home Tuition as a result of the lack of specialised placements, and as many as 270 autistic children require the support of a special school and do not have an offer of a school place for September 2022; this is not acceptable.

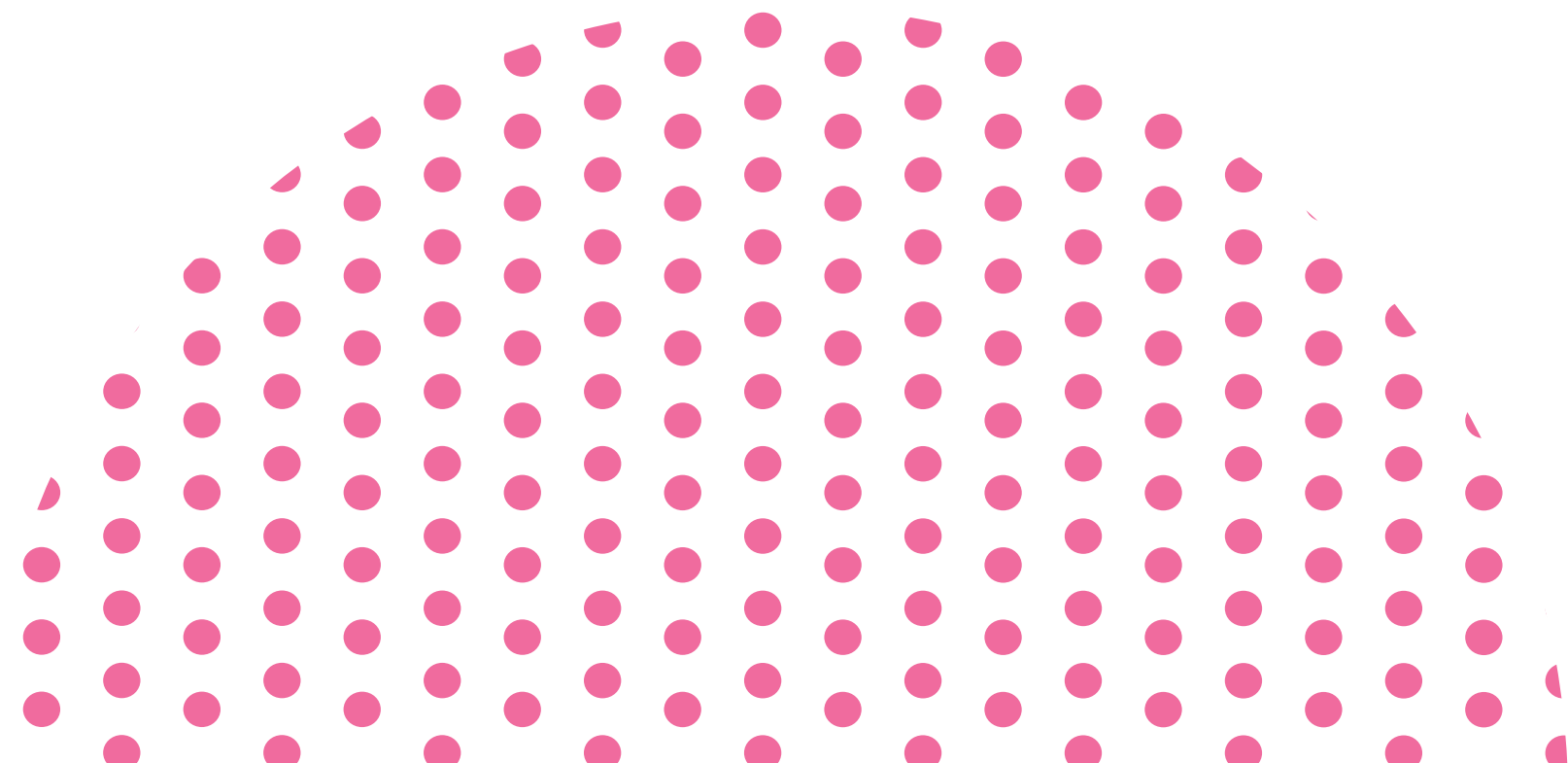
The DE has stated that its planning is hampered, in part, by parental choice regarding their child's education setting. The OCO has observed that where a child has a diagnosis and recommendation for a specialist placement and a parent wishes to exercise that option, the system lags in its response, and for many children who live in provision 'black spots', most notably Dublin and Cork, the system fails in its response. Without proactive capacity building at a local level this situation is set to deteriorate further with future pressure on school provision expected to be concentrated in and around Metropolitan Areas at both primary and post-primary level.

Realising Inclusion

The challenges that the DE has in responding to the needs of children with SEN reflect the education system as it is currently configured. In Ireland, this is not an inclusive education system as defined under Article 24(2) of the United Nations Convention on the Rights of Persons with Disabilities (CRPD). As such, it is reasonable for parents to seek out specialised schools and classes as recommended by their child's psychologist and reflective of their child's diagnosis, even though these forms of segregation are not in line with the principle of inclusive education.

According to the DE, it is 'aware of the recommendations of the CRPD in relation to inclusivity and is committed to considering the implication of this in the context of the finalised NCSE policy advice on specialised educational placements when this is received' in Q2 2022. However, the OCO has found that anomalies exist between the policy narrative around inclusive education, and the continued use of segregated settings in Ireland.

The segregation of children with SEN, who are not able to integrate into the standardised school setting, has led to the emergence of a dysfunctional parallel system, which the DE needs to dismantle as a matter of priority.



5. Family Perspectives

The OCO spoke with the parents of three children with SEN attending mainstream, special class and special school provision to inform this report. Their stories are summarised below. This sample is not representative of the diverse make up of children within this sector. Significantly, autistic girls may be missed by current diagnostic procedures and, as such, awareness and representation around their needs is less accessible.



Aaron's Story

Aaron is 12 years old and has a dual diagnosis of autism and an intellectual disability. Diagnosed in his early years, he went to an early intervention pre-school and then to a special school, which caters for children up to 12 years of age. Aaron's mother informed the OCO that Aaron travelled by taxi to school, which was about half an hour away. For this reason, she said that he does not have a friendship group in his local community. She said that the supports he was promised in his special school – including an OT and an SLT – never transpired. She said that there were not enough therapists for the special school to do what it said it was going to do upon enrolment. She said that his diagnosis was reassessed only once during his time attending the special school and that she had to push for this to happen.

On the day the OCO spoke with his mother, Aaron was graduating from his special school and had no school place to progress to the following September. She said that approximately half of Aaron's classmates (seven in total), all of whom were known to the local SENO, were in a similar position. She said that there was no progression pathway for Aaron. She said that, in her opinion, the DE and the NCSE did not engage in any forward planning to ensure that Aaron and his classmates' right to an education was guaranteed.

On the day of speaking to the OCO, Aaron's mother was waiting to hear back from a new special school in their county. She said that, even if

he was accepted there in July, there would be no opportunity for a transitional programme in order for him to familiarise himself with his new school environment. She said that he is confused about his future.

His mother stated that, in her experience, the onus is on parents to put their child's name forward everywhere and simply pray that a door is opened to them. She said that the local SENO had been ineffective. She said that they approached the SENO the previous September and were told 'don't worry, you will be okay'. However, they discovered in March that Aaron did not have any school place for the following year. She lamented that the shadowy nature of the process put parents in competition with one another. She said that the SENO sent them a list of mainstream secondary schools that were clearly not suitable for her son. She said that she rang them all and was told by each that they didn't have the experience to cater for Aaron. She said that the SENO also sent them a report stating that Aaron was entitled to 20 hours home tuition but was never told how this would work in practice, especially for Aaron, whose only friends are those he met at school.

She said that mainstream schooling is not an option for Aaron because the supports he requires are not available to him there. However, she believes that, even if he cannot attend mainstream, there should be more socialisation between the special and mainstream schools to foster inclusion. She hopes that going forward, all children, no matter their diagnosis, are educated with their peers in their community.

Leo's Story

Leo was diagnosed with autism a few months before starting junior infants. His intended primary school decided to set up a special class that same year and he got a place. His mother informed the OCO that she requested that NEPS assess whether the place offered was suitable for her son but, as they were not forthcoming, she had to approach the school principal and make some noise for this to happen. She said that he received a hybrid education with the assistance of an SNA.

Leo's mother said that when he was in third class, the school principal suggested that she begin the process of finding a secondary school place for Leo. She said that she began contacting mainstream schools directly, and it was only when she discovered that none of the mainstream secondary schools in her county had classes for autistic children, that she contacted her local SENO for assistance. She said that the SENO did not provide any support and that she complained to the NCSE. She said that the NCSE tells parents to apply the year the school place is required but this fails to account for whether a school requires a new building in order to put a special class in place.

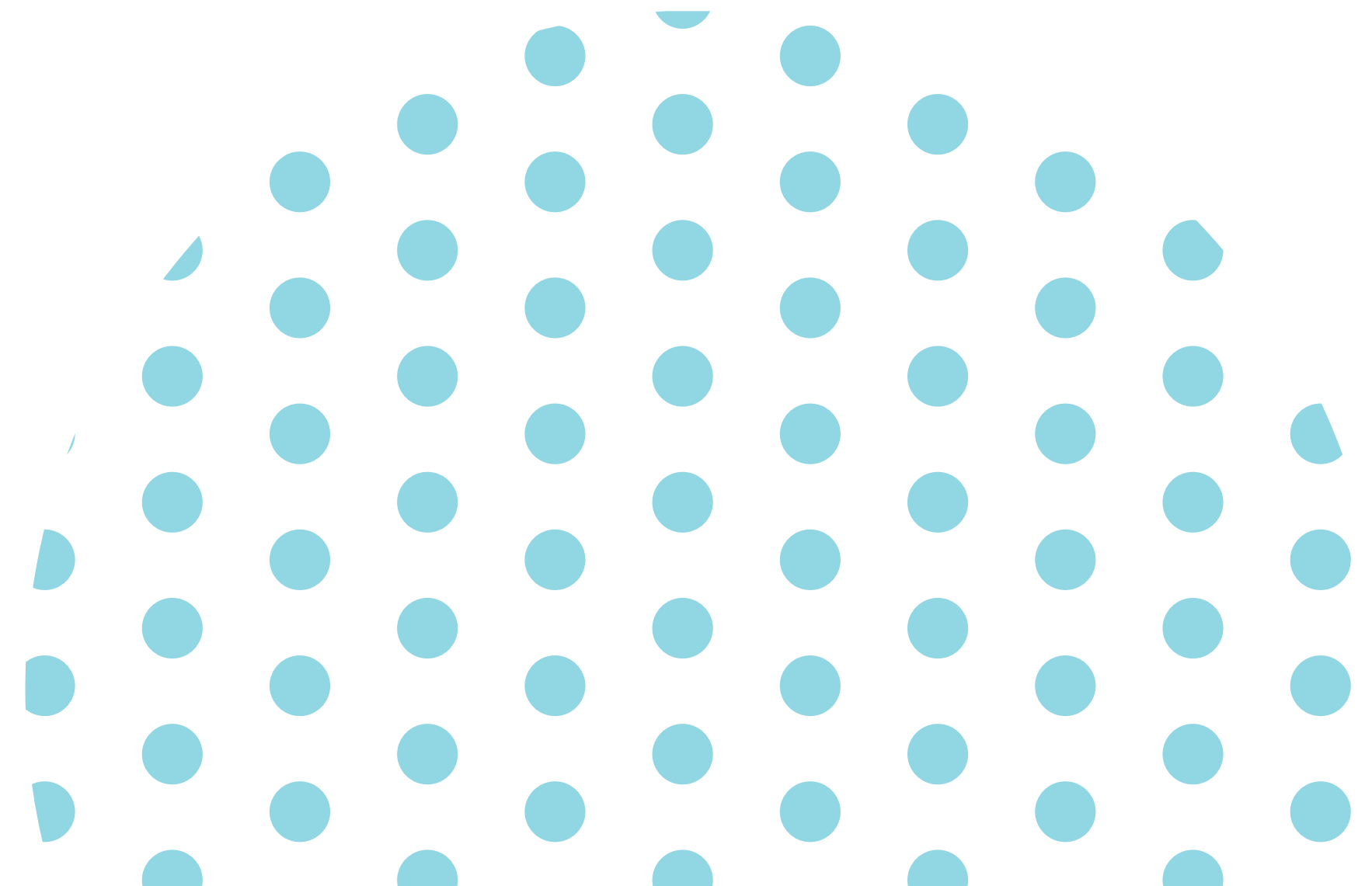
She said that the pursuit of school places for her son and his five classmates, who were graduating with him, became a part-time job for her. She said that the NCSE's regional coordinator assured her that arrangements were underway for a post-primary secondary school to open a class for autistic children in their region. However, she said that she approached the post-primary school directly and they said

they had not heard from the NCSE and had no plans to open a special class. She said that her son was belatedly offered a school place for September but she was unsure whether he would have a special class place or whether he would just have the assistance of an SNA. She said that the NCSE and the DE had eight years to plan for her son, and that it was ridiculous that parents have to go to the lengths they do to secure a school place for their child. She said that parents shouldn't have to threaten the DE and schools with legal action for refusing their child a place on the basis of disability, but that seems to be the only thing that works. She said that the NCSE's attitude is poor, and that they informed her that if they opened classes for autistic children too early in the school year that 'children would come out of the woodwork'.

She said that it is the autistic children, who need structure and continuity, who end up not receiving it. Instead, she said, everything is very last minute, and it leaves children, like her son, bewildered. She said that the government has simply not planned for the population. She said that home tuition is not the answer because the secondary school experience cannot be replicated at home. With respect to inclusion, she said that she has found that children who have grown up with classes for autistic children in their primary schools are more accepting of autistic peers. She said that children with SEN should not have to attend schools outside of their local community so that they lose any connection with the people who may be able to look out for them further down the road. She said that if we, as a society, want to build an inclusive world for adults, we have to foster inclusivity from childhood.

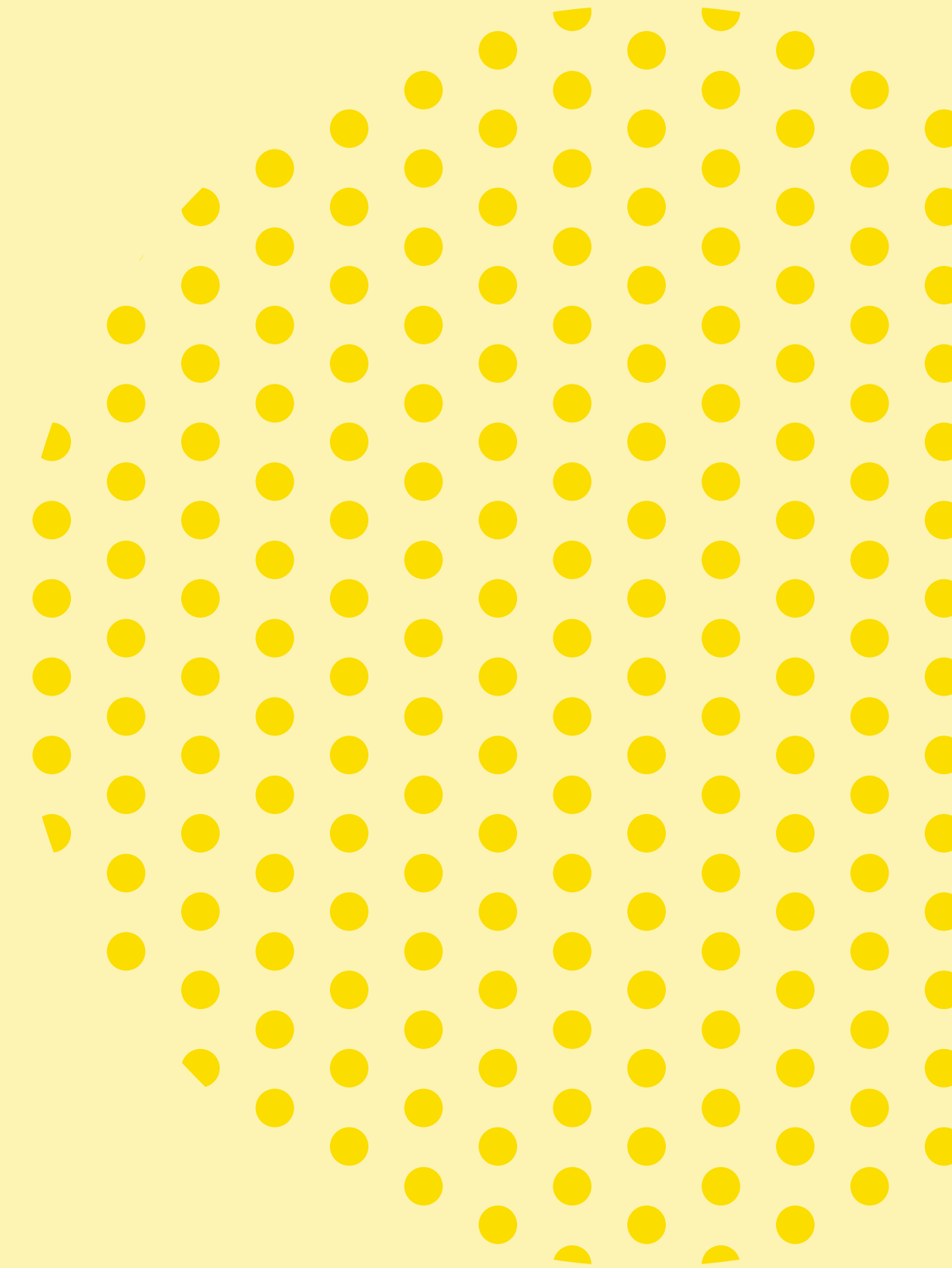
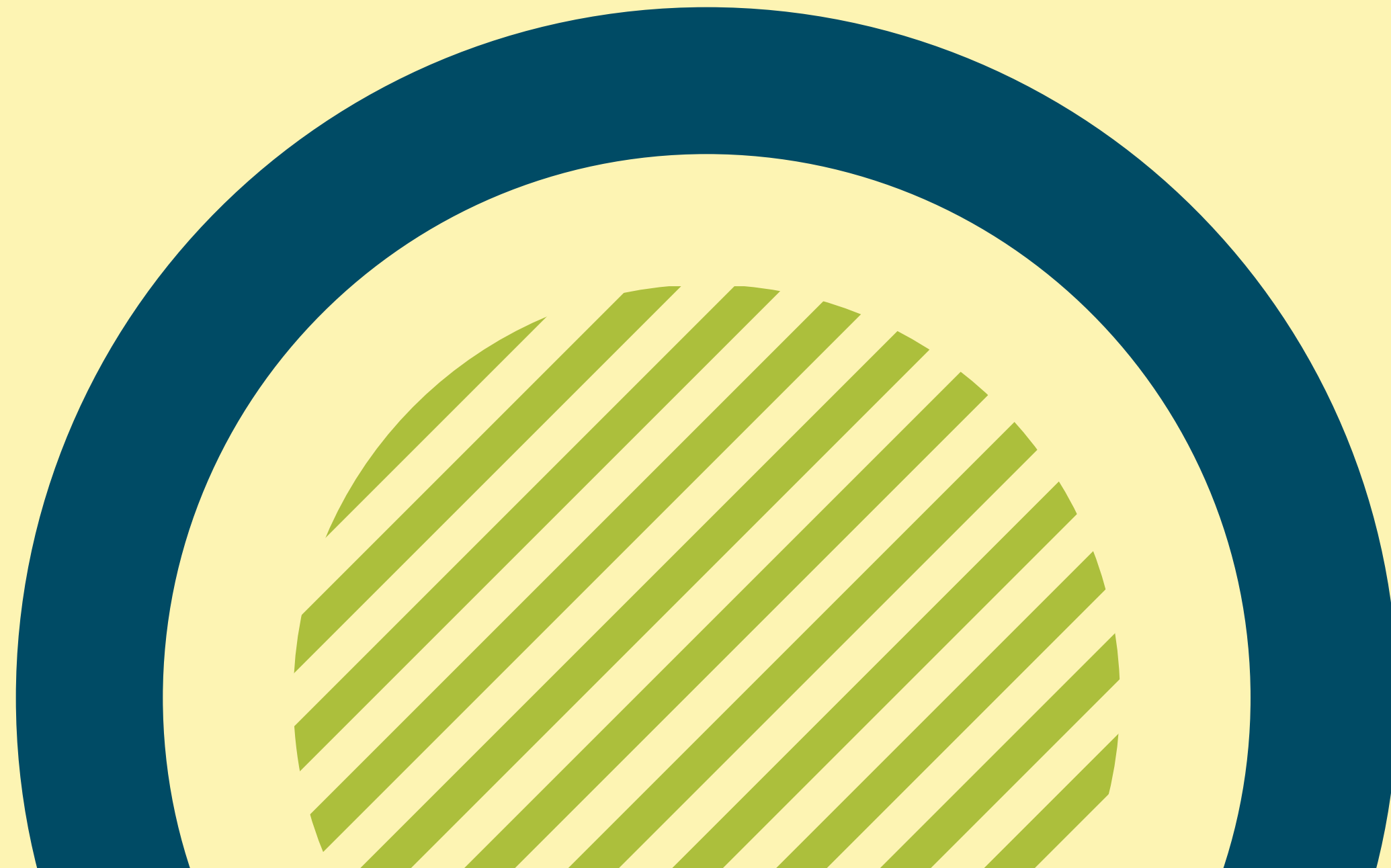
Robert's Story

Robert was diagnosed with autism when he was nine years old. His mother informed the OCO that he attended a mainstream primary school and had the full support of an SNA until the change in allocation policy, which meant that it was up to the school to decide how the SNA's hours would be allocated. She said that she was not advised of her son's reduction in SNA hours and only became aware of this when he began to return home from school in a distressed state. She said that they applied for Irish language exemption for him and were told that he couldn't get it just because he had autism. She said that Robert's psychologist recommended that he attend an autism class in post-primary school. She said that all the post-primary schools with autism classes close to their home were full but she managed to get a place for Robert in a school 25km away. She said that he now takes a taxi there every day. She said that the school is purpose built, which means that it took them five years to go from planning to approval to provision. She said that the staff are trained, the facilities are appropriate, and Robert is flourishing there. She said that the resource teachers helped him to run for student council, and that he is now a student council representative, advocating for his autistic peers. inclusivity from childhood.



6. Recommendations

Our recommendations are designed to eliminate the barriers impeding the right to education for children with SEN in the communities in which they live. It is envisaged that the removal of barriers to access to the continuum of education would both ameliorate the challenges within the education system as currently configured and provide the foundation upon which an inclusive education system can be built. While these measures may have cost implications in the short term, the inclusion model is a more sustainable mechanism over the long term.



1. Forward Planning

- a. The OCO recommends that home tuition should operate as it is intended to operate, namely as a time limited emergency measure and tool of last resort.
- b. The OCO recommends that the DE publish, as a matter of priority, a plan for ensuring that there are sufficient school places in the short to medium term to meet the forecasted needs of children with SEN within their local communities.

2. Access to Psychological Assessments in the Short-Term

- a. The OCO recommends that the DE ensures effective access to a psychologist via the NEPS, the Scheme for the Commissioning of Psychological Assessments (SCPA) or other service for the estimated 4,000 children awaiting a diagnostic assessment to establish whether a special class/school place is required in the short-term.

3. Building Local Capacity

- a. The OCO recommends that all schools, particularly all post-primary schools, be mandated and resourced to construct or re-purpose appropriate existing accommodation in order to meet the needs of children with SEN locally and in the short-term.

4. Engaging Schools, Parents and Students

- a. The OCO recommends that the DE engage with schools, parents, and children with SEN across the country in their inclusion agenda.

5. Data

- a. The OCO recommends that the DE gather data on the number of children requiring SEN supports in integrated settings in mainstream primary and post-primary schools and include this data within its annual Education Indicators.
- b. The OCO recommends that the DE publish annual centralised data on the number of children with SEN without an appropriate school placement.

6. Legislation

- a. The OCO recommends that the current review of the EPSEN Act consider whether sections 3 to 13 should be commenced or amended, or whether new legislation is required to ensure that individual educational plans for children with SEN are rights-based, child-centred and inclusive.
- b. The OCO recommends strong engagement between the DE and the HSE, as well as the Department of Health and the Department of Children, Equality, Disability, Integration and Youth, with respect to both the review of the EPSEN Act and the delivery of specialised supports in schools.
- c. The OCO recommends that the ongoing review of section 37A of the 1998 Act consider whether the process outlined therein is unduly onerous to meet the presenting needs of children with SEN in a timely manner and, as such, whether section 37A requires amendment.

7. Access to Therapeutic Assessments and Supports

- a. The OCO recommends that the DE and the HSE devise a joint working protocol to ensure that children with SEN have access to education enhancing therapeutic assessments and supports in all education settings.

8. Investing in Teachers

- a. The OCO recommends that the DE arranges for all teachers, new and existing, to engage in specialist SEN and inclusion training on an annual basis.

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