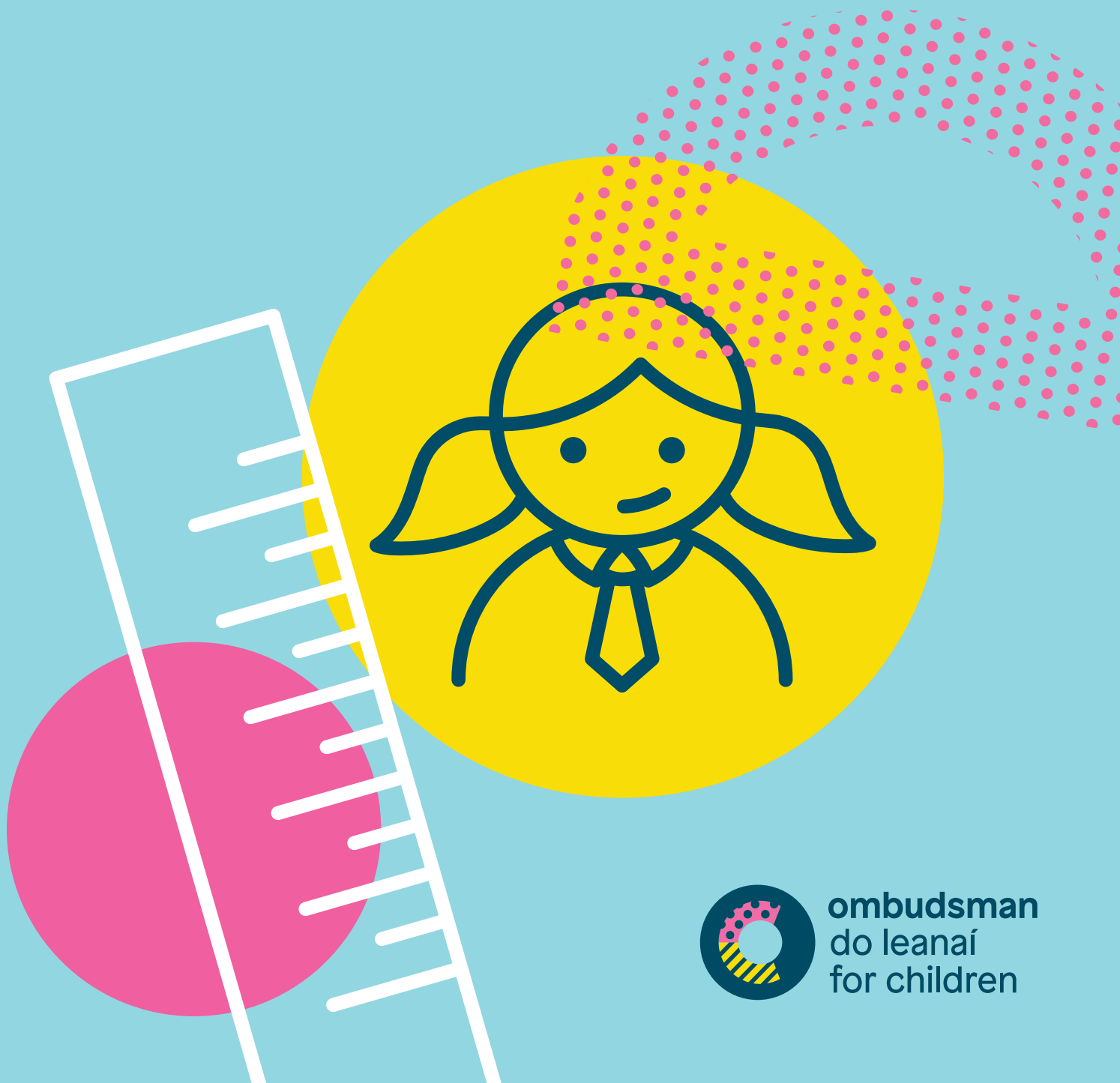


June 2022

# Plan for Places

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



**ombudsman  
do leanaí  
for children**

## Abbreviations

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<b>ARD</b>	Additional Residential Development
<b>ASA</b>	Additional School Accommodation
<b>AON</b>	Assessment of Need
<b>DE</b>	Department of Education
<b>PBU</b>	Department of Education's Planning Building Unit
<b>ESRI</b>	Economic and Social Research Institute
<b>2018 Act</b>	Education (Admission to Schools) Act 2018
<b>1998 Act</b>	Education Act 1998
<b>EPSEN Act</b>	Education for Persons with Special Educational Needs Act 2004
<b>EAL</b>	English as Additional Language Support
<b>Equal Status Acts</b>	Equal Status Acts 2000-2018
<b>2003 Act</b>	European Convention on Human Rights Act, 2003
<b>ECHR</b>	European Convention on Human Rights
<b>EU Charter</b>	European Union Charter of Fundamental Rights
<b>EU</b>	European Union
<b>GAM</b>	General Allocation Model
<b>GIS</b>	Geographic Information System
<b>CHO</b>	HSE Community Healthcare Organisation
<b>HSE</b>	Health Service Executive
<b>IEP</b>	Individual Educational Plan
<b>IIPN</b>	Irish Primary Principal's Network
<b>LSPA</b>	Local School Planning Area
<b>NABSME</b>	National Association of Boards of Management in Special Education
<b>NAPD</b>	National Association of Principals and Deputy Principals
<b>NCSE</b>	National Council for Special Education
<b>NDP</b>	National Development Plan
<b>NDA</b>	National Disability Authority
<b>NEPS</b>	National Educational Psychological Service
<b>NPC</b>	National Parent's Council
<b>OT</b>	Occupational Therapist
<b>2002 Act</b>	Ombudsman for Children Act, 2002
<b>OCO</b>	Ombudsman for Children's Office
<b>PQ</b>	Parliamentary Question
<b>PDS</b>	Progressing Disability Services for Children & Young People
<b>RSES</b>	Regional Spatial and Economic Strategies
<b>SCPA</b>	Scheme for the Commissioning of Psychological Assessments
<b>SBP</b>	School Building Programme
<b>SIM</b>	School Inclusion Mode
<b>SET</b>	Special Education Teacher
<b>SENO</b>	Special Educational Needs Organiser
<b>SEN</b>	Special Educational Needs

<b>SNA</b>	Special Needs Assistant
<b>SLT</b>	Speech & Language Therapist
<b>CRPD Committee</b>	United Nations Committee on the Rights of Persons with Disabilities
<b>CRC Committee</b>	United Nations Committee on the Rights of the Child
<b>CRPD</b>	United Nations Convention on the Rights of Persons with Disabilities
<b>CRC</b>	United Nations Convention on the Rights of the Child

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## Foreword by Dr Niall Muldoon, Ombudsman for Children

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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.

## Statement by the Department of Education and NCSE

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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.

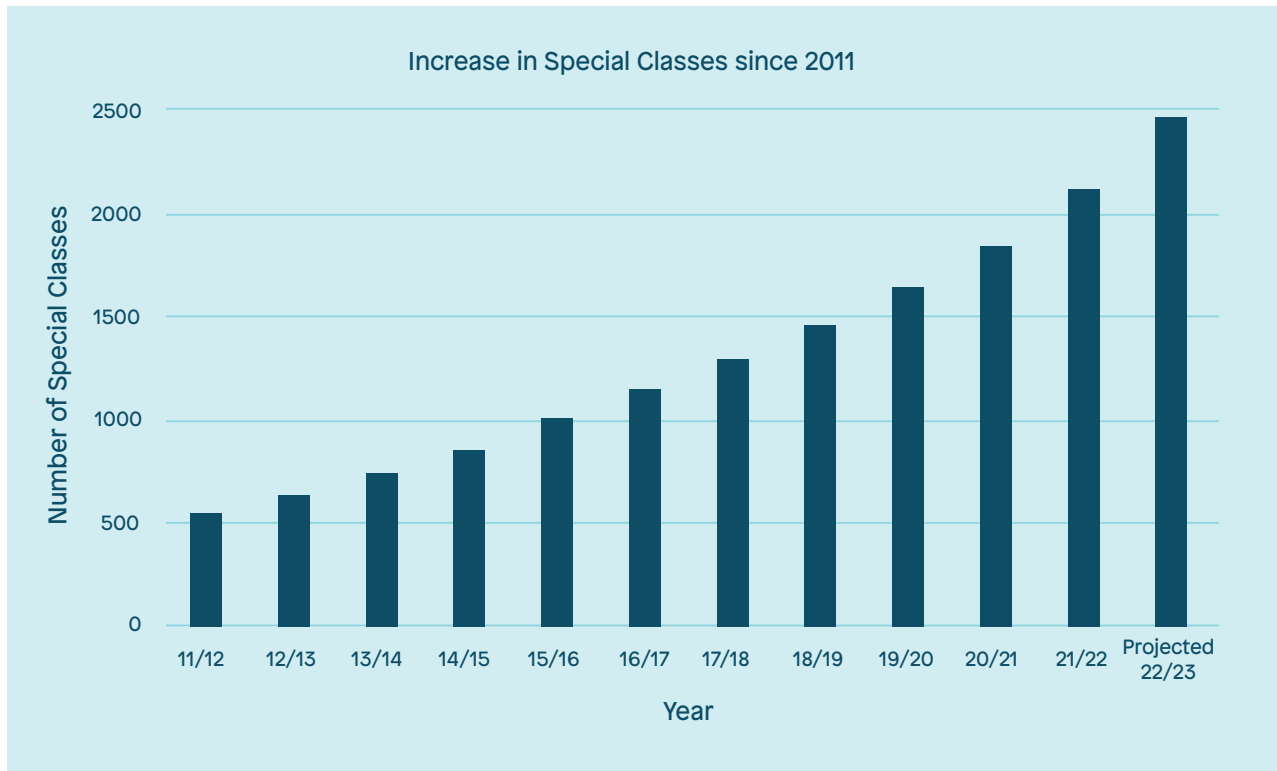
Within this context, providing for an appropriate school placement for every child with SEN in a timely and supported manner is a key priority for the Department and the NCSE. The NCSE is statutorily responsible for planning and coordinating provision at both a local and a national level and advising 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 Carrigline 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.

## Section 1 Introduction

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### 1.1 About the Ombudsman for Children

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 reports directly to the Oireachtas in relation to the exercise of these statutory functions.

### 1.2 Rationale for this Report

The OCO has received several complaints from parents experiencing difficulties in securing an appropriate school place in their local communities for their child with special educational needs (SEN).<sup>1</sup> Notably, parents have complained about the lack of sufficient and appropriate school places for autistic children in Dublin, Cork, and Clare.<sup>2</sup>

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 SEN. In addition to the complaints received, this decision was prompted by the Minister for Education's review of their power under section 37A of the Education Act 1998 to compel a school to provide additional places for children with SEN, and concurrent government initiatives:

- a) Section 37A(21)(a) of the Education Act 1998 (1998 Act), as amended by section 8 of the Education (Admission to Schools) Act 2018 (2018 Act), requires the Minister for Education to initiate a review of section 37A of the 1998 Act in December 2021 (i.e., three years after the commencement of section 37A on 3 December 2018). Under section 37A(21)(b), the Minister for Education is required to complete this review within 12 months (i.e., by December 2022) and submit a corresponding report to the Oireachtas. The DE have confirmed that this review will take place by the end of 2022.
- b) The June 2020 Programme for Government includes a section on 'An Inclusive Vision for Education', in which the Government commits to ensuring that each child

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1 'SEN' is used throughout this report and should be taken to include autistic children.

2 53% of complaints received by the OCO in 2021 related to education. See the OCO's Annual Report 2021, published in May 2022, available at <https://www.oco.ie/library/annual-report-2021-resilience-tested/resilience-tested-oco-annual-report-2021/>.

with a special educational need has an appropriate school place, in line with their constitutional right to education. It also commits to further progress the move towards a needs-based, responsive set of State supports for students with SEN and to expand early-intervention teams in schools during the period 2020-2025;<sup>3</sup>

- c) The National Council for Special Education's (NCSE) Policy Advice on Special Schools and Classes was due in June 2020;
- d) In September 2020, the Minister of State with responsibility for Special Education and Inclusion, Josepha Madigan, T.D., committed to reviewing and updating the Education for Persons with Special Educational Needs Act 2004 (EPSSEN Act) as part of her key priorities for action to reform and develop special education provision. This review commenced in early 2022 and is expected to be completed by Q1 2023;<sup>4</sup> and
- e) On the 10th November 2021, Minister of State with Special Responsibility for Disability, Anne Rabbitte, T.D., published Ireland's first State party report to the United Nations Committee on the Rights of Persons with Disabilities (CRPD Committee).

### 1.3 Purpose of this Report

This report has been produced pursuant to the Ombudsman for Children's statutory function under section 7 of the 2002 Act to promote the rights and welfare of children.<sup>5</sup> In this regard, the work is aligned with several duties that the OCO has under section 7 of the 2002 Act, namely those duties specified under sections 7(1)(a), 7(1)(b), 7(1)(c), 7(1)(d), 7(1)(g) and 7(4).

The report is also informed by two key objectives of the OCO's Strategic Plan 2019 – 2021: to influence positive change for children and to work towards the progressive realisation of the rights of vulnerable groups of children, including children with disabilities.<sup>6</sup>

We have produced this report to:

- 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;
- 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;

<sup>3</sup> Programme for Government (June 2020) at page 96.

<sup>4</sup> See further press release available at <https://www.gov.ie/en/press-release/5f5d4-minister-josepha-madigan-td-sets-out-priorities-for-action-to-reform-special-education-provision-in-ireland/>.

<sup>5</sup> See also CRC General comment No. 2 (2002): The role of independent national human rights institutions in the promotion and protection of the rights of the child.

<sup>6</sup> See also actions 1.2, 2.1, 3.1 and 3.2 of the OCO's Strategic Plan 2019 – 2021.

- 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
- 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.

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.

## 1.4 Methodology

Work for this report was planned and implemented between 2021 and 2022. The report’s methodology comprised of two components: a desk-based review of relevant materials, including documentation in respect of the forward planning process as presented to the OCO by the DE, and semi-structured interviews with a number of key stakeholders, including the DE and the NCSE.

### Desk-Based Review

We implemented a desk-based review and analysis of relevant documentation throughout the lifespan of this report. These included:

- Materials and documentation from the DE and the NCSE in respect of forward planning of school places for children with SEN;
- Reports and articles by research institutions, State agencies, NGOs and media outlets regarding school places for children with SEN; and
- Relevant national and international legislative and policy instruments.

### Semi-Structured Interviews

For the purposes of this report, 13 semi-structured virtual interviews were conducted with 27 individuals between June and August 2021. These included interviews with academics, NGOs, parents, school principals, solicitors, as well as State agencies.

These interviews were conducted to gather information and to understand stakeholders’ perspectives on different aspects of the forward planning process. In this regard, we were cognisant that stakeholders’ perspectives as shared with the OCO were shaped by varied experiences of the forward planning process.

A draft version of the report was circulated to interviewees so that they could proof the information, and views shared with us, prior to publication.

## Section 2 Planning Overview

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### 2.1 What is the Current Level of Need?

The figures collated below aim to offer an insight into the number of children with SEN enrolled in schools nationwide. However, it should be noted that there is a lack of centralised data with respect to how many children with SEN require a school placement or require a more appropriate school placement.<sup>7</sup> As such, the OCO has attempted to ascertain the level of need nationwide from incomplete data subsets. In September 2019, the then Minister for Education, Joe McHugh, acknowledged that there were no official figures for the number of children not receiving the education they require.<sup>8</sup>

#### 2.1.1 Students with Special Educational Needs (SEN)

According to Government figures from August 2016<sup>9</sup>, there were 181,218 students with SEN in primary and post-primary education in Ireland. These figures suggest that between 2011 and 2016 the number of students with SEN relative to the total student population increased from 17% to 20%.<sup>10</sup>

By 2016, 113,888 children, representing approximately 63% of all students with SEN, were receiving their education in mainstream schools under the 'general allocation model' (GAM) i.e., with supports such as special needs assistants (SNAs) in mainstream classrooms. Students accessing NCSE Low Incidence Teaching Hours<sup>11</sup> (42,931) and High Incidence Teaching Hours<sup>12</sup> (10,835) represented approximately 30% of all students with SEN.<sup>13</sup> The figure for students accessing special schools was 8,092 or 4% of the student with SEN population. The number of students accessing support in special classes in mainstream schools was 5,472 or 3% of the student with SEN population.<sup>14</sup>

The ESRI's Growing Up in Ireland study suggests that the number of students with SEN relative to the total student population is in fact closer to 25%.<sup>15</sup> This 25% figure is based on a three-step approach combining information from teachers and parents on a range of physical, learning and emotional/behavioural difficulties. According to the study, this

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7 Sources consulted included the NCSE's website, CSO datasets, parliamentary debates, DE publications and official statistics, DE circulars, NGO reports, and figures from the Department of Public Expenditure and Reform (DPER).

8 Michael Clifford, 'Not all of State's children are being educated equally', Irish Examiner, 14 February 2020.

9 These figures from 2016 are the latest available, which count all students with SEN and not just those in special schools/classes.

10 Irish Government Economic and Evaluation Service, Focused Policy Assessment of Data on Special Needs Assistants (Department of Education and Skills, 2016) at page 15.

11 Correlating to a low incidence disability, such as autism, a moderate, severe or profound general learning disability, or a hearing or visual impairment.

12 Correlating to a high incidence disability, such as a mild general learning disability.

13 Note that the GAM and NCSE Low/High Incidence support schemes were replaced by the new allocation model in 2017.

14 Irish Government Economic and Evaluation Service, Focused Policy Assessment of Data on Special Needs Assistants (Department of Education and Skills, 2016) at page 15.

15 A Study on the Prevalence of Special Educational Needs, December 2011, Banks & McCoy available at <https://www.esri.ie/publications/a-study-on-the-prevalence-of-special-educational-needs>.

prevalence rate aligns with cohort studies internationally, including the Netherlands and the UK, which both estimated SEN prevalence among their student populations to be 26%.<sup>16</sup>

The 3% increase in Irish students requiring SEN supports during the five years preceding 2016, certainly supports the assumption that, in the five years since the Government's figures were collated, the number of students with SEN relative to the total student population is at least 23% and probably closer to 25-26%. Accordingly, for the purposes of this report, the OCO estimates that 25% of the total student population have SEN.

## 2.1.2 Autistic Students

The Government's Focused Policy Assessment, from which the 2016 data at 2.1.1 is derived, details factors driving the increased demand for SEN supports. This includes a significant increase in the number of children with an autism diagnosis.<sup>17</sup>

The NCSE collects data on autistic students who have access to resource teaching support, are in special classes, or are in special schools. Their analysis indicates a prevalence rate of 1.55% of the total student population, or one in every 65 students. This calculation is based on school-aged autistic children in State-funded schools between 4 and 18 years.<sup>18</sup>

Significantly, this prevalence rate is in line with prevalence estimates in other countries such as the UK, Finland, Norway, Denmark, Italy, Australia, Canada, and the USA.<sup>19</sup> The NCSE confirmed to the OCO that a figure of 1.55% is currently used for the purposes of planning policy and services. Therefore, for the purposes of this report, the OCO estimates that 1.55% of the total student population are autistic.

Most autistic students are educated alongside their neurotypical peers. 86% of autistic students are enrolled in mainstream schools. Within this 86% figure, 63% of all autistic students attend mainstream classes and 23% of all autistic students attend special classes. The remaining 14% of autistic students attend special schools.<sup>20</sup>

## 2.1.3 Identified Need within the Irish School Population

DE data indicates that in 2021 the number of pupils in special schools stood at 8,682<sup>21</sup>, the number of pupils in special classes at mainstream primary schools stood at 7,510, and the number of pupils in special classes at post-primary schools stood at 2,856.<sup>22</sup> Out of the

16 Selina McCoy, Joanne Banks & Michael Shevlin, 'Insights into the Prevalence of Special Educational Needs' in James Williams, Elizabeth Nixon, Emer Smyth & Dorothy Watson (eds) *Cherishing All the Children Equally? Ireland 100 years on from the Easter Rising* (2016) at page 157.

17 Irish Government Economic and Evaluation Service, *Focused Policy Assessment of Data on Special Needs Assistants* (Department of Education and Skills, 2016) at page 32.

18 Approximately 14,000 students in the 2014-2015 school year. NCSE Policy Advice, *Supporting Students with Autism Spectrum Disorder in Schools* (NCSE, 2016) at page 4.

19 *Estimating Prevalence of Autism Spectrum Disorders (ASD) in the Irish Population: A review of data sources and epidemiological studies*, November 2018, Department of Health at pages 5-6; 14; 16-17.

20 NCSE Policy Advice, *Supporting Students with Autism Spectrum Disorder in Schools* (NCSE, 2016) at page 5.

21 Note that all special schools are designated primary schools.

22 For total enrolments in special schools for 2021/2022 year (enrolment as of 30th September 2021) see: Department of Education, *Primary school enrolment figures* available at: <https://www.gov.ie/en/collection/primary-schools/#20212022>. For total numbers of pupils in special classes in primary and post primary schools, see: Department of Education, *Education indicators for Ireland: December 2021*, available at <https://www.gov.ie/en/publica->



2,148 special classes set up for the 2021-22 school year, almost 1,900 cater for autistic students.<sup>23</sup>

No numbers are available for pupils requiring SEN supports in integrated settings in mainstream primary schools or post-primary schools. In response to a January 2021 parliamentary question (PQ) on the issue, Minister Madigan outlined that ‘as special education teaching support is now allocated to individual pupils at local school level, my Department does not hold details of the number of pupils with particular conditions of SEN who are supported in mainstream schools’.<sup>24</sup>

There were 546,121 students enrolled in mainstream primary schools and 391,703 students enrolled in post primary schools in the 2021/2022 school year.<sup>25</sup> If we apply the SEN prevalence figure estimated at 2.1.1 above, we can deduce that in the 2021/22 school year, there were approximately 136,530 students with SEN enrolled in primary schools, and approximately 97,926 students with SEN enrolled in post-primary schools, who are not accounted for in the DE’s Education Indicators. Similarly, if we apply the autism prevalence figure estimated at 2.1.2 above, we can deduce that in the 2021/2022 school year, there were approximately 8,465 autistic students enrolled in primary schools, and approximately 6,071 autistic students enrolled in post-primary schools.

#### 2.1.4 The Level and Dispersal of Unmet Need

According to correspondence received by the OCO from the NCSE, current unmet need for school places is derived from the following:

- Children on Home Tuition or otherwise out of school due to a lack of specialist education placement; and
- Children with recommendations for special school or special class placements currently in other school settings as communicated to the local Special Educational Needs Organiser (SENO) by the children’s parents/guardians or current school placement.

Apart from the ‘special school’ figures released by the NCSE via a press release in March 2022, there are no official figures on the number of children with special needs who do not have an appropriate school place.<sup>26</sup> During a 2019 Oireachtas debate it was estimated that approximately 4,000 children were awaiting a diagnostic assessment in order to get a school place, and that more than 850 children with SEN were receiving Home Tuition because a place could not be found for them in proximate schools.<sup>27</sup> In July 2021, figures released by the DE in response to a PQ further noted that there were 752 applications

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tion/055810-education-statistics/.

23 Dáil Deb, 02 March 2022, available at: <https://www.oireachtas.ie/en/debates/debate/dail/2022-03-02/3/#s6>.

24 Dáil Deb, 13 January 2021, available at <https://www.oireachtas.ie/en/debates/question/2021-01-13/456/>.

25 Enrolment as of 30th September 2021. See: Department of Education, Primary school enrolment figures’ available at: <https://www.gov.ie/en/collection/primary-schools/#20212022>, and Department of Education, Post-primary schools enrolment figures, available at: <https://www.gov.ie/en/collection/post-primary-schools/>.

26 Dáil Deb, 25 September 2019, available at <https://www.oireachtas.ie/en/debates/debate/dail/2019-09-25/29/>.

27 Dáil Deb, 09 July 2019, available at <https://www.oireachtas.ie/en/debates/debate/dail/2019-07-09/48/>.

for Home Tuition sanctioned during the 2020/2021 school year for students with no SEN placement.<sup>28</sup>

Moreover, concerns have been raised in relation to children attending school placements outside of their own locality. In this regard, the OCO has heard from parents whose children undertake lengthy journeys in buses or taxis as a result of a lack of dedicated school places, such as special classes, within their own communities. In an Oireachtas debate in 2022, the Minister for Education Norma Foley, T.D., stated that in the school year of 2021/2022, 15,500 children with SEN were transported on a daily basis to primary and post-primary schools throughout the country via the School Transport Scheme.<sup>29</sup> Children with SEN are eligible to avail of the School Transport Scheme where they have a SEN arising from a diagnosed disability and are attending the nearest recognised school/class that is resourced to meet their needs. In South Dublin, figures estimate that during 2020, up to November 2020, €63,579 per day was being spent on taxis and buses to take autistic children to school. During 2021, up to November 2021, that figure increased to €72,704 per day.<sup>30</sup> It was noted in an Oireachtas debate that the reason for this increase is due to children having to travel further distances out of their local area in order to be able to reach their school placement.<sup>31</sup>

During a March 2022 Oireachtas debate about aligning Ireland's education system with the inclusion goals contained in the CRPD, Minister Madigan pointed out that under the Constitution *'there is a right to education, but it is not specified that this a right based in your locality. That does not mean we do not endeavour to do that, because we do.'*<sup>32</sup>

With regard to instances of demand exceeding supply at county level, Deputy Margaret Murphy O'Mahony stated that in 2018 there were 156 children on a waiting list for school placement in Cork.<sup>33</sup> At a further Oireachtas debate in 2019, it was recorded that the NCSE had 'already informed the Minister for Education and Skills that parents in South Dublin and Cork [were] having trouble securing schools places for their children.' Then Minister for Education, Joe McHugh, T.D, acknowledged that he was aware that there were 'challenges in Cork and Kilkenny too'. In respect of Dublin 2, 4, 6 and 6W, the ratio of available places to autistic children was stated to be 1:782, as compared to the national average of 1:100.<sup>34</sup> At a 2020 Oireachtas debate Minister Madigan 'anticipated that additional places [for autistic children] may be required in Limerick to cater for likely future demand in the city and county'.<sup>35</sup> Difficulties faced by parents in South Dublin and Cork to secure appropriate school places for their children have continued to be reported in 2021 and early 2022.<sup>36</sup>

28 Dáil Deb, 27 July 2021, available at: <https://www.oireachtas.ie/en/debates/question/2021-07-27/930/?highlight%5B0%5D=education&highlight%5B1%5D=educational&highlight%5B2%5D=educational>.

29 Dáil Deb, 08 February 2022, available at: <https://www.oireachtas.ie/en/debates/question/2022-02-08/400/>.

30 Dáil Deb, 24 January 2022, available at: <https://www.oireachtas.ie/en/debates/debate/dail/2022-01-20/30/?highlight%5B0%5D=chris&highlight%5B1%5D=andrews>.

31 Dáil Deb, 24 January 2022, available at: <https://www.oireachtas.ie/en/debates/debate/dail/2022-01-20/30/?highlight%5B0%5D=chris&highlight%5B1%5D=andrews>.

32 Dáil Deb, 03 March 2022, page 13, available at: [https://data.oireachtas.ie/ie/oireachtas/debateRecord/joint\\_committee\\_on\\_disability\\_matters/2022-03-03/debate/mul@/main.pdf](https://data.oireachtas.ie/ie/oireachtas/debateRecord/joint_committee_on_disability_matters/2022-03-03/debate/mul@/main.pdf)

33 Dáil Deb, 09 July 2019, available at <https://www.oireachtas.ie/en/debates/debate/dail/2019-07-09/48/>.

34 Dáil Deb, 25 September 2019, available at <https://www.oireachtas.ie/en/debates/debate/dail/2019-09-25/29/>.

35 Dáil Deb, 13 October 2020, available at <https://www.oireachtas.ie/en/debates/question/2020-10-13/255/>.

36 See further Carl O'Brien, 'Hundreds of special-needs children unable to access school places', The Irish Times 05 July 2021; Eoin English, 'Mother in desperate fight to secure suitable school place for autistic son', The Irish Examiner, 06 December 2021; Sean Murray, 'Parents feels as if they're falling off a cliff' over lack of special needs school places' Irish

On the 14th September 2021, the NCSE informed the OCO that it was working to identify special class places for 53 students and special school places for 18 students for 2021/22. It stated that these students were all based in the Dublin region and there were sufficient places in the rest of the country. These figures do not include all children attending mainstream school receiving Special Education Teacher (SET) supports but with a recommendation for a special class, or those who are awaiting an assessment for a special class.

In March 2022, the NCSE stated that the number of children and young people known to the NCSE who require the support of a special school and do not have an offer of a school place for September 2022 is 103 (45 in Cork, and 58 in Dublin).<sup>37</sup> As of May 2022, the Chief Executive of the NCSE has said that there were 'roughly 160' children nationally who require, and do not have, a special school place.<sup>38</sup> According to a May 2022 survey by advocacy group, AsiAm, almost 270 autistic children do not have appropriate school places available for September 2022.<sup>39</sup>

For the purposes of this report, the OCO infers that demand for special class and special school places may exceed supply in counties Dublin, Cork, Kilkenny, and Limerick.

## 2.2 Current Planning for SEN Provision

The DE informed the OCO that it is the Department's policy that students with SEN should be included, where possible and appropriate, in mainstream placements with additional supports provided. According to the DE, where children with SEN require more specialised interventions, the continuum of education provision extends to access to a special school or a special class place. In planning for school place requirements, the DE stated that the priority is to ensure sufficient school places are available across each local school planning area (LSPA) and not at individual school level.

The DE informed the OCO that, under the National Development Plan (NDP), it aims to build a modern and sustainable school infrastructure within the decade. It stated that the key drivers of this capital investment in the schools' sector are demographic changes and housing provision, and SEN place provision at a local, regional, and national level in the short, medium, and longer term. As such, the forward planning process for meeting emerging demand for SEN places involves:

- (i) The DE projecting overall enrolments across the State in the short to long term at a local and national level; and

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Examiner, 22 January 2022; and Dáil Deb, 27 January 2022, available at: <https://www.oireachtas.ie/en/debates/debate/dail/2022-01-27/28/>.

37 See Department of Education, Announcement, 23 March 2022, available at: <https://www.gov.ie/en/press-release/1895f-ministers-foley-and-madigan-announce-the-establishment-of-a-new-special-school-in-cork-and-provide-an-update-on-the-expansion-of-existing-special-class-and-special-school-capacity-in-cork-and-dublin-to-meet-the-needs-of-children-and-young-people-with-special-educational-needs/>

38 Conor McMorrow, 'Twins with autism to be granted special school place', RTE News, 20<sup>th</sup> May 2022. Available at: <https://www.rte.ie/news/primetime/2022/0520/1300216-milne-twins-autism-granted-special-school-place/>

39 Carl O'Brien, 'Almost 270 children with autism do not have appropriate school places – survey', Irish Times, 30<sup>th</sup> May 2022. Available at: <https://www.irishtimes.com/ireland/education/2022/05/29/almost-270-vulnerable-children-with-out-appropriate-school-places-survey/>

- (ii) The NCSE identifying the current and anticipated demand for SEN places in the short to long term at a local and national level.

### 2.2.1 Planning for School Places Generally

With respect to (i) above, the latest set of long-term (up to 2038) national level projections<sup>40</sup> of full-time enrolment in primary and post-primary schools' forecasts that:

- At primary level overall enrolments are expected to have peaked during the 2018/2019 school year at almost 568,000 pupils and to continue on a downward trajectory; and
- At post-primary level, enrolments are expected to continue to increase until the 2024/2025 school year, where they will peak at over 410,000 before also beginning to decline.

Across the 314 LSPAs this means that:

- 36% of LSPAs at primary level are projected to experience an increase in enrolments by their peak year in the period 2019 to 2024;
- 90% of LSPAs at post-primary level are projected to experience an increase in enrolments by their peak year in the period 2019 to 2027; and
- Pressure on school provision is expected to be concentrated in and around Metropolitan Areas at both primary and post-primary level.

The DE informed the OCO that the extent and timing of demographic growth in specific LSPAs is determined by the population targets up to 2040 developed under the Regional Spatial and Economic Strategies (RSES), and the City and County Development plans to be developed in line with the RSES. The Department's Planning and Building Unit (PBU) stated that it uses further data from a range of sources, including Child Benefit Data from the Department of Social Protection, the DE's own school enrolment databases, information on planned/anticipated additional residential development (ARD), and data on internal and external migration, to identify where the pressure for school places across the country will arise.

The PBU informed the OCO that recent initiatives introduced to strengthen the demographic analysis process include:

- Enhanced engagement with local authorities in relation to the information on residential development, which is incorporated in the analysis process;
- Additional engagement with school patron bodies, the Education and Training Boards, Diocesan offices and national patron bodies such as Educate Together and An Foras Pátrúnachta regarding their local knowledge of school place requirements; and

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<sup>40</sup> DE Projections of Full-time Enrolment Primary and Second Level (2020–2038), November 2020.

- A national inventory of school capacity derived from schools' annual 30 September enrolment returns to the Department. Schools are now also requested to provide information in respect of overall demand for school places and available capacity within their schools.

Since 2018, this information has been compiled and analysed through the Department's Geographic Information System (GIS) which contains up-to-date data on general pupil demand and capacity across all primary schools and post-primary schools. The OCO was given a demonstration of the GIS system. The GIS facilitates 'heat maps', which showed that the overall number of LSPAs with projected additional demand to be relatively few, but the demand itself to be very significant within these areas.

The remainder of this section will focus on (ii) i.e. the DE and the NCSE's forward planning processes for SEN within the context of each LSPA's demographic projections.

### **2.2.2 Planning for SEN Places Specifically**

The DE stated that at a regional and national level, it plans that an average 1.5% of the school going population will require special class/school places. At a local level, the DE stated that it relies upon the NCSE's local network of SENOs to gather information on the numbers of known students requiring a special class place, and the schools willing to establish new classes, within each LSPA to identify areas of potential unmet need.

According to the NCSE, each SENO maintains periodic contact with parents who are seeking a specialist placement for their child in their local area to determine if they have received a place. The NCSE stated that SENOs also contact the parents and schools of students due to transition from primary to post-primary, who may require specialist provision, 2+ years in advance of that transition. Where a local school placement is not available for a child in accordance with their assessed needs, the SENO will support the parents through the Home Tuition application process. Intended as a short-term intervention, the DE provides funding towards 20 hours Home Tuition a week for successful applicants.

According to the NCSE, all schools have an assigned SENO. Local SENOs are required to report to their Team Manager weekly on the number of students who require a special class/school places in their areas, as well as provide the most up-to-date information on the number of class vacancies across their caseload [the 'SC Planning and Demand Template']. The information from each SENO area is collated at LSPA level on a weekly basis using an Excel template.

To complete the 'SC Planning and Demand Template' referenced above, the NCSE informed the OCO that the SENOs:

- Engage with the parents of children expected to transition from pre-schools with additional support, or early intervention special classes, or from primary special classes to post-primary special classes. Transition planning generally commences two years in advance of a child with SEN enrolling in post-primary school. SENOs

advise parents on the resources available to support transition on the NCSE website. Parental choice is built into short- and medium-term planning.

- Engage with schools to identify students who may require a special class or special school placement in the future and provide guidance to schools on setting up special classes.
- Undertake an annual programme of seminars for parents of children with special education needs who are starting school in the next one to two years. The NCSE stated that it is developing a similar programme of seminars for primary to post primary transition, to be trialled in 2021/22.
- Examine applications for Home Tuition.
- Receive schools' annual leavers forms ['NCSE Form 5-Leavers Form'] providing details of those students leaving special classes or special schools at the end of a school year. Schools are required to publish the number of places available in their admissions notices.
- Link in with colleagues in the HSE and NEPS to build an overall picture of future demand for special classes and special schools in the area. The NCSE stated that it engaged with the HSE at a regional and national level during 2020/21 regarding a backlog of overdue Assessments of Need (AONs) in anticipation of increased demand for special education placements as the backlog was cleared. There is also a National Health and Education Forum comprising of NEPS, HSE Disability and the NCSE, which meets three to four times a year to facilitate information sharing between services.
- Where the NCSE becomes aware of a SEN school placement at risk, the SENO will seek to engage the family and school, and coordinate other agencies such as NEPS, HSE, and Tusla to agree a joint approach to support the school placement. The SENO will arrange additional supports and resources for the school and the child, such as assistive technology or additional SNA/SET resources where required.

The NCSE stated that other factors used to identify the current and anticipated demand for SEN places include:

- General demographic trends in each LSPA;
- Trends in the % of children enrolled in special classes and special schools in each LSPA; and
- Trends in the % of children receiving Access and Inclusion Model (AIM) supports in Early Childhood Care and Education (ECCE) schemes.

The NCSE informed the OCO that it is confident that the procedures it has in place captures all the pertinent local information required for planning purposes. It stated that 10 Team Managers and five Regional Managers quality assure the information provided by SENOs, monitor team members' progress against goals agreed via bi-annual team business

planning meetings, and carry out individual performance management and development systems reviews with each team member.

The OCO has viewed the 'SC Planning and Demand Template' completed by SENOs each week. It includes tabs on whether building works are required by the schools tasked with meeting the demand locally, and the nature of those works.

The DE informed the OCO that its PBU and Special Education sections meet with the NCSE weekly to establish the resourcing and accommodation requirements for schools in areas of unmet need. The PBU also shares their GIS with the NCSE so that NCSE can see the building projects which are planned in each geographical area in real time.

From an infrastructure perspective, the DE stated that, upon the advice of the NCSE, it considers the following measures for meeting SEN demand in specific LSPAs:

- The utilisation of spare capacity within a school following some reconfiguration works;
- The delivery of additional SEN capacity within the scope of existing projects currently under construction under the School Building Programme (SBP);
- The expansion of the scope of some existing projects under the SBP, following a strategic review;
- The approval of Additional School Accommodation (ASA) projects to meet specific local needs which cannot be addressed through the above measures; and
- The potential establishment of new Special Schools to meet particular needs in particular areas of the State.<sup>41</sup>

In addition to the above, the DE stated that it is now general practice to include a SEN Base in the accommodation brief for new school buildings, with a two classroom SEN Base provided in new primary schools, and a two or four classroom SEN Base provided in new post-primary schools.

The DE informed the OCO that it has been able to maintain the momentum, and improve the efficiency, of its SBP during the Covid-19 pandemic, because of the following measures:

- Under the Health Act 1947, (Section 31A – Temporary Restrictions) (COVID-19)(No. 10)(Amendment) Regulations 2021, construction work on school building projects, which provide additional capacity for students or involve essential maintenance or refurbishment works in support of the continued provision of education continued during the latter Level 5 restrictions;
- An amendment to the Planning and Development Regulations 2001 (S.I. No 114 of 2021) allow schools to:

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<sup>41</sup> The DE stated that due to a shortage in suitable SEN places locally, two new special schools in Crumlin, Dublin, and Carrigaline, Cork, providing 68 special school places, opened in September 2021.

- Construct temporary structures (up to 30% of the floor area of the existing school) to facilitate the continued delivery of education subject to certain conditions; and
- Increase the existing exemption under CLASS 57 for extensions to schools from 160m<sup>2</sup> up to 210m<sup>2</sup>, whilst limiting the use of the exemption to just once;
- The DE has established a framework for the provision of modular accommodation solutions, with over 25 projects (including five projects with a significant SEN accommodation component) by 13 suppliers in the works; and
- The DE updated the School Design Guide (SDG-02-04) on Primary & Post Primary School Specialist Accommodation for Pupils with Special Educational Needs in April 2021. The DE stated that it provides clear guidelines on the approach to be taken by school authorities in re-purposing/refurbishing existing accommodation for SEN provision.

According to the PBU, they provide the resources required for the physical infrastructure, and occasionally meet with schools, where there is reluctance to make the accommodation adjustments required, in order to persuade them to buy into the process.

The DE stated that, once the resources are in place and a new special class is sanctioned by the NCSE, schools are responsible for devising the enrolment policy for that class and, once the enrolment policy is in place, SENOs inform parents of the new special classes and support parents engagement with the relevant school's enrolment process.

### 2.2.3 Section 37A

Another tool at the DE's disposal is Section 37A of the 1998 Act as amended by Section 8 of the 2018 Act. Where all reasonable efforts to open new special classes in an area fail, and where the DE and the NCSE are satisfied that a school has space to open a new special class, the Minister for Education has the power under the s37A process to compel a school to provide additional specialised places. The DE informed the OCO that the s37A process is expected to substantially resolve the unmet need in South Dublin and a small number of cases in North Dublin.

While the Minister has not used the power to compel to date, the legislation was first employed in Dublin 15 in 2019. The DE stated that negotiations resulted in six schools offering to open special classes and the establishment of a special school.

The legislation was activated for a second time following a report by the NCSE which identified a shortage of special school and special class places across South Dublin. Under the s37A process, the Minister wrote to 39 schools in June 2020. The notices served on 13 of these schools were subsequently withdrawn following site visits, which determined that there was a lack of physical space for the establishment of special classes. Figure 1 sets out the progress of the s37A process in South Dublin.



**Figure 1: Summary of Section 37(A) process in South Dublin as provided to the OCO by the DE in May 2022**

Action	Number of Schools	Number of places
Received a first notice on 26th June 2020	39	-
Withdrawn from the process due to lack of space to accommodate a class following site visit	13	-
Have opened a special class	15	86
Committed to opening classes 2022/23	7	42
Committed to opening classes 2023/24	2	12
Committed to opening classes 2024/25	2	12

While NCSE engagement with education providers resulted in the establishment of 13 special classes by September 2020, there remained, and remains, a significant shortfall across the South Dublin area.

Minister Madigan has asked the DE for a review of the operation of s37A of the 1998 Act to be completed before the end of 2022. The review will examine the operational effectiveness of the s37A process for the child, taking into account cases where the powers under the section have been used.

On the 17th May 2022, Minister Madigan, stated that ‘In my duty as Minister, I feel I must take substantive action now. At this point in time, I am of the view that I have no other option but to issue section 37A notices to schools in areas which desperately require additional SEN school places across the country’.<sup>42</sup>

#### **2.2.4 Growth in SEN Investment**

In its meeting with the OCO, the DE emphasised the overall growth in the number of special classes/schools, and the significant increase in the number of SETs and SNAs nationally, since 2011 (see Figure 2).

<sup>42</sup> Jack Horgan-Jones, ‘Schools may be forced to open places for special needs children – Madigan’, Irish Times, 17th May 2022. Available at: <https://www.irishtimes.com/news/ireland/irish-news/schools-may-be-forced-to-open-places-for-special-needs-children-madigan-1.4881366> after 17th May 2022

**Figure 2: Growth in Special Classes and Special Schools as provided to the OCO by the DE in July 2021**

Indicator	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21
Students enrolled in NCSE supported Special Schools				7,170	7,350	7,426	7,519	7,722	7,856	7,899
Special School Teachers	1,056	1,078	1,060	1,135	1,159	1,197	1,205	1,223	1,231	1,240
Special Classes	548	628	737	855	1,008	1,149	1,304	1463	1,640	1,839
<i>of which are autism classes</i>	279	349	432	536	660	777	922	1,068	1,249	1,435
<i>of which are Primary autism</i>	211	257	316	391	472	544	651	749	880	1,000
<i>of which are Post-Primary autism</i>	68	92	116	145	188	233	271	319	369	435
Students supported in Special Classes	3,286	3,684	4,353	4,706	5,472	6,393	7,390	8,410	9,259	10,436
Special Class Teachers	602	695	823	956	1,136	1,304	1,480	1,663	1,865	2,099
Special Education Teachers (DoE)					11,836	12,501	13,395	13,412	13,530	13,620
No. of SNAs	10,320	10,503	10,671	11,174	11,984	13,006	14,063	15,030	16,125	17,032

This growth has been met by a 50% increase in SEN expenditure since 2011 to €2 billion in 2021 (see Figure 3). Teacher and SNA salaries make up 89% of SEN expenditure.

**Figure 3: Breakdown of Special Education Funding in 2021**

	2021
	REV
	'000
Teachers*	1,294,103
SNAs	650,133
School Transport	168,297
NEPS	22,774
NCSE	22,954
Additional Capitation	11,046
Misc. Provision (e.g., Assistive Technology grants)	15,619
<b>TOTAL</b>	<b>2,184,926</b>
Gross Current Education Expenditure (Including Ntf)	8,220,469
Total special needs as % of gross current expenditure	26.58%
<b>Total</b>	<b>2,184,926</b>

- Includes payments to teachers for Home Tuition Scheme and Summer Programme

According to the DE, 270 new classes for autistic children were planned to open in 2021/22, with 64 special classes in Dublin (including 22 primary and 10 post-primary in South Dublin)<sup>43</sup> and 44 special classes in Cork. A further 39 new classes for autistic children are planned for the 2022/23 school year. The DE stated that the Department and the NCSE work with all these schools to progress the opening of special classes in the shortest timeframe achievable.

## 2.2.5 Forecasting Future Need

The DE stated that it accepts that the change in demographics at post-primary level will require most post-primary schools to have a SEN base to enable sufficient provision nationally. However, Figure 2 demonstrates that only 435 of 1435 new classes for autistic children in 2020/21 school year were in post-primary schools. The DE informed the OCO that particular consideration must be given to fee-charging post-primary schools in South Dublin.

As noted in section 4.6 below, there now exists a ‘Memorandum of Understanding between the Department of Education and Spiritan Education Trust in relation to supporting special educational needs provision, March 2022’ (MOU) in respect of several private primary and post-primary schools in South Dublin.<sup>44</sup>

The NCSE shared its five-year planning model with the OCO. While this is a working instrument, the version viewed by the OCO was up to date as of July 2021. This forecast the special class places required at 1% (9383.23), 1.5% (14074.85) and 2% (18,766.46) levels for the existing school-going population at 3229 primary (including 115 special schools), and 726 post-primary schools around the country. The total number of special class places available in 2020 was in fact 9779 or 1.04% (up from 0.93% in 2019). This correlated to 1.14% provision at primary level and 0.76% provision at post-primary level in 2020. The model forecasts the percentage of the school population supported to increase to 1.52% at primary and 1.14% at post-primary by 2024. While the model provides a detailed aggregation of data and breakdown by area and age, including the number of special class places available immediately, how the strategic objective of meeting increased capacity is to be achieved nationally, is not contained within the document.

## 2.3 Challenges in Planning and Provision

### 2.3.1 A Segregated System

The challenges that have emerged 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 CRPD. As such, it is reasonable for parents to seek out specialised classes and schools as recommended by their child’s psychologist, even though these forms of segregation are not in line with the principle of inclusive education.

<sup>43</sup> According to the DE, 11 of these classes are opening as a result of the s37A process described.

<sup>44</sup> Department of Education, Memorandum of Understanding between Department of Education and Spiritan Education Trust’, 23 March 2022, Available at: <https://assets.gov.ie/219385/2fe3a7e1-b8d1-4008-9345-533364f4a1c5.pdf>

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.

The failure to place the goal of full inclusion at the front and centre of education policy to date has led to a situation where there is now an oversubscription to special schools, hundreds of children on waiting lists for special classes in mainstream schools, thousands of children travelling outside of their local school-catchment area<sup>45</sup>, and a significant number of children being educated at home rather than in a school setting, with the support of Home Tuition grants.

According to Gareth Noble, a partner at KOD Lyons Solicitors<sup>46</sup>, home schooling should not be considered the constitutional discharge of the State's educational duties. He stated that there should be a time limit on home schooling in recognition of the fact that education is broader than the formal curriculum. He informed the OCO that it is the children with additional education needs who require social integration the most but who are at home the most.

There are also structural issues relating to HSE supports, which have been identified as constituting barriers for students who wish to transition from special classes into mainstream classes. The OCO was informed that the HSE advised the NCSE that children in some areas lose access to HSE supports at present when they leave a special class/school setting for a mainstream setting but that this will cease as *Progressing Disability Services for Children & Young People (PDS)* is rolled out.

The vast majority of the stakeholders the OCO consulted agreed that children with SEN should be educated in the mainstream settings, but recognised that a structure of supports needed to be put in place in order for everyone to succeed. According to ASIAm<sup>47</sup>, we need to meet the needs of children today but plan for children in the future.

The *National Association of Principals and Deputy Principals (NAPD)* stated that a hybrid system would work best, whereby children would have lessons in their special classes, but would also have the possibility to mix with students in the mainstream for PE, etc. It recognised that the NCSE were 'trying to design a motorway while the traffic is still on it'.

The National Parent's Council (NPC) informed the OCO that, in the first instance, special schools should be linked to mainstream schools, and the boards of management should be interconnected so that they are constantly working on opportunities to integrate the two school settings, whether through sports or other projects.

According to Inclusion Ireland, there needs to be a 10-to-15-year journey of investment in schools and teachers to enable them to teach all children in the same school. They

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45 In an Oireachtas debate in 2022, the Minister for Education Norma Foley, T.D., stated that in the school year of 2021/2022, 15,500 children with SEN were transported on a daily basis to primary and post primary schools throughout the country via the School Transport Scheme.

46 A firm with a specialist education law department.

47 Ireland's National Autism Charity.

informed the OCO that there needs to be a publicity campaign to remove the stigma from people with disabilities. They said that they have found that a quarter of Irish people do not believe children with disabilities should be educated in mainstream classrooms. They said that teacher training, the physical environment in schools, sensory rooms and alternative spaces, all needed to be factored into the equation. In addition, they suggested that class sizes needed to be reduced to 15-20 pupils, across the board.

The OCO put the matter of class sizes to the DE, which stated that the demographic evidence is that numbers of pupils at primary level have peaked and will start to decrease and the growth of student numbers at post-primary level will peak in the coming years and then also decline. It stated that, in itself, this will see reductions in class sizes nationally.

Dr Joanne Banks, Assistant Professor in Inclusive Education at Trinity College Dublin, informed the OCO that the Department of Public Expenditure and Reform (DPER) spending publications shone some light on 'the higher expenditure' for the parallel system currently employed by the DE. She suggested that a fully inclusive model might be an opportunity for creating a more sustainable mechanism, whereby teachers are designated for SEN classes throughout the system, and therapies are provided on site, or shared with other school campuses.

### **2.3.2 Factors Influencing Special Class Provision**

#### **Strategic Planning**

Advocacy group, Involve Autism, stated that there appears to be inadequate forward planning happening at the DE/NCSE level. They stated that schools seem to operate as independent entities, and that Boards of Management ultimately hold the power for change to take place. They stated that, in the main, any change that has occurred in the provision of autism classes has happened because of the willingness of a school to open a class, a progressive principal, and/or parental pressure/advocacy groups. According to AsIAM, at least 1.55% of children have an autism diagnosis yet there is no requirement for the DE to plan for this need.

Mr Noble, agreed that there was a lack of cohesive, strategic forward planning at Departmental level. He informed the OCO that the vast majority of legal cases, taken by parents with respect to the suitability of the education place offered to their child with SEN, settled outside of court with confidentiality clauses attached. He said that, in this way, no precedent is set for other children with SEN within the education system.

According to the DE, it is their policy 'to settle legal cases taken against the Minister on behalf of children with SEN where at all possible. In doing so the Department works with families and their legal advisors to support appropriate educational provision for these children. Generally settling cases reduces legal costs and negates the need for families to have the issues resolved in Court if it is otherwise possible to find solutions outside of the Court setting. Where, on legal advice, it is possible to settle cases, the settlement negotiations are regarded as confidential between the parties. The Department of Education, does not, as a matter of policy, attach confidentiality clauses to settlements, but does respect the confidential nature of the process. This is appropriate as in many

cases the settlement terms includes specific details of a child or young person with special educational needs’.

## Capacity

According to a mainstream primary school principal (Principal 1), the younger the child, the more likely that they will get a place, and that it is unlikely that a 9-year-old child with a new diagnosis applying for a special class place will get it. Similarly, Inclusion Ireland informed the OCO, that beyond junior infants, there were no special class places available in Dublin.

According to Involve Autism, there has been a historic lack of special classes for autistic children in the Dublin 6/6W area. Involve Autism informed the OCO that there are a number of autistic children who are supported very well in mainstream settings in their local schools in Dublin 6/6W but that there is a cohort of children that are recommended for, and need, the extra support of an autism class and this is where the scarcity lies.<sup>48</sup>

According to the DE, there has been a significant expansion of primary special class provision in Dublin 6/6W in recent years and there are now nine primary special classes and one post-primary special class for autistic children in the Dublin 6/6W area. The DE informed the OCO that an additional primary and post-primary special class will open in 2022/23.

There is also evidence to suggest that capacity at post-primary level is particularly problematic, and that significant bottle necks exist in the transition from primary to post-primary for children with SEN. According to Inclusion Ireland, a recent study found there to be four times more special classes at primary level than post-primary level. According to AsIAM, classes for autistic students were originally set up on the basis that a child may start their school career aged four in an autism class but may over time integrate into mainstream. However, according to AsIAM, it is now clear that the vast majority of autistic young people who start their education in an autism class remain in such a placement for their entire school careers. AsIAM stated that this may be due to a lack of confidence in the supports offered in mainstream school, the support needs of the young person, or a lack of appropriate integration opportunities. As a result, according to AsIAM, there is a need to plan for the likelihood of children remaining in their autism class for their school careers until the appropriate broader reforms take place.

In addition, Principal 1 commented that post-primary schools are not, overall, set up to cater for students with more complex needs, and that they require a base for special classes rather than the current model of having different teachers for various subjects.

## Diagnosis

According to the DE, to access a special class a student must have a report from a relevant professional or team of professionals (for example, psychologist, Speech and Language Therapist (SLT), psychiatrist) stating that:

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<sup>48</sup> According to the NCSE, in September 2020 85% of all special classes at primary and post-primary level were classes for autistic children (1567/1836). See further <https://ncse.ie/wp-content/uploads/2020/05/NCSE-List-of-Special-Classes-for-September-2020.28.05.2020.pdf>.

1. S/he has a disability (in line with the designation of the special class in question); and
2. S/he has complex or severe learning needs that require the support of a special class setting and the reasons why this is the case.<sup>49</sup>

According to Mr Noble, due to clinical waiting lists, many parents are being forced to pay for a private diagnosis. He said that there is a disparity in access between families who can pay for their child to be assessed and those who cannot, and there needs to be a joint protocol between the DE and the HSE for children whose care needs affect their education so that they can equitably access same. This matter was put to the DE, which stated that ‘whereas an assessment of a particular disability is still a requirement for access to special schools and classes, it is not necessary that this assessment be undertaken through the Assessment of Needs process and children who receive their assessment through the AON process are not prioritised for service’.

According to *the* NAPD, schools should have access to a visiting psychologist through NEPS at least a few times a month. They stated that, in their experience, getting access to a psychological referral takes a long-time and, unless parents can support their child in crisis privately, they have no option but to wait. As stated, the current pupil to NEPS psychologist ratio is 4,500:1.<sup>50</sup>

In a meeting with the OCO, the National Disability Authority (NDA) identified the review of special class places as an issue. They pointed out that the recommendation on what is an appropriate placement for a child is taken by a health professional not connected to the school system. They said that these professionals may engage with the child in a clinical setting, not in their pre-school or school environment. According to the NDA, the initial educational placement is hugely important as it dictates the child’s school progression pathway, therefore, one needs to be sure that this is the correct placement for the child going forward. This is important due to the current absence of any systematic re-assessment of a child to see if their placement remains appropriate.

Notably, in early 2019, the Inspectorate of the DE conducted a series of evaluations in mainstream schools in which special classes for autistic learners were allocated. It found that in approximately two-thirds of the post-primary special classes inspected, at least some students with SEN were inappropriately placed in mainstream classes or autism classes.<sup>51</sup>

In the Chief Inspector’s Report September 2016 – December 2020 published on 23 March 2022, the Chief Inspector noted that:

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49 See also NCSE and HSE Guidance Document for Health Professional Reports with Recommendations on School Placement and Special Educational Needs, April 2021, at page 2.

50 According to the DE, NEPS sanctioned psychologist numbers currently stand at 221 whole-time equivalent (WTE) posts, having grown from a base of 173 in 2016, through the intervening Budget increases in 2017, 2018, 2019 and 2021 by 11, 10, 10 and 17 respectively.

51 Department of Education and Skills ‘Educational Provision for Learners with Autism Spectrum Disorder in Special Classes Attached to Mainstream School in Ireland’ (May 2020) at page 6.

- ‘Because considerably fewer post-primary SEN inspections have been completed, the extent of inspection findings at post-primary level is somewhat more limited. Nonetheless, it is of some concern that the quality of teaching and learning at this level was just satisfactory in a significant minority of the lessons that were observed. Similarly, the gap in reported parental satisfaction with aspects of provision for children with SEN warrants further consideration.
- A number of important aspects that relate to provision for children with autism require attention including enrolment practices, review of placements and the integration of learners attending special classes into mainstream provision.’<sup>52</sup>

## Resourcing

According to Inclusion Ireland, an Association of Secondary Teachers Ireland study revealed that only 5% of teachers have a SEN qualification, 22% had participated in SEN training in recent years, and just over 35% had recently participated in training.<sup>53</sup>

This matter was put to the DE, which stated that it considers registered teachers to be fully and appropriately qualified to teach all children in their classroom.<sup>54</sup> According to the DE, there is currently no requirement for teachers working in special education settings to undertake CPD in this area. The DE stated that attendance at CPD events is voluntary but strongly encouraged and each year the NCSE provides a comprehensive programme of teacher CPD seminars covering a variety of special educational needs which teachers may apply to attend. In 2019, a total 16,511 teachers attended 723 NCSE Support Service seminars provided both in schools and in external venues. The DE stated that the NEPS Support and Development Service also reaches an estimated 25,000 teachers annually. This service is an applied psychological service for school staff to help build their capability to respond to the wellbeing, academic, social and emotional needs of all students, and particularly those who experience barriers to their wellbeing, learning, inclusion and participation.<sup>55</sup>

According to the IPPN, most principals are in favour of inclusion. They stated that if a child has significant additional needs there must be some flexibility around pupil to SET/SNA ratios. For autism classes, there is a ratio of 2:1 SNAs to class group and a 6:1 Pupil-teacher-ratio.<sup>56</sup>

52 Chief Inspector’s Report September 2016 – December 2020 Executive Summary published on 23 March 2022, at page 15.

53 Inclusion Ireland ‘Submission to the National Council for Special Education on Inclusive Education’ (June 2020) at page 8.

54 The DE noted that under s.38 of the Teaching Council Act, Initial Teacher Education (ITE) programmes are subject to review and accreditation. It stated that the revised *Céim: Standards for Initial Teacher Education* published in November 2020 requires student teachers to demonstrate through their portfolio of student learning an understanding of inclusive education as applicable to each placement context. It stated that all new and existing programmes of ITE shall be realigned in accordance with *Céim* for first year student teachers in September 2022. The DE stated that it also funds post-graduate programmes for SETs.

55 According to the DE, examples of support and development work include: supporting schools experiencing a Critical Incident; facilitating Cluster Group Meetings for Teachers of Autistic Children, Special Education Teachers (SET), teachers working with children with selective mutism and Teachers in Special Schools; facilitating Group Consultation for Teachers in clusters of small primary schools; attending and assisting at Student Support Team Meetings; and providing Training/formal professional learning opportunities for teachers.

56 See further Circular 0038/2010: Staffing arrangements and the role of the National Council for Special Education.



Principal 1 informed the OCO that for her to open an additional special class at her school an administrative principal would be required.<sup>57</sup> Similarly, the IPPN informed the OCO, that several teaching principals have been encouraged to set up special classes in small schools, when it was simply not possible to teach full-time in the circumstances. They said that they foresee a situation where the system will not be able to attract school leaders as the demands of the job would be too onerous if the requisite supports are not in place. The National Association of Boards of Management in Special Education (NABSME) agreed with this assessment, informing the OCO that, in addition to their other responsibilities, it is up to special school principals to secure school transport for children with SEN who need escorts, and to provide training to staff on behaviours of concern and personal safety.

Principal 1 informed the OCO that they had found the NCSE to be responsive to their requests for additional resources to support their special classes. She said that while her school was entitled to one SET and two SNAs per special class, they put their case to the NCSE and were given nine SNAs in total for their three autism classes.

A principal at a special school catering for autistic children (Principal 2) also stated that, due to the complexity of need, many of her classes had more than two SNAs per class group. She said the needs of children change as they age into puberty and the 6:2:1 ratio is not reflective of the needs of many students in special school settings. She said that it is not realistic to have a one size fits all approach to the different settings, and the process for access to higher staff ratio can be protracted.

Involve Autism, ASIAm, and Mr Noble, all commented that the lack of willingness among some schools to open special classes, rather than a lack of resources, was a major bulwark. According to Inclusion Ireland, the money is there, but it could be better spent. ASIAm commented that when the s37A process was introduced, schools cited a wide range of reasons as to why it was not possible to open an autism class, such as the protection of non-classroom spaces, including library spaces. Mr Noble also expressed frustration with schools, which cited a lack of resources, as a reason not to cater for students with SEN. In his experience, schools only took legal action when they were told that they must admit a child to a school, rather than litigate the DE's provision of resources.

Principal 1 pointed out that schools should not be told to dismantle their sensory room in order to build another special classroom for children with SEN. Principal 2 stated that she believed the DE needed to be a lot more aware of the school environment and the space requirements for children with SEN. She said that children with SEN need outdoor spaces as well, and there needs to be a review of school buildings so that these children are educated in environments in which they can thrive.

## **Responsibility Sharing**

According to the NAPD, every school should be able to take their share of students with additional needs, whether physical or intellectual. They stated that the only way forward is for every school to make provision for children with SEN locally. They called for a review

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<sup>57</sup> In accordance with 'Circular P13/00: Appointment of Administrative Principals to Primary Schools' administrative principals may be appointed to all primary schools with seven mainstream class teachers. Accordingly, in the 2000/2001 school year principals in ordinary schools with or an enrolment of 205 pupils.

of the resource requirements, including the provision of proper buildings and adequate staffing, to support children with SEN to attend their local school.

According to Involve Autism the majority of post-primary schools in Dublin 6 are fee paying, and up until March 2022, the DE did not fund autism classes in private schools.<sup>58</sup> Involve Autism stated that they welcome the recent announcement by the Spiritan Education Trust and hoped that this would be the catalyst for change in the sector. They stated that there are also significantly more autism classes in DEIS and Educate Together Schools. The IPPN agreed that certain schools, because they do a good job in implementing inclusive practices, carry a heavier responsibility because parents want to place their children there.

As noted in section 4.6 below, in the context of the significant emerging demand for special education provision in South Dublin, there now exists a ‘Memorandum of Understanding between the Department of Education and Spiritan Education Trust in relation to supporting special educational needs provision, March 2022’ (MOU) in respect of several private primary and post-primary schools in the area. The Spiritan Education Trust has committed to the use of existing school sites and other lands to support the provision of school places for children and young people with special educational needs.<sup>59</sup>

According to ASIAm, both South Dublin and Cork are special class provision black spots. They stated that localities of greater socio-economic disadvantage are particularly strained because of the number of services they must provide for children with SEN who reside both within and outside their area. ASIAm also considers that there needs to be parity between public and private post-primary schools when it comes to catering for students with SEN.

### **2.3.3 The Role of the National Council for Special Education**

The NCSE was set up to improve the delivery of education services to persons with special educational needs arising from disabilities, with a particular emphasis on children. The NCSE was first established as an independent statutory body by order of the Minister for Education and Science in December 2003. Their local service is delivered through a national network of SENOs who interact with parents and schools, and liaise with the HSE, in providing resources to support children with SEN.<sup>60</sup>

According to Involve Autism, parents often report that they receive little support from SENOs on the ground. Involve Autism informed the OCO that, in their experience, SENOs provide parents with a list of autism classes and advise parents to call the schools listed, only to be told, in many cases, that all of the autism classes are full. According to Involve Autism, parents are, in some instances, put in the situation of applying for to up to 30 schools for a place for their child. They stated that it would be preferable to have a centralised, fair and transparent system whereby a published list states how many places

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58 As noted elsewhere in the report as of March 2022, an MOU exists between the Department of Education and the Spiritan Education Trust in relation to supporting SEN provision in nine primary and post-primary schools in South Dublin. According to the DE, 29 of the 106 post-primary schools in Dublin charge fees.

59 Available at <https://www.gov.ie/en/publication/6da0b-memorandum-of-understanding-between-the-department-of-education-and-spiritan-education-trust-in-relation-to-supporting-special-educational-needs-provision/>.

60 See further <https://ncse.ie/about-us>.

are available in actuality in the local area, and how many places are due to come on stream in the ensuing years as well as a formalised application process for autism classes.<sup>61</sup>

According to Inclusion Ireland, parents need to actively look for school places for their child with SEN and receive little support from the SENO. They stated that parents in North Dublin are getting referred to schools in Drogheda, which is not appropriate. Inclusion Ireland stated that parents need to modify their language in order to receive a more considered response from their local SENO. They advise parents to request that SENOs use their statutory powers to assess their area in order to ensure that there are special classes suitable for their child.

According to both AsIAM and Mr Noble, the NCSE has failed in its mission to support parents to identify appropriate places for their children with SEN. Mr Noble stated that SENOs raised parents' hopes with promises of support but there was no substance behind it. He suggested that the NCSE needs to be replaced and that the DE needs to foster a new relationship with educational stakeholders.

#### **2.3.4 Factors Influencing the Special Education Teaching Allocation to Schools**

All education bodies are subject to the duty to provide reasonable accommodation for children with SEN. However, due to the non-commencement of significant sections of the EPSEN Act, which concern the assessment of SEN in furtherance of a child's educational plan and the resourcing of the same, additional supports for children with SEN are based on policy not law.<sup>62</sup>

The NCSE's longitudinal study of the experiences of, and outcomes for, pupils with SEN in Irish Schools [the IRIS Project 2015] highlighted the difficulties in accessing timely assessments in order to avail of resources, the limited and inconsistent access to therapeutic supports, the need for greater levels of teacher knowledge and expertise, and the inconsistent development and application of individual plans as a consequence of the non-implementation of significant sections of the EPSEN Act.<sup>63</sup>

In 2017, the DE reformed the system for the allocation of teaching resources for special education provision in mainstream primary and post-primary schools.<sup>64</sup> The new allocation model was based on a profile of the needs of each school. It was intended to account for the spectrum of ability and disability within every category of SEN and provide a greater level of autonomy for schools in how to manage and deploy additional teaching support

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61 The DE has requested that it be noted that s.63 of the Education Act 1998, as amended by the Education (Admission to Schools) Act 2018 requires all Boards of Management to prepare and publish an Admission Notice annually. This notice must be published on the school's website at least one week prior to the school commencing its annual admission process. The notice must provide details about how to obtain a copy of the school's Admission Policy and application form for admission. The notice must also provide information regarding the admission process for the intake group of the school for the school year concerned including the number of school places available in the intake group, and in the case of a school with a special class the number of school places available in the special class concerned. In the case of a school where the intake group or special class was oversubscribed in the year prior to the year for which admission is sought, the Admission Notice must include a statement setting out the number of applications received and the number and order of offers made in that school year in respect of each of the school's selection criteria.

62 See further Section 4.4.

63 NCSE Research Report no 19 'Project IRIS – Inclusive Research in Irish Schools' (2015) Rose, Shevlin, Winter and Raw at page xi.

64 See further Circular No 0013/2017: Circular to the Management Authorities of all Mainstream Primary Schools Special Education Teaching Allocation.

based on the individual learning needs of pupils, as opposed to a diagnosis of disability. Additional resources were made available to support the new model. This was to ensure that, under the new model, no school received an allocation, which was less than the combined allocation the school had received under the replaced General Allocation Model (GAM), the English as Additional Language Support (EAL), and the NCSE allocation of Low Incidence disability support schemes for the 2016/17 school year. The role of the SNA to support the care needs of students in mainstream classes remained unchanged.<sup>65</sup>

At the re-profiling stage<sup>66</sup> the allocation of teaching resources for special education provision to mainstream schools would comprise of two components: a baseline component provided to every mainstream school to support inclusion, assistance with learning difficulties and early intervention; and a school educational profile component, which considered the number of pupils with complex needs enrolled to the school, the learning needs of pupils as evidenced by standardised test results in literacy and numeracy, and the social context of the school, including disadvantage and gender.<sup>67</sup> The criteria for accessing Reasonable Accommodations at State Exams and Irish Exemptions are now needs based and do not require an assessment of disability.

A 2018 NCSE review of the SNA scheme recommended the introduction of an improved model of support for students with additional care needs, having found that the SNA scheme was less effective for some older primary and post-primary students, who appeared overly dependent on SNA support and were not adequately prepared for life in their post-school setting. The review also found that some SNAs had a teaching remit despite this being beyond their qualifications. Rather than rely on this 'blunt instrument' to address a wide range and variety of needs, it was suggested that a broader range of support options were required to address students' additional care needs.<sup>68</sup>

Considering these findings, the DE approved a new School Inclusion Model (SIM) trial for the 2019/2020 school year. The model was implemented in 75 schools in one HSE Community Health Organisation (CHO) area [CHO7]. The model's principal features included a new frontloaded allocation of SNAs in line with the profiled needs of participating schools, additional provision for these schools under the NEPS, and the establishment of a NCSE Regional Support Team, which included specialists in relevant disciplines, on a pilot basis. In addition, the initiative included the development of a national training programme for SNAs and a pilot roll-out of this, and the provision of a nursing service for children with complex medical needs.<sup>69</sup>

In December 2019, the Government approved the national roll out of a new frontloading model for the allocation of SNA support to mainstream classes in primary and post-primary schools for the 2020/21 school year, as part of the phased roll out of the SIM. In April 2020, the DE issued a circular advising all recognised schools that, in light of the Covid-19 public

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65 See further Circular 0030/2014: The Special Needs Assistant (SNA) scheme to support teachers in meeting the care needs of some children with special educational needs, arising from a disability.

66 September 2019

67 See further Circular No 007/2019: Circular to the Management Authorities of all Mainstream Primary Schools, Special Education Teaching Allocation.

68 NCSE, '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 at pages 3-5.

69 Children's Rights Alliance Report Card 2020 at pages 30 – 31.

health crisis, a decision had been taken to defer the implementation of the new allocation model until the 2021/22 school year to allow sufficient time for the necessary planning for the implementation of SIM and for the associated professional development to take place. The 2019/2020 SNA allocations were automatically rolled over into the 2020/21 school year; however, schools could apply to the NCSE for additionality where they could demonstrate that their existing allocation did not meet additional care needs within the mainstream classes in the school [the exceptional review process].<sup>70</sup>

In a meeting with the OCO, Mr Noble referenced the exceptional review process for enhanced SNA provision, and the difficulties experienced by schools in accessing these additional supports in practice. This matter was put to the DE which stated that in the 2020/21 school year 772 schools, or 52% of total applications for exceptional reviews, received an SNA increase amounting to 539.39 additional posts allocated.

In August 2020, the NCSE welcomed the continuation of the pilot SIM, which included an in-School Therapy Demonstration project, for the 2020/2021 school year. According to the NCSE, arrangements had been made for the Economic and Social Research Institute (ESRI) to conduct an independent evaluation of the SIM over the course of the 2020/21 school year.<sup>71</sup>

In September 2021, the DE informed the OCO that the 2021 Covid-19 restrictions and closure of schools further disrupted the pilot and, when schools fully reopened in April, it was not possible to resume the pilot due to absence of therapists. It stated that work was underway to allow the resumption of the pilot as soon as possible in the new school year 2021/22. It stated that when the SIM pilot is completed and evaluated, consideration will then be given to extending it to all schools.

According to the IPPN's 2020/2021 SNA Allocation Update, the concept of front-loading an allocation to schools is sound, but only on the assumption that a school's allocation is sufficient, and that the system is responsive to need when it is not sufficient. The IPPN posits that the two positives of the new model are also negatives. It states that removing the need for a diagnosis is positive but raises several concerns around resources and decision-making. Front-loading is also considered a positive, but it raises the issue of identifying the needs of a school accurately. The IPPN poses the question, that since many children will not be given diagnoses as they will no longer need them, how will the DE identify the children with complex needs?<sup>72</sup>

Dr Joanne Banks similarly informed the OCO that greater school autonomy brings with it greater responsibility in how principals allocate the funding available to them to pupils within their schools. She said that DE funding needed to include capacity building at both the leader and learner/SNA level. She also considers that it would be beneficial for children to have therapies on site. She said that the child's teacher should be aware of the therapies received so that they can continue practicing this in the classroom, and it is not a one-time intervention.

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70 See further Circular 0030/2020: Special Needs Assistant Allocations for the 2020/21 School Year for Mainstream Classes in Primary and Post Primary Schools.

71 NCSE Press Release, 'The National Council for Special Education (NCSE) welcomes the continuation of pilot School Inclusion Model for forthcoming school year', 5th August 2020.

72 Available at <https://www.ippn.ie/images/Esceal/SNAAllocations.pdf>.

Inclusion Ireland also considers SLTs and Occupational Therapists (OTs) attending schools to be beneficial. They stated that they recognised that, while it is important to have services delivered in the community setting via PDS, there is also a need to access education enhancing therapeutic supports in schools. They suggest that being able to access therapies in schools is the reason why some parents lean towards sending their child to a special school.

This conclusion was echoed by the NPC, which informed the OCO that many parents feel that they must go through a special school to get their child the therapeutic services they need. The NPC stated that in many cases the child could perform academically in a mainstream school but needed specialist supports only available in a special school setting to ensure a successful and positive experience.

Principal 2 stated that the pilot for in-school therapeutic supports will work if the case load of the therapists allows for frequent ongoing review and intervention. AsIAM also informed the OCO that it was concerned that the in-school therapy pilot might be another NEPS style service, i.e., extremely difficult to access in practice because of the dearth of psychologists aligned to the service, and that parents would not get what they were told their children would get in practice. The NDA has also expressed concern about how the HSE's primary and network teams and therapists would work collaboratively with therapists working in schools. The NDA noted that this collaboration was particularly important in the context of the limited availability of therapy professionals.<sup>73</sup>

While a Scheme for the Commissioning of Psychological Assessments (SCPA) exists, as an interim measure intended to supplement the NEPS service and meet current urgent needs for psychological assessment of children and young people, few of the stakeholders consulted by the OCO were aware of it.<sup>74</sup>

### 2.3.5 Measuring Outcomes

#### Special Schools

According to Dr Joanne Banks, special schools are a forgotten sector. While in other countries special schools have become institutions of excellence, there seems to be little expectation for students of special schools to achieve defined goals in Ireland. She said that students in special schools do not receive guidance counselling and are not enabled to build resilience and to join the labour market.

This matter was put to the DE, which conceded that, at present, special schools do not have guidance counsellor teacher allocations. It informed the OCO that the issue of guidance counselling in special schools was also considered as part of the Indecon

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73 According to the DE, 'in February 2019, the Government approved the trialling of the Model for the 2019/20 school year. Initially designed as a one year pilot involving up to 75 participating schools in the CHO 7 region, it was interrupted by Covid-19 with the closure of schools and the diversion of HSE therapists from the project to Covid related work. It was then extended to the 2020/21 school year which was also interrupted by Covid. Progress has been made on aspects of the Model but much remains to be done in terms of in-school implementation and evaluation. The Pilot has now recommenced in CHO7 and planning for an expansion is underway at present'.

74 The DE has requested that it be noted that this is a scheme for schools to access, and schools have been fully informed regarding same. See further <https://www.education.ie/en/Schools-Colleges/Services/National-Educational-Psychological-Service-NEPS-/SCPA.html>.

Review of Career Guidance.<sup>75</sup> The DE stated that the Indecon Report included four recommendations relating specifically to guidance counselling to promote inclusion. The DE stated that arrangements were in place with the Department of Further and Higher Education, Research, Innovation and Science (DFHERIS) to implement the recommendations, and that this work will be overseen by an inter-departmental steering group.

Dr Banks informed the OCO that the designation of special schools as primary schools, even though they may cater for students up to 22-23 years of age is hugely problematic. She said that the employment and health outcomes of students who attend special schools is worse than those who attend mainstream schools, and it is unfortunate that there is very little communication between the special schools and the mainstream schools in Ireland. She said that the Growing Up In Ireland study should be analysed to follow the progress of children with SEN through the system.<sup>76</sup>

The issue of designation was put to the DE, which stated that ‘Since 2012, special schools are provided with teaching staff on the basis of individual pupil profiles and disability categories of those pupils, as opposed to being based principally on school designation. Special school staffing allocations are reviewed and updated each year by the NCSE and schools are staffed on the basis of each year’s current school enrolments.’

### Special Classes

According to Dr Banks, given the level of investment in the SEN sector, there should be individualised programmes with achievable goals for pupils. Dr Banks said that her research suggests that most students spend their whole school life in special classes once admitted. However, she said that there is no evidence that this is to their benefit.

In its advice to schools establishing special classes, the NCSE advocates that ‘a student’s enrolment in a special class should be kept under continual review by the school and, at a minimum, a review should take place once a year and include a careful examination of the student’s progress in achieving his/her learning targets’. The review should consider ‘students’ views and those of parents, teachers, and other relevant professionals. Such reviews should consider whether the student’s needs might be best addressed in a mainstream setting or whether a more supported setting is required.’

The DE informed the OCO that it is progressing the recommendations for primary and post-primary schools contained in the Inspectorate’s report on Education Provision for Learners with Autism Spectrum Disorder 2020:

- To foster inclusion, all learners’ placements in special classes should be reviewed collaboratively and formally with school personnel, external professionals, parents and the SENO annually to determine if full enrolment in a mainstream class is now more appropriate.

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75 Indecon Review of Career Guidance, Department of Education, 16 January 2020, available at <https://www.gov.ie/en/publication/01ce11-indecon-review-of-career-guidance/>.

76 See further <https://www.growingup.ie/>.

- An individualised plan (or equivalent School Support Plan) should be devised and reviewed at least twice annually for each learner enrolled in a special class to ensure that there is continuity and clarity in learning programmes.

At present, the DE Inspectorate's SEN evaluations of primary and post-primary schools focus on two key questions relating to the quality of a school's provision for pupils with SEN:

- (i) How good are the outcomes for pupils with SEN?
- (ii) How well is the school using the resources it receives for pupils with SEN to improve outcomes for pupils with SEN?

Inspectors use two main sources of evidence in addressing these questions:

- (i) The school's own reporting of outcomes for pupils with SEN and its use of resources received for pupils with SEN.
- (ii) Inspectors' evaluation of teaching and learning outcomes for pupils with SEN and the school's use of resources received for pupils with SEN.

The DE informed the OCO that the inspection models focus on priority outcomes achieved through the learning plan process. A particular focus is placed on evaluating whether outcomes established for pupils with SEN are sufficiently challenging, realistic and measurable and in line with the pupil's identified, priority learning need. The model also seeks to determine the extent to which the pupil's learning outcomes are progressive, in that they enable him/her to move to the next stage of his/her learning and the extent to which the school is monitoring the progression in pupils' learning.

According to the DE, school culture and the extent of supports available to students with special and additional needs are key areas of focus in inspection work. It stated that whole school evaluations such as the WSE-MLL examine and evaluate the way the school manages and addresses the wellbeing of all its pupils, and that there is a particular focus on the support that the school provides for the inclusion of pupils with SEN, pupils from disadvantaged backgrounds and those from minority groups. In addition, if school policies (SEN and admissions) are found to contain 'soft barriers' in the enrolment of students with SEN, this is clearly identified as an area for improvement.

### **Reduced Timetables, Suspensions, and Expulsions in the Mainstream**

According to Involve Autism, it is important that schools with autism classes have ongoing wrap around supports available and that teachers/SNAs have training in the area of autism so as to ensure that teaching and learning in autism classes is of the highest quality. Involve Autism also states that there appears to be very little data available in relation to when school placements break down for autistic children. According to ASIAM, autistic children are often treated as problematic in mainstream schools. They stated that codes of behaviour might not be appropriate for autistic children because they may not be able to comply with them. They stated that they would wish to see disaggregated data on reduced timetables, suspensions, and expulsions.



According to Inclusion Ireland, a quarter of children with intellectual disabilities/autism experience short school days at some point. They stated that that this is an illegal suspension. They stated that they have assisted several parents through the section 29 process<sup>77</sup> and that they have found that many children are being put on a short school day without any consultation with NEPS, or an OT or SLT from the HSE.

In 2020 the DE Inspectorate published a report entitled 'Education Provision for Learners With Autism Spectrum Disorder in Special Classes Attached to Mainstream Schools in Ireland'. Among its recommendations, the report advised that 'All instances of shortened school days or reduced timetables should require written parental consent and be reported immediately to Tusla. If agreed in consultation with parents and external professionals, shortened days should always include an action plan outlining how to fully include the learner in school life as soon as possible.'

On 16 September 2021, the DE issued 'The Use of Reduced School days' guidelines to provide clarity to school authorities and parents/guardians around the use of reduced school days in schools, to ensure that this practice is limited to only those circumstances where it is necessary and that, where such usage occurs, schools follow best practice with the interests of the student to the fore. The guidelines also set out the process for schools to notify the use of reduced school days to Tusla Education Support Service (TESS) and the NCSE, in the case of children with SEN. The notification system will allow data on the use of a reduced school day to be collected and monitored and appropriate intervention by the Educational Welfare Service.

The guidelines took effect on 1 January 2022. According to the DE, the intention is that a reduced day would only be used in exceptional circumstances. Schools must, prior to consideration of a reduced school day, have previously engaged with the relevant support services and professionals, including the SENO where appropriate, and have developed and implemented a student support plan for an appropriate period, so that a reduced day is only used where considered necessary.<sup>78</sup>

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77 Section 29 of the 1998 Act gives parents (and students who have reached the age of 18) the right to appeal certain decisions made by a school's board of management, or a person acting on behalf of the board of management, to the Secretary General of the Department of Education.

78 See also Circular 0047/2021 Guidelines for the use of Reduced School Days in Schools available at <https://www.gov.ie/en/circular/f49bd-0047-2021/>.

## Section 3 Family Perspectives

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The OCO spoke with the parents of three children with SEN attending mainstream, special class and special school provision. Their stories are summarised below. It is recognised that 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.<sup>79</sup>

### 3.1 Aaron's Story

Aaron is 12 years old and has a dual diagnosis of autism and an intellectual disability. Identified 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 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 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.

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<sup>79</sup> See further AsIAM 'Every Child Counts: A Report into Autistic Children's Access to Healthcare in Ireland' (May 2021) at page 6; and Ratto, A.B., Kenworthy, L., Yerys, B.E., et al. (2018) 'What About the Girls? Sex-Based Differences in Autistic Traits and Adaptive Skills', *Autism*, 48, at pages 1698-1711.

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.

### 3.2 Leo's Story

Leo was identified as autistic 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.<sup>80</sup> 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 at that time<sup>81</sup>, 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 school to open a class for autistic children in their region, and that a meeting had been set up regarding the same. 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

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80 The DE requests that it be noted that NEPS is a school-based service and all requests for NEPS involvement with a child (referrals) are through the school principal only.

81 It is understood that the county now has 33 classes for autistic children at primary level, but only nine at post-primary level.

experience cannot be replicated at home. With respect to inclusion, she said that she has found that children who have grown up with autism classes 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.

### **3.3 Robert's Story**

Robert was identified as autistic 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 a 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 25 kms 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.

## Section 4 Legislative Overview

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All education bodies have several statutory responsibilities with respect to the provision of education to children with SEN. These include responsibilities under the Irish Constitution, the Education Act 1998 (1998 Act), the Equal Status Acts 2000-2018 (Equal Status Acts), the Education for Persons with Special Educational Needs Act 2004 (EPSEN Act), and the Education (Admission to Schools) Act 2018 (2018 Act). All education bodies are subject to the duty to provide reasonable accommodation for children with SEN.

### 4.1 Irish Constitution

Article 42A.1 of the Constitution recognises and affirms the natural and imprescriptible rights of all children, and the State as the body responsible for the vindication of those rights.

Article 42.3.2 of the Constitution provides that the State, as guardian of the common good will ensure that children receive a certain minimum education.

Article 42.4 of the Constitution states that ‘The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation.’ The Irish High Court has held that the State must provide education for children with disabilities ‘in as full and positive a manner as it has done for all other children in the community.’<sup>82</sup>

While Article 42.4 makes it clear that the State has a duty to provide for free primary education, it does not explicitly refer to any other level of education. The Constitution Review Group recommended that Article 42.4 should be extended to expressly encompass second level education in order to strengthen the educational rights of children under the Constitution, and to bring it in line with the progressive realisation of the right to free post-primary education as encompassed in the United Nations Convention on the Rights of the Child (CRC).<sup>83</sup> In practice, the vast majority of schools are privately owned but publicly funded.

### 4.2 The Education Act 1998

The 1998 Act recognises the ‘constitutional rights of children including children with disabilities and other special educational needs, as they relate to education’, and requires ‘as far as is practicable and having regard to the resources available, a level and quality of education appropriate to the needs and abilities of the people of the country’.<sup>84</sup>

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82 O’Donoghue v. Minister for Health [1993] IEHC 2; [1996] 2 IR 20.

83 Constitution Review Group, Report of the Constitution Review Group (Dublin 1996) at page 332.

84 Sections 6(a) & 6(b) of the Education Act 1998.

Under the 1998 Act, it is a function of the Minister for Education to ensure that a level and quality of education appropriate to meet a person's needs and abilities is made available to each resident, to provide funding and support services to schools, and to monitor the quality, economy, efficiency, and effectiveness of the education system provided in the State.<sup>85</sup> This section applies equally to primary and post-primary education.

The 1998 Act also provides for funding for students with disabilities, and requires schools' boards of management to use the resources provided by the State to make reasonable provision and accommodation for learners with SEN, and to publish the school's policy concerning admission of, and participation by, learners with SEN.<sup>86</sup>

### **4.3 The Equal Status Acts 2000-2018**

The Equal Status Acts prohibit direct and indirect discrimination in all areas of life, including educational services, on the grounds of disability and other protected status. The Acts apply equally to public and private schools.

Under law, a school may not discriminate in relation to:

- The admission or the terms and conditions of admission of a student;
- The access of a student to any course, facility or benefit provided;
- Any other term or condition of participation in the school by the student; or
- The expulsion of a student or any other sanction.

### **4.4 The Education for Persons with Special Educational Needs Act 2004**

The EPSEN Act provides for the education of children with SEN. The sections of the Act promoting an inclusive approach to the education of children with SEN, and establishing the NCSE, have been commenced.<sup>87</sup>

Section 2 of the EPSEN Act, as enacted, requires 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

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<sup>85</sup> Section 7 of the Education Act 1998; Conor O'Mahony, 'Education, play and leisure' in Children's Rights Alliance and Law Centre for Children and Young People, Making Rights Real for Children: A Children's Rights Audit of Irish Law (Dublin, 2015) at page 136.

<sup>86</sup> Sections 9 & 15 of the Education Act 1998.

<sup>87</sup> Sections 2 & 19-34 of the EPSEN Act.

- b)** The effective provision of education for children with whom the child is to be educated.’

Advocacy groups, AslAm and Inclusion Ireland, both expressed their concerns to the OCO regarding the ‘reservations’ with respect to inclusive education within section 2 of the EPSEN Act. They noted that the EPSEN Act was written at a particular time and that the education system has moved on. While the EPSEN Act explicitly promotes the concept of an inclusive learning environment, it provides no actual definition.<sup>88</sup> Many commentators have questioned whether section 2 of the EPSEN Act needs to be amended in order to accord with Article 24 of the UN Convention on the Rights of Persons with Disabilities (CRPD)<sup>89</sup> and have highlighted anomalies between the policy narrative around inclusive education and the continued use of segregated settings in Ireland.<sup>90</sup>

Under section 20 of the EPSEN Act, the NCSE is responsible for ensuring that schools in an area can, between them, cater for all children with SEN who have been identified as needing school placements. Since December 2018, the NCSE can inform the Minister for Education of identified need. The Minister can then use Section 37A of the Education Act 1998 to direct schools to establish additional specialist educational placements.

Section 20(1) of the EPSEN Act, as enacted, sets out the functions of the NCSE as follows:

- a)** to disseminate to schools, parents and such other persons as the Council considers appropriate information relating to best practice, nationally and internationally, concerning the education of children with special educational needs;
- b)** in consultation with schools, health boards and such other persons as the Council considers appropriate to plan and co-ordinate the provision of education and support services to children with special educational needs;
- c)** in consultation with schools and with such persons as the Council considers appropriate to plan for the integration of education for students with special educational needs with education for students generally;
- d)** to make available to the parents of children with special educational needs information in relation to their entitlements and the entitlements of their children;
- e)** to ensure that the progress of students with special educational needs is monitored and that it is reviewed at regular intervals;
- f)** to assess and review the resources required in relation to educational provision for children with special educational needs;

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88 NCSE Research Report no 19 ‘Project IRIS – Inclusive Research in Irish Schools’ (2015) Rose, Shevlin, Winter and Raw at page 22.

89 See further ‘Reforming the Education for Persons with Special Educational Needs Act 2004 - A Green Paper from Asl-Am’ (May 2021) at page 4; and Inclusion Ireland ‘Submission to the National Council for Special Education on Inclusive Education’ (June 2020) at page 13.

90 Shevlin, M.; Banks, J. ‘Inclusion at a Crossroads: Dismantling Ireland’s System of Special Education’. *Educ. Sci.* 2021, 11, at page 161.

- g) to ensure that a continuum of special educational provision is available as required in relation to each type of disability;
- h) to review generally the provision made for adults with disabilities to avail of higher education and adult and continuing education, rehabilitation and training and to publish reports on the results of such reviews (which reviews may include recommendations as to the manner in which such provision could be improved);
- i) to advise all educational institutions concerning best practice in respect of the education of adults who have disabilities;
- j) to advise the Minister in relation to any matter relating to the education of children and others with disabilities;
- k) to consult with such voluntary bodies as the Council considers appropriate, (being bodies whose objects relate to the promotion of the interests of, or the provision of support services to, persons with disabilities) for the purposes of ensuring that their knowledge and expertise can inform the development of policy by the Council and the planning and provision of support services; and
- l) to conduct and commission research on matters relevant to the functions of the Council and, as it considers appropriate, to publish in such form and manner as the Council thinks fit the findings arising out of such research.

Section 26 of the EPSEN Act establishes the role of SENOs who are responsible for allocating additional teaching and other resources to support the special educational needs of children with disabilities at a local level.

The provisions within the EPSEN Act relating to an individual right to assessment for all children with SEN, the development of a statutory individual educational plan (IEP) based on this assessment, a legal entitlement to the services specified therein, periodic reviews of these IEPs, and an accessible specialised appeals process to adjudicate on disputes, have yet to be enacted.<sup>91</sup> While there is some evidence that such assessments are carried out on an ad hoc basis by NEPS, there is no statutory assessment scheme for SEN in operation, no timelines within which such an assessment must be carried out, and no mechanism to complain about the lack of such an assessment.<sup>92</sup>

According to Mr Noble, due to the failure to enact important sections of the EPSEN Act, schools must rely on the NEPS service. He informed the OCO that all the schools he has spoken with tell him that the maximum assessment allocation they get is two per year. For

<sup>91</sup> Sections 3-13 of the EPSEN Act.

<sup>92</sup> Further to the OCO Report 'Unmet Needs: A Report on the Challenges Faced by Children in Ireland Who Require an Assessment of Their Needs (October 2020)', NEPS informed the OCO that it also provides significant support through its Support and Development work to build school capacity to support the wellbeing, and academic, social and emotional development of all students, including those with more complex needs. They stated that a formal diagnosis is no longer needed within the educational system to access Special Education Teacher support, access to the Reasonable Accommodations in Certificate Examinations (RACE) scheme or access to an Irish exemption. They further stated that the system has moved to a needs-based system rather than a diagnosis driven system and is continuing to move in that direction in relation to the provision of Special Needs Assistant support, with the emphasis now on inclusion and participation.



this reason, he believes that the EPSEN Act requires a proper timetable and roadmap for implementation. According to AsiAm, NEPS is an unknown entity among parents because very few students are able to access their assessments.

It should be noted that NEPS informed the OCO that its psychologists are assigned to schools based on a weighting process which takes into account school size, DEIS status, gender mix, numbers of special classes and geographical spread, equating roughly to a 4,500:1 pupil to psychologist ratio. Depending on local school size and distribution, the number of schools an individual psychologist may be allocated can be within a range of 12 to 40.

According to Professor of Constitutional Law and Child Law at UCC, Conor O'Mahony, the spine of the EPSEN Act revolves around the provisions relating to the use of education plans, which are yet to take effect. He informed the OCO that the real strength of those provisions is the defined process, mechanisms, and timelines for the assessment, planning and provision of IEPs, and the appeals process, which would avoid High Court litigation. He stated that, without the EPSEN Act, one is left with a grey area in terms of the State's constitutional requirement. While significant supports, such as SETs and SNAs, are provided to schools, these additional supports are based on policy not law.

The authors of the IRIS Project 2015 similarly found that the failure to fully implement the EPSEN Act resulted in the inconsistent development and application of individual plans and in uneven policy development on establishing inclusive schooling, and called for the full implementation of the EPSEN Act as a matter of urgency.<sup>93</sup>

The EPSEN Act has also received criticism for failing to ensure that children are in a position to express their views independently and participate actively in the various stages of the education assessment and planning process in line with Article 12 of the CRC.<sup>94</sup>

The DE informed the OCO that since EPSEN was enacted, the Department's policy on supporting children with SEN has changed from a model that is diagnosis led to one which is driven by the needs of the child. On 20 December 2021, Minister Madigan announced the commencement of a full review of the EPSEN Act to begin in January 2022 with the establishment of a Steering Group and Advisory Group to oversee the process. It is envisaged the full review will be completed by early 2023.

## **4.5 Education (Admission to Schools) Act 2018**

The 2018 Act (amending the 1998 Act) requires schools to state explicitly that they will not discriminate in their admission of a student on the ground of disability and other protected grounds. When deciding on an application to the school or placing a student on a waiting list, a school cannot consider the student's academic ability, skills or aptitude

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93 NCSE Research Report no 19 'Project IRIS – Inclusive Research in Irish Schools' (2015) Rose, Shevlin, Winter and Raw at pages 2, 8 & 9

94 Conor O'Mahony, 'Education, play and leisure' in Children's Rights Alliance and Law Centre for Children and Young People, *Making Rights Real for Children: A Children's Rights Audit of Irish Law* (Dublin, 2015) at page 138. See also 'Mind the Gap: Barriers to the realisation of the rights of children with disabilities in Ireland, OCO, NUIG' (March 2021) at page 41.

other than in relation to admission to (a) a special school or (b) a special class and then only insofar as it is necessary to ascertain whether or not the student has the category of special educational need concerned.<sup>95</sup> While this provision was welcomed by parents and advocates alike, according to Involve Autism, parents have reported that they have been asked for reports prior to their child being offered a place in a mainstream setting on the basis that the school wishes to ensure that they will be able to meet the child's needs. According to Involve Autism, there also appears to be a lack of consistency in relation to admission policies for autism classes with some schools adding a further eligibility criteria that stipulates a child's level of cognition. The DE informed the OCO that should it be made aware of instances where the provisions of the 1998 Act are not being applied by schools, it will follow up with the school concerned.

The 2018 Act also provided for an 'annual admission notice' to be prepared each year in respect of the admission of students to the school for the incoming school year.<sup>96</sup> This provision effectively does away with historical school place waiting lists and is aimed at ensuring a selection process which is non-discriminatory and applied fairly in respect of all applicants. An unintended consequence of this shorter school enrolment cycle, however, is that the school may not be aware of the number and profile of children with SEN until a few months prior to the beginning of the school year. Significantly, schools may not be in a position to facilitate children who require additional supports within the school's existing special education teaching allocation, which is assigned on a minimum two year basis, and/or may not be able to cater for children who have a recommendation for a special class on the basis that their existing class(es) are at capacity, or the special class(es) do not exist and require establishment. According to the Irish Primary Principal's Network (IIPN), it is simply too late to put the necessary resources in place when admissions applications are submitted the year before the child enters the school.

The DE has requested that it be noted that admission processes which run in October of the preceding year will allow for eight months for this work to be completed. It stated that the effective elimination of the use of historical waiting lists as a basis for allocation is grounded in the principle of creating a level playing pitch for those who change residence or are new to an area.

The 2018 Act also provides for an additional section to be inserted into the 1998 Act, enabling the Minister for Education to compel a school to make provision for the education of children with SEN, if a consultation between the NCSE, the school's board of management, and the school's patron, has not resulted in the school providing the places required. This is the s37A process mentioned previously in this report.<sup>97</sup>

Finally, under a provision of the 2018 Act, not yet commenced, the NCSE may, under certain circumstances specified in the Act, designate the school, which the child is to attend, and that school must admit the child upon being directed to do so.<sup>98</sup>

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95 Sections 61 and 62 of the 1998 Act as amended by s. 9 of the 2018 Act, commenced on 1st February 2020. Newly revised school admission policies under the commenced provisions of the 2018 Act prohibit the following as a consideration for the offer of a school place: interviews, a student's academic ability, skills or aptitude, a parent's occupation, financial status, academic ability, skills or aptitude, apart from stated exceptions.

96 Section 63 of the 1998 Act as amended by s. 9 of the 2018 Act, commenced on 1st February 2020.

97 Section 37A of the 1998 Act as amended by s. 8 of the 2018 Act, commenced on 3rd December 2018.

98 Section 67(1) of the 1998 Act as amended by s. 9 of the 2018 Act.

According to Inclusion Ireland, SENOs need to be empowered to tell a school that they must accept a child. They suggest that if Tusla can require a school to take a child, then the NCSE should be empowered to do the same. Professor Conor O'Mahony noted to the OCO that this provision within the 2018 Act imposes duties on the school as opposed to placing obligations on the State. According to Professor O'Mahony, just because this provision would compel the school to admit a child, does not mean that the DE would be obliged to provide resources to the school. He stated that enacting the key provisions within the EPSEN Act would be preferable, in that it would lead to education plans detailing what a child needs and would oblige the Minister to put those resources in place.

The DE informed the OCO that it is planning to begin work to commence the remaining sections of the 2018 Act (Section 67 to 70) during 2022. It stated that these sections are interrelated and will require consultation, the drafting of procedures, and the establishment of an appeals mechanism.

#### **4.6 Education (Admissions to School) Bill 2020**

The Oireachtas Joint Committee on Education, Further and Higher Education, Research, Innovation and Science Report on Detailed Scrutiny of the Education (Admissions to School) Bill 2020 (March 2022)<sup>99</sup> made the following recommendations relevant to the admission of children with SEN to school:

- 1. School Admissions Policies must ensure that they are not discriminatory to any student, whether due to ethnicity, place of birth, the presence or absence of special educational needs; being from same-sex or single parent families or the prior educational attainment of their family;**<sup>100</sup>
- 2. The Department of Education should establish an Expert Steering Group to review School Admissions Policies to include Compilation and Disaggregation of Data on all School Admissions, Students with Special Educational Needs, Timeline of School Place Offers and Acceptance, Sibling Allocations and Shared Admissions Policies;**<sup>101</sup>
- 3. Equity of access for local children should be a priority in all Admissions Policies;**
- 4. The Department of Education should address the anomaly that fee-paying schools are not allowed to have Special or autism spectrum disorder classes, as a matter of urgent priority.**

The DE has informed the OCO that it will consider all the recommendations of the Joint Committee's report.

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<sup>99</sup> Available at <https://www.oireachtas.ie/en/committees/33/education/documents/>.

<sup>100</sup> Emphasis added.

<sup>101</sup> Emphasis added.

With respect to recommendation 6 of that report, there now exists a ‘Memorandum of Understanding between the Department of Education and Spiritan Education Trust in relation to supporting special educational needs provision, March 2022’ (MOU).<sup>102</sup> The Spiritan Order are patrons of Blackrock College, Holy Family Community School, St Mary’s College and Junior School, St Michael’s College and Junior School, Templeogue College, and Willow Park Junior and Senior Schools in South Dublin.<sup>103</sup>

According to the press release, the Spiritan Education Trust has entered into an agreement with the DE in relation to the use of its existing school sites and other lands to support the provision of school places for children and young people with special educational needs, making land available on its school campuses to provide special schools and special classes as required. The initial focus will be on maximising the opportunities for facilitating SEN provision at the Templeogue College campus as part of an overall modernisation/development of the campus. This will include a four-classroom base for students with SEN at the college.<sup>104</sup> The MOU states that ‘While it is noted that many of its schools are in the fee-charging sector, it will develop its access programmes to support and avoid school fee costs for any students in the special classes or special schools or who can subsequently progress to mainstream provision in its schools. These students will attract the same level of support in terms of capitation, teaching resources, and associated supports as students in the non-fee-paying sector’.<sup>105</sup>

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102 Available at <https://www.gov.ie/en/publication/6da0b-memorandum-of-understanding-between-the-department-of-education-and-spiritan-education-trust-in-relation-to-supporting-special-educational-needs-provision/>.

103 See further <https://www.spiritaneducation.ie/about-us/school-network/>.

104 Available at <https://www.gov.ie/en/press-release/1895f-ministers-foley-and-madigan-announce-the-establishment-of-a-new-special-school-in-cork-and-provide-an-update-on-the-expansion-of-existing-special-class-and-special-school-capacity-in-cork-and-dublin-to-meet-the-needs-of-children-and-young-people-with-special-educational-needs/>.

105 ‘Memorandum of Understanding between the Department of Education and Spiritan Education Trust in relation to supporting special educational needs provision’ at page 1.

## Section 5 A Child Rights-Based Approach

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The OCO considers the forward planning of school places for children with SEN to be a children's rights issue. Any failure to include children with SEN within the mainstream academic and social development programmes for any reason other than to facilitate their effective education constitutes discrimination.

### 5.1 Relevant Children's Rights Standards

Ireland is a dualist state. Individuals may only plead human rights, which have been incorporated into Irish law before the national courts, i.e. rights protected under the Irish Constitution, the European Convention of Human Rights Act 2003 (2003 Act), and the European Union Charter of Fundamental Rights (EU Charter), where European Union (EU) law is applicable.<sup>106</sup>

Where an international human rights treaty has been ratified, but has not been incorporated into Irish law, the State is still bound by these standards in international law. Furthermore, national courts have attached a form of persuasive authority to these human rights instruments.<sup>107</sup>

#### European Union Charter of Fundamental Rights

The rights of the child, and the right to education, are further enshrined in the EU Charter. The provisions of the EU Charter are addressed to the Irish State when it is implementing EU law.<sup>108</sup>

#### European Convention on Human Rights Act 2003

Ireland ratified the European Convention on Human Rights (ECHR), a Council of Europe treaty which guarantees fundamental civil and political rights, in 1953. It was incorporated into Irish law by the 2003 Act. Section 4 of the 2003 Act requires all organs of the State to conduct their activities in a manner that is compatible with Ireland's ECHR obligations.

Article 2 of the ECHR prescribes the right to education, stating that 'No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions'.

In addition, the European Court of Human Rights has developed a practice of interpreting and applying substantive Convention rights in light of the children's rights principles

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<sup>106</sup> Article 29.6 of the Irish Constitution provides that 'no international agreement shall be part of the domestic law of the State save as may be provided by the Oireachtas'.

<sup>107</sup> Ratification attracts the rule of international law that State Party obligations must be performed in good faith in respect of the State Party's entire territory under Articles 26 and 29 of the Vienna Convention on the Law of Treaties 1969.

<sup>108</sup> Articles 14 & 24 of the EU Charter of Fundamental Rights.

contained in the CRC. In particular, much of the Court's case-law establishes the importance of the 'best interests principle'.<sup>109</sup>

## United Nations Convention on the Rights of the Child

The principal international children's rights instrument is the CRC, which was adopted by the General Assembly of the United Nations (UN) in 1989. It is widely considered to be the gold standard for a child rights-based approach. The CRC is a comprehensive document which recognises children as autonomous rights holders and sets out the obligations of the State as a duty bearer.

Although the CRC has not been incorporated into Irish law, Ireland ratified the CRC in 1992 and is subject to the treaty monitoring procedure.

Ireland became one of the first States to ratify the 3rd Optional Protocol to the CRC on a Communications Procedure in September 2014. This mechanism was designed to allow children and their representatives to bring complaints to the UN Committee on the Rights of the Child (CRC Committee) in respect of alleged violations of their rights under the CRC and its Optional Protocols.

With respect to the rights of children with disabilities, the CRC Committee's Concluding observations on the combined third and fourth periodic reports of Ireland<sup>110</sup> stated that:

'48. In the light of its general comment No. 9 (2006) on the rights of children with disabilities, the Committee recommends that the State party:

- a) Adopt a human rights-based approach to disability and establish a comprehensive strategy for the inclusion of children with disabilities'<sup>111</sup>

In its List of Issues prior to submission of the combined fifth and sixth reports of Ireland, published on 18 November 2020, the CRC Committee requested that the Irish government provide an update on measures taken to:

'Ensure that all children with disabilities have access to and benefit from early childhood education, early development programmes and inclusive education.'<sup>112</sup> The CRC Committee also requested disaggregated data on children with disabilities who attend regular schools and separate schools.<sup>113</sup>

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<sup>109</sup> U. Kilkelly, 'The Best of Both Worlds for Children's Rights? Interpreting the European Convention on Human Rights in Light of the UN Convention on the Rights of the Child' (2001) 23(2) Human Rights Quarterly 308 at page 324.

<sup>110</sup> Committee on the Rights of the Child, Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland (CRC/C/IRL/CO/3-4).

<sup>111</sup> Ibid at page 10.

<sup>112</sup> List of Issues prior to submission of the combined fifth and sixth reports of Ireland, 18 November 2020, CRC Committee at page 61.

<sup>113</sup> List of Issues prior to submission of the combined fifth and sixth reports of Ireland, 18 November 2020, CRC Committee at page 67.

In the combined fifth and sixth periodic reports submitted by Ireland pursuant to Article 44 of the CRC in February 2022, the State failed to address the matter of inclusive education, focussing instead on early childhood and pre-school initiatives. With respect to the issue of disaggregated data on children with disabilities, the State made the following reply: ‘The HSE is rolling out new Children’s Disability Network Teams, whose management information systems will feed data into the HRB database.’ It did not address the CRC Committee’s request for school data directly.<sup>114</sup>

On the 21st March 2022, the CRC Committee and the Committee on the Rights of Persons with Disabilities (CRPD Committee) published a Joint Statement on the Rights of Children with Disabilities, reiterating the right to inclusive education:

#### Right to inclusive education

9. The Committees emphasize that high-quality inclusive education requires the education of all children on equal terms in the same general education system, adapting the educational system to the diverse educational requirements, abilities, potentials and preferences of each child. The Committees also reaffirm that the right to quality inclusive education is not compatible with sustaining two systems of education: a mainstream education system and a special/segregated education system. Early intervention, accessible learning environments and individual support must be provided in all phases of education process for ensuring the inclusive education. The Committees strongly call on States parties to guarantee that all children with disabilities can realize their right to education on the basis of equal opportunities, without discrimination, including the denial of reasonable accommodation.<sup>115</sup>

### The UNESCO Salamanca Statement

In June 1994 Ireland was among the 92 governments and 25 international organisations that formed the World Conference on Special Needs Education, held in Salamanca, Spain. A new manifesto was agreed endorsing the approach of inclusive schooling and supporting the development of special needs education as an integral part of all education programmes. In addition, the Conference adopted a new Framework for Action, the guiding principle of which is that schools should accommodate ‘all children, regardless of their physical, intellectual, social, emotional, linguistic or other conditions’. According to the Framework, educational policies at all levels, from the national to the local, should stipulate that disabled children attend the neighbourhood school, that is, the school that would be attended if the child not have a disability. A change in social perspective was considered imperative.<sup>116</sup>

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<sup>114</sup> The combined fifth and sixth periodic reports submitted by Ireland pursuant to Article 44 of the CRC, 2022, pages 11 & 35

<sup>115</sup> Joint Statement on the Rights of Children with Disabilities, available at <https://www.ohchr.org/en/treaty-bodies/crpd/statements-declarations-and-observations>

<sup>116</sup> The Salamanca Statement and Framework for Action on Special Needs Education available at <https://unesdoc.unesco.org/ark:/48223/pf0000098427>.

## United Nations Convention on the Rights of Persons with Disabilities

The CRPD was adopted by the General Assembly of the UN in 2006. The purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities.

Article 7 of the CRPD concerns the rights of children with disabilities. It states that:

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.
2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.
3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.'

Article 24(2) of the CRPD states that State Parties shall ensure that:

- a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
- b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
- c) Reasonable accommodation of the individual's requirements is provided;
- d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education; and
- e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.<sup>117</sup>
- f) The CRPD Committee's General Comment No 4 (2016) expands upon State Parties duties under Article 24: Right to inclusive education.

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<sup>117</sup> See further <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-24-education.html>



Paragraph 10 states that:

Inclusive education is to be understood as:

- a) A fundamental human right of all learners. Notably, education is the right of the individual learner, and not, in the case of children, the right of a parent or caregiver. Parental responsibilities in this regard are subordinate to the rights of the child.
- b) A principle that values the well-being of all students, respects their inherent dignity and autonomy, acknowledges individual requirements and ability to effectively be included in and contribute to society.
- c) A means of realizing other human rights. It is the primary means by which persons with disabilities can lift themselves out of poverty, obtain the means to participate fully in their communities, and be safeguarded from exploitation. It is also the primary means through which to achieve inclusive societies.
- d) 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.'

Paragraph 11 states that:

'The Committee highlights the importance of recognising the differences between exclusion, segregation, integration and inclusion. Exclusion occurs when students are directly or indirectly prevented from or denied access to education in any form. Segregation occurs when the education of students with disabilities is provided in separate environments designed or used to respond to a particular or various impairments, in isolation from students without disabilities. Integration is a process of placing persons with disabilities in existing mainstream educational institutions, as long as the former can adjust to the standardized requirements of such institutions. Inclusion involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and environment that best corresponds to their requirements and preferences. Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation, curriculum and teaching and learning strategies, does not constitute inclusion. Furthermore, integration does not automatically guarantee the transition from segregation to inclusion.'

Paragraph 12 states that:

The core features of inclusive education are:

- a) **Whole systems approach:** education ministries must ensure that all resources are invested toward advancing inclusive education, and toward introducing and embedding the necessary changes in institutional culture, policies and practices.

- b) Whole educational environment:** the committed leadership of educational institutions is essential to introduce and embed the culture, policies and practices to achieve inclusive education at all levels: classroom teaching and relationships, board meetings, teacher supervision, counselling services and medical care, school trips, budgetary allocations and any interface with parents of learners with and without disability when applicable, the local community or wider public.
- c) Whole person approach:** recognition is given to the capacity of every person to learn, and high expectations are established for all learners, including learners with disabilities. Inclusive education offers flexible curricula, teaching and learning methods adapted to different strengths, requirements and learning styles. This approach implies the provision of support and reasonable accommodation and early intervention so that they are able to fulfil their potential. The focus is on learners' capacities and aspirations rather than content when planning teaching activities. It commits to ending segregation within educational settings by ensuring inclusive classroom teaching in accessible learning environments with appropriate supports. The education system must provide a personalized educational response, rather than expecting the student to fit the system.
- d) Supported teachers:** All teachers and other staff receive education and training giving them the core values and competencies to accommodate inclusive learning environments, which include teachers with disabilities. The inclusive culture provides an accessible and supportive environment which encourages working through collaboration, interaction and problem-solving.
- e) Respect for and value of diversity:** All members of the learning community are welcomed equally, with respect for diversity according to, inter alia, disability, race, colour, sex, language, linguistic culture, religion, political or other opinion, national, ethnic, indigenous, or social origin, property, birth, age, or other status. All students must feel valued, respected, included, and listened to. Effective measures to prevent abuse and bullying are in place. Inclusion takes an individual approach to students.
- f) Learning-friendly environment:** Inclusive learning environments must create an accessible environment where everyone feels safe, supported, stimulated and able to express themselves, with a strong emphasis on involving students themselves in building a positive school community. Recognition is afforded to the peer group in learning, building positive relationships, friendships and acceptance.
- g) Effective transitions:** Learners with disabilities receive the support to ensure the effective transition from learning at school to vocational and tertiary education, and finally to work. Learners' capacities and confidence are developed and learners receive reasonable accommodation and equality regarding assessment and examination procedures, and certification of their capacities and attainments on an equal basis with others.
- h) Recognition of partnerships:** Teacher associations, student associations and federations and OPDs, school boards, parent-teacher associations, and other functioning school support groups, both formal and informal, are all encouraged to

increase their understanding and knowledge of disability. Involvement of parents/ caregivers and the community must be viewed as assets with resources and strengths to contribute. The relationship between the learning environment and the wider community must be recognized as a route towards inclusive societies.

- i) **Monitoring:** As a continuing process, inclusive education must be monitored and evaluated on a regular basis to ensure that segregation or integration is not happening either formally or informally. Monitoring, according to article 33, should involve persons with disabilities, including children and persons with intensive support requirements, through OPDs, as well as parents or caregivers of children with disabilities where appropriate. Disability-inclusive indicators must be developed and used consistent with the 2030 Agenda for Sustainable Development.’

According to paragraph 30, ‘the denial of reasonable accommodation constitutes discrimination and the duty to provide reasonable accommodation is immediately applicable and not subject to progressive realization. States parties must ensure that independent systems are in place to monitor the appropriateness and effectiveness of accommodations, and provide safe, timely, and accessible mechanisms for redress when students with disabilities, and if relevant, their families, consider that they have not been adequately provided or have experienced discrimination. Measures to protect victims of discrimination against victimization during the redress process are essential.’

In addition, according to paragraph 33, ‘any support measures provided must be compliant with the goal of inclusion. Accordingly, they must be designed to strengthen opportunities for students with disabilities to participate in the classroom and in out-of-school activities alongside their peers, rather than marginalise them.

Finally, according to paragraph 61, ‘a comprehensive and co-ordinated legislative and policy framework for inclusive education must be introduced, together with a clear and adequate time frame for implementation and sanctions for violations. It must address issues of flexibility, diversity and equality in all educational institutions for all learners, and identify responsibilities at all levels of government.’

Ireland ratified the CRPD in 2018, affirming its commitment to protect the rights of persons with disabilities. Ireland’s initial State party report to the CRPD Committee was published in November 2021. With respect to Article 24 and the right to inclusive education, the report states that:

**295.** The Government continues significant investment in the area of special education support and is committed to helping every child, particularly those with SEN, to fulfil their potential. In 2021, approximately €2 billion will be invested in SEN support, an increase of over 50% since 2011.

**296.** Some EPSEN provisions remain to be implemented and the Government has committed to consulting with stakeholders on how best to progress aspects of EPSEN on a non-statutory basis. Consultations with education partners and stakeholders took place on the development of a new model for allocating special education teachers, prior to its introduction in 2017. Further consultations took

place with education partners and stakeholders on a comprehensive review by the NCSE of the SNA scheme and will continue in relation to the implementation of recommendations in the resulting report. The NCSE has published policy advice papers on how aspects of EPSEN could be introduced initially on a non-statutory basis.

**297.** People with disabilities in Ireland finish school earlier than people without a disability and have lower levels of educational attainment, though this gap is closing. A comparison of Census data in 2011 and 2016 shows that the gap had narrowed by over 3% and that there was an increase in the number of people with disabilities who have higher qualifications.

**298.** For the 2018/19 school year, 8,224 pupils, (approximately 0.88% of the pupil population) attended special schools, while 8,384, or 0.9% of pupils, attended special classes in mainstream schools. The remaining pupils with SEN attended mainstream classes with additional support.

**299.** Mainstream schools now have discretion to provide additional teaching support to pupils who require it from within their overall allocation for special education teaching support, based on the identified learning needs of pupils. A formal diagnosis of a disability or SEN is not required. It is estimated that 18% of the mainstream pupil population, or 167,518 pupils, received some form of additional teaching support.

**300.** In 2019, within the Further Education and Training (FET) sector, 13,098 students self-reported as having a disability.

**301.** In higher education, the National Plan for Equity of Access to Higher Education 2015-2021 set targets for increasing the numbers of people with disabilities participating in higher education. A 2018 Progress Review of this Plan found that the target of 8% (i.e., that 8% of new entrants to higher education would be students with disabilities) had been exceeded and the overall participation rate stood at 10.5%. The Review data were from 2017 and showed that targets had been surpassed in respect of two of the three categories of disability. There was a 71% increase in participation by students with physical or mobility disabilities; participation rates by deaf students or those hard of hearing had increased by 46%; and participation by students who are blind or have a vision impairment had increased by 24%.<sup>104</sup> In 2019/2020, 12.2% of new entrants were students with disabilities. A new National Access Plan to cover the period 2022-2026 is now in development.'

With respect to school access, the report states as follows:

**314.** The NCSE supports schools and parents through its network of Special Educational Needs Organisers (SENO). A SENO can advise schools and parents on the facilities, services, and resources available to assist children with SEN.

**315.** Pupils with SEN can be supported in school by Special Needs Assistants (SNAs). SNAs play an important role in assisting teachers to support students with SEN

who have additional care needs. SNAs usually support a number of students with additional care needs in the school. There were over 16,000 SNAs supporting over 39,000 pupils in the 2019 school year. This is increasing to 18,014 in 2021, an increase of 70% since 2011. The need for SNA training was identified by the NCSE in its recent review of the SNA scheme. A new National Training Programme for SNAs will begin in 2021, with 3,500 places available over the next four years.

**316.** Schools are required to put in place Personal Pupil Plans for all pupils availing of SNA support. The plan must focus on the pro-active development of student's independence skills and outline the programmes and strategies that are being used to meet the child's needs.

**317.** The National Educational Psychological Service (NEPS) supports the wellbeing, academic, social, and emotional development of children in primary and post-primary schools through the provision of school-based psychological services, with particular regard to students with SEN.

**318.** NEPS has developed a Continuum of Support model to support the development of inclusive school environments for children with SEN. This model recognises that individual special educational needs may occur anywhere along a continuum, and that the level of intervention and support provided in school should match those needs and their changing nature over time. Guidelines have been issued to assist teachers to identify needs and to develop and evaluate interventions to meet them.

**319.** Children with more severe levels of disability may require placement in a special school or special class attached to a mainstream primary school. Each such facility operates at a specially reduced pupil teacher ratio. In the 2019/20 school year, there were 1,621 special classes in mainstream school supporting approximately 8,500 pupils. There are 124 special schools, with 1% of children with SEN enrolled in those schools.

**320.** The Education (Admission to Schools) Act 2018 provides powers to compel a school to designate a school place for a pupil with SEN, where the NCSE has identified a need for such provision.

**321.** A new School Inclusion Model (SIM) pilot programme was introduced to provide the right support at the right time, by personnel with relevant qualifications and skills. It includes teaching and care supports, speech and language and occupational therapies, nursing for children with the most complex needs, training for SNAs, and behavioural and psychological support.

**322.** Budget 2021 provided for an additional 990 SNAs to support frontloading of SNAs into schools - a key feature of the SIM - as well as new special classes and new places in special schools. Budget 2021 expands the SIM pilot, with supports available to more schools from September 2021.

**323.** All mainstream schools receive an allocation of Special Education Teaching (SET) support based on the profiled needs of the school. The SET allocation model

gives schools the flexibility to provide additional teaching support for all pupils who require such support and to deploy resources based on each pupil's individual learning needs. The Department of Education has published guidelines for schools on how to deploy their resources.

**324.** 13,620 SET posts are currently available for allocation to mainstream primary and post primary schools. Budget 2021 provided for an additional 145 special education teachers, bringing the total provision to 13,765, an increase of over 40% since 2011.'

With respect to teacher training in inclusive education, the report states:

**326.** Ireland is committed to training teachers who provide quality, inclusive teaching. All initial teacher education in Ireland that leads to registration must have professional accreditation from the Teaching Council whose role is to promote and regulate professional standards in teaching. CPD is provided for teachers to support the inclusion of students with SEN in mainstream classrooms.

The Government has not yet ratified the Optional Protocol to the CRPD, which would allow persons with disabilities to make individual complaints to the CRPD Committee. The Government has stated that it intends to ratify the Optional Protocol and that the work needed to prepare for ratification will begin once the Assisted Decision Making (Capacity) Act 2015 (ADMCA) has been commenced and the Decision Support Service (DSS) is operational.<sup>118</sup>

## 4.2 Implementing a Child Rights-Based Approach

### Children as Rights Holders

If children are to develop, progress, engage and thrive, it is incumbent upon the State to see children as holders of natural and imprescriptible rights, and to affirm those rights in a holistic way.<sup>119</sup>

The State must take all appropriate measures to ensure that children with disabilities enjoy all human rights and fundamental freedoms on an equal basis with other children. This includes the child's right to respect for his or her physical and mental integrity.<sup>120</sup>

### Children's Rights Principles and Provisions

The following core principles and provisions should be central to all State decisions affecting children's development and education:

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<sup>118</sup> Ireland's initial State party report to the United Nations Committee on the Rights of Persons with Disabilities (Nov 2021) at page 4.

<sup>119</sup> Article 42A.1 of the Irish Constitution recognises the child as a holder of rights and the State as the body responsible for the vindication of those rights; CRC General Comment No. 9 (2006) The rights of children with disabilities at paragraph 33

<sup>120</sup> Articles 7 & 17 of the CRPD; Article 2 of the CRC; CRC General comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6) at paragraph 12; and ICESCR General comment No. 5: Persons with disabilities at paragraph 34.

- The best interests of the child

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child must be a primary consideration. It should be adjusted and defined on an individual basis, according to the specific situation of the child or children concerned, taking into consideration their personal context, situation and needs. There is a duty on the State to uphold the child's best interests with respect to the allocation of national resources for programmes and measures aimed at implementing children's rights.<sup>121</sup>

- The right to survival and development

The State must ensure the survival and development of the child to the maximum extent possible. 'Development' should be interpreted in its broadest sense as a holistic concept, embracing the child's physical, mental, spiritual, moral, psychological and social development. Implementation measures should be aimed at achieving the optimal development for all children.<sup>122</sup>

- The rights of children with disabilities

Children with disabilities are entitled to enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community. In recognition of the right of the child with a disability to special care, the State must extend such assistance as appropriate to the child's condition, subject to available resources. This assistance must be designed to ensure that the child with a disability has effective access to, and receives, education, training, health care services, rehabilitation services, preparation for employment, and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration and individual development.

The State is encouraged to establish an appropriate definition that guarantees the inclusion of all children with disabilities so that children with disabilities may benefit from the special protection and programmes developed for them. The State's health policies should be comprehensive and address the early identification and early intervention of disabilities as part of its health services, in order to minimise and prevent further disabilities.<sup>123</sup>

- The right to non-discrimination

The right to non-discrimination requires the State to take active steps to identify individual children and groups of children, who may require special measures for the recognition and realisation of their rights. The CRC Committee highlights the need for data collection to be disaggregated to enable discrimination or potential discrimination to be identified.<sup>124</sup>

<sup>121</sup> Article 2 of the CRC; CRC General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) at paragraph 15 & 32.

<sup>122</sup> Article 6 of the CRC; CRC General comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6) at paragraph 12 and Article 12 of ICESCR.

<sup>123</sup> Article 23 of the CRC; CRC General Comment No. 9 (2006) The rights of children with disabilities, at paragraphs 19, 51 & 56 and Article 25 of the CRPD.

<sup>124</sup> Articles 7 & 17 of the CRPD; Article 2 of the CRC; CRC General comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6) at paragraph 12; and ICESCR General comment No. 5: Persons with disabilities at paragraph 34.

- The right to education

The State agrees that the education of the child should be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential i.e. the holistic development of the full potential of the child. Education must be child-centred, child-friendly, empowering, and free from overt or hidden discriminatory practices, which destroy the capacity of the child to benefit from educational opportunities.

Children with disabilities should be provided with reasonable accommodation, and effective individualised support measures in educational environments that maximise academic and social development, consistent with the goal of full inclusion. The denial of reasonable accommodation constitutes discrimination and the duty to provide reasonable accommodation is immediately applicable and not subject to progressive realisation.<sup>125</sup>

- The right for children to have their views heard

The State must assure that where a child is capable of forming his or her own views, they may express those views freely in all matters affecting them, and that their views are given due weight in accordance with their age and maturity. They may be represented through a representative or an appropriate body, where necessary. Children with disabilities have the right to be heard on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realise that right.<sup>126</sup>

### **State Responsibility for Implementing Children's Rights**

The concept of 'progressive realisation' describes the State's obligation to undertake all appropriate legislative, administrative, and other measures to the maximum extent of their available resources for the implementation of a child's economic, social, and cultural rights. Even where the available resources are demonstrably inadequate, the State is still obliged to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. This reflects a recognition that the realisation of these rights can be hampered by a lack of resources and can be achieved only over a period of time.

Whatever their economic circumstances, States are required to undertake all possible measures towards the realisation of the rights of the child, paying special attention to the most disadvantaged groups.<sup>127</sup>

<sup>125</sup> Articles 2, 28 & 29 of the CRC; CRC General comment No. 1 (2001) Article 29(1) The Aims of Education at paragraphs 1, 2 & 10; Articles 24 of the CRPD; and CRPD General comment No. 4 (2016) on the right to inclusive education at paragraph 31.

<sup>126</sup> Article 12 of the CRC, and Article 7(3) of the CRPD.

<sup>127</sup> Article 4 of the CRC; CRC General comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6) at paragraphs 8, 11, 24 & 48; CRC General Comment No. 19 (2016) on public budgeting for the realisation of children's rights (art. 4) at paragraph 1; Article 4(2) of the CRPD; and Article 2(1) of the ICESCR.



## Measures to Implement Children's Rights

The enjoyment of economic, social and cultural rights is inextricably intertwined with the enjoyment of civil and political rights. The interdependence and indivisibility of all human rights is reflected throughout the CRC, with many articles containing elements which constitute civil/political rights.<sup>128</sup>

For this reason, the CRC Committee believes that economic, social and cultural rights, as well as civil and political rights, should be regarded as justiciable. It is, therefore, essential that domestic law sets out entitlements in sufficient detail to enable remedies for non-compliance to be effective.<sup>129</sup>

The State must see its role as fulfilling clear legal obligations to each and every child. The development of a children's rights perspective throughout Government, parliament and the judiciary is required for effective implementation of a child-rights based approach.

Significantly, the general measures of implementation of the CRC require:

- Every legislative, administrative and judicial body or institution to apply the best interests principle by systematically considering how children's rights and interests are or will be affected by their decisions and actions;
- The State to undertake all appropriate legislative, administrative, and other measures for the implementation of children's rights;
- The State to undertake visible cross-sectoral coordination to recognise and realise children's rights across Government, between different levels of government, and between Government and civil society. This may take the form of inter-ministerial and interdepartmental committees for children with high-level authority;
- With regard to economic, social, and cultural rights, the State to undertake such measures to the maximum extent of their available resources;
- Effective remedies to be available to redress violations, in order for rights to have meaning. States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives;
- The collection of sufficient and reliable data on children, disaggregated to enable the identification of disparities in the realisation of rights; and
- Raising awareness about the rights of the child, which should involve all sectors of society, including children and young people.<sup>130</sup>

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128 Articles 2, 3, 6 and 12 of the CRC.

129 CRC General comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6) at paragraphs 6, 24, 25 & 48.

130 CRC General comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6) at paragraphs 12, 27, 38, 39, 48 & 69.

## Section 6 Realising Inclusion

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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 CRPD. As such, while the parents consulted by the OCO aspire to a school system where ‘effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion’<sup>131</sup>, there is a recognition that the current education system is not structured to support this goal. It is, therefore, reasonable for parents to seek out specialised classes and schools as recommended by their child’s psychologist, even though these forms of segregation are not in line with the principle of inclusive education.

It should be noted that parents are central to meeting the needs of children with SEN, including autistic children, and that this often carries a substantial economic cost not met by the State. The results of a recent study on the issue found that a family’s average annual cost per autistic child amounted to €28,464.89, which related to private autism services, lost income, and informal care. By comparison, annual State expenditure per child on autism related health, social and educational resources was €14,192. Regression analyses also indicated that autism severity is associated with higher out of pocket expenditures but not State health expenditures.<sup>132</sup> It is not acceptable that the DE challenge these parents further by requiring them to advocate for the right to education for their children with SEN, who cannot be accommodated in a mainstream setting.

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. Inclusion is not purely about the setting in which a child attends, but also about whether the child is truly valued, accepted, and able to fully participate in their learning environment.<sup>133</sup>

Ireland committed to realising an inclusive vision of education by ratifying the UNESCO Salamanca Statement in 1994 and the CRPD in 2018. Nevertheless, the State continues to operate a system of segregation for 2% of the school-going population.<sup>134</sup> Segregation is defined by the CRPD Committee as ‘when the education of students with disabilities is provided in separate environments designed or used to respond to a particular or various impairments, in isolation from students without disabilities’.<sup>135</sup>

The EPSEN Act, currently under review, speaks in the language of inclusivity yet effectively espouses a policy of integration, defined by the CRPD Committee as ‘a process of placing persons with disabilities in existing mainstream educational institutions, as long as the former can adjust to the standardized requirements of such institutions’.<sup>136</sup>

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131 Article 24(2)(e) of the UN Convention on the Rights of Persons with Disabilities (CRPD).

132 ‘The economic costs and its predictors for childhood autism spectrum disorders in Ireland: How is the burden distributed?’ An article published in ‘Autism’ 2019, Vol. 23(5) 1106–1118, Roddy (NUIG) & O’Neil (Queen’s University Belfast).

133 ‘Inclusion in Our Special Classes and Special Schools: A Submission to the NCSE from AsIAM’ (September 2020) at page 2.

134 NCSE Policy Advice on Special Schools and Classes: Progress Report, October 2019 at page 68.

135 CRPD Committee’s General Comment No 4 (2016) at paragraph 11.

136 CRPD Committee’s General Comment No 4 (2016) at paragraph 11.

In contrast, the inclusive model as advocated by the CRPD Committee ‘involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and environment that best corresponds to their requirements and preferences’.<sup>137</sup> Significantly, inclusivity is a process rather than an fixed attainable ideal. 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’.<sup>138</sup>

The OCO acknowledges the DE’s statement that ‘In line with the UNCRPD, evolving international best practice, and on foot of NCSE policy advice, DE policy on inclusion and special education has moved away from a categorical/diagnostic model of disability to provide education services to children and young people using a needs-based approach. This approach has been operationalised in education through the Continuum of Support framework (2008), the introduction of the Special Education Teacher (SET) model in 2017 and the pilot of the School Inclusion Model (SIM) in 2019.’

Even so, the OCO recognises that accommodating and effectively including all children with SEN, some 25% of the school-going population, within the mainstream, challenges the DE to reimagine the education system as a whole. Indeed, to continue to consider the situation of children with SEN in isolation is to perpetuate segregation.

For this reason, the recommendations in Section 7 of the report 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. It should be noted that the OCO does not advocate devolving specialist provision, either partially or entirely, until such time as qualified teaching and education enhancing therapeutic supports are available to all children within the mainstream local school setting.

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<sup>137</sup> CRPD Committee’s General Comment No 4 (2016) at paragraph 11.

<sup>138</sup> CRPD Committee’s General Comment No 4 (2016) at paragraph 10(d).

## Section 7 Recommendations

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The DE has stated that it is committed to considering the implication of the CRPD and the right to an inclusive education in the context of the finalised NCSE policy advice on specialised educational placements in Q2 2022. However, the DE does not need to await NCSE policy advice in order to dismantle those remaining barriers identified within this report as impeding the right to education for children with SEN as a matter of priority. While these measures may have cost implications in the short term, the inclusion model is a more sustainable mechanism over the long term.<sup>139</sup>

### 7.1 Forward Planning

The OCO recognises that the growth in investment in this sector by the DE indicates a strong commitment by the Department 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.<sup>140</sup> In May 2022, Taoiseach Micheál Martin referred to this as ‘an absence of pro-activity in the system’.<sup>141</sup>

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 LSPA capacity is put in place.<sup>142</sup>

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 1455 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.<sup>143</sup>

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.<sup>144</sup>

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<sup>139</sup> See Section 2.3.1.

<sup>140</sup> See Section 2.2.

<sup>141</sup> Daniel McConnell, ‘Taoiseach’s apology ‘too little, too late’ says mother of two autistic sons’, Irish Examiner, 18<sup>th</sup> May 2022.

<sup>142</sup> See Section 2.2.

<sup>143</sup> See Sections 2.1.4. Carl O’Brien, ‘Almost 270 children with autism do not have appropriate school places – survey’, Irish Times, 30<sup>th</sup> May 2022.

<sup>144</sup> See Section 2.2.1.

For these reasons, 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.

Significantly, 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.

## 7.2 Access to Psychological Assessments in the Short-Term

In the short-term the issue of effective access to diagnostic assessments required for special class/school admission will continue to provide a barrier to access to the education continuum until such time as an inclusive system is put in place. This recommendation is addressed to the education system as it is currently configured, where non-mainstream supports are diagnosis-led rather than needs-led.

While the OCO acknowledges the challenges faced in recruiting and retaining sufficient psychologists, this can no longer provide a barrier to access to the education continuum for children with SEN.

The OCO recommends that the DE ensures effective access<sup>145</sup> to a psychologist via the NEPS, SCPA or other service for the estimated 4,000 children awaiting a diagnostic assessment in order to establish whether a special class/school place is required.<sup>146</sup>

## 7.3 Building Local Capacity

The DE's PBU has stated that it is now general practice to include a SEN Base in the accommodation brief for new school buildings. While this is encouraging, all centres of education will need to provide for a diverse range of needs if the Government's inclusive vision for education is to be realised.

The OCO notes that under the Equal Status Acts all schools, public and private, may not discriminate in relation to:

- The admission or the terms and conditions of admission of a student;
- The access of a student to any course, facility or benefit provided;
- Any other term or condition of participation in the school by the student; or
- The expulsion of a student or any other sanction.

The Minister for Education already has the power to compel a school under the Free Scheme to provide additional places (the s37A process). However, consideration must be given to what other measures are required to ensure that private post-primary schools are

<sup>145</sup> The current pupil to NEPS psychologist ratio is 4,500:1

<sup>146</sup> Dáil Deb, 09 July 2019, available at <https://www.oireachtas.ie/en/debates/debate/dail/2019-07-09/48/>.

set up to accommodate the needs of children with SEN. Ad hoc arrangements, such as the MOU between DE and the Spiritan Education Trust<sup>147</sup> are encouraging but insufficient. Only 435/1435 of new autism classes in the 2020/21 school year were in post-primary schools, - a sector where enrolments are expected to continue to increase until the 2024/25 school year. The DE needs to act to close the gap in provision between primary and post-primary schools as a priority.<sup>148</sup>

The OCO recommends that all schools, and all post-primary schools in particular, 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.

## 7.4 Engaging Schools, Parents and Students

The general measures of implementation of the CRC requires the raising awareness of the rights of the child, which should involve all sectors of society, including children and young people. The realisation of an inclusive education system, in particular, requires an information and awareness raising campaign among the management, staff and pupils at all centres of education throughout the country.

Significantly, inclusion requires a move away from a competitive, curriculum-based educational system, to one which embraces the biopsychosocial model of SEN, integrates vocational skills, and is designed to accommodate all children, save for those whose complexity of needs require a specialist provision, in the same classroom. The biopsychosocial approach, as advocated by NEPS, recognises that humans are complex beings whose functioning is determined by interrelated and interdependent biological, psychological and socio-cultural factors.<sup>149</sup>

While system change may take some time, greater inclusion can begin now. As suggested by the stakeholders consulted, networks could be established across LSPAs between mainstream and special schools in order to foster social connectivity and shared understanding, and to facilitate and support school leaders in this area.

It is also apparent from speaking with parents that many are wary of the Government's inclusive vision for education, fearing that their children will lose the specialised supports that they have fought long and hard to obtain. As stated, the OCO does not advocate devolving specialist provision, either partially or entirely, until such time as qualified teaching and education enhancing therapeutic supports are available to all children within the mainstream.

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<sup>147</sup> See Section 4.6.

<sup>148</sup> See Section 2.2.5. In a press release dated 23rd March 2022, the DE stated that 'In line with these demographics and as part of forward planning, it is envisaged that special classes will be required at most, if not all, post-primary schools', available at <https://www.gov.ie/ga/preasraitis/1895f-ministers-foley-and-madigan-announce-the-establishment-of-a-new-special-school-in-cork-and-provide-an-update-on-the-expansion-of-existing-special-class-and-special-school-capacity-in-cork-and-dublin-to-meet-the-needs-of-children-and-young-people-with-special-educational-needs/>.

<sup>149</sup> NEPS, DES, 'Behavioural, Emotional and Social Difficulties: A continuum of Support - Guidelines for Teachers', 2010.

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

## 7.5 Data

In September 2021, the NCSE reported that it was working to identify special class places for 53 students and special school places for 18 students for 2021/22. It stated that these students were all based in the Dublin region and there were sufficient places in the rest of the country. However, these figures did not include all children attending mainstream school receiving SET supports with a recommendation for a special class, or those who were awaiting an assessment for a special class. The DE needs to have a real time view of the number of children with SEN who do not have an appropriate school placement in order to address this unmet need.

The DE also needs to have visibility in respect of the largest cohort of children with SEN within the education system – those in integrated settings in mainstream primary schools and post-primary schools - who represent approximately 93% of children with SEN,<sup>150</sup> in order to plan for their needs appropriately within an inclusive education system.

The OCO recommends that the DE gather data on the number of children requiring SEN supports in integrated settings in mainstream primary schools and post-primary schools, and include this data within its annual Education Indicators.

The OCO further recommends that the DE publish annual centralised data on the number of children with SEN without an appropriate school placement.

## 7.6 Legislation

Children with SEN should not be precluded from accessing mainstream academic and social development programmes for any reason other than where it is in their own best interests.

The OCO recommends that the DE consider removing the qualification under s2(b) of the EPSEN Act, which states that a child with SEN shall be educated in an inclusive environment with children who do not have such needs, unless to do so would be inconsistent with the effective provision of education for children with whom the child is to be educated.

The OCO is firmly of the view that legislative underpinning for the special educational needs of children is vital to ensuring that children's needs are identified, resourced, and met in a timely and appropriate manner. For this reason, the OCO also 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.

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<sup>150</sup> See Section 2.1.1.

As the Disability Act 2005 and the EPSEN Act were drafted to work in concert with one another, it is essential that there is 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.

Finally, the OCO recommends that the ongoing review of section 37A of the 1998 Act, which empowers the Minister for Education to direct a school to provide additional provision for children with SEN, 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.

## **7.7 Access to Therapeutic Assessments and Supports**

Under an inclusive system, the issue of assessing the child's needs to ensure that appropriate education enhancing therapeutic supports are put in place, will not be displaced. For this reason, the issue of delays in accessing AONs identified in this report, and the OCO's Unmet Needs report<sup>151</sup>, must be addressed. Periodic access to psychological assessments needs to be built in to the current and any future education system so that it is responsive to the child's developing educational needs, and so that assessed supports are provided in a timely manner.

In addition, access to on-site education enhancing therapeutic supports appears to be one of the primary reasons why some parents show a preference for special schools over special classes, or education in the mainstream, despite supporting a vision of inclusion. The HSE has advised the NCSE that children in some areas lose access to HSE supports when they leave a special class/school setting for a mainstream setting but that this will cease as PDS is rolled out. Some stakeholders are sceptical, however, that the roll-out of PDS will, in and of itself, resolve the frictions between education and health in this area.

Moreover, a pilot for in-school therapeutic supports in line with the SIM has received criticism because of the small number of therapists expected to cover a huge number of schools. There is a fear among stakeholders that the in-school therapy service might be another NEPS style service, i.e. extremely difficult to access in practice because of the dearth of psychologists aligned to the service. In circumstances where there is already an acknowledged shortage of psychologists, OTs, and SLTs within the health service, the DE should not be in competition with the HSE. Rather it is imperative that the DE and HSE work in tandem for the realisation of this goal.

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<sup>151</sup> The OCO Report 'Unmet Needs: A Report on the Challenges Faced by Children in Ireland Who Require an Assessment of Their Needs (October 2020)'.



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.

## **7.8 Investing in Teachers**

At present, there is no requirement for teachers working in special education settings to undertake CPD in this area. For inclusion to succeed, there needs to be greater levels of teacher knowledge and expertise in respect of SEN in the mainstream. In addition, an inclusive education system may necessitate further teacher training with a likely move away from a differentiation approach of modifying content and processes to address the needs of each student, towards a Universal Design for Learning, which aims to ensure all students have full access to everything in the classroom, regardless of their needs and abilities.

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.