

September 2024

Two Years On Plan for Places

**Progress Update on Forward
Planning for the Provision of Schools
Places for Children with Special
Educational Needs**



**ombudsman
do leanaí
for children**

Abbreviations

AON	Assessment of Need
CRC	United Nations Convention on the Rights of the Child
CRPD	United Nations Convention on the Rights of Persons with Disabilities
EPSEN Act	Education for Persons with Special Educational Needs Act 2004
ETSS	Educational Therapy Support Service
HEI	Higher Education Institution
HSE	Health Service Executive
ICESCR	International Covenant on Economic, Social and Cultural Rights
LSPA	Local School Planning Area
NCSE	National Council for Special Education
NEPS	National Educational Psychological Service
OCO	Ombudsman for Children's Office
OECD	Organisation for Economic Co-operation and Development
OT	Occupational Therapist
SEN	Special Educational Needs
SENO	Special Educational Needs Organiser
SET	Special Education Teacher
SIM	School Inclusion Model
SLT	Speech and Language Therapist
TSI	European Commission's Technical Support Instrument
UDL	Universal Design for Learning
WTE	Whole Time Equivalent

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Foreword

In June 2022, the OCO published *Plan for Places, Forward Planning for the Provision of Schools Places for Children with Special Educational Needs: A Children's Rights Issue*. Plan for Places set out a series of recommendations for the Department of Education which were focused on strengthening the forward planning process for children with special educational needs ('SEN')¹ and accelerating Ireland's progress towards a fully inclusive education system. This year we decided to examine what, if any, progress has been made to implement our recommendations arising from the report. I must thank the Department again for its openness and co-operation in the preparation of this update.

There is no doubt that the issue of SEN has been prioritised by the Government in recent years, and since the publication of *Plan for Places*. In July 2022 the Government enacted the Education (Provision in respect of Children with Special Educational Needs) Act 2022, which streamlines the process under which the Minister can direct a school to make additional provision for children with SEN and empowers the National Council for Special Education (NCSE) and Tusla to designate a school place for a child. This year, we welcomed the publication of the NCSE Policy Advice on Special Schools and Classes and the commitment in Young Ireland, National Policy Framework for Children and Young People,² to ensuring that all children are supported to avail of inclusive education in mainstream schools. We also welcome the establishment of the Cabinet Committee on Children, Education and Disability as demonstrative of the current Government's commitment to improving the lives of children with SEN.

It is so important to recognise and celebrate progress. However, there is much still to be done. The progress made since 2022 comes from what was a completely unacceptable situation for children with SEN and their families, and one that has unfortunately not gone away. While the Department has gone some way to developing prediction models to anticipate likely demand, each successive September there remains a 'scramble' to find special school/class places for children with SEN, particularly at post-primary level. To date we have not been provided with a coherent and comprehensive plan to ensure that any modelling discrepancies are accounted for, and sufficient school places are available to meet the needs of this knowable student population within their local communities. As An Taoiseach Simon Harris said in the Oireachtas in July - "this cannot be rocket science. People know that when a child is X age, they will require a secondary school place. It seems to me that this has not been happening at an early enough point".³

Lack of data remains a real concern, not only in the planning, but also the monitoring of school places. We must be confident that these places are and remain appropriate to the child's needs. Engagement with children and families has improved but is still not as good

1 The term 'Special Educational Needs' is applied throughout this document as it is the established term in education and in legislation in the area, however, in its observations on the EPSEN Act review the OCO recommended that the Department consult with children with individual educational needs for the purposes of identifying a more inclusive term to replace the use of the word 'special'.

2 Government of Ireland (2023), *Young Ireland: National Policy Framework for Children and Young People 2023-2028*, p. 80.

3 Dáil Éireann Debate, Cabinet Committees, 10 July 2024, available at: <https://www.oireachtas.ie/en/debates/question/2024-07-10/11/>.

as it could be, and children with SEN continue to be excluded from decisions that concern them. The recruitment of psychologists, occupational therapists, and speech and language therapists, remains a big issue. It is clear efforts have been made to address this, but this needs to go further. It needs structural solutions and a new coordinated and integrated approach, in line with the Organisation for Economic Co-operation and Development (OECD)'s recent recommendations to Ireland.⁴

I am concerned also that the Department's forecasting for future provision is overtly focused on increasing provision of additional places in special classes and schools. This approach risks the further entrenchment of an already segregated, dual system and moves us further away from achieving the goal of full inclusion.

While it is acknowledged that change will take time, the Department must move from a nice to have attitude to a must have imperative regarding full inclusion. We must envision a future where all children enter the same school gate and enter a school building that has been structurally transformed to provide all students with an equitable learning experience and an environment that accommodates each student's individual needs.

The Department has commenced work to develop a roadmap for inclusive education. It is imperative that this is paired with work to ensure short-term, immediate measures adopted by the Department are aligned with the NCSE policy advice and Ireland's international children's rights obligations. This roadmap needs to be matched with proactive efforts by the Department to engage with children with SEN, and their families, in conversations about what an inclusive system will look like and how we get there, creating a movement which everyone can get behind.

The concept of inclusive education, and our shared understanding of what inclusive education is, remains an issue and one that we must work on together to resolve in the best interests of children. The OCO is committed to continuing to engage on this issue and we will work with the Department and others to accelerate progress to ensure that all children can attend their local school, regardless of individual need.

⁴ OECD (2024), *OECD Review of Resourcing Schools to Address Educational Disadvantage in Ireland*.

Introduction

“All children growing up together, going to school together, playing together, and helping each other, while learning about their various differences – that is the future I would like to see”

Dr Niall Muldoon, Ombudsman for Children (June 2022).

In June 2022, the Ombudsman for Children’s Office (‘OCO’) published *Plan for Places, Forward Planning for the Provision of Schools Places for Children with Special Educational Needs: A Children’s Rights Issue*. This report is an update on the recommendations made by the OCO in 2022 and gives the OCO’s view on access to school places for children with SEN in 2024.

Plan for Places was published following a period of significant investment in the SEN sector by the Department of Education (‘the Department’) over the previous decade. However, in our report we noted that this growth was a response to individual demand, rather than a concerted effort to plan for, a knowable population of students with SEN already within, and set to enter, the education system.

Significantly, we found that the Department had the data to forecast the population of children with SEN requiring a school place. Despite this, children with SEN were still required to present to the Special Educational Needs Organiser (‘SENO’) who was working with their local National Council for Special Education (‘NCSE’), before Local School Planning Area (‘LSPA’) capacity was put in place by the Department.

The OCO found that the challenges that the Department had in responding to the needs of children with SEN reflected the education system as it was then configured. This was not an inclusive education system as defined under Article 24(2) of the United Nations Convention on the Rights of Persons with Disabilities (‘CRPD’).⁵ As such, it was reasonable for parents to seek out special class and school places, as recommended by their child’s psychologist and reflective of their child’s diagnosis, even though these forms of separation are not in line with the principle of inclusive education.

The recommendations we made in 2022 were designed to eliminate the barriers for children with SEN to enjoying their right to education in their local communities. Our recommendations also encouraged a more child-centered and transparent approach to decision-making in this area. By removing the barriers to accessing education, we can address the challenges within the education system and provide the foundation to build an inclusive education system.

⁵ Article 24(2) of the CRPD states that: In realizing this right, States 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.

In June 2022 the Department of Education and the NCSE welcomed Plan for Places and committed to working with stakeholders to implement the recommendations as quickly as possible. Since publishing Plan for Places, we have had very positive engagement with the Department on progressing our recommendations.

When we published *Plan for Places* there were a number of government-led initiatives also underway, including the anticipated NCSE policy advice, the Ministerial review of Section 37A of the Education Act 1998 (the Section 37A process), and the ongoing Ministerial review of the Education for Persons with Special Educational Needs Act 2004 (the EPSEN Act). There is significant overlap between these initiatives and the recommendations made in the report. We will reference these initiatives where relevant in the updates on our recommendations below and in the appendices.

Since the publication of the original report, the UN Committee on the Rights of the Child, and the UN Committee on Economic, Social and Cultural Rights have examined Ireland's implementation of the UN Convention on the Rights of the Child ('CRC') and the International Covenant on Economic, Social and Cultural Rights ('ICESCR'). In their concluding observations, the CRC Committee expressed concern about the establishment of special classes, and recommended that the State "[e]nsure inclusive education in early childhood education and mainstream schools for all children with disabilities by adapting curricula and training and assigning specialized teachers and professionals in integrated classes, so that children with disabilities and learning difficulties receive individual support and due attention, and ensuring reasonable accommodation within the school infrastructure and for transportation".⁶

The ICESCR Committee similarly recommended that the State "prioritize inclusive education in early childhood education and mainstream schools for all children with disabilities by adapting curricula and training, assigning specialized teachers and professionals to integrated classes so that children with disabilities and learning difficulties receive individual support and due attention and ensuring reasonable accommodation within the school infrastructure and for transportation".⁷

6 Committee on the Rights of the Child (2023), *Concluding observations on the combined fifth and sixth periodic reports of Ireland*, CRC/C/IRL/CO/5-6 (28 February 2023), para. 37(c).

7 Committee on Economic, Social and Cultural Rights (2024), *Concluding observations on the fourth periodic report of Ireland*, E/C.12/IRL/CO/4 (20 March 2024), para. 53(b).

Update on OCO 2022 Recommendations

2022 Recommendation 1: Forward Planning

a. The OCO recommends that home tuition should operate as it is intended to operate, namely as a time limited emergency measure and tool of last resort.

b. The OCO recommends that the Department 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.

Following on from our *Plan for Places* report, one of the Department's *Annual Statement of Priorities 2024* is to: 'Ensure that sufficient special class and special school provision is available to meet the needs of children with special educational needs via effective forward planning, the establishment of new special schools or places, the implementation of the additional budgetary measures for special schools, and the progression of a range of other actions to address the particular challenges facing special schools' for completion by Q4 2024 (Goal #28).⁸

The Department informed the OCO in August 2024 that the NCSE was confident that there are sufficient places to meet the needs of children known to them for September 2024, and that planning for 2025, and beyond, is already well underway. Figures provided to the OCO on 2nd September 2024 suggest that there are still 126 children without a school place.

According to the Department:

- 1,300 new special classes have been sanctioned and seven special schools established over the last four years. This includes 390 new special class sanctions for the current 2023/24 school year and the establishment of two new special schools.
- For the coming 2024/25 school year, the NCSE have sanctioned 408 new special classes nationwide: 290 at primary and 118 at post-primary level (equating to over 2,400 SEN places in mainstream schools). This brings the overall number of special classes nationwide to 3,333 for the 2024/25 school year: 2,337 at primary level and 996 at post-primary level.
- A further four new special schools under the patronage of local ETBs are on course to open in Limerick, Meath, Wexford and Kildare during the 2024/25 school year, with plans to transition the children to the new schools on a phased basis from early Autumn 2024.

⁸ Department of Education (2024), *Forbairt - Annual Statement of Priorities*, p. 9.

The Department estimated that almost 1,200 additional special classes across primary and post-primary, and a further 900 special school places, will be required over the next three years. The Department acknowledged the need to increase special class capacity in post-primary schools as being particularly acute. According to the Department, the forecasting model is designed to ensure that the NCSE plan for sufficient classes, and have these classes sanctioned, ahead of actual demand being verified.

OCO 2024 view

To date, we have not been provided with a departmental 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, and to reduce the need to avail of home tuition. However, according to the Minister for Education's responses at an Oireachtas debate on 2 July 2024, the number of children with SEN accessing the Home Tuition Grant Scheme, because of the lack of appropriate school places, rose from 69 in the 2021/22 school year to 135 in the 2023/24 school year.⁹ These figures denote regress rather than progress on the part of the Department.

While the OCO notes the range of separate, positive initiatives undertaken by the Department, as detailed below, each successive September there is a 'scramble' to find special school/class places for children with SEN who have not been accounted for in the Department's modelling. To ensure that there are sufficient special school/class places for children with SEN, the Department must move from predicting to comprehensively planning for this knowable student population.

Forecasting

In June 2023 the Department shared a document entitled '*Forecasting the requirements for additional special class places in mainstream primary and post-primary schools and for additional places in special schools (10/01/23)*' with the OCO. It has since been published online.¹⁰

The new Special Class Forecasting Model projected the demand for special classes for students with autism in mainstream primary and post-primary schools for the period 2023 to 2025. It noted that the demand for special class places related primarily to autism specific special classes and that there was either no growth, or too small a growth to identify a trend, in other need areas.

While the report noted that academic research in autism is now showing a prevalence rate that is much higher than previously suggested, with most recent studies suggesting a rate of 3.38%, the forecasting model is based upon identified, and likely future identified, need.

According to the report, the projected enrolments of students in autism specific special classes in primary schools was arrived at by applying a rate of identified need to total projected enrolments for the years 2023 to 2025. This projection model assumes that rates by county would change in line with national growth, corresponding to an increase of

⁹ Dáil Éireann Debate, Home Schooling, 02 July 2024, available at: <https://www.oireachtas.ie/en/debates/question/2024-07-02/227/>.

¹⁰ NCSE and Department of Education (2024), [Review of Special Educational Needs provision and forward planning](#).

0.26% for the next three years to 2025. The need for additional classes was then mapped out for each successive year, based on population size, rate of identified need, and the overall available capacity of current provision. These projections prioritised LSPAs where there are sizable populations but limited or no current provision.

The report forecasted that 2,157 total autism specific special classes would be required at primary level by the 2025/2026 school year. It therefore projected a need for a further 693 of these classes over the three-year period to meet this need, increasing from the 1,460 classes in place in the 2022/2023 school year.

With respect to post-primary schools, using the modal age of enrolment in autism specific special classes in primary schools for each county, an estimate was made of the maximum number of students likely to present with a demand for a place at post-primary. The results were then compared with the standard projection results, and the higher of the two values was used. The report forecasted that 1,309 total autism specific special classes would be required at post-primary level by the 2025/2026 school year. It therefore projected a need for a further 656 of these classes over the three-year period to meet this need, increasing from the 653 classes in place in the 2022/2023 school year. The report stated that the forecasting for primary and post-primary would be revised and updated in line with any data from special class developments in the 2023/2024 year.

In June 2023, the Department also informed the OCO that, in addition to the special class requirements outlined above, a further 300 special school places would be required each year for the three years covered by the model.

The report stated that the model was reviewed by an expert group with representatives from Mary Immaculate College, UCD, and the National Disability Authority, and there was broad agreement on the overall levels of forecasting within the model. It is unclear whether children or people with disabilities were included in the expert group.

The Department told us that it will examine its forward planning process in its engagement with the Irish Government Economic and Evaluation Service.

OCO 2024 view

The Department has made huge strides in the number and geographical dispersal of additional school places and special classes, and we commend them for that. However, the OCO is concerned that children with general SEN, outside of the autism population, are not represented in the new Special Class Forecasting Model. We are also concerned that enduring data collection deficiencies are likely to hamper the model's effectiveness (see recommendation 5 below). For example, an assumption within the model is that post-primary special class demand is primarily influenced by students with SEN transitioning from primary special classes. However, it is often the case that children with SEN manage well in the mainstream environment at primary level but then struggle in the busier post-primary environment. This population of students are underrepresented in the data. It is perhaps due, in part, to these modelling deficiencies, that the annual 'scramble' for places persists.

Internal Capacity Building

According to the Department, it added a number of new posts to its Special Education Section, including four Principal Officers, six Assistant Principal Officers and six Higher Executive Officers in 2023 and 2024. The Department stated that it has also made a significant investment in the NCSE, with close to €13m in additional funding provided to increase staffing levels by over 50%. This includes funding for 70 new advisory positions. The Department is satisfied that the NCSE will have recruited a full complement of staff by September 2024. In August 2024 it informed the OCO that there were 113 SENOs in place, with a further 7 commencing in September 2024.

In addition, the Department informed the OCO that Budget 2024 included an investment of nearly €8.7 million to support service development within the NCSE to ensure that it is fit for purpose and able to deliver real and meaningful supports for children with SEN.

OCO 2024 view

The OCO must again acknowledge the huge investment being put into this section of the education system by the Department and via the NCSE. However, given the ongoing examples of parents not being able to get a school place for their child (126 children as of September 2024), that investment is still not yet paying off for our students with SEN. We want to see the new model's broad aims translated into specific and streamlined supports for children with SEN and their families.

SET and SNA Planning Initiatives

In June 2023, the Department informed the OCO that the Special Education Teacher ("SET") allocation model, including the data and indicators used to inform the distribution of SET resources, was being reviewed in advance of the 2024/25 school year, to ensure that resources are allocated fairly and transparently across all primary and post-primary schools. In September 2023, the Department stated that teacher supply, across the board, is an acute difficulty in urban areas, and that the Special Education Section is part of the Secretary General's teacher supply implementation group. The Department told us they introduced measures designed to help special schools in Dublin to secure SETs on a one-year fixed term basis in response to this shortage.

The Department also said that there is no issue recruiting SNAs, and a new internal unit had been created to support the workforce planning of SNAs on issues such as initial qualifications, continuous professional development, and closer integration into school communities.

In March 2024, the Minister of State for Special Education and Inclusion wrote to the Ombudsman for Children stating that Budget 2024 had provided additional funding for teachers and SNAs to staff another 400 new special classes for the incoming 2024/2025 school year. According to the Minister ‘this level of expenditure and resourcing, which provides almost 40,000 teachers and SNAs in our schools dedicated solely to special educational needs, provides us with an excellent base upon which we can achieve, over time, a more inclusive education system’. The Department further advised in July 2024 that there will now be over 41,500 teachers and SNAs from 2024.¹¹

In June 2024, the Department stated that there will be 14,600 SETs supporting mainstream classes in the 2024/25 school year, which is an increase of 1,000 since the end of the 2021 school year.

OCO 2024 view

The Department deserves credit for moving to professionalise the role of the SNA and to increase their numbers as well as those of SETs. It appears that there are no difficulties in recruiting SNAs, or engaging teachers willing to upskill in the area of SEN (see also the response to recommendation 8 below). Therefore, the Department must continue to invest in this critical workforce as the education system moves away from a differentiation approach towards embedding a Universal Design for Learning approach (as espoused in the NCSE policy advice), ensuring that all students have full access to everything in the classroom, regardless of their needs and abilities. This will ultimately lead to ALL teachers being able to teach ALL students in an inclusive system.

¹¹ Dáil Éireann Debate, Special Educational Needs, 11 July 2024, available at: <https://www.oireachtas.ie/en/debates/question/2024-07-11/193/>.

2022 Recommendation 2: Access to Psychological Assessments in the Short-Term

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

Following the *Plan for Places* report, the Department's Annual Statement of Priorities 2024 sets out to: 'Develop a structure and working protocol, through which the NEPS and NCSE progress a seamless response to promote better outcomes for children and young people' for completion by Q4 2024 (Goal #24).¹²

According to the Department, funding for an additional 54 psychologists to NEPS was sanctioned in 2023. This initiative was intended to bring the total number of psychologists available via NEPS to 225 and the pupil to NEPS psychologist ratio down to 2,900:1 from 4,500:1 two years ago. However, in August 2024 the Department reiterated the difficulty - felt across public services - in recruiting additional psychologists, noting 60 vacancies at that time. The Department stated that it is actively engaging with the Public Appointments Service to maximise the number of psychologists being recruited, and a panel of 24 candidates has recently been created – three of these panel members will take up employment before the end of August and two will commence in November 2024. In addition, the Department stated that 60 Trainee Educational Psychologists are now in receipt of a bursary from NEPS and are expected to fill vacancies when they graduate. It stated that NEPS has assigned a member of its senior management team responsibility for Workforce Planning and Lifelong Learning and part of that role includes maximising the numbers of psychologists being recruited.

OCO 2024 view

While the expansion of NEPS is encouraging, significant issues with the recruitment of psychologists remain, and structural solutions need to be sought. The Department has stated that it is progressing work to remove the necessity for an updated report for children transitioning from a special class at primary to a special class at post-primary by September 2025. However, this initiative will not assist the approximately 9,924¹³ children still awaiting a diagnostic assessment under the Assessment of Need ('AON') process every year. The AON is most often used to establish whether or not a special class/school place is required in the first place. Therefore, any children on such a waiting list are NOT included in the figures used to forecast the number of places required for this cohort. Until the HSE effectively addresses this backlog in the AON process, and until this diagnosis-led system is replaced by a needs-led model of inclusion, it is important that the Department ensures effective access to an education for these students. As stated in the original report, the

¹² Department of Education (2024), *Forbairt - Annual Statement of Priorities*, p. 9.

¹³ Letter from HSE to Deputy David Cullinane re: PQ 13920/24, 3 May 2024, available at <https://www.hse.ie/eng/about/personal/pq/pq/2024-pq-responses/april-2024/pq-13920-24-david-cullinane.pdf>.

Department needs to ensure effective access to a psychologist via the NEPS, SCPA or other service (for example, the new Educational Therapy Support Service (ETSS)) for all children awaiting a diagnostic assessment in order to establish whether a special class/school place is required in the first instance.

2022 Recommendation 3: Building Local Capacity

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

According to the Department, if there is insufficient special class accommodation in an area, the Department has put a SEN reconfiguration process in place which streamlines the delivery of the accommodation via a simplified application process, project manager oversight, and a framework of contractors. Alternatively, if there is no available accommodation capacity in an area, accelerated delivery of new special class accommodation could be achieved by using the Department's Modular Accommodation Framework. In addition, the Department told us that there is a new project manager to assist schools in procuring and delivering modular accommodation solutions. The Department said that, where appropriate and feasible, the special class facilities are provided within the existing school accommodation and the displaced mainstream classrooms are located in the new modular accommodation. Regardless of the delivery method, the Department aims to deliver purpose-designed SEN facilities that meet the needs of the school, including appropriate ancillary facilities, in a manner which represents a pragmatic and sustainable solution. The Department informed us that it had also used the Climate Pathfinder Programme to transform existing accommodation at two special schools.

They said that their current approach is to co-locate special schools on the campuses of existing primary and/or post-primary schools so as to maximise the opportunities for inclusion and integration e.g., Sonas Special School is co-located with Gaelscoil and Gaelcholáiste Carrigaline in Co. Cork, and St. Mary's Special School in Mullingar, Co. Westmeath (currently under construction) is being co-located with St Finian's College. According to the Department, four new special schools are being established for the 2024/25 school year and interim accommodation arrangements for these schools are being put in place.

In June 2023, the Department provided the OCO with a copy of a letter sent to all post-primary schools (including fee-charging post-primaries) in October 2022 to advise them of the need to begin planning to provide additional special classes, with approximately four special classes required in each post-primary school in the next three to five years. The Department stated that it was working with the NCSE and other key stakeholders, including School Patrons and Management Bodies, to ensure this provision. In June 2024, the

Department informed the OCO that following this correspondence two new special classes were established amongst fee-charging post-primary schools for the current school year 2023/24.

In August 2024 the Department informed us that it was their policy that SEN provision should be made in State funded recognised schools in the first instance (schools in the ‘free scheme’). It stated that it is only where there is insufficient capacity in the free scheme schools that the Department will provide resources for special classes in fee charging schools. Free scheme schools are fully funded and supported by the Department which provides for teachers, SNAs, professional development and professional supports for staff, capitation, and where appropriate enhanced capitation, assistive technology, school transport, and building and equipment supports.

According to the Department, 419 free scheme post-primary schools provided 871 special classes in the 2023/24 school year. The Department stated that there are approximately 50 fee-charging post-primary schools. Of these, one school opened two special classes in September 2023 with both classes catering for pupils with autism.

For the coming 2024/25 school year, 452 free scheme post-primary schools will provide 994 special classes, and one fee-charging school will provide two special classes.

OCO 2024 view

It is significant that the Department has agreed to provide the same level of support and special education related funding for all post-primary schools. However, it is concerning that only two new special classes were established in fee-charging post-primary schools as a result of their June 2023 appeal even though four special classes will be required in every post-primary school in the country within five years – a total of 2,892 special classes based on the existing figure of 722 post-primary schools. To address the acute shortfall in special classes at secondary level, the Department must be much more proactive in its approach.

In addition, their policy that SEN provision should be made in State funded recognised schools in the first instance is at odds with their own stated inclusion goals. All children should be able to attend school near their homes and with their peers. The Department must ensure that the responsibility of providing an education to children with SEN is spread across all schools, regardless of whether the school is private, or state funded; whether the school is considered to be “academic” or “technical”; who the school patron is; or whether the school is located in an affluent or socio-economically disadvantaged area.

2022 Recommendation 4: Engaging Schools, Parents and Students

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

The Department's Student Participation Unit was established in April 2023. According to the Department, the Unit promotes the participation of children and young people in the development and implementation of departmental policy. An expert group, which includes student representation, was established to advise the Department on how to progress the work of the Unit, with Professor Laura Lundy, Professor of Education Law and Children's Rights at Queen's University, acting as Chair.

The expert group is examining how the Department fulfils its obligations under the CRC and the *National Strategy on Children and Young People's Participation in Decision-Making*. This includes identifying existing structures, systems, processes, and practices in place across the Department and identifying any gaps in how the Department meets its obligations. As part of this work, an extensive consultation process with children and young people has taken place, and the Unit has consulted with 174 children and young people from diverse backgrounds and education settings including children with SEN, Traveller and Roma children and children from Ukraine.

This Unit is unique, in that, to date, other forums, such as the *Consultative Forum for Special Education* and the *NCSE Consultative Forum*, consisted of adult advocates and failed to incorporate the CRC principle of child participation under Article 12, which obliges the State to seek the views of children on all matters affecting them and give due weight to their views. The Department informed the OCO in June 2024 that a Steering Committee established to progress the development of a roadmap for inclusion based on the NCSE policy advice includes representation from the Irish Second Level Students' Union. The Department also intends to organise a consultation with learners with SEN in September as part of a wider consultation process.

OCO 2024 view

The Department have been extremely proactive in pursuing the concept of a Participation Unit and we commend them for that. As with all decisions concerning education, we look forward to the regular and ongoing participation of children with SEN, which should be integral to any strategic group formed as a consequence of the *NCSE Policy Advice on Special Schools and Classes*. Children with SEN should also be included throughout the development, implementation and evaluation of actions to move towards an inclusive education system.

2022 Recommendation 5: Data

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

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

In June 2023, the Department said that it recognised the importance of good data collection and had significantly broadened its use of data resources to strengthen its forward planning of special education provision. They also said that the NCSE is adopting the Department’s Geographic Information Management System which will further enhance the planning and coordination of SEN provision through improved data sharing arrangements. No further information was provided on progress in respect of the data specific recommendations documented above.

The Department advised the OCO in July 2024 that it had recently established a working group which will be tasked with developing a framework by which outcomes for children with SEN are recorded and reported at school and at system levels.

OCO 2024 view

The lack of data on children with disabilities has been noted by the CRC Committee who, in their February 2023 Concluding Observations on Ireland, recommended that the State “[s]trengthen the collection and analysis of data on children in disadvantaged situations including children with disabilities...”¹⁴ The absence of a centralised application process means that there is no centralised data on the number of children with SEN seeking education placements available to the NCSE, and effective central planning is much more difficult to achieve.¹⁵

In addition, while the stock of special class and school places coming on stream is increasing, the Department is not collecting and monitoring data on the quality of such placements. They are also not monitoring whether these placements are, or continue to be, the most appropriate educational setting for meeting the child’s needs and maximising their educational outcomes. This can result in children with SEN becoming invisible to the system once a place is secured, regardless of the placement’s appropriateness, the challenges associated with the school setting, or its distance from their locality, which

¹⁴ Committee on the Rights of the Child (2023), *Concluding observations on the combined fifth and sixth periodic reports of Ireland*, CRC/C/IRL/CO/5–6 (28 February 2023), para. 37(c).

¹⁵ It is understood that a centralised admission process for post-primary schools will be introduced in a number of high-pressure areas nationwide for the 2024/5 school year. This could present the Department with an opportunity to test the centralisation of SEN admissions also. See further: RTE, Centralised school entry plan to be trialed in high-pressure areas, 8 August 2024. Available at: <https://www.rte.ie/news/education/2024/0808/1463919-school-entry-plan/>.

is often considerable. In the 2023-24 school year, more than 19,800 students with SEN required use of the School Transport Scheme to attend their school placement.¹⁶

2022 Recommendation 6: Legislation

a. The OCO recommends that the current review of the EPSEN Act consider whether sections 3 to 13 should be commenced or amended, or whether new legislation is required to ensure that individual educational plans for children with SEN are rights based, child-centered and inclusive.

b. The OCO recommends strong engagement between the Department 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

In June 2023, the Department told us that a Steering Group, Working Group and Advisory Group were overseeing the ongoing review of the EPSEN Act to ensure that the legislation reflected the lived experiences of students and families. They said that over 28,000 online survey responses were received as part of the consultation process, and that significant efforts were being made by the Department to consult with students with SEN and their families. This included an easy access survey designed to accommodate individuals who may face challenges with traditional survey methods. The Department said that the review should be concluded by Q3 2023 with the delivery of a report containing recommendations. The Department stated that any recommendations to amend the existing legislation would need to undergo parliamentary scrutiny.

While the review report has yet to be published, the Department's *Annual Statement of Priorities 2024* has the targeted completion date for the review of the EPSEN Act as Q3 2024 (Goal #33).¹⁷ The Department informed the OCO in June 2024 that it intends to conclude the review in Q3 or Q4 of 2024.¹⁸

The OCO recommends that the ongoing review of section 37A of the 1998 Act consider whether the process outlined therein is unduly onerous to meet the presenting needs of children with SEN in a timely manner and, as such, whether section 37A requires amendment.

¹⁶ Dáil Éireann Debate, School Transport, 11 July 2024, available at: <https://www.oireachtas.ie/en/debates/question/2024-07-11/88/>.

¹⁷ Department of Education (2024), <https://assets.gov.ie/289245/858af436-5bbc-4806-9b56-3dec3fea555d.pdf>, p. 10.

¹⁸ For a summary of the OCO's submission on the EPSEN Act review see Appendix 1.

Immediately following the publication of *Plan for Places*, the Government introduced emergency legislation in the form of the *Education (Provision in Respect of Children with Special Educational Needs) Act 2022* (the 2022 Act), commenced in July 2022. The legislation primarily focuses on streamlining the Section 37A process via section 67, by which the Minister can compel a school to make provision for children with SEN in their area, and mandating school patrons, boards of management, and schools to cooperate with the NCSE.

At the time of enactment, the OCO observed that the 2022 Act did not include a definition of what the ‘area concerned’ is and provides no guarantee that, if a place is secured for a child, it will be in their locality. Although not guaranteed in the Act, the OCO noted that it is intended that the revised section 37A process will allow the Minister to issue directions to schools within a period of six to eight weeks after the receipt of a detailed report from the NCSE.¹⁹

According to the Department, the NCSE has instigated two section 67 processes at four schools for individual children with SEN. The Department has stated that it is fully committed to using the legislative processes, as required, where all reasonable efforts have been made to support the school in making the required provision and all opportunities to avoid use of legislation exhausted. There is also anecdotal evidence that the presence of the legislation has encouraged school compliance.

OCO 2024 view

The Government, with support from the opposition, moved very quickly to bring in this legislation after our report was issued in 2022. The Department must now rigorously employ all the resources it has at its disposal – including its powers under section 67 – to ensure that special classes are opened and evenly spread across all primary and post-primary schools, new and established, so that the needs of children with SEN are appropriately met within their local communities.

¹⁹ Seanad Éireann debate, Education (Provision in Respect of Children with Special Educational Needs) Bill 2022: Second Stage, 11 July 2022, Vol. 287, No. 4, available at: <https://www.oireachtas.ie/en/debates/debate/seanad/2022-07-11/2/>.

2022 Recommendation 7: Access to Therapeutic Assessments and Supports

The OCO recommends that the Department 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.

In June 2023, the Department informed the OCO that the HSE had developed a programme for the reinstatement of 136 Whole Time Equivalent ('WTE') posts to special schools and that the equivalent of 41.5 WTE have been reassigned to support special schools. In addition, 55 WTE have been recruited to dedicated special school posts. This was in line with the Government's priority to deliver comprehensive on-site health and social supports to special schools.

In the September 2023 meeting with the OCO, told us that it supported the co-professional delivery of supports to children but that the School Inclusion Model ('SIM') had to be limited to one CHO area due to the challenge of accessing occupational therapists (OTs) and speech and language therapists (SLTs).²⁰ The Department has been engaging with colleagues in different government departments and agencies, including the Department of Children, Equality, Disability, Integration and Youth and the HSE, regarding the need to increase therapy supports and services supply.

In June 2024, the Department announced the establishment of the Educational Therapy Support Service (ETSS), which will see the appointment of Occupational Therapists, SLTs and behaviour practitioners to the NCSE on a permanent basis. These therapists will work with teachers in classrooms to collaboratively design and deliver educationally relevant interventions for students with a range of needs. They will also work in partnership with school communities, NCSE colleagues and, where appropriate, NEPS and HSE professionals.

The OECD's recent review of resource allocation to address educational disadvantage in schools in Ireland flagged shortcomings in the assessment of, and provision of services for, student needs in all schools, and particularly in DEIS schools where a higher proportion of students have special educational needs.²¹ The review highlighted the need to strengthen the planning, coordination and integration of educational services with health and therapeutic service provision to increase support for schools and families in meeting students' needs.

OCO 2024 view

The recent establishment of the new Cabinet Committee on Children, Education and Disability is demonstrative of the current Government's commitment to improve the lives of children and young people with disabilities and SEN. However, the challenges of co-ordination, recruitment, and retention of in-school OTs and SLTs emphasises the need for

²⁰ The SIM project consisted of 39 sanctioned posts for SLTs and OTs.

²¹ OECD (2024), *OECD Review of Resourcing Schools to Address Educational Disadvantage in Ireland*.

a joint working protocol between the Department and the HSE with respect to rolling out these direct therapeutic interventions in all education settings.

2022 Recommendation 8: Investing in Teachers

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

In June 2023, the Department informed the OCO that the Minister had recently published a *Policy Statement for Initial Teacher Education* which sets out a vision for teacher training for the remainder of this decade. It stated that the Minister has asked the Department and the Teaching Council to consider whether student teachers could spend at least one of their school placements in a special education setting. The Department said that engagement between the Department, the Teaching Council, higher education institutions ('HEIs'), and school management bodies took place in June and July 2024. The Department informed the OCO that it is clear that there is a strong commitment to inclusive education, but it was also evident that the practical impact of a mandated placement in a special education setting would vary across providers, with different considerations at play in primary and post-primary schools.

The policy statement also requests the Teaching Council to provide a report on how inclusive education in *Céim* (the Standards for Initial Teacher Education) is helping to prepare student teachers to teach pupils of all abilities and in all settings, including special education settings. It also establishes a consultative forum for collaboration between providers and policy makers on the achievement of learning outcomes from initial teacher education programmes, with a focus on inclusive education.

The Department said that it provides annual funding for 295 teachers to undertake a Post-Graduate Diploma Programme of Continuing Professional Development for Special Education Teachers in a number of HEIs and for 18 teachers to undertake Dublin City University's post-graduate certificate in the Education of Pupils on the Autism Spectrum for teachers working with pupils with autism. Through the NCSE, the Department stated that it also funds places for 25 teachers on St Angela's post-graduate certificate/diploma programme of Continuing Professional Development for teachers working with students with autism in Sligo. In addition, the NCSE have secured the services of Middletown Centre for Autism to deliver support to school staff in special classes for autistic children. The Department acknowledged that the state-funded courses were generally oversubscribed.

The Department stated that in November 2022, January 2023, and February 2023, it held meetings with the HEIs to discuss the current provision, trends in inclusive practice, and the possibility of extending capacity in the event of a new funding model being agreed.

OCO 2024 view

The Department has shown strong commitment to this goal, but there is some way to go to ensure that all teachers, new and existing, engage in specialist SEN and inclusion training on an annual basis as recommended. There is a clear demand among teachers to increase their knowledge and skill level in this area and the Department must capitalise on this critical resource.

Progress Towards an Inclusive Education System

As detailed above, the focus of the Department has been to increase the stock of special class and school places, which may have the effect of further entrenching segregation, in the absence of a comprehensive plan to achieve stated inclusion goals.

This 'inclusivity lag' continues to effect children's educational experience. For example, in March 2024, AsIAM completed a survey representative of 1700 autistic people. According to feedback given, 56% of respondents said they did not find the education system to be inclusive or accessible for autistic people, 55% had experienced the use of restraint and seclusion in the classroom, and 29% of the autistic children surveyed had experienced reduced timetable without the consent of a parent.²²

The OCO has welcomed the NCSE policy advice, which was submitted to the Department in January 2023. In June 2023, the Department informed the OCO that, if accepted, the policy advice will inform the Department's decisions about the future direction of special education policy. The Department stated that the adoption of a fully inclusive education system, which was aligned with the CRPD, will require a whole system recalibration and, as such, will involve extensive consultations with all of the Department's stakeholders and partners in education.

In the September 2023 meeting with the OCO, the Department stated that it would like to see the NCSE policy advice fully implemented, with mainstream and special education provision on the same campus. According to the Department, enabling every child, whatever their need, to enter their local school through the same front gate is one of the strongest principles in the policy advice.

After receiving this policy advice, the Department's *Annual Statement of Priorities 2024* set out to: 'Consult and engage with education stakeholders on key issues including access to therapy services and building school and teacher capacity in areas of special education provision. Use this engagement to inform the development of a roadmap for a system level response to the NCSE policy advice on inclusive education' to be completed by Q4 2024 (Goal #25).²³ The Government also published *Young Ireland: National Policy Framework for Children and Young People 2023-2028* in November 2023, which includes a commitment to ensure that all children are supported to avail of inclusive education in mainstream schools in line with the CRC Committee's recommendations.²⁴

²² AsIAM (2024), *Same Chance Report 2024*, p. 18.

²³ Department of Education (2024), *Forbairt - Annual Statement of Priorities*, p. 9.

²⁴ Government of Ireland (2023), *Young Ireland: National Policy Framework for Children and Young People 2023-2028*, p. 80.

In January 2024, the NCSE published its landmark Policy Advice on Special Schools and Classes. It reiterated many of the OCO’s recommendations.²⁵

The policy advice acknowledged that the “change process will require time and the development of a detailed multi-year implementation plan. Progressive realisation of this plan will firstly involve a clear statement of intent, followed by phased implementation of the various elements of the plan over a number of years. The plan should address areas such as initial teacher education and ongoing teacher professional learning programmes, funding, transport, school buildings, teacher and SNA allocations, and school and student support services. Engagement and communication with stakeholders will be critical for the successful development and progressive realisation of the plan”.²⁶

In the September 2023 meeting with the OCO, the Department confirmed that Ireland had been awarded significant funding by the European Commission via its Technical Support Instrument (‘TSI’) programme to implement the multi-country *Fostering Inclusive Quality Education in Finland and Ireland* project with support from the European Agency for Special Needs and Inclusive Education.

In March 2024, the Minister of State for Special Education and Inclusion wrote to the Ombudsman for Children stating that, further to the NCSE policy advice “as a long-term ambition, [the] Department will seek to develop new school campuses which will cater for all students and enable them to complete their primary and post-primary education together”. She stated that “reform measures, which may be necessary in these areas, will be the subject of extensive consultations and engagement with the education stakeholders, other Government Departments and agencies in the coming months”. She noted that, via the TSI funding, the European Agency for Special Needs and Inclusive Education will support Ireland to progress the development of a model of inclusion for the school system, considering the findings and recommendations contained in the NCSE policy advice.

The Department stated that there have already been extensive consultations with education stakeholders and advocacy groups in relation to the development of a roadmap for inclusion, and it is trialling a number of initiatives aimed at developing inclusive practices in schools and linking special and mainstream schools.

OCO 2024 view

While consultation is essential, the OCO is concerned that the implementation of the NCSE policy advice will proceed at a pace similar to the EPSEN Act review, which has been ongoing for almost four years now and is not close to reaching a conclusion. Meeting the needs of children within the education system today is essential, however, the continued entrenchment of a dysfunctional parallel system, will undoubtedly delay the desegregation and inclusion goals at the heart of the NCSE policy advice. Therefore, the Department needs to move from a ‘nice to have’ attitude to a ‘must have’ imperative with all children, regardless of their educational needs, receiving quality, inclusive education in their local school.

25 Government of Ireland (2023), *Young Ireland: National Policy Framework for Children and Young People 2023-2028*, p. 80.

26 NCSE (2024), *An Inclusive Education for an Inclusive Society Policy Advice Paper on Special Schools and Classes*, p. 15.

Appendix 1

With respect to the EPSEN Act review, in March 2023 the OCO made a submission to the Department in which we recommended that:

- A final decision on the outcome of the current review of the EPSEN Act should not occur until the Department has afforded children with SEN appropriate opportunities to share their views.
- The Department integrate into its review the collection of sufficient and reliable data on children with SEN, disaggregated to enable the identification of disparities in the realisation of their right to education as compared with other children, to inform decision-making about prospective amendments to the EPSEN Act.
- The reference to ‘inclusive environment’ in s.2 of the EPSEN Act should be changed to ‘inclusive learning environment’ and should provide for an expansive definition of what an inclusive learning environment is, in accordance with Article 24 of the CRPD and the CRPD Committee’s General Comment No 4 (2016).
- The definition of SEN in the EPSEN Act should be amended to acknowledge that the needs of children with disabilities arise within the context of an education system, which must move away from standardised learning towards the vision of inclusive learning as enumerated in the CRPD.
- The EPSEN Act should be amended to emphasise individual educational needs within an inclusive learning environment, rather than emphasising difference through use of the word ‘special’.
- The qualification under s.2(b) of the EPSEN Act should be removed, such that, children with individual educational needs 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 under s.2(a) of the EPSEN Act.
- Through this current review process, the Department ensures that children with individual educational needs have their right to access an independent appeals mechanism affirmed.
- Having regard to Article 42A.1 of the Irish Constitution, the United Nations Convention on the Rights of the Child and the CRPD, the OCO recommends that the Department should consider the insertion of a section setting out guiding principles, which must inform the interpretation and implementation of the EPSEN Act in its entirety.
- Sections 3-13 should be amended to ensure that children with individual educational needs are able to express their views independently and to participate actively in the education assessment and planning process, such that (1) the child may notify the school principal that they are not benefiting from the standard education programme and/or request that the NCSE carry out an assessment of their SEN, (2)

the child's involvement in the preparation of the Individual Education Plan is not just facilitated, but their views sought as a member of the planning 'team' and those views form part of the content of the education plan, (3) the child is notified and given a copy of the education plan and review report, and (4) the child may appeal decisions in respect of their assessment and education plan directly to the Appeals Board.

- The review of the EPSEN Act needs to have due regard to the relevant provisions of the Disability Act 2005 to ensure the timely assessment, transfer of responsibilities, and delivery of supports to children within inclusive learning environments.²⁷

²⁷ Ombudsman for Children's Office (2023), *Department of Education Review of the Education for Persons with Special Educational Needs Act 2004: Observations by the Ombudsman for Children's Office*

Appendix 2

The NCSE policy advice recommendations for the progressive realisation of an inclusive education system are summarised below:

- The NCSE recommends the progressive realisation of the Irish inclusive education system over time where all local schools are enabled to educate all students in their community in line with students' strengths and abilities.
- The NCSE recommends the establishment of a strategic planning group led by the Department and the NCSE to further develop the Irish education system through the progressive realisation of the vision of an inclusive school system.
- The SIM should be expanded nationally to ensure that all schools in the country have access to an in-school therapy service.
- A Planning Group should be established by the Department and the Department of Further and Higher Education, Research, Innovation and Science to examine the implications of expanding the education sector workforce resulting from the recommendations to additional in-school therapeutic and psychological supports as part of the SIM.
- NEPS should be significantly expanded to ensure that all schools in Ireland have access to a comprehensive educational psychology service to support the inclusion and participation of all students, including those with complex special educational needs.
- The Teaching Council should set out standards for the knowledge, skills, and competencies required by all teachers to teach all students, including students with special educational needs so they can provide an education appropriate to all of their students.
- Teacher Education should work with the NCSE and other organisations and services that provide professional learning programmes for teachers to develop a coordinated national professional development programme in inclusion, Universal Design for Learning (UDL) and disability awareness.
- The Department and stakeholders should develop a framework to support decision making on student placement and review of student placement based primarily on student need.
- To support the implementation of the Department's building design and construction guidance, a strategic group should develop guidance on inclusive education spaces focusing on creative, flexible, and innovative use of space in schools to support all students, informed by universal design.

- The Department should lead the development of a national system to support schools to determine, measure and report on student progress that identifies measurable outcomes to enable students to develop skills for life, transition to adulthood, and to promote students' active participation in school, home, and community life.
- The Department's School Transport Section should draw up and put into effect necessary changes to the School Transport Scheme to support students with disabilities to attend their local schools.
- Further guidance should be provided to school leaders on the utilisation and deployment of school staff in small, medium, and large schools, in order to support the management and deployment of the range of supports available to schools to meet the inclusive educational needs of all students, including those with special educational needs.
- The Department should enhance guidance to schools to ensure that teachers are competent and supported in assessing students' strengths and needs, identifying any additional supports required, and accessing and utilising those supports in an effective way based on student needs.
- The Department should lead the development of an inclusive assessment framework to support the identification of the learning strengths and needs of students who will continue to require highly specialised supports and provision.
- The Department and the National Council for Curriculum and Assessment should further review curricula to ensure that a UDL approach underpins its development, to ensure it is sufficiently flexible, and that schools have the autonomy to adjust programmes to meet needs of their students at all levels.
- The NCSE recommends that the Department access assistance and support from the TSI managed and administered by the European Commission's Directorate General for Structural Reform Support.²⁸

28 NCSE (2024), *An Inclusive Education for an Inclusive Society Policy Advice Paper on Special Schools and Classes*, pp. 126-128.

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