

**Whose right(s) is it anyway?**  
**A review of Policy and Practice(s) in**  
**Inclusive Education in Ireland**

**Introduction**

Since its inception, inclusive education has not been without its challenges. For example, the term ‘Special Educational Needs’ encompasses a wide range of pupils with varying disabilities who require specialised teaching and specific knowledge on the behalf of educators as to how to best optimise their learning experience and educational outcomes. In addition, the landscape which has informed the development of policy changes in Special Education in the 21st Century has changed dramatically. Specifically, these changes have been informed by a Human Rights agenda in the areas of disability, education and health and are supported by the United Nations and World Health Organisation charters. As a result, they have become intrinsically linked to a “rights-based education system” where the individual needs of pupils must be recognised and supported in order to enable them to reach their potential. Consequently, schools are undergoing constant changes in an effort to develop inclusive policies and practices for all pupils. The purpose of this chapter is to review the national and international policies which have contributed to these changes and examine how schools have addressed the rights of pupils with special and additional needs to access and participate in education in Ireland.

**Social and Cultural Context of Exclusion**

Historically, two central psychological concepts have contributed to the development of how disability is viewed within a social and cultural context (Hagenaars et al., 2020): the role of genetics in determining ability (Galton, 1892) and social identity theory (Tajfel & Turner, 1979). The application of psychology to human development prompted a universal scientific approach which provided a starting point for identifying individual differences and was later used to justify the extermination of people with Intellectual and Developmental Disabilities (IDD) in Nazi Germany (Hagennars et al., 2020). This approach promoted the notion of “ableism” to the detriment of including people with disabilities in future societies. This ideology stemmed from Galton’s seminal work in eugenics based on his publication ‘Heredity Genius’ (1892) which claimed that being clever ran in families, as did being less

intellectually able. In short, Intelligence Quotients ( I.Q.) and other talents were inherited. Galton's belief that his theory could influence policy to improve people's lives impacted on the development of the eugenics movement with proponents believing that "improving the human condition by eradicating its negative aspects" (Reinders, Stainton & Parmenter, 2019, p. 1), was not specifically about improving the human condition but rather to ameliorate human suffering. These ideas lead to the development of multiple human rights abuses in the 20<sup>th</sup> century, particularly for people with IDD (Hansen & King, 2013). For example, coercive sterilization policies were enforced in Western Europe and North America in 1907, reinforcing the belief that people who had certain traits i.e. mental disability, should be prevented from reproducing (Donnelly, 1997). Within the Irish context, how and when sterilization could take place was constrained largely by article 40.3.1 in the Irish constitution which 'guarantees to protect... and vindicate the personal rights of the citizen' regardless of mental capacity and prioritises individual rights for all. However, the ideology of the eugenics movement lead societies to believe that some people had more rights than others, the philosophy of which proliferated across the world including Ireland.

This second concept encompasses social identity theory which purports that individuals tend to define and identify themselves according to the characteristics of a specific group and undermine and exclude other individuals who do not possess these characteristics (Tajfel & Turner, 1979). Being a member of these groups generates self-esteem and pride and serves to enable individuals to develop a sense of social identity, while also boosting their self-image by placing higher value on their group while demeaning others. This has become known as the Social Identity approach which provides a framework of how psychological processes can be applied to understand how, for example, disability is viewed within a cultural context. The process begins when social categorisation occurs which sees people organising social information by categorising individuals into groups. This is followed by social comparison where individuals assign a specific meaning to the category of the group which facilitates the process of self-identification by the individual to one of these categories. This results in the development of stereotyping, for example for people with disabilities and which, depending on their status in society, are usually perceived as the "outgroup" as opposed to the "ingroup". Taken together, these two psychological concepts are particularly important in the context of special education as they have been seen to inform societal attitudes which lead to the development of stereotypical views of ability which have impacted on the development of policies that affect the access and participation

of children with special educational needs and disabilities (SEND) not only in education but in wider society. In tandem with comprehensive legislation including the United Nations Convention on the Rights of the Child (1989) and the United Nations Convention of the Rights of People with Disabilities (UNCRPD, 2006), the universal drive to promote inclusive education has progressed as a result of a rights-based perspective on education and a change in the perception of disability.

### **A rights-based approach to Inclusive Education**

Like many of their European counterparts, the Inclusive Education agenda in Ireland has been shaped and influenced by a number of global policies that have proliferated and impacted on the development of educational reform which seeks to address the inequalities that have arisen as the result of stereotypical views of disability. In Ireland, the right to education is enshrined in the Irish Constitution (Article 42), and further protected by the State's ratification of the United Nations Convention on the Rights of the Child (UNCRC) which places the responsibility on the State to ensure educational provision, protection and participation for all children irrespective of their religious, cultural or social background. This obligation extends far beyond the provision of compulsory primary education that is available and free to all (Article 28 (a)) and details the State's responsibility to respect, protect and fulfil opportunities for the development of the child's personality, talents and mental and physical abilities to their fullest potential (Article 29). The UNCRC makes clear the State's obligation to safeguard the rights of all children. This includes the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (Article 27), the right of the child to the enjoyment of the highest attainable standard of health (Article 24) and provisions to ensure that children with additional and special needs can enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community (Article 23).

The founding principles upon which the UNCRC was established are evident in the Universal Declaration of Human rights (UDHR, 1946) and was developed after World War II amid the revelation of the violation of human rights for specific groups in Europe. This charter created a universal focus on the notion that violating human rights should be subjected to the law (Hagenaars et al., 2020 ) and is reflective of a shared value system to ensure societal well-being. The main remit of the UDHR was to strengthen and protect the promotion of human rights at a global level in tandem with responding to violations and

making recommendations. The UDHR is underpinned by three key principles: dignity, freedom and inclusion.

Dignity is opposed to individual and collective dehumanising practices ranging from bullying and scapegoating to systemic inequality, poverty and torture, as well as excluding persons and maintaining relationships that disempower, denigrate and demean, and lead to worthlessness. It recognises the inherent dignity and inalienable rights of all members of the community and is built on the notions of freedom, justice and peace (Preamble of the UDHR, 1948). This notion is reflected by Staub (2012) who states that

‘Only if others are understood as fully human do we feel bound to consider and care about their interests prevent or alleviate their suffering and experience moral emotions that we have wronged them’

The notion of freedom is reflected in Article 1 of the UDHR which states that “All human beings are born free and equal in dignity and rights” and assumes that freedom includes autonomy. Autonomy, according to Sen (2005), is critical in order to live a good life and become fully human, physically, intellectually, psychologically and spiritually. Critically, all individuals must have the capabilities for development and where achieving a dignified life can only emerge if the context in which an individual exists enables *their* development. Systematic, historical and contemporary inequality which contributes to excluding people with disabilities, for example, is understood as deprivation of the capability to live a good life and is considered to be a violation of human rights.

Inclusion is affirmed in Article 2 where everyone is entitled to all of the rights and freedoms set forth in the declaration without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Fulfilling human rights requires attention to structural and institutional forms of social exclusion of person(s) in disadvantaged positions who are often silenced or even invisible. Attributing equal access to quality health care, including mental health care and education, are global priorities because generally exclusion means that fundamental rights are violated. What is important within the context of this chapter is that discrimination and exclusion also negatively affect personal and group identity which interact with other factors thereby increasing the challenges for children with SEND. The vision of the UDHR assumes that all human rights are indivisible, interrelated and interdependent, and includes civic and

political rights, and economic, social and cultural rights including the right to work and access to education.

The declaration of the Salamanca Statement (UNESCO, 1994) set out a number of principles to guide governments to develop and support inclusive education practices to include *all* children irrespective of their individual differences. The guiding principle to inform and support the framework proposed that:

‘schools should accommodate all children regardless of their physical, intellectual, social, emotional, linguistic or other conditions. This should include disabled and gifted children, street and working children, children from remote or nomadic populations, children from linguistic, ethnic or cultural minorities and children from other disadvantaged or marginalized areas or groups.’

The declaration also provided a definition of the term special educational needs which was defined as:

‘all those children and youth whose needs arise from disabilities or learning difficulties’

The framework for action on Special Needs Education provided for the interpretation on how to create the inclusive school which would include developing child-centred pedagogies for those experiencing extreme disadvantage as well as working towards challenging discriminatory attitudes and changing behaviour in order to develop an inclusive society (UNESCO, 1994.) Consequently, inclusion in this wider sense can be seen as similar to “equality as a social value in relating to all aspects of social disadvantage, oppression and discrimination” (Avramidis & Norwich, 2002, p. 1). The principles of social integration and facilitating the transition from school or higher education to employment in tandem with the development of lifelong opportunities were particularly evident in what followed (Council of Europe, 2003). For example, the Council of Europe Action Plan (2006) placed the onus on states to ensure that citizens including children receive the supports that they require to participate in mainstream education. Of particular note was the aspiration to move from special education settings, that is from segregation to mainstream provision.

The right to participate in, and access to, education is further enshrined in the United Nations Convention on the rights of Persons with Disabilities (UNCRPD, 2006) which was ratified in Ireland in 2018 and clearly articulates the function of a rights-based approach. That is, to create a gateway for people with disabilities to access additional human rights

such as the right to work and live a full dignified life which is not possible without an education (Heyer, 2020). The articles of the CRPD have established a radical new ground on which to build inclusive policies for all people to access appropriate education and training regardless of ability. The Convention has sought to dismantle the structural exclusion of people on the grounds of physical or mental ability, and to progress towards the *full inclusion* of all, without regard to level of physical or mental impairment. In keeping with the human-rights perspective on disability, the UNCRPD completely shifts the locus of responsibility to respond to disability from the individual and on to wider society, social institutions and, importantly, to the level of the state (Lewis, 2010). Indeed, the Convention recognises the concept of disability as historically constructed and borne of individualistic construals of ability rather than in “the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others” (Article 1).

The critical importance of the CRPD for the development of inclusive educational policy is in the fact that it bestows a legally binding status to ‘inclusive education’ as a practical reality for states to progress towards. Previous documents issued by the U.N. around inclusion and special education, such as the Salamanca Statement, did not have the legal mandate that the CRPD enjoys. While the Salamanca Statement contained the original articulation of inclusive education as a right within the framework of human rights, only with the CRPD was this articulation given binding legal power. Nation states can be held accountable via the Convention because of this legal power afforded to it. Consequently, the CRPD goes further than the CRC and Salamanca Statement in creating a mandate for inclusion to be fully realised in schools. The shift in focus of the CRPD from the ‘individual’ to the ‘institution’ in upholding and championing the values and practices of inclusive education puts onus on schools, educational systems and state bodies to bring about inclusion in the classroom via the necessary structural changes that are required to make inclusive education a reality. This inevitably means reforms to the way curricula are designed and disseminated, how classrooms and all physical environments are laid out and organised, and how daily routines are performed. For inclusion to be realised, the CRPD calls for a transformation within the class wherein the full participation of the child with SEND is made possible. This may necessitate broad reforms in the way classes and classrooms are organised, how assessment is conducted and the level of assistance offered to students with SEND so that they can be fully included (Powell et al., 2021).

In their discussion around the Education for All movement (UNESCO, 2000 - 2015), Peters et al. (2005) identify four variables that speak to the achievement of inclusive education: i) attitudes and commitment to educating children and young people with disabilities; ii) teacher training in child-centred curriculum delivery; iii) parental support and engagement; and iv) structuring schools as inclusive entities. They propose a Disability Rights in Education Model (DREM) for evaluating national approaches to inclusive education by drawing attention to the interdependency of policy, legislation, enforcement, community involvement, and collaborative partnerships, and the impact these have on the activation of resources, contexts and inputs that are necessary to achieve enabling outcomes - ultimately, the right to participate in society on an equal basis.

### **Special Education in Ireland - A historical Context**

At the backdrop of international developments and in line with political obligations and societal demands for the realisation of a rights-based approach to education, a number of policies and reforms have been enacted which have contributed to the current model of provision for special education in Ireland. An important factor in considering the rights of pupils with SEND to access and participate in education in Ireland is an understanding of how special education has evolved through a continuum of segregation, integration and inclusion (Shevlin, 2016; Swan, 2000). In their review of special education reform, Dorn, Fuchs & Fuchs (1996) suggest that this focus on where special education should take place is historically informed by social reform and the creation of segregated institutions to provide specialist services for 'discrete problems' (p. 13) such as mental illness, disability, delinquency / criminality and homelessness. The ancient Brehon Laws (A.D. 432) made provision for the regulation of the behaviour of the mentally ill and incompetent by specifically distinguishing one from the other. The madman was categorised as the "lunatic" and the imbecile as the "fool" who was considered to be capable of participating in the community as opposed to the lunatic who was either cast out or imprisoned. Fools were referred to as being "God's own" and included those who were mentally retarded, simple and withdrawn, and were considered harmless (Scheper-Hughes, 2001). Behaviour was used to distinguish the difference between those who were perceived as being dangerous and those who were considered to be harmless. This influence continued into the early 19th century where segregation offered a solution to containing and managing individuals who were perceived to be incapable of participating usefully in either the community or

society at large. As a consequence, whilst residential care represented a convenient and economical method for managing such discrete populations, poor standards of care essentially resulted in poor life outcomes.

In the early 19th century, children and adults with sensory, intellectual and physical disabilities were admitted to workhouses and later within training institutions and trained in practical tasks which contributed to the maintenance of the institution. However, the perspective of the State in terms of providing education for children with disabilities was reflected in the recommendations of the Commission of Inquiry into the Reformatory and Industrial School System 1934-1936:

It is in every way undesirable that mentally deficient children, even of the higher grade, should be placed with normal children. Such children are a burden to their teachers, a handicap to other children, and, being unable to keep up with their class, their condition tends to become worse.

Thus, the ethos that informed attitudes and approaches to disability was reflected in the language used to reference a marginalised and vulnerable group in society: defective, deficient and handicapped. Between 1938 and 1942, Dr Louis Clifford sought to establish the incidence and educability of mentally handicapped children, something that had hitherto been difficult to determine, connected as it was to stigma and shame. His paper presented to the Statistical and Social Inquiry Society of Ireland (Clifford, 1939) describes a survey of Dublin medical premises and charitable/philanthropic institutions, and discusses approaches to educating the 'Feeble-minded Child', the 'Defective' and 'Dull Child at School', and the 'Imbecile' and 'Mongol' Children in the Schools. His examination of 1,966 children from national schools in Dublin provided one of the first insights into attitudes towards educating children with disabilities and, importantly, describes early efforts to introduce special classes (p. 38) and a vision for special education (p. 40):

The special school should provide an education for the feeble minded from ages of 7 to 16. Such education should be confined on the intellectual side of the elements of reading, writing and arithmetic, with the developments from this curriculum for those who can benefit. Simple religious instruction must also be given. Arts and crafts and manual training and domestic subjects should predominate. Eurhythmics is a subject of



particular importance for the development of muscular co-ordination and correct posture. Musical games, folk dancing, singing, will be found extremely useful, especially as an aid in the development of the power of attention. A trained occupational therapist with a special training will be required, and it will be realised that only the best can be taken for this specialised work.

The endeavours of individual philanthropists from the early 19<sup>th</sup> century onwards focused principally on the educability of those with sensory and learning disabilities, resulting in the establishment of community institutions through public fundraising. This charitable model persisted into the 20th century through the works of religious institutions principally under the Catholic ethos of 'subsidiarity', whereby the State may hand off responsibility for social care where these can be provided for within the community, and specifically by religious orders (Barrington, 1987, cited in Linehan et al., 2014, p. 1). In this the State was only too happy to oblige. This model is still in operation in the Ireland of the 21<sup>st</sup> century but is currently in a state of flux as the result of the ratification of the Irish state of the UNCRPD (2006) which requires states to enact educational reforms that fundamentally rethink the nature and provision of disability reduction rights (Heyer, 2020).

O'Murchu (xxxx) points out that 'concepts of mental handicap have been intimately linked with the kind of language we use' (p. 5) and are a reflection of societal attitudes which influence the nature of services provided. Such negative labelling was a strong feature of health and education terminology used persistently in policy and reporting e.g. the White Paper The Problem of the Mentally Handicapped (1960). This 'problem' evolved from a Commission established to review industrial schools and which expressed the view that mentally handicapped children were wrongly placed in such settings and should be separated from other children in a 'mental colony' (O'Murchu, xxxx, p. 12), and that residential institutions should be provided in order to do so.

In Ireland, the notion of a 'special education' emerged with the creation of special schools for children with specific disabilities managed and financed by religious orders. As early as 1892, St Vincent's Home for Mentally Defective Children was established by the Daughters of Charity of St Vincent de Paul, and in 1926 those children who were considered to be 'educable' were moved to new premises in 1955. This was formally recognised by the Department of Education a year later as St Michael's Glenmaroon, a special school for mildly handicapped children. A second school for moderately

handicapped children in Blackrock was established in 1959 which was also officially recognised. This model was mirrored by other religious organisations such as the Brothers Hospitallers of St. John of God who opened schools in 1936 and 1959, becoming formally recognised in the 1960s, and the Brothers of Charity who provided similar services in the Cork area in 1938/1939 and were also formally recognised by the State in 1956. The first residential special school for intellectually disabled children was formally recognised and renamed as St. Vincent's Special School in 1964. Interestingly, post-World War II, many European countries considered children with intellectual disabilities as being incapable of attending school but this practice began to change in the 1960s and is considered to be a milestone in the history of the evolving concept and provision of special education (Buchner et al. 2020). The school for blind boys opened by the Carmelite Brothers in 1870 was formally recognised by the State as an educational establishment in the early 1900s, and in 1955 came under the auspices of the Rosminian Order, later becoming St. Joseph's Centre for the Visually Impaired, and renamed again in 2012 as ChildVision, National Education Centre for Blind Children. Whilst the change in name illustrates a shift towards emphasizing education as a central tenet, charity and religion still play a central role where "faith in a better future for Ireland's blind children" is supported by "donations from caring people across Ireland."

In the UK the Committee of Enquiry into the Education of Handicapped Children and Young People was commissioned in 1976 to review the:

educational provision in England, Scotland and Wales for children and young people handicapped by disabilities of body or mind, taking account of the medical aspects of their needs, together with arrangements to prepare them for entry into employment; to consider the most effective use of resources for these purposes; and to make recommendations (page 1).

Their findings, published as the Warnock Report (1978), set out more than 200 recommendations including changes to the language of 'handicap' in reference to education, whereby:

Statutory categorisation of handicapped pupils should be abolished (paragraph 3.25).

The term ‘children with learning difficulties’ should be used in future to describe both those children who are currently categorised as educationally sub-normal and those with educational difficulties who are often at present the concern of remedial services (paragraph 3.26)

The report set out a national framework that placed the child at the centre of special education reform and introduced a paradigm shift that was to influence thinking and policy in Ireland.

### **Developing policy and practice**

The philosophy of child-centred education in Ireland has waxed and waned across the last 100 years or so, largely in response to political, economic, and social changes and their influence on educational reform (Walsh, 2016a, 2016b). The *Revised Programme 1900 - 1922* of primary education which evolved from the report produced by the Commissioners of National Education in Ireland (1902) introduced a broader and more varied curriculum outside of academic subjects including the proposed education of young children in Kindergarten and, importantly, permitted an individualised approach to curriculum and teaching at a local level. Despite this vision, the economic constraints of creating suitable school buildings, training teachers, and resourcing the curriculum resulted in a general failure in fidelity to the programme (Walsh, 2016). Revisions to the *National Programme* in 1922 and 1926 re-focused attention on a knowledge-based curriculum and modelled a tiered framework of learning that underpinned primary education until the 1970s. By rejecting the need to place the child at the centre of the education process, the State effectively maintained parallel systems of special and mainstream education, segregating children with disabilities from their peers.

#### *Formulating policy*

Until the late 20<sup>th</sup> century, little progress was made in relation to the construction of formal policies that impacted on the practice of providing services to people with disabilities, including education. The 1971 *Primary Curriculum* (Curaclam na Bunscoile 1971) represented a significant departure from earlier curriculum design, revisiting the tenet of child-centred learning through a wide range of academic and pastoral subjects, and flexible methods of curriculum delivery including individual and group work, and discovery-learning. However, from the 1980s onwards, changes in thinking and by extension to policy flowed from a number of important documents. The *White Paper on Educational Development* (Government

of Ireland, 1980) included discussion of primary and secondary school curricula, in-service training for teachers, school transport, adult and community education, third level education, and youth activities. A short chapter on 'special provision' made a strong case for the integration of children and young people with disabilities in mainstream schools but surmised that the: "issue of integration was a very complex one which could not be fully addressed in a White Paper" (MacGiolla Phadraig, 2007, p. 289). *The Education and Training of Severely and Profoundly Mentally Handicapped Children in Ireland* (1983) called for their inclusion in educational provision. *Towards a full life: Green paper on services for Disabled People* (Department of Health, 1984) noted that care for more than 5,000 individuals was provided mainly by families and community organisations. It was not until the *Needs and Abilities: Report of the Review Group on Mental Handicap Services* (Government of Ireland, 1990) that attempts were made to separate care from education, noting that: "Children and adolescents with general learning difficulties should not be referred for residential services if the only reason for doing so is to facilitate attendance for special education" (p. 4) and that opportunities should be provided for further education, training and employment. This emphasis was written into law as Part 1, section 6 (a) of the *Education Act 1998*: "to give practical effect to the constitutional rights of children, including children who have a disability or other special educational needs."

In 1992 the Minister of Education appointed a Special Education Review Committee (SERC) to examine educational provision for learners with special educational needs. *The SERC Report* (Government of Ireland, 1993) created a foundation for special education in Ireland, defining pupils with special educational needs as: "all those whose disabilities and/or circumstances prevent or hinder them from benefiting adequately from the education which is normally provided for pupils of the same age" (p. 18) and advocating for "as much integration as is appropriate and feasible with as little segregation as is necessary" (p. 22) and remains the bedrock of special education in Ireland. *The White Paper on Education: Charting Our Education Future* (1995) set out plans for curriculum reform, leadership development for school principals, and upskilling teachers in special education needs, premised on the entitlement of all children in Ireland to high quality education. However, a year later, the Commission on the Status of People with Disabilities published *A Strategy for Equality* (1996) had determined that "public attitudes towards people with disabilities are still based on charity rather than on rights" (p. 5), and significantly "a failure to provide comprehensive education for people with disabilities results in their being denied access to

employment and training opportunities comparable to those available to people without disabilities” (p. 6). Their recommendations to government proposed: i) legal provision to allow students with disabilities to be part of the mainstream education system; ii) the requirement for school authorities to provide supporting evidence for refusing an application for admission from a student with a disability; iii) entitlement to an individual education plan; iv) recognition that parents should be included in decision making and provided with supports and information to enable them to participate fully in their child’s education; v) freedom of movement between special schools and mainstream schools facilitated through enrolment and services; vi) a flexible curriculum and support for teachers in mainstream schools to learn new teaching methods.

The Education Act 1998 (Government of Ireland, 1998a), gave statutory rights to parents, obligating schools to cater for diverse needs, specifically: “to give practical effect to the constitutional rights of children, including children who have a disability or other special educational needs.” (Part I, section 6). Schools are directed to resource accommodation of individual need, to publish formal policy on admission and participation of pupils with special needs and disabilities, and to regularly review school plans for equity of access. Additionally, the Minister for Education and Skills must ensure support services that include: i) assessment, psychological, guidance and counselling services; ii) technical aid and equipment; iii) adaptations to buildings to facilitate access; iv) early childhood and continuing education; v) Special Needs Assistant (SNA) support; and vi) transport. However, it was not until the Education (Admission to Schools) Act in 2018 that mainstream schools were compelled to make additional provision for the education of children with special educational needs.

#### *Developing an Inclusive Agenda*

The early years of the 21<sup>st</sup> century saw a flurry of policy documents that were to influence the evolution of special education. *The Education (Welfare) Act (2000)* and the *Equal Status Act 2000*, *The Report of the Task Force on Autism (2001)* and the *Report of the Task Force on Dyslexia (2002)* were instrumental in redirecting attention towards inclusion of children with special educational needs and disabilities. *The Education of Persons with Special Educational Needs (EPSEN) (2004)* remains the only piece of legislation assigned with the education of children and young people with disabilities and set out a road map for the development of the Inclusion agenda in Ireland. The intention of the Act is:

.... to make further provision, having regard to the common good and in a manner that is informed by best international practice, for the education of people with special

educational needs, to provide that the education of people with such needs shall, wherever possible, take place in an inclusive environment with those who do not have such needs, to provide that people with special educational needs shall have the same right to avail of, and benefit from, appropriate education as do their peers who do not have such needs.

Importantly the vision of the act was to realise the rights of children with SEND to develop according to their capacity and be included in social and economic activities in order for them to live “independent and fulfilled lives” (pg 36. Meaney, Kiernan & Monahan, 2005).

Mandatory provision of inclusive education and systems was provided for as follows;

A child with Special Educational Needs shall be educated in an inclusive environment with children who do not have such needs unless the nature or degree of those needs of the child is such that to do so would be inconsistent with: (a) the best interests of the child as determined in accordance with any assessment carried out under this Act, or (b) the effective provision of education for children with whom the child is to be educated. (p.7).

The Act also made provision for: an assessment of need to facilitate individual supports; review of Individual Education Plans (IEPs); parental involvement; and the designation of a school for a child and the duties of schools in this regard. In a historical and important move, the act provides for the involvement of health boards in the assignment of supports and services for children in an effort to provide coordinated support and streamline health and education services (Meaney, Kiernan & Monahan, 2005).

Unfortunately to date this section of the act has yet to be implemented along with the individual right to assessment, IEPs, designating a school to a child and the appeals process ([inclusionireland.ie](http://inclusionireland.ie)). The creation of the National Council for Special Education (NCSE) under EPSEN provided for the establishment of the National Council for Special Education (NCSE), with the specific remit to ensure the full participation of people with SEND in the education system and to develop a framework for inclusion.

#### *Developing an Inclusive curriculum*

Up to this point, revisions to the curriculum in Ireland had paid scant attention to the education of children with special needs and disabilities. Beginning with *Guidelines on the Individual Education Plan Process* (2006) and followed by *Special Educational Needs, A Continuum of Support* (DES, 2007) established frameworks for supporting children special needs and disabilities in mainstream schools including transition of supports from primary to post-primary education. The *Inclusive Education Framework* (NCSE, 2011) set out guidance to schools on good practice for including pupils with special educational needs in terms of

reflecting on inclusive practices, collaborative approaches to implementing inclusion and “a co-ordinated response to the educational challenges that inclusion may bring” (p. 11). Policy advice has also encompassed a number of key areas for specific cohorts: the *Education of Deaf and Hard of Hearing Children in Ireland (2011)*, which highlighted the need for early identification, increased input from the Visiting Teacher Service, a preference for mainstream provision with articulated supports and an accessible environment, focused teacher training and a bilingual education; *The Future Role of Special Schools and Classes in Ireland (2011)*, whose recommendation included flexibility in educational placements, access to special classes for pupils with complex needs, a review of curriculum provision, links between mainstream and special schools including dual placement; *The Education of Children with Challenging Behaviour arising from Severe Emotional Disturbance/Behavioural Disorders (2012)*, which recognised this as an increasing challenge in schools, recommending early intervention, teacher training in behaviour management, and the adoption of whole school approach to positive behaviour support.

Policy Advice Paper number 4: *Supporting Students with Special Educational Needs in Schools (2013)* was a significant milestone in that it summarized issues in context that were to inform the *Delivery for Students with Special Educational Needs (NCSE, 2014)*, and the School Inclusion Model arising from the Policy Advice on Special Needs Assistants in 2018. Key recommendations focused on accessing extensive supports in educational placements and ensuring equal access; in acknowledgment of the restricted access to a diagnosis of disability required for additional teaching supports, development of a new model for allocation of additional teaching resources to mainstream schools based on the profiled need of each school, without the need for a diagnosis of disability; and a new statutory framework to address inequitable access to school places.

In essence, it seems that uncertainty, indecision and lack of consensus has resulted in a continual back and forth between the philosophies of segregation, integration and inclusion, a stance that has still not been resolved since Clifford’s early observation that: “If, by our efforts, we can in the future help he who ‘received the one talent’ to unearth his talent and turn it to his profit, then we shall indeed be rewarded” (1939, p. 43). Despite a plethora of policy and practice guidance, teacher viewpoints from the INTO Consultative Conference in 2015 indicate a belief that the curriculum is still not designed to fully include children special educational needs (INTO, 2016). In its most recent iteration, the NCSE Strategy 2017 –

2021 offers a vision where “children and adults with special educational needs are supported to achieve better outcomes in their education to enable them reach their potential.”

### **Organising and resourcing special education**

Clifford’s survey report of 1939 drew attention to the need for differentiated teaching methods and acknowledged the awareness and practice of doing so from teachers at that time, and yet, O’Murchu (xxxx) suggests that: “Teachers must have been intimately connected with the problem of slow learning children in the classroom and yet they made no public utterances about the issue until the 1950s” (p. 56). The Irish National Teachers Organisation (INTO) published their Plan for Education in 1947, arguing that the academic focus of primary and post-primary education should be evolved into a more child-centred programme and, importantly, they were critical of the lack of equality of educational opportunity (INTO, 2016, p.13).

Revisions to the primary curriculum from 1966 informed the *New Primary Curriculum* in 1971 with a returned focus on child-centred, activity-based learning that acknowledged individual differences in learning. Teacher training and professional development was accelerated with the introduction of degrees through Colleges of Education from 1974 and the founding of the Educational Studies Association of Ireland in 1976. There was also significant growth in educational placements for children with special needs in this period in the form of special schools and special classes, principally in response to the series of disability-specific government reports between 1965 and 1982. *The Education Act (1998)* set out the roles and responsibilities of schools and Boards of Management in providing appropriate education for students with disabilities or special educational needs, supported by policy requirement for the implementation of resource teachers and special needs assistants in mainstream primary settings.

A subsequent *White Paper on Early Childhood Education (1999)* broadened this focus to the need for early diagnosis of disability with parental access to an early education expert, specialist advisors, and pre-service and in-service development for teachers (NCCA, 1999a). However, despite this emphasis on liaison, the NCCA noted that “At present there is little regular and sustained contact between mainstream and special schools in the sharing of resources and expertise” (p. 11) and expressed concern at the dearth of resources available to teachers in special schools, who were dependent upon locally developed materials and adaptation of published programmes. *The Primary Curriculum* published in the same year (NCCA, 1999b) did not prescribe curriculum content specific to special educational needs,



leaning more towards adaptation of academic material, recognition of individual difference, teaching methods, and reinforcement of learning.

In a systematic review of research literature from 1994 to 2016, Moljord (2018) points out that whilst special needs education is framed in terms of inclusion, less attention is given to the content of the curriculum (p. 647). This is of particular importance if students with disabilities are to develop functional skills that include self-awareness, self-determination and self-advocacy, allowing them to make choices about participating equally in the community and wider society, as: “the equality of what’ is essential to questions about justice” (Sen, 1992, cited in Moljord, 2018, p. 647). In Ireland, a person-centred education is one which considers the ambitions, commitment and abilities of an individual throughout their lifetime, and educational opportunities to support these elements are provided for through the National Framework for Qualifications (NFQ), a hierarchical system that specifies levels of achievement required to progress through education and training. Whilst access to the JCSP is a crucial element of the transition from special school settings, it is important to understand its relevance to participation in further qualification and training under the NFQ. Although delivered in the senior cycle of education in special schools, as part of the Junior Cycle, it sits at NFQ Level 2, so young people leaving special education settings must identify a physically accessible and appropriate course at QQI level 3 or 4. However, the range and availability of such courses is disparate and geographically contested and, in real terms, the gap in providing a bridge from Level 3 to Level 5 at a local level means that there is no facility for young people with disabilities to progress upwards through the ladder of qualifications.

With this in mind, it is important to tease out the fundamental differences in curriculum offering between mainstream and special schools and how these inform the inclusion agenda. In September 1996, the Department of Education and Science (as it then was known) introduced the Junior Certificate School Programme (JCSP), an adapted curriculum designed to address the needs of potential early school leavers by providing an individualised, student-centred curriculum. However, monitoring of the JCSP was painfully slow, with data collated in 2002 / 2003, a final report written in 2005, but not launched publicly by the DES until February 2006. *Building on Success, An Evaluation of the Junior Certificate School Programme* conducted research in 30 of the 174 settings offering the JCSP (139 post-primary schools, 15 special schools, eight Senior Traveller Training Centres, five Youth Encounter Projects, four remand centres and three schools for students with physical

and hearing disabilities). Two of these were special schools in which the JCSP was offered to “students in the senior section that were considered capable of benefiting from the JCSP were following the programme” (2005, p. 59). Its main finding in relation to special schools, where the organisation and structure of the school day is based on the primary school structure, was the limited time allocated to teaching the programme within a shorter school day. The recommendation that: “personnel from mainstream schools that provide the JCSP as well as personnel from those schools that have students with special educational needs, and personnel from special schools that provide the JCSP, should come together to share insights, ideas, and methods” (p. 87) echoes the point made by the NCCA (1999a), and was also noted by Ware et al. (2009), suggesting that such collaboration has not progressed.

From the mid-1990s, pupils who might otherwise have attended special schools were increasingly admitted to special classes in mainstream schools catering to specific learning or behavioural difficulties. However, access to the curriculum is underpinned by the provision of support to make this possible. In 2005, the DES issued Circular SP Ed 02/2005 detailing the allocation of additional teaching resources to schools as a General Allocation Model (GAM) with the intention of developing inclusive primary schools that meet the needs of children with SEN. Its remit was to dispense with the need to apply for resources against individual children with ‘high incidence disabilities’ (e.g. Specific Learning Difficulties). The allocation of additional teaching time included intervention under learning support and resource teaching targeted towards specific disability categories meeting specific academic criteria, where priority was given to pupils whose attainment in literacy and numeracy was measured at or below the 10th percentile. It was anticipated that these teaching resources would be facilitated in the classroom or small group withdrawal, or in one-to-one lessons. Fundamentally, this placed an emphasis on the requirement to provide diagnostic evidence of disability and academic achievement, principally through psychoeducational assessment via the National Educational Psychology Service (NEPS), or Assessment of Need process under the Disability Act (2005). In 2008, there were 127 NEPS psychologists, allocated regionally, serving approximately 3,000 schools across the country; only four of these were assigned to the National Behavioural Support Service. NEPS referrals were made by the school where each school, if they had a linked NEPS psychologist, was allocated a small number of assessments (usually between four and six) each year. Consequently, many parents were forced to seek assessment via private psychologists, psychiatrists or therapists at a prohibitive cost, further establishing inequalities within the system.

However, the new resourcing model also impacted on special classes. In 2009, the Department of Education notified 119 schools that it intended to close 128 special classes for pupils with a Mild General Learning Disability, on the premise that they did not meet minimum class sizes of nine pupils. Rather, these pupils were to be integrated into mainstream classes and supported through resource and learning support teaching in accordance with the Continuum of Support model (DES, 2007) – individualised support for a few, group intervention for some, whole school and classroom support for all – essentially individualised support based on need. This move was strongly criticised by the Irish Primary Principals Network, making the point that pupils were not able to manage mainstream classes for the whole school day, but benefitted from learning at their own pace in smaller classes. However, by 2016, the need for a return to special classes prompted the NCSE to issue policy guidance on setting up special classes for pupils on the Autism Spectrum, with a pupil-teacher ratio of 6:1, and for students with mild general learning disabilities an upper limit ratio of 11:1. Furthermore, resourcing requirements stipulated a formal diagnosis of disability.

To frontload the pilot of a new School Inclusion Model proposed by the NCSE, DES Circular 0013/2017 set out a revised allocation of resources process combining previous special teaching allocation posts into a new model of Special Education Teachers and SNAs to mainstream primary schools, and additional resourcing of supports for pupils with Low Incidence disabilities. The SIM pilot commenced in September 2019 with a remit to deliver a range of targeted supports:

- An expansion to NEPS to extend in-school supports for students with complex educational needs.
- A national training programme for SNAs to evolve skills and knowledge to support students with complex medical, physical, emotional/behavioural, sensory, communication and other needs that pose a barrier to facilitate participation in school life.
- A school nurse service for children with complex medical needs in schools provided through community-based services.
- A Regional Support Teams to include speech and language therapists, occupational therapists and behaviour support practitioners, and an additional allocation of 31 therapists to provide support in individual schools.

A major change to the process of allocation of resources was the removal of the necessity for formal diagnostic evidence to determine level of need and support. This was a welcome revision for parents who were financially under-resourced to meet the costs of private assessments, and whose children were part of the 5,000 wait list for Assessment of Need. However, evidence of disability becomes an issue towards the end of formal education. In order to meet the criteria for eligibility for the Disability Access Route to Education (DARE) (a higher education access route that recognises the disadvantages imposed by disability in education settings), to meet regulations for registering with Disability Services in higher education and to qualify for Disability Allowance, formal diagnostic paperwork is required.

Essentially, the allocation of resources is connected to the needs of individual children – rather than diagnostic profile – with decisions on the best way of framing support and resources defaulted to the school. This situates responsibility with the school principal (headteacher) to oversee “complex systems for allocation, accountability and staff fidelity” (Kenny, McCoy & Mhuit, 2020, p. 11), and with teachers to focus teaching on an increasingly diverse pupil population. Today, there are just 238 NEPS psychologists serving almost one million students in full time primary and post-primary education (Houses of the Oireachtas, 2020).

*Preparing Teachers for the 21<sup>st</sup> Century: Report of the Working Group on Primary Preservice Teacher Education* (Kellaghan, 2004) states that “recent experience in the mainstreaming of pupils with special needs indicates that this is a formidable task and is probably beyond the competence of teachers who do not have specialised training” (p. 20). The report on *Special Classes in Primary and Post-Primary Schools* (Ware et al., 2009) noted that efforts to integrate pupils with special needs was hampered by a lack of continuity in provision of special classes between primary and secondary levels. Furthermore, there was no real reciprocal relationship flow between special and mainstream schools which might encourage the resourcing of shared knowledge. In its review of the *Future Role of Special Schools and Classes in Ireland*, the NCSE (2011) set out a vision that:

in the spirit of the EPSEN Act, 2004, future educational provision for children with complex special educational needs that cannot be met within mainstream classes should in so far as is possible, be available locally, either as an integral part of a mainstream school (special classes) or be situated on the same campus as

mainstream schools (special schools or units) so that the opportunity for inclusion can be maximised (p. 15).

However, in the same year the O’Gorman & Drudy (2011) expressed concern that “12.4 per cent overall of LS/R teachers with substantial responsibilities for SEN in their schools had not engaged in any relevant in-career training” (p. 111), and that not only did 37% have no formal qualification in special educational needs “this lack was statistically significantly greater at primary level” (p. 138).

Arguably, special school settings reflect the continued practice of segregation for some, whilst assigning students to special classes within mainstream schools may essentially represent integration rather than inclusion, depending upon the way in which they are perceived and managed in individual schools. Banks & McCoy (2017) usefully summarize the evidence which expresses competing viewpoints on integration as inclusion, for example, the negative effects of stigmatization, ability streaming and its effects on expectations and attainment, versus access to smaller classes with an adapted curriculum to suit individual needs, and the opportunity to participate in mainstream education. Their study examined day-to-day “integration exposure” and “permanence effect” for students attending special classes, providing important data which illustrates the existence of non-inclusive practice on the ground. Principally, they find that the level and quality of interaction with the mainstream curriculum and associated activities is tempered by the complexity of individual need, and the ethos and culture of the school, where the purpose of the special class can range from acceleration of basic academic skills to respite from the stresses of mainstream classrooms. They conclude that the re-packaging of special education as an inclusive education model diverts attention from what “appears to mask a ‘deep structure’ of special education traditionally based on practices of segregation and discrimination (Thomas, 2013)” (p. 458).

Eight years later, in October 2019, the NCSE published findings from its progress report *Policy Advice on Special Schools and Classes: An Inclusive Education for an Inclusive Society?* concluding that whilst all students “could, and perhaps should, be educated together with their peers in mainstream classes” (p. 35), the current structure and organisation of educational settings indicates that they are “not ready for this” (p. 35), and furthermore, a lack of consensus on the desirability of full inclusion in mainstream classes. Additionally, a formal procedure for determining the suitability of placement in special classes or special

schools needed to be evolved, with student progress regularly reviewed. The report also noted the increase in challenging behaviour in schools, a lack of specialist supports such as therapy, and a critical need for continuing professional development of teachers to support the educational needs of an increasingly diverse pupil population.

In 2020, the NCSE invited submissions to inform a Progress Report on the Future of Special Schools. The Irish National Teachers Organisation (INTO) submission in March of that year reiterated historical arguments for greater resourcing and focused teacher training in special educational needs, with recommendations including a Universal Design for Learning (UDL) approach to curriculum delivery, smaller classes to meet the needs of a more diverse student population, and access to multi-disciplinary support teams. Whilst they acknowledged that "... a continuum of provision to include special schools, special classes and mainstream schools, to meet a continuum of need, is in line with providing an inclusive education system, as outlined in Section 24 of the UNCRPD" (p. 4), they also express concerns for the "potential effect on the child and on the class teacher of having a child who is either misplaced in a mainstream or special setting or for whom the back-up support services are not being provided by the State" (p. 5).

The COVID-19 pandemic had a devastating effect on access to education for every child in Ireland, not helped by placing the population in and out of 'lockdown' with no clear timelines for re-opening of schools. Teachers had to adapt quickly to remote teaching and learning using digital platforms with little or no knowledge or training as to how this might be delivered, in particular to a diverse population of school students, not all of whom had access to the requisite technology. In response, the Teaching Council has advised all teacher training providers to provide a module in digital learning for all trainee teachers.

### **Parents, pressure groups, and activism**

The colossus that is social media is a natural vehicle for social change movements, giving parents of children and young people with disabilities a platform to advocate for rights, lobby for change and to provide illustrative examples of systemic failures in meeting the inclusion agenda. Many important organisations and landmark legal cases connected to special education have their origins in pro-active parent and community groups, action and activism that has been growing since the mid-20<sup>th</sup> century.

In parallel with the work of religious orders, parent and community groups became actively involved in the 1950s. The Association for Parents of Mentally Backward Children was formed in 1955 in response to the lack of educational provision for children with an

intellectual disability, which at that time was institutionalised residential care. Over the following five years, parent-led fundraising activities resulted in the purchase of premises and engagement of teaching staff, culminating in recognition by the Department of Education as St. Michael's National School in 1960, today known as St Michael's House. The objectives of the Association were to: "provide residential services for handicapped persons, provide advice and assessment services to parents, and to promote positive public attitudes in order to improve and increase State provision" (p. 16). The Cork Polio and After Care Association was established in 1957 and in 1958 extended services to children with brain damage or mental handicap in the Cork area and opening its first school the same year and in 1959 the Department recognised a second residential school. A groundswell of other associations were formed by parents and community groups during this period in Galway, Limerick, Waterford and Wexford, together with the appointment of the first State agency to address disability services: the National Rehabilitation Association.

From the early 1990s, several landmark cases taken by parents as proxies for their children against the (then) Ministers of Education and of Health. *Paul O'Donoghue v. Minister for Health and Others* (1993) rested on the Constitution Article 42.4 which establishes State provision of free primary education and 'when the public good requires it, other educational facilities or institutions.' In its decision, the Court obliged the State to modify the primary school curriculum to accommodate the need of children with disabilities. This was to have a lasting impact by establishing their constitutional right to education establishing a foundation for later cases over the following 20 years which addressed State provision for children with special educational needs. *T.D. and Others v. Minister for Education and Others* (2001) addressed the Childcare Act (1991) and Article 40.1 and 42.2. in the matter of constitutional obligation to children with significant needs for special care and appropriate educational provision. Although the State conceded in principle, planning suffered such significant delays that a mandatory injunction was issued by the High Court, but contested by the State. Following lengthy judicial debate surrounding the limitation and separation of powers, the Supreme Court overturned the injunction.

A similar dismissal of inherent rights was reflected in *Sinnott v. Minister for Education* (2000) which centred on the right to primary education on the basis of need and the State's failure to provide same. Although Jamie Sinnott was aged 23 years at the time of the case, he had in his lifetime received only two years of education, despite more than 20 years of campaigning by his mother. Indeed, the trial judge noted "official indifference and persistent

procrastination which continued up to and through this trial.” The ruling awarded significant damages to the Sinnott family and established the right of persons with disabilities to primary education appropriate to their needs which may necessarily be continued into adulthood. However, although accepting award of damages, the State appealed the right to continuing primary education beyond the age of 18 years, and this was upheld by the Supreme Court.

These landmark legal cases in the 1990s pushed the inclusion further into the public domain, spotlighting parents as the driving force behind furthering the inclusion agenda, a necessity that has continued into the 21<sup>st</sup> century. However, Perry and Clarke (2015) point to the financial and emotional cost to parents who are forced into legal action. Although some may be fortunate to qualify as pro bono cases, more often, parents who do not have the financial wherewithal to pursue the State through the courts accept out of court settlements, in the hope that the act of bringing a case will result in a good outcome for their child. Parents continue the legal fight for assessment of need, admission to mainstream education, access to special classes and SNAs, activation of IEPs, reduced timetables and school exclusion. At a local level, parents drive inclusion, as exemplified by social media campaigns calling for the creation of special classes for autistic children in specific residential areas of Dublin. The naming and shaming of individual schools resulted in a directive to school principals by the Department of Education, irrespective of whether the physical infrastructure and staffing of the school were capable of meeting this requirement.

Voluntary organisations and parent groups are still plugging holes in the education of children with disabilities, as can be seen from even a cursory review of entities such as Activelink, a community exchange forum set up in 1999. Funding for projects that bridge the transition from school to further education, training and employment for young people with disabilities is precarious, depending as it does on the economic stability of the nation, and policy and legal frameworks for specific disability issues that depend on political will (e.g. the *Autism Bill*, 2017). A plethora of local charities, some operating as social enterprise entities, have mushroomed across all corners of the country, fulfilling more complex roles than ever seen before encompassing education and training, awareness raising, advice and guidance for parents, and unique projects such as the Autism-friendly Communities initiative driven by ASIAM, aimed at fostering autism inclusion and empowerment within local communities. Public funding schemes and donations allow groups such as ASIAM to go beyond the educational context. By building a national profile they are well positioned to advocate for



inclusive practices within the community and can bring focused pressure on government through reporting such as their 2019 report *Invisible Children: Survey on School Absence and Withdrawal in the Autism Community*. In the introduction to the report they draw attention to the inaccuracy of figures provided by the NCSE on the school attendance of autistic children, in that:

there was and is still a significant body of children within our community who do not go to school at all. In some instances, these students have simply been failed by the State in terms of inadequate levels of autism or special class provision despite the obligations on the State under the Education for Persons with Special Educational Needs Act 2004 to provide an appropriate school place for every child.

### **Challenges to inclusion in the 21<sup>st</sup> century**

Notwithstanding the progress that has been made in the provision of education for children with SEND and the progression of a rights-based approach to lifelong learning, there currently remains a number of challenges to the ongoing realisation of the rights of *all* people with disabilities to access and participate in education. For example, the inclusion of diverse needs in schools requires restructuring in the light of emerging research and awareness, acknowledgement and acceptance of complex neurodevelopmental conditions such as 22Q11 and extreme, anxiety-based school avoidance observed in profiles within the Autism Spectrum, such as Intolerance of Uncertainty and Pathological Demand Avoidance (PDA). Investigating experiences of health and education settings for families supporting individuals with PDA in Ireland, Doyle & Kenny (2020) found that children who had a greater need for control were significantly more likely to have school avoidance issues. Furthermore, parents reporting longitudinal school absence described the school environment as presenting a hostile and impenetrable barrier for those with extreme demand avoidance. Thus “within the wider discussion of inclusion for people with disabilities, there remains work to be done on reframing difference and deficit in terms of diversity” (p.26). As a result of a rights-based approach the rhetoric around what really is the essence of inclusion has begun to emerge and also focuses on those individuals who are marginalised or at risk of exclusion (Davis et al., 2014). This has resulted in the term ‘inclusion’ taking on a wider significance and having broader social and political value.

Consequently, 'inclusion' in this wider sense can be seen to be similar to... "equality as a social value in relating to all aspects of social disadvantage, oppression and discrimination" (Avramidis & Norwich, 2002, [p. 1](#)). It is worth noting that while the Salamanca conference was primarily concerned with special needs education, it was acknowledged that this could not proceed in isolation but form part of an overall strategy which would primarily involve reforming schools as they are seen to be the most effective way of promoting equality (UNESCO, 1994). The Education 2030 Framework for Action placed an emphasis on the need for states to address all forms of marginalisation and exclusion, thus creating an inclusive agenda that includes everybody and not just those with SEND (Ainscow, 2020). The ratification of the UNCRPD places specific responsibilities on states to instigate political reform to progress and uphold human rights and ending segregate (Heyer, 2020). This is best achieved through the development and provision of inclusive teaching cultures providing accessible learning opportunities with targeted and appropriate supports (Ainscow, 2020).

The Children Rights Alliance (CRA) in Ireland is tasked with ensuring that the rights of children are respected and upheld within a legal and political framework. Each year they develop the Report Card which is an established accountability tool to enable them to identify serious issues for children and where grades are awarded to the government based on their performance on specific issues in the last year ([childrensrights.ie](#)). In 2021, under the Constitutional Right to Education for Children with Special Educational Needs, the government received a D grade due to the insufficient number of appropriate school places available for children with SEND and the incompleteness of assessments of need within the statutory timeframes. In addition they noted that EPSEN (2004) has still not been fully enacted and, as a result, IEPs have not been operationalised nor has an appeals board been established, which is the mechanism for review and redress (CRA, 2021). Given that EPSEN (2004) predates the UNCRPD (2018), the CRA has called for a review of the act to ensure that it is compliant with the UNCRPD and the requirement for human rights standards, which should be followed by a timeline for the commencement of the remaining sections. As a number of parents have taken legal action against the state for their failure to assess the needs of their child, they have also called for this process to be adequately resourced in order to meet the statutory requirements. While the Education (Admissions to Schools) Act 2018 is fully mandated to source a school place for a child, the government is asked to

provide clear and transparent timelines for each stage of the process, to mitigate the risk that protracted delays occur, further jeopardising children's education. In short, the failure to fully enact EPSEN is having a profound effect on the ability of children in Ireland with SEND to enjoy their constitutional right to access and participate in education. This access has been further compounded by Covid-19 where evidence indicates that children with SEND have been disproportionately and adversely impacted by the closure of schools. The CRA have stated that

To ensure that no child is discriminated against in accessing their right to education, in compliance with Article 2 of the UNCRC 61 it is vital that particular assistance and support for children with special educational needs is provided to counter regressions experienced during the pandemic (CRA, 2021).

In conclusion, the UNCRPD, in keeping with the broader view of the human rights framework, recognises that progress in this area is something that is realised gradually. Therefore, it is recommended that (1) state finance departments budget accordingly and allocate appropriate funds to schools to develop the structural changes necessary to deliver inclusion (2) develop the infrastructure needed to facilitate inclusion of students with SEND and (3) provide continuous personal development in the area of inclusion for teachers (CRPD Committee General Comment No. 4 (2016) para 40) as this has proved critical for the development of more positive attitudes towards inclusion (Sharma & Sokal, 2015). Developing an inclusive setting is fundamentally a fluid process which facilitates change and the evolving needs of all stakeholders. As a concept it is an ideal or an aspiration that is never fully realised or reached because we are all human and humans by their very nature are diverse.

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