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## **Special Needs and Children's Right to be Heard under the UN Convention on the Rights of the Child 1989 in the Republic of Ireland**

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### **Introduction**

Recent debate has highlighted the need to acknowledge the status of children as independent rights holders and to support their participation in educational decision-making. Particular concern has been expressed that 'deficit' models of disability may privilege the role of adult experts while failing to recognise the participatory rights of children with special educational needs (SEN). The aim of this paper is to critically analyse and evaluate, from a human rights perspective, how policy and practice in relation to the deployment of special needs assistants (SNAs) supporting pupils with SEN in the Republic of Ireland (RoI) is implemented. The purpose will be to consider how the manner in which SNAs are deployed might be developed to become compliant with aspects of international human rights law as exemplified in the United Nations Convention on the Rights of the Child 1989 (UNCRC) and in the United Nations Convention on the Rights of Persons with Disabilities 2007. The specific focus is on the right of all children to express and have their views heard in matters affecting them. The significance of the right of the child to express and have their views heard is highlighted by the Irish Ombudsman for Children, who observed in her 2006 Report to the Committee on the Rights of the Child (CCRC) that:

'children's right to be heard is a mechanism for the promotion and protection of children's other rights and, moreover, one through which children can be empowered to contribute to the implementation of their rights.'<sup>2</sup>

In the light of the relevant human rights principles and with reference to literature from both educational and human rights perspectives, it is hoped to critically analyse how SNAs might have a role in facilitating children with SEN in exercising this right.

Following the publication in February 2007 of the Twenty-eighth Amendment, which proposes to insert an article affirming 'the natural and imprescriptible rights of all children'<sup>3</sup> into the Irish Constitution, the issue of children's rights is currently being debated in Ireland.<sup>4</sup> Historically, however, the specific issue of children's rights in school has received little attention, perhaps reflecting the fact that schools in Ireland have been organised along strictly hierarchical lines.<sup>5</sup> It is also worth noting that assistants working in schools have

themselves occupied a lowly status, with little regard for their input into decisions affecting them and the children whom they support.<sup>6</sup>

The paper begins with a concise review of some of the literature relating to children's right to 'speak, participate and decide'<sup>7</sup> and seeks to identify some of the issues particular to children with disabilities exercising this right. A rationale for current interest in this topic is presented and a brief overview of the important contextual factors is provided. The relevant international human rights standards are identified, and RoI policy and practice in relation to the SNA role is critically analysed in the light of these standards. Existing models of good practice are highlighted and recommendations to support human rights compliance in this aspect of the deployment of SNAs are made. It is hoped that the implications and recommendations drawn from this review will have relevance for all school settings in which SNAs are working as 'frontline workers'<sup>8</sup> in support of children with disabilities.

## Children's Rights

The issue of children's rights, including the right to participate in decisions that affect them, has been debated over many years.<sup>9</sup> Arguing against the rhetoric of rights, O'Neill makes the case for paternalism, observing that adults have an obligation to do much more than meet children's basic human rights and should be concerned with enhancing the quality of children's lives.<sup>10</sup> Distinguishing between the temporary dependency of children and the permanent oppression of other social groups, she argues that adults in positions of power have a vested interest in ending the burden of children's dependency and suggests that children's 'main remedy is to grow up'.<sup>11</sup> However, it can be argued that this remedy may be less available to children with disabilities, whose dependency may perpetuate into adulthood and with whom adopting a human rights-based approach may be even more important.

Writing on the UNCRC, King is also sceptical that legal remedies can significantly improve the reality of children's lives,<sup>12</sup> but Freeman makes a compelling case for the importance of children's rights. He observes that oppressed and marginalised groups, for example 'blacks' in South Africa during apartheid and even adults with learning disabilities, who have been denied rights, have been labelled as children using terms such as 'boy'.<sup>13</sup> Freeman's case that adults should both recognise children's 'present autonomy' and protect their 'future autonomy'<sup>14</sup> reflects Eekelaar's argument that adults working with and making decisions on behalf of children have a duty to listen to, hear and closely observe children's responses to maximise the chances that decisions are taken in accordance with the child's wishes.<sup>15</sup> Freeman speculates on the complexion of the Convention if children had been involved in framing it, noting that with the exception of Art 12, it is framed in terms of protection and grants children the rights which adults think they need.<sup>16</sup> Allan and l'Anson question the effectiveness of traditional efforts to support participation, such as the establishment of school councils. They found that providing children with experience of consulting with their peers with disabilities about accessibility issues, by 'taking rights for a walk around the school', engaged the children and enabled them to experience the exercise of rights.<sup>17</sup>

## The rights of children with disabilities

Canon suggests that the increase in the number of appeals about educational provision for students with SEN has led to greater awareness of the fact that the voice of the child is not heard.<sup>18</sup> In Ireland, although deemed 'important',<sup>19</sup> eliciting children's views is not mandatory, nor is the child's view paramount in decision making. Reflecting the fact that many children with significant disabilities are in need of extra care and protection, there is often an implicit assumption that the parent can adequately represent the views of the child.

Confirming the findings of other researchers, Westling - Allodi<sup>20</sup> found that many children with learning disabilities have been bullied, sometimes feel unsafe and insecure at school and that they want their teachers to be actively in control in order to protect them. However, Lansdown warns of the disabling effect of over-protection on the part of even well-intentioned carers and suggests that a failure to recognise their capabilities denies children with disabilities 'the opportunities for personal development and growth

associated with the process of participating'.<sup>21</sup> The implications of this argument for staff such as SNAs are striking, as is the observation over 30 years ago by Merges, who points out that inflexible practices mean that the range of options for people with disabilities can be very limited:

'at age five [Johnny] couldn't talk. Today at age eight, Johnny has the capacity to talk, but everyone is used to the fact that initially he couldn't talk and therefore continues to do his speaking for him. His requirements for survival have diminished, but his options remain constant.'<sup>22</sup>

In educational settings, where staff have the power to make important decisions about what is in children's best interests, it seems particularly important to be mindful as to whether such decisions accord with the wishes of children themselves. Indeed, as Lundy<sup>23</sup> observes, the full realisation of the Art 12 right to participate is conditional on the co- operation of adults.

## Rationale

In an analysis of Irish children's experiences of primary school, Devine concludes that 'school and schooling is experienced as something "done to" children, legitimised by a discourse which prioritises adult/future-oriented needs and expectations over present lived experiences'.<sup>24</sup> She suggests that children perceive themselves as having little control of their time and space or their interactions with their peers or adults in school. Similarly, research with students with learning disabilities has identified ambivalence in children's attitudes to their assistants. Although students express appreciation for the support provided by assistants, many also identify problems: 'I was kind of getting embarrassed because I always had, like a mother there'.<sup>25</sup> Studies highlight the need for assistants to listen to the students with whom they work and suggest that schools should consult with students when decisions are being made about the provision of such support.<sup>26</sup> It is also interesting to note the paucity of research investigating the perspectives of students on the support provided to them by assistants, a fact that may reflect both the inherent methodological challenges of such research and an oversight on the part of researchers to provide opportunities for students to voice their opinions.

Citing Roche, Devine characterises children's school status in terms of 'deviance, dysfunction and deficit' and of 'innocence and vulnerability'.<sup>27</sup> Historically much of the same language has been used in the discourse around the education of children with disabilities with a focus on a medical, 'within - child' deficit, determinist model of disability.<sup>28</sup> In an analysis of developments in special education in Ireland, McDonnell suggests that a deficit model such as this serves to 'privilege the role of experts and exclude the perspectives of disabled people themselves'.<sup>29</sup> The influence of a clinical model of disability may parallel sentiments expressed in the Declaration of Geneva that 'the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succoured'.<sup>30</sup> Equally, the focus on a care role for SNAs may reflect such a paternalistic or welfarist approach to the education of pupils with SEN.

In recent decades there has been a paradigm shift towards a socially constructed model in which disability is seen as a result of the failure of society to acknowledge and respond to the needs of people with disabilities.<sup>31</sup> In parallel with this discourse, a debate about the merit of needs or rights - based legislation and provision has taken place.<sup>32</sup> Several writers have also noted that children with SEN are at an even greater risk of being denied the right to express their views than are their peers without SEN<sup>33</sup> and the challenge is likely to be more acute when the child has a significant learning or communication disability.<sup>34</sup>

Currently in Ireland there is no overarching national or departmental policy on children's rights to 'speak, participate and decide'<sup>35</sup> on matters affecting their education. Consequently there is little evidence to suggest that in Irish primary schools children with disabilities are being given opportunities to realise their rights under Art 12 of the UNCRC. Specifically, there are no structures in place whereby children can participate when decisions are being made about assigning SNA support or crucially when the manner in which such support is provided is discussed. More fundamentally perhaps, there appears to be little awareness among school staff of children's rights under the UNCRC, a fact noted by the Committee in Concluding Observations issued in both 1998 and 2006 on Ireland's progress in implementing the Convention.<sup>36</sup>

## Legislative and Policy Context

The first piece of legislation governing education in the RoI was the Education Act 1998. In the long title to this Act, the aspiration that the education system should be accountable to and conducted in partnership with students is articulated.<sup>37</sup> Although the Act states that: 'Students of a post- primary school may establish a student council and ... a board of a post- primary school shall encourage the establishment by students of a student council',<sup>38</sup> little provision is made for such partnership with students and there is no clarity as to their influence on school decisions. Moreover, this provision for the establishment of school councils only applies at post- primary level, leading to criticism of a lack of measures to facilitate the involvement of primary school pupils.<sup>39</sup> The Education for Persons with Special Educational Needs Act 2004 provides for consultation with children with SEN when an education plan is being prepared and states that a team preparing such a plan 'may include ... the child where this is considered appropriate ... having regard to the age of the child and the nature and extent of the child's special educational needs'.<sup>40</sup> While this Act has not yet been fully implemented, it seems clear that this provision falls far short of the requirement that all children, regardless of age or level of disability, have the right to speak and to participate in decisions affecting them. In guidelines on the Individual Education Plan (IEP) process issued to schools in 2006, scant attention is paid to the rights of the child. Here too, involvement is seen as important, but only 'where appropriate', for example in the case of students at post- primary level.<sup>41</sup> Of even greater concern is the fact that in the October 2006 report on the implementation of EPSEN, no reference is made to how children's participation in decision- making might be facilitated.<sup>42</sup>

## Policy developments

In the past decade there has been an unprecedented increase in the number of staff working in support of students with learning support and SEN in mainstream schools in the RoI. In 1999 there were less than 300 SNAs employed in mainstream primary schools, but by April 2007 over 6,000 SNAs had been appointed,<sup>43</sup> comprising a large proportion of the staffing in support of pupils with SEN and making a significant impact on mainstream provision for these pupils. Assistants are appointed to support pupils who have 'significant' medical needs, 'significant' physical or sensory impairment or where their behaviour is considered to pose a danger to either themselves or their peers in school.<sup>44</sup> Application for SNA support is made by the school principal to the National Council for Special Education and although the signed consent of the parents or guardians is required for such an application, no structures are in place for consultation with the child. Likewise, at no stage in the process of recruitment or appointment, or in the ongoing management or review of the manner in which SNAs work, are there structures or procedures in place to facilitate participation by the child or indeed by their parents or guardians.

The Department of Education and Science sanctions a care role *only* for assistants and specifies that their duties must be of a non- teaching nature. This exclusive focus on a care support role belies the considerable evidence to suggest that, in the RoI, as in other jurisdictions, the SNA role has evolved from that of a domestic helper undertaking mainly care and housekeeping duties, to include considerable involvement in educational support duties.<sup>45</sup> Recognised training opportunities designed specifically for SNAs are limited and although many SNAs have completed 20- hour introductory courses, very few have had opportunities to proceed to accredited certificate level qualifications.<sup>46</sup> The introductory course for SNAs acknowledges the fact that the care role places SNAs in a very close relationship with students and highlights the need for them to value and respect the students with whom they work. However, the focus is on ensuring dignity and privacy for the student rather than on actively seeking to support the student in participating in decision- making.<sup>47</sup>

## Human rights education

Although no specific reference is made to human rights education in the Primary School Curriculum for the RoI,<sup>48</sup> the aims for social, personal and health education (SPHE) include 'to promote the personal development and well-being of the child [and] to foster in the child a sense of care and respect for himself/herself and others and an appreciation of the dignity of every human being'.<sup>49</sup> Guidelines for teachers working with pupils with general learning disabilities go further, stating that SPHE 'aims to ... enable them [pupils] to develop a framework of values, attitudes, understanding and skills that will guide and inform them in decision-making now and in the future'.<sup>50</sup> However, since SNAs are not designated an educational support role, it is reasonable to conclude that, officially, they are not perceived as having a role in curriculum delivery. This presents a considerable dilemma since in many cases SNAs work in a very close relationship in support of pupils with SEN and could therefore be perceived as having a very significant influence in terms of supporting the development of decision-making skills.

## Human Rights Principles

The principle that children have the right to express their views is articulated in the UNCRC, which was signed by the Irish Government on 30 September 1990 and ratified on 28 September 1992. Article 12, para 1 of this Convention states that:

'1. States Parties shall assure to the child who is capable of forming his or her views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.'

This inherent right to participate is a right per se, but also underlies other rights articulated in the Convention, notably, in the case of children with disabilities, the right to protection from abuse, the right to active participation in the community and the right to social integration and individual development. Moreover, as a general principle of the UNCRC, the implementation of Art 12 would serve to empower children to participate in the realisation of their rights. More recently the participatory right has been reiterated and developed in the UN Convention on the Rights of Persons with Disabilities, which was opened for signature on 30 March 2007 but has not yet been signed or ratified by the Irish Government. Article 7, para 3 states that:

'3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realise that right.'

The acknowledgement of the need to provide children with disabilities with special assistance to realise this right reflects the fact that many children, in particular those with learning and communication difficulties, will require significant support to express their views. Clearly, if the rights of children with disabilities both to voice and have their opinions heard with regard to their education are to be upheld, there are significant implications for the deployment and training of all school staff, including SNAs.

In a General Discussion Day in 1997, the Committee reiterated the right of children with disabilities to participate in decisions that impact on them but noted that they:

'suffered a double denial of this right. Many adults found it difficult to recognise both the right and the capacity of any child to contribute effectively to decision-making; where the child was disabled, there tended to be an even deeper inability to accept its competence. This was compounded by protectiveness on the part of carers which sought to shield the children from the responsibility of participation'.<sup>51</sup>

The Committee articulated several reasons for promoting such participation. These included the possibility of better informed and more successful decision-making, the development of the child's self esteem and confidence and the view that the child would be less vulnerable to abuse, violence and exploitation. In addition, several authors have noted the extent to which relevant experience informs decision-making.

Thus, for example, children who are seriously ill or who have significant disabilities bring their own unique knowledge and experience of illness or disability to the process, leading to better decision-making.<sup>52</sup>

Among the recommendations issued by the CCRC in 2004 following the General Discussion Day on Implementing Child Rights in Early Childhood were that schools should seek to create opportunities for very young children to exercise their rights 'according to their evolving capacity' and that staff working with young children should receive education and training to support this.<sup>53</sup> In 2006, the CCRC highlighted the need for knowledge of the UNCRC to be disseminated among children and recommended that training in the rights of children with disabilities should be a requirement for all professionals working with children with disabilities. These recommendations for staff training to support this may have particular resonance for assistants working with much older students with disabilities who may be functioning at a developmentally young age and who may also require them to 'adopt a child-centred attitude ... [and] show patience and creativity by adapting their expectations to a ... child's interests, levels of understanding and preferred ways of communicating'.<sup>54</sup>

In terms of the deployment of SNAs, the key concerns arising from this policy gap include: awareness of the status of the child as a rights-holder, respect for the child's views and the adoption of a rights-based approach to policy and practice in the provision of support.<sup>55</sup>

## **Policy and Practice**

### ***Awareness of children's rights under the UNCRC***

The curriculum in schools in the RoI espouses democratic principles. Nevertheless, in Concluding Observations on progress with regard to the dissemination of knowledge about the UNCRC, the CCRC has expressed concern that neither those working with children nor children themselves are sufficiently well aware of children's rights.<sup>56</sup> The Committee stressed the importance of raising awareness of their status as rights-holders among children themselves and highlighted the need for the development of child-friendly materials to support this.

In Ireland in recent years considerable attention has been paid to the rights of parents in relation to educational decision-making.<sup>57</sup> In the absence of a corresponding emphasis on children's participation, this focus on parental involvement may in fact compound the risk that children's rights will be overlooked because of an assumption that parents' wishes reflect and equate with those of their child. The risk may be greater still in the case of young children or children with disabilities.<sup>58</sup>

### ***Respect for the views of the child***

In periodic reports on Ireland, the Committee has twice criticised Ireland's failure to take into account the view of the child.<sup>59</sup> In 2006, while welcoming the measures taken to establish student councils in post-primary schools and national forums such as Dáil na nÓg and Dáil na bPáistí (Youth and Children's Parliaments), the Committee noted that many of the complaints received by the Ombudsman related to a failure to give due regard to the views of the child and recommended that the state make constitutional provision for children's views to be heard in all matters affecting them within educational contexts. In her submission to the Committee, the Ombudsman noted that 'the voice of the child is often not respected within internal school complaints' and that 'there is very little evidence that children with special needs are involved in decisions being made with regard to their education'.<sup>60</sup>

### ***A child rights-based approach to educational policy and practice***

In its 2005 report to the CCRC, the Irish Government acknowledges that 'putting children at the heart of policy and practice is a new way of working and is at an early stage of development'.<sup>61</sup> Nevertheless, the report pays considerable attention to the publication of the Irish National Children's Strategy (INCS) *Our*

*Children -- Their Lives* and the stated national goal therein that: 'Children will have a voice in matters which affect them and their views will be given due weight in accordance with their age and maturity'.<sup>62</sup> However, examination of the report shows that the focus is on the rights of children involved in judicial proceedings and those in various forms of residential care and that the only reference to school relates to steps taken to establish student councils in post- primary schools. While acknowledging the value of the INCS, Pinkerton criticises the failure to comprehensively evaluate the extent to which the policy has succeeded in enhancing children's participation in decision- making.<sup>63</sup> It is not surprising, therefore, that the Committee has reiterated its concern that Ireland has not yet adopted a 'child rights- based approach' to policy and practice or that the Ombudsman has concluded that children's participation should be extended from so- called 'softer issues' such as play and recreation to the health and education sectors. This would require investment and training for staff to 'develop their capacity to design, implement and evaluate their work to support children's participation in line with best practice'.<sup>64</sup>

Citing Alderson and Montgomery, Franklin and Sloper identify four levels of child participation in decision- making, namely: 'being informed, expressing a view, influencing a decision and being the main decider'.<sup>65</sup> Analysis would suggest that, at present, policy and practice in relation to the Art 12 right in Ireland is predominately at the first level, that is that students are informed of decisions and that significant changes will be required to progress the level of participation. While no literature specifically addressing the question of how assistants (or in fact teachers) could support and facilitate children in their care to express their views and participate in decision- making, two papers outlining how child and youth care workers could adopt such an advocacy role were found. Boylan and Ing describe the experiences of young people in residential care, of advocates facilitating their participation in decision- making, and conclude that such advocacy is crucial if the participatory rights of marginalised children are to be realised. The young people believed that having a close relationship based on trust and respect was most important: 'Someone you can trust and who won't let you down ... Someone who will really stick up for you, who turns up when they say they are going to and is your friend'.<sup>66</sup> Similarly, in an analysis of policy regarding children's rights in Canada, Grover concludes that:

'advocacy must be considered a fundamental responsibility of the frontline worker ... It is often only through the vigorous advocacy of the frontline worker that individual children can hope to have their rights respected and have access to appropriate and adequate government service'.<sup>67</sup>

Assistants in Irish schools may be operating in frontline positions, but a radical rethink of their role and status in schools will be required if they are to have an advocacy role.

## **Space, Voice, Audience and Influence**

Lundy proposes a model that conceptualises the child's right to participate in terms of having 'space, voice, audience and influence'.<sup>68</sup> This model will be used to make some recommendations, which may help to ensure that policy and practice regarding SNAs in Irish schools might be developed in compliance with Art 12 of the UNCRC.

### **Space**

Special needs assistants work very closely, often on a one- to- one basis, with the children whom they support. In the context of large class sizes, expanding curriculum demands and pressure to meet learning targets, they, more than teachers, may have time to give children regular opportunities to express their views. Fundamentally, SNAs should be encouraged to adopt democratic and participatory approaches in all their interactions with the pupils they support, since it is through the exercise of their participatory right that children can contribute to the implementation of their rights under the UNCRC. Research in other contexts identifies a particular need to consult with children *before* the decision to appoint an assistant is made.<sup>69</sup> Another stage at which children might be given space to participate is in the IEP process, in which student participation is encouraged. Guidelines for schools on the implementation of IEPs note 'a familiar and

sympathetic adult should spend some time with the student enabling him/her to express his/her views'.<sup>70</sup> Individual education planning might therefore provide a fruitful context in which, with appropriate training and support, SNAs might assume such a role.

## ***Voice***

As the development of a relationship is often key to enabling children to communicate their wishes, SNAs may be ideally placed to facilitate children with disabilities in participating in decisions that affect them. Such consultation is likely to be especially challenging in the case of young children and children with learning and/or communication difficulties. Nevertheless, if the Irish state signs and ratifies the United Nations Convention on the Rights of Persons with Disabilities 2007, there will be a clear obligation on the state to 'provide disability and age- appropriate assistance' for children to exercise this right. In this regard the use of multi- media approaches and alternative means of communication such as Picture Exchange Communication Systems (PECS), getting to know the child and their communication style and preferences, and simply making the experience fun, have all been found to be useful strategies.<sup>71</sup> It is also likely that teaching children with disability self- advocacy skills will improve their decision- making capabilities.<sup>72</sup> In some instances specific training for SNAs in the use of specialised approaches to communication may also be required.

## ***Audience***

Article 12 not only states that children have the right to express their views, but also that their views must be 'given due weight in accordance with the age and maturity of the child'. In other words the child's views must be heard and ultimately, where appropriate, acted upon. The Ombudsman for Children in Ireland has noted, first, that almost 40% of the complaints received by her Office related to education and, secondly, that a common feature of these complaints was a failure to respect the voice of the child. The Ombudsman has expressed particular concern that children's efforts to complain or suggest changes to situations that concerned them were either disregarded or not taken seriously and that issues were dealt with only when adults intervened on children's behalf.<sup>73</sup> This underlines the importance of advocacy on behalf of children, a support that may be especially important for marginalised children or children with disabilities.<sup>74</sup> Moreover, it is also the case that some children want adults to assume responsibility for bringing forward their ideas to decision- making forums such as IEP meetings.<sup>75</sup> Given their close relationships with children, SNAs may be well positioned to provide a receptive audience for the child, but will also require training in active listening and in careful observation of the child's use of non- verbal cues. Moreover, because SNAs have only recently been acknowledged as having a role in the IEP process,<sup>76</sup> they are likely to need considerable support from school colleagues if they are to assume an advocacy role in this.

## ***Influence***

Having expressed their views, children must then be able to influence decisions and thus there is an onus on adults, including SNAs, to be vigilant in monitoring developments in children's competencies. Stafford, Laybourn, Hill and Walker warn against a tokenistic approach, observing that consulting should be genuine and honest or children are likely to be cynical about its value.<sup>77</sup> Furthermore, research indicates that, with experience of participation, the decision- making capabilities of children with disabilities increases.<sup>78</sup>

In conclusion, it appears that SNAs may be well positioned to support children with disabilities in the exercise of their right to participate in decisions affecting them. However, on the basis of policy to date and observation of practice, SNAs typically occupy a lowly status in schools. As a result they may themselves lack sufficient power or influence to enable them to be advocates for children's rights. Instead, they and the children with SEN whom they support:



'might reasonably be considered to include some of the most marginalised people within school hierarchies. As a result, assigning the least powerful staff to the least powerful students may be perpetuating the devalued status of both groups.'<sup>79</sup>

## Conclusions

Clearly then there are significant implications for policy developers, school management and the teachers who work with and often supervise and direct the work of SNAs. In the first instance the role, job description and training of SNAs will need to be reviewed.<sup>80</sup> Policy makers, principals and teachers will themselves need to be made aware of children's rights under the UNCRC and specifically in this instance of their obligations to support the realisation of the child's right to 'speak, participate and decide'. In tandem with this, school personnel should have a role in disseminating knowledge of the Convention rights among children themselves. If SNAs are to have an advocacy role in support of children with disabilities, they must receive specific training and support for this role and crucially their status within schools must be enhanced. Investment will also be required since 'rights without services are meaningless, and services without resources cannot be provided'.<sup>81</sup> Moreover Freeman suggests that the CCRC is itself under- resourced and lacks the power to police effectively the implementation of the Convention and argues therefore for 'inter- state complaints' and 'individual petitions'.<sup>82</sup> Finally, constitutional changes granting 'express rights'<sup>83</sup> to the child would underpin developments in legislation and policy in support of compliance with the UNCRC and would significantly strengthen children's rights in Ireland. In the run up to a planned referendum on the issue, the wording of the Twenty- eighth Amendment will be much debated.

Devine concludes that, in the Irish context, discourse about children's rights has focused on children's right to education, rather than on their rights *within* education,<sup>84</sup> an observation which certainly reflects the development of special education in the state. Recent legal challenges by parents to the nature of the provision made for their children with autistic spectrum disorders may reflect a change, albeit one driven by parental advocacy on behalf of children rather than by a concern for the child's inherent status as a rights holder.<sup>85</sup> Curricular changes, such as the introduction of social, personal and health education at primary level, civic, social and political education at secondary level, and intercultural education at both primary and secondary level, are to be welcomed. While the merits of developments such as the National Children's Strategy and the establishment of the Ombudsman for Children have been acknowledged,<sup>86</sup> the impact of these initiatives in terms of promoting children's autonomous rights in school appears very limited to date. Fundamental changes in the way Irish schools operate and specifically in the way adults interact with children in school are required if the right of children to be 'the primary authors of their lives'<sup>87</sup> is to be realised.

<sup>1</sup> I wish to acknowledge the considerable support and advice provided by Laura Lundy of the School of Education, Queen's University Belfast in the preparation of this article.

<sup>2</sup> Ombudsman for Children, 'Report of the Ombudsman for Children to the UN Committee on the Rights of the Child' (2006) (on the occasion of the examination of Ireland's second report to the Committee); retrieved 4 July 2007, from: [http://www.oco.ie/policyResearch/policy\\_documents.aspx](http://www.oco.ie/policyResearch/policy_documents.aspx).

<sup>3</sup> Ireland, Twenty- eighth Amendment of the Constitution, (2007), para 1, retrieved 5 July 2007, from: <http://www.omc.gov.ie/viewdoc>.

<sup>4</sup> See in particular J Van Turnhout, 'Children's rights -- A View from the NGO Sector' Presentation to the Trinity College Dublin, School of Law Conference on Children's Rights and the Constitution (21 February 2007); Office of the Minister for Children (OMC) (2007): <http://www.omc.gov.ie/viewdoc.a>; Ombudsman for Children, 'Report to the Oireachtas on the Twenty- Eighth Amendment of the Constitution Bill 2007' (2007), retrieved 13 July 2007, from: <http://www.oco.ie/whatsNew/submissions.aspx>.

<sup>5</sup> See D Devine, 'Children: rights and status in education -- A socio- historical perspective' (1999) 18 *Irish Educational Studies* 14, pp 14-29.

<sup>6</sup> See in particular M Stephenson, 'LSAs: Mapping the centre of influence' (2001) June/July *Special Children* 24; L Lawlor and A Cregan, 'The evolving role of the Special Needs Assistant: Towards a new synergy' (2003) 16(2) *Reach: Journal of Special Needs Education in Ireland* 82, pp 82-93.

<sup>7</sup> Committee on the Rights of the Child, Day of General Discussion on the Right of the Child to be Heard (unedited version; United Nations, 2006), at para 1.

<sup>8</sup> S Grover, 'Advocating for children's rights as an aspect of professionalism: The role of frontline workers and children's rights commissions' (2004) 33(6) *Child and Youth Care Forum* 405, at p 405.

<sup>9</sup> See, in particular, J Eekelaar, 'The importance of thinking that children have rights' (1992) 6 *International Journal of Law and the Family* 221; M Freeman, 'The future of children's rights' (2000) 14 *Children and Society* 277; M King, 'Children's rights as communication: Reflections on the autopoietic theory and the United Nations Convention' (1994) 57 *The Modern Law Review* 385; L Lundy, "'Voice" is not enough: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child' (2007) 33(6) *British Educational Research Journal* 927.

<sup>10</sup> O O'Neill, 'Children's rights and children's lives' (1988) 98(3) *Ethics* 445.

<sup>11</sup> Ibid, at p 463.

<sup>12</sup> See M King, op cit n 8.

<sup>13</sup> See M Freeman, 'Taking children's rights more seriously' (1993) 6 *International Journal of Law and the Family* 52, at p 56.

<sup>14</sup> Ibid, at p 66.

<sup>15</sup> See J Eekelaar, op cit n 8.

<sup>16</sup> See n 12 above, p 69.

<sup>17</sup> J Allan and J I'Anson, 'Children's rights in school: power, assemblies and assemblages' (2004) 12 *The International Journal of Children's Rights* 123, at p 137.

<sup>18</sup> L Canon, 'Special educational needs and the case for children's rights' [2005] *Ed Law* 108.

<sup>19</sup> National Council for Special Education, 'Guidelines on the Individual Education Plan Process' (TSO, 2006), p 63.

<sup>20</sup> Westling- Allodi, 'Children's experiences of school: Narratives of Swedish children with and without learning difficulties' (2002) 46(3) *Scandinavian Journal of Educational Research* 181.

<sup>21</sup> G Lansdown, 'The rights of disabled children' (1998) 6 *The International Journal of Children's Rights* 221, at p 224.

<sup>22</sup> R Merges, 'Children's rights, normalisation and organisational patterns of institutions' (1973) 50(2) *Peabody Journal of Education* 128, at p 132.

<sup>23</sup> L Lundy, op cit n 8.

<sup>24</sup> D Devine, 'Children's citizenship and the structuring of adult-child relations in the primary school' (2002) 9(3) *Childhood* 303, at p 312.

<sup>25</sup> S Broer, M Doyle and M Giangreco, 'Perspectives of students with intellectual disabilities about their experiences with paraprofessional support' (2005) 71(4) *Exceptional Children* 415, at p 420.

<sup>26</sup> See in particular *ibid*; M Giangreco, S Yuan, B McKenzie, P Cameron and J Fialka, 'Be careful what you wish for: Five reasons to be concerned about the assignment of individual paraprofessionals' (2005) May/June *Teaching Exceptional Children* 28.

<sup>27</sup> See n 23 above, at p 305.

<sup>28</sup> See S Hart, MJ Drummond and D McIntyre, 'Learning without limits: Constructing a pedagogy free from determinist beliefs about ability' in L Florian (ed), *The Sage Handbook of Special Education* (Sage Publications, 2007), at p 499.

<sup>29</sup> See P McDonnell, 'Developments in special education in Ireland: Deep structures and policy making' (2003) 7(3) *International Journal of Inclusive Education* 259, at p 259.

<sup>30</sup> League of Nations, Geneva Declaration of the Rights of the Child 1924, retrieved 17 May 2007, from: <http://www.un-documents.net/grdc1924.htm>.

<sup>31</sup> See in particular S Riddell, 'A sociology of special education' in L Florian (ed), *The Sage Handbook of Special Education* (Sage Publications, 2007), at p 34.

<sup>32</sup> See in particular M Rioux, 'Disability rights in education' in L Florian (ed), *The Sage Handbook of Special Education* (Sage Publications, 2007), at p 108.

<sup>33</sup> See in particular G Lansdown, 'The rights of disabled children' (1998) 6 *The International Journal of Children's Rights* 221, at p 224; L Lundy and R Kilpatrick, 'Children's rights and special educational needs: findings from research conducted for the Northern Ireland Commissioner for Children and Young People' (2006) 21(2) *Support for Learning* 57, at p 58.

<sup>34</sup> See in particular A Lewis and J Porter, 'Interviewing children and young people with learning disabilities: Guidelines for researchers and multi-professional practice' (2004) 32 *British Journal of Learning Disabilities* 191.

<sup>35</sup> See n 6 above.

<sup>36</sup> Committee on the Rights of the Child, 'Concluding Observations of the Committee on the Rights of the Child: Ireland' CRC/C/Add.85 (United Nations, 1998), para 11 and 'Concluding Observations of the Committee on the Rights of the Child: Ireland' UN/CRC/C/IRL/CO/2 (United Nations, 2006), para 18.

<sup>37</sup> Ireland Education Act 1998.

<sup>38</sup> *Ibid*, at para 27(3).

<sup>39</sup> See n 1 above at para 7(2).

<sup>40</sup> Ireland Education for Persons with Special Educational Needs Act 2004, at paras 15(2)(a) and 8(4)(a).

<sup>41</sup> See n 18 above, at p 63.

<sup>42</sup> National Council for Special Education (NCSE), 'Implementation Report: Plan for the Phased Implementation of the EPSEN Act 2004' (TSO, 2006).

<sup>43</sup> See Department of Education and Science, 'Moving Forward Together' address by Minister for Education and Science, Mary Hanafin TD, to Irish National Teachers Organisation Congress (2007), retrieved 13 July 2007 from: <http://www.education.ie>.

<sup>44</sup> See Department of Education and Science Circular, SP.ED 07/02, 'Applications for Full- time or Part- time Special Needs Assistant Support to Address the Special Care Needs of Children with Disabilities' (2002), retrieved 4 July 2007 from: <http://www.education.ie>.

<sup>45</sup> See in particular EM Anderson, *The Disabled Schoolchild* (Methuen, 1973), at p 221; R Hancock et al, 'Classroom assistants in primary schools: Employment and deployment', ESRC Project Dissemination Report (2002)

<sup>46</sup> Special Education Support Service, 'Courses for Special Needs Assistants', retrieved 13 July 2007 from: [http://www.sess.ie/sess/Main/SNAs\\_Training.htm](http://www.sess.ie/sess/Main/SNAs_Training.htm).

<sup>47</sup> Department of Education and Science (In- Career Development Unit), *Introductory Course for Special Needs Assistants* (DES, 2003).

<sup>48</sup> *Ireland Primary School Curriculum: Introduction* (TSO, 1998).

<sup>49</sup> *Ireland Primary School Curriculum: Social, Personal and Health Education* (TSO, 1998), at p 9.

<sup>50</sup> National Council for Curriculum and Assessment (NCCA), *Guidelines for Teachers of Students with General Learning Disabilities* (TSO, 2007), at p 3.

<sup>51</sup> Committee on the Rights of the Child, 'General Discussion on the Rights of Children with Disabilities' (United Nations, 1997) UN/CRC/C/66, Annex V, at para 334.

<sup>52</sup> See in particular A Franklin and P Sloper, 'Listening and responding? Children's participation in health care within England' (2005) 13 *International Journal of Children's Rights* 11, at p 14; P Alderson and M Goodwin, 'Contradictions within concepts of children's competence' (1993) 1 *International Journal of Children's Rights* 303, at p 311.

<sup>53</sup> Committee on the Rights of the Child, General Discussion Day on Implementing Child Rights in Early Childhood, Palais Wilson (United Nations), at paras 10 and 12.

<sup>54</sup> Committee on the Rights of the Child, General Comment No 7, Implementing Child Rights in Early Childhood, (United Nations, 2005) UN/CRC/GC/7 Rev.1, at para 14(c).

<sup>55</sup> 'Concluding Observations of the Committee on the Rights of the Child: Ireland' UN/CRC/C/IRL/CO/2 (United Nations, 2006), at para 6.

<sup>56</sup> *Ibid*, at paras 18-19.

<sup>57</sup> Ireland Education Act 1998, at para 6(e); Ireland Education for Persons with Special Educational Needs Act 2004, at para 12(1).

<sup>58</sup> See n 6 above, at p 192.

<sup>59</sup> See n 36 above, at paras 15 and 24.

<sup>60</sup> See n 1 above, at p 27.

<sup>61</sup> Ireland, 'Report Submitted by States Parties Under Article 44 of the Convention' (2005) CRC/C/IRL/2, at para 1(b).

- <sup>62</sup> Ireland, 'Our Children -- Their Lives', The National Children's Strategy, Executive Summary (TSO, 2000), at p 14.
- <sup>63</sup> See J Pinkerton, 'Children's participation in the policy process: Some thoughts on policy evaluation based on the Irish National Children's Strategy' (2004) 18 *Children and Society* 119.
- <sup>64</sup> See n 1 above, at p 15.
- <sup>65</sup> See A Franklin and P Sloper, op cit, n 51, at p 15.
- <sup>66</sup> J Boylan and P Ing, "'Seen but not heard' -- Young people's experience of advocacy' (2005) 14 *International Journal of Social Welfare* 2.
- <sup>67</sup> See n 7 above, at p 406.
- <sup>68</sup> See n 8 above, at p 927.
- <sup>69</sup> See n 25 above, at pp 33 and 415.
- <sup>70</sup> See n 18 above, at p 55.
- <sup>71</sup> See J Cavet and P Sloper, 'Participation of disabled children in individual decisions about their lives and in public decisions about service development' (2004) 18 *Children and Society* 278.
- <sup>72</sup> See n 24 above, at p 426.
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- <sup>82</sup> See n 8 above, at p 290.

<sup>83</sup> See U Kilkelly, 'Judgement is evidence of invisible status of the child' *The Irish Times*, 14 November 2006.

<sup>84</sup> See n 23 above, at p 316.

<sup>85</sup> See *Sinnott v Minister for Education* [2000] IEHC 148, [2001] 2 IR 545 and *O'Cuanacháin v Minister for Education* (unreported) 6 June 2007.

<sup>86</sup> See in particular D Glendenning, 'The Ombudsman for Children: An analysis of the Irish model as it relates to recognized schools' (2004) 16(2-3) *Education and the Law* 133; and see also J Pinkerton, 'Children's participation in the policy process: Some thoughts on policy evaluation based on the Irish National Children's Strategy' (2004) 18 *Children and Society* 119.

<sup>87</sup> Reggio Emilia (1995), cited in M Westling - Allodi, 'Children's experiences of school: Narratives of Swedish children with and without learning disabilities' (2002) 46(3) *Scandinavian Journal of Educational Research* 181.