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# Inclusive education and the law in Ireland

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## Abstract

By ratifying the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2018, Ireland has undertaken inter alia the obligation to implement ‘an inclusive education system at all levels and lifelong learning’, as required by Article 24. However, concerns have been repeatedly expressed about the practice of inclusive education in Ireland in terms of admission policies, funding, school choice and reduced timetabling. This paper investigates whether, and to what extent, the current approach to special educational needs (SEN) in Ireland complies with the aim of ensuring an inclusive educational system in which children with disabilities are valued and empowered. Ireland is an interesting case-study due to its history of marginalisation of children with disabilities and its relatively recent engagement with the concept of inclusive education. By using a socio-legal approach, drawing on qualitative interviews with key stakeholders in education combined with a legal analysis of relevant primary and secondary sources, it examines the current practices relating to the education of children with disabilities in Ireland.

**Keywords:** education law; inclusive education; Article 24 of the Convention on the Rights of Persons with Disabilities; qualitative interviews; Ireland; special educational needs

## 1 Introduction

In March 2018, Ireland ratified the UN Convention on the Rights of Persons with Disabilities (CRPD), having signed it in 2007. By becoming a party to the CRPD, Ireland has committed itself to ensuring the effective participation of persons with disabilities on an equal basis with others in all areas of life (Broderick and Ferri, 2019). Among the wide-ranging obligations provided for in the CRPD, Article 24 requires states to implement ‘an inclusive education system at all levels and lifelong learning’ (de Beco, 2016; 2019; Broderick and Quinlivan, 2017). While the right to education is well rooted in international human rights law (Beiter, 2006) and enshrined in several international and regional provisions,<sup>1</sup> Article 24 CRPD is the first legally binding instrument to mandate inclusive education (Broderick, 2014; 2018). As discussed further in this paper, the CRPD requires inclusive education to be geared towards the ‘full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity’ (Art. 24(1)(a) CRPD) and towards the ‘development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential’ (Art. 24(1)(b) CRPD). The ultimate goal of an inclusive educational system is hence that of ‘[e]nabling persons with disabilities to participate effectively’ in society (Art. 24(1)(c) CRPD). Article 24 confers a series of obligations such as ensuring non-discriminatory access to education and providing accessible educational tools and individualised support that address the specific needs of each student. It requires educational institutions to adapt to the needs of children with disabilities and accommodate their different learning requirements.

<sup>1</sup>Including Art. 26 of the Universal Declaration of Human Rights, Arts 13 and 14 of the International Covenant on Economic, Social and Cultural Rights and Art. 2 of Protocol 1 to the European Convention on Human Rights.

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Against this background, this paper aims to assess Ireland's compliance with the obligations laid down in Article 24 CRPD. In particular, taking into consideration the ongoing scholarly debate and current public discourse (Arduin, 2013; Inclusion Ireland, 2019b; de Beco, 2020; Conroy, 2019; Rose and Shevlin, 2020), it examines the practical implementation of inclusive education in Ireland in terms of admission policies, funding, school choice and reduced timetabling.

Ireland is an interesting case-study not only because of its long history of marginalising children with disabilities, but also due to its relatively recent engagement with the concept of inclusive education and its continuing failure to implement key legal provisions to ensure the active participation in mainstream education of children with SEN compared to other European countries such as Italy (Kanter *et al.*, 2014). In the 1950s and 1960s, voluntary groups, such as the 'Friends of the Mentally Handicapped', began to set up special schools for children with disabilities in Ireland (McDonnell, 2003, p. 260). Following the *Report of the Commission of Inquiry on Mental Handicap* (1965), during the 1970s, there was an expansion in the provision of education for children with disabilities (DES, 2007, p. 13). It transpires that special education and general education developed separately in Ireland (Rose *et al.*, 2017), with special education 'rarely considered within mainstream education decision-making and policy development' (Smyth *et al.*, 2014, p. 438). However, a significant change has taken place in the last two decades, with the Irish government establishing a legislative framework, discussed further in this paper, that 'paves the way towards vindicating a right to quality education for all in the best-suited learning environment' (Arduin, 2013, p. 93). This legal framework developed due to a number of factors, including key cases brought before the Irish courts on behalf of children with disabilities during the early 1990s (*O'Donoghue v. Minister for Health & Ors; FN v. Minister for Education*),<sup>2</sup> policy documents such as the *Report of the Commission on the Status of People with Disabilities* published in 1996 and international trends towards the development of inclusive education (Perry and Clarke, 2015, p. 494). After the passage of this legislative framework, additional investment has been provided to 'develop a more sophisticated support infrastructure within mainstream schools', including additional specialist teachers and special needs assistants (SNAs) (Rose *et al.*, 2010; 2017; McConkey *et al.*, 2016), which will be examined in this paper.

Further to these introductory remarks, the paper consists of six main sections followed by concluding reflections. The adopted methodology will be outlined in section 2. Section 3 will briefly discuss the concept of inclusive education that informs the subsequent analysis, while section 4 will focus on the relevant legal framework. The latter section builds on the obligations purported by Article 24 CRPD and then briefly presents the Irish legal framework. Section 5 will examine current practices in Ireland assessing the specific areas of admission policies, assessment, school choice, reduced timetabling, exclusion and home tuition. Section 6 outlines some 'bottom-up' solutions to the current challenges encountered in achieving an inclusive education in Ireland.

## 2 Methodology

### 2.1 A socio-legal approach

This paper provides an analysis characterised by a socio-legal approach. It blends traditional doctrinal legal research with a qualitative methodology. The paper builds on well-established legal scholarship on the right to education in Ireland and in Europe (Arduin, 2013; Broderick and Quinlivan, 2017; Broderick, 2018; de Beco, 2019; Whyte, 2019), policy reports and social science research (Broomhead, 2019; Yada *et al.*, 2018; Alderson, 2018; Banks and McCoy, 2017; UNESCO, 2015; 2017; 2018). It also draws on semi-structured interviews conducted with thirty key stakeholders. This qualitative methodology applied a purposive sampling approach and, as a result, the participants in this study included government and public representatives, parents of children with disabilities, school principals, teachers and non-governmental organisation personnel with particular expertise on the provision of education for children with disabilities. This cohort provides a critical

<sup>2</sup>[1993] IEHC 2; [1995] 1 IR 409.

counterbalance to the ‘top-down’ state reports. The anonymity of the interviewees is preserved in this paper, unless the interviewee explicitly consented to their identity or organisation being identified. The interviews were carried out at a location nominated by the interviewee and the duration varied between forty minutes and one hour. These unique ‘on-the-ground’ perspectives, which are too ‘often overlooked in traditional doctrinal scholarship’ (McGaughey, 2019), offer an important insight into the practical implementation of inclusive education in Ireland and reveal the difficulties experienced by individuals with disabilities. On the whole, this socio-legal approach enables the provision of original findings and offers a novel contribution to scholarship in the field of inclusive education in Ireland.

## 2.2 Terminology

This paper is informed by the ‘social–contextual model of disability’ that is purported by the CRPD (Broderick and Ferri, 2019),<sup>3</sup> in that it is underpinned by an understanding of disability as stemming from the interaction between individual impairments and external environmental and social barriers. Consistently with this understanding and in line with the terminology adopted by the CRPD, this paper uses the term ‘children with disabilities’. However, when examining Irish legislation and current practice, it refers to ‘children with special educational needs’ (children with SEN), in compliance with the terminology of Irish legislation and policies. It is acknowledged that children with SEN ‘do not form a clearly defined group’ (van der Veen *et al.*, 2010, p. 16) and in that regard the term ‘children with SEN’ arguably might be considered a broader term than ‘children with disabilities’. Under Irish law, section 1 of the Education for Persons with Special Educational Needs (EPSEN) Act 2004, discussed in section 4 of this paper, defines SEN as:

‘a restriction in the capacity of the person to participate in and benefit from education on account of an enduring physical, sensory, mental health or learning disability, or any other condition which results in a person learning differently from a person without that condition.’

According to section 52, the terms ‘special educational needs’ and ‘disability’ have the same meaning in the EPSEN Act 2004. By contrast, under section 2 of the Education Act 1998, the former phrase had a broader definition that encompassed the educational needs of exceptionally able students (Glendenning, 2012).<sup>4</sup> Additionally, it is important to note that ‘disability’ is defined differently in the Disability Act 2005 as meaning

‘a substantial restriction in the capacity of the person to carry on a profession, business or occupation in the State or to participate in social or cultural life in the State by reason of an enduring physical, sensory, mental health or intellectual impairment.’

As a result, there are conflicting views regarding the definition of SEN provided for under the EPSEN Act. Some have argued that the EPSEN Act has ‘further constrained the understanding of special educational needs by focusing exclusively on disability as the determinant of special needs’, resulting in a move away from a broad and encompassing understanding of SEN (MacGiolla Phádraig, 2007),

<sup>3</sup>The term ‘social–contextual model of disability’ was first used by Broderick to refer to a more refined elaboration of the ‘pure’ social model (Broderick, 2015, p. 77). Other authors refer to the CRPD as being underpinned by the social model of disability (among others, see Arstein-Kerslake, 2017, p. 72; de Beco, 2018, p. 399).

<sup>4</sup>The National Council on Special Education (NCSE, 2014) does not provide a definite clarification by stating that ‘[t]he EPSEN Act recognises that special educational needs may arise from four different areas of disability: physical, sensory, mental health, learning disability or from any other condition that results in the child learning differently from a child without that condition. It is also important to understand that a child can have a disability but not have any special educational needs arising from that disability which require additional supports in school’. The latter phrase seems at odds with that established by the CRPD, which requires states parties to accommodate the differences of children with disabilities.

whereas Banks and McCoy (2011) view the first statutory definition of SEN contained within the EPSEN Act as ‘much broader than any previous definition’. On the whole, while acknowledging the blurred boundaries and the debate over the meaning of children with SEN under the Irish legislative framework, this paper focuses solely, in fact, on children with disabilities and therefore uses both terms interchangeably for the purpose of this analysis.

### 3 Tracing conceptual boundaries: inclusive education

#### 3.1 A human rights approach to inclusive education

On the basis of several UN soft law documents and the CRPD, inclusive education is closely aligned with human rights and social justice (Frumos, 2018, p. 132), as inclusion within a mainstream educational environment represents a human right for children with disabilities (Smyth *et al.*, 2014, p. 436). Building on this, many scholars have highlighted that inclusive education is a means of enabling ‘participation, equal opportunities, respect for difference and social justice’ (Robinson, 2017, p. 164). The CRPD with its mandate of inclusive education confirms that argument. However, even though the CRPD has firmly established the human right to inclusive education, the concept of inclusion itself remains a ‘controversial issue’ with blurred boundaries (Ruijs, 2017, p. 15; Byrne, 2019), despite the fact that inclusion has been recommended as best practice for over thirty years (Chao *et al.*, 2017, p. 360) and viewed as ‘a necessary component of any truly Democratic educational practice’ (Portelli and Koneeny, 2018, p. 134).

There is currently no prescriptive definition of inclusive education. The United Nations Educational, Scientific and Cultural Organization (UNESCO) has referred to inclusive education as ‘a dynamic approach of responding positively to pupil diversity and of seeing individual differences not as problems, but as opportunities for enriching learning’ (UNESCO, 2005, p. 12). More recently, UNESCO (2017, p. 7) referred to it as a ‘process of strengthening the capacity of the education system to reach out to all learners’. As mentioned above, the CRPD does not include an explicit definition of inclusive education. However, the UN Committee on the Rights of Persons with Disabilities (CRPD Committee), in its General Comment No. 4, has clarified that inclusive education:

‘involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and the environment that best corresponds to their requirements and preferences.’ (CRPD Committee, 2016, para. 11)

Notably, the CRPD Committee (2016, para. 11) differentiates the concept of inclusion from that of integration, which entails a ‘process of placing persons with disabilities in existing mainstream educational institutions with the understanding that they can adjust to the standardized requirements of such institutions’. Moreover, the CRPD Committee (2016, para. 12) argues that inclusive education necessitates a ‘whole systems’ approach, which requires that ‘all resources are invested in advancing inclusive education and in introducing and embedding the necessary changes in institutional culture, policies and practices’; a ‘whole educational environment’ that entails a commitment of educational institutions to inclusion; and, most notably, a ‘whole person’ approach, which entails the recognition of ‘the capacity of every person to learn’. The CRPD Committee (2016, para. 12) also states that an inclusive education system must be realised by ensuring that ‘all teachers and other staff receive the education and training they need to give them the core values and competencies to accommodate inclusive learning environments, which include teachers with disabilities’. Hence, as it transpires from the CRPD Committee’s General Comment No. 4 and from literature pertaining to this area (Rose, 2010; Graham, 2015; Sailor, 2015; Maciver *et al.*, 2018), achieving success in implementing inclusive practices requires fundamental changes in relation to school cultures, structures, practices and curricula.

Interestingly, the CRPD does not openly outlaw special education and does not overtly ban special schools. In its interpretive declaration attached to the ratification of the CRPD, for instance, the UK stated that it understands that special schools are permissible under the Convention. Some commentators argue that special schools could be retained in particular for blind, deaf and deafblind children (Arnardóttir, 2011). In that regard, it has been suggested that the CRPD allows for special educational systems in limited circumstances (Broderick, 2014, p. 31). Arnardóttir (2011) contends that Article 24 CRPD confers the right to choose an inclusive education, thus attempting to strike a balance between the goal of full inclusion and the need for special education to meet the specific needs of children with disabilities in certain cases. De Beco (2018, p. 402) affirms that the CRPD ‘still offers governments a certain degree of leeway regarding its practical implementation’. However, the CRPD Committee (2016, para. 40), despite not engaging with the debate on the dichotomy of mainstream vs. special schools, suggests that the progressive realisation of Article 24 CRPD cannot entail ‘sustaining two systems of education: a mainstream education system and a special/segregated education system’. In its concluding observations (UN CRPD, 2021) on state reports, the CRPD Committee has consistently expressed concerns in relation to the persistent large number of children with disabilities in segregated schools or institutions or in separate classes in regular schools, which perpetuates stigmatisation and exclusion. In a similar vein, in a recent inquiry, the CRPD Committee established that Spain’s segregation and exclusion of students with disabilities from mainstream education on grounds of their impairments amount to a grave violation of the right to inclusive education under the CRPD. The Committee considers:

‘the right to education to be the right of all persons to learn in an education system that takes account of the needs of all persons, including those with disabilities, and in which all students are accepted by all schools regardless of their physical, intellectual, social, linguistic or other abilities. This involves not only providing a quality education but also changing discriminatory attitudes and systems in order to create inclusive societies in which the differences and dignity of all persons are equally respected and valued.’ (2018, para. 6)

This approach has been confirmed by a decision released in September 2020, in which the CRPD Committee found that Spain violated the right to inclusive education of a child with Down Syndrome by excluding him from the mainstream education system, confining him to a special school for children with disabilities.

### 3.2 *The blurred boundaries of inclusive education in practice*

Prompted by international developments over the last thirty years, and in particular by the CRPD, the commitment to inclusive education has become quite widespread, with an increasing number of countries recognising that mainstream schooling should be the first choice for all children (Batsiou *et al.*, 2008). Some countries promote inclusive education based on the assumption that this is the most appropriate means to address discriminatory attitudes (Avramidis *et al.*, 2018). This is observed in Albania, for instance, where the Commissioner for Protection from Discrimination concluded that ‘the majority of discrimination cases in the field of education relate to refusals or failure to integrate children with disabilities in ordinary schools’ (EC, 2019a, p. 37). Additionally, since the 1970s, Italy has undertaken a process of inclusion in mainstream schools and ‘despite the difficulties imposed by economic constraints ... has laid the foundations for implementing anti-discriminatory legislation known as school integration’ (*inter alia* Caldin, 2013, p. 18). In Sweden, to avoid segregation, the model of ‘A school for all’ has been put into practice (Lindqvist and Nilholm, 2013, p. 98). This approach is also endorsed in Finland, where the right to educational success, individual and flexible support, and a sense of belonging are stated in both the Basic Education Act 628/1998 and the core curriculum for Basic Education 2014 (Riitaoja *et al.*, 2019).

Despite this increase in commitment towards inclusive education, especially in Europe (Smeets and Roevelde, 2016), challenges along with wide variation in the practical implementation of inclusive

education persist (Haug, 2017). Special schools still function in the majority of European countries, albeit to varying degrees (European Agency, 2021), and debate continues over the usefulness of those educational settings (Shaw, 2017). Byrne has recently suggested that ‘the inclusion umbrella has become so broad and all encompassing, that it risks becoming a new way to describe and legitimise age old norms of mere integration and/or segregation within mainstream settings’ (Byrne, 2019, pp. 301–302). In such a landscape, Ireland is particularly interesting due to its historically dominant tradition of segregation of children with disabilities, its relatively recent legislative framework moving towards inclusive education and its continuing failure to implement key legal provisions to ensure the active participation in mainstream education of children with SEN. This is clearly visible in statistics capturing the system of education for children with SEN in Ireland, which show that the number of pupils in special schools in 2018/2019 was 8,224 and the number of pupils in special classes within mainstream primary schools was 6,229 during the same period (DES, 2019). These figures must be viewed in light of the total primary school population, which stood at 567,772 (Oireachtas Library & Research Service, 2020). It is difficult to find precise data pertaining to SEN and education. This, however, is not a case of Irish exceptionalism. In the Netherlands, for instance, it has been estimated that approximately 3.7 per cent of primary school students and 5 per cent of secondary students are identified as having severe SEN (Ruijs, 2017, p. 17). Moreover, a recent English study found that 14.4 per cent of all school pupils had SEN (Alderson, 2018), while students with SEN represent approximately 10 per cent of the student population in Greece (Coutsocostas and Alborz, 2010). More precisely, the Latvian Ministry of Education provided that in 2019/2020, there were 15,437 pupils with SEN, of whom 63.9 per cent study in general education schools following different programmes, while 5,579 study in special education schools (EC, 2021, p. 39).

## 4 The relevant legal framework

### 4.1 *The international context and the obligations purported by the CRPD*

At the international level, the Jomtien World Declaration on Education for All (UNESCO, 1990), the UN Standard Rules on Equalization of Opportunities for Persons with Disabilities (United Nations, 1993) and the Salamanca Statement and Framework for Action on Special Needs Education (adopted at the World Conference on Special Needs Education: Access and Quality, Salamanca, Spain, 7–10 June 1994) laid the foundation of inclusive education (Kiuppis, 2014). The 1994 Salamanca Statement and Framework particularly is said to have ‘marked a significant step in policy developments towards inclusive education’ (Meijer and Watkins, 2019, p. 705). Following the lines set out in the Salamanca Statement and previous soft law, the more recent UNESCO Policy Guidelines on Inclusion in Education emphasise that schools should operate in an inclusive manner to support all students (Hardy and Woodcock, 2015, p. 147). Furthermore, Goal 4 of the UN General Assembly (2015) Sustainable Goals aims to ‘ensure inclusive and equitable quality education and promote life-long learning opportunities for all’ by 2030.

As specified in the introduction to this paper, while the CRPD builds on these soft law documents, it is the first legally binding international instrument obliging states to create an inclusive education system (de Beco, 2017; 2018; 2019). Article 24 CRPD, which must be read in light of the general principles of the Convention, regards inclusive education as a ‘universal human rights objective’ (Yada *et al.*, 2018). Moreover, Article 24 and its interpretation by the CRPD Committee in its General Comment No. 4 have been referred to as ‘the most critical milestones’ in recent times, affirming the right of persons with disabilities to access an inclusive education (UNESCO, 2019, p. 4).

Article 24 CRPD requires states to achieve a truly inclusive and non-discriminatory educational system by removing all barriers to participation (de Beco, 2014, p. 287). Article 24(2)(b) CRPD, read in light of the general principle of accessibility (Arts 3 and 9 CRPD), requires states to make the whole education system accessible, ‘including buildings, information and communications tools (comprising ambient or frequency modulation assistive systems), the curriculum, education materials, teaching

methods, assessment and language and support services’ (CRPD Committee, 2016, para. 22). The CRPD obliges states to ensure that reasonable accommodation is provided to children with disabilities and to put in place ‘effective individualized support measures ... in environments that maximize academic and social development, consistent with the goal of full inclusion’ (Art. 24(2)(e) CRPD) and requires those measures to be tailored to the needs of individual children (Broderick, 2018, p. 31; de Beco, 2014, p. 281). According to the CRPD Committee (2016, para. 32), individualised measures include ‘the provision of sufficiently trained and supported teaching staff, school counsellors, psychologists, and other relevant health and social service professionals, as well as access to scholarships and financial resources’. Reasonable accommodations are not the same as individualised support measures. Rather, they entail

‘individualised solutions designed to meet the specific needs of a person with a disability in a particular case, and are concerned with the removal of the disadvantage to which a disabled student would otherwise be subjected by standard educational practices or systems.’ (Broderick *et al.*, 2020)

On the whole, Article 24 makes it imperative for states to implement the obligations set out in the CRPD through the enactment of a legislative framework that adequately supports and facilitates inclusive education. As noted by the CRPD Committee in *Rubén Calleja Loma v. Spain* (2020), states must:

‘formulate a comprehensive, inclusive education policy with strategies for promoting a culture of inclusion in mainstream education, including individual rights-based assessments of educational needs and necessary accommodations, support for teachers, respect for diversity in ensuring the rights to equality and non-discrimination, and the full and effective participation of persons with disabilities in society.’

#### 4.2 The Irish legal framework

The right to education in Ireland is enshrined under Article 42 of the Constitution, recognising the family as the primary educator of the child. However, state intervention is contained within Article 42.3.2<sup>5</sup>, which provides that ‘the State shall, however, as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social’. This duty is compounded in Article 42.4, which requires the state to ‘provide for free primary education’ and ‘endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions’.<sup>5</sup> Notably, Ireland is a dualist state requiring adherence to Article 29.6 of the Constitution, which states that ‘no international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas’. The result of this Article is that for international treaties entered into, such as the CRPD, there is a requirement that they are incorporated into domestic law through legislation before they may be applicable within the Irish state.

There is a body of legislation in Ireland pertaining to children with SEN,<sup>6</sup> albeit Ireland has been referred to as a ‘latecomer to inclusion in terms of its legislative commitment’ (McCoy and Banks, 2012, p. 84). One of the key statutes in the context of children with SEN is the EPSEN Act 2004. Section 2 of the EPSEN Act stipulates that a child with SEN ‘shall be educated in an inclusive

<sup>5</sup>A provision under which a number of legal actions have arisen. These include e.g. *O’Donoghue v. Minister for Health & Ors* [1993] IEHC 2; *Comerford v. Minister for Education* [1996] IEHC 48; *Sinnott v. Minister for Education* [2001] IESC 39; *O’Carolan (A Minor) v. Minister for Education and Science & Ors* [2005] IEHC 296; and *SOC v. Minister for Education and Science and Others* [2007] IEHC 170.

<sup>6</sup>These provisions include the Education Act 1998, Equal Status Acts 2000–2011, Equality Act 2004, Education (Welfare) Act 2000, EPSEN Act 2004 and the Disability Act 2005.

environment with children who do not have such needs'. However, both the EPSEN Act and the Equal Status Acts 2000–2011 permit the exclusion of children with SEN in circumstances in which it would be inconsistent with the best interests of the child or the effective provision of education to other pupils with whom the child is to be educated. Consequently, until those provisions are repealed, Ireland faces a considerable challenge in bringing its domestic practice in line with, and fully implementing, the inclusive education model purported by the CRPD.

When the EPSEN Act was enacted in 2004, it received favourable commentary in terms of its potential to bring about enormous improvement in the provision for children with SEN. As outlined by MacGiolla Phádraig (2007), the Act 'aims to give children who have special educational needs rights which are, for the first time, enforceable in law and it is an important stage in the evolution of special education provision in Ireland towards inclusive education'. Furthermore, Kenny, McCoy and Mihut (2020) comment that the 2004 Act 'signalled a real shift in thinking from segregated provision and stated that children with special educational needs should be educated, wherever possible, in an inclusive environment'.

While the objectives of the EPSEN Act are in line with the international trend towards inclusive education, key provisions of the EPSEN Act have not yet been commenced and since its enactment, this failure has been subject to criticism (O'Mahony, 2006). These provisions relate to the preparation of an individual education plan (IEP) by the school with input from a number of relevant stakeholders, the assessment of a child by the relevant health board or the National Council for Special Education (NCSE), an appeals procedure relating to assessment and education plans, and the provision of relevant supports and resources for children with SEN. This failure to commence these core provisions – regarding resources, appeal processes and IEPs – has resulted in an inability to 'guarantee an effective and inclusive education accessible, available and adaptable to every child' (Arduin, 2013, p. 106).

Although there has been a failure to commence several key legal provisions, a striking feature of the legislative landscape in Ireland is the difficulty encountered with respect to the implementation of the provisions that have already been commenced, and which aim to enable effective participation in society in line with Article 24(1)(c) CRPD. These include, *inter alia*, the absence of a specific reference to special schools, which might have serious ramifications if an increasing trend of students leaving mainstream arises and the indefinite deferral of a date for full commencement of the statute that has led to inadequate monitoring of student education support needs (Kelly *et al.*, 2014). Although the approach of the Irish courts appears to broadly conform with the principles espoused in other international law instruments such the UN Convention on the Rights of the Child (Bracken, 2018, p. 209), the Committee on the Rights of the Child<sup>7</sup> (2015, pp. 115–116) observed that the failure to fully implement the EPSEN Act – which would be a prerequisite to complying with the CRPD in practice – occurred 'in light of the difficult economic situation and the significant associated costs'. However, in recent years, this continuing lack of implementation has been referred to as 'shameful' by bodies working to achieve inclusive education in Ireland (Inclusion Ireland, 2019b).

## 5 Current Irish practices

### 5.1 School structure

In Ireland, there is a 'continuum of educational provision' for children with SEN (Rose and Shevlin, 2020, p. 53), who may be placed on a full-time basis in a special school, full-time basis in a mainstream school or enrolled in a special class within a mainstream school. Furthermore, there has been a significant increase in special classes within mainstream education from 548 in 2011/2012 to 1,008 in 2015/2016 (Banks and McCoy, 2017, p. 448) with a substantial increase to 2,118 in 2021/2022 (Donnelly, 2021a). This approach to structuring SEN education is also endorsed in other countries

<sup>7</sup>Art. 23 of the Convention on the Rights of the Child requires states parties to 'encourage and ensure' assistance that is 'designed to ensure that the disabled child has effective access to and receives education ... in a manner conducive to the child's achieving the fullest possible social integration and individual development'.



such as Bosnia and Herzegovina (Dizdarevic *et al.*, 2017, p. 95). Conversely, countries such as Germany and the Czech Republic (Bartonova, 2016) have implemented a ‘dichotomous special education system’ (Kocaj *et al.*, 2018). This continuum of provision reflects the enduring debate concerning the benefits and drawbacks of special schools (Farrell, 2006; Mand, 2007; Dizdarevic *et al.*, 2017, p. 95; Kocaj *et al.*, 2018), which has not been silenced by the CRPD. Similarly, some participants in this study voiced concerns about the total inclusion model. One interviewee, for instance, observed that ‘there should be special schools in every single town’, while another parent felt that inclusion was failing her child due to inadequate teacher training and deficient resources:

‘So she’s eating the skin in her mouth, she’s pulling the skin off her fingers, on her feet with anxiety, she’s displaying other behaviours and the teacher is just too busy and this particular mainstream teacher again doesn’t have any autism training and she doesn’t know what to do.’

This continuum of provision thus seems to fend off the realisation of an inclusive education system envisaged by the CRPD, in which children with disabilities can be educated together with other children. However, alongside the continuum of educational provision, the SNA scheme implemented by the Irish government is ‘designed to provide schools with additional adult support staff who can assist children with special educational needs who also have additional and significant care needs’ (Circular 0030/2014). This scheme has been deemed a crucial factor in the successful inclusion of children with SEN into mainstream education and the provision of additional care and support to children with SEN currently enrolled in special classes and special schools. There has been a significant increase in the number of SNAs in Irish schools from 8,521 in 2014 to 15,799 in 2019. Of these (15,799 SNAs), there were 2,560 attached to special schools, 9,948 to primary schools and 3,291 to post-primary schools (DES, 2020, p. 21). During the school year 2019–2020, over 39,500 children with SEN were provided with access to SNA support (NCSE, 2021, p. 19). Despite the persistent dichotomy between special and mainstream schools, this scheme seems to entail a shift towards the ‘whole systems’ approach envisaged by the CRPD Committee, in that it provides a structure whereby an increasing number of children with SEN may be educated within the mainstream setting, striving towards a more inclusive approach to educational provision in Ireland.

## 5.2 Funding

At international and European levels, the importance of adequately financing inclusive education has been emphasised (Meijer and Watkins, 2019, p. 710). As a socio-economic right, the right to education is subject to progressive realisation within the maximum of available resources, as stated in Article 24 (2) CRPD. The CRPD Committee has urged states to develop a ‘funding model that allocates resources and incentives for inclusive educational environments to provide the necessary support to persons with disabilities’ (CRPD Committee, 2016, para. 70). Sufficient funding is essential in providing education for children with disabilities, which is estimated to be twice the cost of general education (Banks *et al.*, 2015). Nonetheless, the implementation of Article 24 CRPD must be assured through the effective allocation of adequate financial and human resources and the establishment of monitoring mechanisms (Broderick, 2014).

In the Irish context, the Minister for Education and Skills (‘the Minister’) stated that in 2022, in excess of €2 billion in funding will be provided to support children with SEN, ‘representing over a quarter of the Department’s entire current expenditure budget’. Under budget 2022, a further 1,165 SNAs will be hired, which will lead to a total of 19,200 in Irish schools and 360 new teachers will be recruited to work in special classes (DES, 2021, p. 5). The aim of this investment is to ensure that over 1,700 new places in special classes within mainstream settings are provided for children with SEN. Despite these developments, the European Commission (2019d, p. 48) has outlined that this funding is insufficient ‘to provide the necessary support/accommodations to enable disabled children to participate in mainstream education’. Much of this educational provision for these children is still made by ‘grace and concession’ rather than a right (*O’Donoghue v. Minister for*

*Health*<sup>8</sup>; Glendenning, 2012). Concerns have been raised regarding the inadequacy of educational supports, the over-concentration of pupils with disabilities in schools that are designated as disadvantaged and an incoherent approach to reasonable accommodation for State Examinations (EC, 2019d; CRC, 2016; CESCR, 1999).

### 5.3 Admission policies

The CRPD requires states to ensure non-discriminatory access to education; however, across a number of countries, ‘organisational and economic arguments can be used to refuse admittance’ to children with disabilities (Magnússon, 2020, p. 28). This has been a constant feature of the educational landscape in Ireland, but due to recent legislative developments, under section 8(5)(a) of the Education (Admissions to Schools) Act 2018 (‘the 2018 Act’), the Minister may ‘compel’ a school to open a special class should the NCSE – responsible for the provision of supports to children with SEN – identify that the need arises in a given area. While such a provision is certainly a move towards the implementation of and compliance with Article 24 CRPD by ensuring equal access to education, a representative of the Irish Society for Autism expressed reservations about the practical impact of the provision:

‘You can force a school to take a unit but if the board of the school itself are not on board with it, you’re wasting your time because there is a basic resistance who are not prepared to cooperate, not putting their hearts and minds into it and that’s something you can’t legislate for.’

This comment shows that without what the CRPD Committee has termed a ‘whole educational environment’, legal provisions cannot by themselves ensure non-discriminatory access to education.

Moreover, section 61 of the 2018 Act requires schools to include an Admission Statement in their Admissions Policy, advising that the school will not discriminate on any of the grounds set out in the Act. The Minister has pledged that ‘schools will be prohibited within the next two years from asking parents during enrolment whether their children have disabilities’ (O’Brien, 2019). This pledge was subsequently fulfilled with the commencement of the 2018 Act in February 2020. However, a number of schools do not have the necessary infrastructure and supports in place to accommodate children with disabilities and to provide for their individual needs. One interviewee, a parent of a child with SEN, captured the difficulties encountered in practice by saying:

‘I was trying to get him into another school last year and all the schools around me said no, they have no facilities, they have no SNAs, they can’t deal with him and its basically because he couldn’t go into an ordinary classroom they didn’t have the facilities.’

The majority of parents interviewed for this study felt that their child was, or had been, discriminated against as a result of their diagnosis or lack thereof. In one instance, a parent described being told that the enrolment policy in her chosen special school required that a child ‘not only needs to have an autism spectrum disorder, but they have to have a diagnosis of a low IQ’. More specifically, the shortage of appropriate school places for children with autism was, as the interviewee from the office of the Ombudsman for Children pointed out, particularly acute in certain parts of the country: ‘We have had reports in here of out in Dublin 15 where there are approximately 70 children with autism who are not receiving education, we would see that very clearly as a violation of their rights.’

While the recent legislative provisions strive to comply with the obligations arising under the CRPD, in practice, significant difficulties remain in accessing an appropriate school place due to limitations in terms of infrastructure and supports. A further challenge faced by parents and their children in this regard relates to the current practice of requiring a diagnosis prior to admission, which necessitates a formal assessment.

<sup>8</sup>[1993] IEHC 2.

#### 5.4 Assessment

The assessment process has been identified as ‘the most crucial aspect’ of education provision for children with SEN (Isaksson *et al.*, 2010, p. 136). Section 7 of the Disability Act 2005 defines assessment as:

‘an assessment undertaken or arranged by the Executive to determine, in respect of a person with a disability, the health and education needs (if any) occasioned by the disability and the health services or education services (if any) required to meet those needs.’

Currently in Ireland, the provision of an assessment only applies to a child under the age of five years in accordance with the Disability Act 2005. Legislative provisions under the EPSEN Act, by contrast, pertain to children over the age of five, but they have not yet been commenced. Significantly, key provisions in the EPSEN Act that could be pivotal in overcoming existing weaknesses in the framework for assessment – such as time limitations imposed on the completion of assessments (s. 3) and appeals procedures in relation to assessments (s. 6) – are still not operational in law. Assessments and early interventions are crucial in ensuring that children with SEN reach their full potential whether that is in an inclusive or specialised learning environment. This importance has been recognised by the Irish courts. In *O’C v. Minister for Education*,<sup>9</sup> Peart J. stated that early intervention was important as ‘the diagnoses is the only key which has the potential to unlock the package of ameliorating measures to which the plaintiff would be entitled after diagnosis’. Particular concerns remain about this aspect of SEN provision due to ‘difficulties in accessing educational psychologist assessments and the excessive delays and concerns over the quality of the reports’ (Kelly *et al.*, 2014, p. 70).

There has, however, been a move away from the medical model-oriented assessment and from the labelling and potential stigmatisation of children with SEN in Ireland, with the proposed new system for funding based on need, rather than diagnosis. In other words, an assessment would not be required for resource allocation (Banks *et al.*, 2015, p. 939), as recommended by the NCSE (2014), which appears not only to be incompatible with the aim of inclusive education, but also counter-intuitive in that the resources allocated to the school should be linked to the needs of the children who attend it. Under the proposed model, the government will provide teaching supports to schools on the basis of their educational profiles, embodying the key principle that ‘all pupils, irrespective of special educational needs, are welcomed and enabled to enrol in their local schools’ (DES, 2017, p. 4). This shift is important because assigning such labels ‘can have negative effects’ on children, such as lower self-esteem and peer rejection (World Health Organization, 2011). It is certainly important to move towards more advanced compliance with the CRPD, with the social-contextual model embedded in it, bearing in mind the Article 24 provisions, but also the obligation of ‘fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities’ (Art. 8(2)(b) CRPD).

It is arguable that in terms of practical implementation, it is necessary to identify the individual needs of children in order to ensure that the resources provided to the school are, in fact, sufficient in meeting their needs. Both the EPSEN Act and the Disability Act refer to IEPs in order to ensure proper provision in this regard. This was echoed by the NCSE (2006). A proposed review of the EPSEN Act that will include a re-examination of the implementation of IEPs was listed as a priority for the Irish government in January 2022 (Donnelly, 2021b).

Current practice remains anchored to medical diagnosis and assessment. In this study, a sense of frustration was experienced by parents of children who did not have a formal diagnosis of autism and as a result did not meet the admission criteria for enrolment in a special class. Schools, in general, require a diagnostic report with a written recommendation. One interviewee outlined the high threshold required to secure a place in a school for children with behavioural, emotional and mental health issues:

<sup>9</sup>[2007] IEHC 170.

‘They have to have a diagnosis of severe emotional behavioural disorder it can’t even be emotional behavioural disorder, it has to be severe and has to be attending CAMHS [Child and Adolescent Mental Health Service] on a full time basis that’s their criteria so she basically said look “there is nothing I can do we only have 18 places”.’

Lengthy delays exist in the public health-care sector for assessing autism and this can vary depending on geographical location. Frequently, parents have no alternative but to pay for a private assessment and this inevitably creates a two-tier system, differentiating between those who can afford to pay for this service and those who cannot. This was captured by a Special Educational Needs Organiser (SENO) from the NCSE who stated that ‘if parents have money, they can decide to get a child assessed. If they are waiting on the NDT [Network Disability Team] they could be waiting for a long time’.

Thus, in Ireland, there are significant impediments for children with SEN in accessing suitable and appropriate education due to current practices relating to assessments and their subsequent impact on admission processes. This includes a medicalised approach, which is still in place despite some progress towards a more social–contextual approach being made. Despite recent legislative developments, these impediments are further compounded by the lack of school choice.

### 5.5 School choice

The CRPD Committee (2016, para. 10) indicates that ‘education is the right of the individual learner and not, in the case of children, the right of a parent or caregiver’ and that ‘[p]arental responsibilities in this regard are subordinate to the rights of the child’. While recognising the key role of parents and the principle of the best interest of the child, the CRPD Committee (2016, para. 47) highlights that, consistently with Article 7(3), the promotion of the voice of children with disabilities is central in developing a more inclusive education system. This entails that children with disabilities have the right to express their views on the education that they receive. Article 4(3) CRPD also requires that states ‘must consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations, in all aspects of planning, implementation, monitoring and evaluation of inclusive education policies’ and children with disabilities cannot be considered merely recipients of education (CRPD Committee, 2016, para. 7).

Under the Irish Constitution, parents are regarded as the primary educator and thus ‘have acquired considerable control over educational provision relating to their children’ (Shevlin and Rose, 2008, p. 426). Article 42 of the Irish Constitution and section 6 of the Education Act 1998, subject to available resources and the rights of school patrons, promote the right of parents to send their children to a school of their choice. However, the parents interviewed for this study felt that their freedom of choice had been significantly hindered as a direct result of school admission policies and the lack of school places for their children. One participant, who had been in contact with the Educational Welfare Officer and was reassured that every child is entitled to an education, noted that ‘school places are few and far between’, while others revealed that they were left with little or no choice regarding schools and thus accepted the first school place that became available. Parents also had to come to terms with the reality that their child may be required to travel long distances outside of their community to avail of a suitable place. One parent described the impact that this had had on their child:

‘I think it’s unfair that he has to go to a school outside of his town, there should be a school in the town for children like my son because just the travel alone for children like him puts added pressure on the child.’

As has emerged from this study, the stringent admission policies and lack of appropriate school places are impacting on the accessibility of education for all children. However, in circumstances in which a place is obtained, the interviewees also emphasised issues with the use of reduced timetabling in schools.

### 5.6 Reduced timetabling

Reduced timetabling was introduced as a support to be implemented in a positive manner, for compassionate reasons, in circumstances in which children were experiencing illness, family bereavement or other extenuating circumstances that prevented them from attending school on a full-time basis. A survey carried out by Inclusion Ireland (2019a, p. 2) found that one in four children with an intellectual disability or developmental disability had been put on shorter school days. A representative from the office of the Ombudsman for Children expressed particular apprehension about the use of reduced timetabling:

‘What we would be concerned about really is that what was meant to be a very positive measure to support children who needed reduced timetables for a limited period of time for whatever reason be that health or mental health or wellbeing appears to have become more widespread and disproportionate amongst vulnerable children.’

Some participants reported that reduced hours were used as a means of managing children’s challenging behaviour. Although in favour of reduced timetabling in principle, one parent outlined the negative effects that her child experienced after she requested support from the school: ‘They decided then that they would bring in the reduced timetabling which I do think is a great idea, but it doesn’t resolve the issue because what it does is it isolates that child further and further.’

In September 2019, the Minister announced that schools will be required to give formal notification regarding the use of reduced timetables. The press release also stated that a reduced timetable should not be used as a sanction or as a behavioural management tool, but rather that it should be applied proportionately and should only last as long as is necessary to facilitate the child’s return to school on a full-time basis (DES (Education), 2019a). One interviewee indicated that this approach requires reconsideration and that it should only be ‘an interim measure until something else is put into place’.

Participants’ perspectives varied in this regard, with some believing that in cases of extremely challenging behaviour, schools were left with no alternative but to introduce reduced timetabling. Others, including the SENO interviewed, argued that there are other options and assistance available to schools, if they make such requests.<sup>10</sup> While a number of other participants outlined the negative effects of reduced timetabling – such as a feeling of unacceptance and exclusion from the school community, a loss of interest in education and early school leaving – one interviewee described the confusion experienced by her child when this reduction in hours occurred:

‘Suddenly my child is saying mammy why am I so different to all the other kids in my school, why am I only allowed a half an hour with my class room every day and I don’t even get to eat my lunch and why am I walking around school with a man and not in my class.’

The CEO of the National Parents Council echoed these fears: ‘I think the emotional and psychological impact for children being told from very young ages that the school cannot cope or manage with them is a real concern.’ On the whole, the impact of this interim measure, which was initially conceived of as a support measure, was felt to contribute to a sense of segregation and stigmatisation of children with SEN in Irish education. This contradicts the obligations arising under the CRPD, and in particular the requirement for ensuring individualised support measures and reasonable accommodation. In September 2021, new guidance was issued to schools on the recording and notification of the use of reduced timetabling (Circular 0047/2021). Commencing on the 1 January 2022, schools must notify Tusla’s Education Support Service of the decision to place a student on a reduced school day no later

<sup>10</sup>Schools can apply for services on behalf of a child in need to the National Educational Psychological Service (NEPS) and the NCSE, which now encompasses the National Behavioural Support Service (NBSS), SENOs and the Special Education Support Service (SESS).

than the first day of its commencement. The NCSE must also be notified of the decision regarding a student with SEN.

### 5.7 Exclusion

Exclusion from school can have a number of consequences on a child's life, including 'dislocating them from their peer group, depriving them of access to the mainstream curriculum and exposing them to serious risks of under-achievement, and long-term unemployment and poverty' (McCluskey *et al.*, 2016, p. 529). The aforementioned study (p. 534), carried out in Wales, found that children with SEN account for over 50 per cent of all exclusions. At the international level, UNESCO (2018, p. 7) observed that children with disabilities are among the population groups most likely to suffer from such exclusion. While it is not possible to state with certainty that children with SEN are the most likely group to be excluded from Irish schools, one interviewee described the difficulties that she experienced when her child was excluded due to behavioural concerns:

'So we went in for a meeting and they had to read a list in front of us of what he had done and he had to say yes or no to each thing but he wouldn't speak he just sat there crying so I had to say "yes, yes I understand through the whole thing" and then he was expelled and that was the end of that.'

During these periods of exclusion, parents may experience difficulties in finding an alternative place for their child in an educational setting. One interviewee, in particular, outlined the lack of support received in these circumstances:

'I tried to argue I went to the Board of Education [Management] to fight the suspension and I lost that completely so I went back to the school and said "look you're not helping me here I want to fix this and I want to help the school but I don't know the route to go", but still no help.'

These exclusionary practices on the basis of disability are in blatant breach of Article 24 CRPD, and more generally disrespectful of the envisaged principle of participation and inclusion. In *Rubén Calleja Loma v. Spain*, the UN CRPD (2020) reiterated that the right to non-discrimination in educational settings includes the right not to be segregated and to be provided with reasonable accommodation. Furthermore, it highlights that there is an overarching obligation on states to provide accessible learning environments. Children with disabilities cannot be excluded from an educational institution because it is not capable of providing an inclusive environment and the adequate support necessary to address behavioural concerns. The CRPD Committee has also made clear that structural patterns of discriminatory exclusion need to be addressed and dismantled.

Furthermore, the consequences of such exclusions are significant and reinforce the fact that children with disabilities are already 'less likely to learn key skills such as reading, writing and mathematics than those without disabilities' (UNESCO, 2015, p. 23). This, in turn, hampers the possibility for them to find meaningful employment and earn a living in their adult age, leading to a breach of several other CRPD provisions.

### 5.8 Home tuition

In the context of SEN provision in Ireland, there is a cohort of children who are not currently educated in a school setting. To alleviate the effect of this, there is a Home Tuition Grant Scheme available to three categories of students (Circular 0043/2019).<sup>11</sup> A representative of the NCSE revealed the limited

<sup>11</sup>(a) Early educational intervention for children with autism who meet the Scheme's eligibility criteria (b) Students with special educational needs seeking an educational placement in a recognised school (c) Students, enrolled in schools, with a significant medical condition, or school phobia and/or associated depression/anxiety, which has caused, and is likely to continue to cause, major disruption to their attendance at school.

provision that is in place to fill the void: ‘When there is no place there is a provision called home tuition not home schooling, home tuition provides a bare minimum of education.’

Home tuition is available for children with SEN but should only be used as an interim measure while seeking a suitable placement. Figures released in 2021 show that 210 children of school-going age are receiving home tuition, which includes eighty-eight children with no special school placement (Casey, 2021). Obtaining funding for home tuition can be ‘fraught with difficulties for parents’. Parents are also concerned about the potential loss of social interactions for their child (Donnelly, 2019). One interviewee captured the perseverance required in order to both obtain and retain this scheme: ‘Every term you have to reapply [home tuition] and basically you have to beg for it, you have to have every piece of paper possible and I don’t have a lot of paperwork.’

Participants not only felt that the application procedure for home tuition was onerous due to the level of paperwork involved and the requirement for supporting reports. They also expressed that the process was especially time-consuming for those with children absent from school on a long-term basis. One interviewee recounted their experience of applying for home tuition and the corresponding lack of agency support: ‘He eventually qualified for home tuition for three months, nine hours per week and I sourced a tutor myself because the Educational Welfare Officer couldn’t find one.’

The most recent circular (Circular 0044/2020) on the Home Tuition Grant Scheme states that it is the responsibility of the parent/legal guardian to source an appropriate tutor for their child. However, this can often prove difficult without support. It is only ‘where an applicant cannot source a fully qualified teacher’ that the Department *may* permit the engagement of a person qualified in the relevant area, who is registered with the Teaching Council of Ireland.

Other participants, such as the CEO of the National Parents Council, believed that home tuition should be the ‘absolute last resort’ and that it is an ineffective remedy for a child who is excluded from school. Home tuition does not provide the social interaction or related experiences that a child would receive in a school environment, which can impact a child’s comprehensive engagement with their right to education, as encapsulated under Article 24(2)(e) CRPD. As one interviewee pointed out:

‘You’re missing sort of 50% of your schooling by having it at home if not more, and you’re also missing the key things that as a society we value most from their education, the subjects are one thing but the skills that they find around education are just absolutely key, home tuition is not a solution at all it’s a last resort.’

As a result, children excluded from school are effectively being deprived of the ‘intellectual, social, cultural and ethical knowledge and skills’ afforded by formal education (Mizunoya and Zaw, 2017, p. 8).

## 6 Addressing current challenges

In the previous section, the pitfalls of the Irish education system and the challenges faced by children with disabilities and their families were highlighted. This section builds on the analysis by indicating a number of recommendations for improvement as offered by the interviewees. The majority of these suggestions centred on the quality and availability of specialist training for both teachers and SNAs, while some suggested that specialised training should be mandatory for all those involved in educational provision for children with SEN – a point that tallies well with the CRPD Committee recommendation (2016, para. 21). The participant from the Irish Society for Autism summarised these concerns:

‘The teachers SNAs whoever, do not have enough training in the individual needs of children, so if you just take autism on its own, they don’t have comprehensive autism training, the amount of times that we get contacted by teachers asking for training specific to autism because they don’t have it and they have children in their classroom and they want to be able to help but they don’t have the skills.’

This lack of appropriate training is not unique to Ireland. Similar concerns have been raised in other EU Member States (EC, 2019b, p. 42). Furthermore, a number of interviewees raised the issue of service provision within the school setting. At present, services such as speech and language therapy and occupational therapy are separate to the education system and are generally sourced externally by parents and facilitated outside of school. The onus is placed on parents to request and apply for these supports, with one interviewee indicating that ‘[t]he parents try to get the help on board from the therapists, from the teams into the school but it’s something that you kind of have to keep on to constantly’.

An important development in this regard has been the introduction of a Pilot Scheme School Inclusion Model. Announced in March 2019, this is a model of support for children with SEN and additional care needs, which has been piloted across seventy-five schools in Ireland (DES (Education), 2019b). It involves the establishment of regional support teams, designated nursing services and increased SNA allocation and training. An occupational therapist and a speech and language therapist are also attached to the school. This development, as one school principal pointed out, is a positive step forward:

‘We are part of the school inclusion model basically its where we have an OT [Occupational Therapist] and SLT [Speech and Language Therapist] attached to the school, we were just lucky to get on this and that’s another layer of support.’

In addition, a consultation process will take place with schools, teachers and parents, and ‘its findings’, according to the Minister for Children and Youth Affairs, will be ‘useful in determining the best path forward for inclusive support’ (DES (Education), 2019a). The School Inclusion Model remained a priority for government in the Department of Education’s Statement of Strategy for 2021–2023 as a strategic action in ensuring their goal of equity of opportunity in education and in supporting all students to fulfil their potential (DES, 2021). This is a promising development and similar projects have been relatively successful across Europe. In the Czech Republic, for example, a project of inclusion was launched that entailed the transfer of children with disabilities from special schools into mainstream schools (EC, 2019c, pp. 34–35). Effective from January 2020, the Decree on Education of Pupils with Special Educational Needs and of Gifted Pupils provides additional options for establishing special classes within mainstream education and it also regulates recommendations for IEPs (Eurydice, 2019). The difficulties experienced in this area are thus not particular to Ireland, but interestingly, the recently drafted Primary Curriculum Framework in Ireland, which is currently at the consultation phase, outlines that supports will be put in place to assist schools in creating supportive learning environments (NCCA, 2020). With the government investing €2 billion in special education in 2022, these progressive developments should hopefully go some way towards unblocking ‘the walls that prevent the child with special needs obtaining access to quality education’ (O’Brien, 2019) and complying with the CRPD obligations.

## 7 Conclusion

The CRPD, by enshrining the right to inclusive education, imposes a set of wide-ranging obligations on states that necessitate substantial changes in the organisation and structure of educational systems. Ireland is no different from other states in this regard but, as this paper reveals, considerable challenges remain and must be addressed in order to bring domestic law and practice in line with the requirements of international law.

This paper has highlighted that there have been a few positive developments towards the realisation of an inclusive education system. In this respect, the Education (Admissions) to School Act 2018 and the pilot School Inclusion Model scheme represent a clear advancement in ensuring that children with disabilities have the opportunity to both access and participate in inclusive educational settings.



However, as the qualitative research has shown, current practices are still a long way from being fully compliant with the requirements of Article 24 CRPD.

A lack of appropriate funding is still a major hurdle in creating inclusive educational settings. If the Irish government is serious about practically implementing the obligations imposed by the CRPD, this will involve, inter alia, the allocation of greater resources in the form of additional SNAs, specialised teacher training, individualised educational support, appropriately adapted classrooms and a greater number of school places.

Two key findings that emerged from this study, however, illustrate that, in Ireland, there is a more profound and persistent tension between mainstream and special educational provision that reflects the controversial (and far from being over) debate over the usefulness of segregated educational settings. First, there appears to be a gap between the aspirations of the CRPD and, as voiced by the participants in this study, what is sought by the key stakeholders in practice. The reality on the ground, emerging from this study, is that a fully inclusive educational model is not always perceived as appropriate or realistic. Several participants expressed the view that some children with disabilities will not benefit from being educated in a mainstream classroom setting, regardless of the support systems in place. Second, quite notably, certain participants articulated that parental choice should take precedence over the goal of inclusion. In other words, parents should have the right to choose the most appropriate educational environment for their child, and that adequate supports and services should exist to facilitate whatever choice they make. Reconciling these ongoing tensions between inclusion and segregation may yet prove to be the greatest obstacle to achieving inclusive education in Ireland and realising the ambitious goals of the CRPD.

**Conflicts of Interest.** None

**Acknowledgements.** We are grateful to the Irish Human Rights and Equality Commission (IHREC) for funding this research and to all the interviewees who participated in this study.

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