**Questionnaire**

**Empowering Children with Disabilities**

**Ireland’s response**

**October 2018**

**1. Ensuring access to inclusive education for children with disabilities is one key way in which they can be empowered.**

1. **Please identify laws and policies in your country intended to ensure the inclusion of children with disabilities in the general education system and the transition from segregated to inclusive settings.**

The National Disability Inclusion Strategy 2017 – 2021 contains commitments aimed at improving the education system for children with disabilities including:-

* Ensuring that children with disabilities can fully take part in the Early Childhood Care and Education Programme.
* Training of teachers to work with all students
* Upskilling of teachers and schools so that they can better support students with disabilities
* Ensuring that there are adequate numbers of special needs assistants to help children at school that have special learning needs
* Ensuing that schools can use IT to help students with disabilities to learn
* Working with schools and service providers to support children and young people with their mental health

In Ireland, there is both a legislative framework and a comprehensive strategy which provides for the inclusion of children with disabilities in education and which encourages their autonomy in schools.

In addition, resources equating to 18.72% of the overall education budget make provision for additional supports to ensure that all children with special educational needs and disabilities can participate and be included in education. In 2018 €1.8 billion will be invested in Special Education, nearly one fifth of the overall Education budget, and up 43% since 2011.

Ireland signed the Convention on the Rights of Persons with Disabilities in 2007 and ratified it in March 2018. The State’s progress in implementing the Convention’s obligations is monitored by the Irish Human Rights and Equality Commission (IHREC), Ireland's national human rights and Equality.

**Legislative Framework**

The regulatory framework to ensure that pupils with special educational needs can access education is provided in:

* *The Education Act 1998*
* *The Education Welfare Act 2000*
* *The Equal Status Act 2000*
* *Education for Persons with Special Educational Needs Act 2004*
* *The Education (Admission to Schools) Act 2018*

1. **Education Act 1998**

Under the Education Act 1998, there is a requirement for schools to identify and provide for pupils with special educational needs. Boards of management of schools are required to publish the school policy on admission to and participation by students with disabilities or who have other special educational needs, to make reasonable provision and accommodations for pupils with special educational needs.

The Education Act 1998 (Section 29) also puts in place an appeals process in relation to a decision by a school to permanently exclude, suspend or to refuse to enrol a child, including a child with special educational needs.

1. **Education Welfare Act 2000**

Under this Act, children with special educational needs have same rights as pupils who do not have special educational needs.

The Act provided for the establishment of the Educational Welfare Board and the appointment of education welfare officers who have responsibility for supporting the enrolment, attendance and participation by children in school.

1. **Equal Status Act 2000**

Under the Equal Status Act, disability is identified as one of nine discriminatory grounds that are prohibited under the Act. It is stated in the Act that educational establishments shall not discriminate in relation to admission, access to courses, participation or expulsion.

1. **Education for Persons with Special Educational Needs Act 2004**

The Education for Persons with Special Educational Needs Act 2004 sets a legislative context for the education of children with special educational needs in mainstream schools.

While not all sections of the Act have been commenced, Section 2 of the Act, which provides for inclusive education of pupils with special educational needs has been commenced.

Section 2 of the EPSEN Act provides that:

‘A child with special educational needs shall be educated in an inclusive environment with children who do not have such needs unless the nature or degree of those needs of the child is such that to do so would be inconsistent with: the best interests of the child as determined in accordance with any assessment carried out under this Act, or the effective provision of education for children with whom the child is to be educated.’

The Act has also provided for the establishment of the National Council for Special Education (NCSE) on a statutory basis in order to promote an inclusive approach to the education of children with special educational needs.

1. **The Education (Admission to Schools) Act 2018**

The Education (Admission to Schools) Act 2018 which was signed into law by the President on the 18th July 2018, is an important piece of legislation which will introduce a more parent-friendly, equitable and consistent approach to how school admissions policy operates for the almost 4,000 primary and post-primary schools in this country and a fair and balanced school admission process for all pupils.

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The provisions of the Act aim to make it easier for parents to more easily access local schools and to enrol their children in a school that meets their needs. The Act will require schools to be fair and transparent in deciding how to prioritise children for admission to the school.

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The main provisions of the Act include measures to:

* Ensure that where a school is not oversubscribed (which relates to 80% of schools) it must admit all students applying;
* Ban waiting lists, thus ending the discrimination against parents who move in to a new area;
* Ban fees relating to admissions in non-fee paying schools;
* Require all schools to publish their admissions policies, which will include details of the provisions for pupils who decline to participate in religious instruction;
* Provide for a situation where a child (with special needs or otherwise) cannot find a school place, and allow the National Council for Special Education or Tusla (Child and Family Agency) to designate a school place for the child.
* Replace section 29 of the Education Act (Appeals) with a new section to align the legislation with actual practice and procedures as they have developed over the years and to increase the efficiency of the processes involved.

The Act also contains a provision which, when commenced, will amend the Equal Status Act 2000 to prohibit the use of religion as a selection criterion in primary school admissions, with certain protections provided to ensure that a child of a minority religion can access a school providing a religious instruction or religious education programme consistent with his or her religious beliefs.

1. **Please identify any specific measures or actions being taken in your country to empower children with disabilities in education settings, particularly children with disabilities with psychosocial and intellectual impairments.**

In addition to the regulatory framework which has been put in place to ensure that pupils with special educational needs can access education, the Department of Education and Skills has provided the necessary resources to ensure that such children can fulfil their full right to education.

Details of how these resources can be accessed and meet the needs of children can be easily accessed through a range of both Department Circular and Information made available to parents by the National Council for Special Education.

Funding for special education provision in 2018 will amount to some €1.8 billion, which is equivalent to approximately 18.72% of the gross overall current allocation for education and training.

The main supports which are provided are:-

* Nearly 15,000 Special Needs Assistant (SNA) posts to provide for the care needs of pupils with disabilities/special needs attending schools
* Over 13,400 Learning Support/Resource Teacher posts to provide additional tuition to pupils in mainstream schools
* Teacher training and continuing professional development in the area of special education through the NCSE
* 1,100 teachers in 124 special schools, including education provision in Health Service Executive Child and Adolescent Mental Health (CAMHS) Units.
* 1,456 Special Classes in mainstream schools
* An Assistive Technology scheme to provide equipment and support for pupils with special needs
* Special school transport arrangements
* A visiting teacher service for children who are Blind/Visually Impaired or Deaf/Hard of Hearing
* Enhanced capitation levels for special schools and special classes
* Modification of school buildings

**2. The empowerment of children with disabilities depends upon an environment in which they are fully included and supported in claiming their rights. Please identify laws, policies and good practices in your country aimed at the inclusion and empowerment of children with disabilities, including through:**

1. **Awareness-raising and capacity building on the human rights of children with disabilities, both broadly to the general population and their families, and to children with disabilities themselves.**
2. **Ensuring close consultation with and active involvement of children with disabilities in decision-making processes affecting them.**
3. **Ensuring provision of support to families, support networks and care-givers to enable the participation of children with disabilities in decision-making processes according to their evolving capacities.**
4. **Ensuring participation of children with disabilities in society and interconnectedness in their communities, promoting deinstitutionalization and combating isolation and segregation.**

The National Strategy on Children and Young People's Participation in Decision-Making, 2015-2020 aims to ensure that children and young people will have a voice in their everyday lives across the five national outcome areas as set out in Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People, 2014-2020.One of the key fundamentals underpinning the Strategy is ‘establishing and improving mechanisms to ensure the participation of seldom-heard and vulnerable children and young people in decision-making’.

The Strategy has adopted the principles of the Council of Europe’s 2012 recommendation on participation in decision-making of children and young people under the age of 18 and Article 12 of the UN Convention on the Rights of the Child. These highlight that ‘The right of children and young people to participate, applies without discrimination on any grounds, such as race, ethnicity, colour, sex, language, religion, political or other opinion, national or social origin, property, disability, birth, sexual orientation or other status’.

As part of implementing the Strategy, the Health Information and Quality Authority (HIQA) when inspecting foster care settings and children residential facilities, speak with children and their families in relation to how they experienced the services they received and whether or not their wishes and views were reflected in decisions made about their lives.

Hub na nÓg was established in 2017 as a national centre of excellence and co-ordination to support government departments and agencies to give children and young people a voice in decision-making that has an impact on their lives. Currently, inspectors from HIQA are undertaking training provided by Hub na nÓg, on how to embed child participation methodologies and ethos in their inspections of children in care.

The Health Service Executive (HSE) continues to implement Children’s Disability Services and Voice of the Child/Young Person; oversee the Project Manager for implementation of Outcomes for Children and their Families, a performance management and accountability framework for Children’s Disability Network Teams.

**3. Realizing the rights of children with disabilities can be particularly challenging in certain circumstances, such as conflict and humanitarian situations. If relevant to your country, what measures are in place to empower children with disabilities in such circumstances?**

Some of Ireland’s funding to humanitarian NGOs addresses child protection in emergencies and education in emergencies which increasingly considers the needs to children with disabilities.

This would incorporate ‘hard’ elements such as constructing suitable latrines in schools and ‘soft’ elements that look at barriers to participation in education.

**4. Please provide information on policies and programmes in your country aiming at respecting the participation in decision-making processes of children with disabilities according to their evolving capacities.**

In November 2012, the people of Ireland voted by Referendum to insert an Article (42 A) in the Constitution of Ireland – <http://www.irishstatutebook.ie/eli/cons/en>

This Article explicitly recognises that children have rights, and that the State is obliged as far as practicable by its laws to protect and vindicate those rights.

It obliges the State to pass laws requiring the courts to consider the best interests of the child as paramount, when making decisions in certain proceedings relating to a child's safety or welfare, adoption, guardianship, custody of, or access to a child. It also means the State must pass laws requiring the courts where practicable to ascertain and take into account the views of a child having regard to his or her age and maturity prior to taking such decisions.

**5. Does your country have independent accountability mechanisms to monitor the situation of children with disabilities and their access to essential services, including to inclusive education in the general system without discrimination?**

Ombudsman for Children’s Office (OCO)

The Ombudsman for Children’s Office (OCO) is a human rights institution that promotes the rights and welfare of young people under 18 years of age living in Ireland. The Ombudsman for Children may independently investigate complaints relating to the administrative actions of a school recognised by the Department of Education and Skills, provided the parent has firstly and fully followed the school’s complaints procedures. The key criterion for any intervention by the Ombudsman is that the administrative actions of a school has, or may have, adversely affected the child.

The OCO investigates complaints about services provided to children by public organisations. The service is free and independent. ([www.OCO.ie](http://www.OCO.ie))

The National Council for Special Education (NCSE)

The National Council for Special Education (NCSE) was set up to improve the delivery of education services to persons with special educational needs arising from disabilities with particular emphasis on children. The Council was first established as an independent statutory body by order of the Minister for Education and Science (now the Minister for Education and Skills) in December 2003. This local service is delivered through the national network of Special Educational Needs Organisers (SENOs) who interact with parents and schools and liaise with the Health Service Executive (HSE) in providing resources to support children with special educational needs.

The Education for Persons with Special Needs Act 2004 sets out that one of the functions of the National Council for Special Education (NCSE) is to advise the Minister for Education and Skills, in relation to any matter relating to the education of children and others with disabilities.

In recent years, the NCSE has published a number of policy advice/strategy papers on:

* The Future Role of Special Schools and Classes in Ireland
* The Education of Deaf and Hard of Hearing Children in Ireland
* The Education of Children with Challenging Behaviour arising from Severe Emotional Behavioural Disorders
* Supporting Students with Special Educational Needs in Schools
* Delivery for Students with Special Educational Needs: A proposed new model for allocating teaching resources for Students with Special Educational Needs
* Supporting Students with Autism Spectrum Disorder in Schools
* Comprehensive Review of the Special Needs Assistants Scheme

Details of these reports can be found at <http://ncse.ie/policy-advice>

These reports have provided strategic direction and have made a number of recommendations aimed at developing better educational services for children with special educational needs and which aim to move the system towards ultimate implementation of the EPSEN Act.

It is intended to bring into effect many of the good ideas contained in the EPSEN Act, on a non-statutory basis initially, through policy developments across a range of areas, in conjunction with NCSE policy advice.

Legislation

Disability Act 2005

Under Part 2 of the Disability Act 2005, any child born on or after June 1st 2002 who may have a disability are eligible to apply for an Assessment of Need. Children who qualify for an Assessment of Need under the Act have a right to:

* An assessment of their health and education needs arising from their disability
* An assessment report
* A statement of the services they will receive
* Make a complaint if they are not happy with any part of the process

A person may make a complaint to the HSE about -

* A finding that he or she does not have a disability
* The failure of the assessment to meet the standards set by the Health Information and Quality Authority
* The contents of the Service Statement
* The failure to start or complete an assessment within the required timescales;
* The failure of a health or education service (N.B. education services only apply to adults) provider to provide a service set out in the Service Statement or to provide it within any timeframes prescribed.

Complaints will be heard by a complaints officer. The complaint will be resolved informally, if possible. If informal resolution is not possible, the complaint will be investigated and a recommendation will issue, which will include a timeframe for the action directed. The recommendation will have regard to the outcome of the investigation as well as other considerations, including the eligibility of the person for the service, the practicality of providing the service and the resources available to the service provider.

Appeals (sections 16-20)

A person may lodge an appeal against a recommendation of a complaints officer. The HSE or education service provider can also appeal a recommendation in relation to the provision of a service. Appeals will be investigated by an independent appeals officer. If the parties to the appeal agree, an appeal may be resolved by mediation. Otherwise, an appeal hearing will take place and a formal determination will issue. The appeals officer’s determination is final and may only be appealed on a point of law to the High Court.

Education Act 1998

Under section 15 (2) (d) of the Education Act, 1998, each school is legally obliged to disclose its enrolment policy and to ensure that, as regards that policy, principles of equality and the right of parents to send their children to a school of the parents' choice are respected.  
  
Section 29 of the Education Act, 1998 provides for an appeal by a parent or guardian to the Secretary General of the Department or, - in the case of an Education and Training Board (ETB) school, - to the ETB in the first instance, where a Board of Management of a school, or a person acting on behalf of the Board, refuses to enrol a student in a school, expels a student, or suspends a student for 20 or more days in any school year. This Department has no authority to compel a school to admit a pupil, except in the case of an appeal under section 29 of the Education Act, 1998 being upheld.

The position is that the selection and enrolment of pupils in schools is the responsibility of the authorities of the individual school. This Department's main responsibility is to ensure that schools in an area can, between them, cater for all pupils seeking school places in an area. However, this may result in some pupils' not obtaining a place in the school of their first choice. As schools may not have a place for every applicant, a selection process may be necessary. This selection process and the enrolment policy on which it is based must be non-discriminatory, and must be applied fairly in respect of all applicants.   
  
The Educational Welfare Service (EWS) of the Child and Family Agency (TUSLA) is the statutory agency which can assist parents who are experiencing difficulty in securing a school place for their child. The EWS may be able to offer assistance and advice on securing a school placement.

**6. Does your country monitor the inclusion of children with disabilities through disaggregated national data?**

Yes.  Section A below.

1. **Please provide information on how the number of children with disabilities enrolled in education is recorded in national data.**

The primary and post primary online national databases record details of the number of pupils with special educational needs who attend special classes in mainstream schools.

The primary and post primary online national databases also record details of the number of pupils with special educational needs who attend special schools.

The National Council for Special Education records details of the number of pupils with special educational needs who are enrolled in mainstream education and who access Special Needs Assistant support.

Under the model for allocating special education teaching supports to mainstream schools, which was introduced for all mainstream schools from September 2017, mainstream schools now have autonomy to provide additional teaching support to pupils in mainstream education, based on their learning needs as evidenced in school, without a requirement for the pupil to have a formal diagnosis of a particular special educational need or disability. Details of the number of pupils with special educational needs who are in receipt of additional teaching support is recorded by individual schools. From the 2018/19 school year, schools will also be asked to return details of the number of pupils in receipt of additional teaching support though the national databases.

The biennial *State of the Nation's Children* (SONC) report is based on the *National Set of Child Well-Being Indicators* published in 2005 and has three aims; to describe the lives of children in Ireland, to track how this has changed over time, and to benchmark progress in Ireland relative to other countries. This report includes data disaggregated (where available) by disability status.

The *Report on the Indicator Set for Better Outcomes Brighter Futures* was first published in 2017 with the purpose of tracking progress for children and young people aged 0-24 across the five national outcomes outlined in *Better Outcomes Brighter Future: The national policy framework for children and young people 2014-2020* (BOBF). The compilation of disaggregated data (including disability status where available) for each indicator in the BOBF indicator set is underway and will be made available in electronic format towards the end of 2018

1. **Please provide any available data on the number of children with disabilities living in institutions or care facilities in your country.**

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|  | Less than 3 years old | | | 3-5 | | | 6-9 | | | 10-13 | | | 14-17 | | | Total (ages 0-17) | | |
|  | Nat | Non-nat. | Total | Nat | Non-nat. | Total | Nat | Non-nat. | Total | Nat | Non-nat. | Total | Nat | Non-nat. | Total | Nat | Non-nat. | Total |

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| **Institutions for children with disabilities** | | | | | | | | | | | | | | | | | | | |
| Male |  |  | 0 |  |  | 0 |  |  | 0 |  |  | 3 |  |  | 8 |  |  | 11 |
| Female |  |  | 0 |  |  | 0 |  |  | 0 |  |  | 0 |  |  | 3 |  |  | 3 |
| Total (C) |  |  | 0 |  |  | 0 |  |  | 0 |  |  | 3 |  |  | 11 |  |  | 14 |

Please note that the above figures vary slightly from those provided by the HSE, which reports 76 children availing of a residential service and 11 in congregated settings while NIDD 2017 data shows 75 children availing of residential services and 14 in congregated settings\*.  This may be due to the time lag in the NIDD data as some of those in the older age category may have aged out of this group or some children may have moved to other residential services in 2018.   
  
\*75 children are in community group homes, residential centres and other full time residential places which includes intensive placements for severe/profound disability.  Of that number 14 are in congregated residential centres which are deemed institutional.