

ASTI Submission to Review of EPSEN Act 2004

March 2023

Introduction

The ASTI welcomes the invitation to contribute to the review of the EPSEN Act 2004 as it provides a necessary and overdue opportunity for teachers to communicate longstanding concerns in relation to the measures currently in place, including policy frameworks, to support inclusion of students with special and additional needs (SEN). The purpose of the public consultation is to provide assurance that the law that governs the provision of education children with special educational needs is adequate. This is a very specific and indeed, narrow, focus. Teachers and school leaders do not, and have not, asked themselves this question. Instead, their concern is to ensure that their schools are inclusive; that all students are enabled to flourish as individuals and as learners; that schools are provided with adequate human resources to meet the educational and developmental needs of SEN students; that policy frameworks are realistic and capable of implementation. Accordingly, this submission will focus on the experience of teachers in meeting the needs of SEN students and set out the policy changes which the ASTI believes are necessary to achieve the rights-based objectives of the EPSEN Act.

EPSEN ACT 2004

In many ways, the 2004 Act was -and remains – a progressive piece of legislation. Not only does it set out a clear legal framework for the education of children with special educational needs, it stipulates for the first time in Irish law, their right to education. This right includes the same right to an appropriate education as for students without special educational needs. Further, such appropriate education must also be in an inclusive environment. Perhaps the most progressive feature of the Act is its comprehensive definition of disability as set out in Section 52 which moves frames disability in social terms rather than medical categories.

To date only some parts of the Act have been put into effect and include the right to be educated in an inclusive environment, the duties of schools and the establishment of the National Council for Special Education (NCSE). Important sections of the Act providing for an individual right to

assessment, individual education plans and cooperation between education and health service remain unenacted.

ASTI and other education stakeholders are on record in calling for these sections of the Act to be implemented. Of particular concern for stakeholders is the failure to enact the individual education plan process and the resultant lack of clarity and guidance for teachers and schools in this key area. This and other issues are highlighted in the sections below.

ASTI Policy Statements on Special Educational Needs

The most recent ASTI policy statements of the ASTI were adopted following the introduction of the revised model of resource allocation to schools in September 2017. The ASTI was supportive of this model but outlined the need for investment in two key areas: teacher professional development and a dedicated SEN coordinator role. These two areas were prioritised by the ASTI after a careful analysis of the Departmental Guidelines for Supporting Students with Special Educational Needs in Mainstream Schools.¹ The 56-page Guidelines in themselves are comprehensive and clear. Key features are the Continuum of Support model, the development of the school profile, the need for coordination and team work, and – of particular – concern to teachers, the stipulation that the class teacher has primary responsibility for the progress and care of all pupils in the classroom, including pupils with special educational needs. Pedagogical approaches are recommended, including team teaching, and the expectation that all teachers engage in differentiation in their classroom practice is unambiguous.

Unfortunately, no national programme of CPD was provided to support the new allocation model and Guidelines, notwithstanding that in all the preceding stakeholder engagements the issue of teacher training was repeatedly raised. Teachers were put into, and remain in, the invidious position of being required to ensure the progress of all students without any meaningful training to develop their understanding of the wide spectrum of special educational needs or of wider developments in understanding neurodiversity and education responses such as universal design for learning.² The ASTI had several meetings with the Teacher Education Section in the Department in the period

¹ <https://www.gov.ie/en/publication/56c43-supporting-pupils-and-students-with-special-educational-needs-guidelines-for-schools/>

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https://www.internationaldisabilityalliance.org/sites/default/files/universal_design_for_learning_final_8.09.2021.pdf

immediately following September 2017 at which it underlined the need for a national programme of CPD for all teachers, including a whole-school dimension, as was provided to support the introduction of the Framework for Junior Cycle. More recently, the ASTI has communicated its concerns that the support services providing training in the area of special educational needs, including the behavioural support service, will not be incorporated into the revised teacher support model of Oide.³

The other key area of concern for teachers and school leaders is the inadequate level of support provided to schools to ensure effective and consistent SEN coordination. The core theme of the Guidelines is the need for a whole-school approach. This should be underpinned a dedicated SEN team with a coordinator. Areas to be addressed are:

- Inclusive education policy
- Whole-school planning
- Parental engagement
- Student engagement
- Engagement with external bodies and agencies
- Transitions to further learning, training and employment
- Continuing professional development

Unbelievably, Circular 0014/2017 states that 'co-ordination time be kept to a minimum in order to ensure that the most teaching time that can be provided for students can be given to those students. This is completely unacceptable and the ASTI is demanding that the Department review this provision as a matter of urgency.

In 2019, the ASTI commissioned research to obtain evidence to support its policy positions.⁴ Its findings include:

- Only 16% of teachers who had AP 1 or 2 posts had a SEN coordination role
- 29% of teachers who had a non-remunerated post outside the schedule of posts had a SEN coordination role
- 20% of all classroom teachers had a qualification in SEN
- 35% of teachers had recently participated in some form of SEN training

³ <https://oide.ie/>

⁴ <https://www.asti.ie/document-library/achieving-inclusive-schools-the-teachers-perspective-april-2019/>

- The primary reason for not engaging in training is workload and lack of information on what training is available

It is no surprise to the ASTI that the two preeminent themes in the Inspectorate's SEN evaluation reports following SEN are the need for more effective classroom differentiation and SEN planning and coordination. Indeed, it is of note that the Chief Inspector's Report 2016-2020 identified the need for an induction programme for SET teachers as well as support for teacher collaboration and usage of assessment data in developing plans for SEN students.⁵

Assessment of students' needs

There is a decades-old crisis in the system of assessment of students' needs. The introduction of the revised model of resource allocation in 2017 was, in part, a response to that crisis. However, under-investment in public services and an over-reliance on voluntary/private services has resulted in thousand of children not being assessed. These matters came to public prominence in summer of 2022 following media stories and the publication of the Report Ombudsman for Children Office on lack of school places for students with autism.⁶ The Report stated that there were over 4,000 children currently waiting for a diagnostic assessment in order to qualify for a school place in the first place. Prior to the Report's publication, as recorded in a Dáil debate on April, 2021, the HSE confirmed an average 19-month waiting time for an assessment – in direct contravention of the legal requirements under the Disability Act 2005 which stipulates that such assessments be commenced within three months and completed within six months. Shockingly, less than 10% of assessments are carried out within the statutory time-frame.⁷ A few months later, the Mental Health Commission's review of CAMHS services highlighted deficits in service provision, including access, capacity and consistency in quality of services across regions.⁸

⁵ <https://www.gov.ie/en/publication/611873-chief-inspector-reports/>

⁶ <https://www.oco.ie/news/plan-for-places-oco-report-highlights-need-for-adequate-forward-planning-to-ensure-children-with-sen-receive-equal-access-to-education/>

⁷ <https://www.oireachtas.ie/ga/debates/question/2021-04-21/937/>

⁸ <https://www.mhcirl.ie/news/mental-health-commission-publishes-interim-report-child-and-adolescent-mental-health-1>

Concluding observations

The ASTI is committed to inclusive education and believes that it is the model most consonant with the needs of children and young people and wider social inclusion goals. Ireland's ratification of the UN Convention on the Rights of People with Disabilities RPD requires the state to provide for an inclusive education system. This will require continued investment in schools, in the teaching profession, in assessment and intervention, and in school leadership. Education policy should regard inclusion as a process rather than a fixed outcome. Concepts of rights and duty bearers will continue to evolve in democratic society and education policy must be proactive in ensuring effective 'fits' between desired outcomes and implementation strategies on the ground. From the ASTI's perspective, the most important resource in the school system is the teaching profession. Supporting the profession requires sustainable workloads, good working conditions – including equal pay for equal work, resourced in-school management structures, and supports for CPD.

To revert to the purpose of this consultation, namely, to provide assurance that the law that governs the provision of education children with special educational needs is adequate, the ASTI must put on record a number of concerns. Delay in enacting sections of the Act, most notably those sections referring to education plans, have caused disquiet because it has resulted in lack of clarity for teachers on their statutory obligations. The fact that litigation remains a driver of aspects of state policy is of concern to the teaching profession and has an impact on teachers' understanding of their roles and responsibilities. This lack of clarity is aggravated by the fact that teachers have not been provided with a national CPD programme to support the introduction of the new resource allocation model in 2017.

Ireland has new international obligations since its ratification in 2018 of the UN Convention on the Rights of Persons with Disabilities (UNCPRD). Article 24 of this convention requires us to ensure that all children can access an inclusive, quality and free education on an equal basis with others in the communities in which they live. The UN Committee's position is that having separate special schools and classes – as we do in Ireland – is not compatible with the Convention. In response, the NCSE published its policy advice on special classes and schools which will require to be revisited. It too raises questions which are pertinent to the review of the EPSEN Act.⁹ It is essential that the outcome of the current review is taken into consideration in the preparation of future policy advice on inclusive education.

⁹ <https://ncse.ie/wp-content/uploads/2019/11/Progress-Report-Policy-Advice-on-Special-Schools-Classrooms-website-upload.pdf>