

Education (Admission to Schools) Bill 2016

Presentation by National Association of Boards of Management in Special Education To Joint Committee on Education and Skills

Firstly we would like to thank the members of the Joint Committee for affording us the opportunity to give the views of our members. NABMSE is the management voice of special education in Ireland. We provide countrywide representation for almost 200 member Boards of Management of special schools and mainstream schools providing education for pupils with special educational needs.

We welcome many of the suggested changes but are concerned by the manner in which it does not appear to take into account the necessary practices and requirements of schools catering for pupils with special educational needs. On behalf of our members, we made detailed Submissions to the Joint Oireachtas Committee on Education and Social Protection in relation to the draft Heads of Bill and the draft regulations. We highlighted that, the mechanisms that were proposed in the Regulations and in the draft Heads of Bill not only ignored the special education sector but would make it almost impossible to run special schools and special classes catering for students with different types of special needs.

This Bill unfortunately raises the some of the same concerns amongst our members as the draft Heads of Bill and while some issues have improved there is still cause for concern.

The main issues of concern for Special Education are as follows:

1. Specific statement of non-discrimination (Section 61)

The proposed new Section 61 of the Education Act 1998 contains a requirement that a school would have a specific statement of non-discrimination on all the usual quality grounds but also on “the disability

ground of the student or the applicant in respect of the student concerned". It goes without saying that special schools and special classes must differentiate between applicants with different types of special educational needs. It is also the case that if a child does not have a particular type of diagnosis, then a special school/class catering for children with that diagnosis should of course be in a position that it can refuse enrolment to a child who does not have that diagnosis. For example, there are special schools/classes who cater for children with hearing difficulties who do not take in children who have emotional and behavioural difficulties with no hearing difficulty. It is vital that special schools/special classes are able to differentiate between categories of students with different requirements/needs.

2. Admission Policy – Section 62

The proposed Section 62(6)(c) gives a very limited number of circumstances in which a school will not be obliged to enrol a student. As noted previously, special schools and schools with special classes must be given the right to refuse an applicant on the basis that the needs of the applicant do not match the profile of needs catered for by that particular school/class. This provision does not take into account the increased vulnerability of certain classes of student with special educational needs and it is imperative therefore that a fifth ground is included here to ensure that special schools and mainstream schools with special classes can refuse enrolment on the basis that an applicant student does not have the type of special needs catered for by that school.

3. Regulations - Section 64(2)

The proposed Section 64(2) does state that in drafting the regulations directed at different types of schools, that the Minister may draft regulations which contain different provisions in relation to different categories of schools. While this may be helpful in allowing the Minister of the day to draft provisions which relate to different schools, we are of the view that this distinction in relation to special schools/classes needs to be hard coded into the Act and not merely left as a matter of Ministerial discretion.

4. Enrolment Process in special schools and units

There are several provisions in Section 64(3)(d) which will be hugely problematic for special school and classes as follows;

- (a) **Prior attendance at a specified category of pre-school.** Many special schools and units have pre-schools and early intervention units and there would be an expectation by parents that pupil would continue in that school.
- (b) **Students' academic ability** Section 64(3)(d)(iv) refers to the fact that schools will not be able to look at a student's academic ability skills or aptitude. Obviously if we are looking at schools catering for students with mild, moderate or severe needs the aptitude of a student will be extremely relevant.
- (c) **Interview/open day** Section 64(3)(d)(vi) would preclude a school from requiring that a student attend an open day or an interview. Meetings are an extremely important part of the admissions process of a large number of special schools and special classes as they allow both the parents and the school to assess whether the child and their needs can be properly catered for by the school.
- (d) **Information with application** Section 64(3)(e)(ii) would preclude a school from seeking information in relation to any medical condition, disability or special educational needs of a student. While it would be open to the Minister to declare that such a regulation would not apply to special schools and classes, it seems unusual that such a power would be given to the Minister without the Act expressly stating that these provisions will not apply to special schools and classes.

Each of the above regulations would create enormous obstacles for the enrolment processes of special schools and classes and we request that serious consideration be given to resolving these challenges for schools.

5. Designation of a school by the NCSE or TUSLA

Our members are still concerned with the proposed powers in the Bill regarding designation of a school by the NCSE or TUSLA. The designation provision has been improved in the latest Bill but there are still issues. There are provisions in Section 66 regarding the ability of the school to accommodate the child, the best interests of the child, the special education needs of the child concerned but as the NCSE or TUSLA would have no involvement in the day-to-day affairs in a particular school and would have no understanding of the makeup of a particular class grouping into which they are proposing to 'designate' a child, it would be important that that school would be consulted fully before making any proposal to designate.

Another issue arises, if a child were expelled from a particular school, there is nothing in the Bill to stop TUSLA or the NCSE from ignoring that expulsion and re-inserting the child into that school. If a child is expelled from a school, this is obviously a very serious matter and such decisions are not taken lightly.

We welcome the provision 66(14) that a person with a special interest in or knowledge of education of persons with special education needs will be included in an appeals committee where the case concerns a person with special educational needs. However, it would be important that management bodies would be also be consulted on the procedures for the appeals process set out at Section 66(19)

In conclusion, NABMSE recognises that, according to the Education Act 1998, each pupil with special needs has a right to an appropriate education. As a school management organisation we wish to ensure that parents can engage in a transparent process to choose the placement most suitable to their child's educational needs. Our desire is that any forthcoming legislation will facilitate Boards of Management in their efforts to respond to the needs of both pupils and their parents.