

## Education (No.2) Bill: Where are the Guarantees?

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### GREAT EXPECTATIONS

When I first read the Education (No. 2) Bill (Ireland, 1997b), I did so with a keen sense of anticipation. Government Reports published during the past few years had clearly indicated the direction of Special Education in the years ahead, and had been unequivocal in relation to the necessity of an Education Act to underpin the rights of people with special educational needs to an appropriate education. Moreover these same reports had clearly delineated the principles which should inspire such legislation, and the responsibilities of State agencies and services which should be enshrined in the legislation to safeguard educational access for people with special educational needs. Can you then imagine my surprise and disbelief when I discovered there was little or no connection between the discussion and recommendations in such reports and the terms of the Education Bill? I read reports on the Bill. I discussed its contents with others. I re-read the Bill, and the chasm between the rhetoric of principled idealism and legislative provision remained as wide as ever.

### WHOSE RESPONSIBILITY?

Why this should be so I do not know. It may well be that my lack of awareness and knowledge of legislative and constitutional provision may be blinding me to the actual rights that pupils with special educational needs do have, or it may be that the voice of the unvoiced, as articulated by their advocates, continues to fall on deaf and insensitive ears belonging to our legislators. Either way, there is a need for informed discussion and debate relating to how we can best bridge the absence of appropriate educational services for people with special educational needs with the requisite legislative framework. And that bridge is necessary. Daily in our courts pupils with special educational needs are fighting for their right to an education in any kind of school. As yet, no Government agency has taken responsibility for ensuring the satisfactory placement of pupils with special needs in our schools. Identification, assessment and placement procedures are haphazard, uncoordinated and deteriorating. There is no cohesion between or

within Government Departments that share responsibility for the welfare of people with special needs, and worthwhile initiatives in educational arenas such as curriculum development, the responsibility of the National Council for Curriculum and Assessment (NCCA), continue to regard special education as an afterthought.

This is disappointing, considering the reports I referred to earlier. The *Report on the National Education Convention* (Ireland, 1994) located the debate on Special Education firmly within the context of equality of participation and achievement within the Education System. In its discussion on education for special needs, the Report refers to commitments made by Government under the articles of international agreements and in European Community resolutions, not to mention our own Irish Constitution. Was it too much to expect that at least some of the thinking behind these might be reflected in our Education Bill, particularly as the Report did highlight the anomalies relating to constitutional provision of education and the rights of parents, especially as they relate to a child with a disability.

#### **FUNDAMENTAL PRINCIPLES**

The *Report of the Special Education Review Committee* (Ireland, 1993), commenced its deliberations by delineating seven fundamental principles which should serve as basic guidelines for the future development of special educational services. These included the right of all children, including those with special educational needs, to an appropriate education; the entitlement of parents of children with special educational needs to be involved in decisions relating to the special educational provision of their children; and, the obligation of the State to provide adequate resources to ensure that children with special educational needs can have an education appropriate to those needs. The Committee then recommended "*Due account should be taken of the principles outlined above in the framing of an Education Act*" (SERC, 1993, p.20).

Of course they were not taken into account. I wonder why! And why have none of our large teacher organisations who were represented on the Special Education Review Committee been insisting that these principles be enshrined in an Education Act? Moreover the Special Education Review Committee also recommended "*The right of pupils with disabilities and special needs to an appropriate education should be upheld and provided for under the terms of the proposed Education Act. The Act should define the basic rights and responsibilities of pupils, parents, school authorities, teachers and the State in*

*relation to educational provision for pupils with special needs and/or disabilities”* (SERC, 1993, p.56).

After the publication of the Report of the Special Education Review Committee, the Department of Education set up a Departmental Committee to prioritise and oversee the implementation of the recommendations of this Report. Is it not extraordinary that this Departmental Committee had no influence whatsoever on the contents of the Education Bill, or is it that official policy does not now agree with the recommendations of the Special Education Review Committee?

### **NEED TO GUARANTEE APPROPRIATE PROVISION**

The *Report of the Commission on the Status of People with Disabilities* (Ireland, 1996) also defined principles in regard to citizens with a disability and further asserted that the rights explicit and implicit in these principles should be incorporated in all education policy and should be enshrined in any legislation. Is it not strange and disconcerting that such recommendations formulated by a Government Department - defined at the time as the Department of Equality and Law Reform - do not find expression in the Education Bill?

The Report of the Commission with the apt sub-title, *A Strategy for Equality*, goes into quite some detail about how an Education Act should enhance and guarantee educational provision for pupils with special educational needs. The Report stresses that such an act should enshrine and further stimulate further progress towards inclusion while increasing support to specialist schools, as well as facilitating co-ordination and linkages between mainstream and specialist schools, and between specialist vocational training centres and centres offering adult education opportunities.

Of particular interest in this Report is the recommendation that legal provision should attach to the assessment of needs and the development of resultant individual education plans which would give effect to the student's educational requirements. The Report further states: "*This legal provision should take the form of a statutory instrument and should contain provision for enforcement. The individual plan should assess the resources required to meet the students' needs and make recommendations for placement*" (p.35). The Report has many other excellent recommendations in relation to legislation, but again, they do not figure in our proposed Education Bill.

## NO ENTITLEMENT

Let us now take a closer look at the Education (No.2) Bill. The preamble to the Bill commits that the Bill will make provision of a high quality education to all persons "including a person who has special educational needs." The Bill does not deliver on this commitment.

The Bill does not assign the responsibility of delivering a special educational service to any person or authority. Section 7 sets down the functions of the Minister. These functions are system wide - dealing with broad global functions of planning, co-ordination and provision of support services, in a general way. The Minister has no duty or function to provide for the education of every child, including every child with special needs. The Minister's function creates no entitlement for children. The previous Education Bill (Ireland, 1997a) set down, as an object of the Education Board, the following... "*to ensure that there is available to each person living within that region an appropriate level and quality of education, other than university or both or other third level education, to meet the needs of that person*" ( 1997a, Section 9, p11). This provision went some way to creating an entitlement for the individual student. With the demise of the education boards, this provision has gone. It has been "replaced" with a provision which removes any possible claim to an entitlement.

## WHOSE RIGHTS?

Section 6 of this bill ( 1997b) states: "*Every person concerned with the implementation of this Act shall have regard to the following objectives in pursuance of which the Oireachtas has enacted this Act: (a) to provide that, as far as is practicable and having regard to the resources available, there is made available to people resident in the State a level and quality of education appropriate to meeting the needs and abilities of those people*" ( p.9).

Clearly, this provision comes nowhere near providing an entitlement for the individual student; it applies to all concerned with the implementation of the Act - teachers, principals, Boards of Management, parents, students, psychologists, inspectors....! It puts no duty on the State; it applies to "people" - rights can only be secured for individuals; it is hedged around with reference to resources and practicability. This provision, in short, does nothing for students. It compares most unfavourably with the provision in the original.

## WILL SUPPORT SERVICES IMPROVE?

In relation to support services, while the Minister has a duty to provide support services (section 7) the manner of the provision creates no entitlement to those services. They will be provided "*as the Minister considers appropriate*" ( 7.4b). It is difficult to imagine what this provision does to improve the current very unsatisfactory situation regarding support services and the lack of entitlement to these.

The previous Education Bill (1997a) introduced the very important concept of "reasonable accommodation"- requiring school Boards to make reasonable accommodation for students with disabilities. This provision has been weakened in the current Bill (Section 15g). The obligation only applies "*within the resources provided to the school*" (4.15g). It will be argued that this weakening relates to the Supreme Court finding in respect of the Employment Equality Bill, where the reasonable accommodation provision was struck down, on the grounds that private employers could not be compelled to invest in adjustment of premises etc. This consideration surely should not apply to schools which receive the bulk of their funding from the state. In including this provision, the Minister is in effect, absolving himself from the need to resource schools to accommodate children with special educational needs.

No discussion of the Education Bill would be complete without reference to the O'Donoghue Supreme Court Case. This was the first real opportunity to uncover the true extent of the right to education for children with special educational needs. Marie O'Donoghue whose son Paul has severe learning disabilities, sought a judicial review in the High Court on the denial by the State of her son's constitutional right to free primary education. Justice O'Hanlon in his written judgement of 27/5/93 concluded that Paul had been denied his constitutional right. The government appealed this judgement to the Supreme Court. At this time also a review of the Constitution of Ireland was undertaken. The Supreme Court met to hear the appeal on 6th February 1997. The court did not in fact carry out a full hearing of the appeal and Justice O'Hanlon's judgement apparently still stands unchanged.

Following the outcome of this appeal and the review of the Constitution ambiguities still exist in relation to the right to education for people with special educational needs and as to how and where best such rights should be enshrined.

As educationalists we are not legal experts. As special educationalists we are particularly sensitive to the rights of the people we teach and our responsibility in

ensuring that they acquire those rights. Charters, agreements, understandings and even Department Circulars are no substitute for legal guarantees. I conclude with a question. What provision do we need to include in an Education Bill to guarantee the

- **right** of all pupils with special educational needs to an appropriate education as near as possible to their own homes,
- **responsibility** of all schools to accommodate this right if feasible,
- **resources** from government to all schools catering for pupils with special educational needs,
- **right of appeal** by a parent or advocate who feels his/her child-student is not being accorded due educational opportunity.

I rest my case.

## REFERENCES

Government of Ireland (1993). *Report of the Special Education Review Committee*. Dublin: Stationery Office.

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