Submission on

The Draft General Scheme for an

Education (Admissions to Schools) Bill, 2013

And

Associated Regulations

Introduction

The opportunity from the Joint Oireachtas Committee on Education and Social Protection to make a submission on the Draft Scheme and Draft Regulations for school enrolments (the proposals) is most welcome. The following submission contains the observations of Inclusion Ireland, Down Syndrome Ireland, Irish Autism Action and Special Needs Parents Association.

Children with a disability have a right to an education. Current government policy is for inclusive, mainstream education where possible. However, at present, there are issues for children with a special education need (SEN) accessing a school placement. The proposals go a way to addressing these issues. While being well meaning the proposals create a host of other difficulties for children, parents and schools.

Observations

Head 9

Head 9 allows the National Council for Special Education (NCSE) to designate a school to enrol a child in certain circumstances. In principle this provision is welcome. However, some clarification is needed.

A school placement must adopt the principle of inclusiveness as set out in the EPSEN Act, 2004[1] where possible.

The NCSE will step in where a parent has failed to obtain “any” school placement for their child. This could refer to a school placement that does not meet the identified needs of the child. The word “any” should be replaced with “appropriate”. Children

[1] Section 2 of the EPSEN Act states a child should be educated in mainstream education where possible.

present with a spectrum of education needs and an inappropriate school place can do more harm than good.

These proposals under Head 9 do not refer to the location of the school. When the NCSE gets involved a child should be enrolled in their local school when possible. This will reduce the practice of children travelling great distances to access an education.

Head 9 does not deal fully with many of the 'soft barriers' to enrolment as identified by the NCSE[2]. Some schools do not apply for additional resources to ensure they are not an option for a parent of a child with SEN. For example a school may not offer the Leaving Cert Applied.

When the NCSE place a child into a school they can "recommend" that resources are given to the school. The Department of Education (DES) does not have to supply the resources. A lack of resources has led to pupils being in school for as little as one hour per day[3]. The proposals do not tackle this issue. The NCSE must ensure that resources follow a child, especially when it is they who effectively enrol that child into a school

Resources to accommodate a child must be based upon an assessed, individual education plan.[4] In other words a school placement must involve only the support that is assessed as necessary for an individual child. . A lack of resources to support a mainstream placement should not result in a child entering a special class or special school.

[2] NCSE, 2013, Supporting Students with Special Education Needs.
[3] Irish Examiner, September 5, 2013. 'Liam gets only one hour of schooling each day'
[4] The EPSEN Act 2004, Section 3-5 relates to education plans and assessments. This has not yet been commenced.

Not only must resources be given to a school to accommodate a child, these resources must be given in a timely manner. Children are often delayed starting school while they wait on resources to be given to the school. Their starting day is often delayed for months.

A school may appeal the decision of the NCSE to enrol a child if this enrolment is "unreasonable". The term "unreasonable" needs further clarity. Is it "unreasonable" for a school to accommodate several pupils with a special education need?

The National Educational Welfare Board (NEWB) can also designate a school to take a child under Head 9. The proposals do not compel the NEWB and the NCSE to disperse children equally to various schools in the locality. As a result one school in a locality may become a 'repository' for children with additional support needs.

Heads 5 - 7

Head 5 removes a parent's right to independently appeal a school decision not to enrol a child[5]. Heads 6 sets out that a principal, alone, will decide if a child will be enrolled or not. If a child has not been enrolled their parent may appeal to the board of management of the school (Head 7). The decision of the board of management is final. A parent may not be happy with this 'internal' appeal. Their only option is to have a judicial review at great expense to themselves and the school.

The proposals must retain the independent appeal against the refusal to enrol a child in a school. Removing this option is to remove a vital cog of natural justice in enrolment procedures. The current appeal process (section 29) is not perfect. These proposals should reform and expand the scope of the current appeal system. Appeals should be less burdensome and should examine other aspects of enrolment such as 'soft barriers'.

[5] Section 29 of the Education Act 1998.

Head 4

Head 4 when combined with Regulation 12 (b) Content of Policy introduces a role for the Garda and the HSE in school enrolments. Either organisation can object to the enrolment of a child into a school if it would have a "serious detrimental effect" on the safe running of the school.

The regulation does not detail the right to natural justice for a parent and child. All people have a right to a good name. A right to due process where the passing of 'soft information' is concerned has been long established in Irish courts[6]. Therefore, the HSE or Garda would have to carry out an extensive investigation before the passing of any information to a school. Neither the Garda nor HSE have the available resources to carry out this function.

There is also the possibility that passing information may conflict with data protection legislation.

These proposals must carefully consider the implications of involving Garda or the HSE in school enrolments. There are implications for the good name of people. There are also huge resource implications for the HSE and Garda.

Additional observations

The proposals do not define the role of a special education needs organiser (SENO). The EPSEN Act 2004 provides for SENO's. However, their role is not defined in law. As a result they vary greatly in how they go about their work. A child may have a very proactive SENO in their locality. However, this should not be left to chance.

[6] MQ V Gleeson, 1998.

Given the additional powers these proposals give to the NCSE the role of a SENO must be clarified.

These proposals should also introduce the role of independent advocates. Many parents are not aware of the procedures and appeals of school enrolments. This information should be available from an independent source. Advocates could assist parents to get the most appropriate, local school place possible.

All school enrolment policies must be publicly available. In addition, the enrolment policy should be available in easy read and/or accessible format.

Summary of recommendations

School placements for children with a SEN must be in an inclusive, mainstream manner where possible.

A school placement must be appropriate to the assessed needs of the child.

The proposals must do more to deal with ‘soft barriers’ that some schools place in the way of a child enrolling.

When the NCSE allocate a school place to a child the place must be local where possible and appropriate.

The NCSE must ensure that resources follow the child and do so in a speedy manner. The school day should not be cut short because resources are not in place.

A child should not have to enter a special class or special school due to the availability of resources.

The NCSE and NEWB must disperse children they place into schools locally. This will prevent any one school being a ‘centre’ for children with educational needs.

Section 29 of the Education Act 1998 must be retained and reformed. Not to do so is to remove a right to natural justice.

Involving the Garda or HSE in enrolments needs careful consideration. There are issues around a person’s right to a good name. There are also resource implications for both organisations.

The proposals must look at the role of the SENO. Currently their role varies depending on the SENO. This is an opportunity to define their role as a proactive educational advocate for children with SEN.

The proposals should refer to the use of independent advocates. An advocate could be used to provide information to parents, in appeals and where a principal has an enrolment conflict of interest.

Down Syndrome Ireland

INCLUSION IRELAND

Irish Autism Action
Raising Standards

Special Needs Parents Association
SNPA Bringing Parents Together