

National Council for Special Education

IMPLEMENTATION REPORT: PLAN FOR THE PHASED IMPLEMENTATION OF THE EPSEN ACT 2004

As Submitted To The Minister For
Education & Science On 1 October 2006



An Chomhairle Náisiúnta um Oideachas Speisialta
National Council for Special Education

*Working to deliver a better special education service
Ag saothrú chun uas-seirbhís a sholáthar san oideachas speisialta*

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FOREWORD

The National Council for Special Education (NCSE) is pleased to submit this Implementation Report to the Minister for Education and Science, Mary Hanafin, T.D.

The report sets out the NCSE's views and recommendations on a plan for the implementation of the Education for Persons with Special Educational Needs (EPSEN) Act, 2004 in accordance with the obligations placed on the Council under Section 23 of that Act.

The preparation and submission of this Implementation Report has been a daunting challenge for the Council. There are a number of fundamental considerations which the Council had to take into account in developing its views and recommendations on the Implementation of the EPSEN Act, 2004 which are at the core of the approach set out in this Implementation Report. These are articulated, by way of context for the Implementation Report, in the paragraphs which follow.

The EPSEN Act, 2004 is a ground-breaking piece of legislation which seeks to put the provision of education for persons with special educational needs on a new footing. It challenges the very basis on which such provision had previously evolved, it redefines special educational needs, it confers new statutory rights on those coming within the ambit of the Act and it creates a vision for the future educational regime for meeting the needs of those with special educational needs. In effect, it seeks to put that regime in place on the basis of those persons with special educational needs having rights to participate in, and benefit from, education on an equal footing with their peers who do not have such needs.

In passing the EPSEN Act, 2004 the legislature was acutely conscious of the fundamental change involved, and of the radical nature of the response which would be required from the State, and from the multiplicity of stakeholders concerned with special education, if the vision inherent in the new Act is to be converted into reality for those intended to be the beneficiaries. In recognition of the considerable change agenda, and of its inherent challenges, the legislature recognised that it would take time to convert a special educational needs regime which pre-dates the Act and which, therefore, was not designed to meet its core requirements, into one which is fully compliant with the provisions now made. For this reason, the EPSEN Act, 2004 specifically provides for the phased implementation of the Act over a five year period. It provides for an Implementation Report to be prepared which would set out for government the sequence in which the various provisions of the Act should be commenced, the timeframes involved and the resources, actions and other

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supports which would be needed as integral elements of a phased implementation plan for the Act. The implementation process began with the establishment of the NCSE by the Minister for Education and Science under the EPSSEN Act, 2004 on 1 October 2005 and this, in turn, commenced a statutorily ordained sequence of events which requires the completion of this Implementation Report by 1 October 2006 setting out a timetable for the commencement of all sections of the Act by 1 October 2010.

The EPSSEN Act, 2004 was not conceived, nor does it now operate, in isolation from other relevant developments. It fits into a legislative framework which, inter alia, includes the Education Act, 1998, the Education (Welfare) Act, 2000, the Equal Status Act, 2000-2004 and the Disability Act, 2005 under the overall umbrella of the Constitution as well as various international agreements and human rights provisions.

One of the very fundamental changes brought about by the EPSSEN Act, 2004, and by the legislative and constitutional framework into which it now sits, is the conferring of specific rights on persons with special educational needs to identified benefits and outcomes from participation in inclusive education. The rights-based approach enshrined in the EPSSEN Act, 2004 is intended by the legislature to replace a previous regime for meeting special educational needs which was characterised by resource-constrained concessionary provision and by frequent recourse to the Judiciary and to the Courts in order to determine appropriate provision.

The future vision for rights-based special educational needs provision contained in the EPSSEN Act, 2004 is both compelling and challenging. It “raises the bar” for special educational needs provision from its articulation as something separate from, or as an add-on to, mainstream educational provision to the concept that inclusive education means that all persons, including those with special educational needs, have equal rights to participate in, benefit from and achieve outcomes from educational opportunity as the norm. The EPSSEN Act, 2004 places a duty on the State, and on all other relevant stakeholders and partners in the education and health sectors, to operationalise that vision and to make it a reality over a five year timeframe. It would be all too easy to understate the degree of challenge involved for an education regime that was not designed, constructed nor implemented to attain that goal.

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The NCSE, in preparing this Implementation Report, has had to grapple with a number of core dilemmas which are inherently problematic in the context of the task which it faces in putting a fully costed and implementable action plan before the Minister and government for the implementation of the EPSSEN Act, 2004 within the required timeframe. These include the following key considerations:

- An action plan for the implementation of the EPSSEN Act, 2004 requires an articulation of the vision for future educational provision inherent in the Act and for the education regime which must underpin such provision. The Council, however, is only one participant, amongst many, in developing such a vision. While we have consulted widely in preparing this Implementation Report, we have had to recognise that the necessary national debate on the future shape of education in Ireland needed to comprehend the broad principles of the EPSSEN Act, 2004 has really only commenced and has certainly not reached any level of consensus amongst the key stakeholders on the implications, in all their manifestations, of that vision. We have had, therefore, to approach the issue of future vision for an educational regime to deliver on the EPSSEN Act, 2004 on the basis that the required vision is not something that is necessarily already in place on a consensual basis but rather is it something which will evolve iteratively over the five year timeframe for implementation. We are acutely conscious, therefore, that beyond certain indisputable core principles as enshrined in the EPSSEN Act, 2004, there are numerous potential and legitimate paths to the detailed implementation of the specific provisions in the Act which are likely to be consistent with its intent. We are not, therefore, in a position, nor would it be desirable for us, to be unduly prescriptive in that regard. Despite the requirements, therefore, contained in the Act for a fully costed and detailed implementation plan to be produced at this point, we fully realise that the implementation plan must be sufficiently flexible to enable a consensus to emerge over time on matters in relation to which the Council cannot, in isolation, make decisions at this juncture. Many of the elements of the vision for the future of the education and health regimes needed to implement the EPSSEN Act, 2004 are matters for decision by the Minister and by government, taken in consultation with other key stakeholders. The Council's role in that regard is essentially an advisory one and this Implementation Report has, therefore, been prepared and submitted on that basis.
- The process of preparing an Implementation Report for the EPSSEN Act, 2004 requires an element of identifying gaps and deficiencies in current approaches to special educational needs provision within the educational system at all levels from pre-school through to further, higher and continuing education. The Council has attempted, in this Implementation Report, as such matters arise, to avoid gratuitous criticism of, and pejorative descriptions of, the current special educational needs provision regime. It would be all too easy to be overly critical of a special educational needs

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regime which has evolved in an ad hoc manner, essentially since the early 1990s, which pre-dates the EPSSEN Act, 2004 (and its ground-breaking new provisions) and which was designed for a different era. In many senses, the totality of the current SEN regime, and the elements which comprise it, will progressively need to be re-thought, and in many cases reconceptualised, as the EPSSEN Act, 2004 is implemented. The Council cannot pre-empt, not pre-ordain, the outcomes of such a process of re-thinking and reconceptualising special educational needs provision over the period ahead. Again, the Council has approached its task in this regard from the perspective of identifying and advising on matters which will require further detailed examination and debate amongst the many stakeholders involved before definitive decisions on how best to address current gaps and deficiencies in special educational needs provision can emerge. While such an approach is not easily reconciled to the requirement in the EPSSEN Act, 2004 to produce a detailed and costed implementation plan at this time, it would be unwise, in the view of the Council, to try to prematurely specify solutions to problems endemic to current special educational needs provision, having regard to the new requirements in the governing legislation, without full prosecution of the issues and options involved through thorough analysis and engaged stakeholder consultation and input. Nonetheless, this Implementation Report cannot avoid the issue that change, and, in some areas of special educational needs provision, very fundamental change, is needed if the EPSSEN Act, 2004 is to be fully implemented as intended by the legislature. The Council hopes that this process, based on the implementation issues raised in this report, can be approached by all concerned on the basis that very considerable progress has been made, particularly in more recent years, in special educational needs provision but that considerable further advancement will be required in order to implement the new Act in all of its aspects.

- In preparing this Implementation Report, the Council has encountered a number of impediments which have rendered the production of the detailed implementation report envisaged in the EPSSEN Act, 2004 extremely difficult. Firstly, it is necessary to report that there is a dearth of readily verifiable baseline information. This problem manifests itself across a broad spectrum of information needs from a lack of demographic and related information on special educational needs prevalence, particularly in the light of the broad definition now included in the EPSSEN Act, 2004, to the inability of current management and financial information systems on the education and health sector sides to easily produce detailed breakdowns of current manpower and financial allocations to special educational needs provision across all areas of current activity. This lack of detailed baseline data has meant that the Council has had, in some areas, to indicate broad areas where additional investment will be needed in order to implement the EPSSEN Act, 2004 without

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being able to calculate the additionality involved at any level of detail or accuracy. Secondly, there is a need to recognise that in some areas where additional resources will be required, the necessary quantum of such resources is a matter for discussion between the Minister, her department, other government departments and the partners in education. In such circumstances, the Council has had to be careful that its treatment of resource requirement issues in this Implementation Report would not pre-empt such discussions. Finally, as regards matters which have impacted on the quantification elements of this Implementation Report, the Council has been faced with the fact that the EPSSEN Act, 2004 dictates a level of cooperative and interactive working between the Education and Health sectors which has not previously existed. Because this is a new feature of special educational needs provision introduced by the EPSSEN Act, 2004 and by the Disability Act, 2005 baseline data on inputs and resource requirements of both sectors is not readily obtainable. For all of the foregoing reasons, our Implementation Report has had to treat the issue of resource additionality to implement the EPSSEN Act, 2004 with caution and with a very strong “health warning” from us that any estimates of additional resource requirements made by us will need to be kept under review as necessary discussions take place and as more definitive data emerge as the implementation process progresses over the implementation period. It is also necessary to recognise that within the overall 5 year timeframe for implementation of the Act, the timelines put forward by us in which additional expenditure will actually be incurred are extremely tentative.

We have also had to consider, in submitting this Implementation Report, the fact that special educational needs provision has attracted considerable additional resources over the relatively recent past. Due recognition needs to be given to this fact. There is now a considerably enhanced resource base for supporting special educational needs provision in place at school level and elsewhere within the education and health sectors. A key issue as regards resources necessary for the implementation of the EPSSEN Act, 2004 will, therefore, be the extent to which existing special educational needs resources are being effectively utilised and/or have the potential to be better used in future to meet the new requirements of the Act. In addition, the health sectoral plan under the Disability Act, 2005 has addressed some of the resource issues involved in the parallel implementation of it and the EPSSEN Act, 2004. Implementation of the EPSSEN Act, 2004, is not solely about additionality, therefore, it is also about effective utilisation of existing resources.

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The foregoing considerations, *inter alia*, have informed the Council's thinking and approach to the submission of this Implementation Report. Our Implementation Report is predicated on a number of core underlying principles as follows:

- The intent of the EPSSEN Act, 2004 is that the rights of the child with special educational needs need to be put centre stage. Previous approaches, which are open to the interpretation that they prioritised systemic, institutional and/or interest group agendas, need to be replaced by a regime which is predicated on achieving outcomes for children with special educational needs based on the primacy of their right to participate in, and benefit from, an appropriate education in an inclusive setting.
- The EPSSEN Act, 2004 is a radical departure from the regime which previously existed and, when taken in the context of other legislative developments, the Constitution and other international trends, presents the opportunity to introduce a new deal for those with special educational needs and their parents and guardians. The Implementation Report will make this a viable reality.
- The rights-based provisions in the EPSSEN Act, 2004 must be implemented at the earliest possible date.
- A pragmatic and realistic approach will be needed. Many areas necessary to underpin implementation and future resource requirements will require further detailed analysis, appropriate debate and discussion and flexibility of approaches to iterative development over the implementation period in order to facilitate optimum implementation of the intent of the EPSSEN Act, 2004.
- Due recognition must be given to the progress which has already been made in SEN provision. We are starting from a better base than was the case some years ago. What we need to concentrate on now is leveraging that base to achieve the next step-change in SEN provision needed to make the provisions of the EPSSEN Act, 2004 a reality on the ground.
- The core of future special educational needs provision will be properly resourced and effective inclusive schools. Determining what is needed, and then putting in place, at all levels, the truly inclusive school, operating effectively, is the cornerstone of future special educational needs provision.

It will be important to recognise that the implementation of the EPSSEN Act, 2004 is not merely about the necessity for change in the institutions of the State. Implementation of the Act will require fundamental cultural, attitudinal and societal change across a broad spectrum of interests. The change agenda cannot be driven by the State in isolation. Effective progress in making the EPSSEN Act, 2004 vision a reality will require change on the part of parents, representative bodies, schools, teachers, education and health sector administrators and professionals and a wide variety of other statutory bodies and stakeholder interests including the NCSE. The goal of enabling children with

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special educational needs to participate in, and benefit from, inclusive education and in achieving meaningful outcomes from education in terms of progression to employment, further and continuing education, fulfilled lives and independent living is an extremely challenging one which will require the combined efforts of all concerned if it is to be delivered as a new deal for children with special educational needs.

A key consideration in the implementation of the EPSSEN Act, 2004 is the need for its implementation to be coordinated between the Departments of Education and Science and of, Health and Children, as well as their respective agencies, in tandem with the Implementation of the Disability Act, 2005. This important requirement has already been reflected in:

- The preparation of the health sectoral plan for implementation of the Disability Act, 2005.
- The interdepartmental group, representative of both departments and their agencies, which contributed to the preparation of this Implementation Report.
- The establishment of a high-level, cross-departmental group to coordinate implementation between both departments and their agencies, the first meeting of which has already been scheduled to follow the submission of this Implementation Report.

In submitting this Implementation Report, the NCSE would like to thank all of those who participated in the process (acknowledged elsewhere). In many senses, the submission of this Implementation Report is the beginning of, rather than the culmination of, an implementation process. The Council looks forward to working constructively with the Minister, her department, the health sector and all the other key stakeholders in progressing the implementation of the vision enshrined in the EPSSEN Act, 2004 for children with special educational needs. In particular, we look forward to engaging in this process through making a real difference to the lives of children with special educational needs and of those who work with them and who otherwise support them.



Tom Murray
Chairman
NCSE
29 September 2006



Pat Curtin
Chief Executive Officer
NCSE
29 September 2006

EXECUTIVE SUMMARY

1. Introduction

This Executive Summary is intended as a high-level extrapolation of some of the key issues addressed in our Implementation Report. It is included in our Report as a complement to, rather than as a substitute for, the more detailed treatment of many complex, inter-related and cross-cutting issues contained in the Implementation Report itself.

1.2 We set out our Executive Summary under the following headings:

- Our Vision and Values.
- Contextualisation.
- Our Main Findings and Conclusions.
- Our Key Recommendations.
- Implementation Considerations.

2. Our Vision and Values

2.1 We approached the task of preparing this Implementation Report, for submission to the Minister, with a particular vision for future special educational provision in mind and with a set of values which underpinned our work and the Implementation Report itself. Our vision is very much guided by the EPSEN Act, 2004 in that the Act itself puts forward a very challenging and compelling vision for future SEN provision in Ireland.

2.2 The main components of this future vision are:

- Children with SEN will have an enforceable right to an appropriate education in an inclusive setting.
- Children with SEN will participate in, and benefit from, education on a par with their peers who do not have SEN.
- Children with SEN will achieve outcomes from education which will facilitate them in transferring to the workplace, progressing to further education and lifelong learning, participating meaningfully in economic, social and cultural activity and, in effect, in living fulfilled lives independently in the community.

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2.3 Our report recognizes the enormous challenge inherent in such a vision for an education system which has evolved in an ad hoc manner as regards encompassing the requirements of those with special educational needs, the key elements of which obviously pre-date the EPSSEN Act. We, therefore, based our work in producing this Implementation Report on a number of key values as follows:

- Children with special educational needs should be put at the centre of policy formulation and educational/health service delivery in order to best provide for their future as prescribed in the Act. We should consciously eschew past approaches which are open to the interpretation that other priorities in relation to fiscal considerations, systemic and institutional needs, the agendas of powerful interest groups and the interests of professionals and, indeed, parents have influenced unduly our approach to special educational needs provision in Ireland.
- We should challenge constructively current provision for special education and the premises/policies on which it is based. Implementation of the EPSSEN Act 2004, will require that gaps and deficits in current provision be identified and addressed. However, we should avoid gratuitous criticism of the current regime, fully recognizing that it was not designed to meet the very fundamental change agenda implicit in the EPSSEN Act. We should also recognize that, whatever about its shortcomings, the current regime has benefited significantly from additional resourcing and continuous policy evolution in recent years in particular. The EPSSEN Act, however, shifts the goal posts yet again. We need to devote our energies to what is now needed for the future rather than expending them on criticizing the past.
- There is no single answer, and no “right” response, to many of the challenges posed by the EPSSEN Act. The Council is not, therefore, in any sense wishing to be prescriptive in areas where it is not appropriate for it to take such an approach. Its key value system, in this regard, is to identify and raise issues which it believes need now to be debated with the many key stakeholders involved regarding the nature, shape, pace and extent of change needed to convert the EPSSEN Act vision into reality on the ground.
- The Council is hugely aware that delivery of the EPSSEN Act vision, in terms of tangible benefits to children with SEN, will be effected by schools and teachers on the front line. How we fund, resource, train, build capacity, develop and support schools and teachers for the task ahead is the key challenge.

2.4 Our report seeks to develop the foregoing vision and values as a strong underpinning for the implementation plan necessary to make the provisions of the EPSSEN Act, 2004 work in practice.

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3. Contextualisation

3.1 Before delving into what is, of necessity, a very detailed Implementation Report and action plan for putting EPSSEN into effect, it is, perhaps, appropriate that we put some of our thinking on what is required into context. We do so in the paragraphs which follow.

3.2 The EPSSEN Act, 2004 puts Ireland in the forefront of legislative underpinning for special educational provision in global terms. The Act is visionary, compelling and far seeing. However, as a statement of the obvious, it will only make a real difference to the lives of children with SEN, their parents/guardians and those who otherwise support them, when it becomes a reality on the ground. This is an exciting time to be involved in special education because we are all now presented with the opportunity to shape and deliver that reality. To do so will require a collaborative effort by all concerned across a very wide spectrum of stakeholder interests. The NCSE welcomes this opportunity and is anxious to play its part in this exciting process. We want to see a world-class SEN provision regime, delivering tangible benefits and outcomes to match the leading edge legislative underpinning for SEN provision which now exists in Ireland.

3.3 The Council recognizes that the past (and, indeed, the not too distant past) was a dark place in relation to SEN issues. However, since 1993 (the SERC report) and through 1998 (the passing of the Education Act) and up to the present day there has been an exponential improvement in the State's response to SEN issues including considerable additional resource allocations. The passing of the EPSSEN Act, 2004 is a continuation of that evolutionary path and it will be the cornerstone of SEN provision developmental progression for the years ahead. This Implementation Report sets out the Council's views and recommendations on how to continue down that evolutionary path in accordance with the timescale prescribed in the Act.

3.4 There are many schools, teachers, professionals in the health and education sectors, voluntary organizations and others who are doing tremendous work on behalf of children with SEN. The preparation of this Implementation Report has been an inspiring process in that the widespread consultation and inputs involved has demonstrated the enormous goodwill, dedication, expertise and commitment which exists to convert EPSSEN into a workable and meaningful reality. We need to harness and support the very strong base which already exists in that regard.

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3.5 The EPSEN Act dovetails neatly with the Disability Act, 2005. Both Acts promulgate the need for the education and health sides to work collaboratively in the parallel implementation processes involved in order to enhance the lives and prospects of those with disability and with SEN. The envisioned co-working between the sectors is of a scale and nature which has not previously existed. The process for bringing this about has already begun, the benefits will begin to be rolled out immediately and great commitment exists on both sides to make this new departure in joint working effective.

3.6 The early Chapters of our Implementation Report deal with some other key contextualization issues. We refer below to some of the key points covered in these chapters.

3.7 Chapter 1 gives the background to the Implementation Report and sets out the methodology used in its production. The key issues addressed relate to the very extensive process of consultation and research. The accompanying appendix summarises the main points from some seventy two submissions received. We acknowledge the enormous contribution to our work made by all those who contributed, including the useful inputs of the Consultative Forum and of the joint implementation group involving the Department of Health and Children and the HSE.

3.8 Chapter 2 comprises of necessary background material to the Implementation Planning process. It describes the evolution of special education in Ireland, outlines current SEN provision arrangements and provides an update on the main provisions of EPSEN and their status to date as regards implementation.

3.9 Chapter 3 is the first substantive chapter of our Implementation Report. It sets out our approach to estimating the prevalence rate for SEN in Ireland. We outline, in Chapter 3, the significant impediments which we encountered, despite commissioning expert research support, in determining a prevalence rate for SEN. There is no definitive, agreed and accepted source or sources of data on SEN prevalence. In the event, because of the availability of some baseline data, we endeavored to put together a disability prevalence rate on the basis that those identified with a disability will certainly come within the ambit of EPSEN. However, we fully recognize that SEN, as defined statutorily in EPSEN, is a much wider definition than disability. We point out, however, the need for care in the treatment of our figures. Firstly, the data sources used have varying degrees of reliability. Secondly, we are unable to be certain that there is no double counting involved. Thirdly, current access to

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education and health services is significantly influenced by disability prevalence rates as defined within the respective regimes. There is a natural concern that our use of disability prevalence (as estimated by us) as a proxy for SEN prevalence might be misconstrued by some and used inappropriately to advance arguments about resource allocations under the current DES and/or DHC policy regimes. This is certainly not our intent and, in fact, our figures could not, with any credibility, be used in that context. In the event, we estimate that the disability prevalence rate, as interpreted by us for the purposes of EPSSEN, is in the range of 14-18% of the school going population. However, since SEN is a wider category, we believe that the SEN prevalence rate is actually higher than 18%. However, we are unable to confirm to what extent that is the case. We conclude that much more work is needed to deepen our understanding of the SEN prevalence rate and of its implications and to produce verifiable and reliable data in that regard. We have now prioritised that work in the early stages of the action plan for implementation.

3.10 Chapter 4 deals with the outcome from the legislative review commissioned by us to assist with the preparation of this Implementation Report. Amongst the key issues dealt with are:

- The need to use a wide definition of SEN which is broader than the definition of disability in the Disability Act.
- The need to progress Implementation of EPSSEN having due regard to other education statutes, the Disability Act, 2005 and the Equality Act, 2000-2004.
- The need to integrate the assessment, educational planning and service planning processes between the health and education sectors.
- The need to rationalize appeals processes.
- The need to avail of a future opportunity to review the provisions of the various statutes with a view to maximizing the consistency of approach to issues such as assessments and appeals.
- The need to produce a user-friendly guide to the various legislative provisions impacting on SEN for the benefit of schools, parents and other key stakeholders involved.

4. Our Main Findings and Conclusions

4.1 Chapter 5 sets out our main findings and conclusions in relation to the matters which we think will influence the approach which needs to be taken to the implementation of EPSSEN.

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4.2 We begin by stating what the Act envisages for children with SEN as follows:

- Appropriate education in an inclusive setting.
- Provision of skills necessary to participate in society on leaving school.
- Opportunities to progress to third-level, training and employment.
- Preparation for independent living.
- Greater participation of parents.

4.3 We then expand on these broad elements of the future vision in terms of what it will demand by way of systemic and institutional response. Key points are:

- Universal access/removal of barriers to access.
- Educational outcomes on a par with peers.
- Effective assessment of needs.
- Effective educational planning.
- Rights to appeal and mediation.
- Individualization.
- Equity.
- Joined-up government particularly between the education and health sectors.

4.4 We analyse the main gaps and deficits between the “to be” scenario envisioned in the Act and the “as is” SEN regime. Key gaps and deficits are identified in the following areas:

- Early identification of needs, early intervention and pre-school provision are all significantly behind what is needed.
- Many children with SEN have no access to the curriculum at first and second levels, few obtain certificated outcomes, fewer still progress to further education and drop out rates are high.
- Not all schools are inclusive and there are numerous “soft” barriers to access.
- There is unequal participation between first and second levels and two-tiered provision between mainstream and special schools.
- There is no structured emphasis on outcomes and an almost endemic fascination with inputs with no means of ascertaining what outcomes are being achieved for children with SEN.
- Schools are under-resourced in terms of capacity to deliver inclusive education.
- Institutional and systemic supports for schools in relation to inclusive education provision are inadequate.

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- There is insufficient investment in training and development at all levels (schools, teachers, support professionals etc.).
- Assessment is not delivered when needed, is overly linked to resource considerations and is dependent on questionable labeling and categorization of children with SEN.
- Structured educational planning for children with SEN is not widespread and there are resource and training shortfalls in this key area.
- The education and health sectors have not, in the past, been required to work effectively together on the ground in the manner now envisioned.
- Boards of management, school leadership and parents are not sufficiently involved nor are they adequately informed, trained and supported to play an effective part.
- Funding mechanisms are overly based on disability deficit approaches and include criteria and thresholds which may not be in accordance with the intent of the Act.
- Educational progression for all children with SEN is not properly planned nor executed.
- Research on SEN issues is not sufficiently supported.
- The current regime is open to the interpretation that it allocates resources inappropriately, is not efficient, is not equitable and is not outcome focused.

4.5 Based on our analysis of gaps and deficits between the “to be” and “as is” SEN scenarios, the Council is of the view that the whole approach to SEN provision in Ireland needs to be re-thought and, in many respects, reconceptualised. We recognize that debate on the issues involved is only now commencing. We accept that Ireland is not alone in struggling to grapple with the issues involved. There is no globally accepted model of best practice to which we can readily turn for definitive guidance.

4.6 We conclude that future SEN provision should be based on a number of strong fundamental building blocks as follows:

- The development of the inclusive school as the key to delivery. Properly resourcing, training, building capacity in and supporting schools and teachers will be the key to successful implementation.
- Re-orientating the system from a disability deficit approach in relation to funding, assessment, allocations etc. to one of systemic capacity and competency building is a fundamental requirement of the change agenda.
- Dealing holistically with inclusive education, in all of its manifestations and implications rather than dealing with its individual modalities as stand-alone issues will also be critical to success.

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4.7 We accept that there are many possible routes to dealing with the very challenging issues identified above and that there needs to be substantial engagement between all of the stakeholders involved in this regard. We identify a range of matters to be addressed as priorities in such engagement including the following:

- Funding of SEN to support learning and outcomes.
- Building school capacity.
- Strengthening the identification of need, assessment and IEP processes to underpin educational service provision to children with SEN.
- Professional Development at all levels.
- Integrating services to support inclusive education (education, health, voluntary sector etc.)
- Developing a focus on outcomes, evaluation, monitoring, accountability and reporting.
- Improving Parent Participation.
- Improving pupil learning outcomes and embedding educational progression through curriculum access for pupils with SEN.
- Strengthening support structures (NCSE, NEPS, SESS, DHC, DES etc.).

Our report sets out our thinking on how these key processes should be developed to enhance SEN provision.

5. Our Key Recommendations

5.1 In Chapter 6 we identify the main areas where additional investment will be needed and we estimate what the extent of such investment is likely to be over the 5 year implementation period. We do so firstly in relation to investment on the education side and then we outline the health sector investment profile.

5.2 On the education side, the main areas of investment are identified as follows:

Pre-school Provision: To support universal early intervention for all children with SEN. (€45.25m over 5 years)

Building Capacity in Schools: To support inclusive education. (€194m over 5 years)

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Developing Educational Support Services: To support inclusive education in schools. (€76m over 5 years)

Training and Development: To support professional development. (€49m over 5 years)

Service Integration: To promote effective co-working. (€5m over 5 years)

Appeals and Mediation: To develop effective systems. (€8m over 5 years)

Educational Progression: To plan curriculum access and support certificated progression. (€8.5m over 5 years)

Outcome of Reviews: To implement review outcomes. (€4.5m over 5 years)

Further and Continuing Education: To support development. (€3.75m over 5 years)

Research: To strengthen structures and capacity. (€3m over 5 years)

5.3 Total investment on the education side is estimated at some €397m over the period. However, we point out that:

- In many cases, we are unable to provide accurate estimates because of the lack of quality baseline data.
- In major areas, fundamental debate with key stakeholders needs to take place (see Section 6 below) the outcome of which will greatly influence future expenditure profiles in the areas involved.
- In some areas, we are only able to recommend “seed” funding for the launching of initiatives the outcome of which will, in themselves, provide a framework for future investment.

5.4 Funding on the health side has effectively been dealt with in the health sectoral plan which provides for parallel implementation of the Disability Act and the EPSSEN Act. A projected investment of €60m is envisaged in putting locally based multi-disciplinary support teams in place as well as a further €17m in developing Mental Health Support Services.

5.5 Chapter 6 also makes specific recommendations in relation to the following key issues:

- Assessment: In terms of developing the NEPS three-staged approach
- Individualized Education Plans

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- Appeals and mediation
- Liaison Officers
- Designation of Schools
- Infrastructural Development
- NCSE
- NEPS
- Schools
- Special Schools
- Policy and Provision
- Parental Involvement

5.6 Finally, Chapter 6 includes a detailed 42 point action plan and a commencement schedule for the various sections of the Act within the 5 year implementation period dictated by EPSEN.

5.7 In putting forward our recommendations, we have had due regard to the following:

- Much discussion and debate is needed with the key stakeholders on the issues involved.
- Our cost estimates are necessarily tentative and will need to be kept under review as key decisions are made and as better data become available.
- Our timelines are necessarily tentative and are dependent on the outcome of stakeholder discussion and agreement in many instances.

6. Implementation Considerations

6.1 Chapter 7 of our Report deals with a number of fears and concerns expressed to us during the process of developing the plan.

In summary, the matters addressed by us are as follows:

- We argue that the funding envelop proposed will not divert monies from mainstream education given Governments' commitment to additionality. We also point out that implementation of EPSEN is not merely about additionality. There is a significant requirement to obtain value for money and ensure effective utilization of the considerable additional SEN resources already allocated in recent years.

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- We deal with a number of misunderstandings and misconceptions in relation to SEN prevalence. We caution against equating SEN prevalence to disability prevalence as currently understood within the education and health regimes in terms of access to health services and/or in the context of current DES disability based allocation processes. Our SEN prevalence rate is not intended for these purposes.
- We point out that not every child with SEN will need a “full-blown” multi-disciplinary assessment.
- Equally, we deal with the issue that IEPs will take many forms and that fully developed highly individualized programmes will arise only in relatively few cases.
- We strongly advocate that all schools, at first and second level, should be inclusive schools.
- We argue that “inclusive education” and “special schools” are not mutually exclusive concepts. We see EPSSEN as strengthening the role of special schools rather than as being a threat to them. However, we point out that a considerable reconceptualising of SEN provision will be needed having regard to EPSSEN requirements in the context of examining all current arrangements whereby children with SEN are educated separately from their peers.
- We point out that current allocation policies will need to evolve in order to support inclusive education as promulgated in EPSSEN.
- We caution against any tendency for imbalance within the regime brought about by the broadening of the definition of SEN in the EPSSEN Act in manner which would divert resources from those with highest need to areas of highest numbers (but lowest individual needs).
- We confirm that the action plan envisages progressive implementation from now up to the point when formal commencement of the various sections of the Act occurs. We accept that formal commencement can only take place when the necessary resources, training and supports are in place to enable commencement to be effected.

6.2 Implicit in our Implementation Report is the fundamental requirement for a substantive re-thinking and reconceptualising of SEN provision in Ireland if the EPSSEN Act, 2004 is to be effectively implemented for the benefit of children with SEN. In addressing the many challenging issues inherent in the EPSSEN Act vision for future SEN provision, the Council is anxious that all of the key stakeholders will engage with the implementation process conscious of the fact that necessary debate and consensus on very fundamental matters has only now commenced and is a critical requirement if successful implementation is to be achieved.

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6.3 The agenda for debate and consensus building to support meaningful implementation of EPSEN is an extensive one and includes many issues which will be very challenging as regards seeking resolutions. The Council is anxious that the following priority areas for consideration will receive appropriate urgent attention from the various stakeholder interests involved:

- The concept of “appropriate” education for children and young people with SEN needs to be carefully considered. The challenge will be to describe and develop a national approach to appropriate education for those with SEN which is strongly linked to the curriculum, which produces meaningful certificated outcomes and which delivers benefits to those with SEN which are not separate from, nor devalued in any way relative to, those available to their peers. Developing an educational regime which provides for appropriate placements, delivers effective programmes and achieves results will not be easy. There are very significant educational design issues involved and a requirement for substantial evolution of differentiated (but appropriate) programmes for pupils with SEN if the intent of the Act is to be realized.
- “Inclusion” needs considerable debate given the many different interpretations encountered by us in preparing this Implementation Report. The Council is anxious that the debate proceeds on the basis that inclusion is about much more than the location in which education takes place. Successful inclusion requires a cultural and attitudinal mind-set which facilitates flexibility of response with the priority focus on what is in the best interests of the child/young person involved. How we understand, articulate and deal with the concepts of inclusion, integration and removal of restrictions/barriers (and not just to access) will all be fundamental to how the Act gets implemented on the ground.
- The processes which support effective, appropriate and inclusive education need considerable further refinement as part of the dialogue around implementation. For example, we need to carefully think through why we are doing certain things, who should do them and what they should achieve. This includes our approach to placement, identification, assessment, IEPs and monitoring/evaluation. The current paradigms which influence these processes, as experienced to date by children with SEN, need to change fundamentally if EPSEN is to be made a reality.
- Considerable thought needs to be given to the nature of schools and of teaching to support inclusive education. We need to spend a lot of time developing our concept of the inclusive school and then looking at the impacts on educational programmes, teacher training, professional development, school structures, support structures for schools etc. Our current approaches in all of these areas need considerable re-examination.
- Major effort is needed now in developing an approach to funding education to achieve learning

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outcomes for children/young people with SEN. It is, Council believes, probable that our current funding mechanisms overly provide in some areas, under provide in others and generally do not represent value for money in outcome terms. A major re-think is necessary in order that the focus can be on benefiting the children involved.

- We need serious concentration on key transitional stages to underpin our approaches to SEN. EPSEN implementation will require early identification and intervention (effectiveness at the pre-school level), planned progression into school and from primary to secondary school as well as clear strategies for post-secondary progression. How to plan and execute these key transitions for children and young adults with SEN will be important elements in the implementation process.

6.4 The foregoing areas are matters on which the Council, on its own, cannot definitively pronounce. They represent, however, some of the key issues which must now come to the forefront of stakeholder consideration. Council looks forward to playing its part in this regard in exercising its coordination, research and policy advisory roles.

6.5 We conclude our Implementation Report by recommending its adoption to the Minister and by looking forward to collaboration with the key stakeholders involved in delivering the benefits of EPSEN for children with SEN.

7. Conclusion

7.1 The EPSEN Act, 2004 represents an enormous opportunity to improve the lot of children and young adults with SEN. It places Ireland, potentially, in the forefront of global best practice in relation to SEN provision mirroring, as it does, leading edge developments such as the “no child left behind” initiatives in the United States, the “education for all” approach in Canada, the significant legislative and service delivery change in the UK in recent years and many others. The challenge now is to convert that potential into reality on the ground.

7.2 Successfully implemented, EPSEN will deliver a new deal for children and young adults in Ireland. Our collective aim through effective collaboration between all of the key stakeholders should be to deliver on a number of very challenging high level goals to include:

- More and more children with SEN benefiting from education in mainstream schools and classes

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alongside their peers who do not have SEN.

- Improved learning outcomes for children with SEN linked to the curriculum at first and second levels with recognized, valued and usable certificated results.
- Properly developed inclusive schools which have the resources and the capacity to deliver effective educational programmes for children across a wide range of abilities thus benefiting all pupils and not just those with SEN.
- Parents, schools, teachers and the institutions of the State on the education and health sides working constructively and collaboratively for the benefit of children and young people with SEN.
- Accountability and transparency throughout the regime for supporting SEN.
- Less emphasis on the bureaucracy and documentary compliance associated with the rules and regulations surrounding SEN provision and more emphasis on effective teaching, learning and results.

7.3 This Implementation Report sets out the framework for ensuring progression towards the achievement of these desirable goals over the next five years. We all need now to engage constructively with the process of fleshing out and delivering effective SEN services within that framework.

ACRONYMS

ABA: Applied Behavioural Analysis.

ASD: Autistic Spectrum Disorder.

DES: Department of Education and Science.

DHC: Department of Health and Children.

EPSEN: Education for Persons with Special Educational Needs Act, 2004.

HEA: Higher Education Authority.

HSE: Health Service Executive.

IEP: Individual Education Plan.

JCSP: Junior Certificate Schools Programme.

LCA: Leaving Certificate Applied.

LS/RT: Learning Support / Resource Teacher.

NCCA: National Council for Curriculum and Assessment.

NCSE: National Council for Special Education (also referred to as the Council).

NEPS: National Educational Psychological Service.

NIDD: National Intellectual Disability Database.

NPSDD: National Physical and Sensory Disability Database.

NQAI: National Qualification Authority of Ireland.

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OT: Occupational Therapy.

PCSP: Primary Curriculum Support Programme.

PDD-NOS: Pervasive Developmental Disorder – Not Otherwise Specified.

SCPA: Scheme for Commissioning Private Assessments.

SDP: School Development Planning.

SEAS: Special Education Administration System.

SEC: State Examinations Commission.

SEN: Special Educational Needs.

SENO: Special Educational Needs Organiser.

SERC: Special Education Review Committee (1993).

SESS: Special Education Support Services.

SNA: Special Needs Assistant.

NOTE

Throughout this Implementation Report, the Council has found it necessary to refer to the term “disability” because of its prevalent use in much of the policy and other frameworks associated with special education provision prior to the enactment of the EPSSEN Act, 2004. Confusion also arises from the overlap between the EPSSEN Act, 2004 and the Disability Act, 2005 which use different definitions to describe those to whom the respective Acts apply. The Council hopes that, in future, the term “special educational needs”, as defined in the EPSSEN Act, 2004, will become the standard terminology when referring to educational provision.

CHAPTER 1

1.1 INTRODUCTION

This report is prepared in fulfilment of the National Council for Special Education's obligations under Section 23 of the Education for Persons with Special Educational Needs Act (EPSSEN), 2004. The Act requires the Council to make a report to the Minister for Education and Science on the implementation of the legislation over a five year period. It represents the Council's view on how the legislation can be put in place and how the needs and rights of children with special educational needs can be addressed speedily. The Council, in preparing the report, consulted widely with key stakeholders in the disability/special education and health sectors to ensure that a range of views are represented.

In the report the Council is required to:

- Specify a date for the commencement of each of the provisions of the Act.
- Provide an estimate of the resources necessary for taking each step in the implementation of the Act.
- Provide a review of any other relevant enactments or instruments under enactments which may affect the performance of the Council's functions under the Act and make such recommendations as are considered appropriate as regards amendments, repeal or revocation.
- Consider how the educational needs of children with special educational needs can be met, to the greatest extent possible, pending the full implementation of the Act and make recommendations in that regard.

1.2 PURPOSE OF THE IMPLEMENTATION REPORT

The stated purpose of the Implementation Report is to outline "the steps that must be taken in order that the provisions of the EPSSEN Act, 2004 will be fully implemented within the period specified in the report. The period so specified shall not be more than five years from the establishment day"¹. The establishment day for NCSE was 1 October 2005 and so the statutory requirement is that the commencement of various provisions of the Act will be completed by October 2010. The Implementation Report provides the basis for future planning of services and resource requirements over the five year implementation period so that the Act can take statutory effect within the required timeframe.

¹ EPSSEN Act 2004, Section 23 (1) (2)

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1.3 METHODS AND CONSULTATION

As noted above, the NCSE used a range of methods to gather information for its Implementation Report and sought opinions from key stakeholders throughout the process of compiling the Report. In summary, the key methods used were:

- A call for submissions from all the key stakeholders and from the general public on the Implementation of the EPSEN Act, 2004. Seventy-three submissions were received from a wide range of individuals and groups (a summary and list of the submissions received is presented in Appendix 1 to this Report).
- Commissioned research on the prevalence of special educational needs in order to quantify the cohort of the population on whom rights have been conferred by the EPSEN Act, 2004.
- Commissioned research on IEPs and on Assessment to supplement our understanding of these two key areas of the Act. Both research pieces employed a very consultative approach to the work, thereby maximising the opportunity for engaging with a wider audience on the implementation process.
- A review of legislation on disability, education and special education was commissioned by the Council and the findings of the review are presented later in the document.
- Establishment of an Implementation Group which brought together representatives of the Council's Executive, HSE, NEPS, Department of Health and Children and the Department of Education and Science. The Group met regularly to discuss issues of common interest and to feed into the process of implementing both the EPSEN and the Disability Acts.
- SENOs compiled a submission to the Council on the Implementation Report which set out their view of how the legislation should be implemented.
- An analysis was undertaken of a sample of cases from SENOs to examine information on assessment and on the allocations process. Some 240 cases were examined from the 2004/5 SENO case load which included those that met DES criteria for resourcing as well as those that did not.
- The NCSE sought and received advice from the Consultative Forum which was established under the EPSEN Act, 2004. The Consultative Forum is representative of the wide spread of interests involved in special education and provided valuable advice and guidance to the Council in framing its final report.
- The Council also consulted with the Minister for Education and Science on the final report.

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The views and findings of the consultation process have helped to shape the Report and its final recommendations. The key issues to emerge from the consultation process centred on the capacity of the system to respond to, and deliver on, the rights-based provisions of the Act and on the legal requirement to do so. The specific issues that were raised most often in our consultations include:

- The assessment process is fundamental to the delivery of the range of provisions of the Act. Standards for assessment are urgently needed as is a more developed and shared understanding of what should constitute an assessment and who should do it.
- Parents, schools and statutory and non-statutory support agencies require information about the Act, its procedures and the respective roles and responsibilities in an easy-to-read format. Training and staff development should accompany this guidance.
- The NCSE, the Department of Education and Science, the Department of Health and Children and the Health Service Executive (HSE) must plan jointly and communicate regularly, so that the support services to children and students who come under the Act are well used and developed according to assessed need. The progress of this planning needs to be monitored closely so that support services ultimately exist in sufficient quantity and quality to meet all the assessed needs written into Individual Education Plans.
- The NCSE has to become more data rich so that its financial and resource decisions are based on evidence. The financial planning and budgetary implications to fully implement the EPSEN Act, 2004 are very significant, and require quality information so that monies are well spent. This includes:
 - Data on the number, characteristics and dispersal of the child population (0 – 18 years) having special educational needs.
 - An analysis of the professional resources, their cost, and availability to discharge the duties of the Act.

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1.4 GENERAL APPROACH AND RATIONALE

Given these issues, and others, the Council's rationale and approach to the implementation of the EPSSEN Act, 2004 is informed by four key considerations.

The first is to ensure that the core objectives of the EPSSEN Act, 2004 are achieved. These objectives, particularly those expressed in the Preamble to the Act, make a commitment to provide people who have special educational needs with: (i) an inclusive and appropriate education (ii) beneficial outcomes from such education including the skills needed to participate in society on leaving school and (iii) the greater participation of parents. In preparing the Implementation Report, therefore, we have tested our recommendations against the objectives of the Act.

Second, the implementation process is informed by the requirements which have been placed on NCSE by the EPSSEN Act, 2004. These include consultation with the Minister for Education and Science, the Consultative Forum established under the Act, the Department of Health and Children, the HSE and the need to identify the resources required to implement the Act within a five year period from 1 October 2005, the specification of dates on which the various sections of the Act should be commenced and the presentation of this report to the Minister by 1 October 2006.

The third major consideration is how special educational need is defined in the Act and how that definition differs from definitions used and applied in determining present special education policy and provision. The Council recognises that the definition is broader than any definition of special educational need used in the past and that the response will, therefore, need to be different. It also recognises the particular significance of the use of the term "special educational need" as opposed to disability and of the difference, therefore, between the EPSSEN Act, 2004 and the Disability Act, 2005 in that regard.

Fourth, in preparing the Implementation Report, the NCSE is conscious of the need to reflect on whether existing policies, procedures and resources are adequate to achieve the objectives of the EPSSEN Act, 2004. Under the EPSSEN Act, 2004, the NCSE is required "to advise the Minister [for Education and Science] in relation to any matter relating to the education of children and others with disabilities" (Section 20(1)(j)). For this reason, the NCSE will continually review the effectiveness of existing arrangements in meeting the objectives of the EPSSEN Act, 2004 and inform the Minister of issues that need to be addressed.

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The Council has adopted the approach that improvements in the delivery of services should be implemented over a range of areas as quickly as possible and that adherence to the timetable proposed will ensure a progressive and systematic move towards realisation of the service levels envisaged in the Act. The implementation of the statutory rights cannot be applied until resources are available and actions effected to enable compliance with a particular section of the Act. On this basis, the Council has constructed its proposals taking into account:

- The urgent needs of persons with special educational needs and the necessity to accelerate improvement of services to the standards required by the Act in the shortest timescale.
- The logistics of providing many of the improvements needed i.e. additional professional staff such as psychologists, occupational and speech therapists and teachers, improvements in training of teachers and special needs assistants.
- The staffing resources needed by the NCSE to fulfil its obligations as set out in the Act.
- The provisions of the Disability Act 2005 and commitments to implement that Act in tandem with the EPSEN Act, 2004 contained in the Health Sectoral Plan.
- The ability of the HSE to develop its services to meet its obligations under the Act.
- The annual and cumulative financial requirements.

To understand the Council's approach we present, in Figure 1.1 below, a framework for analysis which provides a backdrop to the Council's thinking on current provision and future development. We use this framework to structure the Report. Key to this framework is encapsulating the concepts of inclusive education, the inclusive school, and what is required for an appropriate education to become a reality for all children with special educational needs. In setting this frame of reference, the Council acknowledges the duty of the State to ensure that children with special educational needs have the same right to education and to benefit from such education as do their peers.

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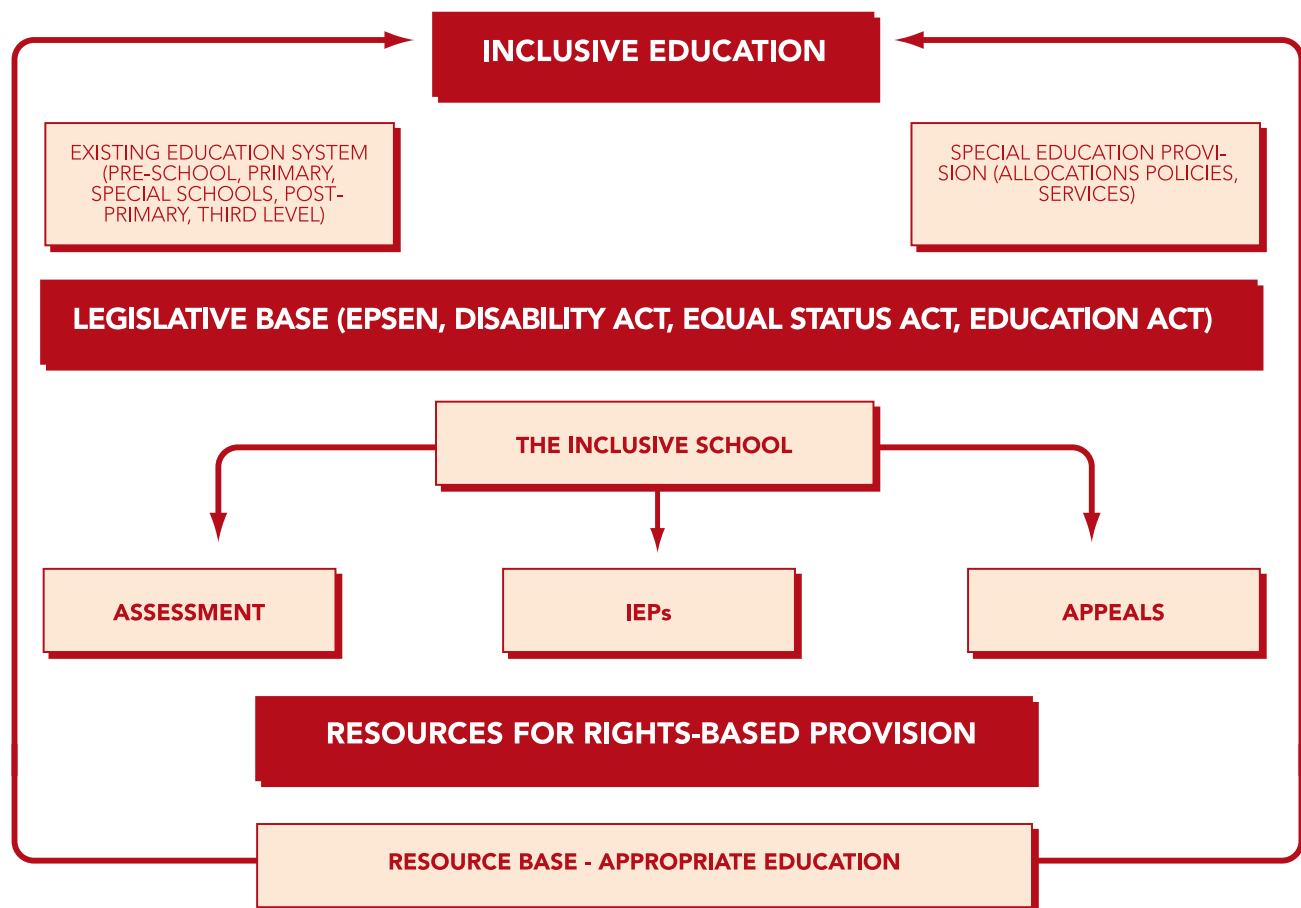


FIGURE 1.1: NCSE Framework for Analysis

The term 'inclusive education' invokes strong views as to its precise meaning and intent. In a recent House of Commons report, for example, it was noted: *"the debate over provision has for too long been focused on an unhelpful interpretation of inclusion as a place (that is, special or mainstream) rather than on what the pupils achieve"*². The core issue is what happens in the school and in the classroom and the outcomes that the system delivers for children with special educational needs.

The Council's view of inclusive education has been influenced by the work undertaken by Booth and Ainscow³ and on the three dimensions set out in their Index for Inclusion which support producing inclusive policies; evolving inclusive practices; and creating inclusive cultures at the level of the

2 House of Commons Education and Skills Committee, 2006.

3 Booth and Ainscow, 2002.

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school. To achieve these, the Council's view is that change is required at statutory level (through the implementation of the Act), at systemic level and at societal level with regard to culture and attitudes towards those with special educational needs.

1.5 OUTLINE OF THE IMPLEMENTATION REPORT

Using the core elements of the framework presented, the Implementation Report is structured as follows:

1. Introduction and Methodology

This chapter provides a brief overview of the Implementation Report and the work undertaken to compile it.

2. Current Provision and the EPSSEN Act, 2004

This chapter presents an historic overview of special education provision as well as some background on existing policy and provision. The chapter also outlines the provisions of the EPSSEN Act, 2004 and an overview of progress to date in relation to the implementation of the Act.

3. Estimated Number of Children with Special Educational Needs

Baseline data on the number of children who may have a special educational need are set out in this chapter. The data were constructed from a multiplicity of sources to identify the potential level of demand for services that may be required based on an estimate of the cohort of the population on whom rights have now been conferred under the EPSSEN Act, 2004.

4. Legislative Review

As required under the Act, this chapter presents the findings of a review undertaken, on behalf of the Council, of relevant enactments that have a bearing on the provisions of the EPSSEN Act, 2004.

5. Issues Relevant to the Implementation Process

In this chapter the Council sets out a range of issues that need to be addressed in the course of implementing the Act. It also present a vision of what needs to be put in place on foot of implementing the EPSSEN Act, 2004 and identifies how the present system will need to change.

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6. An Action Plan for Implementing EPSEN Act, 2004

This chapter outlines the resource-levels, associated costs and timetable for implementation. It provides a detailed action plan for the core provisions of the Act and articulates the steps necessary prior to commencement of those provisions.

7. Conclusion and Key Implementation Considerations

The final chapter sets out some of the key implementation considerations and responds to some of the key fears and concerns regarding implementation which arose during the preparation of the Implementation Report.

Associated appendices list and summarise the submissions received, give some definitions and prevalence rates as used in the 1993 SERC report and include a bibliography of some material used in the preparation of our report.

CHAPTER 2

SPECIAL EDUCATION PROVISION AND OVERVIEW OF THE EPSSEN ACT, 2004

2.1 INTRODUCTION

In this chapter we set out the historic context for the development of special education and we outline some recent developments in provision. The chapter also sets out the main provisions of the EPSSEN Act, 2004. The aim of this chapter is to provide the reader with a contextual overview of current services and policy and how these might alter with the implementation of the Act.

2.2 THE EVOLUTION OF SPECIAL EDUCATION IN IRELAND

Special education provision in Ireland can be traced back to the middle of the 19th century. The first special educational services were set up to cater for students with hearing and visual impairment. Religious orders such as the Dominican Sisters, the Irish Christian Brothers, the Irish Sisters of Charity and Carmelite Brothers were among the first providers.

Services for students with general learning disabilities and physical disabilities were slower to develop. By 1950, only one special school for students with general learning disabilities had been given official recognition.

The Report of the Commission of Inquiry on Mental Handicap (1965) made specific recommendations regarding diagnosis, educational placement, training and care of children and adolescents with a general learning disability. Based on these recommendations, special educational services for students with general learning disability were expanded in the late 1960s and early 1970s by means of special national schools and special classes in mainstream national schools.

By the 1980s, however, many parents of such children wished to have special education provided for them in mainstream schools, at primary and post-primary levels. A number of special classes for students with a moderate general learning disability were subsequently established, largely in mainstream national schools. More recently, special classes were established for students with other disabilities including specific speech and language disorders, autism and specific learning disabilities. In the 1990s, classes for those with severe and profound disabilities were set up in mainstream schools.

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Reports such as *The Education of Children who are Handicapped by Impaired Hearing* (1972), *Curriculum Guidelines for Pupils with a Moderate Mental Handicap* (1980), *The Education of Physically Handicapped Children* (1982) and *the Education and Training of Severely and Profoundly Mentally Handicapped Children in Ireland* (1983) influenced the development of special education provision and helped to shape the system we have today.

Until the early nineties, the great majority of students of post-primary age with disabilities attended special national schools. These schools could enrol students in the age range 4-18 years. As the number of students with disabilities attending mainstream post-primary schools increased, special provision was made for them on an ad hoc basis. Resources were provided by the relevant sections of the Department of Education & Science in response to demand. Provision included special classes, resource posts, individual one-to-one tuition and special needs assistants.

2.3 RECENT DEVELOPMENTS IN SPECIAL EDUCATION

In relation to more recent developments a number of factors have combined to stimulate and effect change in the special education area. Most significant among these are:

- International trends in the development of special education/inclusive education. As noted earlier, since the 1980s there has been “a worldwide push for integration of children with special educational needs into mainstream schools”.⁴ Special classes began to be established and mainstream provision became a feature of education in Ireland where, heretofore, most children with disabilities were educated in the special school sector.
- *The Report of the Special Education Review Committee (1993)* was the first comprehensive review of special needs provision for all categories of disability and, together with the Education Act, 1998 and case law, is a main basis for present policy and provision. Its publication gave a new impetus to special needs issues. The recommendations in the SERC Report called for improved levels of provision across the spectrum of special needs and attached particular importance to the

⁴ Carey, D. 2005.

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need to support students with disabilities in integrated settings. Although the process of giving effect to the SERC recommendations proceeded on a phased basis through the period 1994 to 1998 it was constrained by the lack of adequate resources. Some parents of students with disabilities were unhappy with existing provision and resorted to litigation to assert the students' rights to improved special education services. This in turn led to the landmark O'Donoghue and Sinnott High Court judgements in relation to children hitherto deemed by the State to be 'ineducable' which resulted in a revisiting of the concept of education for persons with disabilities and a review of general provision.

- In 1996 the Commission on the Status of People with Disabilities produced its report⁵ which again highlighted the lack of cooperation between the special school and mainstream sectors and the lack of supports for children with special needs.
- A major breakthrough in special provision for students with disabilities was achieved with the Government decision of October 1998. The Department of Education and Science, for the first time, automatically provided supports - in the form of extra teaching and childcare services - for students with disabilities attending mainstream national schools.
- The completion and publication of the reports of the Task Forces on Autism and Dyslexia also informed new approaches in these areas as did the development of Guidelines for teachers of students with general learning disabilities by the National Council for Curriculum and Assessment.
- These developments led to the drafting of the Education for Persons with Disabilities Bill which eventually culminated in the passing of the Education for Persons with Special Educational Needs Act, 2004, in the establishment of the NCSE and in the provision of additional resources for special education.
- The passing of the Disability Act, 2005 further consolidated the rights of children with disabilities and complements and supports the objectives of the EPSSEN Act, 2004. The implementation proposals in the Health Sectoral Plan for the implementation of the Disability Act, 2005 facilitate, in a practical way, the implementation of the EPSSEN Act, 2004.

5 Commission on the Status of People with Disabilities, 1996.

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2.4 CURRENT POLICY AND PROVISION

Current policy on special education recognises the need for a continuum of support and provision for children with special educational needs. This continuum spans full-time enrolment in mainstream classes to full-time enrolment in special schools and a range of options in between, including pilot projects for students with Autistic Spectrum Disorder and home tuition for some cases. This policy direction reflects international practice and, in particular, the Salamanca Statement⁶ on the education of all disabled students which called for inclusion in the mainstream to be the norm. In special education provision, the Council supports the view that there are needs that are common to all students, there are needs that are specific to groups of students (e.g. groups of students with specific learning disabilities may have similar needs) and needs that are unique to individual students and can only be dealt with in a highly individualised way.⁷

- In the Irish education system at present, there are essentially three models of provision:
- The student with a disability may be enrolled in a mainstream class with additional support from a resource/learning support teacher and/or a special needs assistant.
- The student may be enrolled in a special class in a mainstream school.
- The student may be catered for in a special school which has been designated for a particular category or categories of disability.

These models are provided in a range of ways across the education system and resources are made available to support these models. Other resources include school transport, special equipment and reasonable accommodation to support those sitting the State Examinations. We include a brief overview of each education level below.

2.4.1 Pre-school Provision

The Visiting Teacher Service of the Department of Education and Science provides a service to pre-school children with visual and/or hearing impairment. Teachers with specialist qualifications visit and teach the young children in their homes. They also model appropriate teaching approaches for

⁶ UNESCO, 1994.

⁷ Lewis and Norwich, 2005.

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parents and advise them on the management of their child's special educational needs. Assistive technology is also provided. There is provision to enrol children from the age of 3 years in special schools for students with physical disability. Pre-school special classes have also been established, on a pilot basis, for young children diagnosed with autistic spectrum disorders.

The HSE and/or voluntary bodies provide services for many young children who have been assessed as having severe or profound general learning disabilities, multiple disabilities or autistic spectrum disorders. The services are provided in Child Education and Development Centres and include varying amounts of education provision. They are generally run by a Clinical Director and staffed by nurses with an intellectual disability qualification, with teaching inputs supplied typically by Montessori-trained teachers. Play therapists are also employed in some of these centres.

While the Departments of Health and Children and Education and Science share responsibility for policy and provision for the 0-6 age group, there is no coherent structure at present for providing pre-school services for children in mainstream settings. However, the Council is aware that discussions on the development of a more structured and extensive pre-school provision are on-going between the Departments of Education and Science and Health and Children.

2.4.2 Primary level

At primary level, there have been significant advances in relation to the inclusion of children with special educational needs. Students with special educational needs are catered for on an inclusive basis in the mainstream system or in special classes attached to mainstream primary schools. All primary schools are provided with a General Allocation to support inclusive education. This General Allocation Model provides permanent teachers on the basis of enrolment to cater for the needs of pupils with learning difficulties and special educational needs arising from high-incidence disabilities.⁸ Under this system, additional teacher posts are allocated to primary schools as follows:

- Boys' schools with 135 pupils or more get their first post at 135 pupils; second post at 295; third post at 475, fourth post at 655, and so on.
- Mixed schools with 145 pupils or more get their first post at 145 pupils; second post at 315; third post at

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495, fourth post at 675, and so on.

- Girls' schools with 195 pupils or more get their first post at 195 pupils; second post at 395; third post at 595; fourth post at 795, and so on.
- All designated disadvantaged schools get their first post at 80 pupils; second post at 160; third post at 240; fourth post at 320, and so on.

To ensure that small schools are not disadvantaged by the introduction of the general allocation model, the point at which smaller schools can appoint their first post is significantly reduced. Boys' small schools qualify for their first post at 100 pupils; mixed small schools will qualify for their first post at 105 pupils; and girls' small schools will qualify for their first post at 150 pupils.

It should be noted that schools qualify for a pro rata part of a post for pupil numbers below the enrolment point for the first post and between the first and second post, the second and third post, and so on. Examples: For a designated disadvantaged school with 60 eligible pupils the general allocation is 0.8 of a post; for a boys' school with 215 pupils the general allocation is 1.5 posts; for a mixed school with 700 pupils the general allocation is 4.1 (rounded to one decimal place). One of the objectives of the general allocation model is to maximise the extent of full-time permanent posts available to support the needs of pupils with special educational needs arising from higher-incidence disabilities and pupils requiring learning support. To this end, schools, particularly those with small enrolments, are grouped in clusters where possible. In addition, resource teaching hours and/or Special Needs Assistants are allocated in respect of pupils who meet Department of Education and Science eligibility criteria under the following categorisations:

LOW INCIDENCE DISABILITIES	HOURS OF RESOURCE TEACHING SUPPORT AVAILABLE TO SCHOOL PER WEEK
Physical Disability	3
Hearing Impairment	4
Visual Impairment	3.5
Emotional Disturbance	3.5
Severe Emotional Disturbance	5
Moderate General Learning Disability	3.5
Severe/Profound General Learning Disability	5
Autism/Autistic Spectrum Disorders	5
Specific Speech and Language Disorder	4
Assessed Syndrome in conjunction with one of the above low incidence disabilities	3 to 5, taking into account the child's special educational needs including level of general learning disability
Multiple Disabilities	5

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Those who attend on a fully inclusive basis are supported by the resource teacher service and/or special needs assistants. Students with visual or hearing impairment⁹ attending mainstream schools are provided with additional specialist support by the Visiting Teacher Service.¹⁰ Much of the development has focused on the provision of resource teaching in the mainstream classroom or in small groups and on a one to one basis, particularly for those to whom hours have been allocated on an individualised basis. SNAs are allocated, based on individualised applications, subject to eligibility criteria laid down by the Department of Education and Science. SNAs are recruited specifically to assist in the care needs of pupils with special educational needs. Evidence must be provided by a professional who has assessed the child describing the special care needs giving the reasons why the support of an SNA is necessary and the benefits the child would receive from such care in the school setting. The duties of SNAs are strictly of a non teaching nature. Applications for SNA supports for particular pupils are made by schools to SENOs who examine the request in the context of the Departmental policy and the SNA resources already available in the school. The SENO decides if the pupil is eligible to receive support and, if so, whether the school has sufficient SNA resources to meet the needs of the child. Where the child is eligible for support and the school has insufficient SNAs to provide the required support additional SNA staffing is sanctioned by the SENO.

2.4.3 Post-primary level

Students with special educational needs are catered for in mainstream schools or in special classes. Such students are supported by resource teachers and/or special needs assistants. The level of support provided to the school in relation to each student depends on the category of assessed needs of the individual student. Students with assessed Low Incidence disabilities are supported on the same basis as at primary level (see par 2.4.1 above). Post-primary schools are also provided with an additional 1.5 teaching hours per week for each student diagnosed with mild general learning disability, borderline mild general learning disability and specific learning disability in accordance with DES specified criteria. This additional teaching resource is designed to facilitate the provision of a minimum of 2.5 hours group teaching per week to these pupils. SNAs are allocated to post-primary schools on the same basis as primary schools (see par. 2.4.2 above).

⁹ The Council is at present, finalising a review of education for deaf and hard of hearing students.

¹⁰ The Visiting Teacher Service has changed in recent to reflect a more generic provision across a range of disabilities.

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In addition, learning support is available in post-primary schools for those students who have not been diagnosed as eligible for support under any of the disability categories but who have low achievement in reading or mathematics. To support these students, 0.5 of a teacher post for learning-support is allocated to schools with less than 600 students and a full post is allocated to schools with more than 600 students.

2.4.4 Special Schools

The role of the special schools in provision to date has been significant and it is likely that, although most children with special educational needs can be catered for in mainstream settings, the special school sector will continue to provide a service to those who for one reason or another, will have needs which will not be best met in the mainstream. These schools are designated as primary schools but may enrol students in the age range 4 to 18 years. While special schools are generally dedicated to catering for students in a particular disability group, a small number of such schools make additional special provision for students in other disability groups. The following table sets out the normal staffing schedule for the various categories of special schools:

TYPE OF SPECIAL CLASS/SCHOOL	PUPIL-TEACHER RATIO	CLASS-SNA RATIO
Visual Impairment	8 : 1	4 : 1
Hearing Impairment	7 : 1	4 : 1
Profoundly Deaf	6 : 1	2 : 1
Mild GLD	11 : 1	4 : 1
Moderate GLD	8 : 1	2 : 1
Severe/profound GLD	6 : 1	1 : 2
Emotional Disturbance	8 : 1	4 : 1
Severe Emotional Disturbance	6 : 1	1 : 1
Physical Disability	10 : 1	1 : 1
Speech and Language Disorders	7 : 1	3 : 1
Specific Learning Disability	9 : 1	No automatic allocation
Autism/Autistic Spectrum Disorder	6 : 1	1 : 2
Multiple disability	6 : 1	1 : 1

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In applying the above staffing ratios in special schools a degree of flexibility is available in order to meet the needs of children with major special educational needs.

In addition to Special Schools the DES has also established a number of centres for children with ASDs on a pilot basis. These centres differ from schools in that the applied behavioural analysis (ABA) approaches to schooling are exclusively or largely implemented. The staffing and operating budgets for these centres are agreed between the management of the centres and the DES.

The NCSE is working closely with the Department of Education and Science on a review of special schools and special classes in which it is envisaged due regard will be given to the potential for special schools to provide opportunities to share expertise with mainstream schools, to develop as clusters of expertise, for dual enrolment and for the future use of special schools as “centres of excellence”.

2.4.5 Other Support Services

In addition to the special teacher and other staffing supports made available to students with disabilities within primary and post- primary schools, special additional funding is made available to support the students’ participation in the education system Such funding includes:

- Special material and equipment for students with disabilities and their teachers.
- Special capitation grants in respect of all students attending special schools and special classes.
- Special school transport service, including the escort service on buses carrying students to special schools and special classes.
- Home Tuition.
- Provision of classes in July for children with severe and profound disabilities.

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2.4.6 Further education, training and lifelong learning

As inclusion in the mainstream for children with special educational needs becomes more of a reality, their participation in further education, training and transfer into the workplace will be much more of an issue than heretofore. The NCSE acknowledges that there has been progress within established third level institutions with regard to the issue of access but this has been mainly focused on those with sensory and physical disabilities. The challenge in the future is to look to the needs of those with intellectual disability and to create the environment necessary for their inclusion. This has begun to develop in a number of third level settings but will require additional support and resources in the future.

2.5 THE CURRENT SPECIAL EDUCATION SYSTEM

The term 'special educational need' covers a very broad spectrum of conditions including those ranging from mild general learning disability to the most severe disabilities. As noted earlier, emphasis in the last number of years has been on the move to mainstream provision for children with special educational needs and on the resources necessary to support this. The current system of provision was based, for the most part, on the findings of the SERC Report (1993) and on case law. More recently, however, there has been a significant shift in thinking in relation to children with special educational needs and the commencement of a move away from the 'deficit' model to one in which a more systemic approach is required. This has been reflected in both the development of legislation and in the allocation of resources to support those in mainstream settings.

In accordance with current DES policy on assessment and identification of need, a student needs a formal diagnosis of disability and educational need by specified professionals to qualify for support other than under the general allocation model. The NEPS has developed a staged approach to assessment for use in primary schools. This is designed to aid schools in identifying problems and developing appropriate responses before moving to the more formal assessment currently required for supports for those with a low incidence disability. However this model is not applied by all schools. We discuss the staged approach further in Chapters 5 and 6 when we look at provisions for assessment under the EPSSEN Act, 2004.

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2.6 OVERVIEW OF THE EPSSEN ACT, 2004

Following the recent developments in both education provision generally, and in relation to special education, the EPSSEN Act, 2004 can be seen as the legislative basis for continuing and future development. The Act has as its underlying message the education of children with special educational needs in inclusive mainstream settings. The preamble to the Act articulates this and the longer term implications as follows:

“... to provide that the education of people with [such] needs shall, wherever possible, take place in an inclusive environment with those who do not have such needs, to provide that people with special educational needs shall have the same right to avail of and benefit from appropriate education as do their peers who do not have such needs, to assist children with special educational needs to leave school with the skills necessary to participate to the level of their capacity in an inclusive way in the social and economic activities of society and to live independent and fulfilled lives”¹¹.

The Act also allows for the greater involvement of parents of children with special educational needs in the education of their children, the establishment of the NCSE, and for conferring certain functions on the HSE in relation to special education provision.

2.7 MAIN PROVISIONS OF THE ACT

2.7.1 OUTLINE OF PROVISION

As well as the development of a legislative framework for inclusive education, the Act also provides for the supporting rights of children to an assessment, to an individual education plan, and to an independent appeals process. The National Council for Special Education (NCSE), which was originally set up under the Education Act, 1998 in December 2003, was established under the Act on 1st October 2005 and a Special Education Appeals Board which has responsibility for appeals in relation to a number of the provisions in the Act was established in April 2006.

¹¹ EPSSEN Act, 2004 Preamble.

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The Act sets out the general functions¹² of the NCSE as follows:

- Planning and co-ordinating provision of education and support services to children with special educational needs.
- Disseminating information on best practice concerning the education of children with special educational needs.
- Providing information to parents in relation to the entitlements of children with special educational needs.
- Assessing and reviewing resources required by children with special educational needs.
- Ensuring that progress of students with special educational needs is monitored and reviewed.
- Reviewing education provision for adults with disabilities.
- Advising educational institutions on best practice.
- Consulting with voluntary bodies.
- Advising the Minister for Education and Science on matters relating to special education.
- Conducting research and publishing findings.

In addition, the Council has specific roles and functions in relation to the application of the various rights provisions of the Act. Primarily, the Act provides for the right to an appropriate education in an inclusive setting. It establishes the right of persons with SEN to participate in, and benefit, from, such education and it designates the broad outcomes to be achieved for persons with SEN. Essentially, the Act requires that the education of persons with SEN be put on a par with the education of their peers who do not have SEN. In support of these fundamental rights, the Act makes a number of specific provisions as set out below.

2.7.2 Assessments

The Act provides for the right to an assessment. Assessment can be accessed in one of three ways:

- (i) Through the school principal (Section 3(2) – where the principal is of the opinion that a child is not benefiting from the education programme in the school, he/she is obliged to take measures to meet the educational needs of the child. Where the principal still believes that the child is not benefiting from the education, the Act obliges him/her to arrange for an assessment to be carried out.

¹² EPSSEN Act, 2004 Section 20

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- (ii) Section 4(1) of the Act obliges the health board (now HSE) to cause an assessment to be carried out in respect of a child who is not a student. Section 4(2) of the Act places a similar obligation on the NCSE.
- (iii) The Act allows, where parents are concerned that their children may have a special educational need, to request that an assessment be carried out. It also provides the parents with the right to appeal the refusal by the NCSE/HSE to carry out an assessment.

The Act provides that assessments are carried out in accordance with standards set by a body established by the Minister for Health and Children and that they be carried out by one or more of the following:

- A psychologist.
- A medical practitioner.
- A principal or teacher.
- A qualified social worker.
- A therapist.

Assessments are to be completed within three months. In addition, the Act states that assessments are to contain an evaluation and statement of the nature and extent of the child's disability (including in respect of matters that affect the child overall as an individual) and an evaluation and statement of the services which the child will need to be able to participate in and benefit from education and, generally, to develop his or her full potential. Parents have the right to appeal assessments on the basis that assessments did not conform to standards. In Chapter 5, we discuss, in more detail, the current state of assessments and the range of issues that are likely to impinge on the implementation of those sections of the Act pertaining to assessment.

2.7.3 Individual Education Plans

The EPSSEN Act, 2004 establishes the right to an education plan.¹³ If assessment represents the identification of needs, then the education plan represents the intervention, monitoring and review

¹³ 'Individual education plan' is the commonly used term but the EPSSEN Act refers to it as the education plan.

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regime designed to meet those needs. The process resulting in an IEP is set out in the Act as follows:

- (i) Section 3(2) provides that, following the initiative of either a parent or a principal, practical measures are taken to meet the educational needs of the student where that student is not benefiting from the education programme provided.
- (ii) Where the student is still not benefiting, an assessment may be carried out; if that assessment establishes that the student has a special educational need, then the principal shall cause an education plan to be prepared. The principal, in preparing this plan, must ensure that the parents are consulted, and their involvement in the preparation of the plan is facilitated. The relevant Special Educational Needs Organiser and others, as are deemed appropriate, should also be consulted. This plan must be furnished to both the parents and the Special Educational Needs Organiser.
- (iii) Section 3(11) provides that the principal, based on the assessment report, or a review, may form the opinion that the child's educational needs are such that the Council should prepare the education plan.
- (iv) Section 7 (1) and (3) provide that the HSE may request educational services from the Council where such services would enable the child to participate in and benefit from education. Equally, where the Council identifies health services for a student in the education plan, they may request the HSE to provide those services to enable that student to participate and benefit from education. Section 39 also provides that where the Council thinks that the HSE could assist in the preparation or implementation of an education plan it may request such assistance.
- (v) Section 8 provides that the Council, on being informed by the HSE or a principal that a child has a special educational need, shall direct the Special Educational Needs Organiser to convene a team to prepare an education plan for the child. The team will consist of the parents, the principal, or a teacher, may include the child, a NEPS psychologist, or someone with equivalent expertise, and a person whom the parent or the Special Educational Needs Organiser considers appropriate. This plan shall consider all the child's needs, not just educational needs.

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The purpose of the education plan is to guide the delivery of services, to encourage effective teaching and learning, to promote access to a full curriculum, to monitor progress and to review the attainment of specific goals. Section 9 of the EPSSEN Act, 2004 stipulates that the matters to be specified in an education plan should include:

- The nature and degree of the child's abilities, skills and talents.
- The nature and degree of the child's special educational needs and how those needs affect his/her educational development.
- The present level of educational performance of the student.
- The special educational needs of the student.
- The special education and related support services to be provided to the child to enable the child to benefit from education and to participate in the life of the school.
- Where appropriate, the special education and related services to be provided to the child to enable the child to effectively make the transition from pre-school education to primary school education.
- Where appropriate, the special education and related services to be provided to the child to enable the child to effectively make the transition from primary school education to post-primary school education.
- The goals which the child is to achieve over a period not exceeding twelve months.

In June 2006, the Council produced a set of Guidelines on the Individual Education Plan Process¹⁴ which have been designed as good practice guidelines for schools. Research commissioned by the NCSE on the IEP process found that many schools are already using IEPs and so the Guidelines will provide a resource and a standardised methodology in advance of the commencement of the Act when it is intended that these guidelines will have statutory effect.

2.7.4 Appeals and Mediation

The right to appeal is clearly articulated in the EPSSEN Act, 2004. In addition, the Act makes provision for mediation which is designed to resolve issues amicably and locally. In addition to mediation as part of the Appeals Board process, the Act provides for mediation where an individual can go directly

¹⁴ NCSE, 2006

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to the Minister for Education and Science and a mediation process is put in train (Section 38) before recourse to the Courts.

2.8 PROGRESS TO DATE IN IMPLEMENTATION

The 5-year implementation phase for the EPSSEN Act, 2004 began when the Council was established on a statutory basis on 1 October 2005. We set out below what has been achieved to date as well as what needs to be done. In this regard, we present an overview below of those parts of the Act that have been commenced and those that still require commencement.

Figure 2.1 at the the end of this chapter sets out in summary all of the sections of the Act. It also indicates what sections of the Act have been commenced and the organisations on which demands will fall. The parts of the Act that have been commenced relate to the inclusive approach, provision in relation to the duty of schools, the establishment of the NCSE, its functions, employees and membership as well as the appointment of Special Educational Needs Organisers (SENOs).

In addition to the requirements of the Act the function of allocating resources has been transferred from the DES to the NCSE. This has allowed the Council to get up and running so that applications for resources for children with special educational needs are being processed through the SENO infrastructure. In 2005, the first year of operation, SENOs dealt with 12,946 cases which included a backlog of 2,000 cases at primary level. The estimated time for processing applications is now 4-6 weeks which represents a significant improvement on the way in which resources were administered in the past. In the submissions made to the Council on its Implementation Report, the speedier processing of applications was commented on positively in a number of the submissions received.

While Table 2.1 refers to the progress to date as regards formal commencement of the Act, a number of other important developments relevant to the implementation of the Act have taken place as follows:

- The NCSE has written to the Minister for Education and Science and to the Minister for Health and Children regarding the need to develop a common approach to assessment.
- A cross-departmental group between the education and health sectors has been established to

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coordinate the efforts of both departments and their associated agencies in relation to the implementation of the EPSSEN Act, 2004 and the Disability Act, 2005. This group will address the foregoing and other implementation coordination requirements. The first meeting of this group has been scheduled for October 2006 following the submission of this Implementation Report.

- The NCSE has issued guidelines to schools on IEPs. These guidelines are a precursor to the formal commencement of the statutory requirements of the Act. Discussions with relevant parties will shortly commence with a view to piloting these guidelines in a selected number of schools, in order to ascertain key implications for the statutory roll-out of the IEP process.

From Table 2.1 it is clear that the more substantive provisions of the Act have yet to be put into effect. As well as provisions with regard to assessment and IEPs, which we deal with in more detail in later chapters, the following provisions are worthy of note:

Section 7: Provision of Services

This section makes provision for necessary health-related supports by the HSE following identification in the assessment process. As noted earlier, the recognition of the need for the education and health sectors to work together to address the needs of those with special educational needs is crucial to the successful implementation of the legislation. The health sectoral plan, already published, acknowledges the importance of, and provides for, the EPSSEN Act, 2004 and the Disability Act, 2005 to be implemented in tandem.

Section 10: Designation of Schools

This section provides for the Council, at its own volition or at the request of a parent, to designate the school to which a child with special educational needs should be admitted. The manner in which this section of the Act is implemented will have a significant bearing on how the principle of inclusion is addressed. In the submissions made to the Council, the perceived development of 'magnet schools' was raised; this is where schools in a local area have an over-representation of special needs children while in others there is a significant under-representation. This indicates that "inclusive education" is not yet working in practice and that work is needed to ensure that all schools are in compliance with the legislation. In developing protocols which will apply to the designation of schools by the Council,

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detailed consideration will need to be given to the constitutional position, the right of choice of parents and the right of schools to apply an enrolment policy.

Section 13: Duty of Minister and Minister for Health and Children to make resources available.
Section 16: Implementation of relevant education policy by health boards (now HSE).

Sections 13 and 16 of the EPSN Act, 2004, which deal with the provision of resources for the purposes of the preparation and implementation of education plans for children with special educational needs, are also significant.

Section 13 provides that it is the duty of both the Minister for Education and Science and the Minister for Health and Children to make resources available to implement the Act. Section 13 also states that in formulating policy, the Minister for Education and Science shall take due account of the principles of:

- Equitable treatment of every child in the State.
- The right of children with special educational needs to avail of, and benefit from, appropriate education as do their peers who do not have such needs.

Section 16 directs that health boards (now the HSE) shall implement policies relating to the education of children with special educational needs.

Section 15: Planning for future education needs

This section of the Act relates to the future education needs of students once they reach 18 years of age. It provides that the principal of a school or the SENO shall, in reviewing the student's IEP, have regard to what is needed to assist him/her to continue in education or training. In this regard, the Act provides for

- Consultation with the student concerned and his/her parents.
- Taking steps to ensure that the student can progress to a level of education or training that meets his/her wishes and is appropriate to his/her ability.

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- An assessment of the student's IEP, the extent to which the goals set were met, reasons for the failure to meet goals and a further plan to address this failure.

Section 17: Liaison Officers

The Act also allows for the designation of liaison officers to ensure that the activities of the Council and of the HSE are co-ordinated and that the policies of both are consistent.

2.9 CONCLUSION

A number of key developments in the 1980s and 1990s have brought the issue of special education centre-stage and highlighted the inadequacies that pertained in provision for children with special educational needs. Since then, there have been considerable developments in the inclusion of children with special educational needs in mainstream settings at all levels of education. The EPSSEN Act, 2004 represents a milestone as it provides for a number of statutory rights for these children. To date, much of what has been commenced under the Act relates to the establishment of the infrastructure to deal with the development of services and approach. The rights-based provisions of the Act remain to be commenced and present a challenge as they require the development of services over time and the co-operation of the health and education sectors. We return to this issue in Chapters 5 and 6.

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SECTION OF THE ACT	REQUIREMENTS OF SECTION	COMMENCED	ORGANISATIONS ON WHICH DEMANDS WILL FALL
1	<ul style="list-style-type: none"> • Interpretation of the Act 	Yes	
2	<ul style="list-style-type: none"> • Inclusive education 	Yes	
3 Preparation of Education Plan by school	<ul style="list-style-type: none"> • Arrangements of assessments by school principals • Assessment to be completed within 3 months • Preparation of Individual Education Plans by school Principal • Issue of guidelines by the National Council for Special Education • Consultation and involvement of parents • Appeals System Process 	No	DES HSE Schools NEPS NCSE NCSE/Schools DES Appeals Board
4 Assessment of child by or on behalf of HSE or NCSE	<ul style="list-style-type: none"> • Assessment of child by HSE or NCSE to be commenced within 1 month • Assessment to include statement re disability and educational and other support needs • Appeals Process 	No	DES HSE NEPS NCSE Appeals Board
5 Mode of assessment	<ul style="list-style-type: none"> • Assessments to be carried out by persons with appropriate expertise • Organised by Principal, NCSE or HSE • Written consent from parents • Appeal to Circuit Court in absence of parental consent • Standards for assessment to be set by Minister for Health and Children 	No	HSE NEPS NCSE Schools DHC
6 Appeals in relation to assessments	<ul style="list-style-type: none"> • Parents may appeal assessments • Appeals to be held within 2 months 	No	DES HSE NCSE Schools Appeals Board
7 Provision of Services	<ul style="list-style-type: none"> • Provision of services to children who are not students by the HSE • Provision of services to students by NCSE • HSE or NCSE may require services to be provided by the other • Disputes between the HSE and NCSE to be determined by the Appeals Board 	No	DES HSE NCSE Appeals Board
8 Preparation of Education Plan at direction of Council	<ul style="list-style-type: none"> • Each child with assessed special educational needs is entitled to an Individual Education Plan • Completion within 3 months • NCSE to arrange drawing up of plan by team • Team shall include parents and teachers • Team may include Psychologist, Medical Personnel, Therapists etc. • Plan to identify Education and other needs 	No	DES HSE Schools NCSE
9 Content of Education Plan	<ul style="list-style-type: none"> • Specified list of issues which must be addressed in IEP • Council to issue guidelines on form of IEP • Principal shall implement IEP • School shall be provided with resources in accordance with Section 13 • Consultation between school on the transfer of a pupil 	No	DES HSE NCSE Schools
10 Designation of School	<ul style="list-style-type: none"> • Council may designate a school to take a particular pupil • School may appeal 	No	NCSE Appeals Board

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SECTION OF THE ACT	REQUIREMENTS OF SECTION	COMMENCED	ORGANISATIONS ON WHICH DEMANDS WILL FALL
11 Review of Education Plan	<ul style="list-style-type: none"> Review of IEPs not less than 1 year by Principal Principal to report to parents and NCSE NCSE may order review of plan Parents may request review Parents have a right to appeal decision not to grant review 	No	DES NCSE Schools Appeal Board
12 Appeals in relation to Education Plans	<ul style="list-style-type: none"> Parents may appeal re content of IEPs Parents may appeal the discharge by a school or HSE of its duties relating to the IEP Appeal to be heard and determined within 2 months 	No	Appeals Board
13 Duties of Ministers to make resources available	<ul style="list-style-type: none"> Duties of the Ministers for Finance, Education and Health to provide funds and other resources 	No	DES Dept. of Health Dept. of Finance
14 Duties of Schools	<ul style="list-style-type: none"> The inclusion of children with special educational needs Provision of information to parents Schools to co-operate with NCSE 	Yes	DES Schools NCSE
15 Planning for future education needs	<ul style="list-style-type: none"> Plan for the exit of pupils from the education system Assessment of the extent to which the pupils have reached goals set 	No	DES Schools NCSE
16 Implementation of relevant education policy by HSE	<ul style="list-style-type: none"> Implementation of Education and Health policies 	No	HSE
17 Liaison Officers	<ul style="list-style-type: none"> Council and HSE to designate Liaison Officers 	No	HSE NCSE
18 Delegation of Functions by Principals etc.	<ul style="list-style-type: none"> Principals of schools may delegate any of the functions conferred on him/her under the Act. 	No	DES Schools
19-37	<ul style="list-style-type: none"> Establishment of NCSE, Consultative Forum and preparation of the Implementation Report 	Yes	NCSE
38	<ul style="list-style-type: none"> Provision for mediation in certain cases 	No	DES
39	<ul style="list-style-type: none"> Duty of Health Boards 	Yes	HSE
40-53	<ul style="list-style-type: none"> Amendment of the Education Act, 1998, maintenance of records, regulations 	Yes	NCSE
Schedule 1	<ul style="list-style-type: none"> Membership and meetings of the Council 	Yes	NCSE
Schedule 2	<ul style="list-style-type: none"> Chief Executive Officer 	Yes	NCSE

Table 2.1: Provisions of the EPSEN Act, 2004

CHAPTER 3

ESTIMATED NUMBER OF CHILDREN WITH SPECIAL EDUCATIONAL NEEDS**3.1 INTRODUCTION**

In this chapter of our Implementation Report we address the difficult issue of determining the prevalence of special educational needs. It is important to state clearly, at the outset, that there is no pre-existing source, or sources, of reliable and definitive data on the prevalence of SEN as now defined in the EPSSEN Act, 2004.

During its passage through the Houses of the Oireachtas, the Education for Persons with Disability Bill was changed to become the Education for Persons with Special Educational Needs Bill and was subsequently enacted as the Education for Persons with Special Educational Needs Act, 2004. This amounted to a very significant change, acknowledged by the legislature at the time, which introduced, for the first time, a statutory definition of special educational needs. This definition is much broader than any previous definition of “disability”, “intellectual disability”, “learning disability”, or any other of the commonly used descriptors of those whose learning needs were seen to differ from their peers. Significantly, it differs also from the definition of “disability” contained in the Disability Act, 2005. For the NCSE, in preparing its Implementation Report, we have had to recognise that the new definition of special educational needs contained in our governing legislation will mean that the EPSSEN Act, 2004 has conferred rights on a larger cohort of the population than those who will have been deemed to have had entitlements under previous statutory provisions and/or under the Disability Act, 2005. It is important that we estimate what the size of that cohort is in order that effective planning of service provision can take place. However, the process of estimating prevalence of SEN, as defined in the EPSSEN Act, 2004, is fraught with difficulty and is potentially open to misinterpretation.

We need, therefore, in outlining our estimates of prevalence, to clarify a number of key points as follows:

- The terms “disability” and “special educational need” are not interchangeable. Special educational need is a broader category and its prevalence will, by definition, be greater than any previously understood prevalence rate for disability.
- Children with special educational needs now have rights under the EPSSEN Act, 2004. The conferring of such rights on children with special educational needs does not imply that there is only one means of providing for meeting such needs which is uniformly applicable to each individual child with SEN. The EPSSEN Act, 2004 specifically provides for the availability of a range of interventions, the application of which will be determined by the needs of the individual child. The EPSSEN Act,

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2004 was not designed on the basis of a “one size fits all” approach to matters such as appropriate educational provision, inclusion, assessment, individual educational planning etc.

- The fact that a child has special educational needs does not automatically mean that a school needs additional resources to meet such needs. There are no automatic relationships between special educational needs prevalence and any given level of resource allocation to schools.
- The EPSEN Act, 2004 confers a right on the child with SEN to an appropriate education in an inclusive setting. In addition, it confers on that child certain specific rights, for example, to an assessment of need and to an educational plan. The nature of the form of appropriate inclusive education to be provided, the assessment to be undertaken and the educational plan to be prepared and implemented will be differentiated based on the needs of the individual child. In effect, inclusive educational provision, assessment and individual educational planning will require to be differentiated based on individual need under the EPSEN Act, 2004 and the determination, therefore, of the process of inclusive provision, assessment and IEPs (and their associated resource implications) cannot be extrapolated solely from any global prevalence figures.
- Many different forms of assessment and of IEPs, within appropriate frameworks of standards, will be needed in order to ensure compliance with the provisions of the EPSEN Act, 2004 for individual children with SEN.

There is, therefore, no one-to-one correlation between “children with disability”, “children with special educational needs”, children who require any particular form of assessment or any particular type of IEP and children for whom additional resources need to be allocated to schools. We deal with issues relevant to such considerations later in this Implementation Report. However, the process of determining prevalence should not be constrained by any misunderstandings relating to any such implied correlation.

It is appropriate that we should record that, during the consultation processes involved in the preparation of this Implementation Report, some stakeholders voiced concern that the determination of any particular prevalence rate for SEN by the Council would be open to misinterpretation of the foregoing factors and could lead to demands or assumptions in relation to resource requirements which are not sustainable. The Council is determined that the process of determining prevalence should not be influenced by such considerations. The Council is convinced that a determination of prevalence is a key requirement in order to determine an approach to the implementation of the EPSEN Act, 2004. It has, therefore, set out to determine the rate of prevalence of SEN based on the

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best available data. However, it is clear that much further work needs to be done in this area. The Council, in partnership with the health sector, will seek to strengthen the reliability of prevalence data and their implications as the implementation process progresses.

Our approach is based on estimating the number of children in Ireland who have a special educational need by virtue of a disability or other condition. It is based on a research report prepared for the NCSE by Dr. Kieran McKeown¹⁵ and uses a wide range of data sources in order to quantify the potential cohort of the population on whom the EPSSEN Act, 2004 will confer rights when fully implemented. In defining the task, the Council was acutely aware of the lack of comprehensive, national-level data on special educational needs. In addition, it wishes to provide an estimate that reflects the shift in definition of special educational need as set out in the EPSSEN Act, 2004 and the impact of that on the range and type of conditions that are likely to be covered under the legislation. The estimates as set out in this chapter have been prepared to provide an approximation of potential level of demand and do not in any way reflect on how this need can best be met in the future.

The analysis begins by reviewing the current understanding of special educational needs and the data sources which exist for different types of disabilities in Ireland (Section 3.2). We then draw upon these data sources to estimate the number of children in five broad categories of disability: physical and sensory disability (Section 3.3), intellectual or general learning disability (Section 3.4), specific learning disability (Section 3.5), autistic spectrum disorders (Section 3.6), and mental health difficulties (Section 3.7). (With the exception of specific learning disabilities and autistic spectrum disorders, these categories of disability are specifically listed in the EPSSEN Act, 2004). We collate the data to generate an overall estimate of the number of children with special educational needs in Ireland (Section 3.8) and compare this with the results of the 2002 Census of Population on disability among children (Section 3.9). Data on children in school with a special educational need are collected by the Department of Education and Science from primary schools under two headings: (i) pupils in special classes and (ii) pupils in special schools. The Department also liaises with the OECD in relation to statistics provided by that body. However, on examination of these sources, it was found that the data available was not particularly informative as a guide to the prevalence of SEN as defined in the EPSSEN Act, 2004. Such data do not purport to be estimates of SEN prevalence and are, therefore, not comparable to the figures now produced by us as outlined in this report. We conclude by providing

¹⁵ McKeown, 2006

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an estimate of the number of children with special educational needs drawing attention to the need for a database of all children with special educational needs as defined in the EPSSEN Act, 2004.

3.2 OVERVIEW OF CURRENT UNDERSTANDING AND DATA SOURCES

The EPSSEN Act, 2004 defines a child with special educational needs as anyone up to the age of 18 with “an enduring physical, sensory, mental health or learning disability, or any other condition” which restricts the child’s capacity to “participate in and benefit from education” (Section 1). In interpreting this definition the Council looked at the Dáil Debates on the Bill and how the definition changed in the course of its enactment. We also had regard to the advice emanating from the legislative review commissioned by us (see Chapter 4). The definition in the Act refers to a “restriction in the capacity of the person to participate and benefit from education” on account of a number of factors. It, therefore, includes restrictions of any level of severity arising from these conditions. In the Council’s view, it follows that persons suspected of having the lowest level of restriction in capacity arising from these conditions is entitled to an assessment and identification of needs and the provision of an education plan to meet these needs. The format for such assessment and the standards to be applied has yet to be determined. It is noteworthy, in this regard, that, in the course of the Report Stage of the Bill in the Dáil, the Minister, Mr Noel Dempsey, TD stated: “the power of the Minister to prescribe various disabilities is being removed: The application of the Bill will be allowed to develop organically, objectively and more dynamically than would have been possible if we were relying on regulations to be made to include certain conditions as they become apparent. The term “intellectual disability” in the definition of special educational needs has been replaced with “learning disability” which is considered to be broader and more contemporary.

In the debate about the definition at Report stage, Minister Dempsey stated that “the word “enduring” does not mean the same as the word “permanent”. It means something which lasts or continues in existence”.

These statements clearly envisage a more open approach to identifying the persons who would come within the ambit of the Act than is reflected in current policy. In addition, the Act includes mental health in the conditions which come within the ambit of the Act. It does not define mental health, but the condition, while likely to include such conditions as EBD which is supported under current policy, will extend the parameters of current provision particularly when allied to the understanding in relation to “enduring”.

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In this regard, the Council also considers that children with certain medical conditions of an enduring nature may have a special educational need arising from their condition. We have not made any attempt in this exercise to quantify the number of children in this category of need because of difficulties with verifiable data, but we note their entitlement, under the definition as set out in the Act, for assessment and for an education plan.

Bearing in mind the wider definition of special educational need, Table 3.1 (below) summarises the main data sources on the prevalence of each type of disability among children in Ireland. The disability categories are the same as those used by the Department of Education and Science in defining special educational needs and in current policy.¹⁶ It is important to note that the current policy and definition applies a more restrictive view of special education than the EPSSEN Act, 2004. Current special education policy is informed to a major degree by the recommendations of the SERC Report published in 1993 and the judgement in High Court cases, about the same time, in relation to the constitutional rights of children with special educational needs and the definition of Education. The SERC Report regarded special education “as any educational provision which is designed to cater for pupils with special educational needs and is additional to or different from the provision which is generally made in ordinary classes for children of the same age”.¹⁷

The SERC Report regarded pupils with mild learning difficulties as well as those with severe disabilities and those with social and emotional problems as coming within the ambit of the Report. It then went on to identify particular categories of pupils for which provision should be made and outlined the manner of such provision. It proposed that an operational figure of 10% of each age cohort of children be adopted for the purposes of providing additional remedial posts. The SERC considered such provision to be on the conservative side. The SERC Report did not define disability but considered that 2% of children can be expected to have a disability. It went on to identify a range of specific disabilities which we set out along with SERC’s estimated prevalence in Appendix 2. It is clear that much of this information is now outdated.

Using the broad categories identified in SERC, Table 3.1 shows that there are four main sources of data available: (i) national databases (ii) local studies (iii) international studies and (iv) expert estimates. National databases refer to the National Physical and Sensory Disability Database (NPSDD) which

¹⁶ Circular SP ED 05

¹⁷ Report of SERC, 1993

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provide data on physical, hearing and visual impairments as well as specific speech and language disorders and the National Intellectual Disability Database (NIDD) which provides data on moderate and severe/profound general learning disability. Expert estimates refer to working groups and task forces in Ireland who draw upon local and international studies to estimate the prevalence of a particular type of disability among children. Expert estimates are available for the prevalence of emotional disturbance, specific learning disability, and autistic spectrum disorders.

CATEGORY OF DISABILITY	DATA SOURCES	GAPS / DEFICIENCIES
Physical Disability Hearing Impairment Visual Impairment Specific Speech & Language Disorder	National database (NPSDD*) ¹⁸	Represents just 54% of the estimated number of persons in Ireland with a physical or sensory disability (41,248), based on the 2002 census of population
Emotional Disturbance Severe Emotional Disturbance	Local studies ¹⁹ International studies ²⁰ Expert estimates ²¹	No national study of prevalence.
Borderline Mild General Learning Disability	None (statistical category based on IQ)	No national study of prevalence.
Mild General Learning Disability	International studies ²²	No national study of prevalence.
Moderate General Learning Disability Severe / Profound General Learning Disability	National database (NIDD**) ²³	Covers those in receipt of, or in need of, a service from the HSE.
Specific Learning Disability	Expert estimates ²⁴ International studies ²⁵	No national study of prevalence.
Autism / Autistic Spectrum Disorders	Local studies ²⁶ International Studies ²⁷ Expert estimates ²⁸	Local studies based on those known to services but does not cover PDD-NOS***
Assessed Syndrome	None	No national study of prevalence.
Multiple Disabilities	None	No national study of prevalence.

Table 3.1 Data Sources for Different Categories of Disability Among Children who may have a Special Educational Need, Including Gaps / Deficiencies

* NPSDD refers to National Physical and Sensory Disability Database.

** NIDD refers to National Intellectual Disability Database.

*** PDD-NOS refers to Pervasive Developmental Disorder – Not Otherwise Specified; the other two categories comprising Autistic Spectrum Disorders, according to the Task Force on Autism, are Autistic Disorder and Asperger's Syndrome

18 Galligan, Doyle and Mulvany, 2005

19 Fitzgerald and Jeffers, 1994; O'Connor, Ruddle and O'Gallagher, 1988; McCarthy and O'Boyle, 1986; Porteus, 1991; O'Rourke and Fitzgerald, 1985; Lynch, Fitzgerald and Kinsella, 1987; Barton and Fitzgerald, 1986; Stone, Fitzgerald and Kinsella, 1990; Mohan, Fitzgerald and Collins, 1998; Lynch, Mills, Daly and Fitzpatrick, 2004; 2006

20 Fonagy, Target, Cottrell, Phillips and Kurtz, 2002; Simpson, Bloom, Cohen and Blumberg, 2005

21 Irish College of Psychiatrists, 2005; Working Group on Child and Adolescent Psychiatric Services, 2003 Chief Medical Officer, 2001

22 Emerson and Hatton, 2004; Leonard and Wen, 2002

23 Barron and Mulvany, 2005

24 Special Education Review Committee, 1993; Task Force on Dyslexia, 2001

25 See, notably the National Research Center on Learning Disabilities at www.nrcld.org

26 Fitzgerald, Matthews, Birkberk, O'Connor, 1997

28 Ehlers and Gillberg, 1993

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The main gap in data is that there is no national study on the prevalence of disability or of special educational need among children in Ireland. The 2002 Census of Population included a specific question on disabilities but, as we shall see below (Section 3.9), this did not yield credible data on the prevalence of disabilities among children. For a range of disabilities – notably physical, sensory and intellectual – the lack of national prevalence data is compensated by the existence of two national databases, NPSDD and NIDD. For other disabilities – emotional disturbance, autistic spectrum disorders, specific learning disabilities – the availability of expert estimates provide a useful guide but may contain a small margin of error. However, as a result of cross-checking a diverse range of sources, the estimates derived are as reliable a guide to the likely number of children who may have a special educational need to some degree within the meaning of the EPSSEN Act, 2004 as it is possible to obtain at this point.

3.3 PHYSICAL AND SENSORY DISABILITIES

Data on physical and sensory disabilities is collated in the National Physical and Sensory Disability Database (NPSDD) which is based on returns made by the Health Service Executive to the Health Research Board for persons who “are receiving or require a specialised health or personal social service which is related to their disability”.²⁹ The 2005 Annual Report of the NPSDD estimates that the number of persons registered on the database who are under the age of 66 years, and for whom there is a record detailing their age, sex and other characteristics, is 22,429; of these, 7,039 are children aged 0-17³⁰. However this represents just 54% of the estimated number of persons in Ireland with a physical or sensory disability (41,248), based on the 2002 Census of Population. Accordingly, the adjusted estimate of the number of children in Ireland with a physical or sensory disability is 13,035 children. The age and gender breakdown, based on an extrapolation from the NPSDD, is summarised in Table 3.2. The two main primary diagnostic categories in the area of physical and sensory disability for children are ‘communication’, notably speech and language disorder (29%), and ‘nervous system’, notably cerebral palsy (26%).

²⁹ Doyle, Galligan, Barron and Mulvany, 2006:21

³⁰ Doyle, Galligan, Barron and Mulvany, 2006:27, Table 1

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AGES	BOYS		GIRLS		TOTAL	
	N	%	N	%	N	%
0-4 years	954	12	763	15	1,717	13
5-12 years	5,089	64	2,898	57	7,987	61
13-17 years	1,908	24	1,424	28	3,332	26
Total (N)	7,951	100	5,084	100	13,035	100
Total (%)	61		39		100	

Table 3.2 Estimated Number of Children, by Age and Gender, Who Have a Physical or Sensory Disability, 2005

3.4 INTELLECTUAL / GENERAL LEARNING DISABILITIES

Data on intellectual impairment, also called general learning disability, are collated by the National Intellectual Disability Database (NIDD). They are based on returns made by service providers via the Health Service Executive to the Health Research Board for persons who “have an intellectual disability and assessed as being in receipt of, or in need of, an intellectual disability service”.³¹ The authors of the database believe that the extent of current service provision in Ireland ensures that an almost complete ascertainment of the number of persons with a moderate, severe, or profound intellectual disability is possible and expected. Inclusion of persons with a mild intellectual disability is only sought if they are in special classes or special schools for children with intellectual disability, or attending an intellectual disability service, or if they are considered likely to require such services within the next five years. As a consequence, the NIDD provides accurate data on the prevalence of moderate, severe and profound intellectual disabilities in Ireland but is not regarded by its authors³² as an accurate guide to the prevalence of mild intellectual disabilities.

In light of these considerations, we use international data to estimate the prevalence of mild intellectual disabilities, while using the NIDD to estimate the prevalence of moderate, severe and profound intellectual disabilities. The NIDD estimates that the number of people aged 0 to 19 years with a moderate, severe or profound disability is 4,456.³³ The breakdown according to diagnostic categories is: moderate (70%), severe (25%), profound (5%).

³¹ Barron and Mulvany, 2005:16

³² Personal communication with Steve Barron, 16 January 2006.

³³ Barron and Mulvany, 2005:20-23; the authors adjusted upwards the number of children in the 0-4 age category by 900 since the prevalence rate in this age category is “considerably lower than expected” (Ibid), possibly due to “reluctance of parents to allow information about their children to be recorded on the database ... particularly in the 0-4 age group” (Ibid:25).

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The prevalence of mild intellectual disability has been estimated as the difference between administrative prevalence (based on those in receipt of services who tend to be persons with a moderate, severe or profound intellectual disability)³⁴ and the true prevalence (based on all persons deemed to have an intellectual disability). This procedure was used in estimating the prevalence of intellectual disabilities in England where the administrative prevalence is 0.5% and the true prevalence (based on international evidence³⁵) is 2%, implying that the prevalence of mild intellectual disabilities is around 1.5%³⁶. Applying this to the population of Irish children in 2002 (1,076,040) yields an estimate of 16,141 children in the category of mild intellectual disabilities.

The age and gender breakdown of children with moderate, severe or profound intellectual disabilities, based on an extrapolation from the NIDD, is summarised in Table 3.3.

AGES	BOYS		GIRLS		TOTAL	
	N	%	N	%	N	%
0-4 years	326	12	261	15	587	13
5-9 years	680	25	382	22	1,062	24
10-14 years	761	28	487	28	1,248	28
15-19 years	951	35	608	35	1,559	35
Total (N)	2,718	100	1,738	100	4,456	100
Total (%)	61		39		100	

Table 3.3 Estimated Number of Children with a Moderate, Severe or Profound Intellectual Disability, by Age and Gender, 2004

Table 3.4 gives a similar breakdown of children with mild intellectual disabilities based on applying English prevalence rates to the total population of children in Ireland in 2002.

³⁴ Emerson and Hatton, 2004

³⁵ Leonard and Wen, 2002

³⁶ Emerson and Hatton, 2004

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AGES	BOYS		GIRLS		TOTAL	
	N	%	N	%	N	%
0-4 years	200	2	123	2	323	2
5-9 years	1,601	16	981	16	2,582	16
10-14 years	3,903	39	2,331	38	6,234	39
15-19 years	4,303	43	2,699	44	7,002	43
Total (N)	10,007	100	6,134	100	16,141	100
Total (%)	62		38		100	

Table 3.4 Estimated Number of Children with Mild Intellectual Disability, by Age and Gender, 2002

3.5 SPECIFIC LEARNING DISABILITIES

Specific learning disabilities is a term used to refer to persons, whose intellectual ability is in the normal range, and who experience difficulties in learning a specific skill such as reading, writing, spelling, or arithmetic. Unlike other disabilities, and their associated special education needs, the primary cause of specific learning disabilities is “not attributable to assessed ability being below the average range, to defective sight or hearing, emotional factors, physical condition or any extrinsic adverse circumstances”.³⁷ Specific learning disabilities include dyslexia (difficulties with reading/spelling) and dyscalculia (difficulties with numbers). It differs from general learning/intellectual disabilities where persons experience learning difficulties across a broad range of skill areas (see Section 3.4). In order to identify this condition, the test for specific learning disabilities requires the person to show an intellectual ability in the average, or above average, range (using standardised IQ tests) combined with a very low level of ability in a specific skill area such as reading or writing.

The consensus among a group of leading US researchers is that: “approximately 6% of students may exhibit specific learning disabilities and will need special education interventions”.³⁸ For this reason, and in the absence of any authoritative Irish data, we assume that 6% is a reasonable estimate of the prevalence of specific learning disabilities in Ireland. This figure is substantially greater than that for Specific Learning Disabilities in the SERC Report which estimated a prevalence of about 2%. The Report did suggest that international trends (at that time) showed a prevalence of somewhere

³⁷ Special Education Review Committee, 1993:86

³⁸ National Research Center on Learning Disabilities, 2001; see also Task Force on Dyslexia, 2001:23 which cites US data to show that “for 1997-98, 5.58% of students between the ages of 6 and 17 were identified as learning disabled”.

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between 1 and 4 % and that it is likely that many pupils in Irish schools had not been formally identified. If the prevalence rate of 6% is extrapolated to the total population of Irish children (1,076,040), this yields an estimate of 64,562 children affected by specific learning disabilities in Ireland. Table 3.5 gives a more detailed breakdown of the age and gender of these children, based on the assumption that the age breakdown is similar to children with mild intellectual disabilities, while boys are four times more likely than girls to have this condition.

AGES	BOYS		GIRLS		TOTAL	
	N	%	N	%	N	%
0-4 years	1,033	2	258	2	1,292	2
5-9 years	8,264	16	2,067	16	10,329	16
10-14 years	20,143	39	4,906	38	24,934	39
15-19 years	22,210	43	5,681	44	28,007	43
Total (N)	51,650	100	12,912	100	64,562	100
Total (%)	80		20		100	

Table 3.5 Estimated Number of Children, by Age and Gender, with a Specific Learning Disability, 2002

3.6 AUTISTIC SPECTRUM DISORDERS

The term Autistic Spectrum Disorders (ASD), as defined by the Task Force on Autism, refers to three conditions: Autistic Disorder, Asperger's Syndrome, and Pervasive Developmental Disorder – Not Otherwise Stated (PDD-NOS). There are no reliable studies of the prevalence of ASD in Ireland but the Task Force on Autism, in light of local and international studies, recommended that “as an initial target, provision be made for services for at least 20 per 10,000 with Autistic Disorder and for 36 per 10,000 with Asperger's Syndrome”.³⁹ We adopt this as our prevalence rate, which is equivalent to 0.56%, particularly since the Task Force on Autism had a specific brief to examine educational provision and support services for children with autism. Table 3.6 estimates the breakdown of ASD by age and gender, based on the assumption that the prevalence is the same in each age group of the population, but is four times more prevalent among boys than girls.⁴⁰ It should be noted that, as there is no specific data available regarding the frequency with which PDD-NOS is diagnosed in Ireland and that only limited research is available on this condition, no provision is made for it in this estimate.

³⁹ Task Force on Autism, 2001:30

⁴⁰ According to the Irish Society for Autism, autism occurs four times more frequently in males than females (see <http://www.iol.ie/~isa1/>).

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AGES	BOYS		GIRLS		TOTAL	
	N	%	N	%	N	%
0-4 years	1,253	26	313	26	1,566	26
5-9 years	1,206	25	302	25	1,508	25
10-14 years	1,253	26	313	26	1,566	26
15-18 years	1,109	23	277	23	1,386	23
Total (N)	4,821	100	1,205	100	6,026	100
Total (%)	80		20		100	

Table 3.6 Estimated Number of Children, by Age and Gender, Who Have Autistic Spectrum Disorders, 2002

3.7 MENTAL HEALTH DIFFICULTIES

Mental health difficulties are manifested in many different ways and may be included under a variety of labels such as emotional and behavioural disorder, mental illness, psychological disturbance, and psychiatric disorder. These difficulties involve an enduring disturbance in emotions, behaviour or relationships, whose severity requires professional intervention. The term 'psychiatric disorder' is used when these difficulties meet the diagnostic criteria of the World Health Organisation (ICD-10 Criteria)⁴¹, or the American Psychiatric Association (DSM-IV Criteria).⁴² According to the Irish College of Psychiatrists, psychiatric disorders in children "encompass abnormalities of behaviour, emotions or social relationships that are sufficiently marked or prolonged to cause suffering or hardship to the child or distress or disturbance in the family or community".⁴³

There are no data on the national prevalence of this condition although a large number of local studies have been carried out in Ireland on the prevalence of mental health difficulties among children. These show that 15% to 20% of children show clinical signs of mental health difficulties, depending on the population studied and the measurement instruments used, with considerably higher rates for children living in disadvantaged areas.⁴⁴ The results of these studies are broadly in line with international trends which indicate that "the prevalence of psychiatric disorders in community surveys is reported to be around 20-30% of school-age children, but this figure drops to

41 World Health Organisation, 2004

42 American Psychiatric Association, 1994

43 Irish College of Psychiatrists, 2005: Appendix Three.

44 Fitzgerald and Jeffers, 1994; O'Connor, Ruddle and O'Gallagher, 1988; McCarthy and O'Boyle, 1986; Porteus, 1991; O'Rourke and Fitzgerald, 1985; Lynch, Fitzgerald and Kinsella, 1987; Barton and Fitzgerald, 1986; Stone, Fitzgerald and Kinsella, 1990; Mohan, Fitzgerald and Collins, 1998; Lynch, Mills, Daly and Fitzpatrick, 2004; 2006, Martin and Carr, 2001

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12-15% when only moderate to severe (clinically significant) diagnoses are considered. ...Overall, persistence of moderate or severe disorders at any age is about 50%".⁴⁵ In line with this, the Irish College of Psychiatrists estimate that 8% of Irish children have a mental health difficulty that is "moderate to severe"⁴⁶ and, therefore, require a mental health service. Applying a prevalence rate of 8% to Irish children (1,076,040) yields an estimate of 86,083 children with a moderate to severe mental health difficulty. This is clearly a conservative estimate and is likely to exclude children with milder mental health difficulties which may result in special educational needs. The age and gender breakdown of children with mental health difficulties is summarised in Table 3.7. The age breakdown is based on the assumption that the prevalence is the same in each age group of the population, excluding those under 4 years where mental health difficulties are not easy to detect. The gender breakdown is informed by US data⁴⁷ which shows that mental health difficulties are twice as prevalent in boys as in girls.

The Council is aware that **A Vision for Change** a Report of the Expert Group on Mental Health Policy which was adopted as HSE policy in May 2006 says that "The vast majority of children do not develop mental health problems but at any point in time approximately 2% of children will require specialist mental health expertise". The Council considers that this 2% figure represents the most severe end of the spectrum of children with mental health issues and that it is prudent to accept the figure of 8% as identifying the cohort of children who may present with special educational needs for the purposes of the EPSSEN Act, 2004 (as opposed to those who may require specialist health intervention).

⁴⁵ Fonagy, Target, Cottrell, Phillips and Kurtz, 2002:64

⁴⁶ Irish College of Psychiatrists, 2005:23

⁴⁷ Simpson, Bloom, Cohen and Blumberg, 2005

ESTIMATED NUMBER OF CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

AGES	BOYS		GIRLS		TOTAL	
	N	%	N	%	N	%
4-7 years	14,772	26	7,610	26	22,382	26
8-10 years	14,204	25	7,317	25	21,521	25
11-14 years	14,772	26	7,610	26	22,382	26
15-17 years	13,067	23	6,731	23	19,798	23
Total (N)	56,815	100	29,268	100	86,083	100
Total (%)	66		34		100	

Table 3.7 Estimated Number of Children, by Age and Gender, Who Have Mental Health Difficulties, 2002

3.8 ESTIMATED NUMBER OF CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

The estimated number of children in Ireland with any form of disability, or other condition likely to give rise to a special educational need, based on the different data sources reviewed here, is summarised in Table 3.8. This produces an estimate of 190,303 children in Ireland who have a special educational need as defined by the EPSEN Act, 2004. This is equivalent to 18% of all children.

TYPE OF DISABILITY	NO. OF CHILDREN	PREVALENCE
Physical and Sensory Disabilities	13,035	1.21%
Intellectual / General Learning Disabilities	20,597	1.91%
(i) mild	16,141	1.50%
(ii) moderate, severe & profound	4,456	0.41%
Specific Learning Disabilities	64,562	6.00%
Autistic Spectrum Disorders	6,026	0.56%
Mental Health Difficulties	86,083	8.00%
Total	190,303	17.68%

Table 3.8 Estimated Number of Children Who May Have Special Educational Needs Under EPSEN Act, 2004

A further breakdown of children with special educational needs according to whether they are pre-school (0-4) or school-age (5-18) is presented in Table 3.9. This shows that the estimated number of pre-school children who may have a special educational need by virtue of a disability or other condition is 5,485 (3% of the total), while the number of school-age children who may have a special educational need by virtue of a disability or other condition is 184,818 (97% of the total).

ESTIMATED NUMBER OF CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

CATEGORY DISABILITIES AND SPECIAL EDUCATIONAL NEEDS	PRE-SCHOOL	SCHOOL-AGE	TOTAL
1. Physical & Sensory Disabilities	1,717	11,318	13,035
2. Intellectual / General Learning Disabilities	910	19,687	20,597
3. Specific Learning Disabilities	1,292	63,270	64,562
4. Autistic Spectrum Disorders	1,566	4,460	6,026
5. Mental Health Difficulties	0	86,083	86,083
Total Children with Disabilities and Special Educational Needs	5,485	184,818	190,303
% of Children with Disabilities and Special Educational Needs	3	97	100

Table 3.9 Estimated Number of Children with Disabilities & Special Educational Needs in Ireland, 2004/5

The risk of double-counting in data on disability is widely acknowledged. While all attempts have been made to eliminate double-counting from our estimates by ensuring that each of the data sources is based uniquely to that specific disability, the degree to which it still remains is unclear. However, Council is of the view that any risk of double counting is more than offset by the conservative estimates used in each category and by the fact that some conditions which may give rise to SEN, such as those emanating from medical conditions, have not been included in our figures due to a lack of verifiable data.

3.9 CHILDREN WITH A DISABILITY IN THE 2002 CENSUS OF POPULATION

Our estimate of the number of children with special educational needs is significantly higher than the number of children recorded with a disability in the 2002 Census of Population. The results of the 2002 Census, as summarised in Table 3.10, show 22,346 children with a disability compared to our estimate of 190,303. The prevalence rate, according to the Census, is 2.1% compared to our estimate of 17.7%.

The likely reason for this discrepancy is that the 2002 Census may have underestimated the number of children with mental health difficulties, specific learning difficulties, and mild intellectual disabilities, these being the largest categories in our estimates⁴⁸. This is because a child with these disabilities may not present with the difficulties listed in the two questions, in the opinion of the parent who

⁴⁸ The Census Form for the 2006 Census amended the question on disability to include the categories of learning or intellectual disability, psychological or emotional conditions and other, including any chronic illness. Data from the 2006 Census are not yet available.

ESTIMATED NUMBER OF CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

completed the census form. The census questions are:

14. Do you have any of the following long-lasting conditions? (a) Blindness, deafness or a severe vision or hearing impairment? (b) A condition that substantially limits one or more basic physical activity such as walking, climbing stairs, reaching, lifting or carrying?

15. Because of a physical, mental or emotional condition lasting six months or more, do you have any difficulty doing any of the following activities? Answer (a) and (b) if aged 5 years and over. (a) Learning, remembering or concentrating? (b) Dressing, bathing or getting around inside the home? Answer (c) and (d) if aged 15 years or over. (c) Going outside the home alone to shop or visit a doctor's surgery? (d) Working at a job or business?⁴⁹

The questions asked in the 2006 Census are as follows.

Q 15 Do you have any of the following long-lasting conditions?

a) Blindness, deafness or a severe vision or hearing impairment

b) A condition that substantially limits one or more basic physical activities such as walking, climbing stairs, reaching, lifting or carrying

c) A learning or intellectual disability

d) A psychological or emotional condition

e) Other, including any chronic illness.

Q16 If "Yes" to any of the conditions specified in Question 15, do you have any difficulty in doing any of the following activities?

a) Learning, remembering or concentrating

b) Dressing, bathing or getting around inside the home

⁴⁹ Census of Population 2002, Volume 10, Disability and Carers.

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c) *Going outside the home alone to shop or visit a doctor's surgery*

d) *Working at a job or business or attending school or college*

e) *Participating in other activities, for example leisure or using transport*

Preliminary figures are not expected to be available on this aspect of the 2006 Census until May 2007.

CATEGORY	CHILDREN	ADULTS
Total population	1,076,040	2,841,163
Persons with a disability	22,346	301,361
Prevalence of disability	2.1%	10.6%

Table 3.10 Estimated Number of Children and Adults with a Disability in the 2002 Census of Population
Source: Census of Population 2002, Volumes 2 and 10.

3.10 SUMMARY AND CONCLUSION

This chapter estimates the number of children in Ireland who have a disability or other condition which may give rise to special educational needs. Under the EPSSEN Act, 2004, these children will have an enforceable right to "participate in and benefit from education" (Section 1). We estimate that the total number of children in Ireland with a special educational need is 190,303, equivalent to almost 18% of all children. While all attempts have been made to eliminate double-counting from our estimates by ensuring that each of the data sources is based uniquely to that specific disability, the degree to which it still remains is unclear. However, we believe that any risk arising from double counting is more than offset by the considerations raised earlier in this chapter.

The implications of the findings of this chapter are substantial as it suggests a much higher estimate of need than has been considered heretofore. The figure has not included those with medical conditions who may have a special educational need and some in the borderline mild general learning disability category may not be fully captured. The Council accepts that the figure presented for mental health difficulties will require further testing to see to what extent some of the children in this category are already included under programmes geared towards addressing disadvantage.

ESTIMATED NUMBER OF CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

The complexity of the task of presenting an estimate of special educational need has also been significant. This highlights the need, in the future, for a more accurate statistical profile of special educational needs based on a database of all children with such needs. In this regard, the Council's development of a Special Education Administration System (SEAS) is opportune as it will allow for a clearer picture of needs in the future.

Notwithstanding the difficulties in coming up with a viable estimate of special educational need, it is clear that any response will require additional investment of resources. The issue of determining resource additionality is a complex one involving many considerations, including the issue of making best use of resources which already exist within the system. Our views and recommendations on this issue are addressed further in Chapters 5 and 6 of this Implementation Report. The Council, however, in light of the considerations set out in this chapter, cautions against any simplistic correlation between SEN prevalence, as now defined, and resource additionality.

CHAPTER 4

LEGISLATIVE REVIEW

4.1 INTRODUCTION

This chapter considers the issues highlighted in a review undertaken by Shivaun Quinlivan⁵⁰ of relevant enactments that have a bearing on the provisions of the EPSEN Act, 2004. The Review examined five Acts: the Education Act 1998; the Education (Welfare) Act, 2000; the Equal Status Act, 2000-2004; the EPSEN Act, 2004 and the Disability Act, 2005. The review focuses on the Acts as they relate to the work of the Council and to the requirements of the EPSEN Act, 2004 that the Implementation Report should include a review of any other relevant enactments. The Chapter presents a brief overview of the core pieces of legislation and then identifies key issues under the following headings:

- Definition of disability and special educational need.
- Assessment and diagnosis.
- Access to inclusive education, including designation of schools.
- Support services and resources.
- Appeals.
- IEPs / service plans.

Underlying the review is the overarching need to comply with what is set out in the Constitution. As Quinlivan states: *“The right to education as enshrined in the Constitution is the law that must be complied with, and the legislation is only the tool to give practical effect to that right. To that end, it is imperative that the Acts are constitutional, and where the acts are silent as to any aspect of education it is to the Constitution that we turn”*⁵¹.

4.2 OVERVIEW OF THE CONSTITUTION

Bunreacht na hÉireann, or the Constitution of Ireland, has a number of articles that are relevant to the provision of education in Ireland. Article 42 deals specifically with education, and states:

42.1 The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to

⁵⁰ Quinlivan, S. 2006.

⁵¹ Quinlivan, S. 2006.

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their means, for the religious and moral, intellectual, physical and social education of their children.

- 42.2 Parents shall be free to provide this education in their homes or in private schools or in schools recognised or established by the State.
- 42.3.1 The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.
- 42.3.2 The State shall, however, as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social.
- 42.4 The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation.
- 42.5 In exceptional cases, where the parents, for physical or moral reasons, fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.

While Article 42 deals specifically with education, other articles are important to get the full constitutional picture. Also relevant are Articles 41 on the Family, Article 43 on Private Property and Article 44 on Religion. The constitutional courts have interpreted these articles and the essential elements of the right to education have been clarified. Constitutionally, the family is the primary source of education for the child. The State may not (except in exceptional circumstances) force parents to send a child to any school, or any particular type of school. The choice of school is the parents'; that being stated, schools have a choice whether they wish to accept particular children. The State may require that all children receive a certain minimum education. The State is obliged to provide for free primary education up to the age of eighteen. Children with disabilities are entitled to the provision of education in as full a manner as children without disabilities. The State does not have to directly provide that education but it must ensure that all children can access education. Finally, in exceptional circumstances, the State may adopt the role of a parent, where a child's parents have failed to provide for the child.

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4.3 SYNOPSIS OF THE ACTS

4.3.1 The Education Act

The Education Act, 1998 is the first comprehensive education statute and it establishes a statutory basis for the provision of education in Ireland. The Education Act deals with education generally, but does place a considerable emphasis on the rights of children with disabilities and special educational needs. Education for all should take place in as inclusive an environment as possible, and children with special educational needs shall have the same right to avail of, and benefit from, appropriate education as do their peers. The Act establishes that every person concerned with the implementation of the legislation must have regard to a number of principles, including: giving practical effect to the constitutional rights of children as they relate to education; and the provisions as far as is practicable to a level and quality of education appropriate to the needs and abilities of the people of the country.

The Education Act gives the Minister for Education and Science certain functions in respect of funding, including the funding of support services for students with disabilities. It requires schools to use their available resources to ensure that the educational needs of all students, including those with disabilities, are identified and provided for. The Act also defines support services as including: assessments of students, guidance and counselling services, technical aids and equipment, speech therapy services among others.

The Education Act provided for the establishment of bodies corporate including the NCSE. The Council was established in December 2003 as an independent statutory body and its functions included the co-ordination of the provision of education and related support services, with health boards (now the HSE) schools and other relevant bodies. The NCSE took over certain functions from the Department of Education and Science in January 2005.

4.3.2 Education (Welfare) Act, 2000

The focus of the Education (Welfare) Act is on ensuring that children receive a certain minimum education as required by the Constitution. This means that the Act is focused on truancy, and what are known as 'educate at home' children. The aim is to ensure that children outside of the recognised

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schools are receiving a certain minimum education. This Act may be of benefit to students with disabilities, particularly those who are not attending school because no schools are available, but this does require stretching or expanding the interpretation of this Act. Quinlivan noted, however, that the Supreme Court in the decision of Hardiman J in the Sinnott case is not opposed to this notion.

The Education (Welfare) Act, 2000 is essentially focused on promoting school attendance. The Act replaces the School Attendance Act, 1926 and other related provisions. The Education (Welfare) Act is the Act that seeks to address the constitutional requirement that children receive a certain minimum education. The Education (Welfare) Act does not define a 'certain minimum education,' but the Minister may set out a 'prescribed minimum education.' That minimum standard may differ for children of different ages and capacities. While the focus of this Act is on combating absenteeism from and non-attendance at school this has relevance in the context of children with disabilities who may be experiencing difficulties in accessing schools. Hardiman J in the Supreme Court decision of Sinnott v. Minister for Education stated that taking sections 7, 8, 32, 38 and 41 of the Education Act 'together with those of the Equal Status Act, 2000 and the Education (Welfare) Act, 2000 impose duties on public authorities which may be relevant to a person in the position of the Plaintiff, or to a child afflicted with the disabilities which have afflicted the Plaintiff in one degree or another.'⁵² While not stating what the duty is, it is clear that the Supreme Court recognises the potential of the education legislation in the context of children and adults with disabilities. The Education (Welfare) Act focuses on the issue of participation in school, specifically in terms of matters such as suspensions, expulsions or non-enrolment.

The Act also creates a system of registration for children who are educated at home; providing that children educated outside of recognised schools are to be identified and assessed in order to ensure that the education they are receiving meets the minimum standards. The National Education Welfare Board is charged with maintenance of the register.

⁵² The use of the word "afflicted" to refer to a child with a disability is a direct quotation from the proceedings of the Court and is not a term with which the NCSE would wish to be associated.

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4.3.3 Equal Status Act, 2000-2004

The Equal Status Act, 2000 was amended by the Equality Act, 2004 and, as amended, it is entitled the Equal Status Act, 2000-2004. Unless otherwise stated, all reference to the Equal Status Act will be to the amended version of that Act. The Equal Status Act outlaws discrimination in the non-employment sphere. It relates, for the most part, to the provision of services including education services. Education services are broadly defined and include private and public schools from pre-school facilities right through to third level institutions. The Equal Status Act prohibits discrimination on nine grounds including the ground of disability. The Act prohibits a number of actions including: direct discrimination, indirect discrimination, the procurement of discrimination, harassment, victimisation, and requires the provision of reasonable accommodation. When it comes to education this relates to: admission or the terms and conditions of admission to school; access of a student to a course or facility or benefit; terms or conditions of participation; expulsion or other sanction.

The Equal Status Act states that certain activities will not amount to discrimination on the grounds of a person's disability. Different arrangements may be made in respect of sporting events on the basis of age, gender and disability where necessary; this ensures that it is acceptable to have an under twelve girls' wheelchair race and this would not be deemed either age or gender discrimination. Schools will also be considered not to discriminate against a student with a disability if compliance with the Equal Status Act would have a seriously detrimental effect on or make impossible the provision of services to other students.

4.3.4 EPSEN Act, 2004

The EPSEN Act, 2004 aims to ensure that a person with special educational needs can be educated where possible in an inclusive environment. This Act establishes a framework for the provision of such education, seeking to ensure that children with special educational needs can access their right to education; ensuring that they can avail of their right to education in the same way as other children of the State (see Chapter 2 for main provisions of the Act).

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4.3.5 Disability Act, 2005

The Disability Act, 2005 is not an education act; many of the references to education within the Act are to ensure that there is no overlap between the provisions of this Act and the EPSSEN Act, 2004. The Disability Act addresses several issues including: the provision of disability specific services; sectoral plans; public sector employment; and a Centre for Excellence in Universal Design. Here we focus on the provision of services relevant in the context of education for people with special educational needs. The Act defines the term 'education services' as:

A service provided by a recognised school or centre for education (within the meaning in each case of the Education Act, 1998) or by a person or body specified by the Minister for Education and Science who provides a programme of education, training or instruction and 'education service provider' shall be construed accordingly.⁵³

The Act establishes the provision of an assessment of needs and, where appropriate, this will address the education needs of a person with disabilities. An assessment report forms the basis of a service statement, which should establish what services will actually be provided to a person. The Act does provide an internal redress mechanism, and does not provide access to the Courts system.

4.3.6 Summary Comment

The Constitution provides that all children of the State, including children with disabilities, are entitled to education. The Education Act is the Act seeking to give practical effect to the constitutional rights of all children. As regards children with disabilities, the EPSSEN Act, 2004 reinforces that provision. While all the Acts operate independently, and provide for different elements of a child's educational needs, it seems logical to assume that the Education Act is the parent act and the Education for Persons with Special Educational Needs and the Education (Welfare) Act are giving effect to two specific elements of that constitutional right to education. Neither the Equal Status Act nor the Disability Act are education acts, but they have some benefits to those seeking to be provided with education in the State.

⁵³ Disability Act, 2005 Section 7.

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4.4 ISSUES FOR CONSIDERATION

The review highlighted a number of key issues that have a bearing on the implementation of the legislation for children with special educational needs. In the following section we set out the Council's consideration of a number of these issues and their treatment in the various pieces of legislation.

4.4.1 Definition of Disability and Special Educational Need

The review of the five Acts dealt with in the previous paragraphs established that four of the Acts contained definitions of either disability or special educational needs. The Education (Welfare) Act 2000 does not define either term.

The EPSEN Act, 2004 defines special educational need as

“in relation to a person a restriction in the capacity of the person to participate in and benefit from education on account of an enduring physical, sensory, mental health or learning disability, or any other condition which results in a person learning differently from a person without that condition and cognate words shall be construed according”.

The EPSEN Act, 2004, although it was originally introduced in the Dáil as the Education for persons with Disabilities Bill 2003, does not contain a definition of disability. However, the Act does amend the definition of “disability” in the Education Act 1998 to the precise definition of “special educational need” as set out in the EPSEN Act, 2004. In the educational sector, therefore, there was a clear intention that “special educational need” should equate to “disability” and that the definition is designed to identify who should be entitled to benefit from special services to enable them to participate in and benefit from education.

The Disability Act, 2005 adopts a more restrictive definition of “disability” than that contained in the EPSEN Act, 2004 or the Education Act and is clearly aimed at a smaller group than proposed in these Acts. The Disability Act, 2005 refers to a “substantial restriction” as opposed to a “restriction” referred to in the definition of special educational needs. The focus of the definition in the Disability Act is not education but is about the capacity to carry on a profession, business or occupation or to participate in social or cultural life in the State.

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The definition of “disability” in the Equal Status Act 2000-2004 is as follows:-

- (a) the total or partial absence of a person’s bodily or mental functions, including the absence of a part of a person’s body,
- (b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness,
- (c) the malfunction, malformation or disfigurement of a part of a person’s body,
- (d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or
- (e) a condition, disease or illness which affects a person’s thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour.

This definition is obviously much wider than the others and is designed to be so in the context of non-discrimination.

It is clear that the various definitions in these Acts have the potential to lead to confusion. However, the Council accepts that there are valid reasons for differentiation and that it may not be feasible or desirable to have identical definitions for all purposes. However, the Council is adamant that the broad progressive definition of “special educational needs” and “disability” as contained in the EPSSEN Act, 2004 and the Education Act, 1998, respectively must be the definition applied when questions of educational provision are being considered. The Council considers that this approach is the intent of the legislature and is consistent with the constitutional guarantees on education. However, it accepts that the wider definition of disability in the Equal Status Act 2000-2004 must be used when considering issues of discrimination both generally and in relation to special education policy.

4.4.2 Diagnosis and Assessment

The Council, in commissioning the Legislative Review, was particularly interested in what the various pieces of legislation said about diagnosis and assessment. From an examination of the three Education statutes, it is clear that there is a potential for overlap; the Education Act identified assessment as a function of the Inspectorate (prior to the establishment of NEPS) while the Educational Welfare Board under its legislation may also arrange for an assessment of a child and EPSSEN provides for a number of avenues of assessment (see Chapter 2). Assessment also constitutes a significant part of

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the provisions under the Disability Act. An individual, a specified person or an employee of the HSE may apply in writing for an assessment to be carried out. Assessments should be commenced within 3 months and completed without undue delay. Assessment officers will carry out the assessments themselves or arrange for their carrying out by other employees of the HSE or other persons with appropriate experience. Where the assessment officer considers that there may be education services required they may request, in writing, the Council to nominate a person with the appropriate expertise to assist in carrying out the assessment. If an assessment of a child identifies the need for education services, then, where the child is enrolled, the matter may be referred to the principal of that school for the purposes of an assessment under Section 3 of the EPSSEN Act, 2004. In other cases the matter should be referred to the Council for the purposes of an assessment under Section 4 of the EPSSEN Act, 2004.

The Council considers that close formal co-ordination in relation to assessments under the EPSSEN Act, 2004, the Educational Act, 1998, the Disability Act, 2005, and the Education (Welfare) Act, 2000 is necessary to ensure the efficient use of financial and human resources. The Council is embarking on the process of agreeing operating protocols with the relevant agencies in relation to these matters.

4.4.3 Access to Inclusive Education

Among the objects of the Education Act, 1998 are the promotion of equality of access to and participation in education; to give practical effect to the constitutional rights of children, including children with disabilities; to provide as far as is practicable 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.

The functions of a school are set out in Section 9 of the Act, which establishes that recognised schools shall provide education to students that is appropriate to their abilities. To assist in achieving that aim, the school shall use its available resources to ensure that the educational needs of all students, including those with a disability or special educational need, are identified and provided for; and the school must, subject to section 15(2)(d), establish and maintain an admissions policy which provides for maximum accessibility to the school. Section 15 sets out the duties of the board of management of a school to provide an appropriate education for each student at the school.

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The functions conferred on the board of management include the obligatory duty to publish its admissions policy. No one provision requires a school to provide access for a student with disabilities but, taking section 9(m), 15(2)(d) and 21(2) together there is a clear commitment to achieving access for students with disabilities.

The Education (Welfare) Act, 2000 also refers back to the admissions policy set out in the Education Act. Section 7 of the Equal Status Act prohibits discrimination in relation to educational establishments.

Provisions of the EPSEN Act, 2004, in relation to access, focus on Section 2 which provides for education in an inclusive environment and Section 10 which allows the Council to designate a school for a student with special educational needs. There is no reference in the Disability Act to access to education.

The conclusion of the Legislative Review was that, given the complexity of issues that surround access, it may be best to ensure that the workings of the Equal Status Act are enforced in such a manner as to make that Act more relevant in the context of access. The Council welcomes this advice and will work closely with the Equality Authority with a view to exploring this issue further.

4.4.4 Support Services and Resources

The key issue raised in the Legislative Review in relation to support services was the need to ensure co-ordinated delivery and shared information across the health and education sectors. The Council concurs fully with the view that information gathered by a public sector body which is relevant to the provision of services by another is shared and acted upon subject to the consent of the person to whom the information relates. It is important that duplication of effort is avoided and that costly and time consuming activities, such as assessments, are not duplicated.

4.4.5 Appeals

The EPSEN Act, 2004 provides for the establishment by the Minister for Education and Science of an independent appeals body to be known as the Special Educational Appeals Board. This Appeals

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Board may hear appeals in relation to a variety of the provisions of the EPSEN Act, 2004 including:

- Assessments.
- Education Plans.
- Provision of support services
- Disputes between the NCSE and HSE.
- Designation of schools.

This Appeals Board may also hear appeals in relation to cases where the Council refuses to assist a Liaison Officer of the HSE appointed under the Disability Act, 2005 in drafting a service statement under that Act.

The Disability Act, 2005 also provides for the establishment of its own complaints and appeals procedures in relation to the provision of services to persons with disabilities as set out in that Act.

The Education Act, 1998 provides grievance and complaints procedures through which parents and students over 18 years may appeal against decisions of the Board of Management of a school or teacher or other staff member.

The Education (Welfare) Act, 2000 also provides an appeals procedure to parents of children in relation to the provisions of that Act.

Under the Equal Status Act, complaints may be brought before the Equality Tribunal which assumes an investigative role and may provide mediation.

It is clear that issues arising in relation to the education of children with special educational needs may arise under more than one Act and that these issues may be independent of each other or interconnected. Where issues are interconnected appeals processes may be available under more than one Act. The Council considers that in establishing and reviewing these appeal procedures the appropriate agencies should liaise closely to eliminate duplication of process and effort and to explore how appeals processes and functions might be rationalised.

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4.4.6 IEPs

There is little reference to Education Plans in the Education Act but they are mentioned in passing, suggesting that such programmes are anticipated and accepted even if procedures and methods of achieving such plans are not expressly provided for by virtue of that Act. The Education (Welfare) Act is primarily concerned with school attendance, or in the case of children not at recognised schools, that they are achieving a 'certain minimum' education. As noted earlier, the Education (Welfare) Board must establish a register in respect of those students not attending recognised schools and they may provide a plan for the purpose of 'assisting that child or young person, as the case may be, to avail of educational and training opportunities, and shall for the purposes of ensuring that such plan will be carried out, give all such other assistance to such child or young person and his or her parents as it considers appropriate.' Section 4 of the Equal Status Act positively requires schools, within limits, to ensure that students can avail of their education services.

There is considerable reference to an education plan in the EPSSEN Act. 2004 (see also Chapter 2). The Minister shall provide the moneys necessary for the preparation and implementation of education plans, and shall have regard to his or her duties under Article 42 of the Constitution in determining the issue of resources.

The Disability Act establishes a procedure for the provision of service statements on completion of an assessment report which is forwarded to either the HSE or the CEO of the Education body and the applicant. The relevant person on receiving this report will then appoint a liaison officer to prepare a service statement specifying the health or educational, or both, services which will be provided to the applicant and the timeframe within which the services will be provided (in relation to education this will be the IEP). The liaison officer, in preparing a service statement, must have regard to: the assessment report; the eligibility of the applicant for services; the approved codes of practice; the practicability of providing the services identified; and resource issues for the HSE or the education service provider.

The Council is acutely aware of the need for close co-operation with the HSE in the implementation of the EPSSEN and Disability Acts, particularly in relation to IEPs and service statements, and will be working closely with the HSE in this regard.

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4.4.7 General Issues

On the basis of the information presented in the Legislative Review, the Council agreed that a user-friendly guide to the legislation needs to be developed by the Council for those involved in the education system: parents, teachers, students, inspectors and so on. The Guide to the Equal Status Act developed for schools by the Equality Authority may be a model for consideration. In particular, the Council recognises the needs of parents in this regard and has instigated the development of a leaflet series which sets out the role of the Council and key provisions of the Act in a more accessible format.

4.5 SUMMARY AND CONCLUSION

The Legislative Review raised a considerable number of issues in relation to differences in legislative requirements which may lead to difficulties and duplication of effort without close co-operation between the respective agencies. However, it did not identify any provisions which are contradictory or require to be addressed by the immediate amendment of legislation.

However, it is strongly recommended that any future amendments to the five Acts examined in this Review should be used as an opportunity to review the provisions of these Acts with a view to maximising the consistency of approach to issues such as assessments and appeals.

CHAPTER 5

ISSUES RELEVANT TO THE IMPLEMENTATION PROCESS

5.1 INTRODUCTION

This chapter explores a range of issues about the current system of special education in Ireland which have arisen in the course of preparing the Implementation Report. The EPSSEN Act, 2004 is a landmark in the area of special education and its implementation will require substantial changes in how the education system responds to children with special educational needs. The precise nature and direction of these changes is still a matter for debate. In order to facilitate this debate, this chapter analyses a series of questions about the current system of special education and highlights areas where change may be necessary.

The purpose of this chapter is to examine how, given the existing system of special education, the objectives of the EPSSEN Act, 2004 can be achieved, particularly those expressed in the Act's Preamble, which make a commitment to provide people who have special educational needs with: (i) an inclusive and appropriate education (ii) the skills needed to participate in society on leaving school (iii) opportunities to progress to further education and training (iv) independent living skills and (v) the greater participation of parents. For this reason it is appropriate to raise issues about the existing system of special education in Ireland in the context of this report to assess the ability of the current system to meet the objectives of the EPSSEN Act, 2004.

5.2 CORE PRINCIPLES OF THE EPSSEN ACT, 2004

The EPSSEN Act, 2004 is underpinned by a number of core principles which will impact fundamentally on the future regime for meeting the needs of those with special educational needs. Amongst these are:

- The provision of an appropriate education for all in an inclusive setting is to be provided as a right. Universal access, as a concept, will challenge current practice in a very fundamental way.
- Those with special educational needs will have the right to an appropriate education which will deliver for them the same outcomes, in the same educational settings, as those available to their peers who do not have special educational needs. The shift in focus from concern with attendance and participation to one based on achieving results and outcomes for children with special

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educational needs is one which will require a major re-think on where the expectation threshold for those with SEN is set.

- The Act, quiet apart from its general thrust of challenging the traditional distinction between “mainstream” and “special” educational provision, confers specific rights on children with special educational needs which will now have to be guaranteed. These include:
 - The right of access and the removal of barriers to access.
 - The right to appropriate education in an inclusive setting with a focus on achieving outcomes.
 - The right to early assessment of need which will focus on needs identification rather than on resource implications.
 - The right to an individual educational plan based on need which will focus on the additional actions and outcomes for the individual child with SEN over and above access to the standard curriculum which is, in effect, the universal educational plan for all children including those with SEN.
 - The right to appeal in relation to matters of access, assessment and the provision of appropriate education to achieve designated outcomes.
- Inherent in the EPSSEN Act, 2004 is a significant emphasis on individualization. As a principle, individualization is a very challenging concept for a SEN regime which has evolved to date with group labeling and group categorization as a core mechanism for driving the assessment and resource allocation processes in particular.
- Implicit in the EPSSEN Act, 2004 is also the requirement for equity. Future operation of the EPSSEN Act, 2004, in tandem with equality legislation, will require a concentration on ensuring that a child with SEN is not disadvantaged by the State by virtue of educational provision (and/or the resources and supports for it) being skewed in favour of any particular form of special educational need.
- The Act requires a significant element of joined-up government both in relation to policy formulation and in relation to service delivery on the ground to children with SEN. This is particularly the case in relation to the required coherence of policy and service delivery between the education and health sectors.

The articulation of these core principles in the EPSSEN Act, 2004 post dates the current model for supporting SEN provision. In this regard, it post dates the current policy platform, the current resourcing envelop and the current institutional framework for supporting SEN provision. The implications, therefore, for the implementation plan to put the EPSSEN Act, 2004 into effect over a five year timeframe are neither marginal nor tangential. They are fundamental and far-reaching.

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5.3 FUTURE SEN PROVISION

As pointed out in the foreword to this Implementation Report, the necessary debate on what is needed and the actual response to what is required to implement the EPSEN Act, 2004 is a process which is only now commencing and which will evolve iteratively over the period ahead as the various implementation challenges, tasks and actions are progressively tackled over the five year implementation period.

Nonetheless, the approach to implementation and the overall framework for implementation advocated in this Implementation Report from the Council needs to be informed by a broad understanding of what SEN provision should look like when the EPSEN Act, 2004 is implemented (the “to be” scenario) and some analysis of issues arising from the nature of the gap between it and the current SEN provision regime (the “as is” scenario).

We set out below, therefore, a tabular representation of some of the key features of the “to be” scenario, as we currently see them, and some of the issues which those key features of future provision will raise for the “as is” SEN provision regime. This representation is not intended to be either exhaustive or definitive. It is, however, intended to be illustrative of the implementation challenges which lie ahead and indicative of the types of issues which future debate, consensus building and policy evolution will need to address if the EPSEN Act, 2004 is to be effectively implemented.

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KEY ELEMENTS OF THE "TO BE" MODEL FOR SEN PROVISION	ISSUES ARISING FROM THE "AS IS" MODEL FOR SEN PROVISION
Children with SEN will participate in, and benefit from education on a par with their peers who do not have SEN. They will achieve the same educational outcomes.	<ul style="list-style-type: none"> • Many children with SEN do not have access to an education based on the curriculum at first and second levels. • Relatively few children with SEN sit the State Examinations and achieve certificated outcomes from the education system. • Many children with SEN leave formal education without the skills to participate in economic, social and cultural activity or to live fulfilled lives independently in the community. • Drop out rates from formal education for children with SEN are high. • Few children with SEN progress to meaningful further and continuing education beyond age 18.
Appropriate education for children with SEN will be provided in an inclusive setting.	<ul style="list-style-type: none"> • Not all schools are inclusive. • Through acquired reputation in the case of some schools, and otherwise within the system, there are many "soft" barriers to access which will have to be overcome. • 'Magnet' schools are a reality within the system. • There is a two-tier approach to "mainstream" and "special" schools. • There is unequal participation by children with SEN at primary and at post-primary level. There is greater participation at primary level.
The focus will be on outcomes as prescribed in the Act.	<ul style="list-style-type: none"> • There is a tendency to concentrate on inputs (additional resource teachers/learning support teachers, special needs assistants etc.). • Little coherent effort is devoted to assessment of the outcomes being achieved from the resources allocated to SEN. • Outcomes for children with SEN are not systematically reported nor tracked.
The inclusive school will be the cornerstone of future SEN provision.	<ul style="list-style-type: none"> • Schools believe they are not adequately resourced to provide effective inclusive education as envisaged in the EPSen Act. • Whole school planning and evaluation of SEN provision is not universal. Many claim that the skills and competencies to do so are not sufficiently available. • The support framework to enable all schools to provide effective inclusive education is not sufficiently developed. Key institutional support service providers cannot provide a universal, effective service to schools – these include NEPS, SESS, NCSE and the HSE amongst others. • Second level schools are particularly challenged by the concept of the inclusive school and feel that their particular needs in delivering inclusive education are not being met by the current regime.
Children with SEN will be taught by teachers who are qualified and have the skills and competencies for the task.	<ul style="list-style-type: none"> • Pre-service training in SEN is inadequate to equip all mainstream teachers to deal effectively with children with SEN. • In-service training in SEN is not sufficiently developed. • Many resource/learning support teachers are not qualified in the field. • Allocation policies do not necessarily support a regime which ensures that those assigned to SEN duties have the aptitude, skills and competencies required.

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KEY ELEMENTS OF THE "TO BE" MODEL FOR SEN PROVISION	ISSUES ARISING FROM THE "AS IS" MODEL FOR SEN PROVISION
Assessment of need will be available as required.	<ul style="list-style-type: none"> • There are current backlogs and waiting lists for assessment. • Effective assessment of need is constrained by direct linkage to resource considerations. • There is an undue concentration on labeling and on categorization rather than on individualized assessment. • Teachers are not sufficiently trained in assessment. • NEPS, the HSE and the NCSE are under-resourced. • Parents are not sufficiently engaged in the process.
All children with SEN will have appropriate Individual Educational Plans.	<ul style="list-style-type: none"> • The linkage between IEPs and the curriculum is not sufficiently well understood. • Not all children with SEN have IEPs. • Schools feel under-resourced in this area. • Teachers are not sufficiently trained in the IEP process. • NEPS, the HSE and NCSE are not sufficiently resourced nor trained in the IEP Process. • Parents are not sufficiently engaged in the process.
Inclusive schools, as the front line service providers, will have an appropriate institutional support framework to assist them.	<ul style="list-style-type: none"> • The current support framework, in almost all of its manifestations, is unable, at present to provide the necessary levels of support. • Under current arrangements, the health and education sectors do not work as effectively together as will be required in the future to deliver the necessary supports.
There will be an emphasis on accountability for resource utilization and on evaluation of whole school approaches to inclusive education.	<ul style="list-style-type: none"> • There is little accountability at present for resource utilization. • Models of best practice in whole school resource utilization to support inclusive education are not widely promulgated. • Whole school evaluation does not place sufficient emphasis on evaluation of effectiveness in delivering inclusive education.
Boards of Management and other governance structures, school leadership and parents will be extensively involved in the provision of inclusive education.	<ul style="list-style-type: none"> • The necessary supports and levels of investment in capacity building do not currently exist in order to make this requirement an effective reality.
Funding mechanisms will operate in support of inclusive education.	<ul style="list-style-type: none"> • Current approaches to funding SEN provision are based on out of date prevalence figures and many contain eligibility criteria thresholds and other features based on labeling and categorisation which may not be consistent with the intent of the EPSEN Act, 2004. • Current approaches to funding are based largely on a disability deficit paradigm rather than on systemic capacity building for inclusive education. • There is inadequate support for high quality research in our third-level sector and elsewhere to assist with the process of policy formulation and delivery of inclusive education.

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KEY ELEMENTS OF THE "TO BE" MODEL FOR SEN PROVISION	ISSUES ARISING FROM THE "AS IS" MODEL FOR SEN PROVISION
There will be a clear educational progression path from pre-school through to lifelong learning for persons with SEN.	<ul style="list-style-type: none"> • Despite the recognized importance of early intervention for all children with SEN, there is no universal approach (nor policy framework) for pre-school provision. • Certificated progression for children with SEN is not the norm. • The impact of developmental delay which means that many children with SEN will continue to benefit from formal education beyond age 18 is not adequately addressed. • Participation in effective training leading to meaningful employment of people with SEN is not the norm. • Participation in third-level and in lifelong learning opportunities is not the norm for persons with SEN.

The foregoing analysis of some of the challenges and issues involved in moving from the "as is" SEN scenario to the "to be" inclusive education scenario envisaged by the EPSSEN Act, 2004 needs to be considered having regard to certain key understandings as follows:

- The EPSSEN Act, 2004 is a truly ground-breaking piece of legislation. It was introduced by government in recognition of the fact that there are gaps and deficits in the current regime. Many of the challenges involved are global and are being addressed in varying ways by education systems across the world. There is no universally accepted model of best practice in this regard. It should not be a matter of surprise, therefore, that the current SEN regime in Ireland does not stand up to comparison with the new direction now required to implement the EPSSEN Act, 2004. It would be wrong to be overly critical of a SEN regime which was not designed for the purposes of implementing the EPSSEN Act, 2004. In effect, the EPSSEN Act, 2004 substantially shifts the goal posts. The concentration now needs to be firmly focused on what is needed for the future rather than on denegrating what is currently there.
- There are many positive features to the current SEN regime. Considerable additional resources have been provided by Government. Many schools and teachers in both mainstream and special schools are doing tremendous work with children with SEN. We know, from the consultation process undertaken in the preparation of this Implementation Report, that there is a huge groundswell of goodwill and positive support for making the EPSSEN Act, 2004 provisions a reality on the ground. We need to harness the good work already being done, and the goodwill of key stakeholders, as positive contributors to putting the required new inclusive education regime in place for the benefit of those with SEN.

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- Not all of the deficits in the current regime require the allocation of additional human and financial resources. While such additional resources are clearly needed, there is an equal challenge and requirement to shift cultural barriers and bring about attitudinal change as well as in ensuring that existing resources are being used to maximum effect in support of inclusive education.

5.4 MACRO APPROACH TO IMPLEMENTING THE EPSSEN ACT, 2004.

The Council believes that there are certain fundamental principles which should be adopted in developing an overall approach and framework for the implementation of the EPSSEN Act, 2004.

Firstly, Council is firmly of the view that the key to the development of an effective implementation plan is to concentrate on those actions and changes which are necessary to develop **the inclusive school** as the cornerstone of inclusive education service delivery. Building capacity in, resourcing and supporting the inclusive school is, we believe, the only sustainable model for successful implementation of the Act. Ensuring access for children with SEN to the inclusive school (which must become the universal norm), effectively teaching them while they are there and achieving successful outcomes for them is the critical challenge.

Secondly, Council believes that the concept of the inclusive school, operating effectively in delivering inclusive education, will require a substantial shift away from the current disability deficit paradigm for informing resource allocations and developing support processes. The disability deficit paradigm, which is built around the thesis that the child with SEN has the problem, must be reoriented to produce an inclusive education paradigm which recognises that the core problem is not with the child with SEN but is systemic in terms of an inability on the part of the education and health systems to effectively meet the needs of, and deliver outcomes for, children with SEN. Implementation must be framed around achieving this paradigm shift if the intent of the EPSSEN Act, 2004 is to be achieved.

Thirdly, Council strongly advocates that the inevitable pressures which will come to separately negotiate resource requirements and other issues based on an approach which seeks to decompose the modalities of the EPSSEN Act, 2004 into stand-alone implementation steps should be strongly resisted. In this regard, it will be vitally important not to allow the implementation agenda to be driven by segmented consideration and bargaining by particular interest groups in relation to matters

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such as assessments, individual educational plans, resource teacher/learning support teacher and SNA additionality etc. These modalities are obviously key supports for inclusive education. However, in isolation from an effective model of inclusive education in its totality, they are likely to evolve in a counter-productive manner as has happened in the past. This is an area where any approach assuming that the sum of the parts makes up the whole will not work. This is particularly true of the school-based modalities which should, we believe, only be engaged with as regards implementation from a whole-school, inclusive education perspective taking full account of existing resources within the system.

The three core considerations outlined above have been key drivers of the Council's approach to the development of this Implementation Report.

There are, of course, many other issues which are relevant to the approach to implementation and some of the more important of these are addressed in the remaining parts of this Chapter.

5.5 PUBLIC POLICY ANALYTIC FRAMEWORK

Our approach to analysing the current system of special education in Ireland includes a process which is similar to that used in public policy analysis generally, and this typically involves asking questions about the system's capacity to meet agreed criteria of appropriateness, efficiency, equity, and outcome-focus. These criteria are not mutually exclusive and, for this reason, the issues raised are sometimes complex and cross-cutting, and their resolution can require trade-offs between the different criteria. We raise four specific questions about the current system of special education in Ireland: is the method of allocating resources within the system appropriate? (Section 5.6), is the system efficient? (Section 5.7), is the system equitable? (Section 5.8), is the system outcome-focused? (Section 5.9). We conclude by summarising the results of our analysis but refrain from recommending particular strategies and solutions since that will be part of the ongoing work of NCSE, in collaboration with other stakeholders in the special education sector.

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5.6 IS THE METHOD OF ALLOCATING RESOURCES WITHIN THE SYSTEM APPROPRIATE?

The EPSEN Act 2004, Sections 3 and 4, creates an enforceable right to an assessment for any child deemed to have a special educational need and, where the assessment confirms that the child has special educational needs, to an individual education plan (IEP). It is important, therefore, to have clarity on how these rights will be delivered within the new system.

At present, there is no statutory entitlement to an assessment or an IEP. Primary schools are allocated a permanent teaching resource to meet the estimated demand for teaching assistance for children with high incidence disabilities within those schools. Children may avail of services provided by such teachers as the school deems appropriate without the formal identification of a particular disability. However, if such children need special care or special equipment, an assessment by a professional which identifies such needs is required. A professional assessment (usually including a psychometric test indicating the IQ level of the child) of the special educational needs of a child is needed if supports applying to low incidence disabilities are to be sanctioned for a primary school. Under the EPSEN Act, 2004 each child deemed to have a special educational need will be entitled to an assessment under the Act which complies with such standards as are established in accordance with Section 5.5 of the Act. This will significantly increase the demand for assessments which under the Act must be completed within 3 months. Assessments under the Act will be required to establish the existence of a special educational need as defined in the Act i.e. the presence of “*a restriction in the capacity of the person to participate in and benefit from education on account of an enduring physical, sensory or mental health or learning disability, or other condition which results in a person learning differently from a person without that condition*” and an evaluation and statement of the services needed by the child to participate in and benefit from education. The Act does not require that the assessment be directly linked to the provision of any particular level of resources. Rather, it focuses on the identification of the appropriate supports for the particular needs of the child.

At present, learning support is provided for students with learning difficulties at second-level. Additional special educational supports, however, require a professional assessment to identify the category of disability. An assessment of special educational need must be carried out by one of the listed professionals as set out in DES policies and must identify the particular category of disability by reference to DES criteria.

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NEPS has devised a three stage assessment model to help schools to identify special needs and develop appropriate educational responses at the earliest possible stage. The assessments at Stages I and II of that model, i.e. school-based assessments, carried out by teachers are not acceptable for resource allocation under current policy. Typically an assessment at Stage III is carried out by a psychologist, a psychiatrist, a medical doctor, a therapist or a combination of these personnel. This model is only in place at primary level and only in the case of those schools that have NEPS coverage – not all schools are covered by NEPS.

Given that, under current arrangements, assessments which take place during the third stage of the model are crucial in determining if the child, and the school is to receive additional resources, it has become the convention to confine the term ‘assessment’ to those which occur during the third stage. In other words, under existing policies and procedures, assessments tend to be regarded as those which are undertaken by independent experts outside the school for the purpose of determining both the underlying disability, the special educational needs generated by that disability, and any entitlement to individual resources by virtue of being low or high incidence.

This model of assessment, and its linkage to decisions on resource allocation, is not unique to Ireland and similar models can be found in many other countries. However, this model is widely perceived to have a number of significant drawbacks.

In Ireland, the Task Force on Dyslexia (2000-2001) expressed strong reservations about the current system as it applies to all children with a special educational need and not just those with dyslexia: “The Task Force was concerned with the extent to which students with dyslexia are ‘categorised’ in order to access a level of support appropriate to their needs. ...The Task Force does not feel that it is appropriate to categorise students as the basis for provision. ...The Task Force considered the criteria currently used to identify students with special needs in order to access special educational resources to be problematic. For one thing, some students are not adequately provided for because they fall marginally outside current eligibility thresholds. Other children may be excluded because of difficulty in accessing the form of assessment required by current criteria.⁵⁴ At primary level, some of these issues have been dealt with by way of the General allocation Model. The Task Force on Dyslexia favoured a more individualised approach: “The Task Force favours an approach in which

⁵⁴ Task Force on Dyslexia, 2002:xiv-xv

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the principle of each child having a right to an education appropriate to his or her individual needs would apply.” It considers that there is a need for further debate and ongoing research to advance our thinking on how, in the context of the Irish educational system, the goal of individualisation can be achieved”⁵⁵.

In a review of the international literature on special education systems carried out for NCSE by Dr. Eileen Winter and colleagues⁵⁶, three key issues were raised about the model of assessment and resource allocation currently used in Ireland and elsewhere for children with special educational needs. First, the assessment system involves categorising and labelling children based on defined diagnostic criteria. These labels are useful in helping to identify and name the reason why a child may have difficulties in learning, and help in identifying strengths and weaknesses associated with the condition which can, in turn, be used to prepare an individual education plan. However, the label may also mislead people into believing that every child who belongs to a specific diagnostic category is the same and has the same needs, which is not the case. In addition, many labels in the area of disability have negative connotations and may remain with the child for the rest of his or her life. In addition, “labels may also unwittingly or otherwise, lead to lower expectations, an assumption that the deficit or problem rests solely with the child, and a further assumption that nothing will change”.⁵⁷ In short, categories and labels may be of more benefit to professionals than to children and, by virtue of emphasising the child’s deficits, may shift attention from the deficits in the school’s capacity to provide a more inclusive education.

Second, assessments are a means to an end, not an end in themselves. Normally assessments are carried out with two objectives in mind: (i) to assess the needs of the child and (ii) to access resources in order to meet those needs. Both objectives are important but, due to the fact that resources are scarce relative to need – and given that scarcity is itself shaped more by the distribution of resources rather than their absolute level – the second objective can sometimes take precedence. As Winter and colleagues point out, “parents and schools can be more interested in what follows an assessment than in the assessment itself especially where additional funds and resources are

⁵⁵ Task Force on Dyslexia, 2002:xiv-xv

⁵⁶ Winter, Fletcher-Campbell, Connolly, and Lynch, 2006

⁵⁷ Winter, Fletcher-Campbell, Connolly, and Lynch, 2006:10

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potentially what follow”.⁵⁸ In this sense, the method of resourcing special education can, through the assessment system, create a “perverse incentive”⁵⁹ to over-identify children with special educational needs with the associated dangers of negative labeling. The experience in the province of Ontario, Canada between 2001-2004 is instructive in this context where the diagnosis of children with special educational needs became a major source of revenue for schools and resulted in a massive increase in public expenditure essentially because the system “rewarded negative descriptors of pupils and there was no funding incentive to reward progress”.⁶⁰ As a result of this experience, the true purpose of assessment became thwarted into a process described by some commentators as “diagnosis for dollars” and “bounty hunting”.⁶¹ Other countries, and different states within the US, have also found that linking resources to particular diagnostic categories is “increasingly problematic because of fiscal incentives to place students in higher funded categories”.⁶²

Third, the linkage of assessments to resources can undermine the ethos of an inclusive education since certain children have to ‘earn’ the right to an inclusive education by virtue of being assessed as fitting within a particular diagnostic category and label. Some writers have questioned whether the use of assessments to access resources in this way may not be an infringement of the rights of these children relative to other children whose education is guaranteed without assessment and its associated labels. It would appear that as long as assessments and resources are linked, as they are in Ireland and elsewhere, there is a risk that children with special educational needs may not have the same right as other children to an inclusive education.

These considerations are a challenge to reflect on the suitability of the existing system of special education in Ireland, particularly in light of the objectives of the EPSEN Act, 2004. One option that would address many reservations about the existing system would involve greater targeting of resources at stages one and two of the staged model of assessment. This would legitimise stages one and two as meeting the requirements of EPSEN as part of a continuum of assessment. The balance of resources between stages one, two and three reflects the relative balance between prevention, early

58 Winter, Fletcher-Campbell, Connolly, and Lynch, 2006:15

59 Beek, 2002:12; quoted in Winter, Fletcher-Campbell, Connolly, and Lynch, 2006.

60 Ontario Ministry of Education, 2004; Winter, Fletcher-Campbell, Connolly, and Lynch, 2006

61 Winter, Fletcher-Campbell, Connolly, and Lynch, 2006:49

62 Bowers and Parrish 2000 quoted in Winter, Fletcher-Campbell, Connolly, and Lynch, 2006.

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intervention and treatment⁶³, and the adage that ‘prevention and early intervention are better than treatment’ is also appropriate in the context of special education.

In deciding on the most appropriate balance between the three stages of the model, particularly if this involves greater emphasis and resources being targeted at stages one and two than occurs at present, account must also be taken of the capacity of schools and teachers to address a wider range of needs during stages one and two. This may require a significant cultural shift in some schools. The NCSE has evidence from two pieces of research, commissioned to assist in the preparation of this Implementation Report, which indicate that schools and teachers do not feel adequately prepared or resourced to meet such a challenge⁶⁴.

These considerations illustrate why the question – is the method of allocating resources within the system appropriate? – must be faced in the context of implementing the EPSEN Act, 2004. Our considerations have focused on acknowledged weaknesses in the existing system and raise issues for further consideration on the appropriateness of its methods for allocating resources. Moreover, the case for change is given added impetus by the fact that weaknesses in the existing system are likely to be exacerbated when the Act is fully implemented, essentially because of the large number of children, as estimated in Chapter Three, who will have an enforceable right under the Act to an assessment of need.

5.7 IS THE SYSTEM EFFICIENT?

In the three-stage model described above, independent out-of-school assessments are required in order to determine, inter alia, if a child with special educational needs is entitled to additional individualised resources. It is significant, however, that about 40% of children who undergo an assessment, according to NCSE estimates, do not meet the criteria set down by the Department of Education and Science (DES) for an individual allocation of resources by SENOs. In relative terms, this

⁶³ Education, health and social services are sometimes referred to as forms of intervention which vary according to the time at which they intervene in the life of a problem. Some interventions are made before the problem is allowed to emerge (prevention), others occur after the problem has emerged but are made early in order to stop the problem getting worse (early intervention), while yet others take place when the problem is fully developed in order to address the consequences which have evolved (late intervention, sometimes referred to as treatment).

⁶⁴ Winter, Fletcher-Campbell, Connolly, and Lynch, 2006; O'Brien, Kenny and Mahony, 2006.

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suggests a 'low success/high failure rate'. As an indicator of system effectiveness, a 'low success/high failure rate' suggests that the system is not operating efficiently as a method of allocating resources because of the substantial wastage of resources in assessing cases who do not meet the criteria. The reasons for the 'low success / high failure rate' may be due to the fact that the assessment criteria may be inappropriate or are excessively restrictive. In addition, however, the high failure rate may reflect the fact that children are being referred inappropriately because there are not clear guidelines on the characteristics of children who are most likely to 'succeed' in the assessment. Significantly, no information exists on how the assessment process benefits children whose application for additional resources is not successful or whether the general allocation model is either adequate or is being utilised effectively to provide for such children with special educational needs.

There are reasonable grounds to expect, other things being equal, that the EPSSEN Act, 2004 will result in a increased number of children being referred for assessments and this may give rise to a correspondingly higher proportion of children who fail to meet the criteria for individualised resources unless the system changes. Prior to implementation of the EPSSEN Act, 2004, demand for assessments by school principals is restricted by a quota set for each school while the demand from parents is restricted by either lack of resources or long waiting lists. These restrictions will be lifted when the EPSSEN Act, 2004 is fully implemented. Similarly, when the Act is implemented, school principals may request an assessment under Section 3 while parents may also request an assessment under Section 4. Should these requests for assessments be refused, there may be a corresponding recourse to the appeals process which is also provided for under Sections 3 and 4 of the Act. These provisions could generate a surge in demand for assessments which could make it difficult, if not impossible, to meet specific requirements in Section 3 of the Act, notably that the assessment must be commenced within one month and completed within three months and, for those children assessed as having a special educational need, an individual education plan which must be prepared within one month of the assessment.

These considerations give grounds for concern that, under the current system of independent out-of-school assessments, the EPSSEN Act, 2004 may generate a significant demand for assessments which results in a growing proportion of children who fail to meet the assessment criteria, and which brings little improvement for the majority of children who have special educational needs. This creates the possibility that an increasing share of resources may be drawn into the assessment process without resulting in any tangible improvement in services, an outcome that would not be cost-effective or in keeping with the true intention of the Act.

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The answer to the question posed in this section – is the system efficient? – suggests that there are substantial inefficiencies in how the current system matches resources to needs. Moreover, there is a danger that these inefficiencies – as indicated by the ‘low success / high failure rate’ of applications for funding – could be further exposed and exacerbated when the EPSEN Act, 2004 is fully implemented. In seeking solutions to these inefficiencies, it may be helpful to keep in mind a key finding from the study commissioned by the NCSE to assist in preparing this Implementation Report, namely: “It is the aim in most jurisdictions to reduce the number of formal assessments required and to focus on less formal but often more informative school-based assessment, programming, and student outcomes”.⁶⁵ This consideration, in conjunction with the points raised in the previous section, signal the need to build capacity and resource schools so that they can respond early and quickly to the special needs of children as they present within the school setting.

5.8 IS THE SYSTEM EQUITABLE?

It is important that the existing system for allocating resources to children with special educational needs is equitable and is perceived to be so. Departmental resource allocation policy is designed on the basis that the most severe disabilities are granted the highest level of resources. However, there is no data available on the distribution of resources between the various categories of disability.

The greatest disquiet about the equity of the system amongst parents is the strict criteria applied to each category. The strict application of these criteria can result in children who are at the upper margins of a particular category with similar needs to children at the lower margins of the next category obtaining a lower resource allocation. A small scale study carried out for the NCSE by Sarah Craig and Kieran McKeown, showed that applications for additional individual resources in respect of special learning disability and speech and language disorder constitute the largest categories of applications which fail to meet the DES funding criteria for their particular category of disability.

The reasons for this disparity in the success rate of applications for particular categories is unclear and may be attributable to the criteria set for individual resource applications for those categories combined with a culture which has evolved in schools to make applications for those categories even though they do not meet the criteria.

⁶⁵ Winter, Fletcher-Campbell, Connolly, and Lynch, 2006:74

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While there is little evidence that the existing system of allocation of resources is inequitable there are insufficient data available at present to reach definitive conclusions on this matter. What is clear is that the current model allocates resources on a differential basis depending on the nature of the SEN categorisation even when the needs of the children in other categories are similar. It is doubtful if such an approach will continue to be sustainable having regard to the equity requirements of the EPSEN Act, 2004 and of equality legislation generally.

5.9 IS THE SYSTEM OUTCOME-FOCUSED?

In many countries, including Ireland, the system for funding special education – and public services generally – has tended to be input-oriented rather than outcome-oriented. The general allocation model used to fund primary schools for special education in relation to provision for those categorised at present as ‘high incidence’ children is essentially an input-model which allocates resources to schools on the basis of specific criteria such as number of pupils, gender of pupils, disadvantaged status, etc ⁶⁶. Allocations for those with “low incidence” disabilities are based on the disability deficit paradigm which is also a prominent feature of the second-level allocations process. Until recently, funding systems have tended to ignore or overlook the outputs and outcomes which the funding was designed to bring about. This is due, in part, to difficulties in creating consensus on agreed outcomes, but is also due to difficulties in seeing how inputs and outputs are part of the same funding equation.

At the level of the individual child, the main focus of assessment systems, in Ireland and elsewhere, tends to be on the child’s needs with a view to preparing the most appropriate individual education plan. Less attention is usually paid to assessing the outcomes of individual education plans, or the capacity of the school to deliver them. As a result, traditional assessment systems have tended to be child-focused, with a particular emphasis on child-deficits, and this has favoured an approach which treats these children as ‘special’, requiring special schools and special teachers. This approach has tended to overlook the learning environment and the capacity of schools and teachers to create a setting in which all children can learn and develop. As a result, a weakness of the traditional approach is that “efforts expended on identifying needs are not matched by similar efforts in meeting the needs” ⁶⁷.

⁶⁶ Special Education Circular SP ED 02/05 from the Department of Education and Science.

⁶⁷ O’Connor, McConkey and Hartop, 2005:267; quoted in Winter, Fletcher-Campbell, Connolly, and Lynch, 2006.

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There is evidence that the lack of attention to outputs and outcomes in special education is beginning to change. This is due in part to studies which have found that the relationship between funding and outcomes – in mainstream as well as in special education – is either weak or nonexistent. In the UK, for example, the Audit Commission found that although 15% of local authority expenditure on education went to special education, there was little evidence of how it was used, or what outcomes were achieved.⁶⁸ Similarly, a study of school funding in Canada found that “the link between marginal increases in spending and student outcomes appears to be rather weak”.⁶⁹ As a result of increased awareness about the importance of outcomes, the revised code of practice for special education in the UK has put greater emphasis on pupil outcomes as opposed to systems and procedures⁷⁰.

The challenge of seeing special education from the perspective of inputs, outputs and outcomes is considerable since it requires a more dynamic perspective which takes account of both the needs of the child and the capacity of the school environment to ensure that the child learns and develops to his/her full potential. This contrasts with the more static perspective of matching needs to services which runs the risk of seeing assessment as a ‘snapshot’ of the child’s deficits rather than an interactive process between the child and the school which is continuously adapting in light of ‘what works’. This more interactive approach to assessment is also more focused on problem-solving and suggests the possibility of re-orienting the system towards: (i) decision-making and action rather than merely data collection (ii) continuous action rather than one-off snapshots (iii) a focus on the learning environment and the learning task rather than just the learner (iv) monitoring and evaluating outcomes in the learner, the learning task, and the learning environment (v) involvement and partnership between pupils, parents and professionals.

From a funding perspective, the challenge of taking greater account of outputs – and ensuring that outputs refer to both the school’s capacity as well as the child’s capacity – also raises the question as to the most appropriate balance between school-based funding and child-based funding. This is an open question but the answer may lie in reflecting on the observation of one expert that “a child-centred model of funding and resourcing in special education may be desirable but may not be feasible indefinitely. Changing the capacity of schools to cope with a greater diversity of need, which

68 Audit Commission, 2002; see also Earl, Watson, Levin, Leithwood, Fullan and Torrance, 2003; both sources quoted in Winter, Fletcher-Campbell, Connolly, and Lynch, 2006.

69 Levin, 2004:22; quoted in Winter, Fletcher-Campbell, Connolly, and Lynch, 2006.

70 Department for Education and Skills, 2004; quoted in Winter, Fletcher-Campbell, Connolly, and Lynch, 2006.

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may be seen by some as less effective, at least initially, may be a better investment for the system overall and over time”.⁷¹

These considerations point to the need for serious attention to be paid to the outputs and outcomes which are expected from the State’s investment in special education. This will involve a substantial programme of work designed to build consensus on what would be appropriate performance indicators, and it may be easier, and more appropriate, to do this at the level of schools rather than at the level of individual children. Greater emphasis on outputs may also help to introduce an ethos of monitoring and evaluation which is lacking in the special education sector. Placing these issues on the agenda for ongoing review is the first step towards building a system of special education that has a more appropriate balance between inputs, outputs and outcomes and, by virtue of this, a more appropriate balance between the needs and performance of the child on the one hand and the adequacy of the learning environment provided by the school and its teachers on the other.

It is clear from the response to our question – is the system outcome-focused? – that greater emphasis is needed on the outcomes of the education system, particularly as they relate to children with special educational needs. This way of thinking about education is not entirely new but there is little evidence of it being applied in practice, particularly as it relates to special education. It will not be possible to know if the objectives of the EPSSEN Act, 2004 are being achieved without a sustained focus on outcomes and, for this reason, it is necessary to develop measures which will help to give practical expression to this approach within the education system.

5.10 POLICY PROOFING

As implementation of the EPSSEN Act, 2004 proceeds, and particularly as new policy approaches emerge, there will be a need for a more formalized approach, in line with relevant government guidelines, for carrying out a range of proofing exercises in relation to the emerging EPSSEN Act, 2004 policy framework than it is possible to carry out at this stage. Some of the key issues which will need to be addressed in that regard include:

⁷¹ Winter, Fletcher-Campbell, Connolly, and Lynch, 2006:40

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Equality Issues

Amongst the various equality issues which will require to be addressed are:

- The impact of the trends in the emerging prevalence figures as regards the apparent higher incidence of SEN in boys relative to girls for certain types of SEN. This is a matter which may need separate study as it will inevitably impact on matters relating to resource allocation as well as on whole-school planning for SEN provision.
- The future SEN regime will need to be able to be defended against any criticism and/or challenge that it favours (through allocation policies and/or through the making of special provisions etc) children with SEN of a particular nature over and above children with similar needs and/or, indeed, the general cohort of children with SEN. If, for example, the current focus of legal proceedings has been on cases where the issue is the alleged failure of the State to provide appropriate education, the post EPSEN Act, 2004 and Equality Act scenario could lead to a different focus for legal proceedings based on the perception that the State discriminates between children depending on the nature of SEN presenting.

Social Inclusion

The issues which will arise in relation to social inclusion may well centre on the apparent trend for prevalence of particular SEN presentations to have a relationship to socio-economic and/or geographic factors. Again, this is an area which will require further examination. The current policy of separately resourcing schools to enable them to address disadvantage and SEN provision may need to be re-examined as part of this process. The future model of inclusive education provision might, for example, call for a school-based approach reflecting the totality of additional resources and supports required rather than a programme by programme-based approach.

Rural Considerations

The concept of the inclusive school is easier to articulate when addressing schools of a certain size and critical mass. While there are current models of operation which involve the clustering of smaller

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schools for particular purposes, it is not clear, at this stage, what the full implications of implementing the EPSSEN Act, 2004 will be for such models. Additional issues will also inevitably arise as regards choice and access for children with SEN in less populated areas especially if some of the “softer” barriers to participation and to delivery of an effective inclusive education regime for all children with SEN are not addressed.

No doubt other issues will present themselves over the period of implementation. These are matters which the NCSE will keep under review through dialogue with the DES, the health sector, the partners in education and other key stakeholders in terms of its research and policy advisory roles.

5.11 SUMMARY AND CONCLUSION

This chapter examines a number of questions that arose when the objectives and aspirations of the EPSSEN Act, 2004 were set against the existing system of special education in Ireland. We identify a number of significant gaps and deficits when comparing the “as is” scenario for SEN provision to the “to be” scenario outlined in the EPSSEN Act, 2004. Our method of analysis is similar to that used in public policy analysis generally, which typically involves asking questions about the system’s capacity to meet agreed criteria of appropriateness, efficiency, equity, and outcome-focus. Specifically, we examined four questions: (i) is the method of allocating resources within the system appropriate? (ii) is the system efficient? (iii) is the system equitable? (iv) is the system outcome-focused? Our analysis of these questions mapped out a range of complex and cross-cutting issues which, collectively, make a strong case for improving the present system of special education in order to ensure that the objectives of the EPSSEN Act, 2004 are fully realised. The case for change rests essentially on the finding that the present system of special education falls short of what is possible and achievable in terms of appropriateness, efficiency, equity, and outcome-focus. The main thrust of our analysis points to the need to strengthen the capacity and resources within schools so that they can respond early and quickly to the special educational needs of children as they present within the school setting. Particular strategies to achieve this general goal will be part of the ongoing policy advisory work of the NCSE, in collaboration with other stakeholders in the special education and health sectors.

CHAPTER 6

A PLAN FOR IMPLEMENTING THE EPSSEN ACT, 2004

6.1 INTRODUCTION

The issue of determining the resources necessary to implement the EPSSEN Act, 2004 is an extremely complex one. In earlier parts of this Implementation Report we have referred to some of the difficulties and challenges involved. It is perhaps appropriate to reiterate these here before dealing with the specifics of future resource requirements. Some of the complexity in meeting the Council's statutory requirement to produce a fully costed implementation plan for the EPSSEN Act, 2004 derives from the following considerations:

- The absence of definitive agreed data on prevalence having regard to the very wide definition of SEN contained in the Act.
- The inability of management and financial information systems on both the education and health sides to provide authoritative baseline data on all current resource envelopes for supporting special educational service provision.
- The fact that in order to recommend definitive resource provision needs, assumptions need to be made as to how the future SEN regime to meet the requirements of the EPSSEN Act, 2004 will unfold at a time when the necessary debate and engagement on those matters is really only now commencing and in circumstances where no consensus on many of the key matters involved exists.
- The extent to which a "no policy change" approach will patently not meet the requirements of the Act and, therefore, a forward extrapolation of current policy and resource allocation processes will not constitute an action plan for implementing the EPSSEN Act, 2004 as required by Section 23 of the Act.
- The existence of numerous areas and issues where the determination of appropriate policy to meet the new requirements is a matter for the Minister and for government. It would not be appropriate for the Council to definitively pronounce on these areas when its statutory role in this regard is an advisory one.
- The extent to which many of the issues impacting on future resource requirements are matters which fall to be discussed between the Ministers concerned and other stakeholder and partner interests. It is not appropriate for the Council to pre-empt such discussions.

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The foregoing factors, inter alia, have dictated that we have had to approach the task of producing a costed implementation plan for the EPSSEN more flexibly and more cautiously than the Act itself may have envisaged.

In this Chapter, therefore, we have approached the difficult task of producing a costed implementation plan from three perspectives as follows:

- Firstly, we have identified, in broad terms, the areas in which additional investment will be needed. We have not attempted to specify the extent of additionality which may be required nor have we tried to deal with the issue of trade-off of new requirements against resources already available within the system. Our intent is that the minimum requirement of Council is to set out clearly for the Minister those areas in which the issue of additional resources will have to be addressed as the implementation process for the EPSSEN Act, 2004 progresses.
- Secondly, we have, where it is possible and feasible for us to do so, identified specific additional resource requirements. We have set out the assumptions and other factors on which our estimates are based. However, we fully accept that the estimates given may be subject to change as better data become available and as greater clarity emerges on the various aspects of implementing the Act, 2004.
- Finally, we have included a time bounded action plan for the implementation of the EPSSEN Act, 2004, which seeks to ensure that the various sections of the Act are commenced as speedily as possible, and as realistically as possible, given the policy formulation, resourcing and other key factors necessary for implementation which still have to be addressed. We have also outlined the various actions to be taken to ensure effective progress will be made pending formal commencement of the various statutory provisions of the Act.

6.2 MAIN AREAS OF INVESTMENT

The main areas where investment will be needed in order to effectively implement the EPSSEN Act, 2004 are set out in tabular form below. This table is based on our current perspectives as to what implementing the EPSSEN Act, 2004 will entail. As pointed out, we have not, at this juncture, tried to be definitive about the quantum of, nor the manner by which, such investment will be provided.

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AREA FOR INVESTMENT	KEY RESOURCE REQUIREMENTS
Pre-school provision	Early intervention is a key requirement in dealing with children with SEN. A comprehensive, national pre-school service which is appropriate and inclusive will be required and which will have the necessary health and educational inputs to make it effective.
Inclusive education at school level.	<p>The inclusive school will require resources for:</p> <ul style="list-style-type: none"> • Whole school planning and delivery of inclusive education. • Coordination of inclusive education (incorporating SEN provision). • Effective teaching of children with SEN in inclusive settings. • SNAs to facilitate participation of children with SEN in inclusive settings. • Appropriate and accessible physical environments for children with SEN. • Undertaking early intervention and assessment (Stages 1 and 2 of the NEPS staged model). • Developing, implementing and monitoring IEPs. • Engagement with parents. • Assistive technology and transport arrangements. • Evaluating progress and outcomes for children with SEN.
Inclusive schools support framework – educational support services.	<p>The following support services will require adequate resources to support inclusive schools:</p> <ul style="list-style-type: none"> • The Department of Education and Science. • The Inspectorate. • NEPS. • NCSE. • SESS.
Inclusive schools support framework – health support services.	<p>Inclusive schools will require support from the Health sector in the following areas:</p> <ul style="list-style-type: none"> • The Department of Health and Children and the HSE at national level. • Assessment Officers. • Liaison Officers. • Psychologists. • Speech Therapists. • Physiotherapists. • Occupational Therapists. • Other health sector professionals.

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AREA FOR INVESTMENT	KEY RESOURCE REQUIREMENTS
Training and Development	Investment will be required in order to provide comprehensive training and development to include: <ul style="list-style-type: none"> • Pre-service inclusive education training for all teachers. • Whole school training for all teachers in inclusive education. • Training for Boards of Management and school leadership on inclusive education. • Qualification and upskilling of resource teachers/learning support teachers and SNAs. • Information, communication and guidance for parents.
Education and Health Sector Collaboration.	Investment will be needed in processes and resources, including joint training, to embed effective co-working on inclusive education between the health and education sectors.
Appeals and Mediation.	Adequate resources will be required for effective appeals and mediation processes.
Educational Progression.	Resources will be needed to plan and implement educational progression, including certificated, as appropriate, progression paths for children with SEN. These requirements will impact, inter alia, on the NCCA, the SEC and the NQAI.
Outcome of Reviews.	There may be specific resource implications including possible capital requirements, emerging for the already commenced reviews of Special Schools and of Deaf Education.
Further and Continuing Education.	Resources will be required to develop and implement further and continuing education and supports for children with SEN in third-level educational establishments, state funded training providers and lifelong learning initiatives.
Research.	Resources will be needed in order to develop research capacity on inclusive education development within the NCSE, the third-level sector and the health sector.

As pointed out earlier (see Chapter 5) the main focus of future investment will be on two key areas as follows:

- Building capacity in schools at all levels to make the inclusive school the cornerstone of delivering universal inclusive education.
- Moving the paradigm for funding, resourcing and supporting inclusive education from a disability deficit model to a systemic support model for all children with SEN.

It is clear from Chapters 1-5 of this report that the degree to which existing services and policies need to be modified, supplemented and enhanced in order to meet the standards and delivery time frames of the Act is considerable. It is also clear that the task of estimating the financial and

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human resources required to deliver this new level of service is not an exact science. The dearth of specific statistical information, the variations on the working definitions and understandings of special educational needs as set out in the Act and in other Acts, and the continuing improvements in diagnostic techniques as well as educational strategies and continually evolving policy in relation to special education all contribute to the complexity of the task.

In arriving at its final conclusions the Council has deliberated on all the information available and developed its proposals which it recommends should be accepted by Government as the detailed Action Plan for the Implementation of the Act.

6.3 RIGHTS-BASED PROVISIONS

The Plan for implementing the EPSEN Act, 2004 is based on the Council's understanding of the provisions of the Act, particularly those provisions which are granted as a matter of right. The EPSEN Act, 2004 has as its primary objective the right to an appropriate education in an inclusive setting and to equity of access to education for children with special educational needs. This provision and the associated rights to assessment and benefit from an IEP and to appeal have significant and specific resource implications both in their implementation and in the consequent service levels required to support them on an ongoing basis. The Council's understanding of each of these rights-based provisions is set out below and has been informed by its consultations to date and by the expertise available to it in producing this Implementation Report.

- **Appropriate education** will be achieved in a progressive way over the period of the implementation of the Act. It gives rights to those with special educational needs to avail of and benefit from education in the same way as their peers who do not have SEN and it provides for them to leave school with the skills necessary to participate, to the level of their capacity, in the social and economic activities of society as well as to live independently in the community. This can only be achieved by way of a highly individualised approach and needs to be supported at the level of the school.
- **Assessment** has been taken by the Council to refer to a range of school-based and professional interventions which are designed to identify and address the needs of children with special educational needs. The key concern of the Council, in presenting its recommendations in relation to

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the provisions on assessment, has been that there is still no clear understanding of what constitutes an assessment, who should carry it out and what standards should be applied. Of particular concern is the manner in which the assessment and resource allocation processes are inextricably linked and the need to sever this direct link. These issues will have to be urgently addressed in the implementation phase.

- **IEPs** are deemed by the Council to correspond with the provisions and services that are needed by the child for him/her to benefit from education as well as for the maintenance, monitoring and review of such provisions and services. The Council recognises that the IEP is the conduit for the services and provisions needed for the child to be able to benefit from education. Its view is that the planning process should take place in a flexible and open way, involving key stakeholders including parents and, where appropriate, the student him/herself.
- **Appeals**, in the Council's view, will allow for transparency of the resource allocation system and, as a consequence, must be streamlined with other appeals processes. The appeals process must be responsive to the needs of parents and allow for engagement at the lowest levels of decision-making so that resources are not wasted on overly sophisticated procedures. Effective mediation will be a key element in this process.

The Council's recommendations for the implementation of the Act have been formulated having regard to these understandings of the rights-based entitlements. We discuss these in more detail below.

6.4 ASSESSMENTS

Assessment

A child who has a disability may be assessed under the Disability Act, 2005 or under the Education for Persons with Special Educational Needs Act, 2004. If a special educational need is identified as a result of the assessment of a child under the Disability Act, 2005, that aspect of the assessment must be referred by the Assessment Officer to the National Council for Special Education or to the Principal of the relevant school for the purposes of an assessment under the Education for Persons with Special Educational Needs Act, 2004. Health needs identified in an assessment under the Education for Persons with Special Educational Needs Act, 2004 will be dealt with in a Service Statement under the Disability Act.

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The HSE will appoint Assessment Officers and Liaison Officers around the country based on estimated need, as indicated by population profiles over the next twelve months. (See p.67 of the Sectoral Plan of the Department of Health and Children). The HSE has a particular obligation to ensure that the potential of the roles of assessment and liaison officers is achieved and that these roles bring added value to people with disability availing of specialist disability services as well as meeting the statutory requirements relating to information provision.

As set out in Chapter 2, the Act provides that every child who is considered by a parent, a school principal, the HSE or the NCSE to have a special educational need is entitled to an assessment. The Act places an obligation on schools to take preliminary steps where the school becomes aware that a child is not benefiting to the extent that would be expected from the education programme provided in the school generally. The Act requires that in such cases, the Principal of the school should take such measures as are practical to meet the needs of the student concerned. However, if these measures are not successful and the Principal forms the opinion that the child may have a special educational need, further assessment must be arranged. The Act is silent on what may be regarded as practical steps that the principal should take before further assessment is arranged.

The Council considered that the provisions in relation to assessment are paramount since the assessment is the gateway for the child to the range of other rights under the Act. In this regard, the Council's view is that immediate emphasis must be on establishing and delivering this right for all children. In its deliberations, however, the Council recognises that assessment presents one of the greatest challenges with regard to the need for reform of existing provision and with regard to how it is resourced in the future.

Our consultations highlighted that parents are concerned about waiting lists and a lack of agreed standards for assessment. Perceived delays are caused by the scarcity of suitably qualified professionals in the health and education sectors. A further challenge exists in the assessment of children with special educational needs from ethnic minorities where language difficulties often exist. Difficulties are compounded by differences in the type of assessments required by the Health and Education services to trigger the provision of services in their respective sectors. The Council wrote to both the Minister for Health and Children and the Minister for Education and Science urging the immediate establishment of an inter-departmental group which would deal with this issue and other implementation coordination requirements and we are happy to report that such a group has been established and will meet shortly.

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In examining the potential resource requirements to implement the provisions of the Act in relation to assessment, the NCSE endeavoured to determine:

- The likely level of demand for initial and repeat assessments.
- The level of unmet demand.

We present some estimates below in relation to each of these questions. The estimates are based on consultations with NEPS and the HSE and on the potential prevalence of special educational need as set out in Chapter 3. We then present a recommended course of action in relation to implementing the provisions of EPSSEN Act, 2004 on assessment.

6.4.1 Likely Level of Demand

Chapter 3 explored the issue of the numbers of children with special educational needs currently in the system and also the numbers likely to enter the system over the next five years. The conclusion reached was that potentially, 18% of the school-going population could fall within the definition of 'special educational need' as defined in the Act but that a range of 14-18% could be used in future planning. Taking the 18% figure, which is the upper limit, and which the Council advises is prudent to use on the basis of the broad definition of special educational need in the Act, it is estimated that the number of children in the 0 – 18 years age group with special educational needs will amount to about 190,000 at a given time over the next five years.

Those children with disabilities in the 0-5 age-group will receive assessments under the provisions of the Disability Act, 2005 with effect from 1 June 2007. It is expected that children with low incidence disabilities entering school from September 2008 will, therefore, have an appropriate assessment (this is estimated at 1,800 on the basis of a prevalence rate of 3%). In preparing those assessments the HSE will request the Council to nominate persons to assist in the assessment of educational needs for these children. The Council will be nominating SENOs and NEPS Psychologists to participate in this process. This will place additional demands on the NCSE and on the NEPS service with effect from 1 June 2007.

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On the basis of an estimated prevalence rate of 18% for children with special educational needs it is estimated 10,800 children could present in schools each year with special educational needs which fall to be addressed in accordance with Section 3 of the EPSSEN Act, 2004. This is based on a birth rate of 60,000 children per year. Of this 10,800 children it can be expected that about 1,800 will already have been assessed under the Disability Act 2005 and have identified special education needs. Of the remaining 9,000 it can be anticipated that a significant number will have their needs successfully addressed through the preliminary practical steps, essentially Stages 1 and 2 of the NEPS Assessment Model with learning support interventions, taken by schools in accordance with Section 3(2) of the Act. On this basis it is proposed that until more accurate data becomes available planning for assessment should be based on initial demands for 7,000 assessments of school going children per year.

	No.
Assessments under the Disability Act 2005	1,800
Initial demand for assessment of school going children	7,000
Repeat assessments Based on 2 additional assessments per student with special educational needs = 2 x 8,800	17,600
Total	26,400

Table 6.1 Estimated Demand for Assessments following Implementation of the EPSSEN Act, 2004

The Council also estimated the annual demand for repeat assessments (Table 6.1). It considered that if the spirit of the Act is to be complied with and a continued focus kept on the needs of the child that re-assessments involving appropriate professionals will need to be carried out on at least two other occasions during schooling:

- At the transition between primary and post-primary schooling.
- At some point prior to completion of post-primary education to facilitate planning for further education, training for employment and independent living.

On this basis, it is considered that provision should be made for three assessments for each child in the 0 – 18 age group. Applying these criteria, it is estimated that there could be a potential demand for about 26,000 assessments per year.

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6.4.2 Unmet Demand

In addition to this on-going demand for assessment, there is the issue of unmet demand for assessments at present. This unmet demand is difficult to quantify with any degree of accuracy. However some indicators of need are set out in Tables 6.2 and 6.3 below. Estimates from the HSE show that there is a waiting list for Early Intervention Team services of about 1,000 and that a further 2,870 (which is an additional 10% of the estimated number of assessments needed) is awaiting school-aged assessment. In addition, there is a considerable demand for speech and language therapy.

TYPE OF SERVICE	NUMBER ON WAITING LISTS
Early Intervention	956
School-aged assessments	2,868
Speech and Language Therapy	19,873

Table 6.2 Estimated Waiting Lists for HSE Services

Source: HSE. Figures based on national level estimates extrapolated from actual figures in one HSE area (Mid-West). Figures exclude mental health but include ASD.

Note: average time taken from referral to assessment = 1 month for Early Intervention and 9+ months for Speech and Language Therapy.

In relation to the educational psychological services provided to schools (see Table 6.3) there will also be significant demands. The figures show that only half of primary schools have NEPS coverage which accounts for about 60% of primary pupils. Over three-quarters of second level schools have NEPS input which accounts for almost 80% of pupils at that level. Under current policy guidelines, having regard to available resources, NEPS does not provide a service to special classes or to special schools. There will be a requirement to provide such services, as appropriate, to all children with SEN in future.

	PUPILS COVERED		SCHOOLS COVERED		NEPS POSTS	
	N	%	N	%	N	% of Govt. target set
Primary	265.846	59.5	1.611	49.0		
Post-Primary	264.806	79.1	580	77.4		
Total	530.652	69.3	2.191	63.3	122	67.0

Table 6.3 NEPS coverage by Pupil and School. Based on Figures supplied by NEPS.

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To address backlogs and the demand for assessments, NEPS introduced a Scheme for Commissioning Private Assessments (SCPA) whereby schools that do not have access to a service provided by NEPS may commission individual psychological assessments by reference to a quota system per school. Schools with an enrolment of up to 400 pupils may commission one assessment for each cohort of 50 pupils, or part thereof i.e. a school with 400 pupils may commission a maximum of 8 assessments. Schools with over 400 pupils may commission two additional assessments for each 100 additional pupils or part thereof.

This takes no account of the actual level of demand in a school at a particular time and is not focused on the needs of the children. Furthermore, there is no clear guideline on the number of assessments which may be commissioned nationally in a year or a system for redistributing any unused quota. The number of assessments carried out under this scheme in the 2005 calendar year was 3,400. Whilst acknowledging the inherent difficulties of this scheme, the Council recommends that it be continued in the interim so as to address any significant backlogs (in this regard application of the standards agreed under Section 5(5) of the EPSEN Act, 2004 should be an integral part of the Scheme) and extended to address the level of demand that arises and to ensure that appropriate and common standards of assessment are applied.

6.4.3 Standards

The EPSEN Act, 2004 provides that assessments will be carried out in accordance with standards which are to be developed by a body nominated by the Minister for Health & Children in accordance with Section 5.5 of the Act. As stated in the Health Sectoral plan (p.66), the same standards will apply to assessments conducted under Part 2 of the Disability Act and to assessments for health-related educational supports under the provisions of the EPSEN Act, 2004.

As outlined in the Sectoral Plan, pending the establishment of HIQA, the Department of Health & Children will initiate work on the development of standards, in conjunction with the interim HIQA and in consultation with the National Disability Authority and other relevant stakeholders, including the Department of Education & Science, and the Mental Health Commission, with a view to HIQA assuming responsibility in due course.

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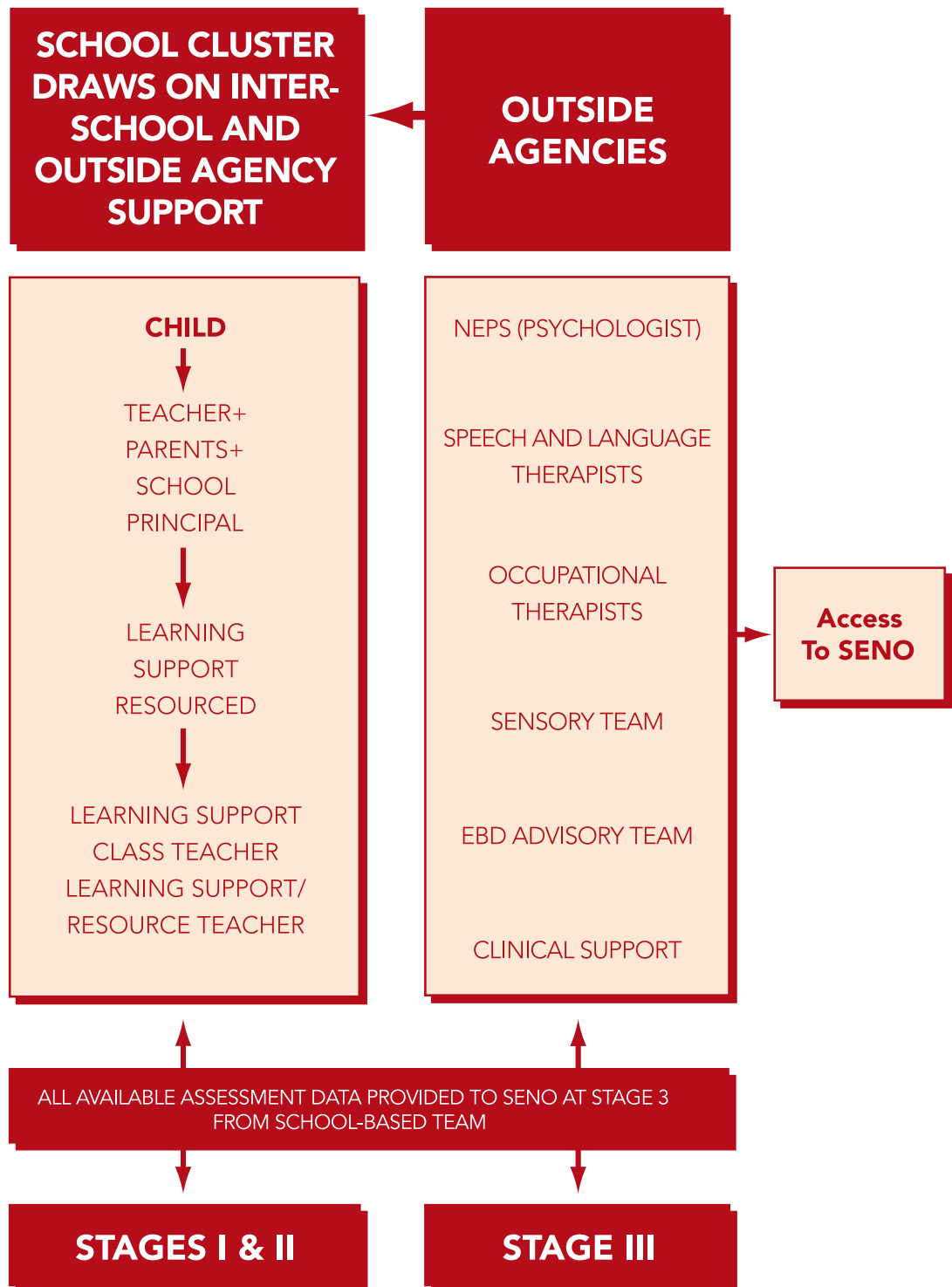
The NCSE welcomes the commitment to this task and considers that the work on the setting of standards should start immediately with a view to completing the task by 1 April 2007. The setting of standards process will need to address the matters outlined below.

6.4.4 Recommendations for Assessment

On the basis of the research undertaken for the Council on assessment⁷², and on advice from NEPS and others, the Council concluded that a new approach to the assessment of special educational need will be required if the needs of children who have a right to assessment under the Act are to be realised. The Council recommends that the assessment and resource allocation processes should be separated out so that assessment of itself is the identification of need rather than a categorisation to maximise resources. The Council's view is that the Staged Approach to Assessment as developed by NEPS provides an appropriate model for the future assessment of needs of children in the most efficient and effective way. The proposed assessment model is set out diagrammatically below.

⁷² Winter, Fletcher-Campbell, Connolly, and Lynch, 2006.

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The staged approach provides for the identification of needs at the school level and identifies ways in which needs can best be met. The use of this model to provide assessments under the EPSSEN Act, 2004 would mean that schools, teachers and educational psychologists would play a more active role in the identification of pupils's needs than heretofore.

The Council considered how best to apply the staged approach and whether all three stages should constitute a statutory assessment under the Act. It concluded that a re-evaluation of the model is required to test its applicability to the statutory assessment process. This will determine what level of involvement constitutes the practical steps that schools are required to take under the Act. It should also consider what level of professional input is appropriate at each stage to reduce the likelihood of self-certification on the part of schools. Upskilling of school personnel to carry out assessments will require investment but it will ensure more appropriate targeting of resources. However, it would not be in the interests of children with SEN, nor systemically, if the NEPS 3 stage approach to assessment were to evolve on the basis that Stages 1 and 2 are regarded as extra-statutory "nuisances" which have to be got out of the way before "real" assessment can proceed. The Council will be striving to ensure that this does not happen.

Notwithstanding the need for decisions on the application of the staged approach, the Council recommends a number of key changes in relation to current practice on assessment which need to happen in the short-term. These are :

- A code of practice and standards need to be developed for the assessment process (see also Section 6.3.4 above). This can build on the experience of other jurisdictions, including the Common Assessment Framework in the UK. The standards applied will need to comply with those agreed in accordance with Section 5(5) of the Act.
- NEPS staff will be required to work with SENOs, teachers and schools to support their involvement in assessment and to provide professional guidance on the required interventions. This will require a nationwide coverage of NEPS with sufficient personnel to deliver on this support function (see also 6.7.2 below).
- In-service training of primary teachers will be required to equip them with the skills needed to undertake assessment. Flexible ways of developing this training should be considered so that teachers can avail of the training; these might include opportunities for training in the summer months, evening and week-end training opportunities, web-based training with certification in relation to the skills needed.

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- Schools and teachers will require information on the application of the Staged Approach to Assessment. In this regard, the NCSE will work to ensure that briefings and information seminars are made available to Principals and school staff on the implementation of this approach.

The Council recognises the challenge that a school-based assessment model will present to teachers and schools. However, its view is that, in the longer term, this model will assist teachers in the classroom as it will address the problem at its lowest level (allowing for recourse to higher levels as required) and will provide for assessment within the school setting with a view to meeting the child's needs as efficiently as possible. It will also result in the elimination of waiting lists for assessment. It will provide teachers with the means to identify easily ways of addressing needs as they arise. This proposal is based on the recognition that teachers are already using their skills and expertise in the identification of learning needs on a day to day basis in schools.

6.5 INDIVIDUAL EDUCATION PLANS

The Act is quite specific about the structure of the education plan for each child and the participative process that is to be followed in drawing up the plan (see Chapter 2). The Council is required by the Act to issue guidelines to schools on the completion, monitoring and review of IEPs. Guidelines have already been produced and circulated to schools. It is recognised by the Council that teachers need in-service training on the range of issues addressed in these guidelines. In its consultation with the education partners on the publication of the guidelines, it was noted that the preparation and review of IEPs in school will require management, expertise and non-teaching time and space for planning meetings, information gathering and dissemination, the formal IEP meeting, drafting of the plan and monitoring and review. The Council deliberated on two issues:

- The estimated demand for IEPs.
- Resources required to meet this demand.

In its consideration of the issues, the Council was aware that different approaches would be required in the primary and post-primary sectors. In the primary sector it is feasible that the class teacher will be the central figure in drawing up the IEP while at second level, subject teachers'

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involvement will require a more co-ordinated effort and give rise to the need for a mechanism to coordinate IEP production, monitoring and review to be put in place.

6.5.1 Estimated Demand for IEPs

Given our estimate that a total of up to 8,800 children might be assessed each year under the Act, we can assume that this number may also be entitled to IEPs. However, IEPs can take many forms ranging from relatively minor adaptations of the standard curriculum through to very complex individualised programmes. In the case of some pupils with SEN, group IEPs may be the most appropriate form of intervention needed with some individualisation. Given that the NCSE currently provides resources for about 6,000 children (covering both primary and post-primary schools) each year and that approximately 2,000 are provided for under the general allocation model our estimate of 8,800 first time IEPs per year, seems well founded. IEPs will need to be drawn up each year (see Table 6.4) and will require the principal and/or teachers in schools and, in many instances, the involvement of the SENO, HSE Professionals and NEPS. The Council also recognises that a review of each plan is required on a yearly basis and that, in the move from primary to post-primary level, a new IEP will be needed giving a potential total demand for 17,600 new IEPs per year.

TYPE OF SERVICE	NUMBER
Demand for IEPs Primary	8,800
Demand for new IEP (Second-level)	8,800
Total	17,600

Table 6.4 Estimated Demand and Resources for IEPs under the EPSSEN Act, 2004

In Primary Schools, the Principal, the class teacher and Learning Support/Resource Teacher will be involved. At second level the Principal, the Learning Support/Resource Teacher/s will need to be directly involved but effective mechanisms and in-school communications systems will need to be put in place to ensure that all subject teachers are aware of and actively contribute to providing the supports and facilitating the outcomes set out in the plan. The precise content of the plan has been set out already by the NCSE. However, flexibility will be applied in the drawing up of plans, particularly those that may be developed in light of Stages 1 and 2 of the Staged Approach to Assessment. Such flexibility might include the development of group education plans and the adaptation of individual

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profile and learning programmes (IPLPs) as well as the use of IEP software that is appropriate to the Irish context. In this regard, the Council has committed to work with organisations like the National Council for Technology in Education on the design and development of software for this purpose.

Research carried out on behalf of the Council by the National Institute for Intellectual Disabilities in TCD⁷³ found that the IEP process is not new to schools. In a survey of schools, using a stratified sample of 30 primary and 30 post-primary schools and a strategic survey of 14 special schools, almost all schools had experience of developing IEPs or some type of personal learning plan. However, the efforts of the schools to provide IEPs and the understandings underlying the preparation of these IEPs do not, at present, correspond with the requirements of the EPSEN Act, 2004. It is also clear from the research that the current processes adopted were less inclusive and less demanding in terms of non-class contact inputs by teachers generally than will be required under the EPSEN Act, 2004.

6.5.2 Resource Requirements to meet Demand

The demands on schools and teachers to provide Education Plans in accordance with the requirements of the EPSEN Act, 2004 will be significant. While it is impossible to determine exactly the impact on teaching resources in the schools, the NCSE, in considering this matter, has sought the views of various bodies and individuals with experience of producing IEPs similar to those required under the Act. The Council considers that there will be need for substantial in-service training for all teachers in the process, content and use of IEPs. The NCSE considers that prior to implementation of the Act as it relates to IEPs, each teacher will need at least 2 days in-service training per year on inclusive education to include the IEP process. A developed programme of in-service inclusive education training will be needed which will be delivered partly in school and partly out of school. This programme will require to be developed and delivered involving consultation with the partners in education, the DES, NEPS, the SESS, the NCSE, the Colleges of Education, the third-level sector and the HSE.

In relation to the development, preparation, monitoring and review of IEPs, the Council considers that the following factors will impact on the teaching resources required by schools:

73 O' Brien, Kenny and Mahony 2006 (op cit)

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- The preparation of IEPs will involve one or more meetings between the Principal/delegated teacher, the SENOs and other appropriate professionals.
- The teacher will be central to the task of writing up the IEP.
- The teacher will have the task of communicating the requirements of the IEP to other school staff.
- The teacher will have the task of monitoring and reviewing progress, keeping parents informed and reporting to NCSE.
- Different processes will be needed at primary and at post-primary levels.

These tasks at teacher level will require availability outside of class contact time. The allocation of teaching resources to schools is traditionally based on class contact time only. However, teachers perform a range of non-class contact duties as part of their normal work load. These include, school planning, liaising with parents, school-based or locally-based in-career training, curriculum development and collaborative subject preparation. Many of the activities relating to the preparation of IEPs fall within these headings. However, the extent to which additional time is required for internal and external communication needs to be addressed. To test the likely demands placed on teachers and schools, the Council plans to undertake a piloting of its IEP guidelines in a small number of schools around the country. Schools will provide feedback on time and space issues and on resource deployment which will assist in the development of provision for all schools and will inform the Council on potential resource requirements.

While the issues surrounding the precise staffing arrangements will be a matter to be resolved through the Industrial Relations process, the NCSE considers that the impact of the assessment and IEP demands on non-teaching time will be significant and will have implications for the number of new staff required to meet this need. However, IEP preparation requires a highly personalised approach where some children will need less time and some with more complex needs will need more. Given that there are approximately 7,100⁷⁴ learning support and resource teachers currently in the system, some consideration should also be given to their capacity to meet some of this additional input.

⁷⁴ Based on DES figures of 5,000 at primary level and 2,100 at post-primary level.

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6.5.3 Recommendations on IEPs

The Council recommends that additional resources should be provided to schools to facilitate their involvement in IEPs. These resources centre on additional posts to support the time and space requirements of the IEP process and in-service training for all teachers. The Council's view is that training on IEPs should be considered as part of an overall strategy of in-service provision on inclusive education that would be provided on a whole-school basis to all teachers. The strategy should consist of the following elements:

- Provision for principals/deputy principals and teachers at the level of 2 days per year between 2007 and 2009 (8 training days per teacher). This could be developed in conjunction with the Department's proposed in-service on the Guidelines for Inclusion in Second-Level Schools for post-primary teachers.
- Joint training of SENOs/HSE staff.
- Development of more extensive modules at pre-service level to enhance the skills of all teachers in inclusive education practices.

The provision of in-service support to all teachers in advance of formal commencement of relevant sections of the Act will be critical. If significant and unacceptable disruption of school time is to be avoided, some agreement needs to be reached on how this training can be provided to teachers in a way that best meets their needs. The Council's recommends that the Teacher Education Section in the Department of Education and Science should work in partnership with the NCSE, the SESS, the teacher training colleges, the third level sector and the HSE to agree a programme for the delivery of this training as a matter of priority.

6.6 APPEALS

An Order for the establishment of a Special Education Appeals Board (SEAB) has been signed by the Minister for Education and Science with effect from 3rd April 2006 but no appointments have been made to date. The Council's view is that this Board will need to be adequately and appropriately staffed to meet its functions under the Act. In this respect, it should comprise an Appeals Staff and a secretariat which is independent of the Departments of Health and Education and of the HSE and

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NCSE. As its functions relate to specific sections of the Act, it will not have an operational requirement until such time as these sections of the Act are brought into force. However, as there is a considerable amount of work to be done in establishing operating procedures and protocols as well as training of staff, the Council recommends that a core permanent staff be appointed immediately and that the Council itself should be consulted on the composition of the Board.

Apart from the functions given to the SEAB under the Act, the Council strongly recommends that the remit of the Board should be extended to cover appeals in relation to resource allocation decisions made by the NCSE and in relation to utilisation by schools of SEN resources allocated by way of general allocations. It was widely envisaged, when the EPSSEN Act, 2004 was being formulated, that the establishment of an appeals mechanism would afford parents and schools an opportunity to appeal decisions in relation to resource allocation. However, the legislation as finally drafted does not make any such specific provision. However, the Council firmly believes that good administrative practice dictates that there should be an appeals route to Council/SENO and school decisions in this, the most critical of decision making areas. The Council is strongly of the view that the most appropriate way of providing this appeals mechanism is through the SEAB. The Council recognises that in order to take this approach, the basis for appeals and range of outcomes needs to be prescribed. It is noteworthy in this regard that the Planning Group which recommended the establishment of the Council envisaged that the Appeals System would deal with decisions in relation to appropriate education provision for a student with special educational needs.

The cost of the Board and its staff can only be finally determined when the full demand on its services becomes clearer. However, the Council considers that the provision of €540,000 which has been included in the 2006 Department of Education and Science budget is sufficient to enable adequate initial provision to be made.

The Act also provides for mediation in two instances:

- Prior to an appeal to the SEAB.
- On appeal directly to the Minister, mediation will apply in certain cases.

The provision of two levels of mediation as provided for in the Act could easily lead to confusion and waste of resources. The Council considers that the mediation provided by the SEAB should be developed as the primary response and the SEAB should be allocated additional resources to

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provide for the development of a first class mediation service. The detailed regulations in relation to the implementation of Section 38 of the Act allowing appeal to the Minister and further mediation could then be constructed tightly.

6.7 OTHER PROVISIONS

6.7.1 Planning for Future Education Needs

Section 15 allows for planning in relation to the education needs of students once they reach 18 years of age. The Council is particularly concerned that support for those with special educational needs should not cease when the child reaches 18 years but that opportunities for further education and training should be developed. This is of particular relevance to young adults with special educational needs as many of them experience developmental delay which means their potential to benefit from education extends beyond the norms associated with their peers. For proper future planning, the needs of the child as an adolescent should be assessed (see above), outcomes of IEPs evaluated and informed decisions made about future core supports in the move to further education, training or employment. In this regard, the Council recommends close collaboration with relevant voluntary agencies in this area and with bodies like the NCCA, the HEA and the NQAI, who have a specified function under the Qualifications (Education and Training) Act, 1999 to facilitate lifelong learning through the promotion of access and opportunities for all learners including learners with special educational needs. The Council acknowledges the role of programmes such as the Junior Certificate Schools Programme and the Leaving Certificate Applied programme in facilitating students with special educational needs to gain accreditation. The outcomes of education for children who do not have SEN are well known and include certificated progression, transfer to further or higher education, transfer to employment and the development of skills to assist the young adult to live independently and to participate fully in society. The Council's view is that all of these outcomes should be applicable and accessible to those with special educational needs in the same way as they are to their peers.

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6.7.2 Liaison Officers

The Council welcomes the provision within the EPSSEN Act, 2004 for the designation of liaison officers whose role will be to co-ordinate the policies and activities of the HSE and the Council. In this regard, the Council will work with its SENOs to promote this overall liaison function and advises that the HSE appoint its liaison officers at an early stage in the implementation process.

6.7.3 Designation of Schools

The Council will work to ensure that all schools are inclusive and resourced to meet the needs of the communities they serve. As a precursor to any developments in this provision, the Council will examine how designation of schools works in other jurisdictions so that the most appropriate model of provision can be applied here.

6.8 IMPLICATIONS FOR SPECIAL EDUCATION INFRASTRUCTURE

The Council is fully cognisant of the implications of its recommendations on the current special educational support infrastructure and on the level of personnel that will be required to meet the demands that will arise as the Act is implemented. We recognise that levels of provision will, in due course, be determined by the Ministers for Education and Science and Health and Children as part of an overall budgetary process and we will work to advise on the ongoing needs as they arise. Notwithstanding this process, we set out some of the implications of our proposals for the continuing development of the NCSE, for NEPS and for schools below. The requirements of the health sector are dealt with elsewhere in this chapter.

6.8.1 The NCSE

As the Act is implemented, the NCSE will take on a range of specific functions in addition to the general functions provided under the Act. Its SENOs will have a core role in supporting schools to implement the inclusive approach. Prior to the establishment of the Council under the Education

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Act, the Department of Education and Science agreed a staffing structure for the NCSE based on a proposal by a Departmental Planning Group. The functions of the Council, as then envisaged, were as follows:-

- A significant information dissemination, co-ordination and delivery role at local level in relation to special needs students.
- A research and policy advisory function to the Department of Education and Science.

Under the Education Act, 1998 the Department of Education and Science transferred the allocation of resources function for pupils with SEN to the Council in addition to the above. On establishment of the Council under the EPSSEN Act, 2004 on 1 October 2005, a wider list of general functions was applied. As the specific rights sections of the EPSSEN Act, 2004 are brought into force, a wide range of additional specific statutory functions will become the responsibility of the Council.

The Council had an original authorised staffing level of 98 consisting of 80 Special Educational Needs Organisers and 18 headquarters staff (see Table 6.5). The deployment of 80 SENOs on a nationwide basis to provide a local service to children with special educational needs and operate the allocation of additional resource policy means that on present student population figures each SENO has a caseload of about 500 students. If, however, the prevalence figures set out in Chapter 3 are applied, there will be a significant increase in the number of children who will have rights under the EPSSEN Act, 2004. This will require additional SENO posts and support staff.

	CURRENT LEVEL
Headquarters Staff	18
SENOs	80
Total	98
Actual (with Government restriction applied)	95.6

Table 6.5 NCSE Staffing, 2006

In addition, office accommodation will be required which will allow for the storage of records on children for the duration of their education – potentially as long as 14 years.

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The Council's functions relating to advising the Minister and to undertake research are implemented through the Council's research section. These functions provide an important role as they support policy development and improvement of practice. At present, the Council has one research post at Principal Officer level. There is no other research support available in-house. This in effect means that most research must be outsourced. However, outsourced research has to be managed, guided and directed. The current arrangements in that regard are not sustainable. The range of duties of other staff is evolving and growing with every increasing statutory obligation in relation to accountability and transparency.

As the present staffing levels for the Council were determined on the basis of a 'guesstimate', without any systematic evaluation or clear view of the extent of responsibilities and functions or, indeed, of the practicalities of operating a national service of this nature, the Council proposes to undertake, with immediate effect, a professional review of its staffing, accommodation and system needs. It is proposed that this review will address current and future needs in the context of the full implementation of the Act. In the immediate term, the Council requires the addition of 5 new SENO posts 2 additional research staff and 2 administrative posts to supplement existing staffing levels as a matter of urgency.

Additional specific functions, over and above the current heavy workloads, which the Council will be required to address as the Act is implemented include:

- Arranging assessments.
- Responding to the HSE for assistance in relation to educational supports.
- Co-ordinating approaches to service delivery between the education and health sectors in respect of persons with disabilities.
- Providing professional support, advice and guidance to schools in implementing inclusive education.
- Designating schools under Section 10 of the EPSSEN Act, 2004.
- Participating in the Appeals system.
- Record keeping and storage of files.

Without a thorough, professional and independent review of its needs, it is difficult to estimate the costs associated with the capacity-building required in the NCSE infrastructure but existing budgets indicate that the operations of the Council may be widened further under the Department

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of Education and Science multi-annual budget for disability which will incur increased spending in this area of about €30 million by 2009. The Council recommends that part of this budget should be allocated for the appointment of additional staff to the NCSE. The employment of each additional 50 SENOs would cost about €2 million per annum.

6.8.2 Professional Input and Availability

The Council's view is that the implementation of the EPSEN Act, 2004 will require an enhanced infrastructure in the educational psychological service and in the supports provided by health professionals.

In its consultations on the issue, the Council concurred with the view expressed by NEPS that, for effective operation of an educational psychological service, not more than 65% of a Psychologist's time should be devoted to assessment work with the remaining 35% being available to advise and support schools. This work ordinarily includes:

- Supporting class teachers where necessary in accommodating pupils' special educational needs in the classroom.
- Supporting class teachers and supporting teachers in intervening appropriately with pupils' behavioural difficulties.
- Supporting Learning Support/Resource teachers in identification of needs and appropriate intervention for pupils within the school's resources.
- Building on training from the PCSP, SESS, SDP and others to empower teachers to build inclusive schools for their particular population of pupils given their particular circumstances and staffing.

All of these tasks will be even more important if the recommendations concerning the staged approach to assessment (identified earlier) are implemented. The Council considers that the likely demand of additional educational psychologists over the next five years will be in the region of 400 (1 for every 10 schools) – which will require an additional 280 posts.

It is recommended that an immediate campaign should be undertaken with a view to recruiting additional educational psychologists by September 2008 with an intermediate target of having a full national coverage with a minimum of 60 additional Educational Psychologists in place before September 2007. There are about 40 psychologists currently on a panel in the Public Appointments

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Service who have been interviewed and deemed suitable for posts in NEPS. The Council's view is that immediate steps should be taken to offer posts to these psychologists. In addition, administrative staff will be required to support the additional psychologists appointed.

One of the difficulties in recruitment at present is that there is a shortage of suitably qualified educational psychologists. Approximately 8 Educational Psychologists per year are trained in UCD and a similar number is trained in Queen's University Belfast. It is expected that another course will be established in University of Limerick in the coming years, but there is an expectation that demand will continue to exceed supply – particularly as the HSE will also be recruiting psychologists to build capacity to deliver on the EPSSEN and Disability Acts.

The Council recommends that the HEA should urgently undertake steps to ensure that sufficient places are provided in third level colleges to address the demand levels for educational psychologists. The professional body for psychologists (Psychological Society of Ireland) requires that a trained educational psychologist has two years postgraduate training at Diploma/Masters level. This is likely to have implications for recruitment and for the numbers of psychologists available for recruitment. The Council recommends that efforts to secure additional psychologists at home should be supplemented by international recruitment as necessary. The efforts of NEPS and the HSE should be co-ordinated in this regard. Further demand for educational psychologists will be driven by the need to resource the VEC's psychological service, to extend the NEPS service to special schools/classes and for verification of increased requests for reasonable accommodations for students sitting the State examinations.

There will also be considerable demand on health service professionals to provide for the needs of those with special educational needs. The health sector estimates that to provide assessments and supports to comply with the standards and within the timeframes of the EPSSEN Act, 2004, that it will require increases across a range of professionals including psychiatrists, physiotherapists, speech and language therapists and occupational therapists. As with the supply of educational psychologists, there are major issues arising in relation to the supply of these professionals although some preliminary work has been done to address this. For example, there has been a trebling of the numbers on Occupational Therapy courses in recent years so that about 120 places are offered where only 40 places existed before. While recognising that it is a matter for decision by government, the Council strongly recommends that the employment ceiling for public sector numbers must be modified in

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the case of these therapies to meet the demands of children with special educational needs. The manner in which therapeutic supports are provided will be a matter for the HSE; the Council will work closely with HSE staff on the ongoing identified needs of those with special educational needs and how their health needs can be supported.

Of particular concern to the Council is the need to develop the infrastructure for early intervention in which the needs of each young child can be picked up on and addressed at the earliest stages in that child's life. The HSE will be providing assessments for, and services, to 0 to 5 year olds with disabilities with effect from 1 June 2007 and maintaining services to those children as they move through the education system which indicates some provision for this cohort. However, as the progressive provision of assessment and services to the 0 to 5 year olds in 2007 would only provide that level of service to all in the 0 to 8 age group by 2010 it is clearly insufficient to meet the requirements of the EPSSEN Act, 2004 which requires the availability of assessment and services to all in the 0 to 18 age group by 1 October 2010. The current proposals in relation to the implementation of the Disability Act will therefore, need to be reconsidered in the light of the needs of the EPSSEN Act, 2004.

6.8.3 The School

The various requirements of the Act impose specific responsibilities on School Principals, Teachers and Boards of Management. It is the view of the NCSE that the staffing structures in schools must reflect the demands placed on it by the legislation and the increased emphasis on inclusive education including the school-based assessment and the IEP process noted above. The Council's view is that a special educational team approach will be required in schools so that responsibility for key actions will be undertaken by those who have a level of leadership, qualifications and competence in the provision of special education programmes. Such structures will be required in schools to allow for opportunities for the Principal to delegate functions under the Act as is provided in Section 18 of the EPSSEN Act, 2004. At primary level, the special education team is likely to consist of the class teacher, the learning support/resource teacher and the SNA with input as required from the Principal, from the SENO, from NEPS and from health service professionals. The required regime in second level schools will require further examination and discussion with the relevant stakeholders. The release in the near future of the DES guidelines on inclusive education at second level will assist this process.

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The Council recommends that consideration be given to the allocation of SEN Programme Co-ordinator posts within schools. In larger schools, consideration might be given to a full-time co-ordination post while smaller schools should be clustered to share this resource. The issue of time for non-class activity, internal staff meetings, assessment and IEP meetings with external staff and parents needs to be addressed. The issue of the normal duties of a teacher outside of actual class contact will come to the forefront in determining how this time for non-class activity can be addressed and what additional resources are required. It is likely that additional teaching posts will be required within the system to meet this demand (see discussion on assessment and IEPs above). The precise additional supports needed in schools, and the most appropriate means of providing the required resources, should be a matter for early discussion between the DES, (in consultation with the NCSE) the school management bodies and the trade unions.

Section 14 of the Act requires of Boards of Management that an inclusive education environment is promoted, fostered and implemented in schools through a range of specific actions. These actions will have to be effected through the teaching staff in the school and will require processes to be established in schools to ensure the Act is complied with and that all staff, through staff meetings or otherwise, have non-class time available for these activities. The provision of accurate and timely information on children with special educational needs, and on programmes being provided by the Council, will also place additional demands on schools. In this regard, the Council's development of a Special Education Administration System (SEAS) as a database on all children with special educational needs is timely. It is intended that, in later development phases of the SEAS project, the system will be enhanced to support schools to provide information in a user-friendly format.

In addition to human resources requirements noted above, much work is still needed to upgrade the existing stock of school buildings to make them accessible. A survey by AHEAD in 2003⁷⁵ found that only 17% of second level school principals considered their premises to be fully accessible.

⁷⁵ AHEAD, 2003.

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6.8.4 The Special School Sector

As noted in Chapter 2, a major review of special schools/classes is underway and the NCSE will play a key role in its completion. The Council's views are that the review will need to address the following key issues:

- The traditional role of the special school and the concept of inclusion. While not mutually exclusive the concepts of inclusive education and of special classes/special schools will pose challenges in implementing the provisions of the EPSSEN Act, 2004.
- The concept of a right to the same benefits as their peers in relation to inclusion from education is not one that has traditionally been recognised in policy formulation in this arena.
- The education system will be more challenged than ever, in terms of how to respond to the statutory requirement to provide an inclusive, appropriate and outcome-focused service to children with complex and/or multiple disabilities.
- Sectoral capacity building to implement the EPSSEN Act, 2004 will need to recognise the resources, skills and expertise available within the special schools sector and new thinking will be needed to harness these.
- The concept of access to the curriculum (at first and second levels) and the issue of certificated outcomes from education for children with SEN will require particular consideration in the context of the traditional role of special schools.

6.9 IMPLICATIONS FOR FUTURE DEVELOPMENT

6.9.1 Implications for Policy and Provision

The Council, in setting out its views in relation to the Act and its implementation, had particular regard to the implications that the rights-based provisions will have in relation to the range of services and resources required.

The production of an IEP for each child with special educational needs carries with it, the assumption that the needs identified will be met. This will require planning and increased levels of resources on the part of the government to address any existing shortfalls. The Council will continue to work proactively to highlight elements of policy that require change or amendment so that the full spirit

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and intent of the Act can be realised.

Not all of the Council's recommendations will require additional resources. Resources which already exist may be deployed differently. For example, as the inclusive model develops and gains credence, the costs of school transport for those with special educational needs may well decline. Equally, the change in the allocation of SNAs from one where they are allocated to an individual to one where they are viewed as a shared resource has already resulted in a levelling off in the number of new SNAs in the system at primary level. However, as more and more children with SEN progress to second level and beyond, the whole issue of the role and quantum of SNAs will need to be reconsidered. It is the Council's intention to undertake a review of the role of SNAs and their work within schools early on in the implementation phase. This will include reviewing the continued appropriateness of the care model on which current SNA allocations are based.

Similarly, the increases in teacher numbers to support the Council's recommendations in relation to assessment and IEPs will result in better pupil teacher ratios and in a better schooling infrastructure. In addition, it is likely that special schools will take on a different role vis a vis provision for children with special educational needs and may act as models of good practice with regard to staffing and provision. The work of the Council in the Review of Special Schools will, it is anticipated, provide data on where the special school sector will be placed in the future.

6.9.2 Implications for Parents

One of the key objectives of the Act is to ensure that parents have a more active role in the education of their children. A recent research report described the experience of parents: *"when a family finds out their child has a disability, they enter the world of special education which has its own terminology, rules, settings and personnel"*.⁷⁶ The provisions of the Act in relation to parents' rights and entitlements have been described as comprising both 'passive entitlements' and 'active entitlements'.⁷⁷ Examples of passive rights include the right to be given information and the right to be consulted, while the active rights include the parents' right to request an assessment for their child, the right to initiate appeals on behalf of their child and the right to participate in decisions

⁷⁶ Hess, R., Molina, A. and Kozleski, E. 2006.

⁷⁷ Meaney, M., Kiernan, N. and Monahan, K., 2005.

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of a significant nature about their child's education. The Council will work to ensure that parents will be given the information and support they require so that their child's needs are addressed. SENOs will play a pivotal role in this regard.

6.10 ACTION PLAN FOR IMPLEMENTATION OF EPSSEN

On the basis of the foregoing conclusions, the Council has developed its Action Plan (Table 6.6 at the end of this chapter) to facilitate the implementation of the EPSSEN Act, 2004. The Action Plan sets out, in chronological order, the actions which need to be taken to facilitate the implementation of the various sections of the Act not yet commenced as well as ensuring that there is a continued improvement in the service delivery pending the actual commencement of the particular sections of the Act. The adoption and implementation of this Action Plan will facilitate the commencement of the entire EPSSEN Act, 2004 as set out in the associated EPSSEN Act, 2004 Commencement Schedule. In summary, the key elements of the Plan are:

- By the end of 2006, work will have begun on the standards for assessment, for the review of staffing in the NCSE, and for recruitment of educational psychologists to support teachers and schools. In addition, the Appeals Board will be appointed and SENOs will be trained in the IEP process. Progress will also have been made on the health supports needed in accordance with the Health Sectoral Plan for implementation of the Disability Act as well as on coordination of the inputs of the education and health sectors in relation to the implementation of both Acts.
- In 2007, training will be commenced for schools on inclusive education in all its aspects and guidelines on appeals, assessment and designation of schools will be issued. Liaison officers will be designated and additional staff recruited to the NCSE. Further progress will be made on the implementation of the health sectoral plan and some joint training of health and education sector personnel will take place. Additional resources will be made available to schools.
- Given that much of the planning work will have taken place in 2006/7, in 2008 and 2009 the statutory entitlements set out in the Act will be progressively implemented. This includes entitlement to assessment, IEPs and to an appeal. Further additional resources will be allocated.
- In 2010, the development of services and the appointment of additional support staff will continue and resources will be provided at full capacity to meet the needs of those with special educational needs.

The action plan sets out the key actions needed, who will undertake them and when. The Council's view is that, if each of these steps is taken, in the sequence identified, then commencement of

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the provisions of the Act can take place in a seamless fashion. Implicit in the plan is the need for cooperation and coordination between the Departments of Health and Children and Education and Science and good working procedures between the NCSE and the HSE. This process has already commenced and will require further specific actions to take place supported by appropriate investment and resources.

Table 6.7 at the end of this chapter develops the approach set out in the Council's Action Plan by formally identifying the particular Section of the Act that is to be implemented and the proposed commencement date for that Section. As can be seen from the table, a lot of the substantive rights-based provisions of the Act will not have statutory effect until the latter end of the implementation phase. However, a broad range of non-statutory provisions are proposed by the Council which are designed to improve services and their delivery in the interim between now and commencement. The Council's view in this regard is that formal commencement of the Sections of the Act should only take place when the necessary policies, systems, training and resources are in place. Providing statutory entitlements to non-implementable rights would, in the Council's view, be futile and lead to further frustration and potentially adversarial recourse to the Courts. However, the Council is equally of the view that considerable progress can, and must, be made in improving service provision to children as part of a progressive annual evolution towards formal commencement of the EPSSEN Act, 2004 provisions. Such pragmatic annual progress will need to focus on areas as policy change, training and upskilling of personnel, defining and putting in place, progressively, the assessment and IEP processes, establishing the appeals and mediation regimes, allocating appropriate resources, building capacity in schools to deliver inclusive education, improving the participation of parents and shifting the funding and accountability mechanisms for SEN provision to reflect better the delivery of outcomes for children with SEN.

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6.11 COSTS AND BENEFITS OF IMPLEMENTING THE EPSSEN ACT, 2004

In the remaining parts of this chapter we provide estimates, in as specific a manner as it is possible to do so at this juncture, having regard to the caveats set out in par.6.1 above. We deal firstly with the estimates of resources required on the education side. We then deal with the estimates of resources required on the health side. In relation to the estimates on the health side we rely on information and data in relation to requirements provided to us by the Department of Health and Children and by the HSE.

6.11.1 Education Sector Estimate of Costs

In setting out our estimates of costs on the education side, we deal in the first instance with our views and recommendations in relation to additional provision in 2007. We then deal with the likely additional resource requirements in the period 2008 to 2010. We deal separately with the year 2007 because much of the preparatory work, including necessary discussion with key stakeholders, will take place during 2007. As a consequence, the estimated provisions for 2007 will not reflect full year costs under any of the relevant investment headings. In 2008, 2009 and 2010 there will be a progressive need to provide for the full annual costs of additional resources required to implement the EPSSEN Act, 2004 in full.

6.11.2 Estimates on the Education Side for 2007

Table 6.8 below sets out our views and recommendations on the additional resources requiring to be provided on the education side in 2007.

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AREA OF INVESTMENT	ESTIMATED ADDITIONAL PROVISION REQUIRED IN 2007 € m	KEY ASSUMPTIONS INFLUENCING ESTIMATED PROVISION
Pre-School Provision for Children with SEN	0.25m	Development of proposals for a comprehensive pre-school service and to expand provision.
Additional Supports for Inclusive Education at School Level	4m	Begin to provide additional posts including leadership posts in schools.
Inclusive Education Support Framework – Educational Support Service Development	3m	Begin to recruit additional staff in NEPS, NCSE and DES to support implementation of the Act.
Training and Development	4m	Supplement existing in-service training for teachers with particular training on inclusive education.
Education and Health Sector Collaboration	0.5m	Support for improved collaborative processes in policy formation and service delivery between the Health and Education Sectors.
Appeals and Mediation	0.5m	<ul style="list-style-type: none"> • Establish Board. • Develop Procedures. • Agree Operational Protocols.
Educational Progression	0.5m	Begin process of developing educational progression pathways for children with SEN.
Outcome of Reviews	0.5m	Provide means to begin to address the implications which may arise from current reviews of Special Schools and Deaf Education.
Further and Continuing Education	0.25m	Review and commence development of educational progression/certification for children with SEN.
Research	0.5m	Establish structure for better co-operation in SEN related Research between NCSE, Health Sector and Third Level Education
Total	€ 14.0m	

Table 6.8: Additional Resources 2007

The nature and extent of expenditure in 2007 will be heavily dependant on the outcome of key discussions which will need to take place during the remainder of 2006 and into 2007. These discussions, which will be necessary to develop a consensus on key matters impacting on the implementation of the EPSSEN Act, 2004, will need to take place on a number of levels to include:

- Discussions between the NCSE and the two key departments involved viz Education and Science and Health and Children.
- Discussions at the level of the cross-departmental implementation group established to coordinate implementation of the EPSSEN and Disability Acts.

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- Discussions between the two key departments and their respective agencies.
- Discussions with the partners in education.
- Discussions with voluntary sector service providers and other key stakeholder groups.

There is an extensive range of issues to be discussed at these fora. This will include but will not necessarily be confined to:

- Assessing the appropriateness of current funding and allocation policies to the needs of the EPSSEN Act, 2004.
- Developing a non-duplicative approach to assessment, IEPs and service plans having regard to the requirements of the EPSSEN Act, 2004 and of the Disability Act and developing a model of co-working between the health and education sectors in that regard.
- Developing a consensus on the inclusive school at primary and post-primary levels and its implications.
- Progressing pre-school provision.
- Assessing the implications for young adults with SEN beyond 18 years of age.

Given the extensive and fundamental nature of the discussions which will need to take place following the submission of this Implementation Report, it is inevitable that our estimates of additional expenditure on the education side in 2007 are tentative. It may well transpire that some of the expenditure envisaged by us for 2007 will be carried over into 2008.

6.11.3 Estimates on the Education Side 2008-2010

Our estimates of additional expenditure on the education side for the years 2008, 2009 and 2010 are set out in Table 6.9 below.

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AREA OF INVESTMENT	2008 €	2009 €	2010 €	KEY ASSUMPTIONS INFLUENCING ESTIMATED PROVISION
Pre-School Provision	10m	15m	20m	<ul style="list-style-type: none"> Pre-school. Provision will be provided for all 3-5 year olds with SEN. Methods of delivery to be agreed between the Departments of Education & Science and of Health and Children.
Additional Supports for Inclusive Education at School Level	35m	65m	90m	<ul style="list-style-type: none"> Additional supports to be provided to schools to enable all schools to undertake their full obligations under the EPSSEN Act. Supports to include additional posts, leadership posts, care supports, equipment and assistive technology.
Inclusive Education Support Framework – Educational Support Service Development	18m	25m	30m	Additional staffing to be provided to: <ul style="list-style-type: none"> DES including the Inspectorate. NEPS NCSE SESS
Training and Development	10m	15m	20m	<ul style="list-style-type: none"> Provision of SEN focussed inclusive in-service training for all teachers. Comprehensive in-service training for all school management and staff. Provision of information and guidance for parents.
Education and Health Sector Collaboration	1m	1.5m	2m	Investment in collaborative processes in the areas of: <ul style="list-style-type: none"> Joint Working. Communication. Assessments. IEPs. Policy Formation.
Appeals and Mediation	1m	2.5m	4m	Adequate resources to meet the requirements of the EPSSEN Act in relation to Appeals and Mediation.
Educational Progression	1.5m	2.5m	4m	Resourcing the: <ul style="list-style-type: none"> NCCA SEC NQAI to provide education progression paths for children with SEN.
Outcome of Reviews	.5m	1.5m	2m	Resource implications arising from reviews such as those commenced for Special Schools and Deaf Education.
Further and Continuing Education	.5m	1m	2m	Development of further and continued supports for children with SEN: <ul style="list-style-type: none"> Third Level. Special Training. Lifelong Learning.
Research	.5m	1m	1m	Development and co-ordination of SEN Research function in NCSE, Health Sector and Third Level Education.
Total	€78m	€130m	€175m	

Table 6.9 – Additional Resources 2008-2010

The actual costs in the years 2008, 2009 and 2010 will move progressively towards full annual costs.

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6.11.4 Health Sector Estimates of Costs

The health service has a key role to play in the implementation of the EPSSEN Act, 2004. The interdependence of the health and education sectors in the implementation of current legislation relating to persons with a disability (i.e. the EPSSEN Act, 2004 and the Disability Act, 2005) was highlighted in the Health Sectoral Plan under the Disability Act 2005, published by the Department of Health & Children in July 2006. The plan stated that “the arrangements for the implementation of one Act cannot be considered in isolation from the arrangements for the other, as the same health service staff, mainly in the areas of disability and mental health services, will be called upon to provide assessments and services under both Acts.” (p.58).

It is clear that the arrangements for the implementation of the EPSSEN Act 2004 and the Disability Act 2005 will have significant resource implications for the health services. The arrangements for the implementation of both Acts will also have considerable implications for workforce planning for the health services, and in particular the disability and mental health services, for years to come.

In the health sector, posts funded under the National Disability Strategy in the last two years have been additional to the previously approved staffing levels with consequent adjustment to the approved employment ceiling for the health services. This has facilitated both the delivery and monitoring of agreed service developments in the disability and mental health services.

While not underestimating the challenges that lie ahead, significant steps have been taken to date in the health sector to meet these challenges. These include:

- The Government’s commitment, through the Multi-Annual Investment Programme for 2006 - 2009, to progressively address identified needs.
- The increased availability over the coming years of key allied health professional personnel as a result of additional training places.
- Targeted recruitment drives in Ireland and internationally which are planned for 2006 and 2007.
- Measures which have been taken in relation to retention of personnel and enhanced career progression.
- The establishment of a joint workforce planning group between the Department of Health and Children and the HR Directorate of the HSE to ensure appropriate and integrated workforce planning activity.

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- Measures to address skill mix issues and to ensure that appropriate education is provided to Physiotherapy, Occupational Therapy, Speech and Language Therapy and Rehabilitation Assistant grades which were established in June 2005.

While it is acknowledged that there is a need to further enhance capacity, it is also important to acknowledge the very significant existing level of expenditure on health services for people with disabilities. Investment in services for people with disabilities has been prioritised in recent years by the Government. Overall approximately €2.4 billion is spent annually by the health services on disability programmes.

The Government's Multi-Annual Investment Programme 2006 -2009 is a programme of revenue and capital expenditure, amounting in total to around €900m, on specific disability support services. The bulk of this funding, around €720m, is being spent in the health services. In addition to health funding, the Multi-Annual Investment Programme also provided for additional revenue expenditure of €82m by the Department of Education and Science in relation to a range of services.

The Sectoral Plan of the Department of Health states that, in relation to the cohort of school-going children aged 5-18, both the EPSSEN Act, 2004 and the Disability Act will be implemented in tandem. Consequently, it is difficult to disaggregate the costs for the health service of the implementation of the EPSSEN Act, 2004 from those associated with the implementation of the Disability Act. Planning is now underway in the Health Service Executive (HSE) to enable it to meet its obligations in respect of children aged 5-18 under both Acts by 2010.

In order to provide health-related support services to school-going children aged 5-18, and to meet the requirements of the Disability Act, a nation wide network of geographically-based multi-disciplinary teams for children's services will be required. These teams would include the core disciplines of psychology, speech & language therapy, occupational therapy, physiotherapy and other health professionals as required. Based on the prevalence rates suggested in this report, the HSE estimates that one team per 50,000 population would be required to provide the optimum level of service, at a cost of €750,000 per team. This equates to 80 teams in total, at a total additional cost to the health service of €60m over the period 2007-2010.

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It is estimated that these costs will be incurred incrementally over the period 2007-2010, because the recruitment and establishment of the teams will have to take place over time. Provision is being made by the HSE in its estimates submission for 2007 to commence the development of capacity in services for school-going children, including providing support within Primary Care Networks. Provision is also being made, in line with commitments in the Sectoral Plan, for the commencement of Part 2 of the Disability Act for children under 5 years from June 1st 2007.

In addition, the HSE has indicated that it will be necessary to ensure that the resources already identified for the Child and Adolescent Mental Health Services are in place to provide additional support generally and to meet needs of children identified under the Disability Act 2005 and EPSEN Act 2004. The costs associated with these additional supports in the Mental Health Services have been estimated at around €17m and include 12 Multidisciplinary Child and Adolescent Liaison Teams, Health Promotion Resource Officers and funding to support courses to ensure the supply of appropriately qualified personnel for the services.

6.11.5 Benefits of Implementing EPSEN Act, 2004

While the costs of implementing the provisions of the Act are high, the Council's view is that these need to be weighed against some benchmark benefits which will result from the enactment of the legislation. In summary these benefits include:

- All schools will reflect an inclusive approach to the provision of education.
- All children with special educational needs will have assessments of need.
- All children with special educational needs will have an individual education plan which will set out the priority learning needs and goals to be achieved for that child.
- All children will be treated equitably.
- All schools and teachers will be resourced to meet the needs of children with special educational needs.
- All parents will be satisfied that the needs of their children are being served by the school.
- Opportunities for appeal in relation to any of the provisions of the Act will be available.
- Appeals to the Courts will be reduced.
- A vibrant infrastructure of school-based personnel and resources will be available at local level.

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- Designated outcomes, in line with those available to their peers, will be delivered in respect of children with SEN.
- Children with SEN will be facilitated to progress to further and continuing education and training.
- Children with SEN will be facilitated to acquire the skills and competencies to live meaningful, fulfilled and independent lives in the community.

The Council, in presenting its proposals on the implementation of the EPSSEN Act, 2004, notes that the proposals represent the most cost-effective approach to addressing special educational needs. A failure to invest in this kind of approach will result in parents seeking that the rights of their children be met through the courts.

6.12 SUMMARY AND CONCLUSION

In this chapter, the Council has set out its plan for the implementation of the EPSSEN Act, 2004. The Council proposals are based on its understanding of the task ahead and on estimates provided by organisations such as NEPS and the HSE as well as from its consultation with key stakeholders. The Action Plan presented by the Council is ambitious as it provides for the commencement of the rights based provisions of the Act by the end of 2009. The Council's view is that these provisions cannot wait until the end of the five-year implementation phase. Much needs to be done in the intervening period to ensure that the framework for delivery of the provisions of the Act is put in place.

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ACTION	BY WHOM	WHEN
1 Undertake research, commence dialogue and develop thinking on: <ul style="list-style-type: none"> • Pre-school provision. • Inclusive schools. • Assessment and IEP processes. • Funding models for SEN provision. • Allocations process. 	NCSE, DES, DHC, HSE and other key stakeholders.	Commencing November 2006 and continuing throughout 2007.
2 Commence Section 5(5) to establish Standards Body.	Minister for Health and Children Minister for Education and Science	December 2006
3 Commence Section 13 of the Act in relation to provision of funds by Ministers for Health and Education.	Minister for Education and Science Minister for Health and Children	December 2006
4 Commence Staffing Review of NCSE.	NCSE with agreement of DES and D/Finance	December 2006
5 Appoint Members of Appeals Board.	DES	December 2006
6 Begin discussions with School Management and Unions regarding the resource provision for the implementation of the EPSSEN Act, 2004.	DES	December 2006
7 Begin recruitment campaign for educational psychologists.	NEPS/DES	January 2007
8 Revise the NEPS Scheme for Commissioning Private Assessments.	NEPS/DES	January 2007
9 Train all SENOs on IEPs	NCSE	By March 2007
10 Provide in-service training on IEPs	SESS/NCSE	From January 2007 to September 2008
11 Agree protocols for appeals	Appeals Board/NCSE/HSE	April 2007
12 Clarify circumstances in which NCSE will arrange preparation of IEP	NCSE	April 2007
13 Develop and issue Guidelines to schools regarding operation of Section 10	NCSE	May 2007
14 Review of NCSE staffing completed and implementation process agreed.	NCSE/DES/Department of Finance/Unions	May 2007
15 Publish agreed Standards for Assessment	HIQA/Dept of Health and Children	May 2007
16 Designation of Liaison Officers and agreement of operating arrangements	NCSE/ HSE	June 2007
17 Issue Guidelines to School Principals regarding standards for assessment	NCSE	June 2007
18 Begin recruiting additional staff for NCSE	NCSE	June 2007
19 Agree protocols for communication between schools on transfer of students	NCSE/School Management/Teacher Unions/Parents' Councils	June 2007
20 Commence Section 10 of EPSSEN Act	Minister for Education	June 2007
21 Agreement on new staffing arrangements for schools for implementation of EPSSEN Act	DES/School Management/ unions	September 2007
22 HSE to provide assessments as required by Act for 0-5 year olds	HSE	September 2007

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ACTION	BY WHOM	WHEN
23	IEPs to be provided for all children with SEN assessments entering Primary School	Schools/NCSE/NEPS/HSE
24	New staffing arrangements begin to be implemented in schools	DES
25	Additional NEPs Psychologists in post.	NEPS and DES
26	Undertake research on and strengthen understandings of SEN prevalence rate and its implications	NCSE, SESS, DES, Colleges of Education, DHC, HSE etc
27	Guidelines for schools regarding operation of Section 3 of EPSSEN Act	NCSE and NEPS
28	Preparation of detailed regulations on mediation	DES
29	Develop Modular programme of pre-service and in-service training and development for teachers, school management and leadership, NCSE, NEPS, HSE on inclusive education.	NCSE, SESS, DES, Colleges of Education, Third Level Colleges, DHC, HSE, etc.
30	Formal reviews and reports on implementation progress	NCSE Cross-departmental Implementation Group
31	Provide information to schools re requirements of the EPSSEN Act	NCSE
32	NCSE full staffing complement appointed	NCSE
33	IEPs to be provided for all students in first year second level	Schools
34	Provision of IEPs for all children in Primary and Special Schools on the basis of the available assessment	Schools/NCSE/NEPS/HSE
35	Provision of IEPs for all children in Second Level Schools on the basis of the available assessment	Schools/NCSE/NEPS/HSE
36	Draw up and implement procedures for future planning for students leaving school	NCSE/School Management/Teacher Unions/Parents' Councils
37	HSE Supports for school going children up to 10 years in accordance with Act.	HSE
38	Complete recruitment of additional NEPS Psychologists	NEPS
39	Complete resourcing of schools	DES
40	Complete resourcing of HSE	HSE/ Dept Health and Children
41	Provision of Health Services to children with SEN and their families to support the participation of these children in IEPs	HSE
42	Annual Review and Progress Reports on Implementation	NCSE Cross-departmental Group

Table 6.6: Action Plan and timetable for steps necessary to allow the commencement of the EPSSEN Act in accordance with the proposed schedule

A PLAN FOR IMPLEMENTING THE EPSEN ACT, 2004

SECTION TO BE IMPLEMENTED	ACTIONS NEEDED TO FACILITATE IMPLEMENTATION	BY WHOM	WHEN	Proposed Commencement dates for Act
Section 3 Preparation of education plan by school (including steps preliminary to such preparation)	1. Notice to School Principals regarding action to be taken on being notified by parents or otherwise forming the opinion that a student is not benefiting to the extent expected from the education being provided (Section 3(1)).	NEPS/NCSE	September 2007	
	2. Issue of Guidelines to Principals as to matters that should be taken into account in deciding whether to arrange an assessment or to request the Council to arrange an assessment. (Section 3(8)).	NCSE	September 2006	
	3. Establish Body to determine the standards that assessments under the Act must conform to (Section 5(5)) and publish these standards.	Minister for Health and Children	December 2006 to May 2007	
	4. Prepare and issue Guidelines to Principals in relation to the standards for assessments and the composition of assessments teams (Sections 5(1), 5(5)).	NCSE	June 2007	
	5. Recruitment of sufficient professional personnel to enable assessments in accordance with the set standards to be completed within the timescales set out in the Act.	Minister for Education & Science Health Service Executive	To begin immediately and full complement of required staff to be in place by September 2008	
	6. Issue of Guidelines to Principals/Schools regarding the preparation of IEPs.	NCSE	Done - September 2006	
	7. Provide training to Principals and teachers on the preparation, monitoring and review of IEPs.	SESS	Beginning Jan 2007 completed September 2009	
	8. Review staffing requirements in schools to ensure that teachers have knowledge and time to deliver education plans within time scale.	DES	Begin December 2006 To September 2007	
	9. Appoint additional staff to schools.	DES	September 2007 to September 2009	
	10. Clarification of the circumstances in which an IEP will be prepared under direction of the Council and issue of notification to schools.	NCSE	June 2007	
	11. Appointment of the Appeals Board and clarification of the appeals process.	DES/ Appeals Board	December 2006 to May 2007	
	12. Agree standards of assessment and composition of assessment teams – see 3 and 4 above.	Minister for Health & Children	May 2007	
	13. Appoint sufficient appropriate professionals to deliver assessments and supports within timescale – see 5 above. - Revised SCSA Scheme.	Minister for Education & Science, Minister for Health & Children	Begin Sept 2007 – September 2009	
Section 4 Assessment of child by or on behalf of HSE or Council				September 2009

table 6.7(a). Actions required to facilitate commencement of each section of the EPSEN ACT 2004, not yet commenced and proposed commencement dates

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SECTION TO BE IMPLEMENTED	ACTIONS NEEDED TO FACILITATE IMPLEMENTATION	BY WHOM	WHEN	Proposed Commencement dates for Act
Section 4	14. Appointment of the Appeals Board and clarification of the appeals process.	DES	December 2006 to May 2007	
Section 5 Mode of Assessment under Section 3 or 4	15. Agree standards for assessments and composition of assessment teams - See 3 and 4 above	Body designated by Minister for Health and Children NCSE	June 2007 June 2007	September 2009
	16. Clarify period which should be allowed to parents to provide consent before applying to Circuit Court for Order under Section 5(4).			
Section 6 Appeals in relation to Assessments	17. Commence sections 3, 4, 5, and appoint Appeals Board.	DES		September 2009
Section 7 Provision of Services	18. Appointment of additional professional staff, teaching staff and other support staff to provide the services required.	HSE Department of Health & Children/NCSE/DES	December 2008	September 2009
	19. Agreement of working protocols between HSE and NCSE.	HSE/NCSE Appeals Board NCSE, HSE	December 2007 November 2006 to February 2007	
	20. Appoint Appeals Board – agree operation procedures.			
Section 8 Preparation of Education Plan at direction of Council	21. Review and agree adjustments to the NCSE Staffing levels. Appoint additional staff.	NCSE/DES/ Department of Finance NCSE	December 2006 to September 2008 May 2007	Sept 2008
	22. Train all SENOs on preparation of IEPs.			
	23. Agree Guidelines for the composition of IEP Teams.	NCSE/HSE/Schools	June 2007	
	24. Consult with parents groups regarding arrangements for inclusion of parents.	NCSE	September 2007	
Section 9 Content of Education Plan	25. Issue Guidelines on the form of an IEP.	NCSE	Done	Sept 2009
	26. Develop and issue specific Guidelines in relation to provision for particular students.	NCSE/DES	June 2007	
	27. Agree protocols for communication between schools	NCSE	June 2007	
Section 10 Designation of School	28. Draw up guidelines in relation to the preliminary consultations and notification process of designation of schools	NCSE	May 2007	June 2007
	29. Agree appeals process with Appeals Board.	Appeals Board/ NCSE/HSE	February 2007	
	30. Provide information to schools on their obligations under the Act.	NCSE	February 2007	

table 6.7(a). Actions required to facilitate commencement of each section of the EPSEN ACT 2004 not yet commenced and proposed commencement dates

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SECTION TO BE IMPLEMENTED	ACTIONS NEEDED TO FACILITATE IMPLEMENTATION	BY WHOM	WHEN	Proposed Commencement dates for Act
Section 11 Review of Education Plan	31. Issue of Guidelines on IEPs. 32. Appoint Appeals Board. 33. Staffing issues to be addressed	NCSE DES DES	Done December 2006 September 2008	December 2009
Section 12 Appeals in Relation to Education Plans	34. Sections 3, 7, 9 must be in operation.	Appeals Board/ DES/HSE	September 2008	December 2009
Section 13 Duty of Minister and Minister for Health & Children to make resources available	35. May be implemented forthwith.	Minister for Education & Science and Minister for Health & Children	December 2006	December 2006
Section 14 Duty of Schools	36. Sections 14(1)(a), 14(1)(c), 14(2), 14(3), 14(4) already commenced. 37. Address school staffing issues. 38. Agree Protocols with schools on the exchange of information.	DES NCSE	September 2007 March 2007	September 2007
Section 15 Planning for Future Education Needs	39. Implement the IEP process as set out in the Act. 40. Address resource issues for the NCSE and schools in the overall context of the implementation of the EPSSEN Act, 2004.	NCSE/Schools/HSE	September 2009	December 2009
Section 16 Implementation of Relevant Education Policy by Health Boards	41. The Resource issues will need to be addressed.	HSE	September 2009	December 2009
Section 17 Liaison Officers	42. Protocols to be agreed.	NCSE/HSE	June 2007	June 2007
Section 18 Delegation of Functions of Principals etc	43. Adequate resourcing needs to be made available to schools to facilitate delegation. 44. SENOs need training on the provisions of the Act.	DES NCSE	September 2007 to September 2009	September 2009
Section 38 Provision of certain mediation services	45. Detailed regulations to be prepared.	DES	December 2009	December 2009
Section 39 Duty of Health Boards	46. Need for Protocols. 47. Resourcing of HSE	NCSE/HSE Department of Health	September 2008 December 2006 to December 2008	January 2009

table 6.7(a). Actions required to facilitate commencement of each section of the EPSSEN ACT 2004, not yet commenced and proposed commencement dates

A PLAN FOR IMPLEMENTING THE EPSSEN ACT, 2004

The EPSSEN Act 2004

SECTION	DATE OF COMMENCEMENT
Section 13 Duty of the Minister and the Minister for Health and Children to make resources available	December 2006
Section 10 Designation of School	June 2007
Section 17 Liaison Officers	June 2007
Section 14 Duty of Schools	September 2007
Section 8 Preparation of Education Plan at the direction of the Council	September 2008
Section 39 Duty of Health Boards	January 2009
Section 9 Content of Education Plan	September 2009
Section 3 Preparation of Education Plan by school (including steps preliminary to such preparation)	September 2009
Section 4 Assessments of child by or on behalf of HSE or Council	September 2009
Section 5 Agree standards for assessments and composition of assessment teams	September 2009
Section 6 Appeals in relation to assessments	September 2009
Section 7 Provision of services	September 2009
Section 18 Delegation of function by Principals etc	September 2009
Section 11 Review of Education Plan	December 2009
Section 12 Appeals in relation to Education Plans	December 2009
Section 15 Planning for future Education Needs	December 2009
Section 16 Implementation of relevant Education Policy by Health Boards	December 2009
Section 38 Provision of certain mediation services	December 2009

Table 6.7(b). Summary of Proposed Commencement Schedule

CHAPTER 7

CONCLUSION AND KEY IMPLEMENTATION CONSIDERATIONS

7.1 INTRODUCTION

There is a major road ahead in implementing the provisions of the EPSSEN Act, 2004, 2004 in an effective manner for the benefit of children with SEN and in accordance with the intent of the legislation. In some senses the core concept of inclusive education for all, which underpins the Act, is not new. Some will argue that the core rights associated with inclusive education go right back to the Constitution or that, at least, were dealt with it in the Education Act, 1998. And yet, neither under the Constitution, nor pursuant to the passing of the Education Act, 1998, have we succeeded in this country in putting in place an education regime which effectively meets the needs of all children with SEN. We are not alone in this. Governments, administrations and education regimes across the world have struggled with the challenges involved in special educational needs provision. There is no universally accepted model of best practice in relation to statutory underpinning for SEN provision, how best to fund it in an effective manner, how best to deliver it and how best to achieve value for money and effective outcomes for children with SEN from educational provision. While we can learn significantly from the experience of others, in truth, one would have to be able to mix and match features from different overseas models in order to put together an effective model of best practice for SEN provision.

Given its modernity, the EPSSEN Act, 2004 puts Ireland in the forefront of global models for statutory provision for meeting the needs of children with SEN. The challenge for all stakeholders now is to convert that leading edge statutory underpinning into an effective, properly funded and effectively operating regime on the ground. Only then will we have a world class SEN provision regime in place.

As with any new departure, it became clear to us, from the consultation processes involved in the preparation of this Implementation Report, that there are many fears and concerns as to how the system might unfold and as to how various stakeholder interests might be impacted. Some of these, as encountered by us, are based on genuine concerns, and some emanate from the fact that meeting the needs of children with SEN involves engagement with a multiplicity of stakeholder interests many of whom also have their own wider agendas. Some of these view the EPSSEN Act, 2004 as a difficult challenge and others see it as an opportunity to advance other agendas.

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It is appropriate, we believe, that, in our concluding remarks in submitting this Implementation Report, the Council should seek to address some of the more common fears and concerns which we have encountered. We do so in the paragraphs which follow below.

7.2 FUNDING

Ireland is generally regarded as being at the middle to lower ranking of developed countries in terms of investment in education at pre-school, primary, secondary and tertiary levels. Will implementation of the EPSEN Act, 2004 not mean that exchequer funding will be diverted from necessary investment in mainstream educational provision?

The Council's view is that this will not be the case. Firstly, government is committed in this area, and in relation to the disability agenda generally, to provide additional funding and not substitute funding. This is evidenced in the approach already in place for the multi-annual commitment to the funding of sectoral plans under the Disability Act. Secondly, as will be seen from this Implementation Report, the amount of additional investment needed to implement the EPSEN Act, 2004 is not unmanageable over a five year timeframe, in relative terms, given the overall envelope of spending on education. Thirdly, considerable investment has already been made in special education, especially in recent years. There is at least as big a challenge involved in ensuring effective deployment and utilisation of existing resources as there is in providing additional resources. Finally, not all of what needs to be done to implement the Act requires significant additional monies to be spent. Much will be achieved in changing cultures, attitudes, behaviours and approaches to meeting the needs of children with SEN.

7.3 PREVALENCE

Will the broad definition of SEN in the EPSEN Act, 2004 not lead to a prevalence figure which is unsustainable from the point of view of the resources that will be needed to service a higher prevalence rate?

The Council is confused by some of the feedback which it has received on the issue of prevalence. In effect, the prevalence rate is what the prevalence rate is and no amount of fears and concerns

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in relation to its articulation will change that fact. The Council's approach to prevalence, from the outset, has been to try to independently establish the cohort of the population on whom rights have been conferred by the EPSSEN Act, 2004. In this regard, we commissioned independent research to assist us in arriving at our prevalence figures. Some consultees, on becoming aware of the emerging prevalence rate, have reacted on the basis that it "seems high" without producing alternative verifiable data to support that view. It seems to us that many of the views expressed to us on prevalence are predicated on a number of misunderstandings and misconceptions amongst which are:

- The assumption that SEN prevalence equals disability prevalence and that a higher prevalence rate of SEN will trigger the need for automatic services to be provided under the Disability Act or under the current disability categorisations in current DES policies and circulars for SEN provision. This is not the case since there is no direct correlation between SEN prevalence and disability prevalence as defined in the Disability Act nor as previously understood within the education regime.
- The assumption that SEN prevalence means that every child falling within the SEN prevalence rate will require individual resources to be assigned. This is not the case and we expand later on the reasons why this is not the case in later paragraphs.

Many of the concerns expressed to us in relation to prevalence seem to relate to fears that various interest groups will opportunistically seize on the new definition of SEN in the EPSSEN Act, 2004, and on its associated higher prevalence rate, in seeking to advance their own agendas. We would caution against any such approaches on the basis that any such arguments will not bear up to objective scrutiny having regard to the Council's intent in relation to prevalence as articulated in this Implementation Report. Chapter 3 of this Implementation Report needs to be read carefully in that regard.

Much work remains to be done to advance our understandings of prevalence, to strengthen data on prevalence and to reach consensus on the implications of the SEN prevalence rate before definitive conclusions can be drawn. This will be a priority task for the Council in the period ahead.

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7.4 ASSESSMENT

Will every child with SEN need a “full-blown”, multidisciplinary assessment in accordance with the right to assessment under the EPSSEN Act, 2004?

No. The Council does not envisage the system evolving in that way. The Council’s intent is that through discussions with DES, DHC, NEPS and the HSE a regime of differentiated assessment will be put in place through development of the NEPS staged approach to assessment for children who are attending school and development of the HSE assessment regime for pre-school children. The intention will be to integrate both assessment regimes into a continuum of assessment, the differentiated elements of which will be triggered based on the actual presentations of SEN to be assessed. It is envisaged that this continuum of assessment will be reflected in the statutory right to an assessment and will be underpinned by assessment standards laid down by the body to be designated for that purpose, under the EPSSEN Act, 2004, by the Minister for Health and Children. Assessment, under the EPSSEN Act, 2004, will range from in-school assessment to out-of-school multidisciplinary assessment depending on individualised needs. There will not be a “one size fits all” approach to assessment.

7.5 INDIVIDUAL EDUCATION PLANS

Will every child defined as having SEN within the meaning of the Act require a highly detailed individual plan?

Again the Council’s view is that this will not be the case. It is the Council’s intent that the IEP process will mirror and complement the differentiated approach to assessment. There will be a range of IEP interventions which will be differentiated based on assessed need. IEPs, under the EPSSEN Act, 2004, will range from relatively minor adaptation of the curriculum through to highly developed individualised educational programmes. In the case of some SEN presentations a group approach to IEPs, with appropriate elements of individualisation, will be the appropriate response. Where appropriate, especially in the case of complex disabilities, the IEP process on the education side and the service plan process on the health side will need to be integrated in order to ensure coherent approaches to the implementation of the EPSSEN Act, 2004 and of the Disability Act.

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Much work now requires to be done to develop the assessment, IEP and service plan regimes, in consultation with all relevant stakeholders and interests, in order to develop effective models for meeting the needs and rights of children under the EPSSEN Act, 2004 and under the Disability Act. As will be evident from this Implementation Report, this is a process which has already commenced and which has been fast-tracked for attention in the early stages of the overall action plan for implementation.

7.6 INCLUSION

Is it realistic to expect that all schools can be truly inclusive?

The Council is aware of the considerable challenge involved in developing all schools as inclusive schools. Schools at present are not equally inclusive. In the Council's view, this is not a sustainable position if the EPSSEN Act, 2004 is to be effectively implemented. This Implementation Report provides for resources to be allocated, for training to be provided and for necessary supports to be put in place to develop all schools as providers of effective inclusive education. Potential alternative approaches whereby selected schools only would provide inclusive education and/or where alternative structures are developed to compensate for the fact that not all schools are inclusive are not sustainable. The Council is convinced that the inclusive school at all levels must be developed as the cornerstone of effective SEN provision if the EPSSEN Act, 2004 is to be meaningfully implemented.

7.7 SPECIAL SCHOOLS

Will the new approach to inclusive education mean the end of special schools?

A review of special schools is already underway. The intent of this review is not to herald the end of special schools. The Council is very aware of the fact that children with very complex needs will continue to require education. The intent will be to harness the skills, competencies and approaches developed over many years in special schools for dealing with a wide range of SEN presentations. The challenge will be to reconceptualise special education provision having regard to the concept of

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inclusive education in the EPSSEN Act, 2004. Special schools will be an important part of this equation. Indeed, the whole area of special schools, special classes and all instances in which education for persons with special educational needs is carried out separately from their peers will now need to be re-examined in the context of the EPSSEN Act, 2004 provisions. The Council would wish to reassure special schools that they should not feel threatened by this process. Rather does the Council see the advent of the EPSSEN Act, 2004 as a significant opportunity for special schools.

7.8 ALLOCATIONS

Will current allocation policies remain in place?

The Council would wish to see an evolution of policy in this area. Key issues to be addressed in this regard include the need to reconsider the elements of the allocation process which are based on a disability deficit approach, to re-think the current labelling and categorisation (and the attendant eligibility criteria thresholds involved) approaches and to reconsider the metrics underpinning current allocation policies in the light of this Implementation Report. The general allocation process at primary level and the learning support model at second level have been welcome developments in this area. The Council will be anxious to engage constructively with the DES on further evolution of allocation policies particularly in the context of supporting inclusive schools. Considerable further work is needed before any definitive proposals can be put forward for changes in allocation policies. The Council will engage with the issues involved as part of its policy advisory role.

7.9 BALANCE

Will the wider definition of SEN in the EPSSEN Act, 2004 mean that resources will be diverted from those with greater need in order to provide services to high volumes at the lower end of the special educational needs spectrum?

It is certainly not the intent of the Council that implementation of the EPSSEN Act, 2004 will evolve in this way. The Council appreciates that there is a danger that concentration on providing appropriate education for all children with SEN in inclusive settings could, if not properly managed, lead to a

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situation where the concentration is on the lower end of the special needs spectrum where the highest number of children with SEN present. The Council believes that this was not the intent of the legislature in changing the Education for Persons with Disability Bill into the EPSSEN Act, 2004. Priority must be given to ensuring that those with greatest need are not disadvantaged in the process. Resourcing, training and supporting inclusive schools to cater for children at the upper end of the special needs spectrum must remain a priority.

7.10 COMMENCEMENT

Does the timetable for commencement of the various sections of the Act mean children with SEN will not be provided with a service or services until the relevant section of the Act is formally commenced?

No. The Action Plan for implementation envisages phased implementation of all sections over the full implementation period (in fact, action has already begun in certain areas). Current service levels will be gradually improved and enhanced as resources come on stream and as training and development takes place. Priority will be given to maintaining and improving current services and to meeting the needs of children with the greatest level of SEN. Formal commencement refers to the stage in the process when the resources, training and other supports are fully in place to enable the statutory rights to be triggered on the basis of universal, guaranteed access to those rights for all children with SEN. Technical commencement of the various provisions in the Act can only happen when the capacity to deliver the various rights involved is in place.

7.11 CONCLUSION AND SUMMARY

It would be presumptuous of us to assume that the foregoing paragraphs deal satisfactorily with all of the fears and concerns which exist in relation to the implementation of the EPSSEN Act, 2004. However, we have attempted to deal with some of the more commonly expressed concerns brought to our attention during the preparation of this Implementation Report.

As previously stated, the Council views the submission of this Implementation Report as the

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beginning, rather than the culmination, of a process. Key elements of implementation have already commenced on both the education and on the health sides. We hope that this Implementation Report will now provide the framework for progressive action to ensure that the provisions of the EPSSEN Act, 2004 and of the Disability Act in relation to educational matters are put into effect within the required statutory timeframes.

The Council recommends that the Minister adopts this Implementation Report as an overall framework for implementing the EPSSEN Act, 2004. Much further work, analysis and discussion, especially with the key stakeholders involved, now needs to take place. In relation to many of the issues raised in this Implementation Report, there is no single “right” answer. In many instances, Council has put forward its views and recommendations in order to stimulate necessary discussions in areas where it would not be appropriate for it to be prescriptive nor definitive.

The Council considers that this Report should be put in the public arena as a means of facilitating dialogue with the many stakeholders and interests who have a stake in and a contribution to make to implementation of the EPSSEN, Act 2004, and proposes to publish it. When the Minister has had an opportunity to examine the report we would like to agree on the timing of such publication and the publicity that might surround it.

APPENDIX I

ABBREVIATED SUMMARY OF SUBMISSIONS

In October 2005, NCSE, as part of its consultation on the development of its Implementation Report, invited submissions from interested individuals and groups. This consultation was not a mandatory requirement. It took place as part of the NCSE's general approach of engaging in a wide public debate on the contents of its own Implementation Report. The call for submissions was issued in the national press and letters were also sent to key partners and voluntary and statutory bodies.

The focus of submissions was on areas in the Act; a suggested format for making submissions, in the form of ten questions, was provided. Almost all of the submissions followed this suggested format and were made in written form.

A list of those who made submissions is presented at the back of this summary. In total, 73 submissions were received. The table below provides a breakdown of those making submissions. As can be seen, the submissions came from a wide range of people and groups. Sometimes those writing the submission belonged to two categories e.g. parent and member of a voluntary body, or teacher and member of a national association.

CATEGORY	NUMBER	CATEGORY	NUMBER
Parents	9	Educational Psychologists	3
Parent Organisations	4	Assistive Technology Specialists	1
People with a disability	2	Occupational Therapists & Association	5
Associations of Management Boards	2	Speech and Language Therapists & Association	2
Pre-school Services	1	Multi-disciplinary Teams	3
Primary Schools	5	Third Level Institutions	1
Post-Primary Schools	3	Association of Complementary Medicine	1
Special Schools	3	Government Bodies	4
Teachers	3	Voluntary Bodies	12
Special Needs Assistants	1	Other	2
Teacher Organisations	6	Total Submissions	73

Table A.1: Categories of Persons who Made Submissions

There is a strong commitment in the submissions to improving the educational attainments of children with special educational needs. Some bodies consulted with members before making their submission, despite the very tight timetable. The submissions from larger organisations usually indicated that they

ABBREVIATED SUMMARY OF SUBMISSIONS

were well placed to do this, and to contribute to discussions on how facilities and resources might develop. They wanted NCSE to keep them informed and to continue to consult them.

GENERAL VIEWS

A number of general issues were raised. These included the need for:

- Formal joint planning arrangements especially between NCSE, the Department of Education and Science, the Health Service Executive and the respective health boards ⁷⁸, and the National Disability Authority.
- Investment in, and the development of, provision and support across the Education and Health sectors to meet assessed need under the Act.
- A national pupil database to inform decision-making at both macro and micro levels, and linked to existing databases such as the National Intellectual Disability Database.
- The development of pre-school provision to meet the requirements of the Act.
- The creation of post-school opportunities for students with special educational needs in third level education and also the world of work.
- The continued involvement of non-statutory bodies in special educational provision, particularly the provision of additional support services.
- Mapping out the future role of special schools in an inclusive school system.
- Ensuring that information and training needs are met.

⁷⁸ The term health board is used as it features in the Act and connotes the new HSE areas.

ABBREVIATED SUMMARY OF SUBMISSIONS

PRIORITIES FOR THE IMPLEMENTATION REPORT

Priorities identified in the submissions included:

- Secure the finances to resource the funding of Individual Education Plans.
- Plan a staged approach to implementing various sections of the Act over the five year period commencing with:
 - Implementation of Section 9 and the content of Individual Education Plans
 - Joint work, especially with the Health Service Executive and the Department of Education and Science to clarify roles and understand the extent of the resources required.
 - Special Education/Resource Teacher allocations particularly at second level.

LEVEL OF RESOURCES TO IMPLEMENT THE ACT

With regard to resources for the implementation of the EPSSEN Act, 2004 the key issues raised were:

- Submissions frequently expressed the view that a large investment would be required to secure the full implementation of the Act. The term “under- resourced” was frequently applied to schools and services in submissions, particularly if they were required urgently to do all that was stated in the Act.

A review should take place across both the health and education sectors to determine:

- the current expenditure on children with special educational needs
- the quality of that provision and facilities
- what place, if any, each sector has in the strategic plan to implement the Act.

INFORMATION NEEDS

A range of information needs were highlighted.

- **On EPSSEN Act, 2004:**
 - A guide to the Law for Boards of Management and Principals
 - A booklet for parents explaining their responsibilities, the procedures to follow and their rights
 - A guide to the Law for health professionals.

ABBREVIATED SUMMARY OF SUBMISSIONS

- ***On the Individual Education Plan:***
 - A variety of templates for Assessment Teams based on Section 9 (1) of the Act
 - Software to write the Individual Education Plan.
- ***On linking support provision and teaching:***
 - A series of booklets for resource teachers, based on practical ideas from:
 - Speech and Language Therapists
 - Occupational Therapists
 - Physiotherapists
 - Educational and Clinical Psychologists.
- ***On curriculum differentiation, modification and disapplication:***
 - Advice from the National Council for Curriculum Assessment and the State Examinations Commission
 - Modified teaching resources - especially at second level - from the National Council for Curriculum and Assessment.

TRAINING NEEDS

The main training needs identified in the submissions were:

- Initial teacher training should include: inclusive education, class management, teaching strategies and curriculum modification for students with special educational needs.
- Whole-school foundation training on the Act should take place.
- Ongoing in-service training for Resource Teachers and Special Needs Assistants, which is modular, progressive and accredited, should be available. Some of this could be carried out over the internet.
- There should be continued access to postgraduate training in Special Education for practising teachers.
- Foundation training for multi-disciplinary teams on the implications of the Act and their respective roles should be organised.

ABBREVIATED SUMMARY OF SUBMISSIONS

SUMMARY

In summary, the clear messages from the seventy-three submissions received were:

- **Implementation Report:** The Implementation Report should take a staged approach over the five year period and these stages should be published in the first report. This detail should be organised in such a way that steady progress towards full implementation of the Act can be demonstrated through a series of public progress reports, made at set intervals.
- **Written guidance and training:** Parents, schools and statutory and non-statutory support agencies require information about the Act, its procedures and the respective roles and responsibilities in an easy-to-read format. Training and staff development should accompany this guidance.
- **Joint planning:** NCSE, the Department of Education and Science and the Health Service Executive (HSE), and to a lesser extent the National Disability Authority, must plan jointly and communicate regularly, so that the support services to children and students who come under the Act are well used and developed according to assessed need. The progress of this planning needs to be monitored closely so that support services ultimately exist in sufficient quantity and quality to meet all the assessed needs written into Individual Education Plans.
- **Resourcing:** Significant additional financial and human resources are needed in schools and the support agencies to support the implementation of the Act.
- **Informed forward planning:** NCSE has to become more data rich so that the financial and resource decisions it is making, and advising on, are based on solid evidence. The financial planning and budgetary implications to fully implement the Education for Persons with Special Educational Needs Act 2004 (the Act) are very significant, and require quality information so that monies are well spent. This includes:
 - Data on the number, characteristics and dispersal of the child population (0 – 18 years) known to have special needs
 - An analysis of the professional resources, and their cost, currently available to discharge the duties of the Act

The full summary of the submissions received was circulated to all who made submissions and is available on the NCSE website at www.ncse.ie

ABBREVIATED SUMMARY OF SUBMISSIONS

ANNEX I: LIST OF SUBMISSIONS RECEIVED	
Anne Sullivan Centre	(1)
Association of Occupational Therapists Ireland (AOTI)	(1)
Association of Secondary Teachers Ireland (ASTI)	(1)
Ballytobin Camphill School	(1)
Belvedere College S.J.	(1)
Brothers of Charity	(4)
Catholic Primary School Management Association (CPSMA)	(1)
Central Remedial Clinic	(3)
Children's Research Centre, Trinity College	(1)
Colaiste Dhulaigh	(1)
Combat Poverty Agency (CPA)	(1)
Cooley, Patricia	(1)
Coolmine Community School	(1)
Curam	(1)
Dempsey, Mairead	(1)
Disability Federation of Ireland (DFI)	(1)
Doherty, Anne (Parent)	(1)
Down Syndrome Ireland	(2)
Enable Ireland	(1)
English, Ann (Parent)	(1)
Equality Authority	(1)
Fetal Alcohol Support (FAS) Ireland	(1)
Fitzgerald, Mary	(1)
Foran, SJ	(1)
Gaffney, Cathy	(1)
Glenamoy National School	(1)
Gourley, Mikala (Parent)	(1)
HADD Family Support Group	(1)
Health Service Executive	(2)
IMPACT Trade Union (SENOs)	(1)
Inclusion Ireland	(1)
Irish Association of Speech and Language Therapists	(1)
Irish Foster Care Association	(1)
Irish Learning Support Association (ILSA)	(2)
Irish National Teachers Organisation (INTO)	(1)
Jordan, Tony	(1)
Kerry Autism Action	(1)

ABBREVIATED SUMMARY OF SUBMISSIONS

ANNEX I: LIST OF SUBMISSIONS RECEIVED CONTINUED	
Mc Grath, Finian (T.D.) (Parent)	(1)
Mc Namara, Monica	(1)
National Association of Boards of Management in Special Education	(1)
National Association of Principals and Deputy Principals	(1)
National Disability Authority	(1)
National Federation of Voluntary Bodies	(1)
National Parents & Siblings Alliance (NPSA)	(1)
National Parents Council - Primary, West Cork	(1)
Nolan, Sylvia (Parent)	(1)
O' Connor, Nora	(1)
O' Halloran, Anne	(1)
Occupational Therapy in Child and Adolescent Mental Health Interest Group	(1)
Offaly Centre for Independent Living Ltd	(1)
Ogbebor, Ameze (Parent)	(1)
Principals of Schools for Children with Mild Learning Disabilities	(1)
Rehab Group	(2)
School of the Divine Child	(1)
Scoil Choca Naofa	(2)
St Brigid's Girls' National School Board of Management	(1)
St Cecilia's and Cloonamahon Parents Association	(1)
St Cecilia's Special School	(1)
St. Joseph's School	(1)
Teachers Union of Ireland (TUI)	(1)
The Federation of Irish Complementary Therapy Associations (FICTA)	(1)
The Galway Association	(1)
Whitechurch National School	(1)
TOTAL:	73

APPENDIX II

DISABILITIES AND ESTIMATED PREVALENCE AS SET OUT IN THE REPORT OF THE SPECIAL EDUCATION REVIEW COMMITTEE

DISABILITY	DEFINITION	ESTIMATE PREVALENCE
Specific Learning Disability (Impairments in specific areas such as reading, writing, spelling and arithmetical notation, the primary cause of which is not attributable to assessed ability below the average range to defective sight or hearing, emotional factors, a physical condition or any intrinsic adverse circumstances) SLD has been officially adapted in preference to the term Dyslexia	An impairment as described where the assessed ability by a psychologist is in the average range or higher and actual performance is at a significantly lower level.	Within the range of 1-4%. SERC recommend that not more than 2% should be found in this category.
Specific Speech and Language Disorder	Pupils whose non-verbal ability is assessed in the average band or higher and whose skill in understanding or expressing themselves through the media of spoken language is impaired and disability is not attributable to other factors. Assessment by a speech therapist which places performance in one or more of the language development areas at two standard deviations below the mean or at a generally equivalent level.	One widely accepted prevalence figure .08%
Physical Handicap	Pupils have permanent or protracted disabilities arising from such conditions as congenital deformities spina bifida, hydrocephalus, cystic fibrosis, asthma or severe accidental injury.	Not Known
Hearing Impairment	A person whose hearing is affected to an extent that renders the understanding of speech through the ear alone, with or without a hearing aid, difficult or impossible. Minimum audible intensity of 20 decibels.	20 per 10,000
Visual Impairment	Visual Impairment is so serious as to reduce significantly their capacity to see thus interfering with the capacity to perceive visual present materials such as pictures, diagnosis and the written word.	
Mild Mental Handicap	Significantly below average general intellectual functioning	1-1.5%
Moderate Mental Handicap	Delay in reaching developmental milestones, serious deficits in language development, severe apathy.	320 per 100,000
Severe/profound Mental Handicap	Very significant delay in reaching developmental milestones, very serious deficits in language development, very severe apathy and dependence on others to satisfy basic needs (e.g. feeding).	Approximately 2,000 (1983 estimates)
Emotional and/or Behavioural Disorders	Abnormality of behaviour, emotions or relationships sufficiently marked and prolonged to cause handicap in the individual and/or serious distress or disturbance in the family, the school or the community.	5-18% (international studies)
Autism	Impairment of language development, social development and the presence of ritualistic and obsessional behaviour	2.5-4 per 10,000

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