



GRIFFITH COLLEGE DUBLIN

**The Right to Inclusive Education for Children with Disabilities and
Special Educational Needs in Ireland: A Critical Analysis under
International Human Rights Law**

Research dissertation presented in partial fulfilment of the requirements for
the degree of LL.M. in International Human Rights Law

(QQI)

School of Law, Griffith College Dublin

Lauren M. English *LL.B., B.A.*

2022

For my beautiful daughters.

*“I know you’ll be kind... and clever... and bold. And the bigger your heart, the more it will hold. When nights are black and when days are gray—you’ll be brave and be bright so no shadows can stay. Then you will discover all there is to see and become anybody that you’d like to be. And then I’ll look at you, and you’ll look at me, and I’ll love you, whoever you’ve grown up to be.”*¹

¹ Emily Winfield Martin, *The Wonderful Things You Will Be* (Puffin Books 2000).

CANDIDATE DECLARATION

Candidate Name: Lauren M. English, *L.L.B., B.A.*

I certify that the dissertation entitled: The Right to Inclusive Education for Children with Special Educational Needs in Ireland under International Human Rights Law: A Critical Analysis

Submitted for the degree of: LL.M. International Human Rights Law

is the result of my own work and that where reference is made to the work of others, due acknowledgment is given.

Candidate Signature:



Date: 19 August 2022

Supervisor Name: Dr. Lauren O'Connell, *LL.M., B.C.L.*

Supervisor Signature:



Date: 19 August 2022

ACKNOWLEDGEMENTS

This dissertation is the culmination of a thoroughly challenging, stimulating and rewarding postgraduate LL.M. in International Human Rights Law degree programme, which could have been achieved but for the support and encouragement of several people.

I am indebted to my supervisor Dr. Lauren O’Connell for her time, guidance, and many words of wisdom throughout this research journey. I am also grateful for the support and encouragement which I received throughout the LL.M. programme from a cohort of truly brilliant and inspiring lecturers, both past and present, including the wider postgraduate law faculty and library staff.

I would also like to thank my employer, the Residential Tenancies Board (RTB), for the financial support from which this Master of Laws degree programme was made possible.

A special mention is also due to the principal, teachers, and support staff of *Scoil na Coróine Mhuire*, and, in particular, my eldest daughter’s Special Needs Assistant (SNA) Phil. Your kindness and continued commitment to inclusive educational values from which Alexa has flourished, has served, in part, as an inspiration for this area of research.

To my family and friends for their steadfast support throughout this journey. I owe them much gratitude. I would especially like to acknowledge my wonderful parents and grandparents for their unconditional love and unwavering belief. Not forgetting my dear late grandmother, Kathleen, whose portrait has been a source of company and comfort on far too many late nights and early mornings of writing. To my husband, Cormac - thank you for your sustained encouragement and forbearance on this journey, for the many cups of tea, and for tolerating the accompaniment of certain legal texts on our honeymoon!

Last, but certainly not least, to my two daughters, for whom this thesis is dedicated and who inspire me daily, I hope this research serves as but a small reminder that you can achieve absolutely anything you set your mind to. This work belongs to all of us.

TABLE OF CONTENTS

CANDIDATE DECLARATION	iii
ACKNOWLEDGEMENTS	iv
TABLE OF CONTENTS	v
LIST OF ACRONYMS	viii
ABSTRACT	x
CHAPTER 1: INTRODUCTION	1
1.1 Introduction	1
1.2 Context and Rationale	1
1.3 Aims and Objectives	5
1.4 Definitions and Terminology	6
1.5 Contribution to Existing Knowledge	9
1.6 Research Structure	9
CHAPTER 2: LITERATURE REVIEW	10
2.1 Introduction	10
2.2 The Right of the Child to Education under International Human Rights Law	11
2.2.1 International Covenant on Economic, Social and Cultural Rights (1966).....	12
2.2.2 Convention on the Rights of the Child (1989)	15
2.2.3 Regional Frameworks and the Right to Education in Europe.....	17
2.2.3.1 European Convention on Human Rights (1950).....	17
2.2.3.2 European Social Charter (1961).....	18
2.2.3.3 Charter of Fundamental Rights of the European Union (2000).....	19
2.2.4 Progressive Realisation and Obligations of Immediate Effect	19
2.3 The Emergence of Inclusive Education as a Human Rights Issue.....	20
2.3.1 Recognising the Right to Inclusive Education: The First Milestones.....	20
2.3.2 The Salamanca Statement and Framework for Action (1994).....	21
2.3.3 Other Notable International Initiatives.....	21

2.4 Convention on the Rights of Person with Disabilities (2006)	22
2.4.1 Article 24: The Right to Inclusive Education	23
2.4.2 The Optional Protocol	25
2.5 Chapter Conclusion	26
CHAPTER 3: METHODOLOGY	27
3.1 Introduction	27
3.2 Doctrinal Methodology	27
3.3 Sociolegal	28
3.4 Historical	28
3.5 Research Limitations	29
3.6 Chapter Conclusion	29
CHAPTER 4: A DISCUSSION ON THE INCLUSIVE EDUCATION IN IRELAND	30
4.1 Introduction	30
4.2 The Right of the Child to Education: The Irish Context	31
4.2.1 Setting the Scene: The Right to Education and the Irish Constitution	31
4.2.2 The Education Act 1998	33
4.3 Special Educational Needs: Legislative and Policy Developments	34
4.3.1 The Education for Persons with Special Educational Needs Act 2004	35
4.3.1.1 National Council for Special Education (NCSE)	36
4.3.2 The Education (Provision in Respect of Children with Special Educational Needs) Act 2022	37
4.4 Barriers to the Practical Implementation of Inclusive Education in Ireland	38
4.4.1 Legislative Commitment	38
4.4.2 Reduced Timetables, Data and Monitoring	39
4.4.3 Appropriate School Place Shortages	40
4.4.4 School Admission Policies	41
4.5 Chapter Conclusion	42
CHAPTER 5: CONCLUSION	43

5.1 Research Conclusion.....	43
5.2 Further Research	46
BIBLIOGRAPHY.....	47

LIST OF ACRONYMS

CESCR	Committee on Economic, Social and Cultural Rights
CFREU	Charter of Fundamental Rights of the European Union (2000)
COE	Council of Europe
CRC	Convention on the Rights of the Child (1989)
CRPD	Convention on the Rights of Persons with Disabilities (2006)
DOE	Department of Education
EASNIE	European Agency for Special Needs and Inclusive Education
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)
ECSR	European Committee of Social Rights
ECtHR	European Court of Human Rights
EPSEN	Education for Persons with Special Educational Needs Act 2004
ESC	European Social Charter (1961)
ESRI	Economic and Social Research Institute
EU	European Union
FTI	Education for All Fast Track Initiative (2002)
HSE	Health Service Executive
ICCPR	International Covenant on Civil and Political Rights (1966)
ICESCR	International Covenant on Economic, Social and Cultural Rights (1966)
IEP	Individual Education Plans
IHREC	Irish Human Rights and Equality Commission
MDG	Millennium Development Goals
NCSE	National Council for Special Education
NDA	National Disability Authority
NEWB	National Educational Welfare Board
OHCHR	Office of the United Nations High Commissioner for Human Rights
OP-CRPD	Optional Protocol to the Convention on the Rights of Persons with Disabilities
RESC	Revised European Social Charter
SDG4	Sustainable Development Goal 4 (20215)

SEN	Special Educational Needs
SERC	Report of the Special Education Review Committee
SNA	Special Needs Assistants
TESS	Tusla Education Support Service
UDHR	Universal Declaration of Human Rights (1948)
UK	United Kingdom
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
UNGA	United Nations General Assembly
USA	United States of America
WEA	World Declaration on Education for All
WHO	World Health Organization

ABSTRACT

This research has highlighted that while there have been several encouraging developments for children with disabilities and Special Educational Needs (SEN), including Ireland's ratification of the Convention on the Rights of Persons with Disabilities (CRPD) in 2018 and the enactment of the Education (Admission to Schools) Act 2018, current gaps in practice remain which hinder the realisation of the right to inclusive education for such children.

Adopting doctrinal, sociolegal and historical methodologies, which was further supplemented by drawing on empirical research in the field of disability studies, this research examined the right to education under the wider international and regional human rights framework and explored the various sources from which the child's right to education derives. This set the foundations from which the right to education for more generally for children with disabilities and SEN may be located.

This was followed by tracing the emergence and key developments on the international level leading up to the adoption of the CRPD. After which, the CRPD, and specifically the right to inclusive education under Article 24 were examined.

This research then considered the historical development of the educational rights of the child in Ireland. This began by locating the right to education in the Constitution of Ireland 1937 and reflects on germane case law which refined the scope of this right, particularly for children with disabilities and SEN. This was followed by charting the radical shift in legislative and policy developments in this area, beginning with the enactment of the Education Act 1998.

Finally, this research analysed the translation of inclusive education in practice for children with disabilities and SEN with a view to examining the factors which facilitate, and the barriers which inhibit, inclusive educational practices for children with disabilities and SEN in Ireland, meeting the obligations conferred on States Parties by the CRPD and Article 24 thereunder.

CHAPTER 1: INTRODUCTION

1.1 Introduction

This chapter begins by presenting the context and rationale of this research topic. This is followed by an outline of the aims, objectives, and scope of this work. Next, key definitions and terminology are discussed followed by an overview of the unique contribution of this research to existing discourse in this area. The structure of the succeeding chapters is outlined in the concluding section.

1.2 Context and Rationale

First declared as an international human right in the Universal Declaration of Human Rights (UDHR) in 1948², the right to education has been recognised as an ‘indispensable’³ means to the realisation of ‘...all other human rights when guaranteed and forecloses the enjoyment of most, if not all, when denied’.⁴ While the right to education has since been reaffirmed and developed by several international, regional, and domestic instruments, it is undeniable that certain groups of vulnerable children continue to be denied the enjoyment of this basic right.⁵ Children with disabilities and special educational needs⁶ (SEN) form part of such a group.⁷

Throughout the history of formal education, these children have, and continue to be, segregated from their peers in separate “special” schools or excluded from education altogether.⁸ It has further been reported that, of such children whom do indeed attend mainstream education, some are subjected to reduced timetables⁹, denied reasonable accommodations¹⁰ and supports or receive educational provision of an inferior quality.¹¹

² Article 26 UDHR proclaims ‘everyone has the right to education’. Since then, the right to education has been reaffirmed and developed by a number of international treaties which will be discussed in Chapter Two.

³ United Nations Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, E/C.12/1999/1.

⁴ Katarina Tomasevski, *Education Denied: Costs and Remedies* (Zed Books Ltd, 2003) 1.

⁵ World Health Organization (WHO), ‘World report on disability’ (2011) 205.

⁶ https://www.who.int/disabilities/world_report/2011/report/en/ accessed on 29 November 2021.

⁷ The debates and justification for this term is discussed further in this section.

⁸ World Health Organization (WHO), ‘World report on disability’ (2011) 205.

⁹ https://www.who.int/disabilities/world_report/2011/report/en/ accessed on 29 November 2021.

¹⁰ Andrea Broderick, ‘The Right to Inclusive Education: Article 24 of the UN Convention on the Rights of Persons with Disabilities and the Irish Experience’ in Fiona de Londras and Siobhán Mullally (eds), *The Irish Yearbook of International Law* (Volume 9 2014, Hart Publishing 2017) 25.

¹¹ Carl O’Brien ‘Schools ‘illegally’ imposing short school days on vulnerable children’ *The Irish Times* (Dublin, 05 September 2019).

¹² The term ‘reasonable accommodations, discussed further in Chapter Two, is defined under Article 2 CRPD as ‘necessary and appropriate modification and adjustments...’.

¹³ Sean Griffin and Michael Shevlin, *Responding to Special Educational Needs: An Irish Perspective* (2nd edn, Gill Education 2011).

Precise global figures on the number of children with disabilities and SEN who are out-of-school is not available due to data collection and classification variations and a lack of consistency in concepts, definitions¹² and indicators on disability.¹³ A United Nations Educational, Scientific and Cultural Organization (UNESCO) Global Education Monitoring Report 2020 indicates, however, that children with a sensory, physical or intellectual disability are, on average, 2.5 times more likely to have never been in school when compared to their peers without disabilities.¹⁴

The concept of inclusive education is based on the principle that all children should learn together, wherever possible, regardless of difference.¹⁵ Inclusive education, therefore, challenges this traditional paradigm of educational exclusion and segregation for children with disabilities, SEN, and indeed other groups at risk of marginalisation and exclusion for whatever reason.¹⁶ It has been articulated that the realisation of quality inclusive education enables: ‘...communities, systems and structures to combat discrimination, including harmful stereotypes, recognize diversity, promote participation and overcome barriers to learning and participation for all’.¹⁷

The United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD) is the first international treaty to explicitly recognise and codify the right to inclusive education for children with disabilities and SEN.¹⁸ As the first comprehensive human rights treaty of the twenty-first century, the CRPD constituted a paradigm shift in attitudes and approaches to disability rights. Indeed, the CRPD marked the first time in history that persons with disabilities contributed to the drafting of an international treaty.¹⁹ Whilst several earlier international and regional instruments contain intermittent references to the right to education more generally for children with disabilities,²⁰ it is only with the adoption of the CRPD that *inclusive* education as a right has been ‘legally anchored’ in

¹² A discussion on the difficulties with definitions in the areas of disability and SEN are outlined later in this Chapter.

¹³ UNESCO, *Global Education Monitoring Report 2020: Inclusion and Education: All Means All* (3rd edn, UNESCO 2020)

¹⁴ *ibid* 71.

¹⁵ UNESCO ‘The Salamanca Statement on Principles, Policy and Practice in Special Needs Education’ (1994) ED-94/WS/18.

¹⁶ Gauthier de Beco, Shivaun Quinlivan and Janet E Lord (eds), *The Right to Inclusive Education in International Human Rights Law* (Cambridge University Press 2019) 34.

¹⁷ UN Committee on the Rights of Persons with Disabilities (CRPD), General comment No. 4 (2016), Article 24: Right to inclusive education, 2 September 2016, CRPD/C/GC/4.

¹⁸ Andrea Broderick and Delia Ferri, *International and European Disability Law and Policy: Text, Cases and Materials* (Cambridge University Press 2019) 250.

¹⁹ Maya Sabatello and Marianne Schulze, *Human Rights and Disability Advocacy* (University of Pennsylvania Press 2014) 1.

²⁰ These international instruments are discussed in detail in the Chapter Two.

international human rights law.²¹ Despite significant global progress in this area, it is evident that compliance with the right to inclusive education remains a challenge in practice.²² Many States Parties to the CRPD, including Ireland, retain robust systems of segregated educational structures and debates over the benefits of such educational settings for children with more complex disabilities and SEN persist.²³

In Ireland, recent reports highlight that, for some vulnerable children, simply accessing an appropriate school place often requires legal action or exhaustive advocacy work.²⁴ Indeed, in the Dublin area alone, recent commentaries indicate that some 130 children with disabilities and SEN are currently unable to access an appropriate school place for the coming academic year.²⁵ Some affected families have no alternative but to apply to the Health Service Executive (HSE) for a home tuition funding scheme.²⁶ This scheme, which is described by Government as a ‘compensatory educational service’²⁷ is aimed at children who are, among other things, without a school place.²⁸ However, as tutors are not provided by the HSE, and the often-unachievable burden of acquiring one is thus left to the parents or caregivers, some of these children are effectively deprived of any formal educational at all.²⁹

The current severe shortage of school places for children with disabilities and SEN in Ireland has resulted in concerning Government proposals to build “special education centres” as an emergency interim response.³⁰ This proposal was sharply criticised, amongst others, by Chief Commissioner Sinéad Gibney of the Irish Human Rights and

²¹ Gauthier de Beco, Shivaun Quinlivan and Janet E Lord (eds), *The Right to Inclusive Education in International Human Rights Law* (Cambridge University Press 2019) 29.

²² Sarah Arduin, ‘The Expressive Dimension of the Right to Inclusive Education’ in Gauthier de Beco, Shivaun Quinlivan and Janet E Lord (eds), *The Right to Inclusive Education in International Human Rights Law* (Cambridge University Press 2019) 166.

²³ See, for example, Gauthier De Beco, ‘The Right to Inclusive Education according to Article 24 of the Un Convention on the Rights of Persons with Disabilities: Background, Requirements and (Remaining) Questions’ 32 *Netherlands Quarterly of Human Rights* (2014).

²⁴ Deborah Brennan and Harry Browne, ‘Education, Behaviour and Exclusion: The Experience and Impact of Short School Days on Children with Disabilities and their families in the Republic of Ireland’ (2019) Inclusion Ireland and Technological University Dublin <<https://inclusionireland.ie/wp-content/uploads/2020/09/small-inclusion-ireland-short-school-days-report.pdf>> accessed 03 November 2021.

²⁵ Katherine Donnelly, ‘130 special needs pupils in Dublin have no place in school for September’ *Independent* (Dublin, 19 May 2022).

²⁶ *ibid.*

²⁷ Circular 0046/2022 (Department of Education, 2022).

²⁸ <https://www.gov.ie/en/service/d15f58-home-tuition/>

²⁹ Connor McMorow, ‘Let them get a school place’ *RTE* (Dublin, 18 May 2022)

<www.rte.ie/news/primetime/2022/0517/1299600-parents-autistic-boys-special-school/> accessed 19 May 2022.

³⁰ Carl O’Brien, ‘Government plans ‘special education centres’ as emergency response to shortage of appropriate school places’ *The Irish Times* (Dublin, 25 May 2022).

Equality Commission (IHREC) who described these proposals as ‘fundamentally at odds with the word and spirit of the CRPD’.³¹

As a further response to the shortage of school places, on 19 July 2022, the Education (Provision in Respect of Children with Special Educational Needs) Act 2022 was signed into law. This new Act is concerned with, *inter alia*, truncating a particular statutory process whereby the Minister may compel mainstream schools to open and operate so called “special classes”.³² Whilst the Act has been lauded by Government ministers as a ‘milestone’,³³ it is, however, questionable if these “special classes” effectively operate as another form of segregation? As further discussed in Chapter Four, the emerging view from the UN is that separate educational environments are *not* considered inclusive.³⁴ Moreover, it is debatable if the continued reliance and expansion of this particular model of educational provision constitutes a missed opportunity to build a truly inclusive education system in accordance with Ireland’s commitments under the CRPD?

It is against this backdrop of these introductory remarks, this research examines the right to education under the wider international and regional human rights framework and explores the various sources from which the child’s right to education derives. This sets the foundations from which the right to education for more generally for children with disabilities and SEN may be located. This is followed by tracing the emergence and key developments on the international level leading up to the adoption of the CRPD. Thereafter, the CRPD, and specifically the right to inclusive education under Article 24 are examined. Next, this research considers the historical development of the educational rights of the child in Ireland. This section begins by locating the right to education in the Constitution of Ireland and reflects on germane case law which refined this right, particularly for children with disabilities and SEN. This is followed by charting the radical shift in legislative and policy developments in this area. Finally, this research analyses the translation of inclusive education in practice for children with disabilities and SEN with a view to examining if Ireland is fulfilling its obligations under Article 24 CRPD.

³¹ Senan Moloney and Katherine Donnelly, ‘Plan for temporary education centres for children with special needs sparks concern’ *Independent* (Dublin, 26 May 2022).

³² Education (Provision in Respect of Children with Special Educational Needs) Act 2022, s 6.

³³ Department of Education, ‘Statement from Minister of State for Special Education and Inclusion, Josepha Madigan, announcing significant increase in Special Education Provision in Dublin’ (28 July 2022)

<<https://www.gov.ie/en/press-release/8a499-statement-from-minister-of-state-for-special-education-and-inclusion-josepha-madigan-td-announcing-significant-increase-in-special-education-provision-in-dublin/>> accesse 3 May 2022.

³⁴ UN Committee on the Rights of Persons with Disabilities (CRPD), ‘General comment No. 4 (2016), Article 24: Right to inclusive education’, (2 September 2016) CRPD/C/GC/4.

1.3 Aims and Objectives

The principal aim of this research is to analyse the existing legislative and policy framework in place concerning the mainstream primary education system for children with disabilities and SEN in Ireland and to examine if this framework is compatible with Ireland's obligations under Article 24 CRPD.³⁵ More specifically, the objective of this research is to uncover how the right to inclusive education may translate into practical action points and understand what can be done on a pragmatic level to ensure this right is fully realised? The intention is to understand the factors which facilitate, and the barriers which inhibit, inclusive educational practices for children with disabilities and SEN in Ireland, meeting the obligations conferred on States Parties by the CRPD and Article 24 thereunder.

While acknowledging that the theoretical roots of inclusive education refers not only to the education of persons with disabilities but rather to *all* disadvantaged and marginalised groups, within the parameters of this research, the right to inclusive education is analysed and discussed with reference to children with disabilities and SEN only. As noted by Broderick, inclusive education is '...particularly important for persons with disabilities, as disabled learners have been subject to acute marginalisation and exclusion from mainstream society'.³⁶ Moreover, it is further acknowledged that while the right to education is not a right exclusive to children, it is a right which is principally enjoyed by them and is crucial to their development and ability to enjoy other rights.³⁷

It is also important to note that whilst Article 24(4) CRPD provides that 'States Parties shall ensure an inclusive education system at all levels and lifelong learning...' ³⁸ which enables access to '...general tertiary education, vocational training, adult education and lifelong learning...' ³⁹ Such a broad remit is beyond the ambit of this research. Thus, this current research will focus on inclusive education in the context of education for children with disabilities and SEN in mainstream primary level education *only*.

³⁵ UN Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force on 3 May 2008) 2515 UNTS 3 (CRPD) Art 24(4).

³⁶ Andrea Broderick, *The Long and Winding Road to Equality and Inclusion for Persons with Disabilities: The United Nations Convention on the Rights of Persons with Disabilities* (Intersentia 2015).

³⁷ Laura Lundy and John Tobin, 'The Aims of Education' in John Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press 2019) 1119.

³⁸ UN Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force on 3 May 2008) 2515 UNTS 3 (CRPD) Art 24(4).

³⁹ UN Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force on 3 May 2008) 2515 UNTS 3 (CRPD) Art 24(4).

1.4 Definitions and Terminology

The terms ‘disability’, ‘special educational needs’ (SEN), ‘inclusion’ and ‘inclusive education’ feature prominently throughout this research. While the latter term is more appropriately considered within subsequent chapters, with reference to the relevant legal instruments which developed and codified this right, it is appropriate at this juncture to review the classifications of disability and SEN and discuss the issues with defining these terms. This is followed by a reflection on inclusion and the terminological challenges with this concept.

Turning first to the terminology of disability and SEN. To this end, it is important to note that, whilst the language on disability has significantly evolved over the past few decades,⁴⁰ as discussed further below, terminology in this area remains problematic. It follows that no common definitions for these terms have been universally accepted.⁴¹ The lack of any settled definitions for these terms stem, in part, from the fact that the concepts of disability and SEN are complex, multifaceted, and evolving.⁴² Moreover, mechanisms and criteria for measuring and classifying disability vary between, and indeed *within* jurisdictions depending on the context.⁴³

Whilst a full analysis of this complex area is beyond the bounds of this research⁴⁴, it is important to make a distinction between these terms as not every child with a disability will necessarily have a SEN, and vice versa.⁴⁵

In Ireland, the most significant piece of legislation in the history of the State in relation to the education of children with disability and SEN is the Education for Persons with Special Educational Needs (EPSEN) Act 2004, as examined further in Chapter Two. Section 1 of the Act defines SEN as:

...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...⁴⁶

⁴⁰ Sean Griffin and Michael Shevlin, *Responding to Special Educational Needs: An Irish Perspective* (2nd edn, Gill Education 2011) 17.

⁴¹ Sarah Meegan and Ann MacPhail, ‘Inclusive education: Ireland’s education provision for children with special educational needs’ *Irish Educational Studies* (2006) 25:1, 53-62.

⁴² Sean Griffin and Michael Shevlin, *Responding to Special Educational Needs: An Irish Perspective* (2nd edn, Gill Education 2011) 17.

⁴³ *ibid.*

⁴⁴ The limitations of this research are discussed further in Chapter Three.

⁴⁵ Sean Griffin and Michael Shevlin, *Responding to Special Educational Needs: An Irish Perspective* (2nd edn, Gill Education 2011) 6.

⁴⁶ Education for Persons with Special Educational Needs (EPSEN) Act 2004, s 1.

Section 52 of the Act amended the former definition of disability under Section 2(1) of the Education Act 1998.⁴⁷ Accordingly, under the EPSEN Act, ‘disability’ and ‘SEN’ have the same definition.⁴⁸

It has been argued, however, that this definition is not in line with the social model of disability as embraced by the CRPD since this definition ‘focuses on the functional limitations of impairment of the child and not on the external barriers in society’.⁴⁹ Moreover, in recent years, the label ‘*special* educational needs’ has also been subject to considerable debate within academic discourse, for policymakers and the wider community. Consequently, the use of this term in been abandoned in some jurisdictions.⁵⁰

In line with the CRPD, this research does not discuss the relevant legal instruments by *type* of disability, but rather embraces the view acknowledged by the preamble to the CRPD that disability is “an evolving concept”, which “...results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others”.⁵¹

Accordingly, this interpretation and understanding of disability is consistently applied throughout this research. Additionally, whilst acknowledging the blurred boundaries and debates surrounding the term SEN, in line with the terminology of the current legislative and policy framework in Ireland, this term is used as appropriate throughout this research.

Turning next to the concept of ‘inclusion’. To this end, it should be noted that while many attempts at defining inclusion have been enunciated in scholarly discourse and legal and policy frameworks, none have been universally accepted and ‘a single definition is still elusive...’⁵²

Some international instruments, discussed further in Chapter Two, use the terms ‘integration’ and ‘inclusion’ interchangeably.⁵³ This terminological vagueness has been

⁴⁷ Education for Persons with Special Educational Needs (EPSEN) Act 2004, s.52.

⁴⁸ Dympna Glendenning, *Education and the Law* (2nd edn, Bloomsbury Professional 2012) 279.

⁴⁹ Andrea Broderick, *The Long and Winding Road to Equality and Inclusion for Persons with Disabilities: The United Nations Convention on the Rights of Persons with Disabilities* (Intersentia 2015).

⁵⁰ In Scotland, for example, the term has since been replaced by with the wider and more encompassing concept of ‘additional support needs.’ For further information, see Education (Additional Support for Learning) (Scotland) Act 2004, as amended

⁵¹ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force on 3 May 2008) 2515 UNTS 3.

⁵² Eileen Winter and Paul O’Raw, *Literature Review of the Principles and Practices Relating to Inclusive Education for Children with Special Educational Needs* (NCSE 2010) 3.

⁵³ See, for example, the Salamanca Statement and Framework for Action (1994), discussed further in Chapter Two.

criticised by some scholars who and argue that debates on inclusion tend to focus on *where* the child should be taught rather than focusing on *how* the child should be taught.⁵⁴

Defining the concept proves further complicated since various conceptualisations of inclusion may vary between different groups or within different settings. Indeed, the National Council for Special Education in Ireland (NCSE) highlights this point in its 2010 report wherein it states that ‘...the variations in definition and interpretation suggest that the meaning of inclusion ‘may be contextual’ and ‘...take different forms depending on the situation’.⁵⁵

Notwithstanding the lack of any all-encompassing accepted definition for inclusion, the literature on the topic does agree on its overarching aim. According to The United Nations Educational, Scientific and Cultural Organization (UNESCO):

Inclusion is seen as a process of addressing and responding to the diversity of needs of all learners through increasing participation in learning, cultures and communities, and reducing exclusion within and from education. It involves changes and modifications in content, approaches, structures and strategies, with a common vision which covers all children of the appropriate age range and a conviction that it is the responsibility of the regular system to educate all children.⁵⁶

It follows that, this understanding of inclusion is consistently applied throughout this research, whilst acknowledging that this concept is in no way universally understood, demanding more in-depth research. Moreover, in line with the European Agency for Special Needs and Inclusive Education (EASNIE), for the purpose of this research, it is contented that ‘the current debate is no longer about what inclusion *is*...the key question is *how* it is to be achieved’.⁵⁷

⁵⁴ Andrew Smith and Nigel Thomas, ‘Including pupils with special educational needs and disabilities in National Curriculum Physical Education: a brief review’ (2007) 21(1) *EJSNE* 69-83.

⁵⁵ Eileen Winter and Paul O’Raw, *Literature Review of the Principles and Practices Relating to Inclusive Education for Children with Special Educational Needs* (2010) NSCE 3.

⁵⁶ UNESCO, *Guidelines for Inclusion: Ensuring Access to Education for All* (UNESCO 2015) 13.

⁵⁷ European Agency for Special Needs and Inclusive Education, *Five Key Messages for Inclusive Education: Putting theory into practice* (EASNIE 2014) 5.

1.5 Contribution to Existing Knowledge

The right to inclusive education remains a relatively new concept in international human rights law. Indeed, from a domestic perspective, Ireland was the last country in the European Union (EU) to ratify the CRPD in March 2018 and omitted to ratify the Optional Protocol which establishes, *inter alia*, an independent complaints mechanism for alleged violations of the of the rights enshrined in the convention⁵⁸

While inclusive education has been addressed principally in the fields of education, disability studies and moral philosophy, legal scholarship on the topic is not well established.⁵⁹ As noted by de Beco et al: ‘Given that the goal of inclusive education is legally anchored in Article 24 of the Convention, it follows that an analysis must be informed by the various legal standards and principals of international human rights law’.⁶⁰

Moreover, given the recent nature of CRPD ratification by the Irish State, it follows that legal scholarship with a specific focus on inclusive education for children with disabilities and SEN at the mainstream primary level in Ireland is still emerging.

It follows that this research thus aims to contribute and supplement new and emerging international and domestic legal discourse in this field of study. `

1.6 Research Structure

This research consists of five main chapters. Chapter One presents the research area and describes the overall aims and objectives guiding this research. This is followed a brief outline of the definitions and terminology used, before providing an overview of the unique contribution of this research to existing literature in this field. Chapter Two provides a thematic overview of literature in the areas of the right to education and the development of the right to inclusive education under international human rights law followed by a review of germane literature charting the development of this area as applicable to children with disabilities and SEN in Ireland. Following this, Chapter Three describes the methodology and limitations of this research. The findings of this research are outlined in Chapter Four. Chapter Five concludes this research and discusses possible areas identified for future research.

⁵⁸ Gauthier de Beco, Shivaun Quinlivan and Janet E Lord (eds), *The Right to Inclusive Education in International Human Rights Law* (Cambridge University Press 2019) 29.

⁵⁹ *ibid* 30.

⁶⁰ *ibid*.

CHAPTER 2: LITERATURE REVIEW

2.1 Introduction

This chapter begins by examining the development of the right to education more generally within the wider international human rights framework. This section includes an analysis of the major international conventions in this area and the obligations conferred on States Parties thereunder. Thereafter, the right to education at the regional level is briefly considered with reference to the European Framework.

This is followed by a reflection on the emergence of the right to inclusive education leading up to the adoption the Convention on the Rights of Persons with Disabilities (CRPD) in 2006. This section includes a review of key developments and milestones at the international level preceding the CRPD which were instrumental in paving the way towards the recognition of the right to inclusive education.

Finally, the CRPD, and specifically the right to inclusive education under Article 24, are examined. To this end, the obligations conferred on States Parties thereunder are considered followed by a discussion on the Optional Protocol to the CRPD (OP-CRPD).⁶¹

⁶¹ UN General Assembly, Optional Protocol to the Convention on the Rights of Persons with Disabilities, 13 December 2006, A/RES/61/106,

2.2 The Right of the Child to Education under International Human Rights Law

International human rights law guarantees the right to education for all. The UDHR, adopted by the UN in 1948, unequivocally acknowledges this right proclaiming: ‘everyone has the right to education.’⁶² Article 26(1) further elaborates that ‘education shall be free, at least in the elementary and fundamental stages’⁶³ and ‘elementary education shall be compulsory’.⁶⁴ Whilst the UDHR is not a legally-binding instrument, it does, however, carry significant political and normative weight.⁶⁵ Indeed, most human rights instruments which followed have a foundation in the UDHR⁶⁶ and it serves as an inspiration for the both international and national laws and standards.⁶⁷ Article 26 of the UDHR does not explicitly exempt children with disabilities, however it does not specifically make reference to disability right’s in the context of education, or otherwise.⁶⁸

Following the adoption of the UDHR, the right to education has been affirmed and further developed by several international and regional instruments.⁶⁹ One 2019 publication by the Right to Education Initiative in conjunction with UNESCO, indicates that the right to education is guaranteed in at least 48 international and regional instruments and approximately 23 ‘soft law’⁷⁰ instruments.⁷¹ Some of these instruments apply generally to all persons, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as discussed further in the following subsection. Other instruments are thematic and focus on the protection of the right to education for certain groups of individuals,⁷² or within specific contexts – such as during situations of armed conflict.⁷³

⁶² Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 26(1).

⁶³ *ibid.*

⁶⁴ *ibid.*

⁶⁵ Right to Education Initiative and UNESCO, *Right to Education Handbook* (UNESCO 2019) 47.

⁶⁶ Rhona K M Smith, *International Human Rights Law* (8th edn, Oxford University Press 2018) 40.

⁶⁷ For further information, see for example, Noelle Higgins and others (eds), *The Universal Declaration of Human Rights at Seventy: A Review of Successes and Challenges* (Clarus Press 2019).

⁶⁸ Arlene Kanter, ‘The Development of the Right to Inclusive Education for People with Disabilities under International Law’ in Gauthier de Beco, Shivaun Quinlivan and Janet E Lord (eds), *The Right to Inclusive Education in International Human Rights Law* (Cambridge University Press 2019) 47.

⁶⁹ Including, for example, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which will be discussed further in the following Chapter.

⁷⁰ Material instruments or other documents that do not give rise to binding legal obligations.

⁷¹ Right to Education Initiative and UNESCO, *Right to Education Handbook* (UNESCO 2019) 47.

⁷² See also, for example: the Convention on the Elimination of All Forms of Discrimination against Women (1979), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their families (1990), and the Convention on the Rights of Persons with Disabilities (2006), examined later in this Chapter.

⁷³ See, for example, the Geneva Conventions of 1949 and their Additional Protocols.

The following subsections will consider two of the (arguably) most authoritative international conventions on the right to education more generally, namely: the ICESCR⁷⁴ and the Convention on the Rights of the Child (CRC).⁷⁵

Alongside the UDHR and the CRPD, these instruments have been cited as ‘the strongest articulations of education as a ‘positive right’.⁷⁶ In other words, rights which confer obligations on States Parties to take specific actions to ensure that an individual’s entitlement to that right is realised, in contrast with “negative rights”, which prohibit interference or mandate certain *inaction*.⁷⁷ Further reflection on the significance of this distinction is discussed later in this Chapter.

2.2.1 International Covenant on Economic, Social and Cultural Rights (1966)

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by the United Nations General Assembly (UNGA) on 16 December 1966 and entered into force on 03 January 1976.⁷⁸ Taken together, the ICESCR and the ICCPR are often referred to as ‘The International Covenants’, and alongside the UDHR are collectively said to comprise the ‘International Bill of Human Rights’.⁷⁹

The ICCPR, which as the name suggests, is predominantly concerned with civil and political rights, does not make express provision concerning education, save for a single provision under Article 18(4)⁸⁰ concerning parental freedom to have their children educated in accordance with their own beliefs.⁸¹ By contrast, the ICESCR is considered ‘wide ranging’⁸² and encompasses two comprehensive Articles concerning the right to education, namely Articles 13 and 14.⁸³

⁷⁴ International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993).

⁷⁵ Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577

⁷⁶ David M Doyle, Marie Muldoon and Clíodhna Murphy, ‘Education in Ireland: Accessible without discrimination for all?’ (2020) *The International Journal of Human Rights*, (Vol 24:10) 1702.

⁷⁷ Laurens Lavrysen, *Human Rights in a Positive State: Rethinking the Relationship Between Positive and Negative Obligations Under the European Convention on Human Rights* (Intersentia 2016) 213.

⁷⁸ International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993.

⁷⁹ Dympna Glendenning, *Education and the Law* (2nd edn, Bloomsbury Professional 2012) 424.

⁸⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 18(4).

⁸¹ Paul M Taylor, *A Commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee’s Monitoring of ICCPR Rights* (Cambridge University Press 2020) 501.

⁸² Dympna Glendenning, *Education and the Law* (2nd edn, Bloomsbury Professional 2012) 426.

⁸³ International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993 (16 December 1966) art 13-14.

Prior to examining Articles 13 and 14 of the ICESCR, it is worth briefly noting at this juncture that the right to education is *by and large*⁸⁴ is considered an economic, social and cultural right.⁸⁵ Traditionally, a distinction was made between human rights which are civil and political in nature and rights which fall in to the category of economic, social and cultural rights, as reflected in the bifurcation of the UDGR in to the ICESCR and the ICCPR.⁸⁶ Today, however, it is generally accepted that all human rights are ‘indivisible, interdependent, and interrelated’.⁸⁷ Indeed, this acceptance is implicitly evident through the subsequent adoption of international treaties that combine these rights, such as the CRC,⁸⁸ as discussed further in the next subsection of this Chapter. Moreover, explicit reaffirmation of the ‘indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms’ has been acknowledged by further core international human rights instruments including, for example, by the CRPD in its preamble.⁸⁹

Returning to the ICESCR, Article 13, the lengthiest article in the ICESCR,⁹⁰ is said to offer a ‘binding and more detailed elaboration of the general right to education recognised in the UDHR’.⁹¹ Similarly to the UDHR, Article 13(1) recognises ‘the right of everyone to an education’⁹² which is directed ‘...to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms’.⁹³ Article 13(2) details the requirements for achieving the right to education in respect of different levels of education⁹⁴ with Article 13(2)(a) affirming that education at the primary level ‘...shall be compulsory and available free to all’.⁹⁵ Moreover, pursuant to Article 14, States who have not secured such compulsory and free education at the time of becoming a Party, must develop a plan of action for the

⁸⁴ Some commentary, however, considers that the right to education is also a civil and political right. See, for example, General Comment 11, paragraph 2 of the CESCR which states that the right to education “...is also, in many ways, a civil right and a political right, since it is central to the full and effective realisation of these rights as well.”

⁸⁵ See, for example: Jackie Dugard and others (eds), *Research Handbook on Economic, Social and Cultural Rights as Human Rights* (Edward Elgar Publishing 2020).

⁸⁶ Right to Education Initiative and UNESCO, *Right to Education Handbook* (UNESCO 2019) 41.

⁸⁷ *ibid* 42.

⁸⁸ Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577.

⁸⁹ UN Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force on 3 May 2008) 2515 UNTS 3.

⁹⁰ Ben Saul, David Kinley and Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* (Oxford University Press 2014) 1085.

⁹¹ *ibid* 1087.

⁹² International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993) art 13(1).

⁹³ *ibid*.

⁹⁴ Ben Saul, David Kinley and Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* (Oxford University Press 2014) 1096.

⁹⁵ International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993 art 13(2)(a).

progressive implementation of such within a reasonable timeframe after ratification.⁹⁶ The notion of ‘progressive implementation’ is considered further in this Chapter.

The Committee on Economic, Social and Cultural Rights (CESCR), the UN body responsible for implementing and monitoring compliance with the ICESCR, further expands the right to education in a number of General Comments.⁹⁷ Although not legally binding, General Comments are considered a supplementary form of interpretation and ‘serve an important jurisprudential function...as they provide guidance and explicit language toward effective implementation and compliance with treaty norms.’⁹⁸

Expanding on the normative content of the right to education, General Comment No. 13 endorses what is colloquially referred to as the ‘4As’ framework.⁹⁹ This framework was developed by Katarina Tomaševski, who previously served as the first UN Special Rapporteur on the right to education.¹⁰⁰ The ‘4As’ framework affirms that education should be *available, accessible, acceptable* and *adaptable* to all.¹⁰¹ That education must be ‘available’ involves the duty of establish, develop and maintain an education system in sufficient quantity;¹⁰² ‘Accessible’ involves ensuring unhindered, affordable and non-discriminatory access to education;¹⁰³ ‘Acceptable’ closely corresponds to the concept of quality education in a safe environment and accepting children’s views on how their rights are implemented;¹⁰⁴ and ‘Adaptable’ involves establishing education systems that adapt to the unique needs of all children, including children with disabilities.¹⁰⁵

Despite such extensive articulation of the right to education in the ICESCR, the CESCR has regularly raised concerns regarding the implementation of this right in practice. Indeed, in 2015 in its Concluding Observations to Ireland,¹⁰⁶ the CESCR expressed concerns about, *inter alia*, discriminatory criteria contained in many school admission policies prejudicing children with SEN and the lack of a regulatory framework.¹⁰⁷

⁹⁶ International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993 art 14.

⁹⁷ See, for example, UNCESCR General Comment No. 13 on the right to education.

⁹⁸ Right to Education Initiative and UNESCO, *Right to Education Handbook* (UNESCO 2019) 47.

⁹⁹ UNCESCR General Comment 13 art 13 (2).

¹⁰⁰ See, for example: Katarina Tomaševski, *Human Rights Obligations in Education* (Wolf Legal Publishers 2006).

¹⁰¹ Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education (Article 13 of the Covenant) (8 December 1999) E/C.12/1999/10.

¹⁰² *ibid.*

¹⁰³ Right to Education Initiative and UNESCO, *Right to Education Handbook* (UNESCO 2019) 77.

¹⁰⁴ *ibid.*

¹⁰⁵ *ibid.* 78.

¹⁰⁶ UN Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of Ireland, 8 July 2015 [10].

¹⁰⁷ *ibid.*

The CESCR recommended that school admission policies were reviewed ‘with a view to removing all discriminatory criteria for enrolment’ and further recommended the establishment of a ‘...regulatory mechanism to monitor school policies, including admissions policies.’¹⁰⁸ The CESCR concluded this section by recommending that Ireland ‘step up its efforts to promote inclusive education for all’.¹⁰⁹ The content of these Concluding Observations is indicative that, while unfortunately the ICESCR lacks express provision for the right to inclusive education, the practice of UN treaty bodies appears to be evolving to reflect this right in line with the CRPD and Article 24 thereunder, discussed further in this Chapter.

2.2.2 Convention on the Rights of the Child (1989)

The Convention on the Rights of the Child (CRC), adopted by the UNGA in 1989, is the first legally binding international treaty to delineate comprehensive universal norms and standards for the protection and promotion of children’s rights. As one of the most widely ratified treaties in history, all countries, save for the United States of America (USA), have ratified the CRC.¹¹⁰ Amongst the comprehensive range of rights provisions, which encompass a range of civil, political, social, economic, and cultural rights spanning more than fifty Articles,¹¹¹ two Articles concern the educational rights of the child.¹¹²

Article 28(1) affirms the right of all children to benefit from, *inter alia*, a free and compulsory primary education ‘on the basis of equal opportunity’.¹¹³ To this end, a ‘child’ is defined under Article 1 as: ‘...every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier’.¹¹⁴ Although the content of Article 28 is modelled on Article 13 of ICESCR,¹¹⁵ it also introduces new obligations on States Parties. These include, among others, an obligation to take measures aimed at reducing school drop-out rates¹¹⁶ and mandating that school

¹⁰⁸ UN Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of Ireland, 8 July 2015 [10].

¹⁰⁹ *ibid.*

¹¹⁰ Dympna Glendenning, *Education and the Law* (2nd edn, Bloomsbury Professional 2012) 454.

¹¹¹ Nina Thelander, ‘Human Rights Education: Teaching Children Human Rights: A Matter of Why, What and How’ in Jenna Gillett Swan and Vicki Coppock (eds) *Children’s Rights, Educational Research and the UNCRC* (Symposium Books 2016) 66.

¹¹² Rhona K M Smith, *International Human Rights Law* (8th edn, Oxford University Press 2018) 344.

¹¹³ Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577 art 1.

¹¹⁴ *ibid.*

¹¹⁵ Christian Courtis and John Tobin, ‘The Right to Education’ in John Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press, 2019) 1059.

¹¹⁶ Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577 art 28 (1)(e).

discipline is administered in a manner which is consistent with the dignity of the child.¹¹⁷

Vaghri *et al.* note that Article 28:

...embodies a requirement not only that education is provided for every child but also that the nature of that education is designed to treat children with respect and to encourage and support their active participation ...¹¹⁸

Unlike the ICESCR, the CRC further elaborates on the aims of education for children in a separate provision, namely Article 29.¹¹⁹ These aims include, *inter alia*, that education shall be directed to ‘the development of the child’s personality, talents and mental and physical abilities to their fullest potential’.¹²⁰ In its first General Comment, the CRC Committee, the UN body responsible for implementing and monitoring compliance with the CRC, noted that the aims of Article 29,¹²¹ ‘insists upon the need for education to be child-centred, child-friendly and empowering.’¹²²

In terms of children’s disability rights, the CRC was the first binding international treaty to both explicitly recognise disability as a ground of discrimination,¹²³ and the first binding treaty to specifically recognise the right to education more generally for children with disabilities.¹²⁴ To this end, Article 23(3) provides that children with disabilities must have access to education ‘in a manner conducive to the child achieving the fullest possible social integration and individual development’.¹²⁵ Notwithstanding this, the CRC does not explicitly reference a right to *inclusive* education children with disabilities.¹²⁶

Despite achieving near universal ratification, as mentioned above, following the adoption of the CRC a report by UNICEF found that millions of children around the world were still excluded and deprived from school.¹²⁷ Thus, while it cannot be denied that the CRC

¹¹⁷ Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577 art 28(2).

¹¹⁸ Ziba Vaghri and others (eds), *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes* (Springer 2022) 245.

¹¹⁹ Christian Curtis and John Tobin, ‘The Right to Education’ in John Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press, 2019) 1059.

¹²⁰ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577 art 29(1)(a).

¹²¹ Laura Lundy and John Tobin, ‘The Aims of Education’ in John Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press 2019) 1118.

¹²² UN Committee on the Rights of the Child (CRC), General comment No. 1 (2001), Article 29 (1), The aims of education, 17 April 2001, CRC/GC/2001/1.

¹²³ Andrea Broderick, *The Long and Winding Road to Equality and Inclusion for Persons with Disabilities: The United Nations Convention on the Rights of Persons with Disabilities* (Intersentia 2015).

¹²⁴ Arlene Kanter, ‘The Right to Inclusive Education for Students with Disabilities under International Human Rights Law’ in Gauthier de Beco, Shivaun Quinlivan and Janet E Lord (eds), *The Right to Inclusive Education in International Human Rights Law* (Cambridge University Press 2019) 49.

¹²⁵ UNGA, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577

¹²⁶ Gauthier de Beco, Shivaun Quinlivan and Janet E Lord (eds), *The Right to Inclusive Education in International Human Rights Law* (Cambridge University Press 2019) 27.

¹²⁷ UNICEF, *Children and Young People with Disabilities: Fact Sheet* (UNICEF 2013) 20.

was indeed a landmark treaty in terms of, *inter alia*, the explicit recognition of the educational rights of children with disabilities, unfortunately, in practice, the goal of education for all children cannot have said to have been realised on a global level.

More recently, and closer to home, in 2016 the CRC Committee highlighted a range of issues in Ireland's compliance with the CRC¹²⁸ Of these, the Committee expressed concern, *inter alia*, regarding Ireland's lack of 'comprehensive strategy for the inclusion of children with disabilities in mainstream education and the encouragement of their autonomy'¹²⁹ and that 'reasonable accommodation, such as Braille and sign language, is not provided to all children with special needs...'¹³⁰

2.2.3 Regional Frameworks and the Right to Education in Europe

As previously mentioned, alongside the core international human rights treaties, the right to education is also protected by several regional human rights instruments. The benefits of these region-specific instruments, according to the Right to Education Initiative in conjunction with UNESCO, is that such instruments: '...strengthen the protection and enjoyment of human rights by adapting international human rights standards to regional contexts, taking into account shared histories, customs, traditions, values, cultures, and practices.'¹³¹ While a full analysis of all such instruments is beyond the scope of this research,¹³² the following section will briefly discuss the main provisions of the right to education more generally under the European human rights framework.

2.2.3.1 European Convention on Human Rights (1950)

The European Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights (ECHR),¹³³ was adopted in 1950 under the aegis of the Council of Europe (COE).¹³⁴ The ECHR does not explicitly guarantee the right to education due to its predominant focus on civil and political rights.¹³⁵ Limited provision for this right to education is however recognised in Article 2 of the Protocol to the Convention for the Protection of Human Rights and

¹²⁸ UN Committee on the Rights of the Child (CRC), *Concluding observations on the combined third and fourth periodic reports of Ireland* (1 March 2016), CRC/C/IRL/CO/3-4.

¹²⁹ *ibid.* [47].

¹³⁰ *ibid.*

¹³¹ Right to Education Initiative and UNESCO, *Right to Education Handbook* (UNESCO 2019) 65.

¹³² See, for example: Christina M Cerna (ed), *Regional Human Rights Systems: Volume V* (Routledge 2016).

¹³³ European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) ETS 5.

¹³⁴ Elaine Dewhurst, Noelle Higgins and Los Watkins, *Principles of Irish Human Rights Law* (Clarus Press 2012) 414.

¹³⁵ Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice* (3rd edn, Cambridge University Press 2020) 242.

Fundamental Freedoms 1952 (Protocol 1). Article 2 of Protocol 1, which must be ratified separately to the ECHR, provides:

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.¹³⁶

In contrast to the education provisions in other treaties, such as the ICESCR and CRC discussed previously, it is clear that Article 2 of Protocol 1 is drafted in ‘broad’ and ‘non-descriptive’ terms.¹³⁷ Moreover, the negative formulation of the provision differs to these other conventions previously discussed which typically begin with the positive articulation of ‘everyone has the right to...’.¹³⁸ The significance of the negative formulation of Article 2 of Protocol 1 impacts on the scope of the right to education and consequently, as confirmed in the seminal *Belgian Linguistics* case,¹³⁹ there is no positive obligation on a State to establish, provide or subsidise any specific type of education as this is considered to be at the discretion of a particular State.¹⁴⁰

2.2.3.2 European Social Charter (1961)

The European Social Charter (ESC) 1961¹⁴¹ is a COE treaty that guarantees fundamental social and economic rights as a counterpart to the ECHR, discussed in the previous section, which is chiefly concerned with civil and political rights. Described as the regional counterpart to the ICESCR,¹⁴² it is noteworthy that the ESC did not initially make any provision for the right to education.¹⁴³ Indeed, the ESC has been criticised for its lack of any broad provisions for economic, social and cultural rights in general.¹⁴⁴ In 1996, however, the Revised European Social Charter (RESC) was adopted, which added a number of new rights, including provision for the right to education¹⁴⁵ Article 17 of the

¹³⁶ Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 20 March 1952, entered into force 18 May 1954) ETS 9, art 2.

¹³⁷ Ursula Kilkelly, *The Child and the European Convention on Human Rights* (Routledge 2017) 62.

¹³⁸ *ibid.*

¹³⁹ Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium (No. 2) (Belgian Linguistics case), 23 July 1968, 1 EHRR 252.

¹⁴⁰ *ibid.*

¹⁴¹ Council of Europe, European Social Charter, 18 October 1961, ETS 35.

¹⁴² Conor O’Mahony, *Educational Rights in Irish Law* (Thomson Round Hall 2006) 24.

¹⁴³ *ibid.*

¹⁴⁴ Carole Benelhocine, *The European Social Charter* (Council of Europe Publishing 2006) 17.

¹⁴⁵ Council of Europe, European Social Charter (Revised), 3 May 1996, ETS 163

Revised Social Charter provides for, *inter alia*, free primary education and the establishment and maintenance of educational institutions and services.¹⁴⁶

2.2.3.3 Charter of Fundamental Rights of the European Union (2000)

In 2000, the Charter of Fundamental Rights of the European Union (CFREU) was adopted within the framework of the EU. The Charter has become legally binding on the EU with the entry into force of the Lisbon Treaty in December 2009. Article 14 enshrines, *inter alia*, the right to education adding that: ‘this right includes the possibility to receive free compulsory education’.¹⁴⁷

2.2.4 Progressive Realisation and Obligations of Immediate Effect

As mentioned earlier in this Chapter, many elements of the right to education are subject to progressive realisation. Progressive realisation is said to reflect the ‘realities of the real world and the difficulties involved for any country in ensuring full realisation of economic, social and cultural rights.’¹⁴⁸ This means that the full realisation of the right to education may be achieved *over time*, with certain key exceptions discussed below.¹⁴⁹ Notwithstanding this apparent flexibility, as the CESCR observes “...States Parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of the right to education”.¹⁵⁰

It should be noted that not all aspects of the right to education are subject to progressive realisation. States have an immediate obligation stemming from Article 2(2) of the ICESCR, for example, to ‘guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind’. This has been confirmed by the CESCR, General Comment 3, among others.¹⁵¹ It is worth briefly noting that discrimination in the context of education has been defined as including “...the treatment of any student in a way that separates him or her from the other students and negatively impacts on his or her ability to participate in and receive education.”¹⁵²

¹⁴⁶ Council of Europe, European Social Charter (Revised), 3 May 1996, ETS 163 art 17.

¹⁴⁷ European Union, Charter of Fundamental Rights of the European Union (2000) OJ C 364/01.

¹⁴⁸ Ben Saul, David Kinley and Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* (Oxford University Press 2014) 152

¹⁴⁹ See, for example, Article 2(1) of the ICESCR and the UN Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 3.

¹⁵⁰ CESCR, General Comment 13: The Right to Education, 44.

¹⁵¹ CESCR, General Comment 3 on the Nature of States Parties Obligations (adopted at the fifth session of the Committee on 14 December 1990) UN Doc E/1991/23, para 1.

¹⁵² UNESCO Convention against Discrimination in Education, Paris (1960), art 1.

The presumption that states will progressively realise the right to education also implies that states should not take deliberate ‘regressive steps’ by adopting measures that will repeal or restrict existing guarantees of the right to education. Regressive steps in the context of education may include, for example. States reducing spending on education unless the state can prove that they do not have the necessary resources.¹⁵³

2.3 The Emergence of Inclusive Education as a Human Rights Issue

Having considered the right to education generally under international human rights law, and briefly reflected on this right under the regional European framework, this section will discuss some of the key milestones at the international level preceding the CRPD. These developments, albeit not legally binding, contributed towards the recognition and development of the right to inclusive education for children with disabilities and SEN.¹⁵⁴

2.3.1 Recognising the Right to Inclusive Education: The First Milestones

Following the adoption of the CRC, the UN began to advocate inclusive education and In 1990, the UN adopted the non-binding ‘World Declaration on Education for All’ (WEA), known as the ‘Jomtien Declaration’.¹⁵⁵ The WEA served as one of the first milestones regarding the educational rights of persons with disabilities as it was the first international agreement recognising the goal of inclusive education.¹⁵⁶ The WEA affirmed the fact that ‘the learning needs of the disabled demand special attention’ and that ‘steps need to be taken to provide equal access to education to every category of disabled persons as an integral part of the education system.’¹⁵⁷

Despite the WEA signifying progress towards the goal of inclusive education, as previously noted, the WEA is not a legally binding instrument.

Following the WEA, in 1994 the UN adopted another non-binding international document in 1994, known as the ‘Standard Rules on the Equalization of Opportunities for Persons with Disabilities’ (Standard Rules).¹⁵⁸ The Standard Rules recognise that ‘States should recognize the principle of equal primary...educational opportunities for children, youth

¹⁵³ Right to Education Initiative and UNESCO, *Right to Education Handbook* (UNESCO 2019) 139.

¹⁵⁴ Andrea Broderick and Delia Ferri, *International and European Disability Law and Policy: Text, Cases and Materials* (Cambridge University Press 2019) 250.

¹⁵⁵ Arlene Kanter, ‘The Right to Inclusive Education for Students with Disabilities under International Human Rights Law’ in Gauthier de Beco, Shivaun Quinlivan and Janet E Lord (eds), *The Right to Inclusive Education in International Human Rights Law* (Cambridge University Press 2019) 51.

¹⁵⁶ *ibid.*

¹⁵⁷ UNESCO, *The World Declaration for Education for All: Meeting Basic Learning Needs* (1990), adopted by the UNESCO World Conference on Education for All (9 March 1990)

¹⁵⁸ UNGA, ‘Standard Rules on the Equalization of Opportunities for Persons with Disabilities’ (20 December 1993) A/RES/48/96.

and adults with disabilities, in integrated settings.’¹⁵⁹ States were urged to ensure that education for persons with disabilities form ‘an integral part of national educational planning, curriculum development and school organization.’¹⁶⁰

2.3.2 The Salamanca Statement and Framework for Action (1994)

In 1994, UNESCO adopted the Salamanca Statement and Framework for Action on Principles, Policy, and Practice in Special Needs Education (Salamanca Statement).¹⁶¹

The Salamanca Statement marked the beginning of an acknowledgment at the international level of the importance of educating children with disabilities in an inclusive educational environment.¹⁶² Unlike the preceding international documents discussed earlier, the Salamanca Statement, exclusively focuses on pupils with disabilities and explicitly calls for inclusive education as the norm.¹⁶³ Article 3 urges States to ‘include all children regardless of individual differences or difficulties’ and to ‘...adopt as a matter of law or policy the principle of inclusive education, enrolling all children in regular schools, unless there are compelling reasons for doing otherwise.’¹⁶⁴

Whilst not legally binding, the Salamanca Statement is considered a milestone international statement preceding the CRPD for its recognition of inclusive education.

2.3.3 Other Notable International Initiatives

More recently in 2015, the international community committed to the 2030 Agenda for Sustainable Development, which is an expansion of the Millennium Development Goals (MDG). The ambitions of the 2030 Agenda for education are captured in Sustainable Development Goal 4 (SDG4), which aims to ‘ensure inclusive and equitable quality education and promote lifelong learning opportunities for all’ by 2030.¹⁶⁵

¹⁵⁹ UNGA, ‘Standard Rules on the Equalization of Opportunities for Persons with Disabilities’ (20 December 1993) A/RES/48/96.

¹⁶⁰ *ibid.*

¹⁶¹ UNESCO and Ministry of Education and Science Spain, *The Salamanca Statement and Framework for Action on Special Needs Education* (ED-94/WS/18, UNESCO 1994).

¹⁶² Andrea Broderick, *The Long and Winding Road to Equality and Inclusion for Persons with Disabilities: The United Nations Convention on the Rights of Persons with Disabilities* (Intersentia 2015).

¹⁶³ Arlene Kanter, ‘The Right to Inclusive Education for Students with Disabilities under International Human Rights Law’ in Gauthier de Beco, Shivaun Quinlivan and Janet E Lord (eds), *The Right to Inclusive Education in International Human Rights Law* (Cambridge University Press 2019) 55.

¹⁶⁴ UNESCO and Ministry of Education and Science Spain, *The Salamanca Statement and Framework for Action on Special Needs Education* (ED-94/WS/18, UNESCO 1994).

¹⁶⁵ Sustainable Development Goal 4 (SDG4) <<https://www.sdg4education2030.org/the-goal>> accessed 17 July 2022.

SDG4 sets out several targets that are rights-based, for example, Target 4.5 aims to, *inter alia*, eliminate disparities in education and ensure equal access to education for persons with disabilities.¹⁶⁶

2.4 Convention on the Rights of Person with Disabilities (2006)

The CRPD and its Optional Protocol were adopted on 13 December 2006 at the UN Headquarters in New York and entered into force on 03 May 2008.¹⁶⁷ Figures from March 2022,¹⁶⁸ confirm that there are currently 185 ratifications to the CRPD and 100 ratifications to its Optional Protocol (OP-CRPD). The OP-CRPD is discussed further in this Chapter.¹⁶⁹

As briefly remarked in Chapter One, the CRPD is the first international human rights treaty with a specific focus on the codification and consolidation of the rights of persons with disabilities.¹⁷⁰ Spanning fifty Articles, its purpose, pursuant to Article 1 is to: ‘promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity’.¹⁷¹ Whilst the CRC, discussed earlier, protects the rights of all children, and includes an Article addressing the specific rights of children with disabilities,¹⁷² the CRPD expands on these rights and provides more detailed protection for the rights of children with disabilities.¹⁷³ The CRPD imposes wide-ranging duties on States Parties to the Convention.¹⁷⁴ Of these Article 24 of the CRPD affirms the right to inclusive education. As previously discussed, while the right to education more generally for children with disabilities and SEN was included under several human rights instruments, Article 24 constitutes recognition of the right to, not only education, but to inclusive

¹⁶⁶ Sustainable Development Goal 4 (SDG4) <<https://www.sdg4education2030.org/the-goal>> accessed 17 July 2022.

¹⁶⁷ <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>

¹⁶⁸ The most recent date in which such figures were updated by the Office of the United Nations High Commissioner for Human Rights (OHCHR) at <<https://indicators.ohchr.org/>> accessed 20 July 2022.

¹⁶⁹ <https://indicators.ohchr.org/>

¹⁷⁰ Coomara Pyaneandee, *International Disability Law: A Practical Approach to the United Nations Convention on the Rights of Persons with Disabilities* (Routledge 2019) 21.

¹⁷¹ Art 1 CRPD

¹⁷² UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577 Art. 29(1)(a). Art. 23(3).

¹⁷³ Gauthier De Beco, ‘The Right to Inclusive Education according to Article 24 of the Un Convention on the Rights of Persons with Disabilities: Background, Requirements and (Remaining) Questions’ 32 *Netherlands Quarterly of Human Rights* (2014).

¹⁷⁴ Andrea Broderick, *The Long and Winding Road to Equality and Inclusion for Persons with Disabilities: The United Nations Convention on the Rights of Persons with Disabilities* (Intersentia 2015).

education for the first time in a legally binding human rights treaty.¹⁷⁵ Article 24 and the obligations conferred on States Parties thereunder will now be discussed.

2.4.1 Article 24: The Right to Inclusive Education

Article 24 of the CRPD focuses solely on education. Article 24(1) provides:

States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system...¹⁷⁶

Thus the main obligation contained in Article 24, first and foremost, is the right to inclusive education.¹⁷⁷ Similar to the wording used in previous treaties, such as the ICESCR and the CRC, examined earlier in this Chapter, Article 24(1)(a) provides that education should be directed to the ‘full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity’.¹⁷⁸ Article 24(1)(b) further elaborates that the such education systems should enable persons with disabilities to develop ‘their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential.’¹⁷⁹ Article 24(1)(c) highlights a third aim of inclusive education, to enable persons with disabilities to ‘participate effectively in a free society’.¹⁸⁰

While Article 24 does not provide an explicit normative definition of inclusive education, it does, however, detail a comprehensive list of measures to be adopted by States Parties to the CRPD in order to realise this right. To this end, according to Article 24(2), States Parties shall ensure, *inter alia*, that ‘...children with disabilities are not excluded from free and compulsory primary education...’¹⁸¹ and can access inclusive education ‘...on an equal basis with others in the communities in which they live’.¹⁸² These two provisions emphasise a key principle of Article 24 is the non-discriminatory access to education for children with disabilities and SEN.

¹⁷⁵ Gauthier de Beco, Shivaun Quinlivan and Janet E Lord (eds), *The Right to Inclusive Education in International Human Rights Law* (Cambridge University Press 2019) 28

¹⁷⁶ UN Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force on 3 May 2008) 2515 UNTS 3, art 24.

¹⁷⁷ Andrea Broderick and Delia Ferri, *International and European Disability Law and Policy: Text, Cases and Materials* (Cambridge University Press 2019) 255.

¹⁷⁸ *ibid.*

¹⁷⁹ UN Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force on 3 May 2008) 2515 UNTS 3, art 24(1)(a).

¹⁸⁰ *ibid* art 24(1)(b).

¹⁸¹ *ibid* art 24(1)(c).

¹⁸² *ibid* art.24(2)(a).

¹⁸² *ibid* art 24(2)(b).

The final three obligations on States Parties detailed under Article 24(2) detail the provision of specific supports which children with disabilities ought to receive. Article 24(2)(c) of the CRPD provides that States shall ensure that 'reasonable accommodation of the individual's requirements is provided'.¹⁸³ The CRPD defines reasonable accommodation as:

necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.¹⁸⁴

The right to inclusive education has been further developed by the Committee on the Rights of Persons with Disabilities (CRPD Committee), the UN body responsible for implementing and monitoring compliance with the CRPD, in General Comment No. 4.¹⁸⁵ General Comment No. 4 is an expansive twenty-one-page document and is significant for the clear message it conveys on inclusive education.¹⁸⁶

General Comment No. 4 begins with the view that inclusive education is 'central to achieving high-quality education for all learners, including those with disabilities, and for the development of inclusive, peaceful and fair societies.'¹⁸⁷ Further elaborating that the right to inclusive education 'encompasses a transformation in culture, policy and practice...to accommodate the differing requirements and identities of individual students, together with a commitment to remove the barriers that impede that possibility.'¹⁸⁸

Crucially, the CRPD Committee delineate in General Comment No 4 between exclusion, segregation, integration and inclusion.¹⁸⁹ Of particular significance, General Comment No. 4 highlights that 'placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation, curriculum and teaching and learning strategies, does not constitute inclusion. Furthermore, integration does not automatically guarantee the transition from segregation to inclusion.'¹⁹⁰

¹⁸³ UN Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force on 3 May 2008) 2515 UNTS 3, art 24(2)(c).

¹⁸⁴ *ibid* art 2.

¹⁸⁵ UN Committee on the Rights of Persons with Disabilities (CRPD), General comment No. 4 (2016), Article 24: Right to inclusive education, 2 September 2016, CRPD/C/GC/4,

¹⁸⁶ *ibid*

¹⁸⁷ *ibid*.

¹⁸⁸ *ibid*.

¹⁸⁹ *ibid*.

¹⁹⁰ *ibid*.

2.4.2 The Optional Protocol

The Optional Protocol to the Convention on the Rights of Persons with Disabilities (OP-CPRD) was adopted on 13 December 2006 and entered into force on 03 May 2008¹⁹¹

The OP-CPRD establishes two procedures which are aimed at strengthening the implementation and monitoring of the CRPD. Namely, an individual communications procedure which enables individuals to lodge complaints of violations with the CRPD Committee, and an inquiry mechanism authorising the CRPD Committee to undertake inquiries of grave or systematic violations of the Convention.¹⁹² Complaints, however, may only be communicated against State Parties which have ratified or acceded to the OP-CRPD and only upon the exhaustion of all available domestic remedies.

At this juncture it is worth noting that while the Optional Protocol is a treaty in its own right, only States who are party to CRPD may ratify the OP-CPRD. In this regard, it is noteworthy that while the Irish State did eventually ratify the CPRD in 2018 – becoming the last EU member State to do so, Ireland did not ratify the OP-CPRD.

The failure by Ireland to ratify the OP-CPRD has sparked criticism from, among others, Inclusion Ireland¹⁹³ and the CRPD Committee, with one member of the Committee suggesting in 2021 that such inaction is suggestive that ‘...Ireland is not confident or comfortable enough to open itself up to international scrutiny’.¹⁹⁴ Indeed, one of the most frequently raised criticisms by the Irish Human Rights and Equality Commission (IHREC) is the non-incorporation of international treaties into domestic law. It is worth reflecting at this juncture that Ireland is a ‘dualist State’ and, therefore, international treaties must first be incorporated into domestic law through domestic legislation. Article 29.6 of the Irish Constitution provides, ‘no international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas’.¹⁹⁵ The Supreme Court further affirmed that this provision of the Irish Constitution creates an ‘unmistakable distinction between domestic and international law’.¹⁹⁶

¹⁹¹ Optional Protocol to the Convention on the Rights of Persons with Disabilities <<https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-persons-disabilities>> accessed 19 July 2022.

¹⁹² Gauthier de Beco, Shivaun Quinlivan and Janet E Lord (eds), *The Right to Inclusive Education in International Human Rights Law* (Cambridge University Press 2019) 29.

¹⁹³ Inclusion Ireland, Submission to the Irish Human Rights & Equality Commission on IHREC’s Strategy Statement 2019–2021 (2018) 8.

¹⁹⁴ Maresa Fagan, ‘UN criticises Ireland for failings on disabilities legislation’ *The Irish Examiner* (Dublin, 30 May 2021).

¹⁹⁵ Article 29.6°.

¹⁹⁶ *Kavanagh v Governor of Mountjoy Prison* [2022] 3 IR 97.

2.5 Chapter Conclusion

Having considered the development of the right to education more generally within the wider international human rights framework, it is clear that the right to education has been recognised and developed by several binding and non-binding instruments beginning with the Universal Declaration of Human Rights (UDHR) in 1948. Of these, it is evident that two of the core instruments, namely the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC) which preceded the CRPD are particularly comprehensive in their normative content and scope. Despite the fact that neither the ICESCR nor the CRC explicitly reference the right to inclusive education, a review of recent Concluding Observations by their respective Committee's is indicative that the practice of UN treaty bodies is evolving to reflect this right in line with the CRPD.

Following this, the right to education at the regional level was briefly considered with reference to the European Framework. This section is indicative of the gaps in this area with regards to provision for the right to education is more generally, not least for children with disabilities and SEN. This serves to further highlight the importance of the subsequent adoption of the CRPD for children with disabilities and SEN.

Next, this chapter reflected on the emergence of the right to inclusive education leading up to the adoption the Convention on the Rights of Persons with Disabilities (CRPD) in 2006. It is clear that while these key milestones at the international level which preceded the adoption of the CRPD were instrumental in paving the way towards the recognition of the right to inclusive education. Notwithstanding this, it was discussed that these developments carry no legal weight due to their non-binding nature.

Thereafter, the CRPD and specifically the right to inclusive education under Article 24 were examined. It is clear from his section that the CRPD constitutes a landmark treaty for its specific focus on the codification and consolidation of the rights of persons with disabilities. This section observes that Article 24 cements the principle of inclusive education as a legal right for the first time in a binding international treaty and confers comprehensive obligations on States Parties thereunder. A discussion on the Optional Protocol to the CRPD (OP-CRPD) highlights the purpose and value of this complementary instrument and discusses Ireland's failure to date to ratify this treaty.

CHAPTER 3: METHODOLOGY

3.1 Introduction

This chapter reflects on the chosen methodologies employed by this research. To this end, it should be noted that it is often challenging to compartmentalise a dissertation, particularly one in the area of law, under any specific headings, as it is noted that works of this type often involve a hybrid of methods.¹⁹⁷

Henn et al makes the important distinction between ‘method’ and ‘methodology’.¹⁹⁸ They state that ‘method refers to the range of techniques that are available to us to collect evidence about the social world’. Methodology, however, concerns the research strategy as a whole’.¹⁹⁹ The research methodologies adopted for this dissertation are doctrinal, sociolegal and historical. To further supplement this work, this research also draws in relevant sections on empirical research in the field of disability studies. The following provides an overview of these research methodologies and justifications for such choices.

3.2 Doctrinal Methodology

To complement the normative analysis of this research, at various stages the *classic form* of legal scholarship is employed – namely, a traditional legal doctrinal approach. Doctrinal, or ‘black-letter’, research is a ‘law-centred’ legalistic approach which has been defined as, ‘a detailed and highly technical commentary upon, and systematic exposition of, the context of legal doctrine.’²⁰⁰ It has been stated that the priority within doctrinal research is to ‘gather organise and describe legal rules and offer commentary upon the emergence and significance of the authoritative legal sources that contain these rules’.²⁰¹ In order to adequately address the central research question and other questions which flow from this, it is necessary to conduct a doctrinal analysis of emerging legislative developments and case-law in this area. Moreover, the research questions require a formal legal analysis of the interpretation of the text of Article 24 as well as systematisation of the research material. The published documents of the CRPD Committee on the topic will be used as source material for this purpose. The contents of existing legislation in Ireland are also be examined by investigating relevant Acts, Government Bills, and texts.

¹⁹⁷ Michael Salter and Julie Mason, *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research* (Pearson 2007) 31.

¹⁹⁸ Matt Henn, Mark Weinstein and Nick Foard, *A Critical Introduction to Social Research* (2nd edn, Sage 2006) 10.

¹⁹⁹ *ibid.*

²⁰⁰ Michael Salter and Julie Mason, *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research* (Pearson 2007) 49.

²⁰¹ *ibid.*

3.3 Sociolegal

This dissertation analyses practical issues concerning the implementation of the right to inclusive education in practice which extend beyond that which a strictly doctrinal analyses could not achieve. As such, this research also employs a sociolegal methodology.

To this end, it should be noted that no single or conclusive definition of sociolegal studies has been universally accepted. It has been noted that this is in part due to the wide range of research which has been conducted within this tradition.²⁰² There are, however, some defining tendencies which distinguish sociolegal research from those of the black-letter tradition.²⁰³ Such tendencies include research directed towards studying the ‘law in action’ as opposed to doctrinal analysis of ‘law in books’.²⁰⁴ Salter and Mason provide the following useful characterisation:

Sociolegal studies are a branch of legal studies that are distinguished from doctrinal research through the deployment of one or more research methodologies drawn largely but not exclusively from the social sciences.²⁰⁵

3.4 Historical

Salter and Mason highlight that there are arguments suggesting that the process of studying ‘law in action’ cannot omit a historical form of analysis.²⁰⁶ As such, in order to appreciate the development of educational rights for children with disabilities and SEN, it is vital to understand the historical position of such children, particularly in the Irish context. It has been further noted that the importance of historical contextualisation in legal research is that it enables research which allows the ‘...significance of recent legal and policy developments and reforms to be considered in a wider and more sophisticated manner’.²⁰⁷ To this end it is worth reflecting that as recently as 1993, the Irish State contented that a child with a disability was ‘ineducatable’ within the meaning of the right to education under the Irish Constitution, and that efforts to provide education to children with such severe disabilities was ‘of no real or lasting benefit to them’.²⁰⁸

²⁰² Michael Salter and Julie Mason, *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research* (Pearson 2007) 180.

²⁰³ *ibid.*

²⁰⁴ *ibid.*

²⁰⁵ *ibid.* 132.

²⁰⁶ *ibid.* 193.

²⁰⁷ *ibid.* 194.

²⁰⁸ *O’Donoghue v Minister for Health* [1993] IEHC 2.

As such, this dissertation explores the historical development of the educational rights of children with disabilities and SEN, not for its own sake, but rather to allow the significance and implications of this right to be more clearly understood through a close reconstruction of the factors underpinning such developments.

3.5 Research Limitations

It must be acknowledged that, within the parameters of research, there are certain limitations. First the various theoretical models of disability and conceptions of equality are not examined as a full discussion of this complex area is beyond the bounds of this research. Rather, as discussed within Chapter One, this research embraces the view acknowledged by the preamble to the CRPD that disability is “an evolving concept”, which “...results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others”.²⁰⁹ Accordingly, this interpretation and understanding of disability is consistently applied throughout this research

Moreover, the drafting process of the international human rights instruments this research examines is not discussed. A review of literature has highlighted that many scholars have eloquently examined this area and thus this research cannot contribute further to existing scholarship in this area.

Finally, it must be noted that the deadline for submission of this research was 19 August 2022. As such, this research does not capture any subsequent developments in this area of scholarship after this point in time.

3.6 Chapter Conclusion

This Chapter presented the methodologies employed in this research and discussed the justification behind these choices. To this end, this chapter specifically discusses the rationale of employing doctrinal, sociolegal and historical methodologies for the specific aims of this research. This section was followed by an outline of the limitations of this study and briefly reflects on the basis of these research constraints.

²⁰⁹ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force on 3 May 2008) 2515 UNTS 3.

CHAPTER 4: A DISCUSSION ON THE INCLUSIVE EDUCATION IN IRELAND

4.1 Introduction

Having examined the development of right to inclusive education at the international level, and the right to education more generally, this research proceeds to trace the right of the child to education in Ireland with a view to examining if the Irish legislative framework is in alignment with Ireland's obligations under the CRPD.

As such, this Chapter begins by locating children's education rights more generally within the Irish Constitution of 1937 together with a reflection on the seminal Irish case law which further refined the scope of this right, particularly for children with disabilities and SEN.

This is followed by tracing the emergence of the legislative framework in Ireland, beginning with the enactment of the *Education Act 1998*. Thereafter, the radical shift in legislative and policy developments which have shaped the right to education for children with disabilities and SEN in Ireland are considered.

Next, taking into consideration the current academic debates, as identified in Chapter Two, together with the apparent gaps in practice, as highlighted, *inter alia*, by the CESCR and CRC Committees, the final section of this Chapter discusses the practical implementation of inclusive education for children with disabilities and SEN in Ireland. A number of recommendations in these areas are also indicted.

4.2 The Right of the Child to Education: The Irish Context

In Ireland, the right to education is enshrined in the Irish Constitution of 1937 and has since been affirmed and refined through case law and further developed with the enactment of a detailed legislative framework. The following section begins by examining the Constitutional right of the child to education, followed by a reflection on the seminal case law which refined this right, in particular for children with disabilities and SEN. This is followed by tracing the emergence of the legislative educational framework in Ireland, beginning with the Education Act in 1998.

4.2.1 Setting the Scene: The Right to Education and the Irish Constitution

Under the Constitution of Ireland 1937 (*Bunreacht na hÉireann*), the right to education is enshrined in Article 42, titled ‘Education’.²¹⁰ Article 42 has two main elements, namely: protecting the primacy of the family²¹¹ as the ‘...primary and natural educator of the child’²¹² and obliging the State to provide for free primary education...’²¹³ Further provision for the right to education is mentioned in of Article 44, titled ‘Religion’.²¹⁴

The Irish Constitution does not explicitly enunciate the right of the child to *receive* education; instead, Article 42.4 places a duty on the State to *provide for* free primary education’.²¹⁵ The Courts have, however, long recognised a corresponding right of children to receive the free primary education that the State has a duty to provide.²¹⁶ Article 42 does not explicitly reference a right to education for children with disabilities and SEN, however this was subsequently clarified in two seminal cases, *O’Donoghue v Minister for Health*²¹⁷ and *Sinnott v Minister for Education*.²¹⁸

In *O’Donoghue*,²¹⁹ the State argued that ‘efforts’ to provide education to children with severe disabilities was ‘of no real or lasting benefit to them’ and that ‘the applicant, ‘by reason of being profoundly mentally and physically disabled’ was ‘ineducable’ within the meaning of Article 42 of the Constitution.²²⁰ Further, the State contented that the

²¹⁰ Article 42°.

²¹¹ Elaine Dewhurst, Noelle Higgins and Los Watkins, *Principles of Irish Human Rights Law* (Clarus Press 2012) 408.

²¹² Article 42.1°.

²¹³ Article 42.4°.

²¹⁴ Gerard Hogan and others, *Kelly: The Irish Constitution* (5th Edn, Bloomsbury Professional 2018).

²¹⁵ *ibid.*

²¹⁶ *Crowley v Ireland* [1980] IR 102 [122] (O’Higgins CJ).

²¹⁷ [1993] IEHC 2.

²¹⁸ [2001] 2 IR 545.

²¹⁹ *O’Donoghue v Minister for Health* [1993] IEHC 2.

²²⁰ *ibid.*

constitutional entitlement to free primary education ‘did not include the type of education/training appropriate for children with severe or profound disabilities.’²²¹ O’Hanlon J rejected this contention and held that the State had a duty to provide ‘...each child such advice, instruction and teaching as will enable him or her to make the best possible use of his or her inherent and potential capacities, physical, mental and moral, however limited these capacities may be’.²²²

This significance of this ground-breaking decision refined and explicitly interpreted the right to free primary education under Article 42.4 of the Constitution as applicable to every child, including children with disabilities and SEN, irrespective of severity, and affirmed for the first time, that the State has an obligation to provide for such education.’²²³ The decision in *O’Donoghue* was confirmed by McGuinness J. in *Comerford v Minister for Education*,²²⁴ where she held that ‘the right to free primary education extends to every child, although the education provided must vary in accordance with the child’s abilities and needs.’²²⁵

Another significant development arose following the decision in *Sinnott v Minister for Education*.²²⁶ A case taken by Jamie Sinnott, a twenty-two year old man with autism. In the High Court, it was noted by the Court that the Plaintiff ‘had less than three years of meaningful education and training...’²²⁷ with Barr J acknowledging that this lack of education had caused the plaintiff to ‘...suffer grievously through the failure of the State to meet its constitutional obligation to provide him with such services’²²⁸

Barr J was critical of the State’s failure to provide for the plaintiff’s educational needs and held that the State was obliged to provide education for people with severe or profound disabilities based on need.²²⁹ This significance of this ruling lay in the interpretation that the right to free primary education on extended to children with disabilities on the basis of need, rather than age.

²²¹ *O’Donoghue v Minister for Health* [1993] IEHC 2.

²²² *ibid.*

²²³ *O’Donoghue v Minister for Health* [1993] IEHC 2.

²²⁴ [1997] 2 ILRM 134.

²²⁵ *Comerford v Minister for Education* [1997] 2 ILRM 134.

²²⁶ [2001] 2 IR 545.

²²⁷ *Sinnott v Minister for Education* [2001] 2 IR 545.

²²⁸ *ibid.*

²²⁹ *ibid.*

Unfortunately, on appeal by the State to the Supreme Court this decision was overturned, and it was held that the State's obligation to provide primary education ends when a child is eighteen.²³⁰

This decision resulted in widespread disappointment among disability advocates and families of children with disabilities and SEN.²³¹ The Supreme Court judgment in *Sinnott* was significant as this ruling limited the scope of the right to education to the age of eighteen, irrespective of need which a child with a disability may have beyond this age.

4.2.2 The Education Act 1998

Although the constitutional right to free primary education in Ireland was cemented in 1980 with the seminal decision of *Crowley v Ireland*,²³² as noted by Glendenning: 'statutory provision for education was extremely dilatory in being enacted'.²³³

In 1993, the Special Education Review Committee (SERC) reported that Ireland had a '...conspicuous lack of legislation governing much of educational provision but particularly covering educational provision for students with special needs.'²³⁴

The *Education Act 1998* was the first comprehensive legislation enacted concerning education since the founding of the State in 1922. While the Act addresses educational provision generally, Section 7(1)(a) of the *Education Act* is of particular relevance to children with disabilities and SEN. It requires the Minister for Education to ensure that: 'there is made available...including a person with a disability or who has other special educational needs, support services and a level and quality of education appropriate to meeting the needs and abilities of that person,'. The foregoing provision is conditional, however, having regard to State resources available.²³⁵

²³⁰ *Sinnott v Minister for Education* [2001] 2 IR 545.

²³¹ See, for example: Kilian Doyle, 'Opposition disappointment at Sinnott ruling: The main Opposition parties have expressed disappointment at today's Supreme Court ruling in the Sinnott case' *The Irish Times* (Dublin, 12 July 2001).

²³² [1980] IR 102.

²³³ Dymna Glendenning, *Education and the Law* (2nd edn, Bloomsbury Professional 2012) 226.

²³⁴ Government of Ireland. (1993) *The Report of the Special Education Review Committee*. Dublin: Stationary Office

²³⁵ Andrea Broderick, *A Right to Inclusive Education: Article 24 CRPD* *The Irish Yearbook of International Law* 2014

4.3 Special Educational Needs: Legislative and Policy Developments

As mentioned briefly, the enactment of the *Education Act 1998* marked a significant change to Irish policy and legislation for the right to education. It is notable that the legislative landscape concerning educational provision in Ireland was almost completely unregulated until this time.²³⁶ It follows that the emergence of the Irish legislative and policy framework concerning educational provision for children with disabilities is likewise, relatively recent.²³⁷

The development of this framework was influenced by several factors, including groundbreaking decisions by the Courts, discussed in the preceding section, policy documents and international momentum towards the development of inclusive education.²³⁸ International reports, discussed previously including the Salamanca Statement, were pivotal in shaped the path for inclusion internationally, including in Ireland.

Following the enactment of the *Education Act 1998*, the *Education (Welfare) Act 2000* and *The Equal Status Act 2000* were signed into law. The *Education (Welfare) Act 2000* provides for the entitlement of every child, including children with disabilities and SEN to a certain minimum education and focuses on promoting school attendance and measures to prevent absenteeism and early school leaving.²³⁹ The Act further provided for the establishment of the National Educational Welfare Board (NEWB), which has since been dissolved.²⁴⁰

The *Equal Status Act 2000* prohibits discrimination in the provision of goods and services, accommodation, and education on nine grounds, including disability. In the context of education, the Act introduced certain requirements on schools and educational institutions in relation to how they deliver their services. The Act specifies four areas in which a school must not discriminate against children with disabilities to include admission, access to a course, facility or benefit provided by the school, any other term of participation, and the expulsion or sanction of a pupil.²⁴¹

²³⁶ Sean Griffin and Michael Shevlin, *Responding to Special Educational Needs: An Irish Perspective* (2nd edn, Gill Education 2011) 47.

²³⁷ *ibid.*

²³⁸ Muiread Murphy and Others, 'Inclusive education and the law in Ireland' *International Journal of Law in Context* (2022) 1-21.

²³⁹ The Education (Welfare) Act 2000.

²⁴⁰ The NEWB was subsequently dissolved in 2013 and the relevant functions under the Education Welfare Act 2000 were transferred to The Child and Family Agency (Tusla) upon its establishment on 01 January 2014.

²⁴¹ The Equal Status Act 2000.

It was, however, the EPSEN Act 2004 which marked the most significant legislative milestone in Ireland for children with disabilities and SEN.²⁴² The EPSEN Act will now be considered.

4.3.1 The Education for Persons with Special Educational Needs Act 2004

As briefly mentioned in Chapter One, the Education for Persons with Special Educational Needs (EPSEN) Act is the most prominent legislation in Ireland with regard to the education of children with disabilities and SEN.²⁴³ The EPSEN Act includes the aim that children with special educational needs should be educated, wherever possible, in an inclusive environment and that those with SEN should have the same rights to appropriate education as children without special educational needs. The Act also established the National Council for Special Education (NCSE), discussed further in the following subsection.

Although the text and provisions the EPSEN Act itself are described as ‘far-reaching’²⁴⁴, the rights accorded to students with disabilities in the Act are also somewhat conditional in nature.²⁴⁵ Section 2 of the EPSEN Act, for example, provides that a child with special educational needs is to be educated in an inclusive environment with children who do not have such needs *unless* the nature or degree of those needs of the child is inconsistent with ‘the best interests of the child...’²⁴⁶, or ‘the effective provision of education for children with whom the child is to be educated’.²⁴⁷ This conditionality was referred to by the NCSE in its 2019 Progress Report noting that the CRPD Committee has previously referenced similar caveats as contrary to the spirit and intention of the CRPD.²⁴⁸

²⁴² Sean Griffin and Michael Shevlin, *Responding to Special Educational Needs: An Irish Perspective* (2nd edn, Gill Education 2011) 59.

²⁴³ Education for Persons with Special Educational Needs (EPSEN) Act 2004.

²⁴⁴ Andrea Broderick, ‘The Right to Inclusive Education: Article 24 of the UN Convention on the Rights of Persons with Disabilities and the Irish Experience’ in Fiona de Londras and Siobhán Mullally (eds), *The Irish Yearbook of International Law* (Volume 9 2014, Hart Publishing 2017) 42.

²⁴⁵ Andrea Broderick, ‘The Right to Inclusive Education: Article 24 of the UN Convention on the Rights of Persons with Disabilities and the Irish Experience’ in Fiona de Londras and Siobhán Mullally (eds), *The Irish Yearbook of International Law* (Volume 9 2014, Hart Publishing 2017) 42.

²⁴⁶ Education for Persons with Special Educational Needs Act 2004, s 2 (a).

²⁴⁷ *ibid.*, s 2 (a) and (b).

²⁴⁸ National Council for Special Education, ‘Policy Advice on Special Schools and Classes: An Inclusive Education for and Inclusive Society?’ (Progress Report October 2019) 59 <<https://ncse.ie/wp-content/uploads/2019/11/Progress-Report-Policy-Advice-on-Special-Schools-Classes-website-upload.pdf>> accessed 01 December 2019.

Indeed, some scholars have suggested that such conditional provisions ought to be repealed less Ireland face a considerable challenge in fulfilling its obligations with in line the inclusive education model purported by Article 24 of the CRPD.²⁴⁹

Moreover, while the EPSEN Act was widely considered to be ground-breaking when it was enacted, key parts of the Act have still not commenced which campaigners say has resulted in delays for children in accessing certain vital assessments and services. The Irish government had initially committed to a phased implementation of the Act over a five-year period,²⁵⁰ however by November 2008, the Government announced an indefinite deferral of such implementation.

4.3.1.1 National Council for Special Education (NCSE)

Section 19 of the EPSEN Act 2004 established the National Council for Special Education (NCSE). As an independent statutory body, the purpose of the NCSE is to improve the delivery of education services to children with disabilities and SEN. Its services to children and schools are delivered through a national network of Special Educational Needs Organisers (SENOs) who interact with parents and schools and liaise with the HSE in providing specific resources to support children with SEN, such as Special Needs Assistants (SNA).

In addition, the NCSE has explicit tasks in relation to central requirements of the Act such as assessment and individual education plans; however, as pointed out above, these provisions have yet to be commenced. The NCSE employs special education needs organisers (SENO) to support the assessment and resource allocation process in schools. SENOs are organised on a local basis in each county in the Republic of Ireland.

²⁴⁹ David M Doyle, Marie Muldoon and Clíodhna Murphy, 'Education in Ireland: Accessible without discrimination for all?' (2020) *The International Journal of Human Rights*, (Vol 24:10) 1702.

²⁵⁰ Circular 00/51 (Department of Education, 2007).

4.3.2 The Education (Provision in Respect of Children with Special Educational Needs) Act 2022

As discussed briefly within the introductory marks in Chapter One, on 19 July 2022, the Education (Provision in Respect of Children with Special Educational Needs) Act 2022 was signed into law.²⁵¹

One principal aim of the Act is to address the ongoing systemic issues of school place shortages for children with disabilities and SEN in Ireland. This new Act is concerned with, *inter alia*, truncating a particular statutory process contained in Section 37A of the Education Act 1998, as amended by the Education (Admission to Schools) Act 2018 whereby the Minister may compel mainstream schools to open and operate so called “special classes”.

Whilst Government ministers have referred to this new Act as a ‘milestone’,²⁵² it is, however, debatable if these classes effectively amount to another form of segregation for children with disabilities and SEN contrary to Article 24 CRPD. As discussed in Chapter Two, pursuant to Article 24(2) CRPD States Parties shall ensure, *inter alia*, that ‘...children with disabilities are not excluded from free and compulsory primary education...’²⁵³ and can access inclusive education ‘...on an equal basis with others in the communities in which they live’.²⁵⁴

Moreover, the CRPD Committee emphasise in General Comment No 4 between integration and inclusion²⁵⁵ noting that ‘integration does not automatically guarantee the transition from segregation to inclusion’.²⁵⁶ As such, it is recommended that that the continued reliance and expansion of this particular model of educational provision is further examined and the opportunity to build a truly inclusive education system in accordance with Ireland’s commitments under the CRPD is realised.

²⁵¹ Education (Provision in Respect of Children with Special Educational Needs) Act 2022

²⁵² Department of Education, ‘Statement from Minister of State for Special Education and Inclusion, Josepha Madigan, announcing significant increase in Special Education Provision in Dublin’ (28 July 2022) <<https://www.gov.ie/en/press-release/8a499-statement-from-minister-of-state-for-special-education-and-inclusion-josepha-madigan-td-announcing-significant-increase-in-special-education-provision-in-dublin/>> accessed 01 August 2022.

²⁵³ *ibid* art.24(2)(a).

²⁵⁴ *ibid* art 24(2)(b).

²⁵⁵ *ibid*.

²⁵⁶ *ibid*.

4.4 Barriers to the Practical Implementation of Inclusive Education in Ireland

Having considered the historical development and radical shift in the right to education for children with disabilities and SEN in Ireland, this section discusses the emerging gaps in this area which appear to hinder the realisation of inclusive education for such children in practice. To this end, the following discussion considers the practical implementation of inclusive education for children with disabilities and SEN in Ireland, taking into consideration current academic discourse, as identified in Chapter Two, together with concerns in this area highlighted by both the CESCR²⁵⁷ and CRC Committee.²⁵⁸ A number of recommendations in these areas are also indicted as appropriate.

4.4.1 Legislative Commitment

A major barrier to the realisation of inclusive education for children with disabilities and SEN is the continuing non-commencement of various elements of the EPSEN Act. While the objectives of the EPSEN Act are indeed in line with the CRPD's mandate for inclusive education, key provisions relating to assessments, individual education plans (IEP) and school designation have not yet been commenced.

The impact of the failure to commence these main provisions of the EPSEN Act 2004 is that children with disabilities and SEN do not have legally enforceable rights to specific supports in their education. As summarised plainly by Inclusion Ireland, the National Association for People with an Intellectual Disability in Ireland '...because the Act has not been implemented, children's rights are at the whim of policy makers, changes in government, funding priorities and other factors. This needs to change...'.²⁵⁹

Following on from the concerns raised in 2016 by the CRC in its Concluding Observations to Ireland in 2016, wherein it recommended a 'comprehensive strategy for the inclusion of children with disabilities in mainstream education and the encouragement of their autonomy', it is recommended that due and sustained attention is accorded by Government to this unacceptable state of affairs and that the EPSEN Act is fully reviewed in consultation with relevant Stakeholders, preferably with a view to full commencement without further inordinate and inexcusable delay.

²⁵⁷ UN Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of Ireland, 8 July 2015 [10].

²⁵⁸ United Nations Committee on the Rights of the Child (CRC), Concluding observations on the combined third and fourth periodic reports of Ireland (1 March 2016), CRC/C/IRL/CO/3-4 [47].

²⁵⁹ Inclusion Ireland 'Failure to commence 17-year-old EPSEN Act negatively impacting children with disabilities, Inclusion Ireland to tell Oireachtas Committee'

4.4.2 Reduced Timetables, Data and Monitoring

Article 24(2), States Parties shall ensure, *inter alia*, that ‘...children with disabilities are not excluded from free and compulsory primary education...’²⁶⁰ Despite this, a concerning study by Inclusion Ireland in partnership with Technological University Dublin estimated that approximately one-in-four pupils with disabilities and SEN were being subjected to reduced timetabling.²⁶¹ It could only estimate, because no data is collected in this area.²⁶²

In September 2019, the Department of Education (DOE) proposed new guidelines on as procedures to be followed by schools when they are considering the use of reduced timetables. These guidelines, which commenced on 1 January 2022, affirm that reduced timetables ‘...should not be used as a sanction, offered as an alternative to a sanction, or used as a behavioural management tool’.²⁶³ In addition, schools will also need to consult and obtain the consent of parents or guardians when considering implementing the use of reduced timetables.²⁶⁴

While the new guidelines by the Department of Education are indeed a welcome development. It is concerning that, in the absence of any data gathering and implementation monitoring mechanism, the impact or shortcomings of these guidelines may not be adequately captured. Adequate data collection and monitoring is critical to support the realisation of inclusive education. Article 31 of the CRPD explicitly calls for collection of statistical and research data, providing ‘States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention.’²⁶⁵

To this end, it is recommended that the Department of Education, in consultation with the relevant Stakeholders, consider its obligations under, *inter alia*, Article 31 of the CRPD with a view to identifying and addressing the apparent gaps in this area.

²⁶⁰ UN Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force on 3 May 2008) 2515 UNTS 3, art 24 (2)(a).

²⁶¹ Inclusion Ireland and Technological University of Dublin, *Education, Behaviour and Exclusion: The Experience and Impact of Short School Days on Children with Disabilities and their Families in the Republic of Ireland* (Dublin, 2019).

²⁶² *ibid.*

²⁶³ Circular 0047/2021 (Department of Education, 2021).

²⁶⁴ *ibid.*

²⁶⁵ UN Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force on 3 May 2008) 2515 UNTS 3, art 31.

4.4.3 Appropriate School Place Shortages

As discussed in Chapter One, recent commentaries indicated that some 130 children with disabilities and SEN are currently unable to access an appropriate school place for the coming academic year.²⁶⁶ This is In Ireland, there is no centralised data available yet on the number of children nationally without an appropriate school place.

Pointing to the fact that 1,400 children are in receipt of home tuition, Adam Harris, chief executive of the autism charity ‘AsIAM’, has estimated that up to 26 per cent of families of children with autism in Ireland do not have an appropriate school place.²⁶⁷

Indeed, one sobering news report from 2021 highlighted the plight of one such anonymised child with autism and a moderate to severe learning disability, wherein twenty-four primary schools refused to enrol him.²⁶⁸

It is recommended that Government prioritise a review, not only with a view to ensuring that such children are afforded due educational provision in accordance with their entitlements but to mitigate such unacceptable scenarios occurring again in the future. To this end, it is worth recalling that Article 24(2) of the CRPD explicitly provides that ‘...children with disabilities are not excluded from free and compulsory primary education...’²⁶⁹ and can access inclusive education ‘...on an equal basis with others in the communities in which they live’.²⁷⁰

²⁶⁶ Katherine Donnelly, ‘130 special needs pupils in Dublin have no place in school for September’ *Independent* (Dublin, 19 May 2022).

²⁶⁷ Carl O’Brien, ‘Up to 80 children with special needs in Dublin without school places: Taoiseach apologises to family without appropriate education for seven years’ *The Irish Times* (Dublin, 18 May 2022).

²⁶⁸ Emma O’Kelly, ‘School struggle for special education supports ‘morally wrong’ *RTE* (02 July 2021). <<https://www.rte.ie/news/education/2021/0702/1232563-special-education/>> accessed on 06 April 2022.

²⁶⁹ *ibid* art.24(2)(a).

²⁷⁰ *ibid* art 24(2)(b).

4.4.4 School Admission Policies

As discussed in Chapter Two, in 2015 in its Concluding Observations to Ireland,²⁷¹ the CESCR expressed concerns about, *inter alia*, discriminatory criteria contained in many school admission policies prejudicing children with SEN and the lack of a regulatory framework.²⁷² To this end, it is noteworthy that the Irish Government responded with the enactment of the *Education (Admission to Schools) Act 2018*.

From February 2020, schools were required to draft a new school admission policy in accordance with the Act's provisions, which includes, *inter alia*, '...a statement...that the school shall not discriminate in its admission of a student to the school on...' and proceeds to list nine grounds, including disability.²⁷³

While this Act is indeed a positive step towards the goals of inclusive education, it remains to be seen what impact, in practice, this provision will achieve overtime. Indeed, as previously discussed, there exists a current lack of appropriate school places for children with disabilities and SEN. Thus, whilst it is acknowledged that inclusion in education is a process, not an end point,²⁷⁴ it is recommended that a holistic view of the educational barriers for children with disabilities and SEN and respond accordingly.

²⁷¹ UN Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of Ireland, 8 July 2015 [10].

²⁷² *ibid*.

²⁷³ Education (Admission To Schools) Act 2018, s 61(1)(f).

²⁷⁴ UNESCO, *Global Education Monitoring Report 2020: Inclusion and Education: All Means All* (3rd edn, UNESCO 2020).

4.5 Chapter Conclusion

Having examined children's education rights more generally within the Irish Constitution of 1937 together with a reflection on the seminal case law in this area, it is clear that, in the absence of substantive legislative provision, the Courts have had significant role in the development of the right to education for children with disabilities and SEN in Ireland.

Thereafter, a reflection on the radical shift in legislative and policy developments which have shaped the right to education for children with disabilities and SEN in Ireland clearly illustrates the influence of the international trend towards the right to inclusive education.

Notwithstanding this, it is clear that certain gaps remain which hinder the realisation of this right for such children. To this end, ongoing barriers with regards to the continued non-commencement of the EPSEN Act, 18 years after this Act was first legislated for was discussed.

Next, challenges and developments concerning the use of reduced timetables was explored. This discussion further highlighted apparent gaps which exist in the area of statistical data and monitoring mechanisms.

This was followed by a discussion on the ongoing systematic issue concerning school place shortages. Finally, school admission policies and developments in this area were discussed. Recommendations in these areas were also indicated which are summarised in the Chapter Five.

CHAPTER 5: CONCLUSION

5.1 Research Conclusion

A reflection on the past two decades highlights the significant changes that have taken place both internationally and domestically in Ireland as regards the educational rights for children with disabilities and SEN. Indeed, it is worth restating that as recently as 1993, the Irish State contented that a child with a disability was ‘ineducatable’ within the meaning of the right to education under the Irish Constitution, and that efforts to provide education to children with severe disabilities was ‘of no real or lasting benefit to them.’

Since this time, ground-breaking decisions by the Irish Courts, policy documents and international momentum towards the development of inclusive education, have served to bring Ireland one step closer to realising the goals espoused by Article 24 CRPD.

This research has highlighted that while there have been several positive developments for children with disabilities and SEN, such as Ireland’s ratification of the CRPD and the enactment of the *Education (Admission To Schools) Act 2018*, current gaps in practice remain which hinder the realisation of the right to inclusive education for such children.

First, the continued failure of the Irish State to commence the main provisions of the EPSEN Act 2004 were discussed. The impact of this non-commencement is that children with disabilities and SEN do not have legally enforceable rights to specific supports in their education. It was recommended that due and sustained attention is accorded by Government to this unacceptable situation and that the EPSEN Act is fully reviewed in consultation with relevant Stakeholders, preferably with a view to full commencement without further inordinate and inexcusable delay.

The second barrier identified hindering the realisation of inclusive education relates to the practice of reduced timetabling. This research highlighted one recent interdisciplinary study by Inclusion Ireland in partnership with Technological University Dublin wherein it was estimated that approximately one-in-four pupils with disabilities and SEN were subjected to this practice.²⁷⁵ This particular study could only estimate, because no data is collected in this area,²⁷⁶ illuminating a further gap. It was recommended that the Department of Education, in consultation with the relevant stakeholders, consider its

²⁷⁵ Inclusion Ireland and Technological University of Dublin, *Education, Behaviour and Exclusion: The Experience and Impact of Short School Days on Children with Disabilities and their Families in the Republic of Ireland* (Dublin, 2019).

²⁷⁶ *ibid.*

obligations under, *inter alia*, Article 31 of the CRPD with a view to identifying and addressing the apparent gaps in this area. Pursuant to Article 31, States Parties ought to ‘...undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention.’²⁷⁷

The third barrier identified concerns the ongoing shortage of appropriate school places for children with disabilities and SEN in Ireland. This research recalled recent commentaries which indicate that some 130 children with disabilities and SEN in the Dublin area alone are currently unable to access an appropriate school place for the coming academic year.²⁷⁸

This research further highlighted that, reportedly, up to 26 per cent of families of children with autism in Ireland do not have an appropriate school place.²⁷⁹ To this end, it was recommended that Government prioritise a review, not only with a view to ensuring that such children are afforded due educational provision in accordance with their entitlements but to mitigate such unacceptable scenarios occurring again in the future. Appropriate measures resolving this issue are required in order for Ireland to be compliant with Article 24(2) of the CRPD which explicitly provides that ‘...children with disabilities are not excluded from free and compulsory primary education...’ and can access inclusive education ‘...on an equal basis with others in the communities in which they live.’²⁸⁰

The final barrier identified by this research relates to school admissions policies and discriminatory criteria contained therein prejudicing children with disabilities and SEN, as identified by the CESCR in 2015 in its Concluding Observations to Ireland.²⁸¹ It was noted that the Irish Government has since recently enacted the *Education (Admission To Schools) Act 2018* which requires schools to draft a new admission policy in accordance with the Act’s provisions. These provisions include, *inter alia*, ‘...a statement...that the

²⁷⁷ UN Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force on 3 May 2008) 2515 UNTS 3, art 31.

²⁷⁸ Katherine Donnelly, ‘130 special needs pupils in Dublin have no place in school for September’ *Independent* (Dublin, 19 May 2022).

²⁷⁹ Carl O’Brien, ‘Up to 80 children with special needs in Dublin without school places: Taoiseach apologises to family without appropriate education for seven years’ *The Irish Times* (Dublin, 18 May 2022).

²⁸⁰ *ibid* art 24(2)(b).

²⁸¹ UN Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of Ireland, 8 July 2015 [10].

school shall not discriminate in its admission of a student to the school on...’ and proceeds to list nine grounds, including disability.²⁸²

It was acknowledged that while this Act is indeed a positive step towards the goals of inclusive education, it remains to be seen what impact, in practice, this provision will achieve over time. Thus, whilst it is acknowledged that inclusion in education is a process, not an end point,²⁸³ it is recommended that Government and the relevant stakeholders take a holistic view of the educational barriers for children with disabilities and SEN and respond accordingly.

²⁸² Education (Admission To Schools) Act 2018, s 61(1)(f).

²⁸³ UNESCO, *Global Education Monitoring Report 2020: Inclusion and Education: All Means All* (3rd edn, UNESCO 2020).

5.2 Further Research

This research provides an in-depth examination of the principals and practice of the right to inclusive education for children with disabilities and SEN and yet it is by no means exhaustive.

While this research focused on a legal analysis of the right to inclusive education, in practice, it is acknowledged that the realisation of inclusive education is a broader interdisciplinary endeavour.²⁸⁴ Moreover, while the focus of this research was limited to the right to inclusive education for children with disabilities and SEN in mainstream primary school. There is certainly room for further research both within and outside of these parameters.

To this end, it is worth recalling, as briefly mentioned within Chapter One, scholarly and public discourse on inclusive education is commonly focused on the needs of pupils with disabilities and SEN and their relationship between mainstream and ‘special’ education. Indeed, this is reflected in data captured by USESCO which highlights that while 68% of countries have a definition of inclusive education in their laws, policies and practices, only 57% of definitions cover multiple marginalised groups. In 26% of countries, the definition of inclusive education covers *only* people with disabilities or special needs.²⁸⁵

Accordingly, it is worth recalling that the right to inclusive education is not exclusive to individuals with disabilities and SEN and rather seeks to benefit other groups at risk of marginalisation and exclusion for whatever reason. Indeed, this point has recognised by the CRPD Committee in General Comment No. 4.

Accordingly, there is certainly room for further research in the area of the realisation of inclusive education with reference to, for example: pupils from disadvantaged economic backgrounds, pupils who are members of the travelling community or children in juvenile detention facilities, to cite but a handful groups in particular for whom access to inclusive education is also particularly vital.

²⁸⁴ Gauthier de Beco, Shivaun Quinlivan and Janet E Lord (eds), *The Right to Inclusive Education in International Human Rights Law* (Cambridge University Press 2019) 30.

²⁸⁵ UNESCO, *Global Education Monitoring Report 2020: Inclusion and Education: All Means All* (3rd edn, UNESCO 2020) 20.

BIBLIOGRAPHY

TABLE OF CASES

Irish Cases

1. Comerford v Minister for Education [1997] 2 ILRM 134.
2. Crowley v Ireland [1980] IR 102.
3. Kavanagh v Governor of Mountjoy Prison [2022] 3 IR 97.
4. O'Donoghue v Minister for Health [1993] IEHC 2.
5. Sinnott v Minister for Education [2001] 2 IR 545.

International Cases

1. Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium (No. 2) (Belgian Linguistics case), 23 July 1968, 1 EHRR 252.

LEGALISATION AND OTHER LEGAL INSTRUMENTS

1. The Irish Constitution 1937 (*Bunreacht na hÉireann*).

Irish Legislation

1. The Education Act 1998
2. The Education (Admission to Schools) Act 2018.
3. The Education for Persons with Special Educational Needs (EPSEN) Act 2004.
4. The Education (Provision in Respect of Children with Special Educational Needs) Act 2022.
5. The Equal Status Act 2000.
6. The Education Welfare Act 2000

Legislation (Other Jurisdictions)

1. Education (Additional Support for Learning) (Scotland) Act 2004.

Regional Instruments

1. Charter of Fundamental Rights of the European Union (2000) OJ C 364/01.
2. European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) ETS.
3. European Social Charter, 18 October 1961, ETS 35.
4. European Social Charter (Revised), 3 May 1996, ETS 163
5. Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 20 March 1952, entered into force 18 May 1954) ETS 9.

International Instruments

1. Convention on the Elimination of All Forms of Discrimination against Women (1979).
2. Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force on 3 May 2008) 2515 UNTS 3.
3. Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577.
4. International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993
5. International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.
6. UNESCO Convention against Discrimination in Education (1960).
7. UNESCO and Ministry of Education and Science Spain, The Salamanca Statement and Framework for Action on Special Needs Education (ED-94/WS/18, UNESCO 1994).
8. UNESCO, The World Declaration for Education for All: Meeting Basic Learning Needs adopted by the UNESCO World Conference on Education for All (9 March 1990).
9. UNGA Optional Protocol to the Convention on the Rights of Persons with Disabilities, 13 December 2006, A/RES/61/106.
10. UNGA, Standard Rules on the Equalization of Opportunities for Persons with Disabilities (20 December 1993) A/RES/48/96.
11. Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).

General Comments

1. UN Committee on the Rights of Persons with Disabilities (CRPD), General comment No. 4 (2016), Article 24: Right to inclusive education, 2 September 2016, CRPD/C/GC/4.
2. UN Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education (Art. 13 of the Covenant), (1999) E/C.12/1999/1.
3. UN Committee on the Rights of the Child (CRC), General comment No. 1 (2001), Article 29 (1), The aims of education, 17 April 2001, CRC/GC/2001/1.
4. UN Committee on Economic, Social and Cultural Rights, 'General Comment 3 on the Nature of States Parties Obligations' UN Doc E/1991/23.

Other

1. United Nations Committee on the Rights of the Child (CRC), *Concluding observations on the combined third and fourth periodic reports of Ireland* (1 March 2016), CRC/C/IRL/CO/3-4 [47].
2. UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the third periodic report of Ireland*, 8 July 2015 [10].

BIBLIOGRAPHY

Books

1. Arduin S, 'The Expressive Dimension of the Right to Inclusive Education' in Gauthier de Beco, Shivaun Quinlivan and Janet E Lord (eds), *The Right to Inclusive Education in International Human Rights Law* (Cambridge University Press 2019).
2. Bantekas I and Oette L, *International Human Rights Law and Practice* (3rd edn, Cambridge University Press 2020).
3. Bantekas I Stein M, Anastasiou D (eds), *The UN Convention on The Rights of Persons with Disabilities: A Commentary* (Oxford University Press 2018).
4. Benelhocine C, *The European Social Charter* (Council of Europe Publishing 2006).
5. Broderick A and Ferri D, *International and European Disability Law and Policy: Text, Cases and Materials* (Cambridge University Press 2019).
6. Broderick A, *The Long and Winding Road to Equality and Inclusion for Persons with Disabilities: The United Nations Convention on the Rights of Persons with Disabilities* (Intersentia 2015).
7. Cerna CM (ed), *Regional Human Rights Systems: Volume V* (Routledge 2016).
8. Curtis C and Tobin J, 'The Right to Education' in John Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press, 2019).
9. De Beco G, Quinlivan S, Lord J (eds), *The Right to Inclusive Education in International Human Rights Law* (Cambridge University Press 2019).
10. Dewhurst E, Noelle Higgins and Los Watkins, *Principles of Irish Human Rights Law* (Clarus Press 2012).
11. Dugard J and others (eds), *Research Handbook on Economic, Social and Cultural Rights as Human Rights* (Edward Elgar Publishing 2020).
12. Frederickson N and Cline T, *Special Education Needs, Inclusion and Diversity* (Open University Press 2009).
13. Glendenning D, *Education and the Law* (2nd edn, Bloomsbury Professional 2012).
14. Griffin S and Shevlin M, *Responding to Special Educational Needs: An Irish Perspective* (2nd edn, Gill Education 2011).
15. Henn M, Weinstein M and Foard N, *A Critical Introduction to Social Research* (2nd edn, SAGE 2006).
16. Higgins N and others (eds), *The Universal Declaration of Human Rights at Seventy: A Review of Successes and Challenges* (Clarus Press 2019).
17. Hogan G and others, *Kelly: The Irish Constitution* (5th Edn, Bloomsbury Professional 2018).
18. Inclusion Ireland and Technological University of Dublin, *Education, Behaviour and Exclusion: The Experience and Impact of Short School Days on Children with Disabilities and their Families in the Republic of Ireland* (Dublin, 2019).
19. Kanter A, 'The Development of the Right to Inclusive Education for People with Disabilities under International Law' in Gauthier de Beco, Shivaun Quinlivan and Janet E Lord (eds), *The Right to Inclusive Education in International Human Rights Law* (Cambridge University Press 2019).
20. Kanter A, *The Development of Disability Rights Under International Law: From Charity to Human Rights* (Routledge 2015).

21. Kilkelly U, *The Child and the European Convention on Human Rights* (Routledge 2017)
22. Lavrysen L, *Human Rights in a Positive State: Rethinking the Relationship Between Positive and Negative Obligations Under the European Convention on Human Rights* (Intersentia 2016).
23. Lundy L and Tobin J, 'The Aims of Education' in John Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press 2019).
24. O'Mahony C and Quinn G, *Disability Law and Policy: An Analysis of the UN Convention* (Clarus Press 2017).
25. O'Mahony C, *Educational Rights in Irish Law* (Thomson Round Hall 2006).
26. Pyaneandee C, *International Disability Law: A Practical Approach to the United Nations Convention on the Rights of Persons with Disabilities* (Routledge 2019).
27. Right to Education Initiative and USESCO, *Right to Education Handbook* (UNESCO 2019).
28. Sabatello M and Schulze M, *Human Rights and Disability Advocacy* (University of Pennsylvania Press 2014)
29. Salter M and Mason J, *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research* (Pearson 2007).
30. Saul B, Kinley D and Mowbray J, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* (Oxford University Press 2014).
31. Smith R K M, *International Human Rights Law* (8th edn, Oxford University Press 2018).
32. Taylor P M, *A Commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee's Monitoring of ICCPR Rights* (Cambridge University Press 2020).
33. Thelander N, 'Human Rights Education: Teaching Children Human Rights: A Matter of Why, What and How' in Jenna Gillett Swan and Vicki Coppock (eds) *Children's Rights, Educational Research and the UNCRC* (Symposium Books 2016).
34. Thomas D and Hodges I, *Doing a Literature Review in Designing and Managing your Research Project* (Sage 2010).
35. Tomaševski K, *Human Rights Obligations in Education* (Wolf Legal Publishers 2006).
36. Tomaševski K, *Education Denied: Costs and Remedies* (Zed Books, 2003).
37. UNESCO, *Global Education Monitoring Report 2020: Inclusion and Education: All Means All* (3rd edn, UNESCO 2020).
38. UNESCO, *Guidelines for Inclusion: Ensuring Access to Education for All* (UNESCO 2015).
39. UNICEF, *Children and Young People with Disabilities: Fact Sheet* (UNICEF 2013).
40. Vaghri Z and others (eds), *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes* (Springer 2022).
41. Winter E and O'Raw P, *Literature Review of the Principles and Practices Relating to Inclusive Education for Children with Special Educational Needs* (NCSE 2010).

REPORTS

1. Brennan D and Browne H, 'Education, Behaviour and Exclusion: The Experience and Impact of Short School Days on Children with Disabilities and their families in the Republic of Ireland' (2019) Inclusion Ireland and Technological University Dublin <<https://inclusionireland.ie/wp-content/uploads/2020/09/small-inclusion-ireland-short-school-days-report.pdf>>.
2. Government of Ireland. (1993) The Report of the Special Education Review Committee. Dublin: Stationary Office.
3. National Council for Special Education, 'Policy Advice on Special Schools and Classes: An Inclusive Education for and Inclusive Society?' (Progress Report October 2019) 59 <<https://ncse.ie/wp-content/uploads/2019/11/Progress-Report-Policy-Advice-on-Special-Schools-Classes-website-upload.pdf>>.
4. World Health Organization (WHO), 'World report on disability' (2011) 205. <https://www.who.int/disabilities/world_report/2011/report/en/>.

JOURNALS

1. Broderick A, 'The Right to Inclusive Education: Article 24 of the UN Convention on the Rights of Persons with Disabilities and the Irish Experience' in de Londras F and Mullally S (eds), *The Irish Yearbook of International Law* (Volume 9 2014, Hart Publishing 2017).
2. Doyle D M, Muldoon M and Murphy C, 'Education in Ireland: Accessible without discrimination for all?' (2020) *The International Journal of Human Rights* (Vol 24:10) 1702.
3. Gauthier De Beco, 'The Right to Inclusive Education according to Article 24 of the Un Convention on the Rights of Persons with Disabilities: Background, Requirements and (Remaining) Questions' 32 *Netherlands Quarterly of Human Rights* (2014).
4. Meegan S and MacPhail A, 'Inclusive education: Ireland's education provision for children with special educational needs' *Irish Educational Studies* (2006) 25:1, 53-62.
5. Murphy M and others, 'Inclusive education and the law in Ireland' *International Journal of Law in Context* (2022) 1-21.
6. Smith A and Thomas N, 'Including pupils with special educational needs and disabilities in National Curriculum Physical Education: a brief review' (2007) 21(1) *EJSNE* 69-83.

NEWSPAPER ARTICLES

1. Donnelly K, '130 special needs pupils in Dublin have no place in school for September' *Independent* (Dublin, 19 May 2022).
2. Doyle K, 'Opposition disappointment at Sinnott ruling: The main Opposition parties have expressed disappointment at today's Supreme Court ruling in the Sinnott case' *The Irish Times* (Dublin, 12 July 2001).
3. Fagan M, 'UN criticises Ireland for failings on disabilities legislation' *The Irish Examiner* (Dublin, 30 May 2021).
4. O'Brien C, 'Government plans 'special education centres' as emergency response to shortage of appropriate school places' *The Irish Times* (Dublin, 25 May 2022).

5. O'Brien C, 'Up to 80 children with special needs in Dublin without school places: Taoiseach apologises to family without appropriate education for seven years' *The Irish Times* (Dublin, 18 May 2022).
6. O'Brien C, 'Law on education for children with disabilities to be reviewed: Failure to fully commence law means children miss out on vital services, say campaigners' *The Irish Times* (Dublin, 20 December 2021).
7. O'Brien C 'Schools 'illegally' imposing short school days on vulnerable children' *The Irish Times* (Dublin, 05 September 2019).
8. Moloney S and Donnelly K, 'Plan for temporary education centres for children with special needs sparks concern' *Independent* (Dublin, 26 May 2022).

Online Articles

1. Inclusion Ireland 'Failure to commence 17-year-old EPSN Act negatively impacting children with disabilities, Inclusion Ireland to tell Oireachtas Committee'
2. McMorrow M, 'Let them get a school place' *RTE* (Dublin, 18 May 2022) <www.rte.ie/news/primetime/2022/0517/1299600-parents-autistic-boys-special-school/> accessed 19 May 2022.
3. O Kelly E, 'School struggle for special education supports 'morally wrong' *RTE* (02 July 2021) <<https://www.rte.ie/news/education/2021/0702/1232563-special-education/>> accessed on 06 April 2022.

Press Releases

1. Department of Education, 'Statement from Minister of State for Special Education and Inclusion, Josepha Madigan, announcing significant increase in Special Education Provision in Dublin' (28 July 2022) <<https://www.gov.ie/en/press-release/8a499-statement-from-minister-of-state-for-special-education-and-inclusion-josepha-madigan-td-announcing-significant-increase-in-special-education-provision-in-dublin/>>.

Circulars

1. Circular 0046/2022 (Department of Education, 2022).
2. Circular 0047/2021 (Department of Education, 2021).
3. Circular 00/51 (Department of Education, 2007).

Websites

1. www.coe.int
2. www.education.ie
3. www.europa.eu
4. www.gov.ie
5. www.ihrec.ie
6. www.inclusionireland.ie
7. www.ohchr.org
8. www.un.org
9. www.who.int