



INCLUSION IRELAND

**Inclusion Ireland submission to
The National Council for Special Education
On Education Provision for Children with Autism**

Introduction

Inclusion Ireland is the national organisation advocating for the rights of people with intellectual disabilities in Ireland. Established in 1961, our vision is of a society where people with intellectual disabilities live and participate in the community with equal rights as citizens. Our focus is on the core principles and values expressed in the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

Inclusion Ireland welcomes the invitation from the National Council for Special Education (NCSE) to make a submission on the education of pupils with autism in Irish schools.

In preparing this submission Inclusion Ireland has consulted widely with various autism support groups around the country. The views of families who have children with autism in the Irish education system are expressed in this submission. This submission has also been informed by the Inclusion Ireland Education Subcommittee. A number of the members of this committee have children with autism in the Irish education system.

The National Disability Strategy

The Education of Persons with Special Education Needs Act 2004 (EPSEN) is a central component of the National Disability Strategy. The EPSEN Act provides for a fundamental shift in how the needs of children with special education needs would be met. The Act provides for educational assessments and independent appeals. However, this section of the Act has never been implemented. The current Programme for Government contains a commitment to publish an implementation plan for the EPSEN Act. This plan should be published without delay.

United Nations Convention on the Rights of Persons with Disabilities (CRPD)

Ireland is a signatory to the CRPD but have yet to ratify the convention. A failure to implement the EPSEN Act runs counter to the principles of the CRPD.

The CRPD obliges governments to ensure that all children with a disability are not excluded from the general education system¹. This principle must be at the heart of the policy advice on the education of children with autism. Currently, many schools place barriers in the way of children with autism enrolling in their school.² The NCSE and the Department of Education and Skills must end the practice of mainstream schools making it difficult for children with autism to enrol.

Current provisions

Currently, there are a range of schemes available to support young people with autism in Irish schools. Many of these schemes are very effective and valued by parents. Inclusion Ireland acknowledges the benefit of these schemes and recommends the following adjustments to optimise their effectiveness.

Early intervention has been shown by research to be the most effective intervention for children with autism. All children with autism should have access to a structured early intervention school place³ with the appropriate health therapy supports according to their assessed need.

In some cases an early intervention class is attached to a school which also has an autism 'special' class. There should not be an automatic assumption that a child in an early intervention class will transfer into a special autism class. Early intervention should be a stepping stone to a mainstream class placement where possible.

The extended school year (July provision) is greatly valued by families. However, for second level pupils it can be disjointed. A pupil will get holidays at the start of June and then begin their extended school year in July. The scheme should be

¹ CRPD, Article 24.

² Supporting Students with Special Education Needs, 2013, NCSE.

³ As recommended in the Report of the Task Force on Autism, 2001.

flexible enough to allow second level pupils to avail of the extended school year provision in June for continuity if they wish.

In 2013 the Department of Education and Skills amended the home based, extended school year scheme for families with more than one child with autism. Siblings now have to share hours where previously they had separate allocations⁴. Inclusion Ireland believes this measure penalises families who have a number of children with autism and should be reversed. Families have told Inclusion Ireland that they have found it extremely difficult to find a teacher willing to work with a number of children when they can get the same pay for working with one child. A teacher who works with two siblings will have double the amount of preparation work for which they are not paid.

The continuum of education provision works well from an educational point and offers families choice of school placement. However, the availability of health therapies is affecting choice. One therapy service provider (at least) does not support children with autism in mainstream school places. Parents have told Inclusion Ireland they are faced with a choice between a mainstream school place without health therapies or a special class or school with health therapies. No child should be forced into a special class to access therapies.

One large service provider only supports children with autism and a mild intellectual disability or none. As a consequence schools that this service provider support will not enrol pupils with autism and a moderate or severe intellectual disability. Inclusion Ireland is aware of parents who are forced to travel great distances to locate an autism class that will enrol their child. The NCSE and the Department of Education and Skills cannot allow such a scenario to continue where a health service provider's policies dictate what children can enrol in a specific autism class.

Health supports are severely understaffed at present. As a result children in mainstream classes are often not supported with health therapies they are assessed as needing. Some children regress as a result. Other children do not access vital supports for years. At present 2983 children are waiting longer than 12 months for

⁴ Further Information Note for Home Based July Provision 2013, Department of Education and Skills.

speech and language therapy and 2887 are waiting longer than 12 months on occupational therapy.⁵

Health and education must work together. Therapists should have an input into individual education plans (IEP's).

Health therapy support should be delivered in schools. This will reduce time children are out of class and also allow a therapist to see a number of children in one visit.

Educational interventions/teaching practices

Inclusion Ireland acknowledges that the NCSE and the Department of Education have made great strides in the provision of education for children with autism. There is room for improvement. Inclusion Ireland believes that the following measures will significantly improve the education experience of children with autism.

- Full implementation of the EPSEN Act 2004.
- In the absence of EPSEN children should have an IEP as standard.
- Health therapists should have an input into the IEP.
- For non verbal children, speech and language therapy should be seen as an educational intervention. People learn through communication. Speech and language therapy is an education enabler.
- Occupational therapy and physiotherapy are also key educational enablers. These professionals work with children on being able to attend in the class, pencil grip and posture all of which enable a child's education.
- Government must invest in the provision of these essential therapies to reduce the long waiting lists previously noted.
- Undergraduate teacher training must contain a much stronger special education needs component.⁶ Some college special education work placements are of an observation nature only with no actual teaching practice.
- Teachers working in a special school or class for children with autism should have a post graduate qualification or relevant experience.

⁵ Answer to PQ 1691/14

⁶ As recommended in the Report of the Task Force on Autism, 2001.

- Teaching strategies should be evidence based such as the picture exchange communication system (PECS) or applied behaviour analysis (ABA) for example.
- School supports should be based upon the needs of the individual child. Children with autism are not a homogenous group.
- Special Needs Assistant (SNA) support must not be diverted to other/non care tasks.

Education support for families

Inclusion Ireland believes that families are of critical importance in supporting a child with autism on their educational journey. Inclusion Ireland believes that collaboration between schools and families improves outcomes for children with autism.

- The family should be part of the IEP process.
- Families should get some training in education strategies (PECS, ABA, etc) to ensure continuity at home.
- Families should be fully informed of the education options for their child prior to enrolment in school by the NCSE or early intervention team.
- Children should be able to enrol in their local school. The NCSE must ensure this happens by having the resources available to enable this. The NCSE must be able to direct a school to enrol a child or open an autism class if this is necessary.

Inclusion Ireland believes that families are an integral part of the education of children with autism. Schools, the NCSE and the Department of Education must include families in decision making processes and policy development.

Transitions

Transitions in schools are a difficult time for all children and this is also true of children with autism. A transition program should be in place. Transition programs

must be used when moving to the next schooling level or when a child is phasing into mainstream education from a special class.

The move to second level school is difficult. Mainstream secondary schools rarely enrol a child with autism who has an intellectual disability, even if the school has an autism class.

At second level there are not as many autism classes as at primary level. Inclusion Ireland is aware of one parent who had to contact more than 30 schools before finding a school with an autism class that would enrol their child. The schools in the child's locality would not open an autism class nor could the NCSE direct them to do so. The child travels 1.5 hours to school daily.

As previously stated, the NCSE must be able to direct a school to enrol a child or open an autism class.

Many secondary schools demand up to date psychology reports from parents who have a child with autism beginning school. Parents have informed Inclusion Ireland that they have had to commission expensive private reports. Not all families have the resources to do this. If up to date psychology reports are required for a child entering secondary school the National Educational Psychological Service (NEPS) or the HSE must facilitate this.

Additional comments

- A child should never be refused a place, have a short day or have their enrolment delayed due to the slow approval of resources. Resources to support the child must be available for the child when they begin school.
- The Department of Education have recently released a circular that expects all children to begin school without an SNA. An application for SNA support will be made only after the child attends school for the first time⁷. In the past schools have restricted a child's school day due to not having SNA support in place on health and safety grounds.
- Supports must be based upon assessed need.

⁷ Department of Education and Skills Circular 0030/2014

- More must be done on integration. Inclusion Ireland is aware of pupils in autism classes having different break times to the rest of the school. In one school a fence was erected in the school yard to separate children with autism from their peers⁸. In other schools, parents are being asked to have their child wear a hi-visibility vest. Lunch times may also be segregated where children with autism sit together at one table. None of these practices foster integration and do not belong in Irish schools.

The use of ‘time out rooms’ in schools

Definitions of seclusion

Seclusion can be defined as the involuntary confinement of a student alone. The young person is physically prevented from leaving the room⁹.

Seclusion is being placed in a separate room and being prevented from leaving for an extended period of time. Other terms used in schools include isolation, alone time, quiet time, taking a break, sensory break, exclusion and personal office time¹⁰.

A child may be prevented from leaving the seclusion room in a number of ways. The door to the room may be locked, the exit may be blocked by another person or the exit may be blocked by a physical barrier such as furniture¹¹.

Definitions of restraint

Physical restraint is the use of trained staff to hold a child or young person to restrict their movement in order to prevent serious harm. Physical restraint is a high risk intervention by staff¹². It may cause physical harm, emotional trauma to the person

⁸ <http://www.donegaldemocrat.ie/news/donegal-news/our-children-were-in-a-cage-just-a-cage-parent-1-3179988>

⁹ US Office for Civil Rights cited in Restraint and Seclusion: Resource document, 2012.

¹⁰ Stop hurting kids: Restraint and seclusion in BC schools, 2013.

¹¹ How safe is the school house? 2013.

¹² Best practice guidelines in the use of physical restraint (child care residential units), Special Residential Services Board, 2006.

and emotional trauma to those who witness it. There are also documented cases where people have died as a result of restraint.

Physical restraint is the use of force by one or more persons for the purpose of preventing the free movement of a person's body¹³.

Underpinning policy

The Department of Education and Skills guideline on the design of schools makes reference to "a small safe place". A child may access the space for the protection of themselves, other pupils and the staff. The child must be supervised from inside or outside the room. Pupils will be encouraged to use the room themselves which will allow them to regulate and reduce their behaviour. Use of the safe space should be reviewed to ensure it is having a positive impact on behaviour. The use of seclusion should be documented in the IEP of the child¹⁴.

There are guidelines on the use of single separation of children in special care residential units in Ireland¹⁵. Single separation is a severe measure and must only be taken where there is a risk to the health and safety of the child themselves, their peers or staff. Single separation must only be used in instances of violence that pose a risk to others when all positive behavioural methods have not worked. It must never be used as a punishment.

The separation period should be as short as possible. There should be prior warning to the young person and their family that this possible sanction exists. All instances of the use of this sanction must be recorded and monitored by a third party. Parents must be informed of any incident of single separation (ibid).

The NCSE have issued advice on isolation in the case of children with an emotional behavioural disorder that can result in challenging behaviour. The NCSE advice notes that a 'time out room' can be used by teachers during 'episodes of violent behaviour'. The NCSE has called for training for teachers and SNA's. The NCSE has

¹³ Report on the use of seclusion,, mechanical means of bodily restraint and physical restraint in approved centres in 2008, Mental Health Commission, 2009.

¹⁴ School Design Guide, TGD-026, Department of Education, 2012.

¹⁵ National guidelines on the use of single separation in special care units, Ireland, 2003.

called for the Department of Education to issue guidelines on the use of ‘time out rooms’¹⁶.

Physical restraint is an extremely high risk intervention. It should never be seen as a normal behaviour management tool or used to ensure compliance. Restraint should only be used when it is more harmful not to restrain the person who is presenting with an extremely challenging behaviour¹⁷.

Reporting and monitoring

At present there is no legal obligation for a teacher or school to record the use of restraint or seclusion. As a consequence there is no data on the frequency of such practices or the impact this has on the child. There is no independent oversight of the use of restraint and seclusion in Irish schools.

By contrast the Mental Health Act 2001 provides for such independent monitoring of seclusion and restraint. Written records are required when these practices are employed.

The CRPD requires the state to create independent oversight bodies to prevent against all forms of exploitation, violence and abuse¹⁸. In addition all services for people with disabilities should be independently monitored; this includes schools.

The misuse of seclusion and restraint

Recent media reports in Ireland noted the use of seclusion rooms for extended periods of time. Seclusion has lasted for up to five hours at a time¹⁹. In addition many

¹⁶ The education of children with challenging behaviour arising from severe emotional disturbance/behavioural disorders, NCSE, 2012.

¹⁷ Best practice guidelines in the use of physical restraint (child care residential units), Special Residential Services Board, 2006.

¹⁸ CRPD Article 15.

¹⁹ www.thejournal.ie 13/01/2013

parents have felt the need to remove their child from school due to the effect being secluded has had on their child²⁰.

In the USA children have been isolated or restrained for a host of reasons such as whistling, slouching and waving their hands. Isolation has continued as an intervention even when parents have told the school to stop. As many as 90% of all children who were subject to isolation or restraint had a disability (mainly: autism and attention deficit hyperactivity disorder)²¹.

The use of restraint and seclusion may amount to indirect discrimination where a school requires such practices in order for the child with a disability to receive an education. Equal Status legislation makes exception only where there may be harm caused to others. Where restraint or seclusion is being used as a control or punishment mechanism for a child with a disability this could constitute discrimination.

Inclusion BC, in Canada has published the findings of a recent survey on restraint and seclusion in schools. Most participants (84%) reported that their child was placed in an isolation area, despite the fact they did not agree to this measure. Of the instances of isolation 26% were for longer than one hour.

Inclusion BC also noted that half of all children subject to restraint incurred pain or injury. Of those restrained, 75% reported being traumatised.

Being placed in isolation has an effect on the child. 79% of parents reported that their children were traumatised by the incident. Worryingly, most parents did not find out about their child being placed in isolation from the school itself²².

Does seclusion and restraint work as an intervention?

Placing a child into seclusion or using restraint is a punishment²³. Research has shown that punishment is underpinned by questionable ethics, even when consent has been obtained. Positive behaviour techniques are much more effective as

²⁰ Morning Ireland, RTE 1, 27/01/2014.

²¹ Testimony to the US Government Accountability Office, Seclusion and restraints, Kutz, 2012

²² Stop hurting kids: restraint and seclusion in BC Schools, Inclusion BC & Family Support Institute BC, 2013.

²³ Views on the ethics and efficacy of punishment, Reed & Lovett, 2008.

interventions for any behaviour. Punishments such as seclusion or restraint have many negative side effects. Seclusion or restraint should only ever be used in dangerous situations (ibid).

Seclusion and restraint is used more often on children with a disability despite the fact that it has been shown to be counterproductive. Children with a disability between the ages of 6-10 are likely to be secluded or restrained for their behaviour up to 10 times in a year. In most cases there is no behaviour plan in place to address the root cause of the behaviour that challenges. Many parents have reported that the use of these interventions has made the behaviour it was addressing worse and had left the child traumatised²⁴.

The research indicates that the use of punishment is not effective as a means of addressing behaviour that challenges. Positive behaviour programs have been evidenced as being much more effective in addressing the root cause of the behaviour and thus reducing and eliminating the behaviour.

A question of human rights

Ireland has ratified the United Nations Convention on the Rights of the Child (CRC) and is bound by its provisions. Institutions such as schools have a responsibility to protect children. Children with disabilities are more vulnerable and require additional safeguarding from violence, abuse and neglect²⁵.

The CRC committee recognise that exceptional circumstances may arise where a teacher may be confronted with dangerous behaviour that justifies the use of “reasonable restraint”. However, distinction is drawn between the use of force to protect a child and the use of force to punish. The minimum amount of force for the shortest period of time must always apply. Training is also needed for teachers to minimise the need for such practices and to ensure that any methods are safe²⁶.

²⁴ Use of restraints, seclusion and aversive procedures on children with disabilities, Westing et al. 2010.

²⁵ UN Convention on the Rights of the Child, Articles 19 and 37.

²⁶ Committee on the Rights of the Child, General Comment No. 8, (Forty-second session, 2006) The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (Articles 19; 28, para. 2; and 37, *inter alia*) CRC/C/GC/8, 2 March 2007

Ireland is a signatory to the United Nations Convention on the Rights of Persons with Disabilities (CRPD). Ratification is said to be close, once the Assisted Decision Making Bill has passed into law.

The use of restraint and seclusion is a direct violation of the rights of people with a disability set out in the CRPD²⁷.

- Article 1, Purpose: the purpose of the CRPD is to promote, protect and ensure the enjoyment of all human rights by people with a disability.
- Article 4, General obligations: the state must adopt laws and policy that protect the rights of people in the CRPD and abolish laws, customs and practices that constitute discrimination against people with disabilities.
- Article 16, Freedom from exploitation, violence and abuse: the state must monitor all facilities accessed by people with disabilities and ensure they are independently monitored and incidents are identified, investigated and prosecuted (if necessary).
- Article 17, Protecting the integrity of the person: every person with a disability has the right to have their physical and mental integrity respected.
- Article 24, Education: the state must ensure an inclusive education system. The education system must ensure the development of human potential, sense of self dignity and a strengthening of the respect for human rights. To enable this effective individualised supports must be put in place to maximise academic and social development²⁸.

Ireland has integrated the European Convention on Human Rights (ECHR) into Irish law. The use of restraint and seclusion of a child could be seen as a breach of Article 3 of the ECHR as inhuman or degrading treatment or punishment.²⁹

The International Convention on Civil and Political Rights (ICCPR) prohibits the use of cruel, inhuman or degrading punishment³⁰. This has been interpreted to include the use of corporal punishment in schools and the use of seclusion in any institution of the state. The UN Special Rapporteur has commented on punishments in schools

²⁷ Stop hurting kids: restraint and seclusion in BC Schools, Inclusion BC & Family Support Institute BC, 2013.

²⁸ United Nations Convention on the rights of Persons with Disabilities.

²⁹ European Convention on Human Rights, Article 3.

³⁰ ICCPR, Article 7.

in relation to the provisions of the ICCPR: “corporal punishment can no longer be justified, not even under exceptional circumstances”³¹. In a subsequent report the Special Rapporteur addressed the use of seclusion and restraint of persons with disabilities in psychiatric institutions. The principles expressed can be applied to the use of such measures in schools, that the prolonged use of seclusion and restraint constitute torture and ill treatment.

“The Special Rapporteur has addressed the issue of solitary confinement and stated that its imposition, of any duration, on persons with mental disabilities is cruel, inhuman or degrading treatment. Moreover, any restraint on people with mental disabilities for even a short period of time may constitute torture and ill-treatment. It is essential that an absolute ban on all coercive and non-consensual measure, including restraint and solitary confinement of people with psychological or intellectual disabilities, should apply in all places of deprivation of liberty, including in psychiatric and social care institutions.”³²

EHCR, article 5, notes that no person should be deprived of liberty unless directed by court order. In a recent English case, an 18-year-old man with autism and severe learning disabilities had been regularly placed in a padded seclusion room more than six times a day. The court found that he had been unlawfully deprived of his liberty as the practice had not been authorised by the English Court of Protection.³³

Summary on the use of restraint/seclusion

- **Seclusion and restraint should not be tolerated in Irish schools.**
- Every effort must be made to remove the need for the use of seclusion or restraint. This principle must be reflected in any policy advice.
- There must be enough trained staff in each class based upon the assessed needs of the pupils. All staff must have training on alternatives to seclusion and restraint.
- Positive behaviour strategies are much more effective than seclusion. Schools must develop such strategies and provide training to staff to implement them.

³¹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN GA A/HRC/10/44, 14 Jan. 2009 at para. 37.

³² Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN GA A/HRC/22/53, 1 February 2013 at para. 63

³³ R (C) v A local authority and others

- Staff must be trained in how to defuse a situation. Many uses of restraint begin as minor issues.
- Seclusion and restraint must only be used in a situation where the child or another child or staff member is in serious physical danger. Seclusion and restraint must be an action of last resort only.
- Seclusion or restraint must not be used as a punishment or for convenience. Seclusion must not be used for minor offences such as not sitting down or not having homework complete. Seclusion or restraint must never be used where there is no risk of serious physical harm.
- Any policy or guidelines on seclusion and restraint must apply to all children. Not just children with a disability.
- Any child that is secluded must be accompanied and monitored at all times to ensure their safety. They must be brought back to the class when the 'crisis situation' passes. If seclusion is used it must be for the least amount of time necessary.
- Any time seclusion or restraint is used it must be recorded, reported and monitored.
- Recorded multiple uses of seclusion or restraint by a staff member or a certain school or on a particular child must trigger a review by an external body such as HIQA.
- Parents must be informed. If a school has a policy on seclusion or restraint a parent (and the pupil, if age appropriate) must be told in advance. The parent must also be informed in writing if their child has been the subject of seclusion or restraint. This report must include a justification for the use of the practice.
- Chemical or mechanical restraint must never be used in schools.
- No restraint technique should ever be used that could restrict breathing or hurt a young person.

