

2006

**EDUCATION FOR PERSONS WITH
SPECIAL EDUCATIONAL NEEDS
ACT 2004
AN INTERPRETATION FOR TEACHERS**

OCTOBER 2006



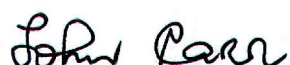
**FROM THE OFFICE OF
INDEPENDENT SENATOR JOE O'TOOLE**

Foreword

The Irish National Teachers' Organisation warmly welcomes the publication of this interpretation of the Education For Persons with Special Educational Needs Act (EPSEN) 2004. This piece of legislation is a significant development in the provision of education for children with special educational needs, which has been one of the most contentious issues in Irish education in the past two decades. While the enactment of legislation on its own cannot provide all answers to a complex issue such as special needs education nevertheless this Act now gives a firm legislative base for decisions in this area.

However, as with any legislation, there is a need for an interpretation which sets out the provisions of the Act in practical terms. This publication sets out clearly the implications of the Act for schools and teachers. It is our hope that in assisting teachers in understanding what the Act will mean in practice, teachers and their representatives will be able to effectively articulate the supports which will be needed to ensure that the aspirations of the Act are realized.

I congratulate Senator Joe O'Toole on providing this excellent publication for teachers at all levels in the education system. His in-depth knowledge of the education system and his life long interest in equality issues are well known and these provide the background for this publication. I am sure that it will prove a valuable resource for schools in planning their special educational needs provision.



John Carr,
General Secretary,
Irish National Teachers' Organisation

Introduction

Generally I find myself defending the position of teachers and schools against the quick fix approach of some politicians who demand that the solution to every one of society's problems, whether it be violence, delinquency, litter, drugs or whatever, be the responsibility of teachers and the school curriculum.

In that regard, the Education for Persons with Special Educational Needs Act (EPSEN Act) is different in that we as educators have always led the demands for adequate resources; professional, structural and monetary, to allow us lead young people with special educational needs to reach their potential. Does this Act do that? Only time will provide a comprehensive answer but in the meantime, we should ensure that every possible support in it is used to its maximum by us. This document will be helpful in identifying some of the opportunities and challenges. So while I would recommend approaching this with an open mind, I would also maintain a certain modicum of scepticism until we see the colour of the money.

Reading and interpreting legislation is not part of the day and daily work of teachers and generally we depend on lawyers to explain what an Act might mean. Most members of the Oireachtas are faced with this problem regularly when dealing with proposed legislation. For those members of the Dáil and Seanad who take an interest in legislation, it is a steep learning curve. It was and is no different with regard to the EPSEN Act.

To get a feel for the legislation, consider the following extract which is from Section 13 of the Act and which goes to the core of what the Act aims to achieve.

(1) The Minister [for Education and Science] and the Minister for Health and Children shall each, with the consent of the Minister for Finance, provide ... resources for the purposes of the preparation and implementation of education plans prepared in respect of children with special educational needs.

.....

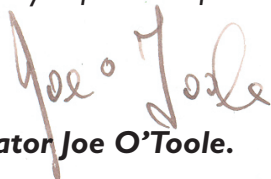
(3) In formulating any such policy, the provision of resources by the State in fulfilment of its duties under Article 42 of the Constitution shall be such as to ensure the equitable treatment of every child in the State,

(b) ... the objective of the educational provision made by this Act is to ensure that children with special educational needs have the same right to avail of, and benefit from, appropriate education as do their peers who do not have such needs.

In all fairness, it is encouraging but take care because it does provide a perfect example of how the drafters of legislation protect the Government in that, if you compare my extract to the full Section 13 in the Act, you will find all manner of "if", "but" and "maybe", each designed to give an out to Ministers and Governments who want to undermine the spirit of the Act and channel the money somewhere else.

The impenetrable nature of legislation has been brought home to me on a number of occasions since the publication of the EPSEN Act, by teachers and staffs who have asked me to explain what this or that in the Act might mean. That gave rise to the publication of this commentary. Be warned it is not a lawyer's interpretation! Rather I have approached it bilaterally. What I have attempted to do is to explain the Act with the experience of twenty years in Leinster House as a legislator and to contextualise it with the experience of twenty years in the classroom as a teacher.

I hope you find it useful.



Senator Joe O'Toole.

OPENING NOTE:

As of September 2006, unless otherwise stated, no part of this document has a commencement date. This means that those sections and sub-sections without a commencement date have not yet come into effect.

DEFINITIONS

“Appeals Board” is the Special Education Appeals Board as defined at the end of this document;

“child” means a person of not more than 18 years of age;

“Council” is the National Council for Special Education;

“parent” has the same meaning as it has in the Act of 1998;

“relevant health board” means the health board in whose functional area the child or person concerned resides;

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

“SENO” is a special educational needs organiser as defined in this Act.

RESPONSIBILITIES OF PRINCIPALS/SENOS

- ❖ A principal may delegate the performance of any of the functions conferred on him/her by this Act to such teacher in the school as the principal considers appropriate and a function so delegated shall, accordingly, be performable by that teacher.
- ❖ SENOs shall give all such advice and assistance as is reasonable to the principal and teachers in their performance of functions under this Act.

IDENTIFYING A CHILD/STUDENT WITH SPECIAL EDUCATIONAL NEEDS – BY THE SCHOOL

- ❖ A principal forms his/her own opinion or, is made aware by, and agrees with, a student’s parents of their opinion, that the student is not benefiting from the education programme provided in the school to children who do not have special educational needs to the extent that would be expected of the student.
- ❖ The principal shall take such measures as are practicable to meet the educational needs of the student concerned.
- ❖ After taking these measures, if the principal believes that the student is still not benefiting from the school’s education programme and that the reason for this may be that the child has special educational needs, then the principal, after consulting with the parents, shall arrange for an assessment of the child to be carried out.

ASSESSMENT – ARRANGED BY WHOM

- ❖ **Principal**, as above.
- ❖ As per the Council’s assessment guidelines, the principal may decide it is not practicable for her/him to arrange to carry out the assessment and may request the **Council** to do so.
- ❖ In the case of a child who is not a student, if the **relevant health board** forms the opinion that the child may have special educational needs, then it shall cause an assessment to be carried out.
- ❖ In the case of a child who is a student, if **the Council** forms the opinion that the child may have special educational needs, then it shall cause an assessment of the child to be carried out, unless the principal of that student is already in the process of trying to identify whether or not the

student has special educational needs, as per the section above.

- ❖ If the **parents** of a child believe that their child may have special educational needs, they may request either the relevant health board, if the child is not a student, or the Council, if the child is a student, to cause an assessment to be carried out.

ASSESSMENT REQUEST (BY PRINCIPAL) REFUSAL

- ❖ The Council may refuse a principal's request for the Council to arrange for an assessment to be carried out.

ASSESSMENT REQUEST (BY PRINCIPAL) REFUSAL – APPEAL

- ❖ Principal or parents may appeal the Council's refusal to carry out the assessment to the Appeals Board.
- ❖ The appeal may be either –
 - Dismissed or,
 - Allowed and the Appeals Board may give a direction to the Council requiring it to arrange for an assessment of the child concerned to be carried out.
- ❖ The Council shall comply with a direction given to it by the Appeals Board.

ASSESSMENT REQUEST (BY PARENTS) REFUSAL

- ❖ The Council or a health board may refuse a parent's assessment request if –
 - It believes there are insufficient grounds to support the parent's opinion that the child has special educational needs, or
 - There has already been an assessment carried out in respect of the child within the previous 12 months.

ASSESSMENT REQUEST (BY PARENTS) REFUSAL - APPEAL

- ❖ Parents can appeal a refusal, by a health board or the Council to cause an assessment to be carried out, to the Appeals Board.
- ❖ This appeal shall be determined by the Board within 6 weeks of receiving the appeal.
- ❖ The Appeals Board may either
 - Dismiss the appeal or,
 - Allow the appeal and direct the health board or the Council, as the case may be, to cause an assessment of the child to be carried out.

ASSESSMENT BY PRINCIPAL – CONDITIONS

- ❖ The carrying out of an assessment also includes the preparation of a statement of the findings in relation to the assessment.
- ❖ The assessment shall be commenced as soon as practicable, within a month of the principal forming the opinion that the child may have special educational needs.
- ❖ The assessment shall be completed as soon as practicable, within 3 months of the principal forming the opinion that the child may have special educational needs.
- ❖ The assessment shall be carried out in accordance with Council's guidelines relating to assessments.
- ❖ The assessment shall be carried out in a manner which conforms to such standards as determined by a prescribed body after consultation with the Minister for Education and Science.

This body standing prescribed by regulations made by the Minister for Health and Children for the purposes of determining the standards that these assessments must conform to.

- ❖ The principal shall facilitate the parents' participation in the carrying out of the assessment, in a manner consistent with the assessment being carried out effectively.

ASSESSMENTS BY THE COUNCIL OR RELEVANT HEALTH BOARD – CONDITIONS

- ❖ In a case where the parents have requested either the Council or a health board to cause an assessment of their child to be carried out, the assessment shall be commenced within a month of receiving the request for the assessment from the child's parents and completed without undue delay.
- ❖ Any assessment carried out by a health board or the Council shall include an evaluation and statement of the nature and extent of the child's disability (including in respect of matters that affect the child overall as an individual).
- ❖ Any assessment carried out by a health board or the Council shall include an evaluation and statement of the services which the child will need so as to be able to participate in and benefit from education and, generally, to develop his or her potential.

MODE OF ASSESSMENT BY HEALTH BOARD/THE COUNCIL

- ❖ Assessment shall be carried out with the assistance of persons possessing qualifications and expertise considered appropriate by the health board (HB) or the Council. These persons may, in the discretion of the HB or the Council, include one or more of the following:
 - Psychologist
 - Medical practitioner
 - Principal of the child's school or a teacher nominated by that principal
 - Appropriately qualified social worker; and
 - A therapist who is suitably qualified to provide support services in respect of the special educational needs of the child.
- ❖ The HB or the Council, as appropriate, shall facilitate the parents' participation in the carrying out of the assessment, in a manner consistent with the assessment being carried out effectively.
- ❖ Shall take into account results of any other relevant assessments of the child which are available to the HB or the Council, as the case may be.
- ❖ Except in the case of an assessment at the request of parents, the HB/Council shall give the parents written notice of intention to carry out assessment and reasons therefor.
- ❖ Shall not cause the assessment to be carried out without parents' written consent.
- ❖ If the parent of a child refuses to give consent, within such period as specified by the HB or the Council, then the HB or the Council, as the case may be, can apply to the Circuit Court (in whose area the child resides) for an order to dispense with this requirement for consent. Circuit Court may make such an order if considered to be in the child's best interests.
- ❖ On completion of a statement of the findings in relation to the assessment, the statement and any other relevant documents relating to the assessment shall be made available immediately to the parents.
- ❖ The HB or the Council, as the case may be, shall make all or part of this statement available to such persons engaged in the education of the child as it considers appropriate, having regard to the need to ensure that such persons are informed of the child's educational needs.
- ❖ Child's parents shall be informed of the identity of person/s who have this information made available to them and informed of the exact information made available to these persons, as soon as possible.

- ❖ Shall be carried out in a manner which conforms to such standards as determined by a prescribed body after consultation with the Minister for Education and Science. This body standing prescribed by regulations made by the Minister for Health and Children for the purposes of determining the standards that these assessments must conform to.

ASSESSMENT – APPEAL

- ❖ Parents can appeal to the Appeals Board against an assessment on grounds that it was not conducted in a manner conforming to the standards as determined by a prescribed body after consultation with the Minister for Education and Science (as mentioned in the above section).
- ❖ Appeals Board shall hear and determine appeal within 2 months of the appeal being made.
 - Determination shall be either to –
 - Dismiss the appeal or,
 - Allow the appeal and give such direction as the Board considers appropriate to the principal, the health board or the Council, as appropriate, which may include a direction to carry out a fresh assessment.
- ❖ The principal, a health board or the Council shall comply with the Appeals Board direction.
- ❖ While this appeal is being determined, the health board or the Council (or both) shall not be absolved of the duty of providing such of the services to the child as are required to be provided to him or her. **[NOTE – see “PROVISION OF SERVICES” section.]**

EDUCATION PLAN- BY PRINCIPAL

- ❖ If the assessment, carried out by the principal, confirms that the child has special educational needs, then the principal shall, within a month of receiving the assessment results, cause a plan to be prepared for the appropriate education of the student - known as an “education plan”.
- ❖ In relation to the preparation of an education plan, the principal shall ensure consultation with parents, the SENO and such other persons as the principal considers appropriate.
- ❖ The principal shall ensure facilitation of the parents involvement in the plan’s preparation.
- ❖ The principal shall ensure that specific guidelines, provided by the Council in relation to the preparation of education plans, are complied with unless the principal decides, with the consent of the SENO, that there are good and substantial reasons not to.
- ❖ The Council may prepare guidelines with respect to the matters to be provided in the education plan by reference to the category of special educational need (being a category of such need specified in the guidelines for this purpose) that is relevant to the child and, in particular, by reference to that category, with respect to the matters specified in the following 3 paragraphs –
 - The special education and related support services to be provided to the child to enable the child to benefit from education and to participate in the life of the school;
 - Where appropriate, the special education and related support services to be provided to the child to enable the child to effectively make the transition from primary school education to post-primary school education, and
 - The goals which the child is to achieve over a period not exceeding 12 months.
- ❖ The Council may amend the above guidelines.
- ❖ The preparation and amendment of the above guidelines shall be done in accordance with the policy of the Minister in relation to the education of children with special educational needs.
- ❖ The above guidelines shall be published in such manner as it thinks fit.
- ❖ Principal shall furnish notice of the fact that the education plan is completed, together with a copy of the completed plan, to the parents and SENO.

EDUCATION PLAN – PRINCIPAL REQUESTING COUNCIL TO PREPARE

- ❖ Principal may ask the Council to prepare the education plan in two instances –
 - Taking into account the nature and extent of child’s special educational needs (as per the assessment), if the principal thinks an education plan prepared in accordance with current Council’s guidelines will not meet the child’s special educational needs.
 - If a current plan exists but the principal believes it does not meet the child’s needs and that any steps taken by the SENO, as a result of a report following a review of the plan, will still not be sufficient to meet the child’s special educational needs.
- ❖ The Council may refuse the principal’s request for the Council to prepare the education plan.
- ❖ Principal or parents may appeal the Council’s refusal to prepare the education plan to the Appeals Board.
- ❖ The appeal may be either –
 - Dismissed or,
 - Allowed and the Appeals Board may give a direction to the Council requiring it to cause an education plan in respect of the child concerned to be prepared.
- ❖ The Council shall comply with a direction given to it by the Appeals Board.

EDUCATION PLAN PREPARATION – AS PER DIRECTION OF COUNCIL

- ❖ If Council is informed by a health board or by a principal that a child has special educational needs, and if an education plan is not already being or has not already been, prepared, then the Council shall direct the relevant SENO to cause an education plan to be prepared.
- ❖ In this case, preparation of the education plan shall commence within 1 month of direction issued by the Council.
- ❖ In this case, the education plan shall be completed without undue delay and within 2 months of it being commenced.
- ❖ The SENO shall convene a group of persons, to be known as a “team”, to provide advice to the SENO on the preparation of the education plan.
- ❖ A team shall include the parents; the principal or a teacher nominated by principal; and can include one or more of the following –
 - The child, if considered appropriate by the SENO, having regard to child’s age and the nature and extent of the child’s special educational needs,
 - A NEPS psychologist nominated by NEPS to be a member of the team or; a psychologist employed by the Minister for Education and Science and nominated by that Minister to be a member of the team or; a person whom the SENO determines to have sufficient expertise in psychology and nominated by the SENO to be a member of the team; and
 - Any other person whom the parents or SENO consider appropriate and nominate to be team member – being a person who holds a qualification granted or awarded by a professional body, which qualification –
 - (i) relates to the education of children with special educational needs, AND
 - (ii) stands recognised by the Council, for the purpose of this paragraph.
- ❖ A parent shall not be a member of a team unless he or she consents to be a member.
- ❖ The team shall have regard to any needs, other than educational, of the child, which are specified in the child’s assessment by the Council or the health board and shall ensure that the education plan is consistent with the provision for such needs.

EDUCATION PLAN – CONTENT

- ❖ An education plan shall be in such form as the Council may determine from time to time and specify in a notice published, in such manner as it thinks fit.

- ❖ Matters to be specified in the education plan shall include –
 - The nature and degree of the child’s abilities, skills and talents;
 - The nature and degree of the child’s special educational needs and how those needs affect his or her educational development;
 - The present level of educational performance of the child;
 - The special educational needs of the child;
 - The special education and related support services to be provided to the child to enable the child to benefit from education and to participate in the life of the school;
 - Where appropriate, the special education and related services to be provided to the child to enable the child to effectively make the transition from pre-school education to primary school education;
 - Where appropriate, the special education and related support services to be provided to the child to enable the child to effectively make the transition from primary school education to post-primary school education, and
 - The goals which the child is to achieve over a period not exceeding 12 months.

EDUCATION PLAN – IMPLEMENTATION

- ❖ The principal shall implement the education plan.
- ❖ The school shall be provided with the necessary moneys and support services in accordance with Section 13 of this Act, for the purpose of preparing and implementing the plan.
[NOTE – see “SECTION 13” at the end of this document.]

PROVISION OF SERVICES – AS PER ASSESSMENT/ED PLAN

- ❖ In the case of a child who is not a student, on completion of an assessment of that child by the relevant health board, the relevant health board shall provide the services which are identified by the assessment as necessary to enable the child to participate in and benefit from education.
- ❖ If the health board believes that particular services can be most effectively provided for by the Council, it shall inform the Council of that opinion by notice in writing and upon being informed, the Council shall provide those services, unless it disputes the health board’s opinion.
- ❖ In the case of a child who is a student, the Council shall ensure that the services identified in the education plan, for that child, as necessary to enable the child to participate in and benefit from education, are provided.
- ❖ If the Council believes that particular services can be most effectively provided for by the relevant health board, it shall inform the health board of that opinion by notice in writing and upon being informed, the health board shall provide those services, unless it disputes the Council’s opinion.
- ❖ The Council or the health board shall provide the relevant services to the child as soon as is practicable after completion of the assessment or, as the case may be, after the preparation of the education plan.

PROVISION OF SERVICES BY HB/COUNCIL – DISPUTE

- ❖ A dispute may arise between the Council and a health board with regard to which of them can more effectively provide particular services.
- ❖ The dispute shall be referred by either or both parties, within 2 months of the dispute arising, to the Appeals Board for determination.
- ❖ Determination shall be made by the Appeals Board within 2 months of it being referred.
- ❖ The Appeals Board shall determine, and give direction accordingly, as to which party will provide

the particular services in question.

- ❖ The Council or the relevant health board shall comply with a direction given to it by the Appeals Board.
- ❖ While this dispute is being determined, the health board or the Council (or both) shall not be absolved of the duty of providing such of the services to the child as are required to be provided to him or her.

EDUCATION PLAN – CHILD CHANGING SCHOOLS

- ❖ Where it is proposed that a child, for whom an education plan has been prepared, will transfer from one school to another, the principal of the child's current school shall consult with the principal of the proposed new school, before the child moves.
- ❖ The purpose of this consultation is
- ❖ To ensure that the new principal is informed of the content of the child's education plan, and
- ❖ To assist the new principal in making any amendments to the plan which the new principal considers necessary, having regard to the child's special educational needs and the operation of the new school. (The new principal is authorised by this Act to make such amendments.)
- ❖ If the new principal proposes to amend the education plan, s/he shall inform the parents of the proposed amendment.
- ❖ The parents may then request that the new principal consults with the "relevant" SENO.
- ❖ The new principal shall comply with this request.
- ❖ In meeting this request, the SENO may reconvene the team which assisted in the preparation of the education plan or engage the assistance of one or more individual members of that team.
- ❖ In meeting this request and in the case of an education plan prepared by a principal, where there would not have been a team convened, the SENO may convene a team.
- ❖ The purpose of the SENO reconvening, or convening, as the case may be, the team shall be to review the content and implementation of the plan and the SENO may, as a consequence of that review, amend the plan.

DESIGNATION OF A SCHOOL – BY THE COUNCIL

- ❖ The Council may, of its own volition or, in the case of a child whose education plan has been prepared on the direction of the Council by a SENO, at the request of the parents, designate the school which a child with special educational needs is to attend.
- ❖ Upon being directed by the Council, this designated school shall admit the child.
- ❖ When making this decision the Council must take the following into consideration –
 - The needs of the child
 - The wishes of the child's parents
 - The capacity of the school to accommodate the child
 - The capacity of the school to meet the child's needs, including that capacity when the school has such additional resources made available to it as the Council recommends to the Minister (such recommendation being allowed by virtue of this Act).
- ❖ In this section "school" includes a centre for education (within the meaning in the Education Act 1998).

DESIGNATION OF A SCHOOL – APPEAL

- ❖ A school BOM of a designated school can appeal to the Appeals Board, but must do so within 4 weeks of being informed of the designation.
- ❖ The BOM may appeal against –
 - The designation or,

- A recommendation of the Council to the Minister, communicated to the school as part of the designation, regarding additional resources to be given to the school.
- ❖ The Appeals Board may –
 - Dismiss the appeal, or
 - Allow the appeal and, in the case of a designation, cancel the designation and, in the case of a recommendation, cancel or, as it thinks appropriate, vary the recommendation.
- ❖ If, in the case of a request from parents to designate a school, the Council refuses or fails to designate a school, then the parents may appeal against that failure or refusal to the Appeals Board.
- ❖ If, in the case of a request from parents to designate a specific school, the Council refuses or fails to designate that specific school, then the parents may appeal against that failure or refusal to the Appeals Board.
- ❖ The Appeals Board may –
 - Dismiss this appeal or,
 - Allow the appeal and give a direction to the Council to designate a school or, if it thinks appropriate, to designate the particular school as specified in the request by the parents.
- ❖ In the case of an appeal by the BOM or by the parents, the burden of proving that a school does not have adequate resources to enable it to meet the needs of the child shall be on the BOM of that school.
- ❖ In the case of a parents appeal against the Council's refusal or failure to designate a specific school –
 - The Appeals Board shall cause the BOM of that school to be made a notice party to the appeal.
 - That BOM shall have the right to make submissions to the Appeals Board in relation to the matter.
 - The Council shall be required to indicate whether it would, if it were to designate the particular school concerned, make a recommendation to the Minister for Education and Science to make additional resources available to the school to meet the needs of the child and,
 - If the Council indicates that it would make such a recommendation, then the Council shall be required to specify the nature of the recommendation.
- ❖ In the case of an appeal by the BOM or by the parents, the appeal shall be heard and determined within 2 months of the appeal being made.
- ❖ The Council shall comply with a direction from the Appeals Board.
- ❖ In this section "school" includes a centre for education (within the meaning in the Education Act 1998).

REVIEW OF EDUCATION PLAN

- ❖ The principal shall ensure that the operation of each education plan for children attending in his/her school is reviewed regularly and at least once a year.
- ❖ The purpose of the review is –
 - to establish whether the child has received the services required, as per the plan, and whether the child is achieving the goals specified in the plan and,
 - to establish any recommendations for an amendment of the plan which may be made in order to assist the child in achieving any goals that s/he is not currently achieving. These recommendations shall be contained in a report of the outcome of the review made by the principal.
- ❖ The principal shall make the above report to the parents and to the SENO.
- ❖ If after considering the report, the SENO believes that goals specified in the plan have not been achieved then, s/he shall reconvene the original team or, if the SENO thinks fit, engage the assistance of one or more members of the team.

- ❖ In the case where the principal had prepared the original plan without the assistance of a team, and if, after considering the report, the SENO believes that goals specified in the plan have not been achieved then, the SENO shall convene a team.
- ❖ The purpose of the SENO reconvening or, as the case may be, convening a team, or members of a team, shall be to review the content and implementation of the plan and, as a consequence of this review, the plan may be amended.
- ❖ The parents may request the principal to arrange for the education plan to be reviewed if they believe goals specified in the plan haven't been achieved by their child and if there hasn't already been a review of the plan in the previous 6 months.
- ❖ If the principal considers this request appropriate, s/he shall carry out or cause to be carried out, the review, and the review shall be carried out in the same manner as the principal would otherwise carry out or, cause to be carried out, a review.
- ❖ If the principal does not consider the parent's request appropriate, s/he shall inform the parents in writing of the decision not to carry out a review and the reasons for this decision, within 2 weeks of receiving the parent's request.
- ❖ The parents may appeal against the principal's refusal to the Appeals Board within 1 month of receiving the principal's written notice.
- ❖ The Appeals Board shall hear and determine the appeal within 1 month of the appeal being made.
- ❖ The Appeals Board determination may be either to –
 - Dismiss appeal, or
 - Allow the appeal and direct principal to review or cause to be reviewed, the plan.
- ❖ The principal shall comply with a direction given to it by the Appeals Board.

EDUCATION PLANS – APPEALS

- ❖ Parents may appeal to the Appeals Board against –
 - A.** the discharge by the Council or a principal of its or his/her duties in relation to –
 - (i) any statement or description of their child's special educational needs as set out in an education plan, or
 - (ii) any other statement or description appearing in the original or amended (if it was amended after being reviewed) education plan,
 on the ground that the statement or description is incorrect or inadequate to meet the child's special educational needs, or
 - B.** the discharge by a school or health board of its duties with respect to an education plan on the ground that there has been a failure by it to implement any part of the plan.
- ❖ The appeal shall be heard and determined by the Appeals Board within 2 months of the appeal being made.
- ❖ The determination may be either to –
 - Dismiss the appeal, or
 - Allow the appeal and, as appropriate, give a direction to the principal or the Council requiring the principal or the Council to amend the plan in such manner as the Appeals Board considers appropriate and specifies in its direction or give such other direction to the principal, the health board or the Council relating to the child's education as the Appeals Board considers appropriate.
- ❖ The principal, the health board or the Council shall comply with a direction given to him/her or it by the Appeals Board, as above.

- ❖ While this appeal is being determined, the health board or the Council (or both) shall not be absolved of the duty of providing such of the services to the child as are required to be provided to the child. **[NOTE – see “PROVISION OF SERVICES” section.]**

DUTY OF SCHOOL BOARD OF MANagements

- ❖ BOM shall ensure compliance with the following statement –
A child with special educational needs shall 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 such that to do so would be inconsistent with –
 - *The best interests of the child as determined in accordance with any assessment carried out under this Act, or*
 - *The effective provision of education for children with whom the child is to be educated.*
- ❖ BOM shall co-operate to the greatest extent practicable with the Council and its employees and, in particular, provide to the Council such information as the Council may from time to time reasonably request for the performance by it of its functions.
- ❖ Such a request for information by the Council shall be complied with within such period as the Council specifies in the request, not being a period longer than 1 month from the date of the request.
[The above three points are commenced as of 14th July 2005]
- ❖ BOM shall ensure that parents of a special educational needs student are –
 - (i) informed of the child’s needs and how those needs are being met, and
 - (ii) consulted with regard to, and invited to participate in, the making of all decisions of a significant nature concerning their child’s education.
- ❖ BOM shall ensure that all relevant teachers and employees of the school are aware of the special educational needs of students
- ❖ BOM shall ensure that teachers and other relevant employees of the school are aware of the importance of identifying children and students who have special educational needs
- ❖ BOM shall inculcate in students of the school an awareness of the needs of persons with disabilities.

SENOS

- ❖ The Council may appoint such and so many persons as it determines to perform the functions expressed by this Act to be performable by special educational needs organisers and each person who is so appointed shall be known, and in this Act is referred to, as a “special educational needs organiser” (SENO).
- ❖ The SENO shall carry out his/her duties under the direction and control of the Council.
- ❖ A SENO shall have such qualifications, expertise and experience relevant to the education of children with special educational needs as the Council considers appropriate.
- ❖ A SENO shall perform, in addition to the functions conferred on him/her by this Act, such additional functions as may be assigned to him/her by Council.
- ❖ SENOs shall perform their functions in respect of particular areas of the State or particular categories of school in the State as the Council may from time to time designate as being that SENO’s responsibility.
- ❖ The BOM, principal, teachers and other school staff shall give all such assistance as may be reasonably required by the SENO in the performance by him/her of his/her functions.
[This section on SENOs is commenced as of 14th July 2005]

SPECIAL EDUCATION APPEALS BOARD – Functions

- ❖ The Special Education Appeals Board is referred to in this document as the “Appeals Board”.
- ❖ Established on 3rd April 2006.
- ❖ The Appeals Board shall hear and determine appeals made pursuant to this Act.
- ❖ The Appeals Board may sit in divisions of itself to hear appeals.
- ❖ The Appeals Board shall be independent in the performance of its functions.
- ❖ The Appeals Board shall act in accordance with such procedures as may be determined from time to time by it, with the consent of the Minister.
- ❖ These procedures shall ensure that –
 - the parties to the appeal are assisted, through mediation, to reach agreement on the matters the subject of the appeal where the Appeals Board believes that reaching such an agreement is practicable in the circumstances,
 - hearings are conducted with the minimum of formality consistent with giving each of the parties a fair hearing,
 - the Appeals Board performs its functions in accordance with the policies from time to time formulated by the Minister, the Minister for Health and Children or the Minister for Finance, as the case may be, in relation to the performance of each of his/her functions as a Minister of the Government.
- ❖ The Minister may, in each financial year of the Appeals Board pay to the Appeals Board, out of moneys provided by the Oireachtas, a grant of such amount as he or she, with the consent of the Minister for Finance, determines towards the expenses of the Appeals Board in the performance of its functions.

[This section on Appeals Board commenced as of 14th July 2005]

SPECIAL EDUCATION APPEALS BOARD – Personnel

- ❖ The Appeals Board shall consist of a chairperson and such number of ordinary members as may be determined, by the Minister.
- ❖ The chairperson and ordinary members shall be appointed, by the Minister, from among persons who have a special interest in or knowledge of education and in particular, the education of persons with special educational needs.
- ❖ The Minister shall determine the period of the term of office of the chairperson and the ordinary members.
- ❖ The chairperson or an ordinary member may resign by letter addressed to the Minister.
- ❖ The Minister may remove the chairperson or an ordinary member from office.
- ❖ The chairperson and ordinary members shall be paid such allowances for expenses as the Minister, with the consent of the Minister for Finance, may determine.
- ❖ The Appeals Board may, with the consent of the Minister given with concurrence of the Minister for Finance, appoint such and so many persons to be employees of the Appeals Board as the Board considers necessary to assist the Board in the performance of its functions.
- ❖ Each employee shall hold office on such terms and receive such remuneration as the Appeals Board with the consent of the Minister for Finance determines.

[This section on Appeals Board commenced as of 14th July 2005]

SPECIAL EDUCATION APPEALS BOARD – Report

- ❖ The Appeals Board shall submit a report of its activities and particulars of its accounts to the Minister at least annually and in such manner and format, as the Minister directs.
- ❖ The Minister shall cause copies of this report to be laid before each House of the Oireachtas.

[This section on Appeals Board commenced as of 14th July 2005]

SECTION 13 – DUTY OF MINISTER TO PROVIDE RESOURCES

- ❖ The Minister for Education and Science and the Minister for Health and Children shall each, with the consent of the Minister for Finance, out of moneys provided by the Oireachtas, provide such moneys and other resources as are determined by him or her for the purposes of the preparation and implementation of education plans prepared in respect of children with special educational needs.
 - ❖ Such a determination by the Minister for Education and Science or by the Minister for Health and Children and such an exercise by the Minister for Finance of the power of consent, shall be in accordance with policies formulated by the Minister for Education and Science, the Minister for Health and Children or the Minister for Finance, as the case may be, in relation to the performance of each of his or her functions as a Minister of the Government.
 - ❖ In formulating any such policy (as mentioned above), the Minister of the Government concerned shall have regard to, and take due account of, the following principles –
 - that the provision of resources by the State in fulfilment of its duties under Article 42 of the Constitution (being the resources available to the State and allocated by it in a manner consistent with common good) shall be such as to ensure the equitable treatment of every child in the State,
 - that the objective of the educational provision made by this Act is to ensure that children with special educational needs have the same right to avail of, and benefit from, appropriate education as do their peers who do not have such needs.
-

Acknowledgements

Tom O’Sullivan and Deirdre O’Connor of the INTO – a big thank you for your most helpful guidance and advice.

Joan Ward, Teaching Council Chairperson – many thanks to you, your Principal and your staff colleagues at Griffeen Valley Educate Together National School for having sowed the seed for this document.

Ciarán Swan, Graphic Designer, Leinster House - thank you for your patience, efficiency and above all, expertise.

Aoife O’Toole, Political Assistant – thank you for your research and editing work and your management of the publication.