

Assignment Module 9

1. Summary

This policy brief addresses people with disabilities' access to education in Germany and proposes measures that can be taken to improve accessibility and to establish an inclusive educational system. The right to education is highlighted as a fundamental human right in several international standards. The Convention on the Rights of People with Disabilities (CRPD) not only reiterates this right but defines what is to be understood as equal access to education of people with disabilities and what provisions are set for governments in regard to the establishment of an inclusive educational system. Its ratification has stirred a controversial debate among education and disability stakeholders and experts with civil society groups, including support and self-help groups for people with disabilities, which have demanded fundamental legal and structural changes.

This document illustrates why the current legal and policy framework is not in compliance with the provisions of Article 24 of the CRPD and how the majority of people with disabilities in Germany are still excluded from access to good-quality education by legal and administrative barriers. It then makes recommendations on what can be done in order to improve the situation and how to include civil society in the development of an inclusive educational system. In comparison to the majority of other European states, the rate of children and adolescents enrolled in the regular school system is significantly lower, and while it is difficult to find data on this topic, adults' access to secondary education is expected to be even more limited. It is important that all stakeholders realize that inclusive education is not only desirable to those who yet lack equal access to education but beneficial to the entire society, as will be highlighted in this policy brief.

2. Overview of the current situation in Germany

Currently, about 400 000 pupils attend one of the 3 302 special developmental schools in Germany. The pupils of Special Development Schools receive no accredited degree but a participation certificate. In order to get a degree, they have to graduate at a regular school afterwards. However, the differences between special needs education and the regular school system are blatant, and 8 out of 10 former Special development pupils drop out without any degree¹.

In comparison to other (European) nations with similar economic and social structures, people with disabilities in Germany face significant barriers in regard to access to mainstream education. In 2008, the Organization for Economic Cooperation and Development (OECD) conducted an overview² of its member states and found that there were tremendous differences in regard to the provision of inclusive education. One indicator used was the integration rate, i.e. the percentage of children and adolescents with disability enrolled in mainstream schools. With an overall integration rate of 15.7%,

¹ Education in Germany 2010. Education Report on behalf of the conference of Ministers of education (http://www.bildungsbericht.de/daten2010/bb_2010.pdf, 17.7.2010)

² S. Inclusion Europe brochure "Inclusion now" 2008

Germany is taking one of the last positions in the ranking, only succeeded by the Czech Republic and Belgium; Sweden, Norway, Portugal and Great Britain each show rates over 90%.

In another nationwide review conducted by the Social Alliance Germany³ in 2009, the extent to which the different federal states have progressed in realizing inclusive education in light of the ratification of the CRPD was investigated. Due to its federal structure, the authority on developing and implementing legal provisions on education mainly lies with each of the 16 federal states, and the review revealed huge differences in regard to the efforts taken to enable persons with disabilities to access mainstream education as promoted in Article 24 of the CRPD. Integration rates varied from 4.7% in the state of Niedersachsen to 44.9% in Bremen. Independent from the integration rate, the researchers developed other indicators to assess the progress of state governments in the development of an inclusive education system. The findings are that in the majority of states - 11 states), no or hardly any effort is taken in order to amend legal and administrative provisions to improve the inclusion of disabled children and adolescents in regular schools in light of the ratification of the CRPD. The researchers consider only two states, Schleswig-Holstein and Bremen, to be "on a good way".

Legal background: The German constitution prohibits discrimination on the grounds of a disability. However, when it comes to the provisions of the state laws, there are remarkable differences to be found in regard to the interpretation of the right to education of persons with disabilities. While most laws promote the integration of children and adolescents with disabilities into the regular school system, the extent of this provision varies. For example, while the state of Bremen (IR 44.9%)⁴ identifies inclusive education as the norm and only allows special education settings in exceptional cases, it is not designated at all in the state law of Rheinland-Pfalz (IR 13%). The law states that special schools are established to provide "students, who because of their disability can not be supported sufficiently or at all in other types of schools despite special support measures, with the qualification that is considered appropriate for this type of schooling or other qualifications according to their abilities"⁵. The state laws also differ in the extent to which parents can decide on the type of school their children are going to attend.

3. Relevance of international human rights standards

The following international human rights standards are relevant to the right of persons with disabilities:

- The Universal Declaration of Human Rights, Article 26
- The Convention on the Rights of the Child, Articles 28 and 29
- The International Covenant on Social, Economical and Cultural Rights, Article 13

³ Sozialverband Deutschland (SoVD): press conference 20.08.2009 "Survey on inclusive education in the federal States", Adolf Bauer, President of SoVD (<http://www.gemeinsam-leben-nrw.de/> 17.7.2010)

⁴ IR= Integration rate (taken from SoVD report)

⁵ Schulgesetz Rheinland-Pfalz §7 (<http://www.behinderung.org/gesetze/intgestz.htm>, 17.7.2010)

- **The Convention on the Rights of Persons with Disabilities, Article 24**

While all these international standards promote the right to education of everyone without discrimination, the CRPD specifies this right for the situation of persons with disabilities and gives details on how to implement this right. States are obligated to ensure that "persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability" (Art. 24.2 a). The convention further demands governments to provide reasonable accommodation so that persons with disabilities can access regular schools "within the general education system" (Art. 24.2 d).

In comparison to other international standards, the CRPD's article 24 on the right to education is much more detailed and clearly promotes accessibility to mainstream schooling. The current German system, however, is still based on the integrative education model where the integration of disabled individuals into mainstream schools is promoted but joint learning in an inclusive education system for all is not considered the norm. When a child is integrated into a mainstream school, she/he is required to adapt to the system, whereas the CRPD goes one step further and promotes an education system which adapts to the needs of all pupils.

In the light of the ratification of the CRPD, Prof. Dr. Riedel, an international law expert, has conducted an analysis of the "Impact of the International Convention on the Rights of Persons with Disabilities on the German education system"⁶. The analysis emphasizes that, while the realization of an inclusive school system can be implemented over a longer time period according to the principle of progressive realization, the right to education is at the same time to be considered a directly enforceable right on the individual level. Every infringement by the government would therefore have to be justified on the grounds of its adequacy of purpose, necessity and its appropriateness, stating:

"Denying a child with disability the access to inclusive education at a mainstream school is principally to be considered a discriminating act by the government."⁷

4. Recommendations for reform

With a special focus on the obligations and provisions of the CRPD, the following recommendations are made in regard to the right to education of persons with disabilities and the development of an inclusive educational system:

1. Education and awareness-raising on the benefits of inclusive education

- On a political level, the CRPD's call for an inclusive education system must be acknowledged. The fact that the term "inclusive education" has been translated into "integrative education" in the German translation has stirred a lot of controversy, particularly among disability user and support groups. The political

⁶ http://www.gemeinsam-leben-nrw.de/sites/default/files/Gutachten_Zusammenfassung_0.pdf 17.7.2010

⁷ See above, pg. 3

stakeholders need to make a clear statement on their commitment to implement the convention's provisions to the fullest possible extent.

- Civil society in general should be educated about the benefits of inclusive education. Existing reluctances and fears should be addressed publicly and the benefits should be demonstrated.
- International examples of good practices should be made available to the relevant stakeholders and broader public to illustrate the feasibility and benefits of inclusive education
- Capacity building and empowerment of persons with disabilities and their families by educating them about their rights and encouraging them to participate in the development of an inclusive education system

2. Re-allocation of funding

- While the development of an inclusive system will take time, the development and expansion of special education facilities needs to cease.
- Transform existing special education resources (special schools, classes) into mainstream education systems (for example, it might even be cheaper to establish reasonable accommodation in a regular school than to pay for the transport of a child with disabilities to a distant special development facility)
- New learning material, buildings etc. have to be accessible

3. Evaluation and amendments of the legal framework

- The existing state laws have to be evaluated in regard to their compliance with the CRPD
- The right to inclusive education has to be clearly promoted and necessary procedural and administrative regulations need to be set (for example, the availability of support staff or technical support for those pupils in need)
- The person with disabilities' and the parents' self-determination in regard to the choice of the type of school should be promoted more strongly

4. Transformation of mainstream schools into inclusive learning environments

- The transformation process should take place step-by-step, as mainstream schools need to address certain changes in order to be able to provide good-quality education
- The training of teachers is an essential aspect for the realization of inclusive education. Special skills required for teaching children with diverse disabilities should be integrated into initial teacher qualifications, and ongoing in-service training should be offered
- Possible areas of training include: special education co-ordinator, team teaching, developing mutual support networks, pedagogic of curriculum differentiation, development of individual education programs and monitoring progresses
- Establishment of support networks within and outside the school setting: For example, the establishment of a position as a special education co-ordinator

- within the school and collaboration with external advisors (occupational therapists, etc.)
- Train special educators to serve as additional resources in mainstream school systems

5. Inclusion of the civil society in law and policy reform

The CRPD also obligates the states to involve civil society and particular groups representing persons with disabilities and their families in the process of policy and law formation⁸. As the development of an inclusive education system accessible to persons with disabilities in Germany is only at its beginning, the chance to involve civil society and user and family groups from the disability sector in the development of adequate plans and policies and the amendment of the legislative framework should be taken seriously. The involvement should be initiated at the community level, including involvement at individual schools, but should also span to the broader political level. The government has already initiated a workshop⁹ on the right to education with relevant stakeholders, including representatives from civil society and user and support groups ("All inclusive"-campaign on the ratification of the CRPD in January 2009). Furthermore, the German Disability Council, an alliance of different civil society and self-help groups from the disability sector, has been assigned to conduct a "National Concept on Inclusive Education" and has already published its own policy brief which contains clear recommendations very similar to those expressed in this document. With a range of helpful recommendations available, the development of an inclusive education system should now be pushed to the next level.

⁸ CRPD Preamble o9; Article 32

⁹ http://www.alle-inklusive.behindertenbeauftragte.de/cln_115/nn_1619942/AI/Kampagne/Bildungspolitik/Bildungspolitik_node.html?__nnn=true 17.07.2010