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THE WAY FORWARD

Diversity, Choice and Equality in Education

AN ALTERNATIVE TO THE BURNS REPORT (November 2002)

Guidelines

The present education system is widely recognised as allowing pupils to reach high standards of achievement, and providing a range of educational opportunities to meet the differing needs of pupils. Improving the system does not require fundamental changes, which would on the contrary jeopardize it and could eventually destroy it. Any future measures aimed at increasing the diversity of schools, providing choice for parents and ensuring equality for pupils, must be soundly based on respect for internationally-recognised principles.

We will first of all examine (1) the fundamental principles of international law on the right to education as a basis for the reform of the education system, before dealing with (2) the implementation of those principles in the education system of Northern Ireland.

I. THE FUNDAMENTAL PRINCIPLES OF INTERNATIONAL LAW ON THE RIGHT TO EDUCATION AS A BASIS FOR THE REFORM OF THE EDUCATION SYSTEM

Three principles are essential as regards the right to secondary education in international law: (A) the principle of availability of different forms of secondary education, (B) the principle of the State's respect for parents' religious and philosophical convictions, and (C) the principle of equality of opportunity for pupils.

A. The principle of availability of different forms of secondary education

The International Covenant on Economic, Social and Cultural Rights of 16 December 1966 (ICESCR) provides in Article 13(2)(b) that "*secondary education in its different*

forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means...”.

Article 28(1)(b) of the United Nations Convention on the Rights of the Child of 20 November 1989, also provides that States recognize the right of the child to education, and in order to achieve this right progressively, on the basis of equal opportunity, they undertake in particular to “*encourage the development of different forms of secondary education, including general and vocational education*”, making them available and accessible to every child.

Both these international conventions, which have been ratified by the United Kingdom, emphasize that different forms of secondary education shall be made available and accessible. It is the State’s duty to promote and encourage the development of different forms of secondary education and to ensure that they are made accessible.

B. The principle of the State’s respect for parents’ religious and philosophical convictions

The International Covenant on Civil and Political Rights of 16 December 1966 (ICCPR) in Article 18(4), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in Article 13(3), both provide that “*the State Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to ensure the religious and moral education of their children in conformity with their own convictions.*”

The purpose of both these covenants, which have been ratified by the United Kingdom, was to prevent any country from repeating in the future abuses of the education system as committed by the Nazis, who had used it as a means of indoctrinating young people.

Article 2 of Protocol No. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms¹ states: “*In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the rights of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions*”.

The emphasis is placed on the word “*respect*”, which according to the European Court of Human Rights case law means more than “*acknowledge*” or “*take into account*”². Article 2 of Protocol No. 1 enjoins the State to respect parents’ convictions, be they religious or philosophical, throughout the entire State education programme.

The European Court of Human Rights also held that the second sentence of Article 2 forbids the State “*to pursue an aim of indoctrination that might be regarded as not respecting parents’ religious and philosophical convictions. That is the limit that must not be exceeded.*”³

¹ Commonly known as the European Convention on Human Rights.

² Case Valsamis V Greece, 18 December 1996.

³ Case Kjeldsen, Busk Madsen and Pedersen V Denmark, 7 December 1976.

The fundamental right of parents to have their children educated in conformity with their own religious and philosophical ideas must be respected. For this right to be effective, the State must preserve and promote the existence of schools with differing ethos, so that parents have the opportunity to send their children to a school which respects their own religious and philosophical convictions.

C. The principle of equality of opportunity

Article 28(1) of the United Nations Convention on the Rights of the Child provides that States recognize the right of the child to education “*on the basis of equal opportunity*”.

This is a fundamental principle, the purpose of which is to guarantee that no child can be discriminated against on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, economic conditions or birth, in having access to education.

It is the State’s duty to ensure that no discrimination based on any arbitrary criteria could take place within the education system. Difference of treatment applied by public authorities to children is prohibited, except on the basis of merits or needs.

It is therefore proper for a State to have different forms of secondary education for which access is regulated by some form of test based on the child’s merits. Such a system is not discriminatory but fair in a democratic society. The principle of equality of opportunity is as a result fully respected as long as the process for determining access to any school is fair also. Moreover, if a child has a special need, for example children with disabilities or advanced pupils, any measure which addresses that need cannot be deemed to be discriminatory.

II. THE IMPLEMENTATION OF THE PRINCIPLES OF INTERNATIONAL LAW IN THE EDUCATION SYSTEM OF NORTHERN IRELAND

On the basis of the principles of international law, the State should (A) increase the availability of different forms of secondary education, (B) respect parents’ religious and philosophical convictions, and (C) ensure equal opportunity for pupils.

A. Increased availability of different forms of secondary education

According to the International Covenant on Economic, Social and Cultural Rights (1966), and the United Nations Convention on the Rights of the Child (1989), it is the State’s duty to promote and encourage the development of different forms of secondary education. Therefore the State must not only (1) preserve and develop the existing diversity of forms of education, but make all necessary efforts in order to promote (2) the development of a diversity of schools in secondary education.

1. *Diversity of forms of secondary education preserved and developed*

The diversity of forms of secondary education, which is to be found at the present time in Northern Ireland, must be maintained. The academic form of education needs to continue to be supported by the State and other forms of education, either vocational or technical, should equally be sustained by the State. The ability to develop the vocational and technical forms of education to meet the needs of society is a particular challenge which has to be addressed by the State.

2. *Diversity of schools in secondary education*

It has been established that different forms of education are best catered for in different types of schools. Comprehensive schools in England and Wales, which are obliged to deliver all forms of education, have resulted in a fall of standards. Therefore, in the best interest of the pupils, each form of education should be delivered by different types of schools.

In Northern Ireland the majority of schools should continue to cater for children who do not have special needs, such as grammar schools and secondary schools. Grammar schools can continue to deliver an academic education, while other secondary schools should be able to provide a vocational and technical education although still ensuring a basic academic education.

In order to provide for children with special needs, (including the needs of those disabled, educationally backward or advanced,) they should be ensured access to the form of education they require, in an appropriate school. The support of the State for schools which address the needs of advanced pupils would therefore be necessary.

Schools delivering a form of education within the context of a particular philosophy, religion or other purpose (e.g. language), should also be able to look for State support. Initiatives to create further diversity of schools should be encouraged by the State and equally supported.

CONCLUSION

Availability of diverse forms of education and of schools is necessary for maintaining and improving standards in education and ensuring that the needs of all children are provided for. Diversity is also the condition for providing effective choices for parents and pupils. In addition, respect for the principle of diversity also means that the different types of school will be treated equally and valued equally, as they are all essential parts of the overall system of education, and meeting the needs of pupils across the educational spectrum.

B. Respect for parents' religious and philosophical convictions

According to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention for the Protection of Human Rights and Fundamental Freedoms, it is the State's duty to respect the right of parents to have their children educated in conformity with their

own religious and philosophical convictions. The duty of respect sets a limit on the State which cannot be crossed. Thus the rights of parents are protected and the State is bound to abstain from interfering in this matter.

In order for the rights of parents to be effectively exercised, the State must respect the different religions and philosophies which existing schools have already adopted. Parents who choose to register their children in a particular school because they approve its religion and/or philosophy, are entitled to have their rights respected.

If ever the State was to interfere with these schools, because of their religion and/or philosophy, this would certainly infringe on the rights of parents. It is therefore appropriate for each existing school to continue to have a particular religion and/or philosophy, which has been and continues to be considered appropriate and acceptable by parents as the ethos within which their children are educated.

Any initiatives to create further diversity of schools in terms of ethos or religion, should also be encouraged by the State and supported on the principle of respect for the rights of parents in this matter.

CONCLUSION

Not only are parents entitled to choose for their children between different forms of education, but they also have the right to choose between the different religions and/or philosophies adhered to by schools. In order for the rights of parents to be respected, diversity of schools with their particular religion and philosophy must be ensured, and equality of treatment guaranteed between the different schools in the best interests of the children.

C. Equal opportunity ensured for pupils

In conformity with the United Nations' Convention on the Rights of the Child, the State must ensure that no child is discriminated against on the basis of arbitrary criteria. However, access to certain forms of education or certain schools can be regulated on the grounds of merits or needs.

The process by which merits or needs are being determined, whether (1) by assessment or (2) by means of a test, must give equality of opportunity to all pupils.

1. Assessment as a common criterium

In order to determine the capacity and potential of any child, in respect of their admission to any type of school, whether academic, technical and/or vocational, the most reliable means is assessment over an extended period of time.

When confronted with the issue of transfer, assessment should become the common criterium and should be enforced by the State. Assessment could be used for transfer from Primary 7 to Year 8, but it could also be used for transfer during secondary education and particularly for transfer from one form of education to another (e.g.

from an academic form of education to a technical form of education and vice versa), at any stage of secondary education.

The period of assessment to be taken into account should cover the three preceding years. This would mean that the period of assessment for transfer from Primary 7 to Year 8 would cover the years between Primary 5 and 7.

For any transfer occurring at any stage during secondary education from one form of education to another or from one school to another, the period of assessment would also cover the three preceding years. For example, transfer from Year 9 in one school to Year 10 in another school will take into account the years Primary 7, Year 8 and Year 9.

Such an assessment of the pupil's achievements in order to carry out a transfer will be based on a true picture of the pupil's profile and will take into account the pupil's academic as well as practical abilities. It would be used as a common basis in every form of education and at any stage to determine the pupil's needs and requirements from the education system. An appeal against the decision made by a school will be made available before an independent panel.

2. Tests as an option in addition to assessment

Certain schools, whatever form of education they cater for, whether academic, technical and/or vocational, may choose to apply tests at the time of transfer, especially from Primary 7 to Year 8. The transfer process would be regulated by the State. It would be optional and would not allow any school not to take into account the three-year period of assessment. The schools which decide to apply a test would have to take into consideration the results of the test as well as the assessment covering the preceding three years in order to determine a pupil's suitability for admission. An appeal against the decision reached by the school could be made before an independent panel. Tests could be applied for entrance to Year 8 and also to Year 11.

3. Criteria used to decide a pupil's admission after completion of assessment and test

Once the assessment alone or the assessment and test has/have been carried out, and if the school is oversubscribed, the school would have to apply a number of criteria. Each school will determine, under the control of the State, the criteria which it will apply to select pupils. Any decision taken by the school would be open to challenge before an independent panel.

CONCLUSION

Equality of opportunity between pupils would be ensured by assessment as a common criterium and where applicable by a test and by admission criteria. The equality of opportunity for pupils would be reflected in the equality between the different forms of education and the different schools, whatever form of education is catered for (academic, technical and/or vocational), and whatever the religion/philosophy adhered to.

RECOMMENDATIONS FOR THE FUTURE IN EDUCATION

- 1.** Diversity of forms of education (e.g. academic, technical and/or vocational) should be maintained and constantly developed by the State.
- 2.** Diversity of secondary schools, catering for different forms of education, should be maintained.
- 3.** Support from the State for independent schools and the creation of new schools, particularly for children with special needs, should be increased.
- 4.** Diversity of secondary schools with a different ethos, religion and/or philosophy should be protected and respected by the State.
- 5.** Transfer on the basis of assessment as a common criterium should be enforced by the State.
- 6.** When a school, whether it caters for the academic, technical and/or vocational form of education, chooses to implement a test in addition to the assessment, the transfer process should be regulated by the State.
- 7.** The criteria for admission for oversubscribed schools should be determined by the schools themselves, under the control of the State.