

## Submission to Joint Oireachtas Committee on Education & Skills

### Re:

**Draft General Scheme of an Education (Admission to Schools) Bill 2013**

**Draft Regulations Content of Policy – Regulations entitled Education Acts 1998 and 2013 Admission Policies of Schools and Related Matters Regulations 2013**

**Draft Regulations on Admission Process – Regulations entitled Education Acts 1998 and 2013 Procedures and Timelines for the Admission of Students to Schools and Related Matters Regulations 2013**

**Date: 30<sup>th</sup> October 2013**

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### Introduction

The Irish Traveller Movement (ITM), “A Movement for Change”- is a national membership organisation representing Travellers and Traveller organisations and was founded in 1990. One of its core principles and objectives was to challenge the racism that Travellers face in Ireland, promoting integration and equality within Irish society. It is thus with 23 years of experience of consultation with Travellers on their needs and aspirations for an equitable education system and through policy analysis that we present to the members of the Joint Oireachtas Committee on Education & Skills. The ITM has already submitted a detailed submission in response to Minister Quinn's Framework on Enrolment Discussion Paper 2011 Enrolment paper.<sup>1</sup>

While some progress had been made in Education in recent years, almost all Traveller-specific educational supports have now been withdrawn<sup>2</sup> and the Traveller-specific education budget has been cut by 87%.<sup>3</sup> A significant gap exists between the participation and attainment of Traveller children as compared with their settled counterparts. Although there are over 8,000 Travellers in mainstream education, the statistics provided by the Census of 2011 demonstrate some startling comparisons;

- Only 3% of Travellers continued their education past 18 compared with 41% of the settled population
- 17% of Travellers have no formal education compared to 1.4% of majority population

The ITM commends the Minister on some elements of the Bill but we submit it has not gone far enough and that further research is required to determine exactly what the practical effect would be of the proposed changes on the most marginalised children in Irish society, including Travellers.

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<sup>1</sup> [http://itmtrav.ie/uploads/publication/ITM\\_Discussion\\_Paper\\_on\\_Enrolment.pdf](http://itmtrav.ie/uploads/publication/ITM_Discussion_Paper_on_Enrolment.pdf)

<sup>2</sup> <http://www.irishtimes.com/news/social-affairs/secondary-schools-failing-traveller-children-pavee-point-claims-1.1474882>

<sup>3</sup> See concerns raised by ITM in 2011 submission

[http://itmtrav.ie/uploads/publication/ITM\\_Position\\_Paper\\_Traveller\\_Education\\_Cuts.pdf](http://itmtrav.ie/uploads/publication/ITM_Position_Paper_Traveller_Education_Cuts.pdf)

Positive aspects of the proposed legislation include:

**(1) Publication of Enrolment Policy**

The increased fairness that results from more transparency as the legislation provides that a school's "over - subscription criteria" for admission must be published, as recommended in our 2011 submission.

The effects of this increased transparency are seriously lessened by the fact that the outcome of any appeal in relation to a refusal of any admission cannot be challenged and adjudicated upon by a body independent from the management of the school. Although the criteria of admission are made more transparent, which will facilitate more challenges to decisions of refusal, the means by which a decision can be challenged has been severely restricted.

**(2) The sibling rule**

Although when taken on its own, the ITM would not have any specific objection to this rule in relation to siblings currently in the school, section 14 of the Draft Regulations Content of Policy also permits this rule to apply in reference to siblings who previously attended the school. Our 2011 submission sets out the reasons for our opposition to this rule.<sup>4</sup> When taken in conjunction with the parent rule it significantly decreases the opportunity for children from educationally disadvantaged backgrounds to access education as a result of a large number of places potentially being taken up by the siblings and children of past pupils. For example, if admissions to one intake have been filled to the 25% permissible by admissions relating to the "parent rule," (which according to section 15 (iii) (b) applies before any other over-subscription criteria), then those applicants with a sibling in the school currently or previously (who are also more likely to also have had a parent attend the school) and who missed out on admission through the 25%, can get a second bite of the cherry, through the application of the sibling rule.

**(3) Abolition of first come, first served criterion**

Residing in the locality of the school remains a possible criteria but admission on a first-come, first-served basis is no longer permitted. This could be of assistance to migrants/Travellers who may have just arrived in the locality when the school admission procedure begins ensuring that their recent arrival will not place them at a disadvantage.

However the effect of this may be tempered by the fact that schools may accept applications for enrolment from 1<sup>st</sup> October of the preceding school year or possibly even two or three (in the case of post-primary) if the regulations are amended with only a suggested requirement of having 10% of its available places reserved for 'late' applicants(ie those filled in the year immediately preceding intake). This possibility is according to page 5 of the Draft Regulations on Admission Process – Regulations entitled Education Acts 1998 and 2013 Procedures and Timelines for the Admission of

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<sup>4</sup> [http://itmtrav.ie/uploads/publication/ITM\\_Discussion\\_Paper\\_on\\_Enrolment.pdf](http://itmtrav.ie/uploads/publication/ITM_Discussion_Paper_on_Enrolment.pdf)

Students to Schools and Related Matters Regulations 2013, schools may begin enrolment process up to 2 years previously

#### **(4) Removal of Application Fees**

The removal of Application fees (as recommended by ITM in 2011 submission), entrance exams and waiting lists is welcomed. However, the interview process remains permissible for applicants seeking enrolment in boarding schools.

#### **(5) Clarification required with respect to mid-year transfers**

Clarification needed re requirements on admission policies reserving places for mid-year transfers. It is important to note that provision for nomadic Traveller families and migrants who may arrive into an area and look to enrol their child in a school in the middle of a school year has not been addressed.

#### Negative aspects of the legislation

Although the ITM would give a cautious and qualified welcome to the above elements of the draft legislation, we would have serious concerns regarding the impact of the following legislative changes, particularly on a sector of society that is already at serious educational disadvantage. The legislation, as currently drafted, represents a missed opportunity for this government to improve the lot of all children who are educationally disadvantaged, including Travellers.

#### **(6) Removal of the Section 29 Right of Appeal to Department against a Refusal to Admit (Heads 5, 6 and 7)**

As currently drafted, the legislation provides that a Board of Management's decision following an appeal of a Principal's refusal to admit will be final. Although the draft legislation provides that the Principal must withdraw from considerations relating to such appeals, we would submit that the Board of Management would not be sufficiently impartial or independent to be the final arbiter in appeals relating to refusals to enrol. The only other avenue then available to challenge a refusal to enrol would be by way of judicial review in the High Court with the attendant costs of approximately €15,000 euros along with a 3 month wait for hearing, an option which is impractical and unavailable to most parents. The right of appeal and access to justice is thus reserved only for those parents who can afford it. It should be noted that the burden of these extra legal costs will also fall to schools to pay and that if an applicant is successful in their judicial review, costs may be awarded against the school so that the school would have to pay both its own legal fees and those of the applicants.

The draft legislation sets out that the reason for the removal of the right of appeal in relation to refusals to enrol was to provide structures that are more "less burdensome, less adversarial and more cost-effective" than the current system of appeals. Inexplicably however, the right of appeal to the Department of Education against a decision to expel/suspend remains.

It is submitted that this restriction may well be unconstitutional as the process in the legislation as

currently drafted does not reach the standard of constitutional fairness by failing to adhere to the following maxim;

*Nemo Iudex in Causa Sua – One cannot be a judge in his own cause/Rule against Bias*

This maxim means that any judge(s) of an administrative decision must be independent and impartial. Even the appearance of bias is impermissible. There are clearly serious issues raised as a Board of Management is comprised of teachers and parents and members of the community who have, at the very least, a conflict of interest, and furthermore, may be subject to the Principal's influence in their decision. Given that it would be a decision of the Principal that would be under appeal in this forum, the difficulties of this appeal system are self-evident. Furthermore, it would not be unheard of for the parent of a settled child to be anxious to ensure that there were no Traveller children attending the same school or same class as his own child and within this proposed appeals forum, it is all too easy for such prejudices to operate. The ITM has received anecdotal evidence from member's feedback and from its links with the Visiting Teacher Service for Travellers (until their removal in 2010) to the effect that access, particularly to secondary schools, has been historically difficult for Travellers.

Furthermore, by removing this function of the Department of Education and any sort of regular system of monitoring and oversight by the Department over the functioning and operation by schools of their Admission policies, the draft legislation in this regard appears to be doing the opposite of what Minister Quinn intends in general for the Irish Education system – the Department is weakened and the autonomy of schools in the functioning and operation of their admissions policies is strengthened. The school is no longer accountable to the Department for decisions in this regard. Although Head 12 does provide for a power to enable appointment by *patron only* of a person independent of the school to operate the school's admission policy (with the consent of the Minister), this is an exceptional power. Although the Minister retains a power to require a patron to make such an appointment, the patron can always choose and select this person. Under Head 13 the Minister can exceptionally and with the approval of a Court – where a patron refuses to comply with a direction issued by the Minister, take the extreme step of temporarily appointing someone to operate the school's admissions policy, however, it is submitted that heads 12 and 13 do not provide a general power of oversight and monitoring.

### **(7) The “Parent” Rule**

The draft legislation and regulations put this discriminatory rule on a statutory footing. The rule functions to allow schools to openly select a potential student on the grounds of one of his parents having attended the same school. The only restrictions are that an oversubscribed school must;

- Apply to the Minister for a derogation in accordance with the procedures set out eg publishing of notices in local newspapers, and request for submissions
- Only 25% of places can be allocated under this rule
- The school has to have had a history of applying this rule in the previous 3 out of 5 years prior to the commencement of the Regulations and the rule was published in their enrolment policy for the previous 5 years.

The rule is discriminatory because it provides further advantage to students who are already privileged, by having parents who received second (and possibly third) level education. The parents of Traveller children are statistically much less likely to have been educated to secondary school level. The Report of the Travelling People Review Body 1983 (which would give an approximate

figure for the age of the parents of today's school-going children) estimated that at the time of its publication, that only 3,500 Traveller children attended school (about 50%) and “very few remained after reaching the age of 12 years” with progress to secondary level education a rarity. Even if the parents of today's Traveller children were educated to secondary school level, it is highly unlikely that they attended the school in the area that was more successful in terms of academic achievement and progression to third level.

Traveller children are statistically far more likely to be excluded from admission under the 25% parent rule, and children who already have the advantage of having educated parents, are gifted with the added advantage of the increased likelihood of admission under this rule. Conversely it could quite easily be argued that if the Minister was serious about addressing educational disadvantage that he would guarantee 25% of places exclusively for children from traditionally educationally disadvantaged backgrounds, such as Travellers.

No grounds for refusal using ministerial discretion or otherwise in relation to applications for derogations are set out in the draft legislation. Furthermore, the selection of schools who may apply for a derogation to allow them to operate the parent rule is restricted to those that have been- at the time the legislation is passed - operating the parent rule in their enrolment policies for 3 out of the last 5 years. This rather odd condition means that the schools who may apply for this derogation (and who may use it forever ie not on a transitional basis) only include schools already in existence and already oversubscribed. Their right to use this rule is ring-fenced as exclusive by the terms of this legislation. No existing or newly established school in the future may apply for a Section 15 derogation if they do not satisfy the criteria at the time of the introduction of the legislation and regulations. The procedure that is set out as regards the publishing of notices and the acceptance of submissions from locals can only operate as a superficial brake, and the school is not bound to take any of these submissions into account in any way, nor to account for its decision to subsequently apply for a derogation to the Minister.

When asked about his reasons for the placing of this discriminatory rule on a statutory footing on RTE news on the 2nd September 2013, the Minister said

“I've listened to the response from a lot of different people and for some people and I know them personally people who went to my old, old school Blackrock college, this is very important for them and this is right across the whole country, parents, grandparents want to see their children going because they have good associations and good memories of that school.....”

The ITM contends that the good memories and associations of a privileged sector of society are not acceptable grounds for that system to be granted state protection and that the Minister should also seek out the opinions and speak personally with people at the other end of the sphere of privilege and to provide for their needs. This proposed legislation is a golden opportunity for the Minister to address the system of educational disadvantage that persists within Irish Education.

#### **(8) Lack of clarity in relation to National Education Welfare Board (NEWB)'s powers, the obligation to require co-operation between schools and other related matters**

There is a lack of clarity as to how the Minister will require cooperation between schools pursuant to the legislation and regulations. It is not explicitly stated that schools will be required to cooperate in relation to the designation of schools under Head 9 where the NEWB are empowered to force a school to enrol a particular pupil. The draft legislation does not provide for any mechanism whereby the NEWB can independently ascertain whether a school has places or not or

whether the NEWB/child will have a choice about which local schools are available. Perhaps a 'live' database could be initiated and moderated by the Department of Education to be updated on a regular basis by Principals with clear criteria as to when a school considers itself "full" or perhaps a mandatory obligation could be imposed on all schools to take a specific number of such students per year and to account for the ethnic and racial balance of their school and whether it is representative of the local population. Otherwise, there are concerns that Traveller children will be enrolled in the schools in the area that are traditionally less academic, regardless of the attributes and talents of that particular Traveller child. Again the ITM has received feedback that some schools have a history of encouraging Traveller students to transfer to Youthreach after a couple of years of second level education, thereby limit the student subject choices which in turn limits their access to third level.

### **Recommendations**

Arising from the above, the ITM would make the following recommendations to the Committee;

- (a) to ask the Minister to provide reasons/rationale for the retention of the 25% parent rule in certain circumstances by providing for derogation 15 and to consider abolishing the parent rule in its entirety, as recommended in our 2011 submission
- (b) to ask the Minister to clarify the circumstances where these requests for derogations will be refused in circumstances where the criteria are fulfilled.
- (c) to ask the Minister to provide the figures and statistics from the Department as to how many schools will be eligible to apply for this derogation, to identify these schools, and to publish any statistical/geographic/socio-economic analysis or report carried out while drafting this legislation.
- (d) Use of these figures/stats by an independent academic to conduct research projecting the short and long term effects of the proposed changes on children from historically educationally disadvantaged backgrounds for example (a) Traveller children (b) Immigrant children (c) children from lower socio-economic backgrounds, and how the Bill might better provide rules to improve access figures and to assess how broad an effect these changes might have across the country, particularly when taken in conjunction with the sibling rule.
- (e) to ask the Minister whether he has asked for AG/Senior Counsel opinion as to the constitutional fairness of removing the Section 29 right of appeal to the Department in incidences of admissions in circumstances where the final right of appeal remains with Board of Management. Also whether the final version of the legislation is compatible with the State's obligations under equality legislation, both domestic and international and for the Minister to seek out the opinion of the Equality Authority in this regard.
- (f) to ask the Minister whether he would consider retaining and reforming the Section 29 right of appeal in cases where admission have been refused but beginning a consultation process with relevant stakeholders [NEWB, National Parent's Council, Teacher's Unions, Principals, Department Officials, former Visiting Teacher for Travellers representative] as to how the process can be streamlined into a more efficient and workable one. In this regard, you will note that our 2011 submission recommended that Travellers be provided with extra support and guidance during the

Section 29 process.

(g) to ask the Minister to clarify exactly what is meant by cooperation between schools under headings 9 and 11 where the NEWB are empowered to force a school to enrol a particular pupil, whether the NEWB/child will have a choice of several schools. Also whether the Minister would consider the employment of a system such as the “live” database suggested above in order to provide fair and appropriate monitoring and oversight of a school's admissions policy. An alternative might be the imposition of a mandatory obligation on all schools to take a specific number of such students on each year.

(h) whether the Minister would consider expanding the remit of the legislation to provide a statutory footing for Traveller-specific supports such as the upskilling and employment of Travellers as community education workers and also within schools and the National Education Welfare Board and if he will consider reviewing his department's policy which is currently against any affirmative State action to assist minorities, including Travellers.

(I) To ask the Minister to define “characteristic spirit” of a school in the legislation, as recommended in our September 2011 submission.