

Inclusion Europe

The European Association of Societies of
Persons with Intellectual Disabilities and their Families



Submission to the UN Committee on the Convention on the Rights of Persons with Disabilities

on

Key Issues for a General Comment on Article 24¹

Inclusion Europe, the European Association of Persons with Intellectual Disabilities and their families, represents the voice of more than seven million people with intellectual disabilities, their families and carers. Our members include organisations of people with intellectual disabilities and their families at national, regional and local level.

We commit ourselves to realising equal rights and full inclusion of people with intellectual disabilities and their families in all aspects of life. As a European association, we work in many different areas which our members have identified as important to them. “Education for all” is one of the most important.

The reasons for this are twofold: Children and adults with intellectual disabilities should have access to quality education in order to develop their full potential, a feeling of dignity and self-worth and, secondly, society will flourish more if all of its members can contribute and learn to live together.

Inclusion Europe welcomes a General Comment on Article 24

We very much welcome a General Comment on article 24 of the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD). In many European countries, the implementation process regarding article 24 is such that children with intellectual disabilities and children with complex needs are at risk of being left behind. In many countries² these groups are excluded from the right to inclusive education. The exclusion may not be intentional, but is the actual result of implicit policies which regard children with intellectual disabilities and complex needs as “non-educable”, or too difficult or too expensive to include in the general educational system. We strive hard to change these false ideas and a General Comment on article 24 can help clarify this issue.

¹ This submission was prepared by the Working Group on Inclusive Education of Inclusion Europe: Pavla Baxová (Czech Republic), Gepke Boezaard (Netherlands), Denise Roza (Russia), Bernhard Schmid (Austria), José Smits (Netherlands), Sonja Uhlmann (Spain)

² According to research by the Academic Network of European Disability Experts (ANED), all European countries with the exception of Italy, Norway and Portugal, have policies which makes it more difficult for students with intellectual disabilities compared to students with other disabilities, to access mainstream schools. At least Germany, Sweden, Netherlands, Finland, Estonia, Greece, Ireland, and Iceland maintain investments in segregated schools for students with intellectual disabilities. Sources: several ANED country reports on education: <http://www.disability-europe.net/theme/education-training>. A synthesis report on data from country reports was published in 2011: INCLUSIVE EDUCATION FOR YOUNG DISABLED PEOPLE IN EUROPE: TRENDS, ISSUES AND CHALLENGES. A synthesis of evidence from ANED country reports and additional sources. Serge Ebersold. (National Higher Institute for training and research on special needs education, INSHEA) with Marie José Schmitt and Mark Priestley April 2011 http://www.disability-europe.net/content/aned/media/ANED%202010%20Task%205%20Education%20final%20report%20-%20FINAL%20%282%29_0.pdf

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Our view on inclusive education

Article 24 states:

States Parties recognize the right of persons with disabilities to education and shall ensure an inclusive education system.

For Inclusion Europe and our members, this means the right to education at all levels (primary, secondary, tertiary, adult and vocational education) for all persons with a disability, without discrimination, on the basis of equal chances, in mainstream schools in the neighborhood in classes where peers without disabilities study, with the support they require to succeed.

We analyze article 24 in connection with the following other parts of the CRPD:

- The Preamble which states that family members should receive the necessary protection and assistance.
- Article 3, which states that a General Principle of the Convention is full and effective participation and inclusion in society. This reinforces the requirement for an inclusive approach to the education of all children.
- Article 4 on general obligations requires that States Parties closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations. That is a requirement for organizations of persons with disabilities and organizations of families of children with disabilities to be involved in education planning.
- Article 5 on equality and non-discrimination prohibits all discrimination on the basis of disability, and guarantees to persons with disabilities equal and effective legal protection against discrimination on all grounds. This means there need to be clear procedures for lodging, investigating, and ruling on complaints if persons with disabilities are denied their right to be in regular education and that there need to be independent mechanisms to investigate and rule on systemic discrimination.
- Article 7 on children guarantees that children with disabilities have a right to education on an equal basis with other children.
- Article 8 on awareness-raising obliges governments to initiate and maintain public awareness campaigns which combat stereotypes; promote awareness of the capabilities and contributions of persons with disabilities; and foster respect, including through incorporating disability-positive curricula into education systems.
- Article 9 on accessibility requires that there be an identification and elimination of obstacles and barriers to accessibility of buildings, roads, transportation, schools and plans for investments in schools and accessible transportation and accessible information.
- Article 23 on respect for home and family states that children with disabilities have equal rights with respect to family life which require information, services, and support and which ensure that children are not removed from their families in order to attend school
- Article 27 on work and employment guarantees that persons with disabilities have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training.

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- Article 30 on culture, recreation, leisure, sport guarantees access to sports and recreation activities on an equal basis with others and the support needed to participate.
- Article 33 on implementation and monitoring requires coordination within governments, in cooperation with disability organizations.

What experience and research shows in European countries

Our research³ and the experiences of our member organizations demonstrate that policies in many countries are formally geared towards inclusive education. Yet, these policies are usually not comprehensive, not always aimed at systemic changes, and they lack careful planning, special monitoring mechanisms⁴ and the necessary reallocation of resources.

According to country reports by the Academic Network of European Disability Experts ANED, European countries offer education to students with disabilities following three patterns. Students may be placed mainly in the same classes as non-disabled pupils (Italy, Norway, Spain, Portugal, Austria, Cyprus, Slovenia, Estonia, Malta, Ireland, United Kingdom) or in special classes located in regular schools (Sweden, Switzerland, Denmark) or mainly in segregated special schools (Belgium, Germany, Netherlands, Bulgaria, Latvia, Luxembourg). In some countries all three options may be offered (Finland, France).⁵

In some countries legislation does not grant unconditional access to mainstream education for all. Often, legislation lacks a firm non-rejection policy. In some countries, such as Spain⁶ and Sweden⁷, access is granted but there is a lack of resources and support. Sometimes access and support is theoretically available, but the school environment is not made accessible for all, and educational programs are not adjusted to the needs of all students. An example is Hungary.⁸

³ For the convenience of the Committee we made a selection of relevant quotes from the report INCLUSIVE EDUCATION FOR YOUNG DISABLED PEOPLE IN EUROPE: TRENDS, ISSUES AND CHALLENGES. A synthesis of evidence from ANED country reports and additional sources. See attachment.

⁴ "While existing data may provide information on the number of students having special educational needs at compulsory level, on their type of schooling, and in some cases by gender or age, most countries do not have reliable and internationally comparable data to identify the situation of young disabled people compared to their non-disabled peers, in terms of access and learning outcomes." page 10 from the report: INCLUSIVE EDUCATION FOR YOUNG DISABLED PEOPLE IN EUROPE: TRENDS, ISSUES AND CHALLENGES.

⁵ Page 7. INCLUSIVE EDUCATION FOR YOUNG DISABLED PEOPLE IN EUROPE: TRENDS, ISSUES AND CHALLENGES. A synthesis of evidence from ANED country reports and additional sources. Serge Ebersold. (National Higher Institute for training and research on special needs education, INSHEA) with Marie José Schmitt and Mark Priestley April 2011 http://www.disability-europe.net/content/aned/media/ANED%202010%20Task%205%20Education%20final%20report%20-%20FINAL%20282%29_0.pdf

⁶ Concluding observations of the Committee on the Rights of Persons with Disabilities on Spain, sept 2011: "reported cases of failure to provide reasonable accommodation, of continued segregation and exclusion, of financial arguments used as justification for discrimination, and of the cases of children enrolled in special education against their parents' will." Quote from the Concluding observations of the Committee on the Rights of Persons with Disabilities on Spain, sept 2011:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fESP%2fCO%2f1&Lang=en

⁷ Concluding observations of the Committee on the Rights of Persons with Disabilities on Sweden, april 2014. "The Committee is concerned by reports that schools can refuse admission to certain pupils with disabilities on the grounds of organizational and economic hardship. The Committee is further concerned at reports indicating that some children who need extensive support cannot attend school due to a lack of such support." http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fSWE%2fCO%2f1&Lang=en

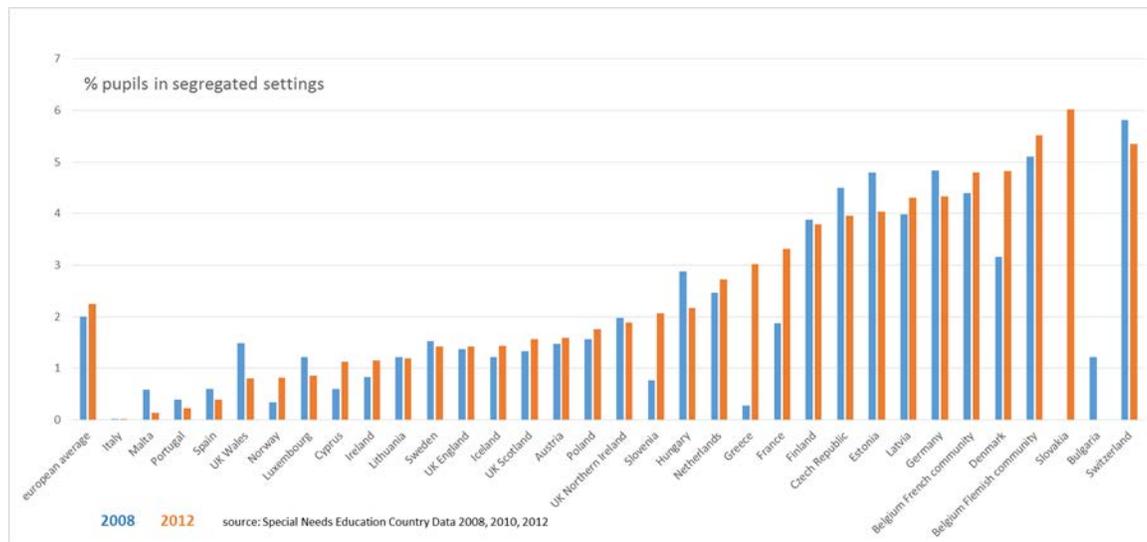
⁸ Concluding observations of the Committee on the Rights of Persons with Disabilities on Hungary, September 2012: "It reiterates that denial of reasonable accommodation constitutes discrimination, and recommends that the State party significantly increase its efforts to: provide reasonable accommodation to children with disabilities based on the student's individual requirements; provide students with disabilities with the required support within the general education system; and to continue training teachers and all other educational staff to enable them to work in inclusive educational settings. The Committee urges the State party to develop programmes to ensure that Roma children with disabilities are included in mainstream education programmes, without disregarding the provision of reasonable accommodation that might be needed to obtain the desired outcome." http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fHUN%2fCO%2f1&Lang=en

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Overall statistics from European countries show that the segregation of students with disabilities has been increasing since 2008, although there are huge differences between countries. Italy has almost 0% segregation where Switzerland, Belgium, Germany and the Czech Republic have high percentages. It is worrying that European average has increased from 2 % in 2008 to 2,25 % in 2012.⁹



Source: data from *Special Needs Education Country Data 2008, 2010 and 2012* by the European Agency for Development in Special Needs Education. For some countries data were not available for given years, but only for specific years between 2008 and 2012.

The lack of systematic change within schools leads to students with more severe disabilities and complex needs being regarded as too expensive to be educated in mainstream environments¹⁰. This happens in Germany, the Netherlands¹¹ and Iceland. In such cases, the concept of “reasonable adjustments” is effectively used as a rejection tool. Getting a place in an inclusive setting turns into a long and exhausting struggle for families. Families feel obliged to accept the referrals to segregated schools because they are convinced that sufficient support can only be obtained in these segregated settings.

In Austria, students with special educational needs from grade 1 to grade 8 (and in pre-vocational schools also in grade 9) have the legal right to choose between education in regular schools and in special schools. According to our member organization Lebenshilfe Austria, this works quite well until grade 4 (primary schools). But the older the child is (higher than grade 4) and the more severe the disability is, the higher the probability that the school administration will only recommend an education

⁹ Based on Special Needs Education Country Data 2008, 2010 and 2012 by the European Agency for Development in Special Needs Education. https://www.european-agency.org/sites/default/files/special-needs-education-country-data-2008_SNE-Data-2008.pdf / https://www.european-agency.org/sites/default/files/special-needs-education-country-data-2010_SNE-Country-Data-2010.pdf / https://www.european-agency.org/sites/default/files/sne-country-data-2012_SNE-Country-Data2012.pdf

¹⁰ Attachments with quotes from INCLUSIVE EDUCATION FOR YOUNG DISABLED PEOPLE IN EUROPE: TRENDS, ISSUES AND CHALLENGES.

¹¹ In the Netherlands a report by independent scholars criticized the Equal Treatment Commission because of a judgment in 2011 in which the ETC concluded that a school could lawfully exclude a pupil with a learning disability from primary school because the class grew from 22 to 32 pupils and the school choose not to differentiate lessons according to the needs of individual pupils. The report sees this as a violation of the general requirement of Dutch educational legislation and the UN CRPD that a school should as much as possible adjust lessons to the need of individual pupils. <http://www.mensenrechten.nl/publicaties/detail/9886>

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in a special school. The right to choose an academic secondary school with SEN is written in law, but is in reality very rarely granted. Statistics for Austria show that the number of students with SEN educated in regular schools compared to peers educated in special schools has slightly increased (2014: 52,8%) At the same time, the number of students in special schools compared to total number of students has increased steadily since 2007 (2014: 2,08%).¹²

There are encouraging policies and good practices in some European countries, such as Norway, Italy, Portugal, Spain and Austria,¹³ but so far these have not led to an overall positive change in European statistics. On the contrary, as the graphic shows, the percentage of segregated students is increasing. There is evidence suggesting that mostly students with intellectual disabilities and complex needs are being segregated. In many countries, such as Belgium¹⁴, Germany¹⁵, the Netherlands¹⁶, Hungary¹⁷, Greece¹⁸, United Kingdom¹⁹, Lithuania²⁰, Romania²¹, the majority of students with intellectual disabilities and complex needs are referred to segregated schools.

Moreover, in many countries children with severe intellectual disabilities or complex needs do not have access to any education at all, as they are being placed in daycare centers or residential institutions that provide no education. This happens²² in the Netherlands (around 4.000 children are being excluded from any school); France (between 6.000 to 20.000 children are being excluded), Bulgaria (3.000 children). The situation may be similar in other countries. It is difficult to assess that, as these children are not being represented in statistical data on special education.

Statistics and research furthermore show that austerity measures in most European countries took the form of cuts in budgets that include resources and individualized support for people with disabilities²³.

¹² Input and statistical overview by Lebenshilfe Austria, see attachment

¹³ Attachments with quotes from INCLUSIVE EDUCATION FOR YOUNG DISABLED PEOPLE IN EUROPE: TRENDS, ISSUES AND CHALLENGES.

Austria has made considerable progress as well towards inclusion in some regions in the country although development seems stagnant: "The Committee notes with concern reports suggesting that the number of children in special schools is increasing and that insufficient efforts are being made to support inclusive education of children with disabilities. It further notes that there is some confusion between "inclusive" education and "integrated" education. However, the Committee commends the establishment of inclusive education models in several Länder." Quote from Concluding observations on the initial report of Austria, September 2013.

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CRPD%2fC%2fAUT%2fCO%2f1&Lang=en

¹⁴ An example is Belgium. Concluding observations on the initial report of Belgium: "The Committee is concerned at reports that many students with disabilities are referred to and obliged to attend special schools because of the lack of reasonable accommodation in the mainstream education system. As inclusive education is not guaranteed, the special education system remains an all too frequent option for children with disabilities. The Committee is also concerned about poor accessibility in schools."

¹⁵ "In Germany, less than 16% of all disabled children have access to regular school settings". Page 42. INCLUSIVE EDUCATION FOR YOUNG DISABLED PEOPLE IN EUROPE: TRENDS, ISSUES AND CHALLENGES.

¹⁶ 80 Percent of students with an intellectual disabilities in the Netherlands are placed in segregated special schools. Staat van het onderwijs 2010. Report by the Education Inspectorate. "Almost all" students with complex needs in the Netherlands are placed in segregated special schools or daycare centers. Staat van het Onderwijs 2012, page 151. Report by the Education Inspectorate.

http://www.onderwijsinspectie.nl/binaries/content/assets/Onderwijsverslagen/2012/onderwijsverslag_2010_2011_printversie.pdf

¹⁷ Latimier C. and Šiška J. (2011), Children's rights for all! Implementation of the UN Convention on the Rights of the Child for children with intellectual disabilities, Brussels, Inclusion Europe. Page 19

http://inclusion-europe.org/images/stories/documents/Project_CRC/Results/European_Report/EN.pdf

¹⁸ Ibid

¹⁹ Ibid

²⁰ Ibid

²¹ Ibid

²² Data from country reports and described in Latimier C. and Šiška J. (2011), Children's rights for all! Implementation of the UN Convention on the Rights of the Child for children with intellectual disabilities, Brussels, Inclusion Europe. Page 19

²³ ENIL Proposal for a Resolution of the European Parliament on the effect of cuts in public spending on persons with disabilities in the European Union Background note, September 2011. <http://www.enil.eu/campaigns/resolution-against-the-cuts/>

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This outcome of austerity measures has become a severe threat to inclusion in education in countries such as Spain (“Libro Rojo de la Educación Española”, April 2011) and the Netherlands.²⁴

Persons with intellectual disabilities suffer when their rights are ignored. They need to go to school together with their siblings and peers without disabilities to be able to become contributing members of their communities, to work and gain independence. Rejection or lack of supports endangers their feeling of self-worth and dignity.

In addition, society misses out if not all members are allowed to learn and to contribute, and if not all persons learn to live and work together.

Families of children with intellectual disabilities also suffer when their family member with a disability is not included like other members of society. Families, whose children are not supported in the community, are faced with higher costs, and with a feeling of isolation and deprivation. Furthermore, they are at risk of falling into poverty, as parents are often forced to quit their jobs in order to take care of their family members with a disability.

Recommendations

Inclusion Europe and its members welcome a clear statement about the rights of students with intellectual disabilities and with complex needs. They should all have access to an inclusive education in a welcoming environment with the support they need to succeed amidst their siblings and peers.

We welcome clear statements about:

The principles of inclusive education

- Inclusive education means a change from an individual, medical model of educating children with disabilities to a social/human rights model in which all children with and without disabilities are educated together in a way that suits all.
- Availability of inclusive education at all levels
State Parties should develop concrete action plans for all forms of education to which students without disabilities have access, including kindergarten, primary, secondary and tertiary education, universities, colleges, vocational training and all forms of lifelong learning. These plans should include students with intellectual disabilities and especially with complex needs.

²⁴ Anecdotal evidence from parents and schools, collected through In1school. www.in1school.nl

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- Providing adequate individual support to succeed
State Parties must make sure that students with disabilities have access to individual support to succeed within mainstream schools. This should include all support necessary for students and their families to participate in all activities related to school life.
- Adapting the school environment, curricula, teaching methods
State Parties should be aware that inclusion is not just about supporting individual students with disabilities. Inclusive education is a good indicator of quality education for all students. Inclusive education leads to wider-ranging curricula and instructional strategies; adapted tests and assessment instruments, differentiated teaching methods, alternative communications systems, easy to read texts, visual aids, positive behavioural support and accessible and universally designed environments. All of this contributes to the overall development of the capabilities and skills of students with and without disabilities.
- The concept *reasonable accommodation* should not be misinterpreted as a rejection policy. In many countries, students with disabilities are denied access to a mainstream school because the school claims it is unable to provide accommodations. However, there is a direct relation between “reasonable accommodation” and an accessible school environment or adapted teaching methods/curricula. The less the effort being made to make a school accessible, the more unreasonable the individual accommodation will be. If nothing changes in the school environment, including the teaching methods/curricula, individual students will shoulder the burden of proving they are not an “unreasonable burden” on the school of their choice.
- Segregated schooling and segregated classes within mainstream schools should not be supported. The right to inclusive education cannot be fully enjoyed if a dual system of both mainstream and special schools or special classes is maintained. A dual system is costly and always maintains the option of referrals from the regular system. State Parties should therefore plan for the transformation of special schools to an inclusive education system in which all schools cater to the needs of students with different abilities. Moreover, resources from the current special education school system must be transferred to the regular one.
- States Parties should plan for the closing of day care centres as a substitute for schools. All children are capable of learning.
- A clear non-rejection policy that protects students with intellectual disability/complex needs. There is a need for the establishment of an appeal process and safeguards regarding enrolment decisions and student placement.
- State Parties should not allow for enrolment decisions, or the allocation of resources and support, to be based on an estimation of a student’s earning capacity on the labour market.

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Inclusion Europe and our members welcome clear statements about:

The resources and strategies needed to implement structural changes and careful comprehensive planning of necessary support for schools, teachers, families and students with disabilities in an inclusive educational system.

A change from a dual, segregated system into an inclusive system requires a clear implementation strategy, not only at the national level but also at local and school levels. School management, teachers, students and families all need to be involved.

- State Parties should plan for a structural change of the educational system towards the inclusion of all students, including students with intellectual disability/complex needs.
- State Parties should adjust the financing of the educational system so that it does not favour segregated settings over inclusive schools.
- Targeted investments for education system reforms have to be provided. Inclusive mainstream settings are not more expensive than special schools, but implementing structural changes may require short-term additional financing.
- Planning and implementation should involve all schools and all teachers (not just the ones that are supposed to work with “special education” students). Teachers are entitled to the training and support they need to succeed in their work in inclusive classrooms.
- Planning and implementation at national, local and school levels should actively involve families and students with intellectual disabilities/complex needs.
- Students with intellectual disabilities and especially with complex needs and their families should be prioritized in the implementation of inclusive education policies. They are they most vulnerable and at risk of being excluded. When they are successfully included, the educational system may be considered capable of including all students.
- State Parties could stimulate the employment of more teachers with disabilities and teachers’ assistants with disabilities, as they serve as role models for these students.

Inclusion Europe welcomes a clear statement regarding:

Monitoring and reporting

Available statistics and research are usually not differentiated for specific groups of students with disabilities. People with intellectual disabilities, people with communications difficulties and people with psychosocial problems are not commonly included in research and surveys as they do not respond easily to surveys. The result is that these groups are underrepresented or not represented at all in existing monitoring systems. State Parties and researchers should require that these groups be actively involved in, and their views and experiences be adequately represented in all relevant surveys and monitoring.

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Sources

- Research and data on (among others) inclusive education in EU countries: Academic Network European Disability Experts ANED: <http://www.disability-europe.net/>
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- Report on (Dutch and) international jurisprudence on the right to inclusive education. Jacqueline Schoonheim en Jacky Nieuwboer. Het recht op inclusief onderwijs in de jurisprudentie. February 2015. www.in1School.nl
- Inventory and analysis of good practices worldwide: Het vieren van diversiteit in de schoolpraktijk. Inventarisatie van praktijken van inclusief onderwijs wereldwijd via internet Heleen Hartholt. February 2015 www.in1school.nl
- ENIL Proposal for a Resolution of the European Parliament on the effect of cuts in public spending on persons with disabilities in the European Union Background note, September 2011. <http://www.enil.eu/campaigns/resolution-against-the-cuts/>
- Libro Rojo de la Educación Española. This document was presented at the Spanish Parliament in 2010. It presents real stories about how in Spain children with special needs have no right to inclusive education. <http://pactoeducativoparatodos.blogspot.com.es/2011/04/el-libro-rojo-en-la-evaluacion-de-la.html>

Annex

Students in Austria with special educational needs (SEN) 2014 – 2007

Annex

Students in Austria with special educational needs (SEN) 2014 - 2007

School year	2013/14	2012/13	2011/12	2010/11	2009/10	2008/09	2007/08	2006/07
Students in total								
Primary schools (grade 1 - 4)	327.772	328.136	328.121	327.663	329.440	332.210	337.934	347.254
General Secondary schools (grade 5 - 8)	209.848	212.594	220.274	192.616	217.338	237.989	249.703	257.642
Special (SEN) schools (grade 1 - 12)	14.170	13.809	13.748	13.198	13.221	13.170	13.148	13.158
Pre-vocational schools (grade 9)	16.367	17.006	18.022	18.841	19.315	20.648	21.338	21.379
Academic Secondary schools, lower level (grade 5 - 8)	111.793	111.461	109.203	112.330	114.693	116.384	117.656	116.674
Compulsory schools, total	679.950	683.006	689.368	664.648	694.007	720.401	739.779	756.107
Students with SEN only								
Primary schools (grade 1 - 4)	6.160	6.403	6.423	6.477	5.904	6.038	5.906	5.592
General Secondary schools (grade 5 - 8)	8.771	8.654	8.817	7.309	7.986	8.412	8.437	8.149
Special (SEN) schools (grade 1 - 12)	14.170	13.809	13.748	13.198	13.221	13.170	13.148	13.158
Pre-vocational schools (grade 9)	901	927	658	676	646	616	565	589
Academic Secondary schools, lower level (grade 5 - 8) (*1)								
Compulsory schools, total, w/o academic Secondary schools, lower level	30.002	29.793	29.646	27.660	27.757	28.236	28.056	27.488
Ratio of students with SEN in regular schools								
	52,80%	53,70%	53,60%	52,30%	52,40%	53,40%	53,10%	52,10%
Ratio of students in special schools compared to total number of students								
	2,08%	2,02%	1,99%	1,99%	1,91%	1,83%	1,78%	1,74%

Source: STATISTIK AUSTRIA, figures re-grouped and further analyzed by Bernhard Schmid, Lebenshilfe Wien (b.schmid@lebenshilfe-wien.at), March 2015.

All Figures without guarantee