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

Draft Regulations Content of Policy

Draft Regulations on Admission Process

Response from

Le Chéile Schools Trust

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LE CHÉILE SCHOOLS TRUST

Le Chéile Schools Trust is a Catholic patron body exercising trusteeship in over fifty second level schools. The Mission of the Trust is "to promote Catholic education as an option within the Irish education system and to develop the schools of the thirteen congregations in the service of their local communities, the state and the Church" (Le Chéile Charter p.2).

Le Chéile schools take their heritage from the work of the Founding Congregations and strive to be centres of learning and excellence in all aspects of growth, for students, parents, teachers and other staff members. Our schools are communities that promote justice and equality and provide support for students with special needs and immigrant students in some of our most disadvantaged communities. In many cases the work of schools has gone beyond current legislative requirements and taken specific initiatives to empower different groups in the local community and to respond to their needs within the system.

THE PROPOSED LEGISLATION

The Trust respects the intention of the *Draft General Scheme of an Education (Admission to Schools) Bill 2013* to provide a more equitable education system for current and future generations. It must be noted, however, that regulating admissions policies alone will not make our society an equal one – other factors and contexts play a very significant role.

As a Trust, we encourage our schools to reflect on their policies and practices through the lens of inclusion, equality of access and transparency. The Trust is conscious that schools have reflected in some detail on issues relating to Admissions over the past numbers of years. They have taken on board their responsibilities to local communities that have become more diverse in ethnic, religious, linguistic and cultural characteristics. They have sought ways to welcome diverse groups of students, and the schools reflect these diverse characteristics of their communities. They have also sought ways of actively integrating students into the school and celebrating differences between students.

In places, the proposed legislation seems to recognise and build on these experiences and developments. In other places, the proposed legislation seems to undermine the work of local schools in working out approaches in dialogue with their local communities and with other schools.

In that context, a major consideration for the Oireachtas Committee must be whether this legislation is needed, or whether it is an unnecessary intrusion on the workings of the schools, without any net benefit to the education system, to the schools or to social policy. In particular, the Committee must explore the effects of the detailed proposals for Regulations accompanying this Bill on the rights of Patrons in Voluntary Schools, and whether the proposals could enshrine unfair and unrealistic expectations of these schools giving rise to legal challenges on indirect discrimination against them. It will also need to decide whether

it is appropriate that the Department should be involved in such detailed micromanagement of schools through legislation rather than through other means open to it.

This submission discusses the principles of diversity and subsidiarity which have not been addressed in the proposals. It then examines two different contexts in which the proposed legislation will operate; 1) where a school can admit all applicants and 2) where a school is oversubscribed. The submission concludes by summarising the key concerns of the Trust.

DIVERSITY AS A VALUE IN A DEMOCRACY

The Trust supports diversity as a value in a democratic society and it supports government efforts to provide for greater diversity in the education sector. Structural diversity can be achieved by providing for different types of schools. An integrated society, which embraces and celebrates diversity, emerges from the experience of acceptance within schools.

The proposed legislation seems to abandon the process of diversity by insisting on a uniform approach to Admissions in all schools, based on compliance to national guidelines. The approach to school admissions seems to be based on the narrow desire to promote the right of parents to choose a particular school (without guaranteeing them a place in the school of their choice). The proposed legislation gives little recognition to the providers of education and their rights.

This legislation is being proposed in the context where real choice between schools is decreasing, not increasing. Government policy is directed to decreasing the stock of schools by insisting on larger schools at both primary and post-primary level. The basic choice levels seem to focus on three areas – denominational and non-denomination; English or Irish medium; single gender or co-ed. The choice between a State school and a Voluntary school is not recognised in this proposed legislation and the differences between them is not addressed. No recognition is given to the rights that might pertain to Patrons and Trustees of Voluntary schools. In fact, the issues raised in the Bill seem to impact disproportionately on voluntary denominational Schools.

All schools are run by a Board of Management. However, the Board of Management of a voluntary school is responsible first of all to the Patron of the school to run the school in accordance with the characteristic spirit of the Patron. Other schools have a direct responsibility to the Minister or to an ETB as a public body. The Patron works in collaboration with the Minister in providing for education in accordance with social policy. This distinction is not recognised in the proposed legislation.

It is a reasonable expectation of Patrons/Trustees that, in undertaking the onerous responsibilities attached to their role, they might have a say in what is taught, how it is taught, to whom and to what end. Many of these schools have been established with a particular mission. The Admissions Policies and Procedures of these schools reflect very understandable concerns in relation to alignment with that mission. In promoting true diversity in society, schools should be facilitated in implementing their mission rather than having that mission eroded for the sake of uniformity.

Some patrons set up their schools so that students can have an immersion experience in some cultural value – e.g. Irish Language, religion, a particular teaching philosophy. In order to promote that immersion cultural experience, schools may wish to set criteria for admissions – e.g. language competence, faith affiliation, etc. The existence of such schools is part of a diverse society and is not a contradiction of it. If the legislation is aimed at producing a "common school" in all communities, then the proposed legislation has a disproportionate effect on denominational schools. There is no reflection on issues related to Gaelscoileanna and social diversity.

THE PRINCIPLE OF SUBSIDIARITY

The Principle of Subsidiarity is a core principle in European Law, and is applicable in the fields of government, political science, cybernetics, management, etc. It has been defined as follows:

> *a central authority should have a subsidiary function, performing only those tasks which cannot be performed effectively at a more immediate or local level.*

The DES has been criticised in the past for its over-centralised role and its involvement in the micromanagement of schools. The proposed legislation seems to involve the Department in a higher level of micromanagement of the internal workings of the schools. The principle of subsidiarity which was part of the Minister's Discussion Document is no longer evident in the draft Bill or Regulations. The new Bill and associated regulations seem to be prescriptive for their own sake and not respectful of different contexts or historical traditions.

The proposed legislation makes no statement about the purpose of introducing the legislation other than to define and clarify the power of the Minister to regulate in this area. The Minister already has power, through the Education Act, to regulate for the Common Good. This proposed legislation gives no indication of what aspect of the common good is being promoted through this particular piece of legislation. The focus of the legislation is on regulations relating to operations within schools, and makes no connection with particular aspects of social policy.

If the main focus of the legislation is to promote more inclusive schools, then it would seem reasonable that there be some statement on Government policy in this area that would define DES targets for inclusivity and diversity. It would focus on the responsibilities of schools in implementing these policies and it would also focus on the responsibilities of parents in making choices in the context of the common good. It is doubtful that such inclusivity can be achieved through prescriptive legislation. It is more likely to be achieved through discussion, incentives and resources.

There is no statement as to how the proposed legislation will contribute to these aims. It proposes uniform legislation for all schools, from small two-teacher schools that are well known within their local communities, to large schools in urban areas with diverse populations. This is not respectful of local Boards of Management, and undermines their roles and the work that is done by them on a voluntary basis.

The legislation, at one level, seems to empower local Boards of Management to decide on their own Admissions Policies. However, an examination of the proposed Regulations accompanying this legislation shows that the opposite is the case, and the proposals add considerably to the work and responsibility of the Boards of Management, with no resources provided for them.

The level of prescription, both in terms of content and form of the Admissions Policy is quite high. In effect, this negates and undermines the authority of such Boards and gives no consideration to the responsibility of the Board to the Patron of the school and the particular mission of the schools.

The repeal of Section 29 as it relates to the implementation of admission policies and specifically refusal to enrol is likely to bring serious unintended consequences. Currently, parents (or students over the age of 18) can appeal to the Secretary General of the Department of Education and Skills. This right will no longer exist. Instead, parents may appeal to the Board of Management against the decision by the Principal. The decision of the Board of Management will be deemed final. This means that parents have no recourse to an external independent body. There are serious concerns that in the absence of this opportunity, parents will seek a judicial review or will appeal to the Office of the Ombudsman for Children. In either case, this will involve families and schools in expensive and time-consuming processes which for the most part are not necessary. School insurance companies are likely to refuse insurance cover for such processes or, if they include cover for this the cost of the premium is likely to rise dramatically. If the Minister is so confident that the new regulations will provide for transparency and fairness and thereby reduce the number of appeals, why not retain the independent appeal system to be used on these rare occasions?

The proposed legislation places an extra burden on the Boards of Management. The prospect of involvement in such legal issues makes service on Boards less attractive, and exposes the Boards to legal issues in relation to judicial reviews, etc. It may have the effect of eroding the high level of social capital that exists in schools through the voluntary service of Board Members on which the system depends.

The prescription with regard to content and procedures, especially in the detail proposed in the draft regulations accompanying the proposed legislation, is likely to be counter-productive, especially in the changing context of many schools. It opens the possibility of legal challenge on minutia, and is based on the false assumption that all problems can be anticipated and solved through this type of regulation.

THE CONTEXT OF THE SCHOOLS

Parents have a right to know how a school operates, and a school has an obligation to give accurate information to parents about their operation so that parents can make informed decisions for their children. This is already enshrined (in the Education Act) in the responsibility of schools to publish specific levels of information. It is doubtful that the proposed legislation adds substantially to that level of information.

The context of the school influences the importance of the Admission Policy in selecting students. In most cases, there are no problems with selection, and the issue for parents is having accurate information on ethos, curriculum and codes of behaviour that they will be expected to support.

CONTEXT 1: Where schools have places for all applicants.

In this context, there are no "problems" with Admissions. A school has space for all applicants, and they have no justification for refusing to take students. The school's responsibility to give relevant information to parents is already enshrined in legislation in the Education Act, making new regulation in this context redundant.

Where there is no problem with admission to school, the proposed legislation and accompanying regulations seek to micromanage specific aspects of the procedures of schools.

1.1 Excluding Students.

The proposed legislation provides for two reasons why a student might be refused when a school had places.

A. Garda or HSE statement that pupil is a danger. This is a new criterion available to schools. It involves outside bodies in decisions about education in a particular school and about individual students.

Regulation 12(b) allows for the HSE or the Garda to provide an opinion that a student "*could have a seriously detrimental effect on the safety of other students or staff".* It is questionable as to whether this is a workable proposal. Given the existing pressures of work for HSE and Garda staff it is unlikely that they will have the resources to deal with these situations. Further, they are effectively being asked to write a form of 'character reference' of a very difficult nature, i.e. certifying a child as being a danger to his/her classmates. This could, of course be defamatory and is likely to be strongly resisted by the HSE and the Gardai.

There will often be other sources of information about a child other than that Gardai and HSE. These will include the child's previous experience in school. However, the draft regulations envisage prohibiting the school acquiring such information about a child, and either making a decision for themselves or seeking confirmation of reports for the HSE or the Gardai.

Whereas the intention of protecting all children in a school is admirable, as is the protection of the right of students who have challenging behaviour, there are other means open to schools and parents at local level, through the NEWB, to seek solutions to such problems. These are already provided for in legislation and regulation, making this form of regulation redundant.

B. The exclusion is "essential to maintain the ethos" of a school. This reflects a provision already enshrined in Equality Legislation.

In practice, a judgement such as this is not directed against an individual per se, but may well work on "quota system" within a school. In a denominational school, the judgement about what is "essential to maintain the ethos" of a school can refer to a balance of denominational members as opposed to non-denominational members. At a certain stage, if the school is attended by more students of no faith or students of another faith then the characteristic spirit could be lost. The determination of a "tipping point" is a judgement call. There may be no one answer to such a question, and there may even be diverse approaches within a single denomination. The proposed legislation adds nothing to clarifying such issues and how a voluntary denominational school can function from their defined religious and educational philosophy, and how that will be respected in this legislation.

The proposed legislation poses particular problems and challenges for denominational schools. However, there seems to be no evidence where these schools have in fact excluded students of other faiths or none when places were in fact available. It would seem that this regulation is redundant.

It is possible that an Irish language medium school might also seek to use this criterion in its admission policy, if a student's language background (or that of a group of students) was such that it would impact negatively on the ethos of a school. One can envisage such situations in a Gaeltacht area if the population changed and a number of people with English or other home languages sought admission to a school whose ethos supported a Gaeltacht culture.

1.2. Specific Issues to be Dealt with in Admissions Policy

The proposed legislation makes prescriptions on what should be included in an Admissions Policy, even in the context where schools will take all applicants.

Non-discrimination. Schools are required to make a specific statement that they will not discriminate against students on the same grounds that are outlined in equality and non-discrimination law that already applies to all organisations in the State. This provides no extra rights or protection to anyone. It is a redundant statement. The inclusion of such provisions in the proposed legislation and in the accompanying regulations reinforces the perception that these are regulations for regulations sake rather than making any advance on social policy.

Financial Contributions. Schools are to be free, and it is to be clear that any contribution to the school is purely on a voluntary basis. This is fully supported by schools in the voluntary

sector. However, there needs to be clarity that, given the differential funding that exists for different types of schools, voluntary schools depend on parental contributions for the running of the school. This affects both capital projects and operational costs in the school. Schools find it necessary to appeal to parents for support in that context. Appeals for support are always on a voluntary basis. There is no evidence that children are refused places or discriminated against in schools if parents are unable to, or refuse to make a contribution. It is not clear what practical impact regulation at national level will make.

Withdrawal from Religious Instruction. The school is required to indicate its provision for the constitutional rights of a parent to withdraw a child from religious instruction.

The right to withdrawal from Religious Instruction is enshrined in the constitution. Parents also have a legally enshrined right to withdraw their child from other subjects if they have a conscientious objection to the content. This is not dealt with in the legislation

Requiring schools to make specific commitments to provisions ignores the reality in schools to do with numbers being responded to, and resources available for alternatives. Such provision is often worked out on a local basis, and is responsive to real situations where parents are open to a variety of solutions rather than one predetermined solution. Documenting good practice, promoting it through WSE and other inspection, and resourcing are more like to provide for better integration of diverse groups in schools rather than the proposed level of regulation.

Specified time-lines. Time-lines may be helpful in giving parents and schools adequate and timely information about allocation of places.

The provision of these time-lines does not require legislation. The DES already makes provision for coordinated approaches to school issues, e.g. in specifying times of closures for mid-term and other school holidays. A similar approach could be adopted here that is more flexible and responsive to local needs.

The time-lines suggested here are unrealistic and do not take into consideration issues such as school size, etc. There are major differences in the workload attached to schools admitting 20 students per year and those admitting 200+. The regulations, as outlined, are in danger of being unworkable.

The timeframe set out in the draft regulations leaves very little time for the administration needed in relation to the enrolment process. In post-primary schools, starting the process as outlined in the regulations in October for a child in Sixth Class in Primary school leaves insufficient time to implement the admission procedures in full for all students, to gather all the necessary information after the offer and acceptance of places and to deal with the unforeseen and problematic issues that arise as part of normal admissions processes.

Provision of Personal Information. The proposed regulations attached to the legislation limits the information that schools can gather from parents prior to being offered a place. For schools where there is little likelihood of having to make choices, this creates an unnecessary administrative burden, where all information can be collected in one application and mailing.

Schools may need information gained through assessment tests or school references or information from parents themselves, in order to plan for student allocation within a school. Not being able to seek such information until late in the process places a heavy administrative burden on schools.

The proposed regulations deal only with the responsibilities of schools. They make no reference to the responsibilities of parents to provide necessary information in a timely fashion to the school. What recourse might a school have if a parent did not give relevant information on time, and then presented demands such that the school was unable to provide for the child's education?

The impact of this regulation on the internal running of schools where there is no issue of selecting between students, illustrates the problems that arise when a centralised bureaucracy becomes overly involved in the micromanagement of individual schools.

CONTEXT 2 Where schools have to make choices between students

This context develops where a particular school does not have enough places for the number of applicants. This is the context in which the legislation and the regulations will have most relevance and impact.

The issue of oversubscription applies to a relatively small proportion of schools, and most of these already have Admission Policies broadly in line with the good practice outlined by in the legislation. The small number of schools that do not meet these requirements should not be used as the "stick" with which to beat all other schools. Prescribing strict and restrictive regulations for all schools may well result in reduced parental choice and a system that imposes such an administrative burden that it becomes unworkable.

It needs to be recognised that legislation with regard to discrimination is difficult to implement. It is often difficult to distinguish between the positive support of a particular value espoused by a majority group, and situation where a person from a minority group does not enjoy the same benefits, because it has no provider dealing with their specific needs. There may be no act of discrimination here. In practice, distinctions are made between direct and indirect discrimination. Whereas acts of direct discrimination are often easy to adjudicate, recognising issues with regard to indirect discrimination is more difficult and may

be influenced by local contexts. Those designing and implementing Admissions Policies will need training and on-going support. There is no statement of the DES responsibility or commitment to providing such support. If the patrons are to provide the support and training required they will need to be funded to do so. It must be noted that currently patrons in the Voluntary sector receive no state funding to exercise what is their statutory function.

2.1. The Need to Make Choices.

It is important to recognise that, in the context where a school is oversubscribed, some parents and children will always be disappointed. All the legislation and regulation does is to distribute the disappointment in a different way. No set of regulations will remove the disappointment of parents whose child has been refused a place they wanted, no matter how transparent the system is.

Whereas parents may be guaranteed a "freedom of choice" of school, they cannot be guaranteed that their choice will be available to them. The basis of disappointment can come from different sources, which have different implications for social policy.

Some parents may be disappointed that they did not get into a particular school, but the alternative available to them offers an equally valid and good education. In this context, the choice is between two good options.

A second scenario exists when the parent perceives the choice as being between a "good" school and a "bad" school. The criteria used in making such judgements may have limited validity. The problem with the proposed legislation and regulations is that is also seems to subscribe to "ad hoc" notions of what good schools are in terms of their student intake. The legislation, along with the accompanying regulations, makes no reference to particular social values involved in the profile of students in a school. They work off unstated assumptions about equality despite the very different social context of schools and the interaction of the school with other social policies such as Local Housing. Developing prescriptive legislation to prevent exclusivity, where there is no statement of policy on inclusion or diversity, gives rise to "ad hoc" expectations and judgements about schools. The proposed legislation does nothing to clarify these problems.

It is in this context that the most upset occurs and is likely to give recourse to legal action. Some parents will always have the means to challenge the legitimacy of any decision where they seem to be disadvantaged. The proposed legislation, making the Board of Management the final arbiter, is likely to favour wealthy parents who will seek judicial reviews of decisions by Boards.

2.2. The Rights of Schools.

Schools have different cultures and traditions and it is the living out of these that give schools their character and assist parents in choosing a school for their child. The proposed legislation and regulations seem to have the aim to ensure that such cultures and traditions do not become decisive factors in admission to a school, or that they allow some schools to be exclusive (although this concept is not outlined). For instance, if, in order to promote an immersion experience in Irish culture, a Gaelscoil requires a child to have a particular level of competence in Irish to be admitted, or expects support from parents about the Irish language, or insists on the use of Irish as a medium of communication in the school, does this make it "exclusive" in a way that needs to be regulated? How might such regulation be different for a denominational school having requirements of students, parents and the "ethos" of the school? The focus of the proposed legislation and regulations has a disproportionate effect on the rights of voluntary denominational schools. (see above Diversity as a value in a democracy)

2.3. Specific Criteria Prohibited

According to the proposed legislation and regulations, schools will not be allowed to operate waiting lists or to prioritise children of past-pupils. Those that already have these criteria as part of a "contract" with parents must now seek a derogation from the Minister.

Waiting lists

Waiting lists are of two types: (a) an expression of interest to ensure that a child is included in a selection process, and (b) as a first-come-first-in basis in selection.

The latter has the potential of being a major disadvantage to some students (e.g. new families in an area). It is not clear how many schools might operate such a system, and whether this can be regulated by agreement rather than by resorting to legislation.

The proposed legislation is not clear if schools may invite parents to submit an "expression of interest" in advance of the admissions process so that the school has contact details which will allow them to send information to the family about the school's enrolment procedures.

Derogation for schools with pre-existing waiting lists is a necessity where schools have already effectively entered into "contracts" with parents under their current admissions

policies. As a matter of justice, parents are entitled to some notice when policies are being radically changed. The absence of such notice could result in litigation against the school.

Family connections

Some schools have a tradition of generation after generation from a family attending the school. This can contribute very positively to a school's culture and ethos.

The proposed legislation may have a disproportionate effect on the ethos of some Voluntary schools, as these are likely to have longer traditions. The proposed legislation might be regarded as an indirect discrimination against denominational voluntary schools that depend on family connections and past pupils to maintain their voluntary status.

Voluntary schools may have some moral obligation to past pupils and parents because of contributions they made to capital developments in the school at a time when full funding was not available to patrons of voluntary schools. It is only very recently that the requirement of Patrons to provide for 10% of capital costs was removed. Whereas this should not be a determining factor in allocating places, the value of loyalty needs to be balanced with the value of serving new applicants. It would seem to be appropriate that the Patron and the Board of Management should negotiate this balance, and that the Minister of Education should not be involved in the detailed micromanagement of individual schools.

The proposal that the school might operate an upper quota of places for applicants in this category is unworkable and develops an unnecessary bureaucratic burden. A scenario might help to outline the problem.

A school sets its first selection criterion as "has a sibling attending the school" and a second criterion as a 10% quota on places for children of past pupils (with no reference to any financial contributions made by these parents). Questions arise in a number of areas:

If some of the applicants from the first criterion (e.g. siblings in the school) were also children of past pupils, would this affect the number of children selected in the quota in the second criterion.

If the second category is over-subscribed and some applicants in the category are refused, are these applicants eligible for selection under the next category or are they excluded?

If some of these applicants were chosen under a subsequent category, could their selection be challenged?

Who decides which category applicants come under?

2.4. Criteria not included in the Legislation and Regulations.

Common criteria used by post-primary schools in their Admissions Policy include (a) designated feeder national schools and (b) catchment areas defined by residence in a particular area adjacent to the school (this may be defined by geographical or parish boundaries). Both of these criteria also highlight the complexity of allocating places when a school is over subscribed. Both also have the potential of favouring one group of students over another, contributing to division within local communities rather than social cohesion.

Perhaps the most common reason for choosing a school is its convenience in terms of home. This makes issues such as location and ease of access one of the most important issues in parents' choice of school. In effect, the legislation fails to deal with what is likely to be the most contentious issue in any selection process where parents have a choice between schools which are in proximity to one another.

Where local post-primary schools do not have commitment to a particular national school or a local area, parents can be left in a very uncertain position about where to apply for a place for their child. This can lead to high levels of stress, especially if a child is refused a place.

Having catchment or feeder school policies can contribute to the replication of social inequalities, especially if the local area is subject to housing policies where disadvantaged groups are all housed in the one area.

Where schools cannot provide a place for someone from the immediate vicinity, it imposes hardships on many parents when children have to travel outside the local community. This can be exacerbated if other children are coming to the school from different locations.

A question arises as to why the proposed legislation and regulations do not deal with these criteria that were raised in the Minister's discussion document, yet other criteria, which have less impact on the profile of students in schools, were selected for regulation. Clearly, the complexity of dealing with these two criteria is not something the DES wishes to embrace in legislation or regulation. However, as pointed out above, the issues chosen for regulation are often equally contentious. It is questionable whether the DES should prescribe different approaches and then leave the schools to shoulder the administrative burden associated with them, as well as face the social and legal consequences, without any supports being put in place.

If we are to provide choice for parents there is no single solution that will solve all problems. Attempting to legislate for the whole country when local circumstances and contexts are so different is a risky business. There is a strong possibility that it will lead to even more reliance on luck or arbitrary decision-making. These are not dealt with in the proposed legislation.

2.5. Selection Procedures within schools

The proposed legislation and accompanying regulations prescribes certain aspects of the Admissions Policy procedures that place an enormous administrative burden on schools. Some of these have been discussed above.

Non-discrimination. As above.

Financial Contributions. As above

Withdrawal from Religious Instruction. As above

Specified time lines. In the case of a number of schools in the one area, it would be helpful to have one time line which eases the administrative burden on schools. Parents often make application to different schools, and having a common timescale allows for second-round offers, etc when children do not take up a place in a school. The issues of the particular time-scale proposed in the regulations have been outlined above.

Gathering information. The issues discussed above are pertinent here also. It is particularly problematic for schools to chase necessary information from some parents who may have been guaranteed a place, so that the school can plan for the best approach to individual students.

Some schools have special units catering for students with specific needs such as autism, emotional behavioural difficulties or physical or sensory disabilities. Schools must be entitled to admit students who can benefit from the specific education provided and to refuse enrolment to students for whom the special unit or service cannot cater. Regulation 22 states that "*it shall not be permissible for schools to conduct any assessment or test of a student's academic abilities or other abilities prior to a decision being taken in relation to that student's application for admission to the school*". How can a school make a decision in the best interest of the student if they cannot ascertain their special needs in advance of offering a place?

Responsibility of the Principal. Responsibility for the Admissions Policy rests with the Board of Management. It is the responsibility of the principal to ensure that the policy is implemented at school level, not that the principal himself or herself actually administer it. The current proposals make no allowance for the Board of Management to assign responsibility to someone else, or for the principal to delegate the administrative work. Delegation needs to be allowed for in the situation where the principal may have a conflict of interest in enrolling a particular student (e.g. a relative). The focus of this regulation demonstrates again the intrusion of the DES into the internal workings of the school, where the Board of Management is the employer, has ultimate responsibility for defining workloads and for ensuring that policy is implemented.

The Repeal of Section 29 for Admissions. It is in the context of schools making choices between students that this provision will impact on parents and schools. The effect of this piece of the legislation has been discussed in detail above. To emphasise the point, there are

two main implications. The first is the extra burden placed on the Board of Management. The second is the lack of access to any independent review for parents. However, the DES proposes to retain some power in this area in providing for the right of the Minister to approach or override a Patron.

The Role of the Patron. The Admissions Policy has a key role in promoting the ethos and characteristic spirit of the school. The proposed regulations place particular responsibility on the Patron with regard to the Board of Management's handling of the Admissions Policy. Currently, if a Board of Management is in contravention of the school's ethos by the way it implements its admissions policy the only course of action open to the patron is to dissolve the Board. This is a serious and relatively rare occurrence and requires the approval of the Minster. The alternative outlined in the proposed legislation and regulations is that the either the patron or the Minister could appoint a person to carry out the functions of the Board with regard to Admissions instead of dissolving the whole Board. Two points need to be addressed here; firstly, it is unlikely that a board failing in its responsibilities in relation to the admissions policy would be functioning effectively in all other areas and secondly, it is not clear what the role of the newly appointed person might be – are they simply adjudicating in an appeal situation or are they administering the policy in place of the principal?

2.6. External Powers in Relation to Admissions.

The proposed legislation gives powers to external bodies to assign students to a school, even if the school is over-subscribed.

If a school is oversubscribed, it appears that the NEWB or the NCSE have a right to insist that a particular student be admitted, without any requirement on their part to take into account the provisions of the school's enrolment policy such as catchment area criteria, pre-enrolment assessment for special needs or indeed the requirement that the student accept the school's code of behaviour. Such practices would serve to discriminate against all the students who were not successful in gaining admission to the school.

The NCSE must take account of the school's capacity to accommodate the student but the regulations do not give any further guidance. Given the level of prescription that attached to schools, this provision undermines the rights of the Patron and the Boards of Management. The proposed regulation makes no provision for the school to negotiate issues such as the effect such a forced enrolment might have on the other children in the school, e.g. taking resources that other children might need. There is no guarantee that the necessary resources will be provided for the student. This section of the Bill constitutes significant interference with the right of the Board of Management to run the school. It cannot discharge its duty of care to all its students if it loses the right to set and manage its own admissions policy.

CONCLUSION

Le Chéile Schools Trust has consulted with representatives of its schools and encourages its schools to reflect on their work keeping in mind the principles and values enshrined in the Le Chéile Mission and Educational Vision as set out in the Charter (see www.lecheiletrust.ie). These principles include equality, transparency, inclusion, diversity and subsidiarity. The proposed legislation and regulations, should they be passed, will have the effect of disempowering schools and discouraging self-reflection and self-evaluation. The new Bill and associated regulations seem to be prescriptive for their own sake and not respectful of different contexts or historical traditions. The focus of the legislation is on regulations relating to operations within schools, and makes no connection with particular aspects of social policy.

The choice between a State school and a Voluntary school is not recognised in this proposed legislation. No recognition is given to the rights that might pertain to Patrons and Trustees of Voluntary schools. It is a reasonable expectation of Patrons/Trustees that, in undertaking the onerous responsibilities attached to their role, they might have a say in what is taught, how it is taught, to whom and to what end.

The level of prescription, both in terms of content and form of the Admissions Policy is quite high. In effect, this negates and undermines the authority of Boards of Management and gives no consideration to the responsibility of the Board to the Patron of the school and to its particular mission. Micromanaging schools to this extent serves to disempower Boards of Management and will make it more difficult in the long term to find willing volunteers to serve on Boards.

In attempting to regulate for every eventuality, many aspects of the proposals, are likely to be unworkable and will cause unnecessary extra bureaucracy and administration for schools. For example, the proposed legislation takes insufficient cognisance of the different school contexts, those that can accommodate all applicants and those that are oversubscribed. If the DES have identified problems relating to admissions in some schools there are other procedures open to them for dealing with them. Documenting good practice, promoting it through WSE and other inspection, and resourcing are more likely to provide for better integration of diverse groups in schools rather than the proposed level of regulation.