



Interessenvertretung
Selbstbestimmt Leben
Deutschland e.V. - ISL



Inclusion
international



International Disability Alliance (IDA)

Member Organisations:

Disabled Peoples' International, Down Syndrome International, Inclusion International,
International Federation of Hard of Hearing People,
World Blind Union, World Federation of the Deaf,
World Federation of the DeafBlind,
World Network of Users and Survivors of Psychiatry,
Arab Organization of Disabled People, European Disability Forum,
Latin American Network of Non-Governmental Organizations of Persons with Disabilities and
their Families, Pacific Disability Forum

Joint DPO submission on Germany Pre-Sessional Working Group, CRC Committee

This joint submission by Interessenvertretung Selbstbestimmt Leben in Deutschland e.V. (ISL), the European Disability Forum, Inclusion International, Disabled Peoples' International (DPI) and the International Disability Alliance (IDA) provides supplementary information from the German, European and international disability movement to the third and fourth periodic reports (*hereinafter* State Report) submitted by the German government to the CRC Committee in September 2012.

Germany ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol on 24 February 2009. It is clear that the human rights standards of the CRPD and the CRC intersect and reinforce each other when it comes to the rights of children with disabilities.

Suggested recommendations for consideration by the Committee for the List of Issues are all grouped at the beginning of this document and also figure at the end of each corresponding section throughout the text. Annex I provides more information about the organisations jointly making this submission (p 12).

Proposed questions for the list of issues:

Articles 2, 4, 23, 42, 44(6))

- What steps are being taken to enshrine children's rights into the Constitution?
- What steps are being taken to define the concept of reasonable accommodation in German law to ensure that the denial of reasonable accommodation is recognised in the law as a form of discrimination?
- What measures are being taken to ensure the effective collection of data and statistics on children with disabilities disaggregated by sex, age, region of residency and type of disability?

Articles 2, 19, 23, 34, 37

- What steps are being taken to amend both mainstream legislation and disability-specific legislation to address the heightened risk for children with disabilities of becoming victims of violence, abuse, and exploitation in the home, community and institutions, and to adopt measures to ensure the accessibility of services and information to victims with disabilities, including training of police and other interlocutors?

Articles 2, 3(1), 9(1), 12, 18(1), 21(1), 34

- With respect to decisions concerning the child him/herself, how does the Government ensure that children with disabilities have the opportunity to express their views and for their views to be given due weight in accordance with the child's age and maturity, on an equal basis with other children, and are provided with age- and disability-appropriate support to exercise these rights?

Articles 2, 5, 18(1) and (2), 9-11, 19-21, 23, 25, 26, 27(4), 39

- What steps are being taken to revise, clarify and coordinate the support services for children with disabilities in order to ensure strengthened and equal access for children with disabilities and their families across all *Länder* to mainstream support services which are inclusive, accessible, and which adapt to and accommodate for children with disabilities and do not result in their separation from families nor their segregation from their non-disabled peers?

Articles 2, 6, 17, 23, 24, 26, 27, 37

- What steps are being taken to adopt measures to ensure that all health care and services, including mental health, be based on the free and informed consent of the individual child concerned and that involuntary treatment and confinement are not permitted by law?
- What measures have been adopted to ensure that all education, information, healthcare and services relating to sexual and reproductive health, HIV and STIs, are made accessible to children and adolescents with disabilities in age-appropriate formats?

Articles 2, 23, 28, 29, 31

- What steps have been taken to include inclusive education as an integral part of core teacher training curricula in universities to ensure that the values and principles of inclusive education are infused at the outset of teacher training and teaching careers of all teachers? And to ensure the accessibility of educational materials, curricula, and school environments, and for the law to provide enforceable remedies to children with disabilities and their families who have been refused access to inclusive education, or who have been denied the provision of reasonable accommodation with respect to education? Is a definition of inclusive education incorporated into the law?
- What measures are planned to legally anchor services of school and communicational assistance within education laws and policies and no longer within the Social Code? How is it envisaged that the Federal Government will coordinate and bring laws, policies and

practices on early childhood education and services and schooling for children with disabilities across all *Länder* in line with the requirements of inclusive education in accordance with the CRC and the CRPD, and to ensure the active involvement and close consultation with children with disabilities and their representative organisations in this process?

- How does the Government ensure that children with disabilities enjoy, without discrimination and on an equal basis with others, extracurricular, cultural and leisure activities organised by schools and in the community including sports events, play and recreation?

Children with disabilities

General implementation measures (Articles 2, 4, 23, 42, 44(6))

The government refuses to address the rights of children in the Constitution.¹ The proposal of the National Coalition on the CRC to include rights of the child in Art 2 of the Constitution² clearly formulates rights to support, protection and participation. The **Federal government refused for the second time an inclusion of their rights into the Constitution** and with it refuses to comply with the recommendations made by the CRC Committee in its Concluding Observations of 1994 and 2004.³

Non-discrimination

German anti-discrimination law is not satisfactory when it comes to children with disabilities. **Neither the Federal German Equal Opportunities Act for Persons with Disabilities (Behindertengleichstellungsgesetz – BGG) nor the German Equal Opportunities Acts of the Länder define or mention the concept of reasonable accommodation.**⁴ In general, German law does not explicitly mention disabled children as a vulnerable group. NGOs and organisations of persons with disabilities (DPOs) fight for including these points in the Länder Acts on Equal Opportunities for Disabled Persons. Also, NGOs and DPOs recommend to include the form of discrimination based on the denial of reasonable accommodation into the General Act on Equal Treatment (Allgemeines Gleichbehandlungsgesetz – AGG).⁵

Data

Figures show that in 2005, 161,555 children with disabilities lived in Germany.⁶ This number only includes those who were registered within the process of requesting a disabled person's pass. Since there is no obligation to register, the number of children and young persons with disabilities is only an estimate. Further reasons for this inaccurate compilation of numbers is a poor information flow and counselling, parents fearing bureaucracy and being overwhelmed by paperwork.

¹ see Newspaper Frankfurter Rundschau from 17./18. November 2012

²http://www.kinderrechte-ins-grundgesetz.de/fileadmin/content_media/projekte/Themen/Kinderrechte/Formulierungsvorschlag_KR_ins_GG-2012-11-14-js.pdf

³See http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/Pakte_Konventionen/CRC/crc_state_report_germany_1_1994_cobs_1995_de.pdf

⁴ "Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms (Article 2, CRPD)

⁵ Allgemeines Gleichstellungsgesetz (AGG): <http://www.gesetze-im-internet.de/agg/>

⁶ See third and fourth state report on the CRC: http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/Pakte_Konventionen/CRC/crc_state_report_germany_3_4_2010_en.pdf, p. 75

There is an absence of data and studies about children and youth with disabilities meaning that there is disconnect between the reality of their lived experiences and the laws, policies and programmes which purport to improve their situations. Moreover, the lack of consultation with children with disabilities and their representative organisations further widens the gap between state action and meeting the needs and upholding the rights of children with disabilities.

In general, there is a lack of concrete formulation of children's needs which extends beyond schooling to participation in society. The study by Anton Bucher "What makes children happy"⁷ and the World Vision studies on children⁸ conclude that well-being and happiness are defined by three main areas: home, educational setting (for example kindergarten or school) and friends.⁹ In Germany, the discussion on the inclusion of children with disabilities is mostly limited to the situation of education and care. Research studies that reflect the life realities of children and young adults in Germany in general (leisure time, engaging in clubs and union, habits of media usage and media competence),¹⁰ do not consider the aspect of disability which means there are no valid studies or statistics.¹¹

Questions for the List of issues:

- What steps are being taken to enshrine children's rights into the Constitution?
- What steps are being taken to define the concept of reasonable accommodation in German law to ensure that the denial of reasonable accommodation is recognised in the law as a form of discrimination?
- What measures are being taken to ensure the effective collection of data and statistics on children with disabilities disaggregated by sex, age, region of residency and type of disability?

Abuse, neglect and violence against children, sexual exploitation (Articles 2, 19, 23, 34, 37)

Exact figures are not available regarding violence against children with disabilities in Germany because data is not disaggregated according to disability. Yet international studies inform us that **children with disabilities are almost four times more likely to experience violence than non-disabled children and children with disability associated with psychosocial disabilities or intellectual disabilities appear to be among the most vulnerable, with 4.6 times the risk of sexual violence compared with their non-disabled peers.**¹² They are subjected to violence in the home, in schools, institutions and the community by family, caregivers, professionals and peers. Data needs to be collected in order to formulate the policies and ensure the practices to prevent violence against children with disabilities and to ensure their protection in the law, their access to victim support and assistance, complaints mechanisms and access to justice and redress.

⁷ Anton Bucher, Was Kinder glücklich macht? Eine glückspsychologische Studie des ZDF, in Markus Schächter (ed.), Wunschlos glücklich? Konzepte und Rahmenbedingungen einer glücklichen Kindheit, Baden-Baden 2009, p. 44-195

⁸ World Vision Deutschland e.V. (ed.), Kinder in Deutschland. 1. World Vision Kinderstudie, Frankfurt/M. 2007; 2. World Vision Kinderstudie, Frankfurt/M. 2010

⁹ see S. Andresen/ K. Hurrelmann, Was bedeutet heute "Glück" für Kinder? In Aus Politik und Zeitgeschichte, 38/2010, p. 6

¹⁰ Besides the studies by Hurrelmann for example Shell-Study, AID:A, Sinus-Studies, KIM-Studies and so on

¹¹ Only the 13th Child and Youth Report shows these realities of lives. This is why an empirical examination would be recommended in order to shed some light on the issue of leisure activities and possibilities for children that have difficulties in participating

¹² "Prevalence and risk of violence against children with disabilities: a systematic review and meta-analysis of observational studies", Review commissioned by the World Health Organization (WHO) and published in the medical journal The Lancet, [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(12\)60692-8/abstract](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(12)60692-8/abstract)

Questions for the List of issues:

- What steps are being taken to amend both mainstream legislation and disability-specific legislation to address the heightened risk for children with disabilities of becoming victims of violence, abuse, and exploitation in the home, community and institutions, and to adopt measures to ensure the accessibility of services and information to victims with disabilities, including training of police and other interlocutors?

Consideration of the Best Interests of the Child and Full Participation (Articles 2, 3(1), 9(1), 12, 18(1), 21(1), 34)

Right of the child to express their views & participation

In order to strengthen children and young adults with disabilities and improve their participation, the Federal government is leading an initiative “Strengthen the Youth”¹³ and wants to develop a concept for a Children and Youth Parliament¹⁴ starting in 2013. However, “Strengthen the Youth” **fails to take into account the specific need to consult with children and youth with disabilities** (as set out in the Articles 12 & 23 of the CRC, and Articles 4(3) and 7 of the CRPD) and does not explicitly mention young adults with disabilities.¹⁵

Questions for the List of issues:

- With respect to decisions concerning the child him/herself, how does the Government ensure that children with disabilities have the opportunity to express their views and for their views to be given due weight in accordance with the child’s age and maturity, on an equal basis with other children, and are provided with age- and disability-appropriate support to exercise these rights?

Family environment and alternative care (Articles 2, 5, 18(1) and (2), 9-11, 19-21, 23, 25, 26, 27(4), 39)

Support to children with disabilities and their families

Children with disabilities and their families face severe problems in Germany due to unclear laws and policies. Parents of children with disabilities must deal with numerous public authorities and cost bearers (for example health insurances). And the services for families with disabled children are delivered by many different non – profit making and commercial service providers. Very often these services are not coordinated with each other. This can result in **situations of disabled children where their needs are not completely met. And what is more: the provision of services still may lead to the segregation and separation of children with disabilities from non-disabled children.** This, for instance, happens very often when children with disabilities are referred to early support in special day care centers for children with disabilities, in special schools, and within the transition from school into a workplace. Children and young adults with disabilities or their parents who are seeking asylum cannot claim services for integration aid since the Asylum-Seekers-Benefit-Law only provides supports in “severe cases”.¹⁶

In Germany, children with disabilities frequently do not receive the adequate early intervention support they need due to inappropriate laws contained in the Federal Social Codes (Books). These legal inadequacies impact their development opportunities. Section 32 of the Ninth Book of the Social Code defines “complex support services” to be provided in

¹³ See State Report http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/Pakte_Konventionen/CRPD_behindertenrechtskonvention/crpd_state_report_germany_1_2011_de.pdf p. 19

¹⁴ see. National Action Plan, http://www.bmas.de/SharedDocs/Downloads/DE/PDF-Publikationen/a740-nationaler-aktionsplan-barrierefrei.pdf?__blob=publicationFile p. 153

¹⁵ see www.jugend-staerken.de

¹⁶ see § 1 Asylum Seekers Benefits Act

early intervention centers for children with disabilities and developmental delays, which are spread all over Germany. The legal aim is a good one: early intervention programs should not be dominated any longer by the medical and therapeutic professions but should include on an equal basis the educational and pedagogic needs of children and parents. Therefore, the social welfare offices which are responsible for the early education of children with disabilities and the national health insurances which pay the medical and therapeutic treatments are obliged to work together in an interdisciplinary way.¹⁷ However, this is not done in practice because the **law is unclear and contains many loopholes**. German DPOs are therefore calling for revision and improvement of the law, but the Federal government favours framework agreements among the *Länder* rather than taking measures to define and organise the “complex support” needed to avoid further shortcomings and disadvantages of children with disabilities. In practice, these framework agreements do not work effectively which is why in 2012 a major part of disabled children could not access adequate support. Oftentimes they receive separate and single services by different professions either paid by the social welfare offices or by the national health insurances. This is not only inconvenient, but also leads to insufficient results and stays far behind the goals of section 32 of the Ninth Book of the Social Code.

Deficits of the complex services with regard to Early Support must be eliminated by legal regulations.¹⁸ The German federal government stated in its National Action Plan on the CRPD that it would only “proof” and “discuss”¹⁹ the complaints about the improper implementation of early intervention support, but is still neglecting a legal solution.

The most important service providers for children and young adults with disabilities are providers of Social Welfare and providers of Child and Youth Welfare. The entitlement for “integration assistance”²⁰ with regard to Social Welfare is enacted in Book Twelve of the Social Code and applies for children and young adults with physical or intellectual disabilities. It addresses specific needs resulting from the different kinds of disability. The entitlement for “integration assistance” with regard to Youth Welfare is enacted in Book Eight of the Social Code and applies to children with emotional and/or psychosocial disabilities. Often this division of responsibilities leads to endless diagnoses for disabled children and young adults. Dividing disabled and non-disabled children and their life realities results in a deficit of information flow both on the sides of the parents and the providers. This then leads to the point that children with disabilities are often neglected as a target group with regard to the offers and services implemented on the basis of Child and Youth Welfare. The National Coalition on CRC implementation²¹ also criticised Germany’s practice, stating that the division of responsibilities must be replaced by a “wider solution” meaning combining the responsibilities of Social and Youth Welfare for children and young adults in one book of the German Social Code provided that the quality of services is guaranteed and that services are tailored to the needs of children with disabilities and that parents do not bear further financial burdens.²²

¹⁷ Meaning that the specialist departments like for example psychologists or curative pedagogy coordinate their services

¹⁸ vgl. Rechtsdienst der Lebenshilfe 3/2012, p. 108/109; NGOs and DPOs claim the need of a valid definition of the term “Complex Services” as providers with a joint responsibility, further it must be legally regulated how to manage conflicts and how to make sure that an open and a low-threshold consultation offers is guaranteed nationwide.

¹⁹ vgl. National Action Plan http://www.bmas.de/SharedDocs/Downloads/DE/PDF-Publikationen/a740-nationaler-aktionsplan-barrierefrei.pdf?__blob=publicationFile p. 152, 153

²⁰ Integration Aid (Eingliederungshilfe) supports children and young adults in their daily life in case they can not provide for themselves, for example rehabilitation support, support within working life, support within self-determined living in the own apartment and therefore guaranteeing life in the community.

²¹ The National Coalition is an alliance of 100 German organisations promoting implementation of the UN Convention on the Rights of the Child; see www.national-coalition.de

²² National Coalition (NC) for the implementation of the UN Convention on the Rights of the Child. Additional report on the third and fourth state report of Germany, Berlin 2010, p.25

Questions for the List of issues:

- What steps are being taken to revise, clarify and coordinate the support services for children with disabilities in order to ensure strengthened and equal access for children with disabilities and their families across all *Länder* to mainstream support services which are inclusive, accessible, and which adapt to and accommodate for children with disabilities and do not result in their separation from families nor their segregation from their non-disabled peers?

Basic health and welfare (Articles 2, 6, 17, 23, 24, 26, 27, 37)

Questions for the List of issues:

- What steps are being taken to adopt measures to ensure that all health care and services, including mental health, be based on the free and informed consent of the individual child concerned and that involuntary treatment and confinement are not permitted by law?
- What measures have been adopted to ensure that all education, information, healthcare and services relating to sexual and reproductive health, HIV and STIs, are made accessible to children and adolescents with disabilities in age-appropriate formats?

Education, leisure and cultural activities (Articles 2, 23, 28, 29, 31)

Education

The German education system is far from fulfilling inclusive education of children with disabilities: 62% of children with disabilities are integrated into early childhood education, 34% are integrated at primary level, and only 15% at the secondary level.²³ In 2010, only 29% of all students with disabilities attended a regular school.²⁴ These numbers vary widely across different *Länder*, the numbers vary from 6 % to over 40 %, ²⁵ in which the largest numbers are reached within primary level. Integration is extremely uneven within secondary education: 39% are integrated in "Hauptschulen" but only 5 % into Gymnasiums.²⁶

The vast majority of pupils with disabilities are attending special schools. 75 % of them leave school without any diploma.²⁷ Inclusion requires high quality standards. Despite the increasing numbers on integrated students, the number of those in special schools does not decrease significantly, since more and more students are diagnosed as needing special pedagogic support; in 2010 it was 487 000 students which means a percentage of 6,4 % of all students.²⁸ **Among the EU member states Germany holds the largest percentage of pupils educated in special need schools.**²⁹

²³ Study "Gemeinsam lernen. Inklusion leben. Status quo und Herausforderungen inklusiver Bildung in Deutschland", Prof. em. Dr. Klaus Klemm in behalf of Bertelsmann Foundation 2010, p. 9, online available at http://www.bertelsmann-stiftung.de/cps/rde/xbcr/SID-78AA2DEA-109CF3E8/bst/xcms_bst_dms_34589_34590_2.jpg

²⁴ Federal Education Report "Education in Germany 2012" (Bildung in Deutschland 2012); group of authors in behalf of the Conference of the Ministers of Education and the Arts, p. 7

²⁵ See above, an indicator based report with an analysis of the perspectives of the educational system regarding demographic change (Ein indikatorengestützter Bericht mit einer Analyse zu Perspektiven des Bildungswesens im demografischen Wandel), chart D 2-7web

²⁶ Prof. em. Dr. Klaus Klemm, University Duisburg-Essen, Educational Research and Educational Planning, lecture: "A school for everyone: educational system an inclusion" Evangelical Academy Tutzing, May 21, 2011

²⁷ This means that these pupils do not even reach the lowest degree of secondary school (Hauptschule) Source: Statistical publication of the Conference of the Ministers of Education and the Arts, Documentation Nr. 196 – February 2012 „Sonderpädagogische Förderung in Schulen“ 2001 - 2010; p. XVI

²⁸ see source as in footnote 55

²⁹ Bundesbildungsbericht 2010 / Education in Germany 2010; an indicator based report with an analysis of the perspectives of the educational system regarding demographic change, p. 6

The German educational system is partly integrative but not at all of inclusive nature. The international human right to inclusive education which ensures the right of children with disabilities to attend a mainstream classroom in a mainstream school as set out in Art 24 CRPD (and the obligation according to Art 4 paragraph 2 of the CRPD), is ignored by German policies and even questioned by Federal government and *Länder*.³⁰

The educational sector is lacking engaged cooperation of the Federal government and Federal states (*Länder*). The Government does not understand that it is responsible to implement the right to inclusive education for children with disabilities.³¹ In comparison to other action plans,³² the German action plan on the implementation of the CRPD neither focuses on the *Länder* nor the communities – whereas both are responsible for education.³³ The German educational system is very selective and leads to injustice at the expense of disadvantaged persons, persons with background of migration and persons with disabilities. The criticism made by the former UN Special Rapporteur on the right to education, Vernor Munoz, in 2006 is still to date and very much relevant:³⁴ He explained that Germany's educational system with its several tracks is too selective and leads to discrimination. Inclusion is so far not discussed as a quality characteristic.

Individual support and the provision of reasonable accommodation in the area of education is not recognised as a right inherent to the right to inclusive education. People with disabilities often have to fight for reasonable accommodation even by taking their case to court.³⁵ **And the availability of accessible and adapted curricula is lacking as well as systematic training of all teacher and school personnel on the inclusive approach of education.** Almost 50% of students in special schools are explicitly supported in the priority of "Learning".³⁶ Expert reports show that it is mostly children and young adults from educationally disadvantaged families, from families with a background of

³⁰ Compare the Conference of the Ministers of Education and the Arts „pedagogical and legal aspects of implementing the CRPD“, resolution from November 18, 2010, p. 2: “subjective legal claims only justified by legislative acts of implementation“

³¹ The Conference of the Ministers for Education and Arts ignores the need for action in their position papers from 2010 and 2011 on inclusive education as enshrined in Article 24 of the CRPD (Position paper of the Conference of the Ministers of Education and the Arts from 18 November 2010 “pedagogical and legal aspects of implementing the CRPD“, resolution from 18 November 2010; Resolution of the Conference of the Ministers of Education and the Arts from 20 October 2011 “ Inclusive education of children and young adults with disabilities in schools”); The conference claims that German Law already fulfils the standards of the CRPD and that subjective legal claims would not be justified by the CRPD (Position Paper as in footnote 45). The conference continues to push forward the plurality of the educational tracks and the preservation of special schools. The conference does not see a contradiction between structural selection and an inclusive school system. With this position it reduces the right to inclusive education for children with disabilities and acts contradictory to the right to education enshrined in the CRC and the CRPD.

³² Nationaler Action Plan “for a child-friendly Germany 2005-2010“, online available at: <http://www.kindergerechtes-deutschland.de/zur-initiative/nationaler-aktionsplan/>

³³ The Federal government and some *Länder* also claim that there would be hardly any need for their action regarding the right to inclusive education as enshrined in Art 24 of the CRPD; Draft law on the UN Convention from 13 December 2006 on the Rights of Persons with Disabilities and to the Optional Protocol, BT-Drs. 16/10808, p. 58.; [...] school political settings of priorities in the several *Länder* of Germany indicate a variety of conformities to the CRPD. “The same objectives by the Conference of the Ministers of Education and the Arts “pedagogical and legal aspects of implementing the CRPD“, resolution from 18 November 2010, p. 2: “Germany's legal situation meets the requirements of the Convention.”

³⁴ Report of the Special Rapporteur on education, Vernor Munoz „Implementation of UN resolution 60/251“ of the Human Rights Council from 15 March 2006 (Addendum Visit to Germany, Section IV challenges of education politics)

³⁵ For example the case in which a hearing impaired girl and her parents went to court in Bavaria since sign language interpretation was not paid for in a regular school even though the “Inclusion Law” of Bavaria sees the financial responsibility for communities. The argument of the community was that the girl would receive better support and education in a special needs school. Meanwhile a settlement was made and up to March 2013 the interpreter cost is being paid for by the Land Bavaria. This means in March there has to be a decision whether she can stay at the regular school or she will be send to a special need school. Online at: <http://www.welt.de/regionales/muenchen/article108382242/Taubes-Maedchen-kann-Regelschule-besuchen-yorerst.html>

³⁶ Federal Education Report (Bundesbildungsbericht) 2010, p. 71

migration or with communicational disabilities, and mostly male pupils that are supported in this special field.³⁷

Furthermore, there is a **lack of implementing the right to bilingual education, in particular bilingual education³⁸ for students with a hearing impairment**. Again, regulations concerning the provision of sign language interpretation in schools vary across the *Länder*, and coverage of costs vary: interpreters can be paid for by the school board or by the “integration aid” granted by social welfare. It can be criticised that it is always the families who have to push for the integration of their disabled child and fight for the needed resources. This way services from integration aid for reasonable school education³⁹ are often restricted and must be fought for.⁴⁰ There are deficits regarding school assistance (integration assistance), including communicational assistance and interpreting.⁴¹

I. Early childhood education

Every child from the age of three years has the legal right to education and care within day care facilities or day care (see Social Code Eight). From 1 August 2013, this right already starts with the completed first year of the child. Children with disabilities and children without disabilities are supposed to be taken care of together in one group.⁴² The Book IX of the Social Code also regulates the inclusive childcare.⁴³

From the very beginning of their lives, children with disabilities have a right to supporting measures from the **Early Support System.⁴⁴ Early Support is not integrated systematically in day care even though providers of Youth and Social Welfare are requested to cooperate. Different responsibilities and regulations of funding make it very difficult to reach inclusion.**

The percentage of **special childcare facilities** is 0,6 % of the 299 existing facilities in 2011 which means that **disabled children are still being segregated.⁴⁵** In Bavaria, disabled children are placed in so called „facilities for preparing for school“ and in Baden-Württemberg they are placed in “school kindergartens” which are affiliated to the special need schools. Funding is based on deficits and medical diagnoses instead of the need of their participation. Instead of guaranteeing the provision of reasonable accommodation (Art 2, CRPD) and eliminating barriers as a duty on the part of the State, it is the parents and the children who have to organise the necessary resources.

In spite of some important competences and resources, the **current system of Early Support with its medical diagnostics approach is not able to support inclusive education** and inclusive childcare.

Currently, 92% of all children between the age of 3-6 years are placed in childcare. Under the age of 3, only 37% are placed.⁴⁶ In 2013, the Federal government passed the “Betreuungsgeld” - childcare supplement of 150 EUR per month, as a federal grant for

³⁷ Justin J.W. Powell, Lisa Pfafl, Wissenschaftszentrum Berlin: “Special Schools hinder Equality of Opportunities” (“Sonderschule behindert Chancengleichheit”) 2008

³⁸ Here bilingual means the German written and spoken language / German Sign Language

³⁹ According to Book XII Social Code § 54 and 35 a Book VIII of the Social Code.

⁴⁰ For example if an assistance is needed for several children with high and specific need of support it is engaged in several different classes, floors or schools at the same time.

⁴¹ Here the interpretation in sign language and text interpretation

⁴² Book VIII Social Code, § 22a, paragraph 4

⁴³ Book IX Social Code, § 19, paragraph 3

⁴⁴ See Book VIII Social Code and Book XII

⁴⁵ Federal Statistical Office: Kinder und tätige Personen in Tageseinrichtungen und in öffentlich geförderter Kindertagespflege (children and personnel in day care facilities and in public supported child day care) from 1 March 2011, Federal statistical Office, Wiesbaden 2011

⁴⁶ Federal Ministry for Families, Elderly, Women and the Youth: Third intermediate Report on the Evaluation of law for child support 2011, May 2012

children under three years if the parent(s) take(s) care of the child(ren) at home. This instrument **discourages families to make use of inclusive day care.**

Only 32% of all child day care facilities are working on an “integrative” basis. Barriers to admission are especially financing/ funding of individual support measures. Due to the insufficient personnel ratio, inclusive practices are hard to implement. Even integrative facilities arrange special groups for (severely) disabled children.

The care situation of **children with disabilities younger than 3 years** is unsatisfactory as there is not a focus of programs or teaching concepts, nor an appropriate child to staff ratio. Within daycare, 80,000 children under the age of three years are looked after, of this number only 1,3% are children with disabilities⁴⁷. Among those aged 3-6 years,⁴⁸ there are 21,200 children, of which 2,6 % live with a disability.⁴⁹

II. Primary education

The implementation of inclusive education in primary education has proven to be extremely difficult in Germany, as the Federal government and the 16 *Länder* are together obliged to implement this. The **German school system has a problem with heterogeneity and therefore focuses on learning in homogeneous groups.** This affects the structure of the whole system: After early childhood schooling, a multi-tracking school system⁵⁰ follows which differs across different *Länder* and which all include the track “Gymnasium”⁵¹ which has a heavy focus on selection. Next to this multi-tracking system there is the system of special schools,⁵² dividing students by their needs of support (learning, behaviour, language, hearing, sight, intellectual, physical disability, autism, ill persons).

German law does not guarantee an inclusive education for all children. School laws of the *Länder* envision an education of disabled and non-disabled pupils⁵³ as a possibility,⁵⁴ but there is **not the same right for disabled children to access a regular school⁵⁵ since this differs from *Länder* to *Länder*,⁵⁶ and denies a situation of equal rights.** In some *Länder*, it is even allowed that children be assigned to go to a special needs school against the will of their parents.⁵⁷ A legal right is lacking for pupils with disabilities in regular schools in order to claim the provision of reasonable accommodation, compensation and accessible learning materials.

In some *Länder*, parents of a disabled child may decide whether the child should attend a regular school or a special needs school. However, the child’s right to attend a regular school close to the place of residence is made conditional; when parents see the poor equipment and ill-preparedness of their local schools to include children with disabilities, **parents have no choice but to turn to special needs schools.**⁵⁸ By claiming the right for parents to

⁴⁷ Out of 79.720 children, 901 live with disabilities

⁴⁸ Out of 21.184 children, 546 live with disabilities

⁴⁹ Own calculations based on data from the Bertelsmann Foundation: *Länder* monitor on early childhood educational systems, June 2012 and Federal Statistical Office see footnote 31

⁵⁰ The different sorts of secondary schools aim at different degrees – Hauptschool degree, Realschool degree and partly the Abitur.

⁵¹ For these schools we use the term “Regelschule” – regular school in the further on going text.

⁵² The term special needs school is being substituted by the *Länder* as “support school” with a lack of change in regard to the content. This is why we explicitly use the term “special needs school”.

⁵³ The term “pupils /students with disabilities” here means the term “pupils with special pedagogical need of support”. We favour use of the term “pupils/students with disabilities.”

⁵⁴ see National Action Plan of the Federal Government p. 45

⁵⁵ The term “regular school” is used to make clear the political difference to the term “special (needs) school

⁵⁶ see School Law of Hessen (Hessisches Schulgesetz), § 49 para. 2, Nr. 1, 21 November 2011, GBl. I; p. 679

⁵⁷ see School Law of Lower Saxony (Niedersächsisches Schulgesetz) from 23 March 2012, GVBl. p. 83, § 59 para. 5

⁵⁸ Reply of a Berlin school board, Berlin-Brandenburg 2011: “The principal had to deny admission, like the other 2 schools before, due to a lack of personnel. If all regular schools deny, all that is left is the special needs school”

choose, the system of specialised schools remains strong and takes up resources that are needed to prepare, build and develop structures and programmes for inclusive education in mainstream schools.

Also **jurisdiction prevents inclusive education in Germany**: a leading principle decision from the **Administrative Court of Hessen**⁵⁹ **generally questioned the validity of the CRPD in Germany and found that pupils with disabilities cannot derive rights and claims from Art 24 CRPD**. This decision, being picked up increasingly by other courts⁶⁰ makes it more difficult for parents to fight against neglect of their child regarding access to a regular school. Many NGOs as well as the CRPD Monitoring-Body of the German Institute for Human Rights criticise the ignorance towards the government's obligation to implement international human rights law. This **court decision stands contradictory to many legal opinions, including that of Dr Eibe Riedel**, member of the UN Committee on Economic, Social and Cultural Rights.⁶¹

Recreation, leisure and cultural activities

Children with disabilities face challenges when it comes to leisure activities: they are in need of support measures, and transport services or assistance is not sufficiently available. Eligibility for benefits (for example takeover of transport costs or assistance costs) are not defined in social law and many times these benefits are dependent on limited budgets. Becoming a member of a sports club can be a barrier due to the focus on performance. And, organised leisure activities for young persons with disabilities are bound to services and institutions under the Child and Youth Welfare Act which are still concentrated on the expressed wishes and requests of non-disabled children and adults only, and neglect the needs of children with disabilities. Many inclusive offers are financed by donations; only few offers for leisure time or holiday activities take into account young persons with disabilities.

Questions for the List of issues:

- What steps have been taken to include inclusive education as an integral part of core teacher training curricula in universities to ensure that the values and principles of inclusive education are infused at the outset of teacher training and teaching careers of all teachers? And to ensure the accessibility of educational materials, curricula, and school environments, and for the law to provide enforceable remedies to children with disabilities and their families who have been refused access to inclusive education, or who have been denied the provision of reasonable accommodation with respect to education? Is a definition of inclusive education incorporated into the law?
- What measures are planned to legally anchor services of school and communicational assistance within education laws and policies and no longer within the Social Code? How is it envisaged that the Federal Government will coordinate and bring laws, policies and practices on early childhood education and services and schooling for children with disabilities across all *Länder* in line with the requirements of inclusive education in accordance with the CRC and the CRPD, and to ensure the active involvement and close consultation with children with disabilities and their representative organisations in this process?
- How does the Government ensure that children with disabilities enjoy, without discrimination and on an equal basis with others, extracurricular, cultural and leisure activities organised by schools and in the community including sports events, play and recreation?

⁵⁹ Administrative Court Hessen (Verwaltungsgerichtshof Hessen) Judgment of 12 November 2009, file number: 7 B 2763/09

⁶⁰ See for example Higher Administrative Court Lower Saxony (Niedersächsisches Oberverwaltungsgericht) decision from 16 September 2010, file number: 2 ME 278/10

⁶¹ Prof. Dr. Eibe Riedel. Expert opinion on the effect on the international Convention on the Rights of Persons with Disabilities and its Optional Protocol on the German School System. Dortmund, Berlin 2010

ANNEX II - About the Organisations:

The **Interessenvertretung Selbstbestimmt Leben in Deutschland e.V. (ISL)** is the umbrella organization of the Centres of Independent Living of people with disabilities in Germany. ISL was founded in 1990 by disabled women and men. For us disability is a human rights issue and not a medical problem.

Our guiding ideas are „Independent Living – Self representation – Inclusion – Empowerment! ISL is the German branch of the international organisation of people with disabilities Disabled Peoples' International (DPI).

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The **European Disability Forum (EDF)** is the independent European umbrella organisation representing 80 million disabled Europeans. EDF is the only European pan-disability platform run by persons with disabilities and their families. Created in 1996 by its member organisations, EDF ensures that decisions concerning persons with disabilities are taken with and by persons with disabilities.

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Inclusion International (II) is a global federation of family-based organizations advocating for the human rights of people with intellectual disabilities worldwide. For over forty years Inclusion International has been committed to the promotion of these human rights and our organization now represents over 200 member federations in 115 countries throughout five regions including the Middle East and North Africa, Europe, Africa and the Indian Ocean, the Americas, and Asia Pacific. II is a member of the International Disability Alliance.

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Disabled Peoples' International (DPI) is a network of national organizations or assemblies of disabled people, established to promote human rights of disabled people through full participation, equalization of opportunity and development. The Goals of DPI are to: Promote the human rights of disabled persons; Promote economic and social integration of disabled persons; and Develop and support organizations of disabled persons. DPI is a member of the International Disability Alliance.

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The **International Disability Alliance (IDA)** is a unique international network of global and regional organisations of persons with disabilities, of which EDF, II & DPI are members. Established in 1999, each IDA member represents a large number of national disabled persons' organisations (DPOs) from around the globe, covering the whole range of disability constituencies. IDA thus represents the collective global voice of persons with disabilities counting among the more than one billion persons with disabilities worldwide, the world's largest – and most frequently overlooked – minority group. IDA's mission is to advance the human rights of persons with disabilities as a united voice of organisations of persons with disabilities utilising the Convention on the Rights of Persons with Disabilities and other human rights instruments.

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