

The Lack of Provision for the Special Educational Needs of Children of Gifted Intelligence in the Republic of Ireland is a Breach of their Human Rights.

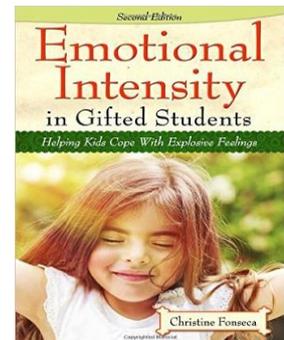
Slide 2: Kashmira



This is Kashmira. She'll be 12 in a few weeks, and she hasn't been to school for a few years. She tested in the top 0.1% of the population for intelligence, and she lives in the Republic of Ireland; which currently has no legislation or policies in place to support and facilitate the special needs of Kashmira, and gifted children like her.

I'm going to take a few minutes to talk about giftedness and what it actually is. At this juncture, a definition would be useful, but there is no singular definition on which experts and academics agree. The term *Gifted* is used, interchangeably, with 'Gifted and Talented' and 'Exceptionally Able'. These terms are generally accepted to mean the same thing, with differences in semantics registering a social and political sensitivity, rather than differences in the understanding of the issue.

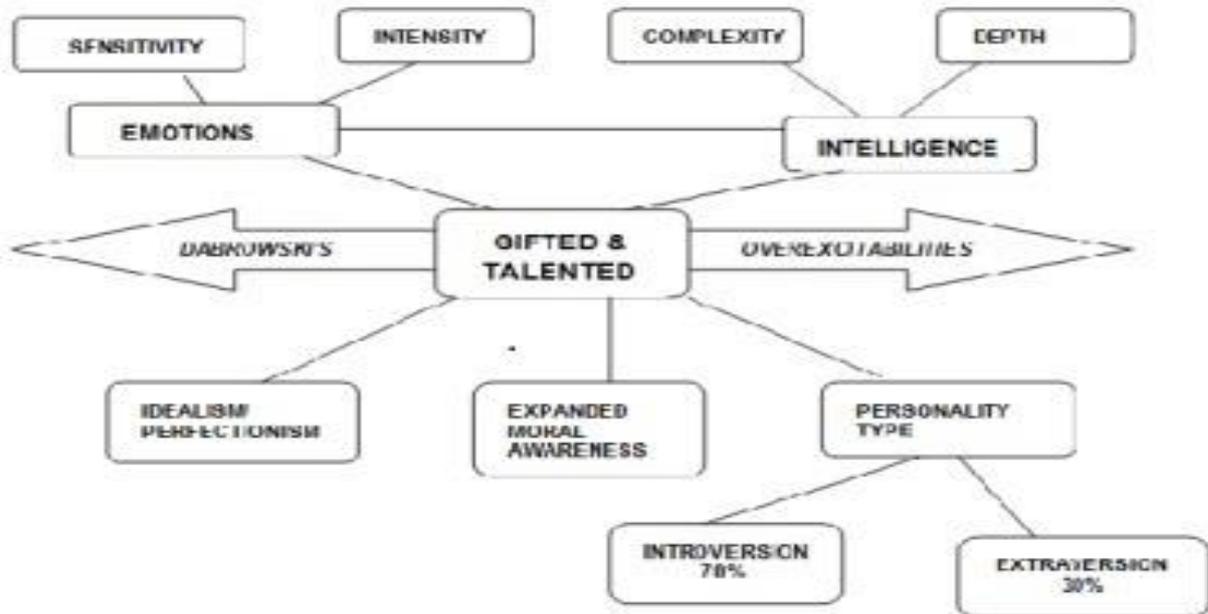
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Broadly speaking, however, there are three characteristics of 'giftedness':

Advanced intellectual ability
A high degree of creativity
Heightened sensibilities

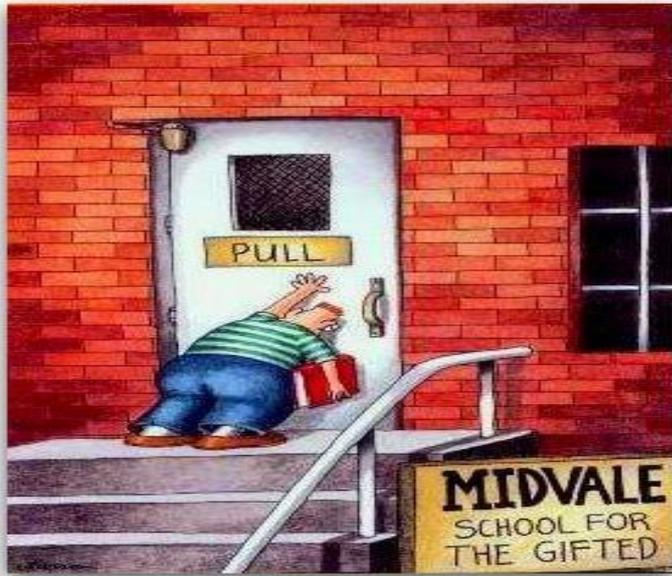
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A Gifted and Talented child can absorb, synthesize and analyse information easily. They can use logic and critical thinking in very complex ways. They are curious, and tend to have a more keenly developed sense of justice, and better memories than others their age.

Giftedness as a Special Need

Slide 5: Gary Larson Cartoon



In academic terms, these children need an appropriate challenge. Like all children, they get bored when they are not challenged, they will – understandably – be bored by what is presented to them in a school system that does not differentiate for their needs. In a typical classroom setting, these children are not learning *how* to learn, so their natural proclivity for problem solving (which is one of the ways intelligence is measured) is not being met.

Slide 6: Lists of Differences

The Bright Child	The Gifted Child
Answers questions	Questions answers
Pays attention	Gets involved physically & mentally
Is interested	Is extremely curious
Enjoys the company of similar-aged children	Enjoys the company of (much) older children and adults
Readily takes in information	Processes information and applies it more broadly, with greater complexity and / or in unique ways

Seeks clear, fast solutions	Explores problems in a deep, analytical way
Has a unique talent	Has many talents (polymath)
Likes to finish a project	Enjoys the process as much as the end product
Is self-satisfied	Is highly self-critical perfectionist (can lead to procrastination)
Is insightful	Is extraordinarily intuitive

There are a number of differences between children who are highly intelligent, and children who are gifted, as detailed on this slide.

The special needs of gifted children are social and emotional as well as academic. Sure, they learn quickly and easily – and remember what they have learnt; but they are also highly self-critical, and hold themselves to a higher standard than most of the rest of us. They also have difficulty switching off. Their brains are constantly whirring – analysing situations, problem-solving and coming up with ideas. And, sometimes, coming up with new problems.

Gifted individuals are born with unique brain functioning – a true cognitive difference – which must be addressed in their education, if it is to be in any way effective. As I’ve mentioned earlier, they are not simply smarter – they think differently, they learn differently, they perceive differently, and they sense differently. Their learning needs, much like students with other special learning needs, must be addressed in order for them to receive an education that is truly human rights compliant.

When children have disabilities, their access to special education services is determined on the basis of *need*; if the children need a service, they are generally regarded as having a right to one. With gifted children, however, access to special provisions is often based on a determination that they *deserve* these special services. As well as that, Colangelo and Davis in their ‘Handbook of Gifted Education’, note that ‘Some resent giving educational privileges to those already basking in talent’. I would argue, however, that if education is a right, it cannot simultaneously be a privilege.

Slide 7 :



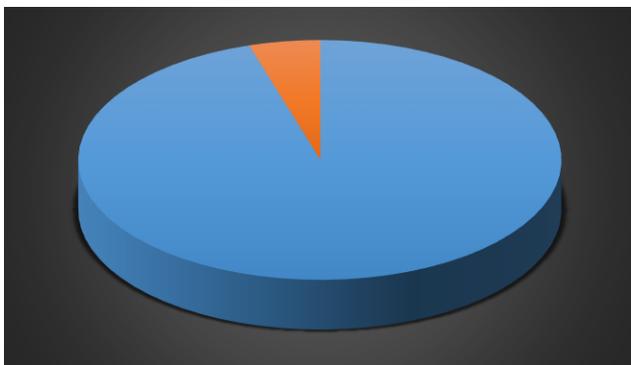
We tend to have the attitude of ‘well, sure it’ll all work out in the end’. For a lot of them, it doesn’t work out in the end and they end up underachieving greatly, and what do we say then? ‘Well, they weren’t that smart to begin with’. I can’t agree with that. The reason they underachieve is because we never did anything for them in the first place, to allow them to fulfil their potential.

Dr Colm O’Reilly, Director of the Centre for Talented Youth in Ireland says: “We tend to have the attitude of ‘well, sure it’ll all work out in the end’. For a lot of them, it doesn’t work out in the end and they end up underachieving greatly, and what do we say then? ‘Well, they weren’t that smart to begin with’. I can’t agree with that. The reason they underachieve is because we never did anything for them in the first place, to allow them to fulfil their potential.”

Gifted children who do not have their special educational needs met often fail; I am aware that that’s an emotive word, so I used it advisedly. Some gifted students can and will adapt to a less-than-optimal learning environment. Many can’t and won’t, and their lack of school achievement is a direct reflection of their inability to learn in a regular classroom setting. Their grades suffer, which then pushes them further away from fulfilling their potential.

Legislation

Slide 8: Ireland + Graph showing 5% as a proportion of the school-going population.



Now, to return, specifically, to the issue in the Republic of Ireland: The Irish rely on the British definition, which states that ‘Gifted’ refers to ‘learners who meet the published eligibility criteria for the top 5% nationally’. Five percent, in this instance, equates to 42,530 children which is a significant number of the school-aged population not having their needs met, and – crucially – not having their human rights respected.

Why am I saying that the education provided in Ireland is *not* human rights compliant in this area? Well, I suppose the first place to look is the legislation.

Slide 9:

The Education Act (1998)

7. (1) Each of the following shall be a function of the Minister under this Act:

- (a) to ensure, subject to the provisions of this Act, that there is made available to each person resident in the State, **including** a person with a disability or who has **other special educational needs**, support services and a level and quality of education **appropriate to meeting the needs and abilities of that person**

(emphasis added)

The Irish Education Act of 1998 formed the legislative framework for the provision of education at first and second levels in the Republic of Ireland. This piece of legislation places a legal onus on the government to ensure that **appropriate education and support services** are available to **all** children enrolled in schools across the country.

Slide 10:

The Education Act, 1998

“...the educational needs of students who have a disability and the educational needs of exceptionally able students.”

The Education Act, 1998 is further useful in as much as it defines certain key terms in education. ‘Special educational needs’, according to the Act, ‘means the educational needs of students who have a disability **and the educational needs of exceptionally able students**’.

So there we are, exceptionally able children, recognised in legislation as having special educational needs that must be supported. At least, they were so recognised in 1998.

The Education for Persons with Special Educational Needs Act, 2004 dissolved the National Council for Special Education, and also omitted the term ‘exceptionally able’ from the legislation.

This cynical move effectively denies the special education needs of exceptionally able children. It further denies them a legal instrument which unequivocally acknowledges their human rights in this area; and removes from them access to a legal instrument which stresses the burden of provision of access to these rights on the Irish Government. All of which means that the current legislation around the provision of education for gifted students is not human rights compliant.

Slide 11:

Education (Welfare) Act, 2000

“...an environment that encourages children to attend and participate fully in the life of the school.”

The Education (Welfare) Act of 2000 charges the National Education and Welfare Board (now known as TUSLA) with the promotion and fostering, of ‘an environment that encourages children to attend and participate fully in the life of the school’. Without provision for their special education needs, gifted children cannot participate fully in the life of the school, and, therefore, suffer discrimination and exclusion.

Indeed, schools that do not cater to the very specific needs of gifted children are failing to provide ‘an environment that encourages children to attend’ because children whose needs are not being met are reluctant to actually go to school in the first place.

European Legislation

Moving to European legislation, it is worth noting that the European Convention on Human Rights does refer – in Article 2 – to the right to education, but it does not expand on what, exactly, that right encompasses. There is no mention of a ‘minimum standard’ nor is there mention of an education that promotes and supports the possibility of fulfilling potential.

Of course, Article 14 of the ECHR does make reference to the prohibition of discrimination but without a clear reference in the Convention to the type of education one can expect, one cannot mount a case for discrimination.

Slide 12:

Thlimennos v Greece (2000)

“(…) is also violated when states, without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.”

(Para 44)

That said, however, we must remember that the Court has previously considered that the right ‘is also violated when states, without an objective and reasonable justification fail to treat differently persons whose situations are significantly different’ (para 44 of the original judgement). It’s fairly obvious that children who are gifted are operating in a situation that is significantly different to the rest of the population, and I would contend that these findings strengthen the argument against the Irish government.

At least ten European states have taken it upon themselves to draft specific legislation governing the education of gifted children.

Slide 13: In Switzerland, for example, gifted students are recognised as having special educational needs. Gifted students in Spain are explicitly mentioned in the Royal Decree 696/1995 and the Organic Act on the Quality of Education. Hungary and Romania also have several legal instruments that refer to the support of special education for gifted students.

In the UK, Gifted and Talented children are recognised by OFSTED as having special educational needs. Their needs are addressed in the same way as those of other SEN children.

Slide 14: Quite rightly, these children are noted to be ‘vulnerable to underachievement’. As mentioned earlier, this is an issue that crops up time and time again with regard to Gifted and Talented children; when their SEN are not recognised and supported, they become

underachievers. Losing interest in an educational system that has no interest in them, they stop engaging, they show up physically for class but don't participate, or are disruptive, refuse to do their homework, or do it shoddily, withdraw from interaction with their classmates and – in some cases – refuse to go to school altogether.

Slide 15:

Education (Additional Support for Learning) (Scotland) Act 2004.

“A child or young person has additional support needs for the purposes of this Act where, for whatever reasons, the child or young person is, or is likely to be, unable, without the provision of additional support, to benefit from school education provided or to be provided for the child or young person. (Section 1).”

2004 was a busy year for the passing of legislation around education on these islands. That was the year Scotland passed the Education (Additional Support for Learning) (Scotland) Act 2004. It was updated seven years ago, and the term Special Educational Needs (SEN) was replaced with the term Additional Support for Learning (ASL). This was because the term ‘Special Education Needs’ had become too firmly associated with pupils who had disabilities and difficulties. This new term was accompanied by a new definition of what it meant to require "additional support".

Slide 16:

“All children and young people benefit from school education when they can access a curriculum which supports their learning and personal development. More able children or young people may require a more challenging education provision than that of their peers.”

(Code of Practice, 2005, Section 2.6, p. 21)

The Act explicitly ties the education of able pupils into a reconceptualised special education arena. The Code of Practice (2005), which accompanied the Act, clarified this wider concept of additional support for learning

Slide 17:

Opinion: ‘Unleashing the potential of children and young people with high intellectual abilities.’



Ireland is a member of the European Economic and Social Council (EESC), which often published Opinions on pertinent issues. These Opinions allow institutions to ‘make a statement in a non-binding fashion (...) without imposing any legal obligation’, but they are useful indicators of the temperature of Member States with regard to the issue at hand, and the direction in which States are headed.

In January of 2013, the EESC passed an Opinion on the education of Gifted students. In this Opinion, the EESC recommends that the European Commission and Member States support research that would tap the potential of gifted children and young people in a wide variety of fields.

Slide 18: Europe 2020 Strategy Cover



- The training of teaching staff with regard to gifted students
- Pooling of procedures for the early detection of high intellectual abilities
- Designing and implementing educational measures

With an eye on the educational objectives of Europe 2020, this Opinion further recommended that Member States give greater consideration to their existing models for, and experience in, working with highly gifted children.

The Committee also recommends – among other things – the training of teaching staff with regard to gifted students, pooling of procedures for the early detection of high intellectual abilities, and designing and implementing educational measures aimed at gifted students. Currently, the Republic of Ireland’s legislation is non-compliant with any of these recommendations.

UN Conventions

Slide 19: CRC

UN Convention on the Rights of the Child

“Article 29 1. States Parties agree that the education of the child shall be directed to: (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential.”

As you know, the United Nations Convention on the Rights of the Child has been ratified by 192 countries, including the Republic of Ireland. It specifically mentions the right ‘to develop to the fullest’ and a lack of provision for the special educational needs of all children is not compliant with this right.

Slide 20: CRC Article 28 & Article 13.1 of the International Covenant on ESCR

Convention on The Rights of the Child, Article 28:

“States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity”

International Covenant on Economic, Social and Cultural Rights, Article 13.1:

“States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity...”

The language in Article 28 and Article 13.1 of the International Covenant on ESC Rights is very similar. The key phrase in both of these articles is ‘equal opportunity’; the removal of any reference to Gifted and Talented students in Irish legislation immediately dismisses any pretence to equal opportunity for these children.

Slide 21: Article 29 of the CRC & Article 12 of the ESCR

UN Convention on the Rights of the Child

“**Article 29:** States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential”

Covenant on Economic, Social and Cultural Rights

“**Article 12:** The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

Clearly, the Irish government is in breach of Article 29 with regard to Gifted and Talented students – whose rights to access support and facilities which will help them develop to their fullest potential are not being upheld. The CRC also supports non-discrimination – yet Gifted and Talented children in Ireland are discriminated against because of the lack of provision for an education that supports the ‘development of their talents, mental and physical abilities to their fullest potential’.

The legislative cessation of recognition of giftedness as a special need in 2004 puts the Irish government in breach of both Articles 29 of the CRC and 12 of the Covenant on Economic, Social and Cultural Rights.

A child’s personal dignity and health are affected if that child is denied appropriate education. For a Gifted and Talented child, this means that not receiving the opportunity to learn at their own pace leads to stress, which often manifests physically (stomach pains, headaches, skin conditions etc.). Their mental health can also be adversely affected when they don’t receive appropriate learning supports – their sense of self-esteem suffers, their sense of identity is

compromised, and they battle on a daily basis to be the square peg that fits into a round hole. Not having their special educational needs recognised and supported often leads to bullying, which leads to further stress. The rights of Gifted and Talented children to an appropriate education are a part of the right to ‘develop to the fullest’.

Slide 22: Article 2.1 of the Covenant on ESCR

Covenant on Economic, Social and Cultural Rights

“**Article 2.1:** Each State Party to the present Covenant undertakes to take steps (...) to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

In spite of being a signatory to the Covenant on ESC rights, Ireland has no legislative measures to safeguard the right to special educational supports for Gifted and Talented children.

Slide 23: Illustrating how many teacher training colleges offer instruction in Gifted and Talented education. (17 Institutions, 0 offering G&T specific training)

In fact, primary research I undertook for an advocacy group in 2015, revealed that not one of the seventeen teacher-training college provides any instruction in the education of Gifted and Talented children. Not one course, module or seminar in the entirety of their learning to be teachers. How can any state that doesn’t train its teachers appropriately purport to provide an equal education for all its children?

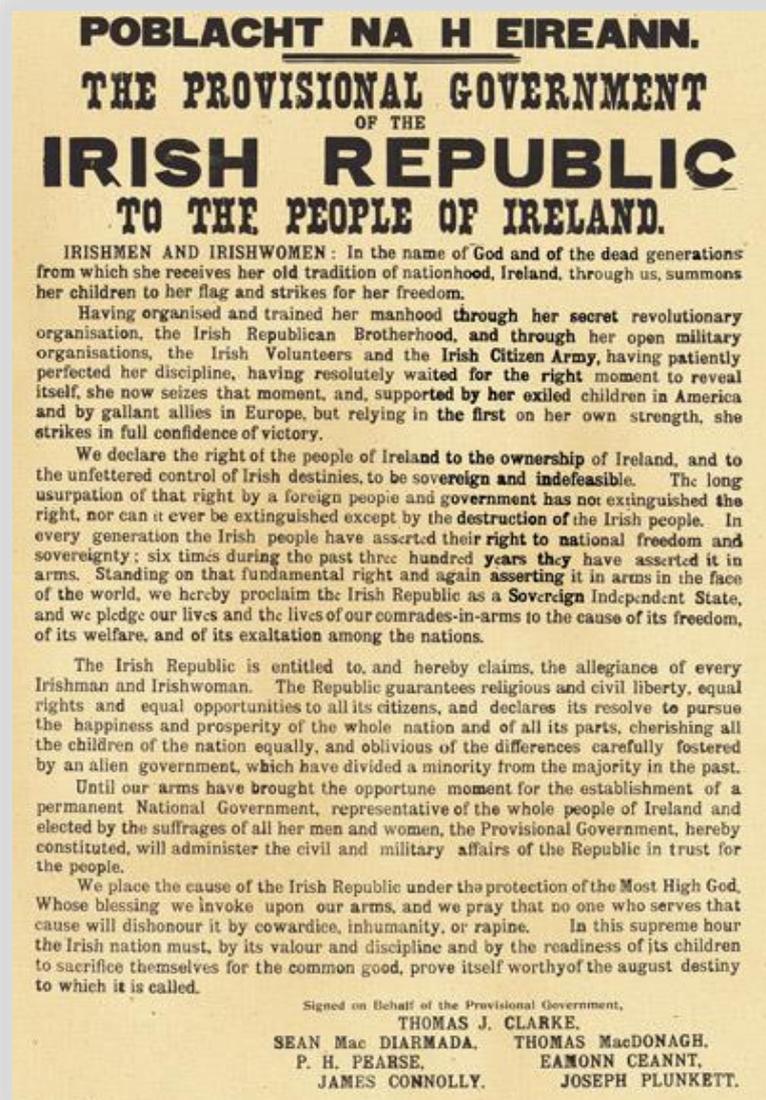
None of this has been lost on advocates for children in Ireland; The Children’s Rights Alliance brought the issue up in its submission to the UPR in 2011, and will be bringing it up again in May of this year, because the government has done nothing to address the issue.

It is interesting to note that the Republic of Ireland has not signed the UNESCO Convention against Discrimination in Education. Practically every Article of this Convention supports and articulates equality of access to education as well as equity in education.

Denying this cohort of students the right to access education that addresses their special educational needs, is a clear breach of their human rights under several legal instruments.

On a human level, these children deserve to have their special needs met not because among them might be the child who will help find a cure for cancer; or the child who will devise the solution to world hunger; or the child who will be the next Mozart or the next Picasso or the next Amal Clooney. These children deserve to have their special needs met because they are children. Gifted and Talented children are entitled to have their needs met the same as any other child. It's time the Irish government sat up and took its responsibility towards these children, stopped effectively excluding them from formal, state education and nourished them and their abilities.

Slide 24: Proclamation



This year, Ireland is commemorating the 1916 Rising and the Proclamation of the Irish Republic. One of the key phrases of that document is a line vowing to ‘cherish all the children of the nation equally’.

Slide 25: Kashmira

It would be wonderful if that sentiment expressed one hundred years ago was honoured so that Kashmira and all the children in Ireland like her would have the opportunity to access an education, in an Irish school, that supports them in achieving their potential.

Slide 26: Selected References.

Selected References:

Brown SW and others, ‘Assumptions Underlying the Identification of Gifted and Talented Students’ (2005) 49 *Gifted Child Quarterly* 68

Cross TL, ‘Social and Emotional Development of Gifted Children: Straight Talk’ (2009) 32 (2) *Gifted Child Today*

DfES, ‘Identifying Gifted and Talented Learners – Getting Started I Identifying Gifted and Talented Learners – Getting Started’ (2008)

European Union, ‘Regulations, Directives and Other Acts’ (*European Union*, 19 April 2010)

‘Gifted and Talented Children in (and out Of) the Classroom A Report for the Council of Curriculum, Examinations and Assessment (CCEA)’

Janet Szabos Robbins, ‘The Gifted and Talented Child’ Maryland Council for Gifted & Talented, Inc.