

LEGISLATIVE DEFINITIONS AROUND LEARNERS VULNERABLE TO EXCLUSION

Country Report: Germany



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You may cite this publication as follows: European Agency for Special Needs and Inclusive Education, 2023. *Legislative Definitions around Learners Vulnerable to Exclusion – Country Report: Germany*. Odense, Denmark

The information in this document was current in November 2022.

See the [Legislative Definitions around Learners Vulnerable to Exclusion web area](#) for further information about this activity.



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INTRODUCTION

Since the foundation of the European Agency for Special Needs and Inclusive Education (the Agency) in 1996, there have been key conceptual changes in the thinking behind and policy priorities for developments on the journey towards inclusive education.

A first shift was from the concept of special educational needs (SEN) to special needs education (SNE). This represented a move away from focusing on the learner (special educational needs), towards a focus on the provision that learners who experience difficulties at school may need (special needs education). The term '**special needs education**' widened the focus beyond learners with disabilities to include learners who appeared to be failing in school for a wide variety of reasons – for example, children living in poverty or those from different linguistic or cultural backgrounds. Special needs education, however, continued the deficit or medical model that still saw the problems as being within the learner.

There has never been an agreed definition of SEN or SNE that could be used across countries. The groups of learners considered to have **special needs** requiring additional provision largely differ across countries.

Inclusion requires a move away from a concern with the categories a learner may or may not fall into, to focus on the barriers some learners experience that lead to marginalisation and exclusion. This leads to an overall focus on **learners vulnerable to exclusion** by the education system. Agency work focuses on supporting the development of **inclusive education** systems in its member countries to ensure every learner's right to inclusive and equitable educational opportunities. This aim is directed at **all learners**, while recognising the need to specifically address specific **learners vulnerable to exclusion**.

Agency work acknowledges that every learner has their own unique experiences of discrimination and/or barriers to learning. All aspects of Agency work aim to consider everything and anything that can marginalise learners and increase their chances of exclusion (European Agency, 2021¹). This requires a move away from a medical approach and labelling with separate provision for different groups, towards a rights-based approach that focuses on the barriers within the system ([European Agency, 2022a](#)).

Central to this commitment and understanding of inclusive education are the legal definitions or descriptions in policy that Agency member countries use to identify and potentially label learners to make additional provision and resources available for them based on their needs.

The Agency also acknowledges the growing need to take account of **intersectionality** – the interconnected nature of all social categorisations – when considering the needs of all learners. Intersectionality is the understanding that a person, group of people,

¹ European Agency for Special Needs and Inclusive Education, 2021. *Multi-Annual Work Programme 2021–2027 Parameters*. Odense, Denmark. Unpublished



organisation or social problem is affected and impacted upon by a number of pressures, forces, levers, discriminations and disadvantages. It considers everything and anything that can marginalise learners and increase their chances of exclusion. This includes, but is not limited to:

... gender, remoteness, wealth, disability, ethnicity, language, migration, displacement, incarceration, sexual orientation, gender identity and expression, religion and other beliefs and attitudes ([UNESCO, 2020](#), p. 4).

The Agency's current [Multi-Annual Work Programme](#) (2021–2027) highlights the concept of intersectionality.

The Legislative Definitions around Learners Vulnerable to Exclusion activity

[Legislative Definitions around Learners Vulnerable to Exclusion](#) aimed to collect information from Agency member countries focusing on legislative definitions around learners vulnerable to exclusion in education systems. It collected evidence to indicate where countries currently stand regarding the **definition of** and **approach to** learner groups and risk factors within inclusive education systems. There was a particular focus on legislative definitions and descriptions around a broad vision of inclusive education for **all learners**.

Specifically, the activity examined how Agency member countries legally define and describe learners' needs in terms of considering them as groups of **learners with special needs** or **learners vulnerable to exclusion**. It also considered how **anti-discrimination legislation** and **legislation for inclusive education** define and/or describe learners' needs, and explored the concept of **intersectionality**.

In the activity, the term '**learners' needs**' is understood as a way to highlight a requirement for educational provision and/or support without applying a label based on an external factor that in some way describes or impacts upon an individual or group of learners. Using the non-categorical term 'learners' needs' would be an **ideal** approach for countries to take and is in line with the Agency position on inclusive education systems ([European Agency, 2022b](#)).

The **reality** – as evidenced by analysing countries' legislative definitions or descriptions in policy around learners' needs – clearly indicates that legislation and policy documents describe learners' needs with less of a focus on learner requirements for provision and support, and more on externally generated labels that identify groups of learner characteristics.

The activity uses the terms '**categories of groups of learners**' and '**groups of learners**'. They refer to the groups of learners identified through the analysis conducted in this activity. However, it must be made clear that references to categories of groups of learners do not in any way endorse or promote the labelling of learners. The term 'groups of learners' has been applied as a way of investigating where and how country legislation and policy make distinctions between different groups of learners who may be vulnerable to exclusion.



As with the journey towards inclusive education, legal definitions may be developing towards **learners vulnerable to exclusion** and the consideration of **intersectionality**. Therefore, to respect the context of all countries, information on **special needs** categories is considered, as well as definitions considering **all learners**.

Please refer to the [Legislative Definitions around Learners' Needs – Policy Brief](#) for more information about the activity.

How the country reports were prepared

Agency team members compiled evidence from 35 Agency member countries.

Agency team members collected the information in this country report from Agency reports, the [country information pages](#) and [Eurydice](#) sources. The extracts focus on identifying **legal definitions** around learners vulnerable to exclusion. They do not cover the different forms of provision for these learners. However, it is recognised that in some cases there may be *operational* definitions rather than *legal* definitions.

The extracts are considered evidence of a *legal definition* and are included if they explain how a term is understood within legislation and policy. In some cases, there may not be an extract that provides this information; however, the legal documents provide indirect evidence that a legal definition may exist. Where this indirect evidence was found, it has been included.

It is to be expected that there may not be information available in response to every question, as country contexts differ and each country is at a different stage on the journey to develop inclusive education. Therefore, a wide range of questions was selected to allow evidence to be collected from every Agency member country.

Each of the first three sections begins by clarifying key terminology.

This report includes three sections with information that the Agency team compiled:

1. [Legal definitions of special needs](#)
2. [Legal definitions of learners vulnerable to exclusion](#)
3. [Legal definitions of inclusive education](#).

Section 4 contains [additional questions](#) that country representatives could choose to answer. Country representatives also had the option to review and amend sections 1–3.

The completed country reports served to identify trends within and across countries on legal definitions related to learners vulnerable to exclusion. The activity report, [Legislative Definitions around Learners' Needs: A snapshot of European country approaches](#), explains how the country reports were used for the analysis and presents the findings.



LEGISLATIVE DEFINITIONS AROUND LEARNERS' NEEDS IN GERMANY

1. Legal definition of special needs

A learner with special needs is understood as a learner who:

... for a wide variety of reasons, require[s] additional support and adaptive pedagogical methods in order to participate and meet learning objectives in an education programme. Reasons may include (but are not limited to) disadvantages in physical, behavioural, intellectual, emotional and social capacities ([UNESCO Institute for Statistics, 2012](#), p. 83).

1.1 There is a legal definition of special needs

Evidence

Special needs education means specific support for learners with disabilities. With respect to all organisational aspects, special needs education in the Federal Republic of Germany exclusively refers to special needs in the context of disability. Within the general system of support, a combination of differentiation measures support:

- learners experiencing problems as a result of certain disabilities and/or in need of additional educational support because of problematic situations;
- learners with special educational needs relating to development (*Schüler mit sonderpädagogischem Förderbedarf*).

Source: [Country information](#)

1.2 The legal definition of special needs is found in laws and policies

Evidence

State Law

Source: [Country information](#)

1.3 The legal definition of special needs is found in strategies and programmes

Evidence

Kultusminister Konferenz (KMK) recommendation from 1994

Source: [Country information](#)

1.4a Does your country's legal definition of special needs specify particular groups of learners?

Yes.



1.4b Which specific learner groups does the legal definition of special needs address?

Specific learner groups	Evidence
Blind/visual impairment, deaf/hearing impairment	State law
Intellectual disability	State Law
Physical disability	State Law
Learning difficulties	State Law
Behavioural problems	State Law
Speech impairment	State Law
Illness/medical needs	State Law
'...learners who already display very good performances...'	Support Strategy for High-Achieving Pupils (<i>Förderstrategie für leistungsstarke Schülerinnen und Schüler</i>). Source: Eurydice
Children with disabilities	Basic Law (Grundgesetz, Art. 3, R1), Book Twelve of the Social Code (Sozialgesetzbuch XII – Sozialhilfe) and the Länder constitutions (R14–29). More detailed provisions are set out in the Länder school legislation (R70, R72, R74, R76, R78, R81, R83, R85, R87–88, R90, R92, R98, R100–102)
Children with autism spectrum disorder – Not a legal definition of special needs. Children with this disorder can be diagnosed as having an official special educational need, but if they don't fit, they are entitled to 'preventive measures' support from specialist teachers.	Recommendations for education and teaching of children and young people with autistic behaviour

2. Learners legally considered vulnerable to exclusion from education

Within this document, the term **learners vulnerable to exclusion** encompasses all learners whose educational experience is 'impacted upon by a number of pressures, forces, levers, discriminations and disadvantages' (European Agency, 2021, p. 6). These learners may or



may not fall into categories of special needs and a special type of provision may or may not be available to support them.

Although there may not be an official definition of learners vulnerable to exclusion, learner groups which are addressed in different legal documents as receiving support and not identified as learners with special needs are listed here.

2.1 There is a legal definition of learners vulnerable to exclusion from education

Evidence

Although no legal definition was found, sources listed in 2.4b imply groups of learners considered vulnerable to exclusion from education. Please amend if there is a legal definition.

2.2 The legal definition of learners vulnerable to exclusion from education is found in laws and policies

Evidence

No information.

2.3 The legal definition of learners vulnerable to exclusion from education is found in strategies and programmes

Evidence

See 2.4b

2.4a Do your country's legislation, policies or strategies specify particular groups of learners?

Yes.

2.4b Which specific learner groups are legally considered to be vulnerable to exclusion from education across legislation, policies or strategies?

Specific learner groups	Evidence
'... aimed at day-care facilities for children with an above-average proportion of children with a special need for language education and support.'	Federal programme Language-Kitas: Because language is the key to the world (<i>Sprach-Kitas: Weil Sprache der Schlüssel zur Welt ist</i>) Source: Eurydice
'... needs of refugee children and youths...'	Education through Language and Writing (<i>Bildung durch Sprache und Schrift</i> (BiSS)) Declaration of the Standing Conference of the Ministers of Education and Cultural Affairs of young refugees through education Source: Eurydice



Specific learner groups	Evidence
'...pupils leaving school without a general education qualification in all sectors of education.'	'Action framework to reduce the number of pupils leaving school without a first general education qualification, to secure transition from the lower-secondary school to the next educational level or to vocational education and training in the dual system and to lower the number of trainee drop-outs' (<i>Handlungsrahmen zur Reduzierung der Zahl der Schülerinnen und Schüler ohne Schulabschluss, Sicherung der Anschlüsse, Verringerung der Zahl der Ausbildungsabbrecher</i>) Source: Eurydice
Learners 'from a weak socio-economic background / who are socially and economically disadvantaged'	Socio-economic disadvantaged backgrounds School gives you strength (<i>Schule macht stark</i>) initiative Source: Eurydice
'...children and young people whose life is characterised by continual moves and a consequent lack of continuity in their school development'	This group of learners is mentioned in a paper by the standing conference of the ministers of cultural affairs of the Länder School diary for children of travelling professionals Source: Eurydice
Refugees	Integration as an Opportunity – Together for More Equal Opportunities. Joint Declaration by the Conference of Ministers of Education and Cultural Affairs and the Organisations of People with a Migration Background

2.5a Does anti-discrimination and equal rights legislation address different learner groups in the education system?

Yes.

2.5b Which specific learner groups are listed in anti-discrimination and equal rights legislation?

Specific learner groups	Evidence
This law addresses all people, not only learners, in all contexts of life, e.g. access to work, healthcare, education, etc.	Allgemeine Gleichstellungsgesetz (in English: General Act on Equal Treatment), Section 1, Purpose: 'The purpose of this Act is to prevent or to stop discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation'



3. Legal definition of inclusive education

The Agency views **inclusive education** as:

... a systemic approach to providing high quality education in mainstream schools that effectively meets the academic and social learning needs of all the learners from the school's local community ([European Agency, 2015](#), p. 2).

In inclusive education:

Learners are placed at the centre of a system that needs to be able to recognise, accept and respond to learner diversity. Inclusive education aims to respond to the principles of efficiency, equality and equity, where diversity is perceived as an asset. Learners also need to be prepared to engage in society, to access meaningful citizenship and to acknowledge the values of human rights, freedom, tolerance and non-discrimination ([Soriano, Watkins and Ebersold, 2017](#), p. 6).

3.1 There is a legal definition of inclusive education

Evidence

For the State of Hesse:

Organisation of inclusive education:

The school is to be organised in such a way that the common education and learning of all pupils is realised to the greatest possible extent and that each pupil is supported appropriately in physical, social and emotional as well as cognitive development, taking into account the individual starting position. It is the task of the school to take preventive measures to counteract impending performance failure and other impairments in learning, language and physical, social and emotional development. Pupils with partial performance disorders are entitled to individual support. Highly gifted pupils are to be supported in their development through counselling and supplementary educational offers ([Hessian School Act](#) of 1 August 2017, §3, (6)).

Inclusive education as the standard form of education for learners with special educational needs: 'Inclusive education with a need for special education takes place as a standard form in the mainstream school' ([Hessian School Act](#) of 1 August 2017, §51, (1)).

3.2 The legal definition of inclusive education is found in laws and policies

Evidence

Ordinance on the Teaching, Education and Special Needs Education of Pupils with Impairments or Disabilities: [Verordnung über Unterricht, Erziehung und sonderpädagogische Förderung von Schülerinnen und Schülern mit Beeinträchtigungen oder Behinderungen \(VOSB\) Vom 15. Mai 2012, § 12 Gestaltung des inklusiven Unterrichts](#)



3.3 The legal definition of inclusive education is found in strategies and programmes

Evidence

[Recommendations and Resolution](#) from the KMK, 20 October 2011.

3.4 Do legal documents related to inclusive education refer to all learners, specific learner groups, or both all learners and specific learner groups?

Legal documents refer to both all learners and specific learner groups.

4. Additional questions

4.1 Are there other specific learner groups that receive additional support within the education system that have not been accounted for in this document? If yes, which legal documents (legislation, policies or strategies) address them?

No information.

4.2a Is the term or concept of ‘intersectionality’ mentioned in legislation?

Yes.

4.2b Share details on how the concept is mentioned in the legislation

The [Allgemeines Gleichbehandlungsgesetz](#) mentions that the law’s aim is to prevent or eliminate discrimination on grounds of racial or ethnic origin, gender, religion or belief, disability, age or sexual identity (§1, Aim of the law).

4.3a Are there any proposals/plans for changes in legislation focused on learners vulnerable to exclusion?

No information.

4.3b What proposals or plans exist for changes in legislation focused on learners vulnerable to exclusion?

No information.

4.4 Do you have any further comments?

No information.