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Diverging Paths How the UN Disability Convention Affects School Reforms in Germany

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Committing itself to ensuring an “inclusive education system,” Germany ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2008. To honor that commitment, however, the country must initiate sweeping reforms. In international comparison, Germany has a particularly high proportion of students attending special schools. According to human rights experts, the systematic segregation of children with special educational needs outside general education is fundamentally at odds with the UNCRPD.

But ratifying the UNCRPD does not automatically translate to more inclusion. In Germany, with its stratified education system and its long tradition of segregated special schools, reforms are faced with major barriers. The existence of separate schools for disabled students has long been justified based on the belief that children with special educational needs need to be schooled in a “protected” space. Likewise, the special education teaching profession has a strong interest in the continued existence of special schools, as closing these schools would mean professional insecurities, not least concerning their work conditions and salaries. Being the experts on this issue, they have successfully articulated their professional interests and beliefs to preserve special schools.

Moreover, a fundamental reform would involve considerable reorganization and extra costs, at least for a transitional period. Administrative routines (e.g. determining a student’s level of educational need) and pedagogical practices must be adapted. The training of both special and general educators must be reformed, and the current teaching staff has to be prepared for team-teaching. All this has to be done in times of tightening public budgets and a lack of funding from the federal government due to the so-called “ban on cooperation” (*Kooperationsverbot*), which bars the federal government from involvement in schooling or education policy. Thus, policymakers are well aware of the upfront costs of integration and inclusion, whereas the considerable follow-up costs for individuals disadvantaged by the special education system and for society as a whole have yet to be fully considered.

Ultimately, the call for inclusive education contradicts the stratified structure of Germany’s education systems. The key principles of inclusion – that diversity is to be valued and that each student should be supported to reach his or her individual learning goals – challenge the fundamental assumption of the stratified school system, according to which students, as a matter of principle, achieve better learning outcomes in supposedly homogeneous classrooms – an assumption proven false by various international and local studies. Stratified schooling, by its very design, is meant to keep classroom diversity at a minimum by distributing students across different school types with various degrees of academic rigor, supposedly in accordance with their innate talent. Within such a system, special schools are required to accept all those students who have been rejected by the regular schools for not conforming to norms and expectations regarding who can be educated and what is “normal” – ideas and standards upon which general schools and their curricula are implicitly based. Abolishing special schools, therefore, challenges Germany’s education system to transform its guiding principles and institutionalized structures and practices, because the provision of “special assistance” to students would have to take place *within* the regular schools. This implies a paradigm shift from inter-school segregation to

Summary: The United Nations Convention on the Rights of People with Disabilities, ratified in Germany in 2008, mandates “inclusive” education. This necessitates profound reforms because the ambitious goals of the Convention challenge the segregated special education systems of the *Bundesländer* and ultimately stratified schooling as a whole. However, the implementation of inclusive reforms faces serious obstacles. By comparing Schleswig-Holstein and Bavaria, we show how these can be overcome and what role the UN Convention can play in this regard.

intra-school differentiation as exemplified in comprehensive schools.

Implementing the UNCRPD, therefore, inevitably involves the debate about school structure and thus one of the core conflicts in German school policy, which has generated fierce political controversies and blocked reforms for decades. In the years ahead, German education policymakers must face the question: How, if at all, can the education system be reformed to accommodate the principles of inclusive education mandated by the UNCRPD without making fundamental changes to the structural setup of the German school system?

For decades, the track record of the nation's special schools has been disastrous. About three quarters of all special education students leave school without a diploma. Even its graduates have limited opportunities to successfully transition into vocational training and the labor market; many spend years fighting the stigma of being "abnormal." And yet the special education system was rarely fundamentally challenged in any German state prior to the ratification of the UNCRPD. Considering the existing barriers to reform, the path towards inclusive education is a rocky one.

Despite these obstacles, the system has seen some change over the years. Since the 1970s, reform-minded educators and policymakers in some German states succeeded in establishing integrative forms of special education that exist alongside the segregated special schools. Integration, in this case, means that special needs students are taught at general schools, which, however, is not to be confused with the more encompassing sense of inclusion mentioned above. To understand why such efforts have been more successful in some states than others, it is worth taking a closer look at Schleswig-Holstein, a state with a comparatively strong record of inclusive schooling – especially compared to Bavaria, one of the last states to enter this process.

The best way to illustrate the divergent developments in these two states is to look at the percentage of students attending special schools at the primary school level, where integrative forms of schooling were often introduced first. A high level of segregation at the primary level, therefore, indicates a particularly high degree of stability of special schooling. When examining change over time, we see opposite developments: whereas the percentage of students attending special schools in Schleswig-Holstein decreased continuously over the years, in Bavaria special schooling has increased, even after ratification of the UNCRPD. Why?

In Bavaria, policymakers have long declined support for the development of integrated schooling. The prevailing skepticism in the State Ministry of Education has hindered reform-minded teachers and school administrators to build the networks necessary for a systematic exchange of information and advocacy. Experiments in inclusive schooling have not often spread beyond pilot projects or local exceptions. From the early 2000s, tentative efforts to expand school integration in Bavaria arose; however, the changes in school legislation occurring at that time were primarily aimed to match the legal situation with current inclusive education practice, which had extended beyond existing legislation. Moreover, even today, integration in Bavaria continues to be permitted only within the boundaries of the existing stratified school system.

The 2011 school law amendment somewhat extended the opportunities for integration, even making "inclusive education" the official developmental goal for all Bavarian schools. Yet the achievement-based system for gaining admission to secondary schools remained essentially the same for all students, including those with special educational needs. As a result, integration in Bavaria primarily takes place in the *Hauptschule*, the lowest and least well-regarded type of secondary school. The aforementioned obstacles to reform are thus particularly strong in Bavaria, and special schools continue to be a firmly entrenched part of the Bavarian school system.

In Schleswig Holstein, by contrast, senior-level school administrators have been pushing for integration for decades, and the state government made integration



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an official school policy goal as early as the late 1980s. To accomplish that goal, policymakers conducted a systematic analysis of the difficulties that might arise when implementing reforms of the special education system; in response, they launched a series of well-targeted measures. Important components in this regard included a variety of policies designed to ensure that special education teachers did not suffer any disadvantages as a result of working in integrative settings (e.g., they were allowed to count the time they spent commuting between regular schools as working hours) and to help minimize conflicts between general and special education teachers. Additionally, training and professional development opportunities for teachers working with special needs students in an inclusive setting were installed and accompanied by measures to raise public awareness and acceptance of school integration.

To keep the costs for expanding integration at a manageable level and thereby dispel budgetary concerns, Schleswig Holstein, unlike Bavaria, early on decided not to establish a costly dual structure featuring both special schools *and* integration. Instead, policymakers aimed for a long-term shift of special education into the state's regular schools, gradually turning special schools into "schools without students." Key lessons for this strategy were learned in a pilot project of the "State Support Center for Vision" (*Landesförderzentrum Sehen*) in Schleswig, which has been providing an integrated education for all visually impaired students since the 1980s. Last but not least, the introduction of *Gemeinschaftsschulen* – that is, schools that students of all achievement levels in grades 5 through 10 attend – as part of the 2007 school law amendment created favorable conditions for integration and inclusion, as schools of this type do not, for the most part, track students by ability or achievement.

Due to the divergent developments in these two German states prior to the ratification of the UNCRPD, the conditions for its implementation were very different. This has important consequences regarding the impact that the UNCRPD has had in the respective states. We find that it depends to a large extent on the scope and depth of prior reforms: In Schleswig Holstein, where school integration and inclusive education began as early as the 1970s and advanced continuously in the decades that followed, the UNCRPD supported ongoing reform processes. In Bavaria, by contrast, steps towards integrative schooling are still at the beginning, with qualitatively more ambitious inclusive education even less developed. Under such conditions, the UNCRPD may strengthen the position of reform-minded groups and boost the legitimacy of inclusive school development. But at the same time it unwittingly facilitates the mobilization of reform opponents, who may be capable of blocking important steps towards inclusive education, especially during the early stages that require extensive and careful cooperation.

In both states, the ratification of the UNCRPD helped strengthen groups, such as disability-related and parent associations, in their calls for inclusive education, providing them with new interpretative authority. They are now more heavily involved in political decision-making, often serving in an advisory capacity. However, by moving special education from its longtime marginal position to the center of education policy attention, the UNCRPD has also mobilized opponents of inclusive education who aim to preserve special schools and the stratified education system at large.

The UNCRPD's human rights character certainly increased the formal legitimacy of inclusive school development in both German states. But championing inclusion is often not much more than a rhetorical strategy, a mere symbolic shift. In extreme cases, the term *inclusion* is even reinterpreted in a way to make it suitable to legitimate existing structures and thus block true structural reforms. Some people often wrongly refer to integration and inclusion as one and the same concept, or refer to the special schools as part of an inclusive school system. In Bavaria, for example, the principle of "integration through cooperation" was simply renamed "inclusion through cooperation" after the UNCRPD took effect, despite the fact that nothing was changed regarding the contents or structures.

Thus, it will be necessary to continuously monitor and assess the medium and



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long-term implications of the UNCRPD on education systems in Germany. Much will depend on how the term *inclusion* is defined by the German courts and, most importantly, on whether this will lead to an individual legal entitlement to inclusive education, defined as being taught in a mixed-ability classroom within a regular school. Ultimately, a Federal Constitutional Court ruling must settle this question. Should that court favor the right to inclusive education in any neighborhood school, opponents could neither point to ideological concerns nor to the costs of inclusive education nor the organizational challenges involved to prevent this transformation in education in Germany. In that case, the most important obstacles to reform would be effectively eliminated.

However, waiting for the Federal Constitutional Court to issue a ruling on how to implement the UNCRPD would be a misguided strategy. Such a lawsuit, although already in preparation, may take many years to work its way through the court system – with an uncertain outcome. Thus, reform-minded actors should now, more than ever, make use of the window of opportunity created by the UNCRPD. Making inclusive school reforms a success, and thereby honoring the human rights commitment resulting from the UNCRPD, will require strong political will and, most importantly, a systematic, long-term strategy for overcoming the barriers that stand in the way of reform. While the UNCRPD has certainly raised awareness of the complex issues surrounding inclusive education, much will depend on how policymakers and professionals interpret its principles in the future – and whether they decide to follow the path selected by Bavaria or that developed by Schleswig Holstein.

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