

# **LEGISLATIVE DEFINITIONS AROUND LEARNERS VULNERABLE TO EXCLUSION**

**Country Report: Spain**



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



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## INTRODUCTION

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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, 2021<sup>1</sup>). 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,

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<sup>1</sup> 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

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[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

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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.



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# LEGISLATIVE DEFINITIONS AROUND LEARNERS' NEEDS IN SPAIN

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## 1. Legal definition of special needs

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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*

According to the 1990 General Education System Act (LOGSE), special education is no longer understood as education for a different kind of learner. Instead, it is understood as the set of material and human resources available to the education system to meet the needs, whether temporary or permanent, that some learners may have.

At present, the 2020 Organic Act of Modification of the Education Act (LOMLOE) follows the inclusive education criteria developed by the 2006 Education Act. It proposes a transversal approach aimed at ensuring that all learners have guarantees of success in education through a dynamic of continuous improvement of schools and greater personalisation of learning in order to eliminate barriers that limit their access, presence, participation and learning. The ultimate goal is to strengthen equity and the system's inclusive capacity.

Schooling for learners with specific learning difficulties is based on the principles of inclusion, participation, quality, equity, non-discrimination, effective equality in access to and retention in the education system and universal accessibility for all learners.

According to LOMLOE (2020), the education system shall have the necessary resources for the early identification of learners with special, temporary or permanent educational needs, so that they can achieve the general objectives established for all learners. To this end, the Educational Administrations will provide these learners with the necessary support from the time of their schooling or the identification of their need.

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

#### *Evidence*

LOMLOE, 2020, Articles 71 and 73.

The Educational Administrations will have the necessary means for all learners to achieve maximum personal, intellectual, social and emotional development, as well as the general objectives established.



Learners who have SEN are those who face barriers that limit their access, presence, participation or learning, arising from disability or serious behavioural, communication or language disorders, for a period of their schooling or throughout it, and who require certain supports and specific educational intervention to achieve the learning objectives appropriate to their development.

Schooling and educational intervention for learners with SEN shall be as inclusive as possible.

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

#### *Evidence*

Territorial Co-operation Programmes, Programme for Educational Orientation, Advancement and Enrichment (PROA+), Programme of Support and Orientation Units for Vulnerable Learners and their Families (UAO), Programme of Art and Music Teaching in multicultural schools (MUS-E), Programme for Inclusive Education.

#### 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
<p>LOMLOE considers different types of specific educational support needs:</p> <ul style="list-style-type: none"><li>• Learners with SEN</li><li>• Learners with developmental delay</li><li>• Learners with language and communication developmental disorders</li><li>• Learners with learning disorders</li><li>• Learners with attention disorders</li><li>• Gifted learners</li><li>• Learners who are late entrants to the Spanish education system</li><li>• Learners with a severe lack of knowledge of the language of instruction</li><li>• Learners in situations of socio-educational vulnerability</li><li>• Learners with special personal circumstances</li></ul>	<p>LOMLOE, 2020, Article 71.2</p>

## 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*

LOMLOE, 2020, Article 80.1

Support will be provided to learners in situations of socio-educational and cultural vulnerability to promote their maximum educational and social development, so that they can access inclusive education, on equal terms with others.

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

### *Evidence*

LOMLOE, 2020, Article 80.2

Compensation policies shall strengthen the action of the education system in such a way as to avoid inequalities arising from social, economic, cultural, geographical, ethnic or other factors.

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

### *Evidence*

The State Observatory for School Coexistence, which is an advisory body, has an Action Plan to Improve Coexistence.

## **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?**

<b>Specific learner groups</b>	<b>Evidence</b>
Among the rights, LOMLOE establishes: ... the Educational Administrations are responsible for ensuring the necessary resources so that learners who require educational intervention other than the ordinary can achieve the maximum possible development of their	LOMLOE, 2020, Articles 71 and 72



Specific learner groups	Evidence
<p>personal abilities and the general objectives established for all learners.</p> <p>LOMLOE includes learners with SEN, developmental delay, language and communication developmental disorders, attention or learning disorders, gifted learners, late entrants to the Spanish education system, learners with a severe lack of knowledge of the language of instruction, learners in situations of socio-educational vulnerability, and learners with special personal circumstances or school history.</p> <p>... For these learners, the following will be guaranteed: early identification of needs, personalisation of learning, adaptations in assessment, the promotion of educational success and the prevention of early school leaving.</p> <p>Schooling for learners with specific learning difficulties is based on the principles of normalisation and inclusion and will ensure non-discrimination and effective equal access to and retention in the education system.</p>	
<p>Learners with SEN shall have the right to an additional school year to achieve objectives, classes with a reduced learner-teacher ratio, assessment according to their own learning objectives, which will allow them to have a degree.</p>	<p>LOMLOE, 2020, Articles 73, 74, 75            Royal Decree 984/2021, Article 3            Royal Decree 157/2022, Article 17            Royal Decree 217/2022, Article 20</p>
<p>Late entrants to the Spanish education system can be incorporated at a different level. If these learners do not know Spanish or a co-official language, they will receive specific attention simultaneous to their attendance in the mainstream group, with which they will share as much time as possible.</p>	<p><a href="#">Country Policy Review and Analysis</a>, pp. 54–55            LOMLOE, 2020, Article 79</p>
<p>Learners in situations of socio-educational vulnerability will benefit from compensation policies that avoid inequalities arising from social, economic, cultural, geographical, ethnic or other factors. There will be support and tutoring for learners who are in this situation and their families. Segregation of these learners within schools will be avoided.</p>	<p>LOMLOE, 2020, Articles 80 and 81</p>



**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
<p>In accordance with the Education Act (2006) and LOMLOE (2020), the Spanish education system must be guided by the following principles:</p> <ul style="list-style-type: none"> <li>• the effective implementation of children’s rights as established in the Convention on the Rights of the Child, adopted by the United Nations;</li> <li>• quality of education for all learners, regardless of their situation and circumstances;</li> <li>• equity, which guarantees equal opportunities for the full development of personality through education and equal rights and opportunities that will help overcome any kind of discrimination;</li> <li>• educational inclusion, and the application of the principles of Universal Design for Learning</li> <li>• universal accessibility to education, as an element that compensates for personal, cultural, economic and social inequalities, with particular attention paid to those arising from any kind of disability, in accordance with the provisions of the Convention on the Rights of Persons with Disabilities;</li> <li>• the transmission and implementation of values encouraging personal freedom, responsibility, democratic citizenship, solidarity, tolerance, equality, respect and justice, as well as values that will help overcome any kind of discrimination;</li> <li>• education for coexistence, respect, conflict prevention and the development of equal rights, duties and opportunities;</li> <li>• a curriculum structure at the service of an inclusive education and in accordance with the acquisition of skills, which also values diversity;</li> <li>• flexibility to adapt education to the diversity of learners’ skills, interests, expectations and needs, as well as to the changes experienced by learners and society.</li> </ul>	<p>Education Act, 2006; LOMLOE, 2020</p>
<p>In 2007, the Constitutional Court established that the right to education applies to Spanish citizens and foreign citizens living in Spain, regardless of their legal status.</p>	<p><a href="#">Eurydice</a></p>



Specific learner groups	Evidence
Education in 'respect for fundamental rights and freedoms, in equal rights and opportunities for men and women, and in equal treatment'. Education in 'respect and recognition of the linguistic and cultural diversity of Spain, as well as of interculturality, as an enriching element of society'.	Education Act, 2006; LOMLOE, 2020 ( <a href="#">Eurydice</a> )
Some of the primary objectives of Spanish education policy are: <ul style="list-style-type: none"><li>• Normative development of the law</li><li>• Promotion of equity and inclusive education</li><li>• Guarantee that mainstream schools have the necessary resources to attend in the best conditions to learners with disabilities</li><li>• Extension of the first cycle of education as a means of compensating for inequalities.</li></ul>	Education Act, 2006; LOMLOE, 2020
... 'the people or groups of people and territorial areas that are at a disadvantage due to social, economic, cultural, geographical, ethnic or other kinds of factors must be the target of compensatory actions that reinforce the action of the education system with the aim of avoiding inequalities. The Law also deals with the compensation of inequalities through specific programmes developed in schools or in geographical areas where educational intervention is necessary. Grants and study aids guarantee the right to education of students with unfavourable socio-economic conditions'.	Education Act, 2006; LOMLOE, 2020 ( <a href="#">Eurydice</a> )
Schooling for learners with specific learning difficulties is based on the principles of inclusion, participation, quality, equity, non-discrimination, effective equality in access to and retention in the education system and universal accessibility for all learners.	LOMLOE, 2020, Preamble

### 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*

LOMLOE's Preamble (2020) proposes a transversal approach aimed at ensuring that all learners have guarantees of success in education through a dynamic of continuous improvement of schools and greater personalisation of learning.

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

#### *Evidence*

One of the main principles of the Spanish education system established in LOMLOE is equity. This guarantees universal accessibility in education and equal opportunities for the full development of the personality through education, educational inclusion, and equal rights and opportunities, including between women and men. It helps to overcome any discrimination and to compensate for personal, cultural, economic and social inequalities, particularly those arising from any type of disability, in accordance with the provisions of the Convention on the Rights of Persons with Disabilities, which Spain ratified in 2008 (LOMLOE, 2020, Article 1).

LOMLOE's Preamble recognises the right to inclusive education as a human right for all people, recognised in the Convention on the Rights of Persons with Disabilities, so that this right extends to those who are most vulnerable.

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

#### *Evidence*

In addition to the programmes already mentioned (PROA+, UAO, Programme for Inclusive Education, MUS-E), the Ministry of Education and Vocational Training works together with other ministries on the following:

- Spanish Strategy on Disability 2022–2030 for the access and full enjoyment of human rights of people with disabilities
- National Strategy to Prevent and Combat Poverty and Social Exclusion 2019–2023
- National Strategy for the Equality, Inclusion and Participation of the Roma People 2021–2030
- Strategic Framework for Citizenship and Inclusion, against Xenophobia and Racism 2021–2025
- Action Plan of the European Child Guarantee in Spain
- Comprehensive Plan to Combat Human Trafficking.



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**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**

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**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?**

No information.

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

No information.

**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.