

## Regulatory and legal support of inclusive education: Ukrainian trends and international practice

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**Abstract.** The relevance of the research is explained by the fact that inclusive education in Ukraine requires improvement of the regulatory framework to regulate both the physical presence of a child with special needs at school and changes in the school itself, school infrastructure, and the relationship between students and teachers and between teachers and medical professionals: psychologists, psychiatrists, defectologists, etc. The purpose of the research is to explore the current state of legal regulation of inclusive education and prospects for its further development in Ukraine. One of the main methodological techniques of the study is a comparative approach. The comparative legal approach analyses the legislation of different countries of the world that regulates inclusive education. The author identifies the correlation between the provisions of international law and Ukrainian legislation on the implementation of the international principles of inclusive education enshrined in international legal instruments into the legal system of Ukraine, including the education system. The practice and shortcomings of regulatory and legal regulation of inclusion at the state level are explored. The author analyses the content of the concept of “special learning conditions”. Particular attention is devoted to the development of inclusive vocational education and training in different countries. The specific features of inclusive education in Ukraine and the world are identified. It is noted that inclusive education is based on the value idea “all children are equal”. It is emphasised that in Ukraine, inclusive education can be assessed as an advanced system of education for children with special educational needs, based on the joint education of healthy children and children with disabilities. The practical significance of the study is that the conclusions and proposals presented in the research will contribute to improving the mechanism for protecting the rights of children with special needs as one of the most vulnerable categories of the population. The generalisation of the results of the work is designed to improve the legislation of Ukraine in the field of inclusive education and to implement foreign provisions and standards for the protection of the rights of children with special needs in Ukrainian educational practice

**Keywords:** children’s rights, inclusion, inclusive approach, a child with special educational needs, a child with disabilities, accessibility of education

### Introduction

“Ensuring inclusive and equitable quality education and promoting lifelong learning opportunities for all” is the main idea of the UN Sustainable Development Strategy until 2030, which is being implemented, in particular, by Ukraine (Decree of the President of Ukraine No. 722/2019..., 2019). Eventually, the principle of accessible education for all children, including children with disabilities and children with special educational needs, is one of the fundamental principles of establishing a single global educational space. Inclusive education (French: inclusive, Latin: include) provides equal access to quality education for all children without exception, regardless of their psychophysical development, and establishes conditions for the productive inclusion of

each child in the educational process together with their habitually developing peers to adapt to the conditions of society and further optimal socialisation (Kozulia, 2020).

Inclusive education is based on the value idea – “all children are equal”. Therewith, notably, inclusion is not just about the physical presence of a child with special needs at school. It is a change in the school itself in its understanding, a change in the school infrastructure. It is a change in the relationship between students, teachers, and between teachers and medical professionals (psychologists, psychiatrists, defectologists, etc.). Spending most of their time in a group of their peers, a child with special educational needs loses the chance to adapt to life in a normal social environment.

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In the future, such children face problems in acquiring social experience, have disorders in social relationships, withdraw into themselves and subsequently “drop out” of society.

Scientists have long and repeatedly emphasised the necessity of an education in which a child with a disability is not rejected from society of children with normal development (Lysianska, 2016). Thus, inclusive education encompasses education based on the idea that all children, regardless of their physical, intellectual, or other disabilities, should be included in the general education system and study together with their peers in a regular general education school that considers their special educational needs.

The idea of inclusiveness in education is reflected in many international regulations, including the Salamanca Declaration on principles, policies and practices in the field of education of persons with special educational needs (Salamanca Declaration..., 1994). The concept of inclusive education in this declaration is quite broad, covering the education of people with special needs, and other categories of people in need of social integration and adaptation, including the disadvantaged, refugees, people belonging to ethnic minorities, etc.

Ukraine’s ratification (March 6, 2010) of the 2006 UN Convention on the Rights of Persons with Disabilities necessitated the establishment of all conditions in our country for the realisation of their rights in all spheres of life, including education. Article 24 of the Convention imposes an obligation on States Parties to ensure inclusive education at all levels (United Nations, 2007; Baida & Krasiukova-Enns, 2012). Accordingly, the Government of Ukraine approved the State Target Program “National Action Plan for the Implementation of the Convention on the Rights of Persons with Disabilities” for the period up to 2025 (Resolution of the Cabinet of Ministers of Ukraine No. 285-r..., 2021).

Leading scholars, such as D. Bondarenko, D. Kolupaieva, and D. Tandchuk, have explored the problems of integrated learning and inclusive education: D. Bondarenko, A. Kolupaieva, O. Lys, I. Talanchuk, V. Kozulia, E. Kryvoruchko, M. Shevchenko. Their scientific works became the foundation for further research on the issues of education of persons with special educational needs and persons with disabilities, and on the specifics of implementing inclusive education in Ukraine based on generalisations of foreign practice in this area. In particular, the work of A. Kolupaieva (2016) deserves particular attention, as she has developed algorithms for implementing inclusive education in secondary schools, considering the regional specifics of special schools and inclusive resource centres. O. Lys (2021) and I. Talanchuk (2021) in their scientific works have substantiated that ensuring proper conditions for the realisation of the right of children with special educational needs to education depends largely on the proper training of teachers themselves, thus, it is important that they improve their competence, master new technologies of teaching and interaction with such children. A definitional analysis of the concept of “inclusion” was thoroughly conducted in his scientific work by V. Kozulia (2020). Scholars such as E. Kryvoruchko and M. Shevchenko (2021) focused on the problems of administrative and legal regulation of inclusive education in preschool and complete secondary education in Ukraine. D. Bondarenko (2018) presented his thoughts on the establishment of inclusive education in the EU, and the consequences of implementation and methods of integration in Ukraine in his scientific researches.

Researcher H. Davydenko (2015) focused on models of inclusive education in the EU and their implementation in Ukrainian legislation. In addition, the scientist explored the principles and methods of organising inclusive education and establishing an inclusive environment in Ukraine based on positive foreign experiences. The achievements of these scholars were enabled by an in-depth analysis of international law and its impact on the Ukrainian education system. Considering this, the main problems in the field of inclusion in Ukraine have been resolved to date. Among them is the active development of research programmes on the problems of educational and rehabilitation processes (methodological substantiation of methods of psychological, pedagogical and socio-medical rehabilitation of persons with special educational needs; ensuring the university’s participation in major international and Ukrainian scientific and educational projects on improving the effectiveness of social adaptation and integration of persons with disabilities into the modern social environment; development of proposals for the introduction of new psychological, pedagogical and information technologies in the educational process, etc.

The purpose of the research is to explore the current state of regulation of inclusive education at the legislative level and to bring the experience of other countries into Ukrainian practice.

The objectives of the work are to explore the approaches to understanding inclusive education that has developed in the world practice; to analyse the historical background of the transformation of the idea of universal access to education to inclusiveness as a key principle of the education system, which is reflected in international regulations and national legislation; to explore the Ukrainian practice of regulating the education of persons with special educational needs at the state level.

### **Adapting the Ukrainian educational system to the needs of children: Model, concept, objectives**

The main objective of inclusive education is to establish a friendly and accessible environment that allows students to acquire knowledge and maximise their capabilities in achieving their life purposes. Currently, the Ukrainian educational space is dominated by an integrative model of education for children with special educational needs, based on the concept of student adaptation to the educational system. However, ideally, it is not learner who should be integrated into the educational process, but the educational process should be modified depending on the individual educational needs of each child. It is the foundation of the inclusive education model, which is widespread in developed countries, as it ensures that the educational system adapts to the educational needs of the child (United Nations, 2019). Thus, all participants in the educational process must be able to establish conditions for their learning.

This practice is quite common abroad. In the United Kingdom, according to the “Special Educational Needs and Disabilities Act” (2001) and the “Children and Families Act” (2014), children with special educational needs are educated in regular schools, provided that the interests of other children are not disadvantaged. In addition, with the adoption of the “Children and Families Act”, the conditions for educating children with special needs in schools other than general education (including those established at medical institutions, etc.) have slightly changed. For example, the

organisation of inclusive education requires a parental application and the consent of the local education authority, which must check whether there are opportunities for such a child to explore in a general education school together with children receiving special education (Lys, 2021). In this regard, the position of the Ukrainian legislator varies from the rules in British law.

An analysis of the educational legislation of foreign countries has allowed the conclusion that inclusive education seeks to use a pedagogical approach to education that would be suitable for all children who want to receive an education. In inclusive schools, children learn about their rights as full citizens, which results in less discrimination. As law enforcement practice demonstrates, if children are together all the time, studying, communicating, and making friends, they adapt faster and realise that everyone is different, everyone has their own needs and characteristics.

Inclusive education in Ukraine has its historical roots in the adoption of the Concept of Integrated Education for Persons with Disabilities (Special Educational Needs), which was developed based on the “Inclusion Index” (Resource Center for Inclusive Education Support, n.d.). The Inclusion Index was developed by British scientists Mel Ainscow and Tony Booth, who conducted their research with the participation of scientists, teachers, parents, representatives of public organisations of people with disabilities and education departments (Ukrainian-Canadian project..., 2011). Subsequently, there was published two versions of the Inclusion Index: the first in March 2000 (Centre for Studies on Inclusive Education, UK), and the second version of the manual was republished in September 2002. The manual is used in many countries, as its translations are already available in more than 30 languages. In addition, the UNESCO International Commission intends to design a manual for developing countries.

In Ukraine, the reform of inclusive education was launched in 2016, and the following year, in 2017, the government approved the Regulation on the Inclusive Resource Center. In addition, draft new versions of the Laws of Ukraine “On Preschool Education” (2001) and “On Higher Education” (2014) were approved. It is significant that on September 5, 2017, the new Law of Ukraine “On Education” (2017) was adopted. However, unfortunately, we have to admit that inclusive education is only beginning to truly enter our lives, facing both material and technical problems and certain moral prejudices of Ukrainian society regarding the possibility of full and effective education of people with special educational needs together with students who do not have health problems. Establishing an inclusive model of education requires real changes in the thinking and culture of education and a change in the paradigm of inclusive education itself. The foundations for such inclusion are established in Ukrainian legislation, but they require consistent development, considering the objectively existing needs in line with established international provisions and using best foreign practices (Ministry of Education and Science of Ukraine, n.d.).

Such practices should become the foundation of the educational policy of the Ukrainian state, including the one that is the foundation of the “Accessible Ukraine” project (Driuma, 2013) and the national strategy-initiative “New Ukrainian School” (Ministry of Education and Science of Ukraine, 2016), which focuses on ensuring the successful adaptation of children with special needs to the educational process.

The establishment of the New Ukrainian School is a special achievement of Ukraine in the field of inclusion and for Ukrainian education in general. However, it is a rather difficult test for Ukrainian society. Although there is a legislative foundation, modern society is not yet quite ready, both mentally and technically, to accept inclusion as a priority in the educational process. In society, there is a clear rejection of people with special needs by the general public, a shortage of qualified specialists, and no particular prospects in terms of the architectural and planning environment. To overcome the above-mentioned barriers to high-quality global implementation of inclusive education, the author of this publication believes that the following tasks should be addressed: systematic promotion of inclusion in society as a form of universal education for all categories of children; provision of educational institutions with the necessary set of technical means (computer systems and acoustic systems, teaching aids and special furniture, developmental simulators and interactive devices, etc); implementation of training programmes for competent specialists in this field. Considering this, the author of the research agrees with scholars who emphasise that the introduction of inclusive education in Ukraine can be considered an education reform in general, which requires, among other things, new administrative decisions, and proper legal regulation, and allows checking how ready the Ukrainian education system is for change (Kryvoruchko & Shevchenko, 2021).

Therewith, it should be recognised that the specifics of the development of inclusive education in a particular country depend, among other things, on socioeconomic conditions, traditions, etc. Nevertheless, the entire civilized world is now paying considerable attention to the implementation of inclusive education for children with special educational needs. According to statistics, 75% of countries officially acknowledge inclusive education as a special education area. And there are hopes that the remaining 25% will join this concept in the coming years (although Finland has not yet joined this system) (Ministry of Education and Science of Ukraine, n.d.).

As it is known, every person is different. In global practice and Ukraine in particular, inclusive education is based on principles that prevent stereotyping of people with disabilities. First of all, the following principles are involved:

- every person, regardless of whether they have any abilities or achievements, is valuable in itself;
- each of us needs support and understanding from our peers;
- everyone wants to be heard and has the right to be heard;
- full-fledged education can only be implemented in the context of real relationships;
- training helps people achieve their purposes;
- diversity has a positive impact on human life (Bondarenko, 2018).

The basic principle of inclusive education should be that the administration of an educational institution, the staff and the teaching community accept all children for education within the framework of state educational standards, without considering their physical, emotional, intellectual and social status as a criterion for any selection. Educational institutions should strive to establish conditions for education and upbringing that are comfortable for everyone.

The main object of education is the child with special educational needs, as this category of children requires

special programmes, methods and standards of education; the state solves this problem by establishing that such students find it more difficult to learn the curriculum material of the regular programme due to physical, mental and other disabilities. Therefore, state educational standards should be adapted to all participants in the educational process.

### International experience in organising and implementing inclusive education

The role of the family as an assistant in the adaptation of a child with special educational needs to the educational process in an educational organisation of any level and type is essential. The family is the child's closest environment; it performs the functions of education, protection, transfer of new knowledge and experience, security, love, emotional support, and assistance in restoring spiritual and physical strength. Parents and relatives are the people with whom a child spends the most time and play a huge role in their lives. In a family with a child with special educational needs, parents have additional caregiving functions: rehabilitation, corrective development, adaptation, and integrative functions. Parents are the ones who are most responsible for the child's education and development; the purpose of other institutions of society, including the state through its competent authorities, is to provide comprehensive support in solving all kinds of life difficulties and problems of the child.

In this aspect, the experience of foreign countries in organising and implementing inclusive education is interesting. First of all, it should be noted that in Europe, inclusive education has three areas: the first area is the inclusion of all children in general education institutions, which demonstrates the wide opportunities and resources of the mainstream school (Spain, Greece, Italy, Portugal, Sweden, Iceland and Norway); the second area is the provision of a wide range of services from two educational systems: regular and special (Denmark, France, Luxembourg, Austria, Finland, etc.); the third area is the functioning of two independent educational systems, regulated by separate legislation for general education and special education (Belgium, Switzerland, Germany, the Netherlands).

Currently, among the countries with developed legislation and experience in the field of inclusive education, the role of leader can be given to Italy, Spain, Great Britain and Northern Ireland, the United States, Denmark, and others (Bondarenko, 2018).

In the United States, inclusive education began with the adoption of the Education for All Handicapped Children Act (EHA), which emphasised the joint education of children with disabilities and their peers in general education institutions (Jeynes, 2007). Notably, at the end of the nineteenth century, schools in large American cities began to establish so-called ungraded classes. They teach students with mild mental retardation, problematic behaviour, and children of immigrants who do not speak English. Frequently, such children were expelled from school, and the problem of special needs children disappeared (Winzer, 2009).

In addition, Italy has been supporting inclusive education at the legislative level since the 1970s. In 1977, the first regulations governing inclusive education were adopted. The education of children with special educational needs has become seen as one of the conditions for education. In Italy, more than 90% of children with disabilities study in

regular schools. In the UK, there are still specialised schools and classes (Havrylova *et al.*, 2020). It was in the UK that the concept of "special educational needs" first appeared (Davydenko, 2015). In the United Kingdom and Northern Ireland, inclusive education became part of the national curriculum in 1978. In Spain, the history of inclusive education goes back more than 40 years, since the establishment of an independent institution, the National Institute of Special Education, in 1978. There is research in the Constitution that refers to "special attention and protection of the disabled" to allow for the implementation of their rights (Bondarenko, 2018).

These and other countries have accumulated a wealth of experience in researching, implementing, and developing inclusive education. However, there is the opposite experience. For example, considering China, it can be stated that children with disabilities frequently experience some isolation or even segregation in education. According to researchers, it is explained by the fact that there is limited parental involvement in the educational process (Bondarenko, 2019). Unfortunately, this unstructured vision and limited parental involvement in this process demonstrate the understanding of the status of children with disabilities in China. This model sees children with disabilities as fundamentally altered by their disabilities and therefore unable to learn; they are treated as mere subjects of charitable activities rather than as equal citizens who can and should participate in public life (Deng & Poon-McBrayer, 2004).

This inhumane approach points to deficiencies in approaches to understanding the concept of a child with a disability, namely that they are considered "incapable" or "unproductive". This shortcoming should be corrected at the level of state social security systems. Take the example of Malaysia. Here, inclusive education is seen as part of the principle of education, not as a right for all children. It means that national policy is limited in its ability to reach all children at risk of exclusion from the education system. Special schools continue to represent the dominant approach to educating children with special educational needs when compared to inclusive schools (Van Bueren, 2006).

In Australia, parents of children with special educational needs are convinced that the mere presence of children in the classroom is not enough – students need to feel confident and comfortable and feel that they belong to the educational organisation. The social and emotional outcomes of inclusion are very important, as without positive experiences of participation, children with special education needs are at risk of increased absenteeism, lower self-esteem, and lower academic performance in adolescence (Van Bueren, 2006).

### Problems of inclusive education development in Ukraine at the present stage

In Ukraine, the first inclusive educational institutions emerged at the turn of the last decades of the 20<sup>th</sup> century. The state has set a purpose for educational institutions to establish conditions for the development and social adaptation of children with special educational needs. However, many teachers and even psychologists are not ready to work with children with special educational needs as they are afraid of the unknown, in particular, due to the impact on healthy children and the educational process in general, on the microclimate in the classroom and school. In other words, adverse attitudes and prejudices, and professional uncertainty of adults frequently contribute to this.



Another barrier is the lack of motivation, including financial motivation. Currently, the work with “special” children in schools is conducted by defectologists. However, the unwillingness to take on the additional workload and the lack of material incentives are a deterrent to working with such children.

Another barrier is that sometimes parents do not want their healthy child to study in an inclusive environment, saying it is harmful to them. And here the problem of the humanity of adult education arises, which, admittedly, affects the younger generation.

Working with “special” children requires appropriate psychological, moral and ethical training. There is an urgent necessity to understand and solve the problems of children with disabilities, to learn to understand their desires, to respect their rights, including the right to education, to help them “join” social groups (both children and adults), and to accept them as they are. Evidently, special education, which includes students with special needs, requires changes (Shcheglova *et al.*, 2017).

Another problem with inclusive education in Ukraine is the so-called “punctuation” approach to its research. Most scientific researches deal with the education of children with special educational needs in the context of an educational school. Thus, having analysed the existing positive experience of implementing inclusive education in Ukraine in recent years, it can be argued that to properly establish the conditions for organising inclusive education in an educational institution, all participants in the educational process need to have:

1) medical support (an important component is a clear organisation of meals and, if necessary, medical support);

2) financial support (availability of a staff of employees who will accompany children and teach them);

3) information support (provision of material resources and new distance e-learning technologies);

4) material conditions, which include: special tables (desks) that can change the angle of inclination, where the height is adjustable, etc.; appropriate sanitary and hygienic conditions (lighting, water supply); devices for motor activity; computer equipment (computer, touch boards, projectors); information stands with supporting materials (diagrams, rules of conduct);

5) sanitary conditions (wardrobe, bathroom);

6) pedagogical support (establishing an individual educational trajectory; comfort and emotional calm in the classroom, considering friendly relations and a positive atmosphere in the classroom; involving children with special educational needs in activities that promote the unleashing of students’ creative potential);

7) psychological support when it is necessary to emphasise additional classes for children with disabilities and special educational needs with psychological specialists; psychological and pedagogical support; regular examination of students, assistance in learning and development of individualised curricula for them;

8) staffing: continuous improvement of the professional skills of teachers of educational institutions in the field of

correctional pedagogy and psychology, clinical psychology; availability of pedagogical and psychological specialists who can understand and meet the needs of children with special educational needs.

## Conclusions

The study explored the history of inclusive education in Ukraine and the world and found that the history of inclusive education in the world is different, depending on specific political and socio-economic changes in each country. The author explores the meaning of the concept of “inclusive education” and establishes that its essence lies primarily in the following principle: by learning together, children learn to live side by side, and thus the boundaries between people with disabilities and healthy people are blurred. A comparison of the experience of inclusion in different countries has demonstrated that Western countries such as Italy, Spain, the United Kingdom and Northern Ireland, the United States, and Denmark are among the leaders in this area, in particular, due to the high level of relevant regulation. An analysis of Ukrainian legislation has demonstrated that the state regulates various aspects of integrative education quite appropriately with relevant documentation, but not everything can be successfully implemented in practice, as, on the one hand, there is insufficient psychological and moral readiness of society to provide appropriate conditions for children with special educational needs, and on the other hand, the material and technical base of educational institutions is far from fully complying with international standards. Therefore, to improve the situation, it would be advisable to use the practice of foreign countries, which can be gradually implemented in Ukraine.

The study concluded the following: 1) the development of inclusive education in Ukraine is conducted primarily through the establishment of special learning conditions for children with special educational needs; 2) the Ukrainian educational space is dominated by an integrative model of education for children with special educational needs, based on the concept of adaptation of the child to the educational system; 3) to establish a truly inclusive model of education in Ukraine, real changes in thinking and learning culture are required; a paradigm shift in inclusive education is required, etc.

Thus, inclusive education in Ukraine is under the control of the state and the general public, and it is designed to maximise the achievement of educational purposes in the context of the digitalisation of all spheres of public life and the education system in particular. However, the process of developing inclusive education is undoubtedly complex, and its purpose is to establish an inclusive society that recognises each person as an individual, and thus each person will feel like a full member of society. Therefore, among the prospects for the research discourse on this issue is the development of proposals for the implementation of the most effective foreign provisions, regulations and standards into Ukrainian legislation, and algorithms for their successful implementation.

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## Нормативно-правове забезпечення інклюзивної освіти: українські тенденції та світова практика

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**Анотація.** Актуальність статті зумовлено тим, що інклюзивна освіта в Україні потребує вдосконалення нормативно-правової бази, аби вона регламентувала не лише фізичне перебування дитини з особливими потребами в школі, але й зміну самої школи, шкільної інфраструктури, взаємовідносин між учнями та педагогами, між педагогами та медичними спеціалістами: психологами, психіатрами, дефектологами тощо. Мета статті – вивчити сучасний стан нормативно-правового регулювання інклюзивної освіти та перспективи її розвитку в Україні. Один з основних методологічних прийомів дослідження – компаративний підхід. У порівняльно-правовому напрямі аналізується законодавство різних країн світу, яке регулює питання інклюзивної освіти. Виявлено співвідношення норм міжнародного права та законодавства України щодо імплементації міжнародних засад інклюзивної освіти, закріплених у міжнародно-правових актах, у правову систему України, зокрема систему освіти. Досліджено практику та виявлено недоліки нормативно-правового регулювання інклюзії на державному рівні. Розглянуто змістовне наповнення поняття «спеціальні умови навчання». Особливу увагу приділено розвитку інклюзивної професійної освіти та професійного навчання в різних країнах. Визначено особливості інклюзивної освіти в Україні та світі. Зазначено, що в основу інклюзивної освіти закладено ціннісну ідею «всі діти рівні». Підкреслено, що в Україні інклюзивну освіту можна оцінювати як передову систему навчання дітей з особливими освітніми потребами, засновану на спільному навчанні здорових дітей та дітей з інвалідністю. Практичне значення дослідження полягає в тому, що сформульовані в науковій статті висновки і пропозиції сприятимуть покращенню механізму захисту прав дітей з особливими потребами як однієї з найбільш вразливих категорій населення. Узагальнення результатів роботи спроектовано на удосконалення законодавства України у сфері інклюзивної освіти, а також на імплементацію в українську освітню практику зарубіжних норм і стандартів щодо захисту прав дітей з особливими потребами

**Ключові слова:** права дитини, інклюзія, інклюзивний підхід, дитина з особливими освітніми потребами, дитина з інвалідністю, доступність освіти