**Alliance for Inclusive Education’s submission to the Government’s SEND Review**

**April 2020**

Alliance for Inclusive Education (ALLFIE) is the only national organisation led by disabled people working on educational issues and, in particular, working to promote the rights of disabled students (including those with SEND) to be included in mainstream education. Inclusive education benefits everyone; it is only through disabled and non-disabled people playing, learning, working, growing up together, and establishing relationships that we will achieve an inclusive society that welcomes all.

**SEND Language**

ALLFIE uses the term ‘disabled children and young people’ because many of them will fall under the definition of disabled persons in the Equality Act 2010.[[1]](#endnote-1)

**Special Schools**

‘Special school’ is an umbrella term used to include alternative provision, pupil referral units and secure schools where the majority of their pupil intake are those with either diagnosed or undiagnosed disabilities.

**SEND Review**

ALLFIE welcomes the SEND review of the actual operation of the Children and Families Act 2014 (CFA). Our submission will use the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) Independent Monitoring Committee’s concluding observations and recommendations to review the progress of SEND reforms, including the correct balance between inclusive mainstream and specialist places, better assistance for parents in making decisions around support for their child, making sure support in different local areas is consistent, joining up health, care, and education services across the country, and ensuring that public money is spent in a sustainable manner, placing a premium on securing high quality outcomes for disabled children and young people.

The UNCRPD Monitoring Committee expressed concern at:

* The persistence of a dual education system that segregates children with disabilities in special schools, including based on parental choice;
* The increasing number of children with disabilities in segregated education environments;
* The fact that the education system is not equipped to respond to the requirements of high-quality inclusive education, particularly reports of school authorities refusing to enrol a student with disabilities who is deemed to be “disruptive to other classmates”;
* The fact that the education and training of teachers in inclusion competences does not reflect the requirements of inclusive education.

**UNCRPD Monitoring Committee’s first observation is the increasing number of children with disabilities in segregated education environments**

The Department for Education datasets consist of numbers and percentages of disabled pupils with and without an Education, Health and Care Plan (EHCP) being educated in different educational settings. Between 2010 and 2018, the percentage of children in England with an EHCP attending maintained special schools increased from 38.2 per cent to 44.8 per cent, while those attending state-funded ‘mainstream’ secondary schools declined from 28.8 per cent to 20.9 per cent.[[2]](#endnote-2) These figures do not include disabled pupils in home education, residential special schools, and specialist psychiatric inpatient units. Additionally, the numbers do not include disabled children placed in segregated settings whilst being educated in mainstream schools. Thus, the statistics severely underestimate the true extent of segregated education experienced by disabled pupils within the UK.

The Department for Education’s statistics reported the following: pupils with SEN support had the highest permanent exclusion rate and were almost seven times more likely to receive a permanent exclusion than pupils with no SEN. Moreover, pupils with an EHCP had the highest fixed period exclusion rate and were almost six times more likely to receive a fixed period exclusion than pupils with no SEN. Children with SEN accounted for almost half of all permanent and fixed period exclusions.2

**UNCRPD Monitoring Committee’s second observation is the persistence of a dual education system that segregates children with disabilities in special schools, including segregation based on parental choice.**

The CFA’s presumption of mainstream education should not exclude any group of disabled children based on their impairments or health conditions. However, the Academies Act states that schools must admit pupils from a broad rather than a full range of abilities.[[3]](#endnote-3) As a result, the Academies Act has encouraged disability discrimination in schools as part of the SEND reforms; this parent explains:

*“The CFA supports parents’ right to choose a mainstream education but it doesn’t say anything about what to do when mainstream schools show little or no interest in educating our children. Is it any wonder, then, that the number of children with severe learning* disability[ies] *educated in special schools has increased?”* (ALLFIE Case Study 2018)

With more maintained nursery schools shutting down or having reduced funding, councils are reporting that head teachers are reducing their intake of disabled pupils[[4]](#footnote-1) or closing resource bases.

*“The majority of headteachers said that, if they did manage to stay open, this would only be by accepting fewer children with SEND, or significantly reducing the support available for these children.”[[5]](#endnote-4)*

*“Miles was settled into a good mainstream school with a well-resourced impaired hearing unit. After the school’s unit closed down as a result of cuts, the parents had to move him three more times from one school to another before settling for a residential special school for deaf children.**[[6]](#endnote-5)*

The Local Government Association has warned the government that:

*“We are concerned that if councils do not receive sufficient funding to cover* [the high] *cost* [of] *SEND, they will not have the resources to allocate extra funds to highly inclusive schools above the national SEN budget. The concern is that unless funding reflects needs, mainstream schools may be reluctant to accept or keep pupils with SEND because they cannot afford to subsidise the provision from their own budgets.”[[7]](#endnote-6)*

Despite the Schools Admissions Code being updated as a result of the SEND reforms prohibiting state-funded schools from discriminating on the grounds of disability, there has been a steady decline of disabled pupils placed in all forms of mainstream schools.[[8]](#endnote-7)

The SEND reforms are not only adversely affected by individual school autonomy but also by local authorities’ strategic role in championing inclusive education practice. A local area approach allows authorities to use their knowledge about disabled pupils to plan, coordinate, fund, and monitor school admissions and their SEND provision in their own educational settings. As a result, disabled pupils do not receive specialist support from experienced practitioners employed by the local authority for mainstream schools[[9]](#endnote-8) (Save Our Schools Campaign conference, 2018).

*“I lost the local authority’s learning support assistant who specialises in working with pupils with dyslexia.”*

Cuts are not limited to SEN; health and social care provision is also being heavily cut by budgetary reforms. Mainstream Schools are unable to access mental health services, physiotherapy, speech and language therapy, and occupational therapy. For many disabled pupils requiring coordinated education, health and care services, parents have a fight on their hands to secure such provision within mainstream educational settings, as this parent has experienced with his son.

 *“Around forty mainstream schools were contacted about a place for Finn and all except one refused. The local authority did not support our preference for Finn to attend a mainstream school, claiming it wasn’t suitable and that children like Finn do better in a special school.”**[[10]](#endnote-9)*

Inadequate funding for coordinated education, health, and care services in local areas has meant that local authorities are being forced into commissioning expensive independent special school placements.5 Additionally, 6,000 disabled pupils/students are being educated in 334 residential special schools and colleges in the state, non-maintained, and independent sectors; these residential placements cost an estimated £500m per annum, or £88.333 per pupil.5

*“Families were often forced to make difficult choices, in some instances be apart so that they could receive all the support they needed.”*

Individual councils such as Hertfordshire, Swindon, and Waltham Forest are paying over £100,000 per pupil attending an independent special school placement.[[11]](#footnote-2) We have been told by parents that an independent residential special school placement can cost up to £250,000 per pupil placement.5 As a result of the SEND reforms, local authorities are no longer adopting a proactive role, but are instead reacting on a case-by-case basis where individual disabled children’s needs cannot be met locally and are therefore required by SEND to pay for more expensive segregated education provision.

The priority of education funding is driving children into segregated education; during 2017, the Government created 1,600 new special free school places across 19 local authorities to deal with the predicted growth of disabled pupils. Bradford and Newham are planning to create more special school placements whilst reducing the availability of mainstream school provision.[[12]](#endnote-10)

Currently, a dual education system is creating bias towards the funding of segregated education whilst reducing resources for mainstream education. In 2019, the National Audit Office observed

*“Funding pressures limiting mainstream schools’ capacity to support pupils with high needs effectively... Pressures – such as incentives for mainstream schools to be less inclusive, increased demand for special school places.”[[13]](#endnote-11)*

The majority of mainstream and segregated education provision has reported insufficient funding to fully cover the cost of SEND provision required for all their disabled students. On a broader note, the National Audit Office also concluded that a dual education system is not sustainable as all types of schools are failing to secure sufficient funding to provide high quality SEND provision for their pupils.

The Department for Education’s desire to achieve the correct balance between state-funded inclusive mainstream and specialist places cannot be achieved. Disabled pupils/students do not consistently receive high quality support in either mainstream or segregated education settings and therefore business as usual is not affordable. The National Audit Office concludes that having a dual education system is no longer sustainable. The only way forward is to heavily financially invest in the UK mainstream education system.

**UNCRPD Monitoring Committee’s third observation is the fact that the education system is not equipped to respond to the requirements for high-quality inclusive education, particularly reports of school authorities refusing to enrol a student with disabilities who is deemed to be “disruptive to other classmates”**

UNCRPD Article 24 and Comment 4 sets out unequivocally that every disabled pupil/student has a right to mainstream education. UNCRPD Article 24 requires the Government to have legal, financial, management, and monitoring systems in place that uphold disabled students’ right to mainstream education.

The CFA is a vital piece of legislation in that, for the first time, there was a presumption of mainstream education for SEN children and young people. Their right to education, health, and social care provision in various school, educational, and training settings were brought together in one statute. However, in practice, the Act has often been ineffective in achieving the stated aim of promoting the presumption of mainstream education for all disabled students; this is because the Act fails to provide a strong framework of inclusive principles within the meaning of the presumption of mainstream education which can also be used to effectively guide education legislation. Currently, there is no legal definition on what constitutes the presumption of mainstream education. Furthermore, the Act allows for students to be placed in segregated educational provision against the wishes of the child and their family.

Disabled students and their parents can lose their right to mainstream education if they request an EHCP. Clause 35 of the CFA states that local authorities are not required to place a child in a mainstream school if it is incompatible with the wishes of the child’s parent or the young person, or the “efficient education of other pupils”. A case worker for the Communities Empowerment Network explains that having an EHCP would mean that if this child started school today, he would be forced down the segregated education route:

*“S is an increasingly rare breed – as a young man with an EHCP requiring a flexible and bespoke approach to his education you would expect now to find him in the special school enclosure as most mainstream schools and academies are shutting their gates at admission stage or excluding students with significant needs once they are in school, often using unlawful and underhand routes.”9*

Clause 35 of the CFA allows local authorities to place disabled students with an EHCP in a special school if no reasonable steps can be taken to remove their incompatibility with the “efficient education of other pupils”. Education caseworkers for various organisations have reported a steady increase in disabled pupils being rejected by mainstream schools and declining support from local authorities. Too often this test is a theoretical one based on prejudice, as illustrated by the parents of two disabled children with significant impairments in separate London boroughs:

*“The Council is not catering to all children; for example, there are currently no options for children with severe learning disabilities in mainstream secondary schools in the borough.” (ALLFIE case study 2018)*

The “inefficient education of other children” caveat allows the same disabled children to be treated differently by different schools and local authorities and is informed, in ALLFIE’s opinion, by prejudice and is a source of social injustice.

*“A parent of a disabled son found that inclusion in a mainstream school was possible within the borough the family was living in but not the one they were moving to.”9*

The Joint Committee on Human Rights (JCHR) highlighted the concerns they had when the Inclusive Schooling guidance accompanying the Special Educational Needs and Disability Act 2001 and the Education Act 1996 was not replaced with any specific guidance under the CFA, which would have set out the principles of inclusive education and what is expected from them in terms of taking reasonable steps to remove the incompatibility with the “efficient education of others” for local authorities and schools. This point supports ALLFIE’s argument that, without guidance, it will be for individual local authorities, schools and Special Educational Needs & Disability Tribunals to decide for themselves on a case-by-case basis whether the child will be allowed to be educated in mainstream schools. The JCHR expressed the view that the uncertainty around the implementation of the “efficient education” clause should be removed to achieve compliance with Article 24 of the UNCRPD.

A key message from the UNCRPD’s Monitoring Committee is that inclusion is not simply about disabled pupils/students’ attendance at a mainstream school or further education college; their guidance in Comment 4 clearly specifies that segregation occurs when disabled pupils/students’ education is provided in separate environments, such as SEN units and segregated courses designed or used to respond to particular or various impairments, in isolation from their non-disabled peers whilst enrolled at a mainstream school or college. Disappointingly, the CFA does not comply with Article 24 standards because the presumption of mainstream education only covers disabled pupils/students’ right to get through the door of a mainstream school or college.

Clause 35 of the CFA sets out the duty for schools to arrange SEN provision in a manner that will promote the child’s engagement in mainstream activities such as lessons. However, schools can rely on the exemptions of Clause 35 to segregate disabled children and students as the presumption of mainstream education clause does not entitle them to anything, as this parent explains:

*“The removal of children from subjects is a bespoke package that the school have for children they do not think will pass GCSE. These assessments are all done in the first term of year 7 and are never done again. This option is designed for the SEN children of the school, none of whom get any reasonable adjustment support. My son was taken to a classroom they called learning support…”9*

Segregation is endemic in the further education sector, as we found from freedom of information requests made to London further education colleges in 2016, two years after the implementation of the CFA. The overwhelming majority of disabled students with learning difficulties were placed on preparation for independent living and employment courses.

The failing of having inclusive education principles set out in the presumption of mainstream education has meant nothing more than expecting disabled students to fit into the education structures designed both by and for non-disabled people.

In the Education Act 2002, Section 52(1) allows head teachers to exclude a pupil due to a single serious breach or persistent breaches of the school’s behaviour policy that would seriously harm the education or welfare of the pupil or others in the school. Many school behaviour policies take a zero-tolerance approach, with children expected to behave in a prescribed manner in an environment which does not cater for disabled children. For example, one couple claimed that the school discriminated against their son Hayden by failing to make disability-related reasonable adjustments under the Equality Act 2010:

*“His breaches of the rules seem fairly minor but there was an accumulative effect – wearing socks that were the wrong colour, eating food in an area of the school where it was banned and ‘gross defiance’ against staff... In the end he was excluded seven times in total, on the final occasion for five days…. After a two-day hearing, a judgment issued last month criticised the school for applying its behaviour policy rigidly and failing to make reasonable adjustments for Hayden because of his disability.”[[14]](#endnote-12)*

The presumption of mainstream education clause in the CFA does not sufficiently protect disabled students’ right to mainstream education. Whilst withdrawing the Inclusive Schooling Guidance and the “incompatibility of efficient education of other pupils” has undermined the practical implementation of the presumption of mainstream education in the CFA, other educational legislative changes and policies cannot be ignored. Some examples are:

* Independent exclusion review panels can only review rather than re-instate a disabled pupil (without EHCP).
* Ofqual’s competency requirements in the setting and awarding of academic qualifications. For example, 5% allocation of marks for spelling, grammar, and punctuation in some GCSE subjects’ marking schemes.
* Department for Education performance targets and league tables.

Whilst the SEND review is centred around the SEND reforms, this cannot be done without examining how mainstream education legislation and policies are undermining the core principle of the presumption of mainstream education under CFA Clause 35 for disabled students.

The greatest source of social injustice is that disabled children do not have an unqualified right to mainstream education. Disabled students are the only group of people who can be segregated and excluded because of their “protected” characteristic, as defined by the Equality Act 2010, which UNCRPD’s Monitoring Committee said is a breach of UNCRPD Article 24 standards.

The Department for Education wants to better help parents to make decisions about the kind of support their children require when tied to a specific type of schooling and improve coordinated education, health, and care services; parents wanting such services for their children will risk losing their right to a mainstream school placement whilst engaging with the EHCP system. This is because local authorities can place disabled pupils into segregated education if specific conditions are met. Parents are often forced to weigh up a mainstream school’s offering and the education, health, and care support available in special schools.

**UNCRPD Monitoring Committee’s fourth observation is the fact that the education and training of teachers in inclusion competences does not reflect the requirements of inclusive education.**

In the UK, there is no requirement for school leaders (i.e. governors and head teachers, SENCO) or teaching staff to have undergone any specific inclusive education training or have prior experience of working in inclusive educational and childcare settings as part of the NQHT, PGCSE Qualified Teacher Status (QTS), and other qualifications. School trainees rated SEN training as one of the poorest aspects of their courses, as this trainee teacher reported:

*“The thing that has let me down most with the training was not knowing enough about intervention strategies and dealing with SEN. We had three major sessions at college but it wasn't practical enough in helping you deal with six SEN children with very different needs in a class of 29 with very little TA support!”[[15]](#endnote-13)*

What was shocking is that some trainee teachers did not expect to be teaching disabled pupils in mainstream education settings.

*“One afternoon per week at a special needs school; excessive as most had no intention of teaching SEN.”* (SCITT School-centred Initial Teacher Training], postgraduate)[[16]](#footnote-3).

With a shrinking qualified workforce, there are insufficient resources to develop inclusive educational practices. Approximately three quarters of SENCOs stated that they do not have enough time to ensure that pupils needing SEN or EHCP-related support are able to access the provisions that they need, or that their workload requires working beyond contractual hours. As a result, learning support assistants, teaching assistants, and other support staff are increasingly being expected to undertake tasks such as curricula, lesson planning, moment-to-moment teaching, and learning decisions that should be provided by qualified teachers.[[17]](#endnote-14)

Many of the recent SEND resources are impairment-specific and include suggested interventions underpinned by the medical model of disability, reinforcing the view that children cannot fit into mainstream educational settings. This is at a time when there has been a steady decline in up-to-date resources around the promotion of inclusive education. The recent SEND commissioned resources have not updated resources such as the Implementing Reasonable Adjustments in Schools pack.[[18]](#endnote-15)

The Department for Education wants to align incentives and accountability for schools, colleges, and local authorities to make sure they provide the best possible support for children and young people with SEND. Only the right people with the right kind of training and experience can provide the best possible support for their pupils. Schools are relying upon teaching and learning support assistants, who are performing tasks that ought to be done by qualified practitioners such as speech and language therapists, occupational therapists, physiotherapists, and qualified teachers. Further, teachers can only deliver the best possible support in mainstream educational settings if they are provided with inclusive education training.

The incentives and accountability of schools and colleges must centre on the quality of their inclusive education practice against appropriate measures and indicators that promote inclusion. The Department for Education performance indicators must therefore focus on inclusivity instead of academic attainments.

**What needs to be done?**

Whilst the UNCRPD’s Monitoring Committee was highly critical of the Government’s SEND reforms, they nevertheless provided recommendations that should be implemented to ensure full compliance with securing disabled people’s human right to inclusive education, as outlined in Article 24, Comment 4 requirements. Indeed, the UNCRPD’s Monitoring Committee made several strong recommendations on what the SEND Review could start to implement.

*“Provide sufficient, relevant data on the number of students both in inclusive and segregated education, disaggregated by impairment, age, sex and ethnic background, and on the outcome of the education, reflecting the capabilities of the students.”[[19]](#endnote-16)*

ALLFIE recommends that the Government commissions independent qualitative research into the drivers behind the increasing rates and range of segregated education provision and the impact it has upon disabled student’s academic, emotional, and social outcomes. The aim is for the Government to have a full understanding that parental choice is meaningless given that there is no alternative, but also to identify the strategic changes required to have a fully inclusive education system that works for all.

ALLFIE’s inclusive education manifesto consisting of six demands would move us from the present situation to a fully inclusive education system, as recommended by UNCRPD’s Monitoring Committee. We believe disabled people have the right to:

* An inclusive education supported by human rights laws.
* A coordinated education, health, and social care system.
* An inclusive learning environment.
* An inclusive curriculum.
* An inclusive assessment system.
* An education workforce committed to inclusive education practice.

For a full copy of our manifesto, [click here](https://www.allfie.org.uk/wp-content/uploads/2019/10/ALLFIE_manifesto.pdf).

As the UNCRPD Monitoring Committee has recommended, the Government should work with organisations of disabled people like ALLFIE to develop a fully inclusive education system. We would like to work with the Government to fulfil its Article 24 obligations around inclusive education.

For more information, contact:

Simone Aspis simone.aspis@allfie.org.uk 0207 737 6030 / 07856 213 837

Michelle Daley michelle.daley@allfie.org.uk

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