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**United Nations Convention on the Rights of Disabled People – England Civil Society Shadow Report: Alliance for Inclusive Education’s Submission Concerning UNCRPD Article 24**

**December 2021**

**Who are the Alliance for Inclusive Education?**

The 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.

Since 2006, schools have had a duty to promote ‘community cohesion’ and Governments have since recognised the role education plays in this. In 2012, the Coalition Government published a policy document entitled “Fulfilling Potential Futures”, which recognised the importance of developing inclusive communities and making the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) a living reality for disabled people in Britain. ALLFIE believes that inclusive communities can only be achieved if disabled and non-disabled people have shared lives, beginning with their educational experiences.

Inclusive education practice is centred round promoting disabled people’s full inclusion within mainstream education settings that positively embrace their various identities and expressions of cultural practices.

**Inclusive education is based on seven principles:**

* Diversity enriches and strengthens all communities
* All learners’ different learning styles and achievements are equally valued, respected, and celebrated by society
* All learners are enabled to fulfil their potential by taking into account individual requirements and needs
* Support is guaranteed and fully resourced throughout the whole learning experience
* All learners need friendship and support from people of their own age
* All children and young people are educated together as equals in their local communities
* Inclusive education is incompatible with segregated provision both within and outside mainstream education

Inclusive education is about a fundamental shift in the existing education system, from seeing difference as a problem to be fixed to celebrating the diversity of students providing all necessary support to enable equal participation. The full definition of inclusive education can be read [here](https://www.allfie.org.uk/definitions/what-is-inclusive-education/).

**ALLFIE’s manifesto demands**

ALLFIE’s manifesto focuses on realising the rights of ALL disabled people to mainstream education, with all necessary supports and adjustments within an inclusive education system. It sets out ALLFIE’s six demands, which would move us from the present situation to a fully inclusive education system.

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 practices.

The ALLFIE manifesto can be signed [here](https://www.allfie.org.uk/support-us/sign-the-allfie-manifesto/).

ALLFIE uses its principles centring around disabled people’s lived experience, the social model of disability, intersectionality, and our manifesto to inform our evidence and conclusions on the progress that the Government has made in implementing UNCRPD Article 24 and Comment 4, specifically regarding disabled people’s rights to inclusive education.ALLFIE uses the terms disabled children, disabled young people, and disabled people because many individuals with special education needs will fall under the definition of disabled persons according to the Equality Act 2010.[[1]](#footnote-1) Disabled people are not a homogeneous group of people, as often assumed by education institutions and practices, as these ALLFIE UNCRPD Article 24 focus group participants explain:

*“My disabled son has no identity outside of his disabilities (in the eyes of others). Positive futures are not imagined, individual preferences and choices neither sought, recognised, nor valued.”*

Disabled students also fall under other Equality Act 2010 provisions such as race, religious beliefs, sexual orientation, and gender. Consequently, an intersectional approach needs to be adopted in promoting inclusive education practices. This is particularly an issue in situations where education institutions do not consider their actions to be discriminative if they dare suggest practices for non-disabled students. For instance, we have heard of education professionals suggesting that parents should not speak their native language with their disabled children in fear of creating language confusion whilst learning English, as these ALLFIE Article 24 focus group participants told us:

*“[Regarding] African or Asian language[s], I remember my mum was advised ‘don't speak your language at home to her because it will mess up her English.’ My mum didn't listen, but for many of the people I grew up with, their parents listened. So they only spoke English at home. So things lack that.”*

*“There’s a hierarchy in language and accents which is driven by racism. This is something that particularly impacts on people from African, Caribbean, and Asian countries. If the language is seen as inferior then the children, young person, etc, is perceived as not speaking proper English or understanding English”.*

It’s not only disabled people’s cultural identity that gets overlooked by the education system and within learning experiences. ALLFIE understands that disabled students being bi-lingual is still discouraged by education institutions.[[2]](#footnote-2) For instance, Jewish disabled children are discouraged from learning Hebrew to avoid difficulty in learning and communicating in English.[[3]](#footnote-3) One survey participant shared her experiences in an ALLFIE UNCRPD Article 24 survey:

*“I spoke with three speech and language therapists and a doctor. His speech and language therapist said ‘don’t confuse him by sending him to a nursery where they speak Hebrew. It’ll delay his language development even further.’ Her boss (an expert in bilingual children) said ‘send him to the Hebrew-language nursery. He’ll learn both languages even if it delays him a bit.’ The speech and language therapist at Binoh said that most children with learning disabilities cope fine with a bilingual approach, although some can’t. The doctor was of Indian heritage and supported me in sending M to a Hebrew-language nursery. She said that her parents had refused to teach her what she referred to as ‘my language’ and only spoke English to her, for fear she would find it difficult to assimilate into English life, and that she deeply regretted not being able to communicate with extended family in India.”*

More broadly, disabled students that are encouraged to become monolingual or Westernised are being denied their cultural roots and that language is very much part and parcel of their identity and who they are, which could be considered as racist. Disabled Gypsy and traveller communities experience low aspirations from teachers, racist bullying, lack of cultural understanding of their way of life, and more because of the intersectional discrimination.[[4]](#footnote-4)

***Have things got better, worse, or stayed the same since the last examination in 2017?***

ALLFIE can only report on the further regression and violation of disabled people’s rights to inclusive education since the publication of UNCRPD Monitoring Committee’s report on the Government’s progress in implementing UNCRPD Article 24. There has been no genuine attempt from the Government to work with ALLFIE or other disabled people’s organisations to develop a fully inclusive education system that welcomes all students, as set out in the UNCRPD committee’s concluding observations and recommendations. On the contrary, the Government’s decision-making processes and policies are being geared towards the increasing segregation and institutionalisation of disabled people.

***How far have the Committee’s recommendations in 2017 and 2016 been implemented?***

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

ALLFIE’s focus group participants have told us that disabled people are increasingly being segregated and excluded from mainstream education. Whilst 50.4% of children with an EHCP attended mainstream school, this nevertheless leaves 49.6% being educated elsewhere.[[5]](#footnote-5) The statistics do not include disabled pupils in home education, residential special schools, and specialist psychiatric inpatient units, the numbers of which have been on the rise in recent years.[[6]](#footnote-6) Whilst the Department for Education’s statistics from 2018[[7]](#footnote-7) appear to report a slight upward improvement in disabled students in mainstream schools, they fail to include the extent to which they experience segregation and exclusion. An ALLFIE UNCRPD Article 24 focus group participant’s child would be included in the mainstream school statistics even though their experience would suggest otherwise:

*“My child needed full time support and when they didn't have it, school became impossible and they were only allowed in for an hour a day, which was very traumatic to take them there for that and interesting at the time, they were isolated in a room on their own, or with the support worker, or in a corridor, not doing anything that anyone else in the class was doing... I don't know why I kept taking him in for that, at that point my son was absconding, destroying furniture, attacking me when he got home. He was so distressed.”*

The data revealing the number of disabled pupils in mainstream schools is meaningless because there is no accompanying information as to what extent they are provided for within mainstream courses and learning alongside their non-disabled peers. There is also no data on the numbers of disabled pupils within SEN Units or receiving in-class support within mainstream lessons. Whilst there is data about disabled pupils’ GCSE attainment and destinations, it’s very limited. The data only reflects on what pupils have achieved rather than the progress they have made with their learning in line with their capacities. The destination data does not provide sufficient information on whether disabled students move into inclusive or segregated education provision. For instance, the number of disabled student destined for Further Education is published without any sense of whether they are enrolled onto discrete or mainstream courses. Further, there is inadequate exclusion data, including internal exclusions and informal exclusions. Thus, ALLFIE’s evidence affirms there has been regression in the numbers of disabled children and young people placed in segregated education settings, which is incompatible with the UNCRPD Article 24 requirements.

**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.**

ALLFIE’s UNCRPD Article 24 focus group participants find no evidence of the Government making any progress in reducing a dual education system consisting of various segregated education provisions. Furthermore, ALLFIE identifies no evidence of progress in dismantling the persistence of a dual education system. On the contrary, the expansion of segregated education provision is a policy response to increasing numbers of local authority schools becoming state-funded independent academy schools where pupil intake schools must reflect a broad rather than a full range of abilities[[8]](#footnote-8), as stated in the Academies Act 2010. Parents are telling us that they – quite literally – have no choice other than segregated education.

*“Considering segregated provision for my own child was entirely a result of poor practices in mainstream schools. We had no choice in the end but to go for this. Local authorities could do a lot more to hold schools to account – but even if they did, so many schools are no longer under local authority control, this would be difficult.”*(ALLFIE UNCRPD Article 24 Survey 2021)

*“Post 16 there are no options. For us, a special school seems to be the best choice available*.” (ALLFIE UNCRPD Article 24 Survey 2021)

Over recent years, the Government’s multi-million pound academy school capital budget ring-fenced funding has been used to establish 1,600 new special school placements across 19 new special schools during 2017[[9]](#footnote-9), 3,500 new special school placements across 37 new special schools and 2 alternative provision schools during 2019[[10]](#footnote-10), and a further 3,000 SEND placements within 35 special schools during 2020.[[11]](#footnote-11) Local authorities have been forced into bidding for new special schools as the only way of reducing the numbers of SEND children without a school placement. Local authorities are having to bid for the establishment of special schools where therapy spaces, sensory rooms, and hydrotherapy pools are available for disabled pupils, whilst mainstream schools are repurposing their space for income generation. ALLFIE UNCRPD survey participants have given their accounts:

*“Generally, education is not set up for having big electric wheelchairs and walkers in mainstream school.”*

*“There is no facilities in mainstream education to support SEND children.”*

Extant research has been unable to identify parents that actively choose to have their disabled children educated in segregated education provision. Parents want their disabled child to be a valued member of their local community, which includes being educated within their local mainstream schools. From ALLFIE’s evidence, parents are forced into segregated education after a prolonged period of time within mainstream school without the necessary support and resources disabled students require to thrive in their learning.

“*My child attended Ms and the long-term trauma he experienced will impact him for a long time. He is now attending a special needs provision that is designed for his needs. I feel there needs to be better understanding and collaboration with professionals, parents, carers, and young people to meet needs and more accountability when this is not working and when schools, health, social care, and transport are in breach of human rights.”* (ALLFIE UNCRPD Article 24 Survey 2021)

The struggle for inclusive education can be a long battle involving three separate legal cases consisting of challenging local authorities that deliberately refuse to (1) carry out an Education, Health, and Care Assessment, (2) issue an Education, Health, and Care Plan, followed by (3) a dispute over the plan’s contents, including the naming of a special school or college over a number of years. Families can be expected to undergo the whole process for both primary, secondary school and post-16 provision. At some point, parents make the decision to send their child to a special school or post-16 institution because they are unable to continue fighting against an ablest education system.

The case remains concerning the Department for Education’s lack of published datasets regarding parents actively choosing to place their disabled children in special schools. The UK Government refuses to conduct research because the findings will affirm ALLFIE’s evidence: that parents are forced into accepting special school placements because they have no confidence in the mainstream education system being sufficiently well-equipped and resourced to support their disabled children’s inclusion.[[12]](#footnote-12) Such research findings would expose the Department for Education’s damning contempt for disabled students’ right to education, as perfectly well stated in UNCRPD Article 24.

**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”**

ALLFIE’s focus group participants told us there is no evidence of the Government developing and resourcing a fully inclusive education system. Similarly, ALLFIE finds no progress in developing a high-quality inclusive education for all. Whilst the permanent school exclusion of SEND children and young people has reduced from being seven[[13]](#footnote-13) to six times more likely than their non-disabled peers to be excluded from school (2018)[[14]](#footnote-14),[[15]](#footnote-15),[[16]](#footnote-16), these statistics do not reflect any real progress in reducing the experiences of exclusion. The Children’s Commissioner has reported concern over the failure of the Department for Education’s datasets to include the increased use of fixed term, internal, and unlawful informal exclusions and home education of disabled children and young people.[[17]](#footnote-17)

Head teachers are allowed to exclude pupils after a single serious breach or persistent breaches of school behaviour policies; this 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.”[[18]](#footnote-18)*

Education behaviour and disciplinary policies are informed by Western social norms where all students are expected to comply, regardless of their own cultural practices and representation of their identity, as these two ALLFIE’s UNCRPD Article 24 focus group members have articulated:

*“They are based on a white supremacist patriarchal system, so when you think about the cause of behaving in schools and all that stuff it's about submission to the system that exists in the school. It doesn't shift. It doesn't acknowledge differences and doesn’t account [for] different backgrounds, even like micro cultures in different homes.”*

*“I am Nigerian. I grew up in Hackney. At home sometimes I would use my hands. If I tried to do that in school that would not be the norm. For eating. Using that as an example. In the school it could have been I was being naughty, because I chose to use my hands to eat. Those are the kind of what is the norm or what is sort of like seen as [the] norm, understanding different cultures.”*

*“If you look at some of the issue[s] that still continue to impact on children from Caribbean and African families. For example, children are not supposed to look at elders in the eyes when they are speaking with each other. Children apply this practice at school. Some schools consider this behaviour as being naughty or the child doesn’t understand instructions/conversation, etc.”*

The Government has been seriously discussing cracking down on behaviour-related disruption in schools, which is counter-productive for disabled children and young people. Academy schools have reduced their pastoral support, replaced sensory rooms and other safe spaces to help disabled pupils de-escalate, access to local authorities’ behaviour support teams, all of which have contributed to the rise in school exclusions. This Government has given school heads greater powers around discipline, including increasing the use of detentions, isolation booths, stop and search powers, and restraint since 2010, all of which engages disabled people’s UNCRPD article rights, including the right to education. School staff have a power to use ‘reasonable force’ to prevent a pupil from prejudicing the maintenance of good order and discipline at the school or among any pupils receiving education at the school.[[19]](#footnote-19) The EHRC expressed concern over a lack of transparency around the use and recording of restraint, which can lead to physical and psychological harm in children. The use of physical restraint has become normalised by their use on public funded television programmes such as “Don’t Exclude Me”. Four families have instructed Irwin Mitchell Solicitors to call for an inquiry under the Inquiries Act 2005 to investigate and recommend measures to end this hidden, traumatic, and unnecessary practice in schools in England and Wales.[[20]](#footnote-20)

**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.**

ALLFIE’s focus group participants tell us there has been no real improvement in teacher training. There is no progression in the Government improving teacher training in inclusive education practice. 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.[[21]](#footnote-21) ALLFIE UNCRPD Article 24 focus group participants explain:

*“Many local authorities do not always feel a child’s needs can be met in a mainstream school and with the current breaches of rights [in the] Equality Act and Children and Families Act… However, if there was adequate training at NQT and PGCE level of disabilities SEND and reasonable adjustments - access to MS may be an option.”*

*“The feeling I get is that they don’t really understand that inclusion goes beyond accepting disabled children. It means changing the way the schools function, across the board, so that disabled children aren’t singled out or marginalised. Inclusion can’t be bolted on but needs to be built-in to everything that happens throughout the day. That’s going to need deep commitment from school leaders and from teacher trainers.”*

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.[[22]](#footnote-22) An ALLFIE UNCRPD Article 24 focus group participant explained how the right type of training could have prevented her child from having a traumatic school experience:

*“Some of that money had been put into the mainstream setting, with the right training as well, and understanding, you know, all the part and parcel of sort of working in a child-centred social model way that could probably have made all the difference.”*

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.[[23]](#footnote-23)

**The Committee recommends that the State party, in close consultation with organisations of persons with disabilities, especially organisations representing children and young persons with disabilities, and in line with the Committee’s general comment No. 4 (2014) on the right to inclusive education and targets 4.5 and 4.8 of the Sustainable Development Goals:**

ALLFIE focus group participants have told us that no progress has been made in working with disabled people’s organisations to develop an inclusive education system. The Department for Education have refused to address any of the UNCRPD Monitoring Committee’s observations and implement recommendations around promoting disabled people’s human rights to inclusive education.

Disabled people’s organisations have systematically been excluded from any genuine engagement around the development of Government SEND policy. Currently, there are no disabled people or organisations representing us on theSEND Review Steering Group[[24]](#footnote-24), who advise major SEND reforms.

We expect a Department for Education Green Paper consultation to be published in the first quarter of 2022. Disabled young people’s engagement has been funded and resourced by non-disabled people’s organisations in receipt of large Department for Education contracts.[[25]](#footnote-25) Currently, young disabled people continue to have no authentic independent voice to engage in developing an education system that is inclusive of all learners.

**(a) Develop a comprehensive and coordinated legislative and policy framework for inclusive education and a timeframe to ensure that mainstream schools foster real inclusion of children with disabilities in the school environment and that teachers and all other professionals and persons in contact with children understand the concept of inclusion and are able to enhance inclusive education:**

ALLFIE’s focus group participants tell us the Government has failed to develop a coordinated legislative and policy framework for inclusive education with a time scale.

The Government have failed to develop a concept of inclusion that clearly sets out the expectations of schools, colleges, and universities to develop inclusive education practice.

*“One Primary was so bad we had to withdraw our child; he went to a really good inclusive primary after that (about 12 miles away).” (Parent Survey 2021)*

Currently, disabled students are expected to fit into the existing education system with minimal adjustments and thought into their inclusion, as set out in UNCRPD Article 24, Comment 4.

Similarly, 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 Children and Families Act, which would have set out the principles of inclusive education and what is expected from it in terms of taking reasonable steps to remove the incompatibility with the “efficient education of others” for local authorities and schools.[[26]](#footnote-26) 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 existing uncertainty around the implementation of the “efficient education” clause should be removed to achieve compliance with Article 24 of UNCRPD.[[27]](#footnote-27)

The Equality Act 2010 covers all disabled people’s civil rights to all forms of education. The Equality Act is the main legislative framework for disabled students without education, health, and care plans or those accessing higher education. The Equality Act 2010 has not been reformed to provide consistency across the education sector in the arrangement of reasonable adjustments.

*“The equalities act allows my child to attend school and access education; however, in reality most schools are not trained on reasonable adjustments and what this means for disabled children in school, college, and education, which results in tribunal cases.” (ALLFIE UNCRPD Article 24 survey 2021)*

Despite all education providers having a duty to anticipate the reasonable adjustments of disabled students, what constitutes reasonable adjustments is nevertheless based on a case-by-case basis by a civil court judge.[[28]](#footnote-28) For more information see ALLFIE’s Equality Act 2010 review submission.[[29]](#footnote-29)

The Government’s Schools Education White Paper 2017 included proposals to establish new grammar schools and forcing all state funded schools to become academies, operating independently from local authority control. Grammar and academy schools are much more selective, often refusing to enrol disabled children, particularly those with learning difficulties and social and emotional behavioural difficulties. From 2017, the expansion of special schools provision is expected to be filled by the increase in disabled children and young people who have been unable to secure a mainstream school placement. An ALLFIE UNCRPD Article 24 focus group participant provides some insight:

*“So if I wanted to fight them. S would have had to keep doing that. I know it can be years. So if I wanted to fight that assessment because what they basically said was, when he had his full-time support, because he had it briefly after he had an accident and they said they couldn't continue to fund that full-time support that he needed because they had already spent the money in the unit where they wanted him to go. So what they were saying was that my son's budget for autism, if it was going to be that much care, if he was going to need full time support, instead he would need to go somewhere special.”*

The school and post-16 institution performance league tables do not include inclusive education measures, targets, and success rates. Accountability measures only focus on students’ public examination performance. Whilst some disabled students are able to sit and pass public examinations, this is not the case for everyone. Our public examinations are designed and informed by non-disabled students with white privilege competences. Disabled and other students without white privilege performances are graded against the standards set by their peers with white privilege. GCSE public examination performance league tables are used for ranking schools and benchmarking between schools. Fewer and fewer students’ qualifications have been included in the school performance league tables over the past five years. The English Baccalaureate (EBacc)[[30]](#footnote-30) contains five academic subjects followed by eight Attainment and Progress measures. This also comprises actual attainment and progress in the student’s eight best GCSE grades, including a minimum of five academic approved qualifications and a maximum of three vocational approved qualifications. An ALLFIE UNCRPD focus group participant explains the curriculum closing in around disabled people:

*“There is an emphasis on STEM rather than the arts and social sciences. The vast majority of these student[s] are from affluent backgrounds.”*

The Level 3 qualification performance league tables consisting of A Levels and other vocational qualifications will be reformed as the Government reduces the range of approved vocational qualifications in the near future after various vocational qualification reviews.[[31]](#footnote-31),[[32]](#footnote-32) Fewer vocational qualifications will be made available for disabled students who prefer a broader range of assessment arrangements other than A Level examinations, as this ALLFIE UNCRPD Article 24 focus group participant articulated:

*“I have completed [the] PRINCES2 Foundation in Project Management [and the] Foundation diploma in Art and Design. [In addition to] building and managing tiny house self-builds and [a] Permaculture Design Course. Without the vocational qualifications, it would have impacted negatively on my employment status and my wellbeing. Project Management course supports my personal development not only having a positive impact on my current employment role but will open up more employment opportunities in the future.”*

GCSE and A Level courses are examination-based after the removal of coursework assessment arrangements that provided a broader range of assessment methods. In addition, various GCSE academic qualifications give 5% of marks for grammar, spelling, and punctuation.[[33]](#footnote-33) The Government went ahead with all qualification reforms, ignoring the equality impact assessments making it clear that disabled candidates would be severely disadvantaged. Not only are the Government making it harder for disabled candidates to pass public examinations, they are considering whether to introduce minimum A Level and GCSE Maths and English grade requirements to secure a Government Higher Education loan, which will further disadvantage disabled students. Put simply, the Government are making it increasingly difficult for disabled people to engage in life-long learning.

**(b) Strengthen measures to monitor school practices concerning enrolment of children with disabilities and offer appropriate remedies in cases of disability-related discrimination and/or harassment, including deciding upon schemes for compensation;**

ALLFIE’s UNCRPD Article 24 focus group participants told us no progress has been made in the monitoring of school and post-16 institutions policies and dealing effectively with disability-discrimination within school and college settings. OFSTED’s inspection framework does not centre on inspecting the inclusivity of the school’s ethos in supporting disabled children and young people’s inclusion within their educational setting. There are just four criteria on which schools are judged on: (1) quality of education, (2) behaviour and attitudes, (3) personal development,and (4) leadership and management. Disabled children with SEN are mentioned, although the primary focus is on providing an appropriate curriculum. There is no mention of inspecting the school and post-16 institutions for its inclusive ethos, including supporting disabled children in developing relationships with others, inclusivity of play and break times, and extra-curricular activities and field trips, among others.[[34]](#footnote-34)

The Independent Exclusions Review (IER) procedure replaced the Independent Exclusions Appeal arrangements.[[35]](#footnote-35) Unlike the Independent Exclusions Appeals, IER has no power to reinstate the excluded child if their exclusions appeal has been upheld. For the majority of children with SEND who do not have an EHCP, there is no legal protection if they are unjustifiably excluded from school:

*“[It was] horrible. I felt so alone and like my life was over. I was just very confused. I didn’t know why this was happening to me and felt like I couldn’t do anything about it. I didn’t know what was going on. I was just getting moved from one place to the other, I didn’t really experience a process; I was just kicked out and that was it. I think exclud[ing] any kid is unfair. They are kids, of course they are going to make mistakes. It doesn’t mean you should ruin their lives by excluding them from school. I don’t think teachers even know what human rights is.” (ALLFIE UNCRPD Article 24 survey 2021)*

Only disabled children with EHCP can have an Independent Special Educational Needs Tribunal appeal hearing where the panel can order the reinstatement of the disabled child if they hold that the exclusion is unjustifiable.

There is no evidence that schools are well-equipped to deal with disability-related bullying and harassment. If teachers are receiving insufficient inclusion training, then they will be unprepared to identify and deal with disability-related bullying issues.

There has been no changes in the law to allow disabled pupils to seek financial compensation if they experience disability discrimination within a school setting. Schools will not take disability discrimination seriously unless there is a financial consequence. Disabled students can be awarded financial compensation if a further/higher education or adult education institution has been found to have acted in a manner deemed unlawful disability discrimination.

**(c) Adopt and implement a coherent and adequately financed strategy, with concrete timelines and measurable goals, on increasing and improving inclusive education. The strategy must:**

**(i) Ensure the implementation of laws, decrees, and regulations on improving the extent and quality of inclusive education in classrooms, support provisions and teacher training, including pedagogical capabilities, across all levels providing for high-quality inclusive environments, including within breaks between lessons and through socialization outside “ education time”;**

ALLFIE’s focus group participants have told us there have been no improvements in the holistic support that disabled people need to benefit from student life. The Government has failed to implement a regulatory framework that supports disabled people’s inclusion in the whole school campus life, including break times, extra-curricular and union activities, field-trips, play dates, and outside social events.

*“I think a lot of the segregation that we are still experiencing within the kind of university sector is not just around access to education and academic materials, but kind of around the experience of university. So that's a big issue around what disabled students can and can't access and also what support they can and can't access for different aspects of university life. I think [there] is still huge disparity between the experience of disabled and non-disabled students.” (ALLFIE UNCRPD Article 24 focus group participant 2021)*

Currently, there is no universal funding system that is well understood and coordinated throughout life-long learning. Complex funding arrangements involve disabled people having to meet different criteria from multiple funding streams to receive the support they require to engage in student life, including hanging out and socialising with others; these have not been adequately addressed. The funding stream for social and personal care support is means-tested, which is discriminatory.

The fragmentation of the funding arrangements has meant that different funding agencies are deliberately arguing that it’s not their responsibility to fund education, health, and social care. For instance, there are protracted arguments about whether speech and language therapy is an education or health need. Schools, post-16 institutions, local authorities, and parental organisations have all cited a chronic reduction in and lack of funding to support disabled students.[[36]](#footnote-36) As a result, disabled young people are left without the necessary assistance they require to participate in their communities. Many disabled young people thus do not have a care package that supports their growing desire for independence with age. Many disabled young people are therefore unable to enjoy play dates, sleepovers, and nights out because they do not have the state support in place. Various ALLFIE UNCRPD Article 24 focus group participants have highlighted the difficulties they have experienced in securing the coordinated support that either they or their disabled children need to thrive in mainstream education.

*“Funding is the biggest gap; however, practically accepting not all children will ‘conform’ to non-disabled people’s expectations is the most difficult part - mainstream education. Lacks the organisational arrangement for integrated therapy and more often than not children with SEND fall behind because of their need for therapies - either the therapies don’t happen or the education doesn’t happen.”*

*“SEND and transport are good. Health - we keep having to travel miles for specialist services (six hours travelling for a half hour consultation is common). Social care is worse than useless; I'd prefer it wasn't even an option. Social workers are not trained in disability, only child protection, so assume everything about the child is due to abuse.”*

The National Association of Head Teachers (NAHT), National Education Union, and Local Government Association are amongst professional organisations all reporting that there is insufficient funding in place to develop and continue delivering inclusive education practice within mainstream school settings, however inadequate it may currently be.[[37]](#footnote-37) The Local Government Association and other professional bodies have all expressed their concern over the Government’s schools and high needs funding policy, which has negatively affected their ability to promote inclusive educational practices. The Local Government Association has warned the Government that:

*“We are concerned that if councils do not receive sufficient funding to cover high cost 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.”*

Many parents have told ALLFIE that local authorities and schools say it’s too expensive to support their children in mainstream education. The Government and local authorities do not question the funding of segregated education even of a residential nature, as this parent explains:

*“There is simply no other option for year 12. Son currently year 11 mainstream. It is far from home so he'll need to be residential, splitting him from [his] brother. Always had limited school choice based upon toilet (if no care suite it couldn't be considered) and previously told when looking at a school that son was 'too expensive' for that headmaster to consider.” (ALLFIE UNCRPD Article 24 survey 2021)*

This parent reflects the experience of 6,000 other disabled pupils who are 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. Some individual residential special schools are receiving £250,000 per pupil. Such funding would not be readily available to support disabled students within mainstream education settings.[[38]](#footnote-38) The cost of disabled residential special school survivors moving into inpatient care can amount to £1 million over three years.[[39]](#footnote-39) These residential special schools and the establishment of special schools are promoting their ability to provide a wrap-around service that supports disabled students in and outside the classroom, which would not be possible within mainstream education settings. As such, disabled students requiring education, health, and social care support in both education and social settings have no option other than to accept a special school placement, often hundreds of miles away from home.[[40]](#footnote-40) Despite all this funding being in place to support segregated education, many families are forced into the position to apply for funding to support their children’s education, including the purchase of specialist toys and play equipment, adaptive technology, and the like.[[41]](#footnote-41)

Disabled students and parents face barriers in arranging a state-funded assessment that will enable educational professionals to identify impairments or health conditions that will impact upon students’ learning. Massive delays in carrying out the statutory education, health, and care assessments due to staff shortages and ‘refusal to assess’ tribunal appeal hearings has a substantial impact upon disabled students’ experiences. UNCRPD Article 24 Focus Group participant said:

*“Sometimes, we can find that young people with special educational needs, who are waiting on Education, Health, and Care Plans (EHCP), may be expected to remain in a school setting that is not suitable for them until all assessments are completed. If the young person drops attendance, this can hamper the assessment which then extends the process… Admittance to college can also be hampered by a lack of an EHCP assessment, meaning Young people cannot attend because they don’t have 1-2-1 support.”*

Disabled students are often left feeling very anxious, often requiring mental health assessments, interventions, and hospitalisation. Disabled students and their parents often have to pay for private assessments to confirm their disability status. Increasingly, local authorities are either denying or frustrating the formal diagnostic assessment processes that will confirm disability status and thereafter access to state-funded education, health, and care support. One ALLFIE UNCRPD Article 24 focus group participant illustrates:

*“£200 is probably the minimum you are looking at as even if you have a SEN provision in your previous kind of academic stages, that's not necessarily tak[en] into account at all when you go to higher education, so it is up to the individual student to provide any evidence. Most of that evidence has to be within the last six months to be eligible, and the cost of just that assessment can run from £250 to like £500 just for the assessment before you get into how much you then have to pay for any support contribution. So it can add up to a massive bill.”*

Disabled students allowance grants are capped at £25,000; a level that does not sufficiently cover the support that disabled students require to complete their courses and participate in campus life.[[42]](#footnote-42) For instance, a full-time BSL interpreter would cost more than £25,000 per year alone. Disabled students often have to apply to charities to cover the shortfall in the statutory funding available to support their inclusion within mainstream education settings.[[43]](#footnote-43)

ALLFIE does not believe that austerity has driven the starving of funding to support disabled students to be educated in mainstream education. The Government has deliberately prioritised the funding of the segregation and institutionalisation of disabled people. As a consequence, ALLFIE does not accept the claim that austerity is driving the financial agenda; it is instead the Government that is systematically attacking disabled people’s human rights, as set out in the UNCRPD.

**(ii) Set up awareness-raising and support initiatives about inclusive education among parents of children with disabilities;**

ALLFIE’s UNCRPD Article 24 focus group participants told us there has been no real improvement in a Government-sponsored programme promoting the benefits of inclusive education for everyone and the wider community. The Government have failed to organise any awareness-raising programmes that counteract the constant stream of negative media publicity highlighting parents’ despair of the schools that have failed to meet their disabled child’s needs on a repeating basis. Further, the Government’s education advertising awareness campaigns such as teacher recruitment do not include positive narratives of inclusive education practice. The Department for Education’s teacher recruitment ‘every lesson shapes a life’ public awareness campaign[[44]](#footnote-44) does not appear to explicitly include disabled children in their mainstream school classroom settings. Whilst BAME and both male and female teachers are represented, there is no clear representation of disabled teachers in the Department for Education’s public education awareness campaigns. Similarly, there is limited representation of disabled people and their inter-sectional experiences within course curriculums.

*“It doesn’t take into consideration disabilities, different identities, backgrounds, and different experiences. Many books in the national curriculum are triggering to children and young people from different backgrounds. There is a book read in year 5 about a child being in a care home, ignored and pushed out of society. This itself is triggering for children in the care system. There are not many books that represent disabled people, those with [learning disabilities], ethnic minorities, etc. Too often children as young people cannot identify with the curriculum.” (ALLFIE UNCRPD article 24 survey 2021)*

The Government has failed to provide any awareness-raising programmes and support initiatives that promote the benefits of mainstream schools with great inclusive education practice.

**(iii) 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.**

In 2019, the Department for Education revealed a report entitled “School exclusion: a literature review on the continued disproportionate exclusion of certain children”.[[45]](#footnote-45) There is plenty of evidence that reports gender and race disparity within the education system. However, when it comes to the experiences of disabled children and young people on their intersectional experiences the data is either inadequate or not available; for instance, the experiences of black and white disabled children and young people living in Jewish communities. ALLFIE knows that lessons have still not been learnt from racism in the 1960s and 1970s within the education system as a result of the under-reporting of their experiences. The use of special schools and colleges continue to be used to uphold segregation and exclusion of groups of people and communities.[[46]](#footnote-46) Black disabled children are disproportionately represented in special schools, alternative provision, and Pupil Referral Units (PRU); the start of the pipeline to prison. Indeed, the HM Chief Inspector of Prisons Annual Report states that the reason 86% of inmates ended up in prison is a direct consequence of their segregation and exclusion from mainstream education.[[47]](#footnote-47)

***Have any new issues have emerged since 2017?***

The Coronavirus Act 2020 allowed the Government to restrict and remove many of the rights we enjoyed in our everyday lives without recourse to Parliament.[[48]](#footnote-48) Disabled people experienced the brunt of the Coronavirus Act’s provisions where some of our most important rights were put aside or weakened under the disguise of controlling Covid-19 infections and preventing NHS overload of patients with Covid-19. Disabled people experienced the increased intersecting of ableism and racism as a result of education, health, and care Covid-19 policies treating disabled people’s human rights with contempt.[[49]](#footnote-49),[[50]](#footnote-50),[[51]](#footnote-51)

The Coronavirus Act 2020 gives notice to modify the Children and Families Act 2014’s s (42) so that local authorities are only required to use reasonable endeavours to secure the SEND provision specified in the child’s EHCP from 1st May 2020; this has been a disaster for many families. It has meant that disabled children are left unable to participate in any form of mainstream education, including engagement with online learning platforms.

ALLFIE has surveyed its members and invited Facebook posts to enlist disabled school pupils, university students, parents, and education professionals’ experiences of the provision of education services throughout the Covid-19 pandemic. We have found that since schools and colleges closed that:

* 83% of parents are expected to home-school their disabled children.
* 54% of parents are not receiving any support from either the local authority or their children’s school to help with home-schooling.
* 34% of parents are receiving some (but not sufficient) support to help with home schooling.

Similarly, the Disabled Children’s Partnership reported that:

* 76% of families say ALL support has stopped since lockdown.
* 8% of families say support has stayed the same.
* 16% of families say they have been offered an alternative such as online education.

Families have reported that the withdrawal of education, health, and care support has had a negative impact upon their child’s or young person’s overall wellbeing, further affecting their education and mental and physical health. Families have reported that the child’s wellbeing has deteriorated as a result of the prolonged period of time without provision. Instead of duties to arrange the necessary support that disabled students need to flourish in mainstream education, local and health authorities’ reasonable endeavours has in practise meant de facto provision of no services.

Many disabled children and young people have had little-to-no participation in mainstream education for over 18 months because they have not accessed the necessary education, health, and social care support or that remote education has not been accessible for various reasons such as having adaptive technology, assisted software, or differentiated and accessible curriculum materials. Now that the UK has returned to normal, without any restrictions and prohibitions on our freedoms, families are still reporting that their children remain without the necessary support they require to flourish in mainstream education.[[52]](#footnote-52)

We strongly believe that the practical outcome of the Children and Families Act easements and non-implementation of the Equality Act’s reasonable adjustment duties has resulted in many disabled students’ human rights to mainstream education being violated by the state under UNCRPD Article (24).

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.

**Which issues have had the biggest impacts on deaf and disabled people in England/most significant implications for the rights of deaf and disabled people in England?**

* Dual Education System that includes an ever-expanding segregated education provision.
* Education law does not include an unequitable human right to inclusive education.
* No legal definition and guidance on what constitutes inclusion, inclusive education practice underpinned by the social model of disability
* No commitment to develop an inclusive education system that includes the infrastructural support that disabled people require to flourish in schools, colleges, and universities.

The Government is reviewing the Human Rights Act and Judicial Review Procedures with a view to weaken the state’s obligations to protect and uphold disabled people’s human rights and the Government’s decision to more generally scrutinise, including the human rights to inclusive education. This is despite ECHR judges incorporating UNCRPD Article 24 principles into the interpretation of non-disability-discrimination in education under Article 2 Protocol 1 and Article 14.

The Government wants to bring in legislation that would allow Ministers to override court judgments they have lost, be they passed by the European Court of Human Rights or British judges. This could have a significant negative impact for disabled people who may have won cases that support inclusive education practices. The Government could easily overturn decisions that would permit the increased segregation, exclusion, and institutionalisation of disabled people.

Disabled people’s civil right and human right to inclusive education would not have been achieved without years of active and sustained protests of all sorts, particularly around the Houses of Parliament, Government departments, and educational institutions. The Government is bringing in legislation that will severely undermine our rights to protest within the Police, Crime, Sentencing, and Courts Bill. The proposals will allow the police significant leeway to stop our inclusive education-related protests on grounds including noise and disruption to the public.

The Government’s plans to expand segregated education through law, policy, and practice whilst curtailing disabled people’s and families rights to challenge tribunal and court decisions and protests will no doubt lead to – yet more – substantial attacks on disabled people’s human rights to inclusive education, as set out in UNCRPD Article 24.

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