



Education Committee inquiry into special educational needs and disabilities

Submission by the Centre for Studies on Inclusive Education (CSIE)

About CSIE

The Centre for Studies on Inclusive Education (CSIE) is a national charity (327805), that works to promote equality and eliminate discrimination in education. Founded in 1982, the Centre has been at the cutting edge of educational change for over 30 years. CSIE seeks to transform education so that everyone can be safe, included and learning in school, regardless of age, disability, gender, gender identity, sexual orientation, culture/ethnicity, socioeconomic background, religion or belief. Activities include: equality workshops for pupils, educators, parents and governors; talks, training & consultancy nationally and internationally; and a wide range of resources for schools, local authorities, academy chains, parents and students, including student teachers.

1. Introduction

Disability equality is understood in multiple and contrasting ways to the extent that what is seen as good educational provision by some, is considered anachronistic and discriminatory by others. Separate special schools were established in the 19th and early 20th centuries, at a time when disabled people were thought to have no place in mainstream society and institutions. Nowadays national and international legislation clearly state every child's right to mainstream education, yet recent evidence confirms that this continues to be understood – and implemented – in vastly different ways. In some areas schools have transformed, so that any type and degree of impairment can be accommodated. In other areas long-established views about how schools should organise teaching and learning have remained fixed, and there continues to be an underlying assumption, held by many professionals, that some disabled children cannot be included in ordinary schools.

Since the beginning of the 21st century the lack of plans to increase school capacity to include disabled children has been repeatedly criticised by multiple agencies. In 2002 the Audit Commission stated: "The existence of separate structures and processes for children with SEN may have allowed their needs to be seen as

somehow different – even peripheral – to the core concerns of our system of education. This needs to change.”¹ In 2004 Ofsted published a report on the quality of provision in mainstream schools for pupils with labels of special educational needs and noted that “a high proportion of schools have still a long way to go to match the provision and the outcomes of the best. They are generally not reaching out to take pupils with more complex needs.”² In 2008 the UN Committee on the Rights of the Child criticised the UK for its lack of a comprehensive national strategy for the inclusion of disabled children into society³. The Salt Review (DCSF 2010) confirmed that many teachers feel ill-equipped to teach pupils who have labels of severe or profound and multiple learning difficulties and suggested that this highlights a gap in initial teacher education. It also revealed a widespread misconception that this group of learners requires carers more than educators⁴.

In September 2011 the Equality and Human Rights Commission (EHRC) published *Hidden in plain sight: inquiry into disability-related harassment*⁵, a report which revealed systemic institutional failure to tackle harassment of disabled people. Hundreds of thousands of disabled people regularly experience harassment or abuse, the report stated, but a culture of collective denial prevents public authorities from tackling it effectively. The inquiry made a number of recommendations, including a recommendation to the Department for Education (DfE) to carry out research in order to better understand how segregated education, or inadequately supported inclusive education, impacts on attitudes towards disabled people and on disabled children and young people’s life chances. In July 2012 the Office for Disability Issues presented the government’s response⁶, in which the DfE rejected this recommendation as unnecessary, on the grounds that it is the quality of provision, rather than the type of setting, that matters. It is hard to understand how the DfE can support segregated education without knowing, and without being willing to find out, its full impact on the future life chances of disabled young people. In October 2012 the EHRC published its follow-up report *Out in the Open: tackling disability-related harassment; a manifesto for change*⁷, in which it set out its final recommendations for local and national governments as well as for police, transport, health and education authorities. Among these final recommendations the EHRC reiterated that the type of setting may be important, because separating disabled children from their peers may have an adverse long-term impact, and repeated the

¹ Audit Commission (2002). *Special educational needs: a mainstream issue*. London: Audit Commission

² Office for Standards in Education (Ofsted) (2004) *Special educational needs and disability: towards inclusive schools*. London: Ofsted

³ Committee on the Rights of the Child (2008) CRC/C/GBR/CO/4 *Concluding observations on the third and fourth periodic report of the United Kingdom of Great Britain and Northern Ireland*.

⁴ Department for Children, Schools and Families (DCSF) (2010) *Salt Review: independent review of teacher supply for pupils with severe, profound and multiple learning difficulties (SLD and PMLD)*. Nottingham: DCSF Publications

⁵ Equality and Human Rights Commission (EHRC) (2011) *Hidden in plain sight: inquiry into disability-related harassment*.

⁶ HM Government (2012) *Government Response to Hidden in Plain Sight, the Equality and Human Rights Commission Report on Disability Related Harassment*

⁷ EHRC (2012) *Out in the Open: tackling disability-related harassment; a manifesto for change*

call for research in this area. The UN Committee on the Rights of the Child last examined the UK in 2016 and, in its concluding observations, the Committee expressed concern that “[m]any children with disabilities are still placed in special schools or special units in mainstream schools” and recommended that the UK should “set up comprehensive measures to further develop inclusive education”⁸ The UN Committee on the Rights of Persons with Disabilities reviewed in 2017 the UK’s compliance with the Convention and issued a damning report⁹, condemning the UK Government’s record of upholding disabled people’s rights. Education for disabled children has been highlighted as an area of major concern. The Committee was concerned at the increased number of disabled children being sent to separate special schools, and the UK’s reluctance to develop more inclusive education for disabled children; it called for a strategy to end the segregation and institutionalisation of children and young people from their families and communities. Specifically with regard to Article 24 (Education), the Committee expressed concerns at:

- a) the persistence of a dual education system that segregates disabled children to special schools, including based on parental choice;
- b) the number of disabled children in segregated education environments is increasing;
- c) the education system is not geared to respond to the requirements for high-quality inclusive education, in particular the practices of school authorities turning down enrolment of disabled students who are deemed ‘as disruptive to other classmates’; and
- d) education and training of teachers in inclusion competences is not reflecting the requirements of inclusive education.

The issue of mainstream or segregated education is often seen as a polarised argument, but it need not be. Supporters of a mainstream education for all advocate this on the grounds of children’s right to non-discrimination and the understanding that, unless children go to school with their brothers and sisters, friends and potential friends from their local community, prejudice and discrimination will persist. At a time when schools are increasingly expected to provide personalised learning, there is no reason why tailor-made provision has to be offered in separate institutions. Separate special schools were established at a time when disabled people were thought to have no place in mainstream society. Children learn from one another, as well as from adults, and establish friendships in school that can last a lifetime. No matter how excellent the facilities or how committed and experienced the staff may be, the fact remains that separate special schools are segregating institutions. In any discussion of children’s needs, a sense of belonging in one’s local community should

⁸ Committee on the Rights of the Child (2016) *CRC/C/GBR/CO/5 Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*.

⁹ Committee on the Rights of Persons with Disabilities (2017) *CRPD/C/GBR/CO/1 Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland*

not be overlooked. Supporters of special schools, on the other hand, argue that these are needed because they offer provision not regularly available in mainstream schools. The two positions do not contradict each other. The first represents a human rights position, the second a reflection on existing practice. In other parts of the world education has transformed and all children attend their ordinary local school¹⁰.

2. The reforms do not fully embrace other relevant legislation

- a) The Equality Act 2010 places a statutory duty on schools to eliminate discrimination, advance equality of opportunity and foster good relations between people who have, and those who do not have, any one of the protected characteristics as defined by the Act, disability included. Eliminating disability discrimination, promoting disability equality and fostering good relations between disabled and non-disabled people are all aspects of the Public Sector Equality Duty which all schools and local authorities have to comply with. Long-standing convention and familiarity, however, can mask the discriminatory aspects of an educational system which has been set up to exclude disabled children and young people from ordinary schools. Educating them in separate schools does little, if anything, towards promoting disability equality and fostering good relations between disabled and non-disabled people.

In addition, the Equality Act places on schools the reasonable adjustments duty, which is sometimes (mis)understood as applying in response to a particular pupil or prospective pupil. To the contrary, the Act defines this as an anticipatory duty, owed to disabled pupils generally, and requires schools to take positive steps to ensure that disabled pupils can fully participate in every aspect of school life.

Recommendation

Issue clear and detailed guidance for schools on implementing statutory equality duties, ensure regular monitoring and offer support as necessary.

- b) The UN Convention on the Rights of the Child also makes it clear that disabled children and those identified as having special educational needs should be

¹⁰ Hansen, J, Leyden, G, Bunch, G and Pearpoint, J (2006) *Each Belongs: the remarkable story of the first school system to move to inclusion*. Toronto: Inclusion Press

included in ordinary local schools. The Committee on the Rights of the Child has issued a number of relevant General Comments, making this even more clear.

In its General Comment No. 1 on the aims of education (2001), the Committee notes that discrimination on the grounds of disability “offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities” and recommends “the provision of education which promotes an understanding and appreciation of the values reflected in article 29 (1), including respect for differences, and challenges all aspects of discrimination and prejudice.” (Paragraphs 10 & 11.)

In its General Comment No. 9 on the rights of children with disabilities (2006), the Committee states that disabled children continue to face barriers to the full enjoyment of their rights and adds (paragraph 5): “The Committee emphasizes that the barrier is not the disability itself but rather a combination of social, cultural, attitudinal and physical obstacles which children with disabilities encounter in their daily lives. The strategy for promoting their rights is therefore to take the necessary action to remove those barriers.” and (paragraph 66) “Inclusive education should be the goal of educating children with disabilities.”

- c) The UN Convention on the Rights of Persons with Disabilities (2006), which the UK has signed and ratified, requires that States Parties must develop an inclusive education system at all levels (Article 24).

In the process of ratifying the UN Convention on the Rights of Persons with Disabilities in June 2009, the then government had issued the following declaration: “The United Kingdom Government is committed to continuing to develop an inclusive system where parents of disabled children have increasing access to mainstream schools and staff, which have the capacity to meet the needs of disabled children.” This declaration remains binding, but there is no evidence of any national effort in response to it. For this commitment to be honoured, the Department for Education should offer clear guidance, support and incentives for schools to increase their capacity to respond to the full diversity of learners.

Recommendation

Ensure that there is clear guidance, support and incentives for schools to increase their capacity to respond to the full diversity of learners.

In September 2016, the Committee on the Rights of Persons with Disabilities published General Comment no. 4¹¹ clarifying how Article 24 (Education) should be understood and implemented. The General Comment confirms that education in separate special schools is understood as segregation and should not be confused with the inclusive education which Article 24 calls for.

Crucially, the Committee highlights the importance of recognizing the differences between exclusion, segregation, integration and inclusion. Segregation, not mentioned at all in Article 24, is defined in the General Comment as the education of disabled students in separate settings, isolated from non-disabled students. Integration, it says, is the process of placing disabled students in existing mainstream institutions and expecting them to adjust to the requirements of these institutions. Inclusion, on the other hand, is the process of “systemic reform” involving changes in content, methods, approaches, structures and strategies in education, so that all students can have an equitable and participatory learning experience. This, the Committee stresses, is what Article 24 means by inclusive education.

Recommendation

Offer advice and training to help ensure that terminology of inclusion and segregation is used consistently by education practitioners and policy makers.

3. Ongoing barriers to equality of opportunity

There is currently unprecedented pressure on high needs funding and a marked reduction in support services available to schools; both of these will have no doubt been evidenced by other submissions to this inquiry. We elaborate here on two additional issues, which are less widely understood or discussed:

a) the chicken-and-egg relationship between parental choice and the educational context in which it takes place

School places for children with an education health and care plan (and, previously, with a statement of special educational need) are allocated by local authority officers, taking into account the views of the child’s parents and a range of professionals. CSIE has been reporting on local authority school placement

¹¹ Committee on the Rights of Persons with Disabilities (2016) CRPD/C/GC/4 [General comment No. 4 \(2016\) on the right to inclusive education](#)

trends since the 1980s. Despite every authority being subject to the same national policies and legislation, successive CSIE *Trends* reports have brought to light alarming inconsistencies: some local authorities regularly rely on mainstream provision while others routinely place larger proportions of children in separate special schools. For example our most recent *Trends* report revealed that as many as 1 in 100 children were regularly sent to separate special schools in one local authority, but only 1 in 500 in a neighbouring authority of similar size¹². Such significant differences in the way local authorities respond to diversity cannot be explained by social or geographical variations alone. Instead, they are more likely to reflect a combination of factors including differences in strategic leadership, vision and commitment to inclusive education.

To avoid such a postcode lottery, clear, detailed and enforceable guidelines are needed to help ensure uniformity in the implementation of national policy and legislation. These could be entirely new or an updated version of the Inclusive Schooling statutory guidance¹³ withdrawn and not replaced in the process of the reforms, which used to set out in detail the steps which mainstream schools were required to take in order to include disabled children or those identified as having special educational needs.

Recommendation

Issue clear and detailed guidance on how to increase schools' capacity to provide for the full diversity of learners and offer incentives for schools to do so.

Further, current data collection practices for national, local and school level data, with regard to school placements of disabled children or those identified as having special educational needs, are not fit for purpose. No information is currently available on the proportion of time that children spend in different settings, for example on how time is divided between mainstream and special schools for children in dual placements. For children in special classes, units or resource bases in mainstream schools, no information is available on the proportion of time they spend alongside, or separated from, other pupils in the school. Such a time-based approach to data collection is already in use in USA data collection systems. It is acknowledged that proximity to peers is only a limited indicator of inclusive provision, but is nevertheless an important one. We therefore recommend that the Department for Education collects time-based information from schools, to establish the extent to which children are learning and developing alongside, or separated from, their peers.

Recommendation

¹² Black, A. and Norwich, B. (2014). Contrasting responses to diversity: school placement trends 2007-2013 for all local authorities in England. Bristol: CSIE

¹³ Department for Education and Skills (2001) Inclusive Schooling: Children with special educational needs

Ensure that time-based information is collected from schools and published, to better understand the quality of pupils' experience in schools.

b) Inflexible ideas about how teaching and learning should be organised in schools

More than 30 years after children's right to mainstream education was first enshrined in law, many schools do not feel able to provide for some types or degrees of impairment and receive no instruction or incentive to do so. This generates a vicious circle of not developing provision because such provision had not been developed before. Parents who wish to exercise their disabled child's right to mainstream education can find themselves under pressure to accept a special school place, despite the government's promise of parental choice. Without strategic leadership from the government and incentives for schools to develop capacity to include disabled pupils, the promise of parental choice will remain hollow. After all, offering an entitlement without developing capacity is like issuing a ticket and keeping the door locked¹⁴.

Recommendation

Take clear steps to restructure mainstream provision, making adequate funding available, so that the presence of disabled children is not seen as a threat to the education of others.

This is also clearly presented as one of the recommendations of the 2017 examination of the UK by the Committee on the Rights of Persons with Disabilities (see above), which recommended that the UK Government should:

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

- i. Ensure the implementation of laws, decrees and regulations 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 socialisation outside "education time";*
- ii. Setup initiatives raising awareness about and support to inclusive education among parents of children with disabilities; and*

¹⁴ Sakellariadis, A. (2014) Issuing a ticket but keeping the door locked: the need for real change on disability equality. *Race Equality Teaching special issue on public sector equality duty*, 32(2), 13-17

- 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 further provide data on the outcome of the education reflecting the capabilities of the students*