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The Centre for Studies on Inclusive Education (CSIE) was set up in 1982 to promote the education of disabled and non-disabled children together in mainstream schools and to end the practice of educating disabled children separately in 'special' schools.

UN Disability Convention

BRIEFING (1) July 2005

CHILDREN BEFORE CHOICE

Amendments to end segregated education

Article 17 of the new Disability Convention should be the key to ending segregated education for disabled children and making properly supported and adapted inclusive education a right for every child. However, there is a danger that this unprecedented opportunity for justice and social progress could be lost if urgent amendments are not made focusing Governments' obligations firmly on developing inclusive education for all and working towards ending segregation in education on the grounds of disability.

CSIE's detailed arguments for removing the choice of segregated 'special' education from the Convention as proposed in the current draft by the Working Group to the Ad Hoc Committee have been presented in earlier briefings and are available at <http://www.un.org/esa/socdev/enable/rights/ahcngocon.htm> under NGO documents for the third, fourth and fifth sessions of the Committee and also on the CSIE website at <http://inclusion.uwe.ac.uk/csie/un-draft-convention-alert.htm>.

These arguments take account of research findings on the damage to individuals and society caused by segregation and the feasibility of developing education for all which removes barriers to participation and individualises learning through necessary supports and adjustments in mainstream settings. The CSIE arguments also demonstrate why the Convention must avoid putting Governments in the self-defeating position of having to provide incompatible systems of both separate 'special' and inclusive education. Some examples of inclusive education from around the world are provided in CSIE Briefing (2) July 2005, 'A Worldwide Movement'.

Such flexible, diverse and restructured education – inclusive education – upholds the 1989 UN Convention on the Rights of the Child (CRC) and reflects the right to education in terms of the responsibilities of Governments to make education 'available, accessible, acceptable and adaptable' to each and every child, as developed by Katarina Tomasevski, Special Rapporteur on Education 1998-2004, and adopted by the UN.

Children First

In this latest briefing, CSIE argues that values and principles promoting self-determination and autonomy create tensions in the current drafting of Article 17 and explains why it is necessary to make amendments which put children's rights first and remove

choice of separate 'special' schooling. Some adverse effects of the UK Government promoting both inclusive and separate 'special' education, which CSIE hopes might be prevented internationally by amending Article 17 in line with children's rights, are also highlighted.

Taking into account the history of discrimination faced by disabled people, there is much support to enshrine self-determination and individual autonomy, including the freedom to make one's own choices, as a basis for the Convention. However, the issue of autonomy for children is different. Although children have a right to express their views and have them taken into account, it is parents who have a right to choice in the education of their children. Parents' right to choice in education for their children already exists in a number of human rights instruments, although it is not recognised in the education articles (28 and 29) of the CRC. CSIE can see no reason why parents' existing rights cannot be upheld in the kind of properly supported and adapted inclusive education we seek to have promoted by the Convention. What we disagree with is attempting to justify the segregation of children on the grounds of disability into separate 'special' schools on the basis of principles of autonomy and choice. The reasons why we believe such an interpretation is not acceptable under a human rights framework are set out below.

Autonomy is not absolute

Individual autonomy including the freedom to make one's own choices is listed among the fundamental principles of the draft Disability Convention under Article 2. It is CSIE's view that this cannot indicate absolute, individual free choice in all matters. Rather it indicates a right to autonomy and self-determination in the context of Governments' responsibilities to ensure that all people are able to enjoy economic, social, political, civil and cultural rights. Autonomy inevitably has its limits. Choice is not free and is curtailed when it violates rights. For example, rights to freedom from torture or cruel, inhuman or degrading treatment or punishment and from all forms of violence (as in draft articles 11 and 12 of the new Convention) are unequivocally interpreted by the Committee on the Rights of the Child as prohibiting corporal punishment of children in all settings, despite the religious, cultural and personal arguments being made in many countries supporting its use, including appeals to the right to privacy and family life (draft article 14 in the new Convention).

Parents' choice in education is not free

In the same way, under a human rights framework, parents' choice in relation to their children's education is understood not as a free choice but one that must be made in the context of the responsibility to respect the human rights of children and within the constraints of standards set by Governments which should reflect the human rights treaties they have ratified. The rationale for

parental choice in education can be traced to efforts to prevent state monopoly of education and the indoctrination of children, particularly following the Second World War. For this reason it is usually associated with the content rather than the organisation of education and with parents' 'philosophical and religious convictions'. In any conflict between parental choice and the best interests of the child, the rights of the child prevail and Governments have to ensure that children are protected.

Repercussions of choice in England

In England, since the Government embarked on its latest, so-called inclusion policy in 2004 which included a ten year inclusion development programme for schools, it has promoted incompatible, parallel systems of separate 'special' education and inclusive education in the name of parents' choice. Two years into the programme, confusion threatens to impede inclusive development and ongoing segregation is not only supported but guaranteed for the long term under current legislation. Official inspections and surveys show that, although improving, most schools are struggling to replicate the inclusive practice of a minority of trailblazers and that the movement of pupils from separate 'special' schools has virtually come to a halt. The Government faces competing demands: to uphold rights, continue enhancing mainstream schools to become more inclusive and phase out separate 'special' schools, AND to maintain and even re-open them to cater for families who complain of the inadequacies of the mainstream as it currently stands and see no other alternative to their present problems. Children who it is intended should benefit from inclusive education are caught in a situation akin to a lottery where their chances of receiving it depend on regional policy, geography, social class and the nature of their impairments. Choice for all in state provided education has proved an illusion for many and children's rights have been denied.

Plea to the International Community

CSIE's views on the need for UK Government to review its inclusion policy to support further inclusive development and phase out separate 'special' schools are well known in the UK (and are available at <http://inclusion.uwe.ac.uk/csie/csiehome.htm> and <http://2020campaign.mysite.wanadoo-members.co.uk>).

We now urge the international community to set a lead by removing choice of separate 'special' schooling from Article 17 in the Disability Convention and obliging Governments to develop properly supported and adapted inclusive education for all. Choice by adults of segregated 'special' schooling for children has no place in a human rights convention. Children's rights to properly supported and adapted inclusive education must be the priority.