



**BRIEFING FOR THE COMMITTEE ON THE RIGHTS OF THE CHILD  
PRE-SESSIONAL WORKING GROUP – June 2008.  
UNITED KINGDOM (third and fourth report – CRC/C/GBR/4)  
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*The Centre for Studies on Inclusive Education (CSIE) is an independent organisation, set up in 1982, supporting inclusive education as a human right of every child and working towards overcoming barriers to learning and participation for all children and young people. The Centre produces a range of publications and engages in: lobbying and campaigning for inclusion; undertaking and commissioning research; delivering talks and training; and creating and utilizing networking opportunities. For more information please see [www.csie.org.uk](http://www.csie.org.uk).*

## **Background**

In its concluding observations on the UK's initial report in 1995, the Committee on the Rights of the Child did not comment on the education of disabled children. In 2002 the Committee expressed concern at disciplinary exclusions and at differences in educational outcomes related to disability (CRC/C/15/Add.188, para. 47) but did not make a recommendation concerning segregated education in special schools.

CSIE is briefing the Committee now, in the hope that it will question the UK closely on its policies concerning inclusion of disabled children in mainstream schools. We hope that the Committee will recommend a thorough restructuring of mainstream provision and systematic closure of all special schools.

## **Current UK context**

The SEN and Disability Act 2001 specifies the duty of schools to make “reasonable adjustments” in their attempts to accommodate disabled pupils and a duty not to treat disabled children less favourably than their non-disabled peers. It also, however, stipulates that placement of children with statements of special educational needs in their local mainstream school is to be dependent on two conditions: it must be consistent with parental wishes and not affect the efficient education of other children. CSIE maintains that these conditions deny children opportunities for “fullest possible social integration” and, therefore, constitute a breach of Article 23 of the Convention on the Rights of the Child. The State's obligation to uphold children's right to full participation and to enforce an inclusive education system should not be dented by parental preferences expressed in the context of mainstream provision in need of restructuring.

In 2002 the Audit Commission undertook extensive research into provision for children said to have special educational needs and, in its evaluation of the current framework, raised concerns that statutory assessment is a costly, bureaucratic and unresponsive process which many parents find stressful and alienating, which leads to inequitable distribution of SEN resources and is at odds with inclusion.<sup>1</sup> It concluded: “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. (...) ‘SEN’ must truly become a mainstream issue.”<sup>2</sup>

<sup>1</sup> Audit Commission (2002a). Statutory assessment and statements of SEN: in need of review? London: Audit Commission.

<sup>2</sup> Audit Commission. (2002b). *Special educational needs: a mainstream issue*. London: Audit Commission.

In 2006 the House of Commons Education and Skills Select Committee conducted an inquiry in special educational needs provision in England and found the current SEN framework “no longer fit for purpose” and made a number of recommendations, including a review of conflicting policies and a need to “radically increase investment in training its workforce” on issues of SEN and disability.<sup>3</sup>

Latest figures from the Department for Children, Schools and Families suggest that in January 2007 there were 82,540 children with a statement of special educational needs attending special schools.<sup>4</sup> The rationale for placing a child in a special school is not always straightforward. For example: Helen is a bright and sociable girl who did well at her local mainstream infant school. Instead of transferring to the local junior school with her friends, when she was seven Helen was sent to a special school. This was because she needed to be fed by tube and none of the junior schools approached felt they could guarantee a sterile area to prepare Helen’s food.<sup>5</sup>

The national picture is alarmingly inconsistent, despite all Local Authorities (LAs) being subject to the same national policies and legislation. CSIE has shown that in 2004 the London borough of Newham had the lowest percentage of pupils in special schools (0.06%) while South Tyneside had the highest rate (1.46%). In other words, about 1 in 68 children of one LA attended special schools while in another LA the figure was 1 in 1,667.<sup>6</sup>

Research has shown that, when mainstream schools are sufficiently resourced, provision for disabled learners can be outstanding. In its 2006 report on the quality of provision for pupils with learning difficulties and disabilities the Office for Standards in Education (Ofsted) declared that “effective provision was distributed equally in the mainstream and special schools visited, but there was more good and outstanding provision in resourced mainstream schools than elsewhere”. The report also identified a number of weaknesses in provision, including the impact of teaching assistants as key providers.<sup>7</sup>

Concerns continue to be raised that teaching assistants are asked to take on considerable responsibility at low pay, on poor employment conditions and with insufficient training.<sup>8</sup> Despite the best possible intentions of staff, such practices may prevent disabled children from developing to their fullest potential and, therefore, constitute a breach of Article 29 of the Convention on the Rights of the Child.

### **Human Rights obligations**

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

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<sup>3</sup> House of Commons; Education and Skills Committee (2006). *Special educational needs*. London: Stationery Office.

<sup>4</sup> Source: <http://www.dfes.gov.uk/rsgateway/DB/SFR/s000732/sfr20-2007.pdf> accessed 07 March 2008

<sup>5</sup> Sakellariadis, A. (2007). *Voices of inclusion: perspectives of mainstream primary staff on working with disabled children*. Unpublished PhD thesis, University of Bristol.

<sup>6</sup> Rustemier, S., & Vaughan, M. (2005). *Segregation trends - LEAs in England 2002-2004: Placement of pupils with statements in special schools and other segregated settings*. Bristol: CSIE.

<sup>7</sup> Ofsted (2006). *Inclusion: does it matter where pupils are taught?* London: Office for Standards in Education.

<sup>8</sup> Shaw, L., & Centre for Studies on Inclusive Education. (2001). *Learning supporters and inclusion: roles, rewards, concerns, challenges*. Bristol: Centre for Studies on Inclusive Education.

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 (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.”

The UN Convention on the Rights of Persons with Disabilities (2006), which the UK has signed but not yet ratified, requires that States Parties must develop an inclusive education system at all levels (Article 24).

### **Conclusion**

UK legislation has, for over 25 years, stipulated that disabled children should be educated in their local mainstream school, as long as this is consistent with their parents’ wishes and does not affect the efficient education of other children. This begs two questions:

- a) What is the justification for allowing parents of disabled children to veto the inclusive education which their child has a right to?
- b) What steps have been taken to restructure mainstream provision, so that the presence of disabled children is not seen as a threat to the education of others?

*Segregated provision reinforces disabled identities and perpetuates marginalised lives. It should no longer constitute an acceptable alternative to inclusion.*

### **Recommendations**

CSIE maintains that existing mainstream structures are in urgent need of review and the current legal framework, retaining provisos for inclusion, is grossly inadequate and in conflict with the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

CSIE hopes that the Committee on the Rights of the Child will urge the UK government to:

- **Undertake a thorough restructuring of mainstream provision**, equipping all schools to include, value and respect *all* children. This should involve a detailed review of existing cultures, policies and practices, including identifying an efficient alternative to the statementing procedure, reviewing funding and support mechanisms, deployment of physical & human resources and offering training, including disability equality training.
- **Ensure that inclusion in a local mainstream school is enshrined in law** as a basic and unconditional human right of all children and young people. The conditions on mainstream placement as specified in section 316 and schedule 27 of the 1996 Education Act and as amended by Part 1 of the SEN and Disability Act 2001 must be removed.
- **Ratify the UN Convention on the Rights of Persons with Disabilities, and sign and ratify its Optional Protocol.**