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Commons Clerk of the Joint Committee on Human Rights
Committee Office
House of Commons
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Dear Mark Egan

We are writing in response to the Committee's call for evidence on children's rights, following the report of the Committee on the Rights of the Child published on 3 October 2008. We were particularly concerned to note the latter Committee's regret that its previous recommendations with regard to education had not been followed up. This submission focuses on the persistent discrimination against children on the grounds of disability and on other aspects of discrimination against children in education.

The report of the Committee on the Rights of the Child highlighted many groups of children and young people facing barriers to enjoying their right to education; among them disabled children, children of Travellers, Roma children, asylum-seeking children and teenage mothers. Among other concerns, the Committee noted the persistently high exclusion rates and, in Northern Ireland, the problem of segregation and of academic selection at the age of 11. The Committee also noted the lack of a comprehensive national strategy for the inclusion of disabled children into society and recommended legislative and other measures to address this, including training for teachers and awareness-raising campaigns aimed at encouraging inclusion and preventing discrimination and institutionalization. The UK has also been told by the Committee on the Rights of the Child to take account of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, the Committee's General Comment No. 9 on the rights of children with disabilities, and to ratify the UN Convention on the Rights of Persons with Disabilities. These international instruments share an unconditional commitment to inclusive education, which the UK has repeatedly been called upon to implement.

CSIE remains concerned that children's rights seem to be given disgracefully low priority in a number of areas. Significantly, even though the rights of disabled adults have recently been acknowledged and endorsed through intense legislative and policy activity, the Department for Children, Schools and Families (DCSF) lags behind other government departments and cross-governmental policy initiatives including the Department of Health, the Department of Work and Pensions and the Cabinet Office. Members of the Committee will know this from your seventh report *A life like any other*. While the report rightly offered criticisms about the slow and imperfect implementation of such policies, it is certainly the

case that *Our Health Our Care Our Say*, *Valuing People*, and *Getting a Life* all make absolutely explicit the right of disabled adults to inclusion in ordinary life and mainstream institutions. By contrast, the DCSF's own policies such as *Every disabled child matters* mention only "inclusion in society", never in the specific social context of schools. In our view this is tantamount to a conscious and studied avoidance.

Chiefly, however, we would particularly like to draw your attention to the fact that no national strategy is in place for the inclusion of all disabled pupils in mainstream schools; no guidance or support is available for schools on making and implementing plans to include all the children in their locality who are currently in segregated provision. The task is not elaborate, expensive or utopian. It has in fact largely been fulfilled in a tiny number of local authority areas. The national picture, however, is alarmingly inconsistent. CSIE has shown¹ 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, approximately one in 1,667 children attended special schools in Newham and one in 68 in South Tyneside. This degree of variation between local authorities is far greater than geographical context could ever account for. The fact that there is a postcode lottery on such a fundamental human rights issue is unacceptable.

Such a postcode lottery is far from new in this country. At the time when mass education was first being developed, the Elementary Education (Defective and Epileptic Children) Act of 1899 allowed local education authorities the possibility of creating provision for children deemed unfit for mainstream schooling, but only if they wanted to. It is particularly sad to see that one hundred and ten years on, there is still no clear strategic direction from central government on the educational provision for disabled children.

What is needed (and what is still missing) in order to overcome discrimination in the form of segregation is *above all else* the requisite strategic leadership at a national level, particularly from the DCSF. Discrimination affects two key groups of children: those who are segregated from the outset on grounds of being significantly disabled (especially those labelled with severe or profound and multiple learning difficulties), and those who start off in ordinary mainstream school but end up being permanently excluded on grounds of their behaviour. By the DCSF's own admission², provision for disabled children and young people is improving but there remains significant cause for concern in a number of areas; for example, evidence shows that disabled pupils are at increased risk of being bullied and disproportionately likely to be excluded from their school.

The DCSF's responses to calls for this strategic leadership have been twofold.

Firstly, according to its Special Educational Needs section, it is up to local authorities to decide on the rate and extent to which they promote inclusion (if at all). While we endorse the commitment to local flexibility, such a stance is painfully reminiscent of the 1899 Act (see above); the lack of strategic leadership in a matter significant enough to transform young people's lives is unforgivable. Disabled adults have repeatedly argued that education in segregated settings leads to adult lives in the margins of society. CSIE considers it essential

¹ 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

² Secretary of State Report on progress towards disability equality across the children's and education sector, published on 1 December 2008.

that the DCSF listens to the voice of disabled adults, recognises the potential harm to people's lives that such an educational apartheid can cause, and urgently reviews its strategic role in upholding the rights of disabled children. In many other areas, after all, the department has chosen to be very prescriptive (for example, it currently removes from local authority control schools failing to attain 30% A*-C passes at GCSE with English and Maths).

Secondly, the department and its ministers say that the DCSF cannot dictate to parents a particular type of provision for their disabled children; segregation and inclusion, the department claims, are matters of parental choice. But this raises two significant issues:

- We do not need to point out to members of this Committee that human rights can never be a matter of "choice". We strongly believe that the State has a responsibility to uphold the human rights of all its citizens, young or old. Allowing for "choice" of segregated education, thereby condoning a practice which breaches children's right to education without discrimination, seems as unethical as allowing for "choice" of child labour or enforced imprisonment. The confusion between rights and choice was sharply demonstrated in the response of the DCSF minister responsible for special needs, Sarah McCarthy-Fry, to questions put to her at the department's most recent presentation to the ODI on its progress under the duty to promote disability equality (1 December 2008). The minister stated that *even if every school in the country were fully capable of including all children, there would still be a need for (segregated) special schools because some parents would still choose them – and this in spite of the fact that, as she also stated, the government regards inclusion as the preferable choice*. In offering parents the choice of segregation, the state is contravening children's basic human rights.
- The idea that parents do have a choice, under the present system, is in any case a myth. Children in segregated schools are often there because they have been rejected by their local mainstream school (if indeed they ever got as far as the door). Many parents who "choose" a special school placement do so because they believe, or have been told by professionals, that mainstream provision is not possible for their child. In other words, that mainstream provision is currently structured in a way that it cannot respond to the diversity of learners. This means that many parents do not have the "choice" of mainstream at all, rendering a special school placement an unwelcome inevitability. To say that they have chosen this is misleading and, potentially, insulting. Parents of disabled children have told CSIE that they do not dare to conceive or hope that their child can have social relationships with their peers; this is due to the extraordinarily negative messages that surround disability in society at large. The very small minority of parents who do dare to pursue their choice of mainstream, often have to do so through countless meetings with local authority officers and school managers, if not through a strenuous battle involving the Special Needs Tribunal. For the majority who cannot countenance this, there continues to be *enforced* segregation within the system.

The enormous controversy surrounding the future of special schools in this country might be mistaken as an indication that there are lobbies on both sides putting forward conflicting matters of principle. This is not so. On the one hand children's rights organisations, charitable organisations for disabled children and their umbrella groups (such as the Council for Disabled Children), as well as organisations of disabled adults, many of whom attended segregated schools themselves, all strongly support inclusive education on the moral principle that segregated schooling amounts to educational apartheid. Children learn from

one another as much as they learn from adults and the curriculum planned for them, if not more. During their school years they also form friendships that can last a lifetime. It is unethical to deprive disabled children of the opportunity to grow up and learn alongside their non-disabled peers. In assessing some children's "needs", many professionals focus on physical, sensory or mental impairments and place children in institutions alongside others with similar impairments. No adult would choose their workplace by these criteria. The moral argument for inclusion is strong and remains undisputed. On the other hand there are parents and professionals, most of whom have a vested interest in a particular school, claiming that segregated schools offer specialized provision not available in mainstream schools. The two positions are not mutually exclusive. There is nothing that takes place in a special school that cannot happen in mainstream or is not already happening somewhere. For more information on CSIE's position on segregated provision please see www.csie.org.uk/inclusion/faq.shtml

We note that none of the above represents a position unique to CSIE. The House of Commons Education and Skills Committee in the report of its inquiry in special educational needs provision in England (*Special Educational Needs*, published in July 2006) called for a major review of provision with a view to grant special educational needs (SEN) a central position in the national education agenda. The report heavily criticized the government for its unclear, if not conflicting, messages of commitment to inclusion and for remaining reluctant, despite Audit Commission recommendations in 2002, to review the current SEN framework, branded "no longer fit for purpose". Finally, it called for the government to commit to a national framework with local flexibility, clarifying its overarching strategy for SEN and disability policy; to seriously consider the impact of league tables on school admissions and act to separate SEN from the raising attainment agenda; and to "radically increase investment in training its workforce", current and future, on issues of SEN and disability.

We also believe you should consider very carefully the disturbing fact that discrimination is woven into the very structure of the DCSF itself. The department has a "Schools" directorate which deals with everything directly relevant to children's education, and a separate "Children and Families" directorate which deals with social care issues such as child protection and early years. The department's "Special Educational Needs and Disability" section comes under the second of these directorates, not the first. This indicates almost a throwback in attitude to before 1970, when disabled and "maladjusted" children were the responsibility of the then Ministry of Health, not of Education. And it certainly ensures that civil servants in the Schools Directorate have no incentive to give proper or due consideration to the place of disabled children and those with emotional difficulties within the mainstream curriculum and the standards agenda.

From a cross-governmental perspective this raises a very practical question: how can we achieve the goals of adult policies on inclusion while we continue to segregate our future disabled adults and those whose adult behaviour society will find most problematic? Furthermore, from your own committee's wider perspective of justice and human rights, is not this contradiction between adult and child policies a clear contravention of the principle of human rights for *all children in general*, inasmuch as certain rights are in principle being reserved for adults that are not available to children?

In summary, we remain deeply concerned that DCSF policy on including disabled children in mainstream schools is weak and out of step with other government departments and cross-governmental policy initiatives for disabled adults. The imperative for mainstream provision for all is not yet widely understood and involves a re-examination of conventional ways of seeing disability. 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, which we hope can be addressed as a result of this consultation:

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

Thank you for taking all of the above points into consideration.
Yours sincerely

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