

# The Right to Education in England

## Alternative report to the UN Committee on the Rights of the Child

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## **FOREWORD**

This report was prepared by the Children’s Legal Centre – an independent national charity aimed at promoting children’s rights in the UK and worldwide. The Children’s Legal Centre has particular expertise in the area of education law, being one of the leading providers of education law advice and casework in England. Owing to the Centre’s particular expertise in education law, an alternative report analysing the implementation of the right to education in England has been produced for the UN Committee on the Rights of the Child. The reason for drafting this separate report is to draw attention to the considerable areas in which education law and practice in England does not comply with the international right to education.

## **ACKNOWLEDGEMENTS**

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## **GLOSSARY**

DCSF	Department for Children, Schools and Families
GCSE	General Certificate in Secondary Education
HMIP	Her Majesty’s Inspectorate of Prisons
LA	Local Authority
Ofsted	Office for Standards in Education, Children’s Services and Skills
SEN	Special Educational Needs
SRE	Sex and Relationships Education

## EXECUTIVE SUMMARY

### INTRODUCTION

Ensuring that every child in England enjoys the right to education is of fundamental importance. Receiving the right education is the key to unlocking a child's enjoyment of many other rights, and helping to ensure that children reach their full potential, ensure their well-being, and participate actively in society. It also decreases vulnerability to poverty, inequality and social exclusion. This report presents an analysis of the extent to which the Government has implemented the right to education in England since the Committee's last periodic review in 2002. The analysis, which examines relevant laws, policy documents, empirical studies and statistics, follows the '4As framework'.<sup>1</sup> This requires the Government to ensure that education is available, accessible, acceptable and adaptable.

### KEY FINDINGS

The analysis found that the Government has failed to implement the right to education in England in a number of key areas.

#### *Availability of Education*

- **Children in custody** do not have a statutory right to education. Many children in custody are not educated under the National Curriculum and do not receive education that is full-time. Also, support for children in custody with Special Educational Needs (SEN) is severely lacking.
- **Children in immigration detention** do not have a statutory right to education. Detained refugee and asylum-seeking children are educated within detention centres, which compromises their welfare, development and future education and opportunities. Educational provision in immigration detention centres is unsatisfactory – of poor quality, with a narrow curriculum, a lack of individual learning plans or accreditation systems and a lack of suitable target-setting.
- There is a lack of suitable educational provision for **children with SEN and disabilities**. A flexible continuum of educational provision should be made available in each English Local Authority (LA) area to meet the needs of children with SEN and disabilities. However, for these children, particularly for those children with autism and Aspergers Syndrome, there is a lack of suitable educational provision in many LA areas to meet the needs of these children.
- For the **135,000 children each year who are unable to attend school** (due, for instance, to medical needs, exclusion, bullying or school phobia), the Government has failed to ensure that they receive appropriate, suitable alternative educational provision. Alternative educational provision is often insufficient and of poor quality.

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<sup>1</sup> The Committee on Economic, Social and Cultural Rights, in its *General Comment No. 13 on the Right to Education*, E/C.12/1999/10, defined the normative content of the right to education as involving these four essential features (para. 6).

- The Government has also failed to ensure that the **100,000 children ‘missing’ from school each year** are identified and provided with education.

### ***Access to Education***

- The Government has failed to ensure equal access to education for all children in England. In particular:
  1. For the 60,000 **children in care**, many have missed a significant amount of schooling. Also, educational outcomes for these children continue to be poor compared to their peers.
  2. Educational attainment is much lower for **children from economically disadvantaged backgrounds**, as educational achievements are strongly linked to their parents’ social and economic backgrounds.
  3. **Teenage mothers** continue to experience obstacles in gaining access to education, which the Government has largely failed to address.
  4. Many **refugee and asylum-seeking children** experience unacceptable delays in gaining access to education; many are placed in schools unable to meet their needs; and for many of these children, access to the full curriculum is restricted due to financial obstacles. In addition, a lack of specificity in funding arrangements mean that refugee and asylum-seeking children will not always receive important financial support they require to access education. Access to further education is also limited as the Education Maintenance Allowance that supports post-16 education does not apply to asylum-seekers.
  5. **Children from minority ethnic backgrounds** continue to experience unequal access to education and educational attainment. Many Roma and Traveller children are not registered in school and, as a group, have very low school attendance rates. Also, Roma and Traveller children have low educational attainment compared to their peers. Children of African and Afro-Caribbean origin experience systemic racism in the education system, which has resulted in poor educational outcomes for these children compared to that of their peers.
  6. The Government has failed to ensure that **children with SEN and disabilities** have equal access to suitable, appropriate education. Many are not properly assessed in terms of the type of provision and support they require, which hinders their access to the most suitable education. In addition, attainment levels are not properly monitored for this group of children.
- A large number of children continue to be **excluded from school** every year. There were 8,680 permanent and 363,270 fixed-period exclusions from schools in England in 2006/07. Many more children were “informally” excluded, as schools will use methods other than official exclusion to keep children off school premises, including persuading parents to remove children from school and keep them at home. Some groups of children – children with SEN, Roma and

Traveller children, children of African and Afro-Caribbean origin, economically disadvantaged children and children in care – continue to be excluded at much higher rates than the whole school population.

- Despite Government attempts to tackle **wide-spread bullying** in English schools, it is still very common in many schools across England, and continues to cause many children to miss school for periods of time, or to withdraw from attending school completely. Some children are particularly vulnerable to bullying, including those with SEN or visible medical conditions. Racist and homophobic bullying is also particularly widespread. Studies have highlighted the inaction on the part of many schools to bullying complaints, and ineffective redress mechanisms for children and parents mean that schools are largely unaccountable for inaction in relation to individual bullying complaints.

### ***Acceptability of Education***

- Children are denied **the right to participate** in many procedural and substantive aspects of the education system. Children do not have a right to express their views in relation to school admission, including choice of school. Children do not have a separate right of appeal against school admission or exclusion decisions or against decisions concerning SEN provision. Also, empirical studies indicate that participation in schools generally occurs on a one-off or isolated basis, rather than being embedded in a systematic process. Many children state that they are not able to participate effectively in the running of their schools. Parents have the unconditional right, in English law, to withdraw their child from sex and relationships education and collective worship. There is no obligation on the part of LAs or schools to consider the views of the child in relation to any withdrawal.
- **The excessive use of testing in schools** has resulted in a narrowing of the curriculum, the problem of “teaching to the test,” and the creation of a great deal of stress on students.
- **Sex and relationships education** is compulsory in English schools, but it does not form part of the National Curriculum. It is therefore not subject to national regulations concerning content and assessment of the subject. Failure to include sex and relationships education as a National Curriculum subject appears to have had a negative impact on the extent and quality of sex and relationships education in schools.

### ***Adaptability of Education***

- Many mainstream schools do not effectively adapt their systems, curriculum, and teaching methods to meet the needs of **children with SEN**. Concerns have also been raised over the insufficient adaptation of teaching methods in mainstream schools to meet the needs of children with SEN.

## **RECOMMENDATIONS:**

### ***Children in custody***

- The *Education Act 1996* should be amended so that the statutory guarantee to education applies to children serving sentences in detention.
- Consideration should be given to providing education for young offenders in community schools, as a means of helping prepare young offenders to reintegrate into society.
- Where children in detention continue receiving education in detention, the Government should ensure that LAs are responsible for the education of children in detention and juvenile detention facilities should work more closely with them.
- Statistics on the number of hours spent on education and training for children of compulsory school age who are in secure institutions should be collated – disaggregated by type of education or training received – and regularly reviewed.
- The LA's duty to provide support specified in a Statement of Special Educational Needs should continue when a child is in a juvenile detention facility.

### ***Children in immigration detention***

- LAs should be under an obligation to provide education to asylum-seeking children, and the statutory guarantee to education should apply to children seeking asylum.
- Asylum-seeking children should be educated at schools in the community, rather than in immigration detention.
- Where children continue to be educated in immigration detention centres, the Government should introduce monitoring and assessment mechanisms in order to regularly monitor and improve the quality of education provided to detained children.

### ***Educational provision for children with SEN and disabilities***

- The Government should conduct an audit to identify areas in which there is a lack of suitable provision for children with SEN and disabilities.
- Resources should be made available to ensure that there is a range of sufficient educational provision available to meet the needs of children with SEN and disabilities, both in mainstream and alternative school settings.

### ***Alternative educational provision***

- The Government should ensure that LAs develop information collection systems which will allow them to identify children who are not in school. This should allow them to monitor each child in their area, to ensure that every child, including those who cannot attend school, receive suitable, quality education.

- Schools should be placed under an obligation to advise LAs of all children on school rolls who are not currently receiving full-time education on school premises.
- The 2008 Government White Paper on alternative provision makes a number of recommendations for improving the quality of alternative educational provision. These recommendations should be implemented as a matter of priority to ensure that all children, whether in school or not, receive suitable quality education.

***Discrimination in access to education and educational attainment***

- The Government should set clear targets for educational access and attainment of children in care, to ensure that children in care can achieve the same educational outcomes as their peers. LAs should be given sufficient resources to allow them to achieve these targets. They should also set regular inspection, monitoring and evaluation systems against these targets.
- The Government should ensure that teachers receive effective, in-depth training on the needs and challenges faced by children in care. They should also ensure that foster parents receive training and support necessary to allow them to contribute positive guidance and support to children in their care.
- The Government should also set targets for reducing the number of placements that children in care go through, in order to avoid disruption to their lives and their education.
- The Government should thoroughly review and address factors which impair the ability for economically disadvantaged children to be engaged with the education system and their ability to achieve their full potential.
- The Government should increase funding for child care for teenage mothers, to allow more young people to continue in education or training.
- The Government should introduce targeted, ring-fenced funding to increase access of refugee and asylum-seeking children to education.
- The Government should provide guidelines on the placement of refugee and asylum-seekers under the dispersal policy, ensuring that refugee and asylum-seekers are placed in areas with suitable educational provision available to meet their or their children's needs.
- The Government should collect disaggregated data and set targets in order to monitor and improve the educational outcomes of refugee and asylum-seeking children.
- The Government should introduce guidelines for LAs, setting out strict timelines for making educational placements of refugee and asylum-seeking children.



- LAs should be obliged to subsidise the whole cost of travel to school for refugee and asylum-seeking children.
- The Education Maintenance Allowance for further education should be available to refugee and asylum-seeking children.
- The Government should initiate compulsory training of school staff (particularly teachers) to sensitise staff to the experiences of minority ethnic students in the education system, and reduce the negative stereotyping and low expectations staff may have about children, based on their ethnic background.
- The Government should ensure that LAs increase the number of Traveller sites in their area to allow children to become more settled and better able to access education.
- The Government should provide targeted, ring-fenced funding to schools to increase access to the education system for children from Roma and Traveller backgrounds.
- The Government should encourage mainstream schools, including well-performing schools, to accept more children with SEN and disabilities.
- Admissions of children with SEN should be carefully monitored to ensure that all mainstream schools are accepting an adequate number of children with SEN and disabilities.
- The Government should develop a national framework setting out minimum standards on the provision of suitable education for children with SEN. In particular, the Government should act on the recommendations of the House of Commons Education and Skills Committee and ensure that LAs develop a child-centred approach with regard to each stage of the statementing process, in particular in the assessment of needs, allocation of resources and placement.
- The Government should set challenging targets for LAs on educational outcomes for children with SEN.

### ***School exclusions***

- The Government should set targets for reducing the number of both fixed-term and permanent exclusions and identify and eradicate informal exclusions. These targets should aim at reducing the disproportionate rate at which groups of children – including Black and Minority Ethnic children, children in care, children from disadvantaged backgrounds and children with SEN – are excluded.
- Initiatives aimed at reducing exclusions should include new initiatives and approaches to respond to challenging behaviour in schools without resorting to exclusion.

### ***Wide-spread bullying in schools***

- The Government should, as a matter of priority, investigate and share best practice in tackling bullying in schools. Anti-bullying strategies should include responding to particular types of bullying (racist, homophobic and bullying of children with disabilities or SEN in particular).
- The Government should mandate that schools develop more direct work with children and young people to enhance their participation in formulating and implementing anti-bullying strategies.
- In order to measure schools' progress in listening to pupils and to facilitate the sharing of best practice, the methods used by schools to consult with children and young people about bullying and in the development of anti-bullying strategies should be included as a topic for Ofsted inspections.
- The Government should consider introducing an independent investigator to address bullying complaints when they remain unresolved.

#### ***Lack of participation in education***

- The Government should legislate to give children a statutory right to make representations, and to have these representations taken into account, concerning school admissions, including choice of school.
- The Government should give children a separate statutory right to appeal against school admission and exclusion decisions. It should also give children a separate right of appeal to the Special Educational Needs and Disability Tribunal concerning SEN provision by LAs. Children who make an appeal against school admissions, exclusions and SEN provision should have access to free, quality legal representation.
- Children should be given a statutory right to participate in decision-making in schools. This could include the right to participate in school councils.
- The unconditional right of parents to remove their child from sex and relationships education and collective worship should be withdrawn.

#### ***Content of education***

- The Government should revise the National Curriculum, with the aim of reducing the number of tests faced by students.
- The Government should include SRE as a subject in the National Curriculum.
- The Government should create posts for teachers who are specialised in SRE.

#### ***Inclusion: children with SEN and disabilities in mainstream schools***

- In accordance with the recommendation of the House of Commons Education and Skills Committee,<sup>2</sup> the Government should clarify its position

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<sup>2</sup> House of Commons Education and Skills Committee, *Special Educational Needs, Third Report of Session 2005 – 2006, Volume 1*, p. 6.

on SEN, particularly on inclusion of children with SEN in mainstream schools, and produce a clear, over-arching policy for SEN.

- The Government needs to significantly increase investment in training its workforce so that all staff, including teaching staff, are fully equipped and resourced to improve outcomes for children with SEN and disabilities.

## INTRODUCTION

Ensuring that every child in England enjoys the right to education is of fundamental importance. Receiving the right education is the key to unlocking a child's enjoyment of many other rights. Depriving children of quality education not only robs individual children of the opportunity to develop to their full potential and secure their wellbeing, but it can also lead to powerlessness, an inability to participate effectively in society, entrenched poverty and the exacerbation of existing inequalities in society.

In 2002, the UN Committee on the Rights of the Child found that the Government had not fully implemented the right to education and made a number of recommendations to assist the Government in ensuring the compliance of education law and practice in England<sup>3</sup> with the international right to education.

### **Recommendations of the Committee on the Rights of the Child on Education<sup>4</sup>**

- Ensure that legislation throughout the State party reflects article 12 and respects children's rights to express their views and have them given due weight in all matters concerning their education, including school discipline;
- Take appropriate measures to reduce temporary or permanent exclusion, ensure that children throughout the State party have the right to be heard before exclusion and to appeal against temporary and permanent exclusion, and ensure that children who are excluded do continue to have access to full-time education;
- Take all necessary measures to eliminate the inequalities in educational achievement and in exclusion rates between children from different groups and to guarantee all children an appropriate quality education;
- Ensure that children in detention have an equal statutory right to education and improve education for children in care;
- Take measures and set up adequate mechanisms and structures to prevent bullying and other forms of violence in schools and include children in the development and implementation of these strategies, in light of the Committee's recommendations adopted at its day of general discussion on violence against children within the family and in schools;
- Taking into consideration the Committee's General Comment No. 1 on the aims of education, include the Convention and human rights education in the curricula in all primary and secondary schools and teacher training;

<sup>3</sup> The report deals exclusively with how the right to education has been implemented in England, owing to the particular expertise of the Children's Legal Centre in education law and practice in England.

<sup>4</sup> Including only those recommendations that are relevant to England.

- Develop educational programmes for teenage mothers to facilitate and encourage their further education; and
- Evaluate the impact of privatisation of schools on the right of children to education.

This report presents an analysis of the extent to which the Government has implemented the right to education in England since the Committee's last periodic review in 2002. This is examined through the analysis of relevant laws and policy documents, and also through the examination of statistics and empirical studies which provide evidence on how the education system operates in practice in England. The analysis follows the '4As framework',<sup>5</sup> which requires the Government to ensure that education is available, accessible, acceptable and adaptable, and measures the education system in England against these criteria.

Since its last periodic review by the Committee in 2002, the Government has made some limited progress toward implementing the right to education in England in accordance with international law. However, in many areas, the Government in England does not comply with the right to education contained in the Convention. In particular, the Government has failed to ensure the availability of education for some groups of children, including children in detention and children who have particular special educational needs or health needs; has failed to ensure equality in educational access and attainment, with certain groups of children routinely being excluded from school and underperforming their peers; and has failed to ensure that education is acceptable to children, by not taking sufficient effective action to address bullying in schools, placing unnecessary stress on pupils and denying children the right to participate in decision-making in education systems.

The Government must take immediate action in these areas in order to ensure that it effectively fulfils the right of each child to education.

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<sup>5</sup> The Committee on Economic, Social and Cultural Rights, in its *General Comment No. 13 on the Right to Education*, E/C.12/1999/10, defined the normative content of the right to education as involving these four essential features (para. 6).

## 1. AVAILABILITY OF EDUCATION

**The Government must ensure that educational systems are available in sufficient quantity to meet the needs of all children of school age.**

The law in England imposes a duty on Local Authorities (LA) to ensure that education is available to each child. LAs are under an obligation to ensure that sufficient primary and secondary level education is available to meet the needs of the population in their area.<sup>6</sup> Education must be made available for children of compulsory school age (5 – 16 years).<sup>7</sup> Primary and secondary schools must be sufficient in terms of their number, character and equipment to provide all pupils the opportunity to attain appropriate education.<sup>8</sup> Unfortunately, this duty imposed on LAs to secure sufficient education in their area has been defined by the courts in a limited way. It has been held, for instance, that the legal duty is a “target duty”<sup>9</sup> that can legitimately be limited by the availability of resources and other factors. The restrictive nature of this duty means that it does not amount to a guarantee that all children have suitable, quality education available to meet their needs, and, in practice, sufficient appropriate education is not provided to some groups of children.

### 1.1 No Right to Education for Children Held in Custody

*The Committee is particularly concerned that children deprived of their liberty in prisons and juvenile detention centres do not have a statutory right to education, that their education is not the responsibility of the departments responsible for education, and that they do not have support for special education needs.*

Despite the recommendation by the Committee on the Rights of the Child in 2002, children in custody continue to be excluded from the statutory right to education. The *Education Act 1996* specifically states that it does not apply to persons “*detained under order of a court*” and neither the Secretary of State nor the LAs are under an obligation to provide education to children in detention. Under the Act, the LA may make arrangements to provide education for such children, but is not obliged to do so.<sup>10</sup>

In July 2008, there were 2,938 children held in custody in England.<sup>11</sup> Children in custody in England will be held either in a Secure Children’s Home (which are run by LA Children’s Services departments), Young Offender Institution (which are run by the Prison Service and private contractors), or a Secure

<sup>6</sup> s.13(1) and 14(1) *Education Act 1996*.

<sup>7</sup> s.8 *Education Act 1996*.

<sup>8</sup> s.14(2) *Education Act 1996*.

<sup>9</sup> *R v Inner London Education Authority ex parte Ali and Murshid* [1990] 2 Admin LR 822, per Woolf J.

<sup>10</sup> s. 562 *Education Act 1996*.

<sup>11</sup> Youth Justice Board, *Youth Justice System: Custody Figures*, July 2008, available at <http://www.yjb.gov.uk/en-gb/yjs/Custody/CustodyFigures/>. This figure includes children up to the age of 18 years.

Training Centre (which are run by private contractors).<sup>12</sup> The rules governing each type of juvenile detention facility deal with provision of education to detainees; however, these rules do not amount to a right to education for child detainees. This means that children in custody have no effective legal protection of their right to education.

In practice, children held in detention are not receiving quality education, which has severe ramifications for the future development and wellbeing of children in custody. As permanent exclusions from school and SEN are considered two of the most prevalent risk factors of offending behaviour, children in juvenile detention facilities are more likely to have fallen behind in their education, and therefore need more, rather than less, tuition.<sup>13</sup> In its current report to the Committee, the UK Government states that juvenile detention facilities are required (by the Youth Justice Board) to provide offenders of compulsory school age with full-time education.<sup>14</sup> However, research has shown that many children, particularly those in Young Offender Institutions, are either not able to access the full National Curriculum, or are not receiving education at all.<sup>15</sup>

### ***Quantity of Education for Children in Custody***

Each juvenile detention facility, according to their rules and regulations, must provide some form of education for all young offenders. Minimum weekly education requirements vary by type of institution, though national guidelines recommend that education, training and personal development activities should be available for 25 – 30 hours a week, 50 weeks a year.<sup>16</sup> According to national guidelines covering Young Offender Institutions, the curriculum should provide “all learning opportunities”, including education, vocational training, programmes to address offending behaviour, physical education and resettlement programmes.<sup>17</sup> There is no guidance on how the minimum hours should be allocated among these different areas, which means that, in practice, very little time may be spent on academic curriculum.

According to the latest statistics, these guidelines have not been met for children in Secure Children’s Homes, who received only 23.85 hours of such education and activities children in 2006/2007. The number of hours received by children in Young Offender Institutions slipped to an average of 26.20

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<sup>12</sup> Referred to collectively as ‘juvenile detention facilities’.

<sup>13</sup> According to a survey of more than 100 young offenders, 83% of the boys had been excluded and 41% of all surveyed had not been in school since they were aged 14 (or younger). DCSF, *Education and Training for Young People in the Youth Justice System – A Consultation (Background Paper)* (2007), para. 7.2.

<sup>14</sup> The Consolidated 3rd and 4th Periodic Report to UN Committee on the Rights of the Child, para. 7.29.

<sup>15</sup> The Howard League for Penal Reform, *Children in Prison: An independent submission to the United Nations Committee on the Rights of the Child* (2007), p.8.

<sup>16</sup> DCSF, *Education and Training for Young People in the Youth Justice System: A Consultation – Delivering a Relevant Curriculum* (2007), p. [hereinafter referred to as “Delivering a Relevant Curriculum”].

<sup>17</sup> Learning + Skills Council, *The Offender’s Learning Journey: Learning and Skills Provision for Juvenile Offenders in England* (2004), p.23.

hours, down from 28.24 in the previous period.<sup>18</sup> Additionally, the data is not disaggregated to show how many hours are spent on academic curriculum. Therefore, it is not clear how the UK Government can report that juvenile detention facilities are required to provide full-time education to detainees.

### ***Quality of Education for Children in Custody***

The quality of education for children in detention is a serious concern. Evidence shows inconsistency in the quality of educational provision across juvenile detention facilities. Education provision in Secure Training Centres is routinely inspected by the Office for Standards in Education, Children's Services and Skills (Ofsted). The most recent reports identify some institutions as providing a good level of education to children, whereas education provision in others was found to be "inadequate".<sup>19</sup> There is insufficient focus placed on developing curriculum to meet the needs of all young offenders – including those with SEN and disabilities.<sup>20</sup> There is also concern that it is difficult to find highly-trained and experienced teachers for these education programmes, as the salaries and conditions are not competitive with mainstream schools.<sup>21</sup> Information is not collected centrally on how many qualified teachers are employed to provide education services in young offender institutions.<sup>22</sup>

Insufficient attention is also placed on ensuring that children in custody are able to carry on in the mainstream education system once they have been released from custody. A 2007 consultation with representatives of organisations working with young offenders found that educational provision in juvenile detention facilities is often not accredited, or is not accredited for mainstream education qualifications.<sup>23</sup> Additionally, many institutions have a limited number of courses, so that offenders serving longer sentences cannot progress but are rather forced to repeat the same coursework.<sup>24</sup> This impairs the ability for young people in the youth justice system to attain educational qualifications.

Juvenile detention facilities "*should deliver the same types of qualifications, using the same exam board, with a central directive on which this should be, in order to increase consistency both across the secure [institution] and between custody and the community.*"<sup>25</sup> This is particularly important as most

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<sup>18</sup> Youth Justice Board, *Youth Justice Annual Workload Data 2006/07*, p.69; Youth Justice Board, *Youth Justice Annual Statistics 2005/06*, p.52.

<sup>19</sup> See, e.g. Ofsted, *Oakhill Secure Training Centre: Inspection Report* (11 October 2007), paras. 82-86.

<sup>20</sup> DCSF, "Delivering a Relevant Curriculum" (2007), p.2.

<sup>21</sup> DCSF, *Education and Training for Young People in the Youth Justice System: A Consultation – Summary of Responses* (2007), p.3 [hereinafter referred to as "Summary of Responses"].

<sup>22</sup> Beverley Hughes, House of Commons, Hansard (Daily Debates), 5 Jun 2008, Column 1160W

<sup>23</sup> DCSF, "Delivering a Relevant Curriculum" (2007), p.2.

<sup>24</sup> DCSF, "Summary of Responses" (2007), p.13.

<sup>25</sup> DCSF, "Summary of Responses" (2007), p.12.



young offenders serve relatively short custody sentences and 25% will be moved between institutions during their sentence.<sup>26</sup>

To promote greater alignment between mainstream and young offender education, LAs should be responsible for the education of children in juvenile detention facilities should work more closely with them. The Government's *Youth Crime Action Plan 2008* moves in this direction. The Government should ensure that detailed measures for implementing the Plan are developed.

### ***Children in Custody with Special Educational Needs***

Amongst juvenile detention facilities, only the regulations for Secure Training Centres include a specific reference to meeting the needs of children of compulsory school age who have Special Educational Needs (SEN). There is no explicit reference of children with SEN in the rules governing either Secure Children's Homes or Young Offender Institutions. Statements of Special Educational Need, which set out the educational provision that a child with SEN is entitled to, do not apply in custody. A 2007 consultation by the DCSF has highlighted the disparity in access to quality education for children in custody with Statements of SEN. The support for children with SEN appears to be lacking and there is some debate about where the responsibility for their educational needs lies – with the Youth Justice Board, the institution or the LA.<sup>27</sup>

A report by the National Audit Office in 2004 found that children in custody with SEN are often not identified as such, owing to inadequate assessments of young offenders which would identify their educational needs.<sup>28</sup> It follows that children in custody with SEN will not always receive suitable quality education.

## **RECOMMENDATIONS**

- The *Education Act 1996* should be amended so that the statutory guarantee to education applies to children serving sentences in detention.
- Consideration should be given to providing education for young offenders in community schools, as a means of helping prepare young offenders to reintegrate into society.
- Where children in detention continue receiving education in detention, the Government should ensure that LAs are responsible for the education of

<sup>26</sup> A detention and training order can be for anywhere between four months and two years. DCSF, Background paper for *Education and Training for Young People in the Youth Justice System – A Consultation* (2007), para. 3.3 (citing Youth Justice Board, *Progress Report on the Implementation of the Youth Justice Board's National Specification for Learning and Skills in the Juvenile Prison Estate 2003-04* (2004)).

<sup>27</sup> DCSF, *Education and Training for Young People in the Youth Justice System: A Consultation – Summary of Responses* (2007), p.15.

<sup>28</sup> DCSF, *Education and Training for Young People in the Youth Justice System: A Consultation – Delivering a Relevant Curriculum* (2007), p.1.

children in detention and juvenile detention facilities should work more closely with them.

- Statistics on the number of hours spent on education and training for children of compulsory school age who are in secure institutions should be collated – disaggregated by type of education or training received – and regularly reviewed.
- The LA's duty to provide support specified in a Statement of Special Educational Needs should continue when a child is in a juvenile detention facility.

## **1.2 Children in Immigration Detention**

Section 36 of the *Nationality, Immigration and Asylum Act 2002* enables the Government to set up accommodation centres for destitute asylum seekers and their families while their claims are being processed. Three immigration centres are currently being used in England to detain families and children. Two of these centres are used for temporary detention (in which children will stay for a maximum of 72 hours), and in one centre (Yarl's Wood Immigration Removal Centre), children can be held indefinitely. A Freedom of Information request found that there were 97 children detained in immigration detention in England at December 2007; 71 of these children were being held in Yarl's Wood.

### ***No Statutory Right to Education***

Children detained in immigration detention centres have no statutory right to education, as s.36 of the *Nationality, Immigration and Asylum Act 2002* removes the duty of LAs to ensure that education is available to this group of children.<sup>29</sup> It is government policy that children in immigration detention are educated within detention centres, and the law stipulates that immigration detention centres *may* provide education to child detainees,<sup>30</sup> however, this does not amount to a statutory guarantee to the right to education. Removing the statutory right of asylum-seeking children to education is in breach of the government's obligation to ensure that education is available to all children in England and that all children have equal access to quality education.

It is of the utmost importance that refugee and asylum-seeking children are educated in the community, rather than in an immigration detention centre. While the Government has argued that the detention of children is only ever used as an exceptional measure, and should not in any event exceed a very short period, the fact remains that regardless of the length of detention, it will compromise the welfare and development of children.<sup>31</sup> Evidence indicates that the impact of detention on a child's education arises less from the quality

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<sup>29</sup> However, LAs continue to be responsible for the provision of education in particular circumstances, for instance, for those children with severe or complex SEN which cannot be met within the centre. They also remain responsible for assessing children with SEN: s.36 *Education Act 1996*.

<sup>30</sup> S.29(1)(f) *Nationality, Immigration and Asylum Act 2002*.

<sup>31</sup> HMIP, *An Inspection of Dungavel Immigration Removal Centre*, July 2003, p7, available at <http://www.homeoffice.gov.uk/docs2/ircdungavel03.pdf>.

of the facilities themselves and more from *“the disruption to existing schooling, the environment in which the education facilities are located and the impacts on future schooling when children are subsequently released.”*<sup>32</sup> Detention has consequences for subsequent education and development of children that go beyond the period of detention itself: disrupted learning has a well-documented impact on overall education outcomes.<sup>33</sup> It also impacts on the overall development and welfare of children. Karen Buck MP states that: *“[t]he socialisation, confidence building and engagement that would come from being located in a community setting rather than an accommodation centre are critical.”*<sup>34</sup>

In August 2003, Her Majesty’s Inspectorate of Prisons (HMIP) recommended that there should be an independent assessment of the welfare, developmental and educational needs of each detained child, guided by the principles set out in international and UK domestic law in relation to children *“to be carried out as soon as practicable after detention and repeated at regular intervals thereafter, to advise on the compatibility of detention with the welfare of the child, and to inform decisions on detention and continued detention.”*<sup>35</sup> This recommendation has not been implemented. Steps taken by the Government to introduce welfare assessments at 21 days fall well short of those envisaged by HMIP.<sup>36</sup> It remains the case that there is no benchmark for assessing a child’s welfare through the course of their detention, which may stretch to long periods.

### ***Quality of Education Provision in Immigration Detention Centres***

The Government has failed to ensure that suitable quality education is available in immigration detention centres. An inspection by HMIP, carried out in 2003, found that, in the immigration removal centres inspected, educational provision was *“inadequate”*<sup>37</sup>, with particular shortcomings relating to the educational facilities available for older children aged 12 to 18 years. The 2006 report by HMIP criticised the continued detention of children at Yarl’s Wood, and outlined its inappropriateness as an educational institution for children, stating that *“education provision for children remained*

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<sup>32</sup> Heaven Crawley and Trine Lester, Save the Children, *No Place for a Child – Children in UK Immigration Detention: Impacts, Alternatives and Safeguards*.

<sup>33</sup> *Alternatives to Immigration Detention of Families and Children A discussion paper by John Bercow MP, Lord Dubs and Evan Harris MP for the All Party Parliamentary Groups on Children and Refugees Supported by the No Place for a Child Coalition* July 2006, available at [http://www.biduk.org/pdf/res\\_reports/alternatives\\_to\\_detention\\_july\\_2006.pdf](http://www.biduk.org/pdf/res_reports/alternatives_to_detention_july_2006.pdf)

<sup>34</sup> House of Commons Standing Committee E, *Nationality, Immigration and Asylum Bill*, Col 141, 9 May 2002.

<sup>35</sup> HMIP, *An Inspection of Dungavel Immigration Removal Centre, October 2003*, August 2003, p 45.

<sup>36</sup> In December 2003, an intention to introduce welfare assessments at 21 days was announced for Dungavel Immigration Removal Centre: Home Office Press Release, Stat 054/2003, 16 December 2003. It was later confirmed that these would be extended to other Immigration Removal Centres. Welfare assessments began for children at Yarl’s Wood in late 2005.

<sup>37</sup> HMIP, *Second Joint Chief Inspectors’ Review of Children’s Safeguards* (2005), para. 7.31, available at [http://www.safeguardingchildren.org.uk/docs/safeguards\\_imagefree.pdf](http://www.safeguardingchildren.org.uk/docs/safeguards_imagefree.pdf)

*deficient.*<sup>38</sup> Problems highlighted included a lack of appropriately qualified staff; the range and quality of teaching resources available; a lack of planned individual opportunities in English classes; and insufficient links with the children's previous schools, making it impossible to gather information on their educational experience and background.

Educational provision in all immigration removal centres consists of a specified number of contracted teaching hours, but minimum guarantees of quality are not prescribed and inspectors continue to consider it deficient for all but the youngest children.<sup>39</sup> An inspection of Yarl's Wood carried out in February 2008 found that educational provision remained "*unsatisfactory*", and of "*poor quality*", with a narrow curriculum, no individual learning plans or accreditation systems and a lack of suitable target-setting for children.<sup>40</sup>

Short units of accreditation, recommended by HMIP as a means of offering children some form of qualification, have not been introduced.<sup>41</sup> Funding provided for Yarl's Wood (roughly £17,142 per annum per person detained) has also been argued to be insufficient to develop a regime that provides sufficient education to detained children.<sup>42</sup>

#### **RECOMMENDATIONS:**

- LAs should be under an obligation to provide education to asylum-seeking children, and the statutory guarantee to education should apply to children seeking asylum.
- Asylum-seeking children should be educated at schools in the community, rather than in immigration detention.
- Where children continue to be educated in immigration detention centres, the Government should introduce monitoring and assessment mechanisms in order to regularly monitor and improve the quality of education provided to detained children.

### **1.3 Lack of Provision for Children with Special Educational Needs and Disabilities**

<sup>38</sup> HMIP, *Report on Unannounced short follow-up inspection of Yarl's Wood Immigration Removal Centre*, 13-16 February 2006, available at: [http://inspectorates.homeoffice.gov.uk/hmiprisons/inspect\\_reports/irc-inspections.html/544687/yarlswood.pdf?view=Binary](http://inspectorates.homeoffice.gov.uk/hmiprisons/inspect_reports/irc-inspections.html/544687/yarlswood.pdf?view=Binary)

<sup>39</sup> HMIP, *Second Joint Chief Inspectors' Review of Children's Safeguards*, 2005, para 7.3331, available at: [http://www.safeguardingchildren.org.uk/docs/safeguards\\_imagefree.pdf](http://www.safeguardingchildren.org.uk/docs/safeguards_imagefree.pdf)

<sup>40</sup> HMIP, *Report on an announced inspection of Yarl's Wood Immigration Removal Centre*, 4 – 8 February 200, available at: [http://inspectorates.homeoffice.gov.uk/hmiprisons/inspect\\_reports/irc-inspections.html/544687/Yarls\\_Wood\\_2008.pdf?view=Binary](http://inspectorates.homeoffice.gov.uk/hmiprisons/inspect_reports/irc-inspections.html/544687/Yarls_Wood_2008.pdf?view=Binary)

<sup>41</sup> HMIP, *Report on Unannounced short follow-up inspection of Yarl's Wood Immigration Removal Centre*, 13-16 February 2006, available at: [http://inspectorates.homeoffice.gov.uk/hmiprisons/inspect\\_reports/irc-inspections.html/544687/yarlswood.pdf?view=Binary](http://inspectorates.homeoffice.gov.uk/hmiprisons/inspect_reports/irc-inspections.html/544687/yarlswood.pdf?view=Binary)

<sup>42</sup> *Alternatives to Immigration Detention of Families and Children A discussion paper by John Bercow MP, Lord Dubs and Evan Harris MP for the All Party Parliamentary Groups on Children and Refugees Supported by the No Place for a Child Coalition July 2006*, available at [http://www.biduk.org/pdf/res\\_reports/alternatives\\_to\\_detention\\_july\\_2006.pdf](http://www.biduk.org/pdf/res_reports/alternatives_to_detention_july_2006.pdf)

In England, 20% of pupils have some type of special educational need.<sup>43</sup> LAs are under a statutory obligation to ensure that there is adequate educational provision for all children of compulsory school age in their area, including children with SEN and disabilities. According to Government policy, there should be a “flexible continuum of provision” available for children with SEN at a local level.<sup>44</sup> There is a duty on schools to use their best endeavours to ensure that children with SEN receive suitable educational provision to meet their needs.<sup>45</sup>

However, empirical research indicates that, in practice, suitable and appropriate educational provision is often not available for children with SEN. A 2005/06 inquiry by the House of Commons Education and Skills Committee found that “*in practice, some local authorities are not providing a range of appropriate provision for children with SEN.*”<sup>46</sup> A lack of suitable education provision has been found to particularly apply to children with Asperger Syndrome and autism, which is estimated to affect a large number of children in England.<sup>47</sup> A study by the National Autistic Society<sup>48</sup> found that 50% of parents of children with autism did not believe that their child was in the kind of school that best supported them, and 66% of parents said that their choice of school was limited by a lack of appropriate placements for children with autism in their local area. Parents reported a particular need for specialist support for children with Asperger Syndrome, and a shortfall in specialist education for secondary age school children.<sup>49</sup> The study also found that, for 40% of parents, it took over a year for their child to receive any support.<sup>50</sup>

Lack of suitable provision of education impairs not only the educational outcomes of children with SEN, but also, their broader development and well-being. Efforts should be targeted towards ensuring that mainstream schools are inclusive and responsive to the needs of children with SEN (see below for a fuller discussion) and that an adequate range of alternative educational provision is available to meet the needs of each child with SEN. The House of Commons inquiry found that “[f]or many children with SEN and disabilities, special schools are invaluable. The issue should not be their closure but how to progress to a system based on a flexible provision to meet the needs of all children.”<sup>51</sup>

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<sup>43</sup> At January 2008: DCSF, *Special Educational Needs in England*, 2008.

<sup>44</sup> DfES, *Memorandum to the Education and Skills Select Committee Inquiry into Special Education Needs* (2005).

<sup>45</sup> s. 317(1) *Education Act 1996*.

<sup>46</sup> House of Commons Education and Skills Committee, *Special Educational Needs*, Third Report of Session 2005 – 2006, Volume 1.

<sup>47</sup> Research shows that the prevalence of autistic spectrum disorders in the total population is 1 in 100: Baird, G. et al, ‘Prevalence of Disorders of the Autistic Spectrum in a Population Cohort of Children in South Thames: The Special Needs and Autism Project (SNAP)’, *The Lancet* (2006) 368 p. 210 – 215.

<sup>48</sup> Which received replies from 1,271 parents and involved 25 in-depth interview of children across England and Wales in October 2005.

<sup>49</sup> The National Autistic Society, *Autism and Education: The Reality for Families Today*, 2006, p. 3.

<sup>50</sup> See below for further information on access to suitable education for children with SEN.

<sup>51</sup> House of Commons Education and Skills Committee, *Special Educational Needs*, Third Report of Session 2005 – 2006, Volume 1, p. 45.

#### **RECOMMENDATIONS:**

- The Government should conduct an audit to identify areas in which there is a lack of suitable provision for children with SEN and disabilities.
- Resources should be made available to ensure that there is a range of sufficient educational provision available to meet the needs of children with SEN and disabilities, both in mainstream and alternative school settings.

#### **1.4 Alternative Provision for Children Not in School**

Around 135,000 children each year are in some kind of alternative provision for education as they have been excluded from school or are otherwise unable to attend school.<sup>52</sup> The *Education Act 1996* requires LAs to arrange 'suitable' education for children of compulsory school age who, because of exclusion, health or other reasons, cannot attend mainstream education *for any period*.<sup>53</sup> Depending on the needs of the child, the education may be provided in a residential or non-residential setting, or in the home. The education must be suitable to the age, ability, aptitude and special educational needs of the child.<sup>54</sup> Despite these legal obligations, many children who are unable to attend school will not receive a suitable quality education.

There are a range of reasons for children being unable to attend school. According to the Department for Children, Schools and Families (DCSF), 100,000 children each year are unable to attend school for at least part of the year as a result of medical problems, including illness or injury.<sup>55</sup> The DCSF estimates that 10% of these children have mental health problems.<sup>56</sup> However, in a 2003 Ofsted inspection of 12 LAs, the largest percentage included children with anxiety, depression and phobia.<sup>57</sup> Children who have been excluded from school will be unable to attend school for a period. There were 8,680 permanent exclusions of children from schools in England in 2006/07 and 363,270 fixed period exclusions.<sup>58</sup> There is also a widespread practice of schools "informally" excluding pupils, especially those with SEN (see below for a fuller discussion). As these pupils have not been "excluded" within the meaning of s.19 of the *Education Act 1996*, LAs do not have a duty to provide these children with alternative education, which means that many of these children could be missing out on receiving education.

#### ***Children 'Missing' from School***

<sup>52</sup> DCSF, *Back on Track: A Strategy for Modernising Alternative Provision for Young People*, May 2008, p. 11.

<sup>53</sup> *Education Act 1996*, s. 19(1).

<sup>54</sup> *Education Act 1996*, s. 19(6).

<sup>55</sup> Department for Children, Schools and Families, *Access to Education for Children and Young People with Medical Needs*, available at: <http://www.dfes.gov.uk/sickchildren/>

<sup>56</sup> Susan Clarke, *Access to Education for Children and Young People with Medical Needs*, Hosta Conference Presentation.

<sup>57</sup> Ofsted, *The Education of Pupils with Medical Needs*, August 2003, p.5.

<sup>58</sup> DCSF, *Permanent and Fixed Period Exclusions from Schools and Exclusion Appeals in England, 2006/07*, 24 June 2008.

LAs have been unable to 'keep track' of all children in their areas who are not in school, which has resulted in thousands of children missing out on receiving an education. An Ofsted investigation in 2002 found that, at any one time, there were 10,000 children 'missing' from school, who were unaccounted for.<sup>59</sup> Many of these children never start receiving an education, while others disappear from school rolls and cannot be accounted for by LAs. A government study commissioned by the DCSF (then the Department for Education and Skills) in 2006 found that only 17% of the 129 LAs that responded had a written policy concerning children missing education and 58% of LAs did not have a database of children who are not registered at a state school or being taught elsewhere. The research also found that many LAs had difficulty persuading schools to enrol these children where they had been 'found', as they were often perceived as being 'difficult.'<sup>60</sup>

Although a new statutory duty has been placed on LAs to make arrangements to identify children missing education in their area,<sup>61</sup> a study conducted by Blackpool Education Authority and the University of Lancashire in 2008 found that 100,000 children are still 'missing' from schools every year.<sup>62</sup>

#### **RECOMMENDATIONS:**

- The Government should ensure that LAs develop information collection systems which will allow them to identify children who are not in school. This should allow them to monitor each child in their area, to ensure that every child, including those who cannot attend school, receive suitable, quality education.
- Schools should be placed under an obligation to advise LAs of all children on the school roll who are not currently receiving full-time education on school premises.

#### ***Nature and Quality of Alternative Educational Provision***

For many children who are not in school, evidence indicates that the educational provision is unsuitable, insufficient and/or of poor quality.

#### Legal definition of 'suitable' education

Whilst all children of compulsory school age have a statutory guarantee to suitable education, the law in England allows significant flexibility on the part of LAs in determining what amounts to 'suitable' educational provision: the Courts have set the threshold very low so that the duty on LAs can be satisfied where only a very bare minimum of educational provision is provided

<sup>59</sup> Rebecca Smitters, '10,000 children slip through schools net', *The Guardian*, Wednesday, 6 February 2002, available at < <http://www.guardian.co.uk/uk/2002/feb/06/schools.ofsted>>

<sup>60</sup> BBC, 'Concern Over 'Missing' Children', 6 October 2006, available at <<http://news.bbc.co.uk/1/hi/education/5412896.stm>>

<sup>61</sup> s. 436A *Education and Inspections Act 2006*.

<sup>62</sup> Janet Murray, 'Lost, Stolen or Strayed', *The Guardian*, 15 July 2008, available at <<http://www.guardian.co.uk/education/2008/jul/15/schools.uk2>>

to a child. For instance, the Courts have accepted that the LAs are not necessarily under a duty to provide a child with education that is full-time.<sup>63</sup>

In *A v Essex County Council*,<sup>64</sup> a child suffering from severe autism, epilepsy and learning difficulties was informally excluded from his special school. He was kept at home for over a year while the LA conducted an assessment and tried to find a suitable educational placement for him. During that year, the child did not attend school and only had access to two boxes of interactive toys, minimal speech and language therapy and occasional activity sessions at his former school. The child was under-stimulated and his self-harming behaviour became severe, putting significant pressure on his parents. The Court held that, although the provision made was minimal, it did not amount to a breach of the child's right to education.

The determination that the LA's duty to provide suitable education to all children is easily discharged leaves many vulnerable children without effective legal protection or remedy and impairs the right of every child to education.

#### Delay in receiving alternative provision

LAs are under a duty to secure education for a child who has been excluded from the fifth day following the exclusion.<sup>65</sup> However, evidence indicates that, in practice, many LAs do not fulfil this duty. Research has found that, under previous legislation which stipulated that LAs must secure the provision of education from the fifteenth day of exclusion, only 50% of LAs met this obligation.<sup>66</sup>

There is also concern that children with anxiety, depression and phobia are not identified and may be missing from school for some time before being referred for alternate education.<sup>67</sup>

#### Pupil Referral Units

Most LAs arrange alternative provision in Pupil Referral Units, many of which have been found to offer very low quality educational provision that does not always meet the diverse needs of children being educated in the Units. Ofsted's 2004 report on alternative educational provision found that "*overall the quality of provision for children and young people out of school, their low attainment, the targeting and monitoring of provision, and the tracking of their progress is unsatisfactory.*"<sup>68</sup>

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<sup>63</sup> See *R(M) v Worcestershire County Council* [2005] ELR 48; *R(B) v Head Teacher of Alperton Community School and Others*; *R v Head Teacher of Wembley High School and Others ex parte T*; *R v Governing Body of Cardinal Newman High School and Others ex parte C* [2001] ELR 359.

<sup>64</sup> [2008] EWCA Civ 364.

<sup>65</sup> ss.100 and 101 *Education and Inspections Act 2006*.

<sup>66</sup> Mary Atkinson, Annie Johnson, Anne Wilkin and Kay Kinder, *Good Practice in the Provision of Full-Time Education for Excluded Pupils* (2004) National Foundation for Educational Research.

<sup>67</sup> Ofsted, *The Education of Pupils with Medical Needs*, August 2003, p.3.

<sup>68</sup> DCSF, *Back on Track: A Strategy for Modernising Alternative Provision for Young People*, May 2008, p. 12 [herein referred to as "Back on Track"].



There is very little data available which measures the educational outcomes of children in Pupil Referral Units. However, available data indicates that children in Pupil Referral Units have very poor educational outcomes. In 2006, only 1 per cent of 15 year olds in Pupil Referral Units achieved 5 General Certificates for Secondary Education at a high level (A\* - C), compared with 45.8 per cent of the student population in mainstream schools.<sup>69</sup> This underachievement is likely to significantly restrict the future job prospects and life chances of children who receive education in Pupil Referral Units.<sup>70</sup>

Ofsted inspections of Pupil Referral Units have found many shortcomings in the quality of educational provision, which has resulted in children in many LAs not receiving a suitable quality education. Ofsted inspections have found that some LAs use a limited range of providers and that the number and types of placements in Pupil Referral Units do not match local needs. Ofsted have also found a lack of robust systems and support for children and inadequate communications between the Units and local schools. In one in ten Pupil Referral Units, Ofsted have found the curriculum to be inadequate, often because it is too narrow and insufficiently focused on preparing pupils for their lives once they have left the Unit. Other barriers to quality education in Pupil Referral Units include: inadequate accommodation; pupils of different ages with diverse needs arriving in an unplanned way; limited numbers of specialist staff to provide a broad curriculum; and difficulties reintegrating pupils to mainstream schools.<sup>71</sup>

Students placed in Pupil Referral Units who have SEN have particular difficulties accessing suitable education. Ofsted have found that *“[i]n too many cases, local authorities placed pupils who had statements of special education need in Pupil Referral Units which were unable to meet their special needs.”*<sup>72</sup>

In addition, pupils with very diverse needs will often be placed into Pupil Referral Units together, in a manner that does not respond to the particular needs of each child. Ofsted has expressed concern that children with medical needs are educated together with those having complex SEN, which is not always in their best interests.<sup>73</sup> Many children placed in Pupil Referral Units have complex needs and have experienced difficulties accessing mainstream education. It is particularly important that educational provision for these children is of high quality and responsive to their unique needs. The 2008 Government White Paper on alternative educational provision found that *“[t]here should be greater differentiation in provision to enable the widely diverging needs of young people to be met. A ‘one size fits all’ approach risks neglecting young people with specific needs.”*<sup>74</sup>

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<sup>69</sup> DCSF, “Back on Track”, p. 11.

<sup>70</sup> DCSF, “Back on Track”, p. 11.

<sup>71</sup> DCSF, “Back on Track”, p. 19.

<sup>72</sup> The Annual Report of Her Majesty’s Chief Inspector of Education, Children’s services and Skills 2006/07.

<sup>73</sup> Ofsted, *The education of pupils with medical needs*, August 2003, p.2.

<sup>74</sup> DCSF, “Back on Track”, p. 17.

Difficulty in securing a remedy for lack of alternative provision

LA duties are only enforceable through judicial review to the High Court. This is a complex and expensive process and the applicant will be unlikely to succeed, as the Court has proved reluctant to interfere, especially to enforce school's duties.

**RECOMMENDATION:**

- The 2008 Government White Paper on alternative provision makes a number of recommendations for improving the quality of alternative educational provision. These recommendations should be implemented as a matter of priority to ensure that all children, whether in school or not, receive suitable quality education.

## 2. ACCESS TO EDUCATION

**The Government must ensure that all children have access to quality education, on an equal basis on the grounds of race, gender, ethnicity, language, religion, economic status, disability and health status.**

The duty to ensure the availability of primary, secondary and further education is available is the duty of the LAs.<sup>75</sup> However, the obligation to ensure that children receive efficient, full-time education, at school or otherwise, rests with parents.<sup>76</sup> Criminal charges may be brought against parents / carers where they fail to ensure that their child receives an education. Many children who do not attend school regularly may come from fractured or chaotic home environments, and, in these circumstances, imposing criminal charges on parents will be ineffective and cause further harm to the child and family.

The Government has failed to ensure that all children in England have equal access to education. It has also failed to ensure that children from all backgrounds have equal educational outcomes.

### 2.1 Discrimination in Access to Education and Educational Outcomes for Particular Groups of Children

*The Committee is concerned at... the sharp differences in educational outcomes for children according to their socio-economic background and to other factors such as gender, disability, ethnic origin and care status... The Committee is further concerned that the majority of children in the care system, as well as teenage mothers, do not attain basic qualifications.*

The Government has failed to ensure equal access to education and equal educational outcomes for all groups of children in England. Some groups of children, including children in care, young offenders, asylum-seeking and immigrant children, Black and Minority Ethnic children, pregnant girls, children with SEN or disabilities and children from Roma and Traveller communities, remain unable to access quality education to the same extent as other children. Also, the educational outcomes for these groups of children are significantly lower than for other children.

#### **Children in care**

There were 60,000 children in local authority care at 31 March 2007.<sup>77</sup> Data indicates that many children in local authority care will be in care for long periods: there were 44,200 children who had been in local authority care continuously for at least 12 months at 30 September 2006, and 34,400 of these children were of compulsory school age.<sup>78</sup> Children in care experience obstacles to in accessing education: 13% of children who were in care for 12

<sup>75</sup> s. 13 Education Act 1996.

<sup>76</sup> s.7 Education Act 1996.

<sup>77</sup> DCSF, *Children looked after in England (including adoption and care leavers) year ending 31 March 2007*.

<sup>78</sup> DCSF, *Outcome Indicators for Looked After Children: Twelve Months to 30 September 2006*, England, 26 April 2007.

months at 30 September 2006 had missed at least 25 days of school. A study by conducted by the organisation National Children's Homes (NCH) of a sample of 377 care leavers found that, in their final year of compulsory schooling, only 9% attended school each day.<sup>79</sup> In addition, children in care have significantly poorer educational outcomes compared to the school age population as a whole. In 2005/2006, only 63% of children in care obtained at least one General Certificate for Secondary Education (GCSE) compared with 98% of all school children; and only 12% obtained 5 GCSEs compared with 59% of all school children.<sup>80</sup> Research conducted in 2005 found that only 1% of care leavers go to university, compared with 37% of other young people.<sup>81</sup>

Research has show that the poor educational outcomes for children in care are less attributable to the inherently disrupted lives of these children, but instead, are attributed to systematic failures by the Government to ensure that these children have access to quality education and that they can achieve. A study conducted by the NCH concluded that, for children in care, *"the achievement gap isn't a product of low ability or learning disabilities, but the result of a systems failure."*<sup>82</sup> In particular, it was found that education was given insufficient priority by LAs, and the number of care placements for the sample of 377 care leavers (25% of which had had six or more care placements during secondary school, and 29% of which had had three or more placements during this period) led to underachievement. It also found that teachers have insufficient training and understanding of the needs of children in care, and low expectations for the achievement of these children. Likewise, it was found that carers are not expected or equipped to provide support and encouragement for learning and development.<sup>83</sup>

The Government's recent Green Paper on children in care confirmed that a systems failure is largely responsible for the gap in educational access and achievement for children in care compared with the general school population. The paper found that the way in which the care and education systems interact created obstacles to educational access and attainment for children in care:

*"Frequent placement changes and a high rate of exclusions mean that children in care are five times more likely than other children to move school in years 10 and 11, a major factor affecting exam performance. Research, and our conversations with children, also show that foster carers often attribute little importance to schooling and that schools often fail to understand the needs of children in care."*<sup>84</sup>

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<sup>79</sup> NCH, *Close the Gap for Children in Care* (2005) p. 6 [herein referred to as "Close the Gap"].

<sup>80</sup> DCSF, *Outcome Indicators for Looked After Children: Twelve Months to 30 September 2006, England*, 26 April 2007.

<sup>81</sup> NCH, "Close the Gap".

<sup>82</sup> NCH, "Close the Gap", p. 1.

<sup>83</sup> NCH, "Close the Gap".

<sup>84</sup> DCSF, *Care Matters: Transforming the Lives of Children and Young People in Care* (2006), para. 1.40.

Children in care are one of the most vulnerable groups in England. The Government should ensure that they are able to access education and reach their full potential.

**RECOMMENDATIONS:**

- The Government should set clear targets for educational access and attainment of children in care, to ensure that children in care can achieve the same educational outcomes as their peers. LAs should be given sufficient resources to allow them to achieve these targets. They should also set regular inspection, monitoring and evaluation systems against these targets.
- The Government should ensure that teachers receive effective, in-depth training on the needs and challenges faced by children in care. They should also ensure that foster parents receive training and support necessary to allow them to contribute positive guidance and support to children in their care.
- The Government should also set targets for reducing the number of placements that children in care go through, in order to avoid disruption to their lives and their education.

***Economically disadvantaged children***

Children from disadvantaged backgrounds have significantly reduced levels of educational attainment than their peers. A Government White Paper reported, in 2007, that *“a child’s educational achievements are still too strongly linked to their parents’ social and economic background – a key barrier to social mobility.”*<sup>85</sup> For instance, only around 25% of students receiving free school meals (which can be used as an indicator that the child is from a disadvantaged background) gained five good GCSEs, compared with over half of the whole-school population in 2006.<sup>86</sup> Other research has found that economic deprivation and poor educational attainment are linked. It has been reported that, in 2007, in schools containing more than 35% of pupils eligible for free school meals, 31% of children aged 11 years did not achieve basic qualifications in English and 32% failed to achieve basic qualifications in Maths. This is compared with 19% and 20%, respectively, in all maintained schools.<sup>87</sup>

Research conducted recently by the Joseph Rowntree Foundation found that *“children from less advantaged backgrounds are more likely to feel a lack of control over and less involvement in their learning, and so have a greater tendency to become reluctant recipients of the taught curriculum. This relates both to children’s attitudes towards learning and to their relationships with adults. These factors are at the heart of the social divide in educational outcomes, yet they have not been at the heart of solutions so far.”*<sup>88</sup>

<sup>85</sup> Department for Education and Skills, *Higher Standards, Better Schools for All* (2005), p. 1.

<sup>86</sup> Joseph Rowntree Foundation, *Experiences of Poverty and Educational Disadvantage*, September 2007, available at <http://www.jrf.org.uk/knowledge/findings/socialpolicy/2123.asp>

<sup>87</sup> The Poverty Site, *Education and Attainment at Age 11*, available at <http://www.poverty.org.uk/14/index.shtml>

<sup>88</sup> Joseph Rowntree Foundation, *Experiences of Poverty and Educational Disadvantage*, September 2007, available at <http://www.jrf.org.uk/knowledge/findings/socialpolicy/2123.asp>

**RECOMMENDATION:**

- The Government should thoroughly review and address factors which impair the ability for economically disadvantaged children to be engaged with the education system and their ability to achieve their full potential.

***Pregnant girls and teenage mothers***

Despite positive developments in Government policy regarding pregnant girls and teenage mothers and their access to education,<sup>89</sup> these children continue to be disengaged from the education system. England has one of the highest rates of teenage births in Western Europe.<sup>90</sup> In 2006, 39,003 young people under the age of 18 in England became pregnant, almost half of whom went on to have a legal abortion.<sup>91</sup>

69.5 per cent of 16 – 19 year old mothers were not in education, employment or training in 2005 – 2007.<sup>92</sup> While this represents a decrease in the number of teenage mothers not engaged in education, training or employment since 2002,<sup>93</sup> the figure is still unacceptably high. It is particularly important to improve pregnant girls and teenage mothers' access to education, as these young people are more likely to already be disengaged from the education system, and have poor expectations of education and employment.<sup>94</sup>

The Government has provided support to many young mothers to assist them in accessing education through its Care2Learn scheme, which helps fund childcare so that teenage mothers are able return to education, training or work. Over 7,000 young parents currently receive this funding. The Teenage Pregnancy Independent Advisory Group, in its 2007/2008 Annual Report, recommended that the Government increase the budget for the Care2Learn scheme, so that a greater number of young mothers can make use of the scheme.<sup>95</sup>

**RECOMMENDATION:**

- The Government should increase funding for child care for teenage mothers, to allow more young people to continue in education or training.

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<sup>89</sup> DCSF Guidance stipulates that pregnant school girls and school age mothers will remain on the roll of their mainstream school, unless they have been excluded for other reasons (Circular, 10/99). The aim should be re-integration where possible, and mainstream schools and Pupil Referral Units should work together to achieve this.

<sup>90</sup> Teenage Pregnancy Independent Advisory Group, *Annual Report 2007/08*, p. 3.

<sup>91</sup> Office for National Statistics and Teenage Pregnancy Unit, *Teenage Conception Statistics for England* (2008), p. 1 .

<sup>92</sup> Department for Work and Pensions, *Indicators Update 2007*, p. 23.

<sup>93</sup> In 2003, 73.3 per cent of teenage mothers were not in education, employment or training: Secretary of State for Work and Pensions, *Opportunity for All. Fifth Annual Report 2003*, p. 166.

<sup>94</sup> Social Exclusion Unit, *Teenage Pregnancy* (1999).

<sup>95</sup> Teenage Pregnancy Independent Advisory Group, *2007/2008 Annual Report*, p. 28.

### ***Asylum-seeking and refugee children***

Many young refugees and asylum-seekers achieve very highly in school; however, there remain considerable barriers to refugee and asylum seeking children accessing education and reaching their full potential, which the Government has failed to address.

#### Delays in accessing school places

Refugee and asylum-seeking children routinely experience difficulties in accessing school places, including excessive delays (of up to seven months) in waiting for places, particularly for young people aged 14–16 years. The Refugee Council reports that delays of several months in accessing education are not unusual due in part to the shortage of places, and the inflexibility of college courses, where, if a young person arrives at a time when they miss the beginning of a course, they are then obliged to wait a whole year until they are allowed access.<sup>96</sup>

Due to the pressures of league tables, schools are not always willing to admit new arrivals who might ‘drag down’ their overall results and, in practice, unsupported and immediate entry into GCSE courses is not always appropriate. Provision, therefore, is varied and includes putting pupils into the previous year group, college link courses, short induction courses prior to full-time education as well as short-term induction support whilst in full-time education and induction courses that provide an introduction to GCSE or other appropriate courses for those who arrive in year 11.<sup>97</sup> The alternative provision available has been found to not meet the statutory standards of an inclusive education.<sup>98</sup>

Some LAs have families in emergency accommodation. Most LAs and schools do not accept children who are likely to attend for a short time, even though they are legally required to do so if they have places available.<sup>99</sup>

#### Obstacles caused by the immigration system

The Dispersal Policy, which has operated since 2000 and aims at ensuring that persons seeking asylum are moved to areas outside the South East of England in order to reduce pressure on LAs in these areas, has had a negative impact on the access to education of asylum-seeking children. A Cambridge University study has found that this policy has compromised the ability for asylum-seeking children to access education.<sup>100</sup> The study found that many local authorities were given insufficient notice of the arrival of asylum-seeking children into their areas and therefore “*the educational needs of asylum-seeker and refugee children have tended to be marginalised or*

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<sup>96</sup> Myfanwy Franks, *Count us in: young refugees in the asylum system* (2006), The Children’s Society.

<sup>97</sup> Myfanwy Franks, *Count us in: young refugees in the asylum system* (2006), The Children’s Society.

<sup>98</sup> Myfanwy Franks, *Count us in: young refugees in the asylum system* (2006), The Children’s Society.

<sup>99</sup> Audit Commission, *Another Country: Implementing Dispersal under the Immigration and Asylum Act 1999* (2000).

<sup>100</sup> M Arnot and H Pinson, *The Education of Asylum Seeker and Refugee Children* (2005).

ignored.”<sup>101</sup> Some families have been moved to places where there are inadequate resources to meet their needs.

### Financial Barriers

In general, many refugee and asylum-seeking families face financial barriers to facilitating their children’s access to school, due to the vastly restricted income of refugee families.<sup>102</sup> The costs of essential items such as food items for food technology, calculators or art materials, may be prohibitive for families living on asylum support.<sup>103</sup> This includes the cost of school uniforms<sup>104</sup> and essentials such as bags, pens and calculators, as well as extras such as ingredients for food technology, sports equipment, school trips and books. This directly impacts on pupils’ full and equal access to the curriculum.

Although LAs will generally fund travel costs to school if the school is more than three miles away, this is not provided for some young people, particularly when they attend education other than at school or specialist college provision. This can affect their ability to join programmes. Joint Oxfam and Refugee Council research has found that 90 per cent of asylum seekers reported that they were sometimes or frequently unable to pay for their children’s bus fare to school.<sup>105</sup>

### Inappropriately targeted funding and support

Funding for refugee and asylum seeking pupils comes through the Children's Service Grant and the Ethnic Minority Achievement Grant. Asylum-seeking and refugee pupils do not attract specific targeted funding. They rely instead on monies aimed at minority ethnic and vulnerable pupils, both of which are ring-fenced and part of the Standards Fund that supports all such children in schools.<sup>106</sup> The lack of specifically targeted ring-fenced funding for refugee and asylum-seeking children is a cause for concern. While there is a degree of overlap between the problems faced by refugee and asylum-seeking children and by ethnic minorities, it is also necessary to identify the separate needs of particular pupils or groups of pupils.

The Ethnic Minority Achievement Grant treats the additional requirements of immigrants and ethnic minorities as part of the same calculation. This places the burden on schools to determine how best to allocate their resources within

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<sup>101</sup> M Arnot and H Pinson, *The Education of Asylum Seeker and Refugee Children* (2005), p. 16.

<sup>102</sup> Lisa Doyle and Megan McCorriston, Refugee Council, *Beyond the School Gates: Supporting Refugees and Asylum Seekers in Secondary School*, May 2008 .

<sup>103</sup> Refugee Council, *Raising the Achievement of 14 to 16 year old Asylum-Seeking and Refugee Children and Young People*, (2005), available at:

<http://www.refugeecouncil.org.uk/policy/position/2005/children.htm>

<sup>104</sup> Section 518 of the *Education Act 1996* gives LEAs the discretion to provide clothing grants.

<sup>105</sup> Oxfam and the Refugee Council, *Asylum and Poverty in the UK* (2002).

<sup>106</sup> Refugee Council, *Raising the achievement of 14 to 16 year old asylum-seeking and refugee children and young people* (2005), available at:

<http://www.refugeecouncil.org.uk/policy/position/2005/children.htm>



“a complex mesh of different needs.”<sup>107</sup> In conjunction with spreading best practice, a funding formula is needed that differentiates between levels and types of need, which will enable schools to prioritise needs appropriately, without spreading support too thin for some groups.<sup>108</sup>

#### Lack of access to further education

Asylum-seekers are specifically excluded from the Education Maintenance Allowance that supports post-16 education, and may face restricted access to English for Speakers of Other Languages (ESOL) classes.<sup>109</sup> Other barriers to higher education include: asylum-seekers being charged international student fees rather than home student fees; asylum-seekers having no access to student loans; and overseas qualifications not being taken into account.

#### Ineffective monitoring of progress

It is currently impossible to measure and monitor, at a national level, the achievement of asylum-seeking or refugee children. At a national level, ethnicity data categories are based on broad categories that reflect the largest ethnic groups in the UK but render asylum-seeking and refugee pupils invisible.<sup>110</sup> It is therefore very difficult to measure whether refugee and asylum-seeking children have unequal educational attainment, compared to their peers.

#### **RECOMMENDATIONS:**

- The Government should introduce targeted, ring-fenced funding to increase access of refugee and asylum-seeking children to education.
- The Government should provide guidelines on the placement of refugee and asylum-seekers under the dispersal policy, ensuring that refugee and asylum-seekers are placed in areas with suitable educational provision available to meet their or their children’s needs.
- The Government should collect disaggregated data and set targets in order to monitor and improve the educational outcomes of refugee and asylum-seeking children.
- The Government should introduce guidelines for LAs, setting out strict timelines for making educational placements of refugee and asylum-seeking children
- LAs should be obliged to subsidise the whole cost of travel to school for refugee and asylum-seeking children.

<sup>107</sup> Institute for Public Policy Research for the Association of Teachers and Lecturers, *Diverse Futures, Equal Chances: Funding Ethnic Minority Achievement in Education* (2005).

<sup>108</sup> Institute for Public Policy Research for the Association of Teachers and Lecturers, *Diverse Futures, Equal Chances: Funding Ethnic Minority Achievement in Education* (2005).

<sup>109</sup> ESOL funding has recently been restricted further: see Refugee Council, *Briefing paper on 'English for Speakers of Other Languages' and Further Education Funding Changes 2007/08 announced by the Learning and Skills Council [Nov 07]*, available at: <http://www.refugeecouncil.org.uk/policy/briefings/2007/esolfunding.htm>

<sup>110</sup> Due to the way statistics are aggregated amongst various government departments, there is no method of identifying those dependants that are children, although the Home Office does collect statistics on the numbers of unaccompanied asylum-seeking children.

- The Education Maintenance Allowance for further education should be available to refugee and asylum-seeking children

### ***Children from minority ethnic backgrounds***

While it is unlawful for all those in charge of educational establishments to discriminate against children on the ground of race in relation to school admissions, exclusions and access to benefits and facilities,<sup>111</sup> data indicates that children from particular minority ethnic groups do not have equal access to education and have significantly poorer educational attainment levels.

#### Roma and Traveller children

Ofsted estimated, in 1996, that there were 70,000 'Travellers' (including Irish Travellers) in the UK, not including persons from other travelling populations, such as fairground or show people, 'New Travellers' and boat dwellers.<sup>112</sup> This includes 50,000 children aged 0 – 16 years.<sup>113</sup> Other estimates, however, have put the total UK Roma and Traveller population at 300,000.

In 1985, the Swann report<sup>114</sup> outlined the racism and discrimination, myths, stereotyping and the need for more positive links between Roma and Traveller parents and their children's schools. In 1999 Ofsted<sup>115</sup> reported that Roma and Traveller pupils had the lowest results of any ethnic minority group and were the groups most at risk in the education system. The School Census since 2003 has confirmed this to still be the case.<sup>116</sup> A report by Ofsted in 2003 found that *"the vast majority of Traveller pupils linger on the periphery of the education system. The situation has persisted for too long and the alarm bells rung in earlier reports have yet to be heeded."*<sup>117</sup> The DCSF recently acknowledged that, while access is "steadily improving", there is still a long way to go in ensuring equal access to education and educational attainment for Roma and Traveller children, especially for the secondary school age group.<sup>118</sup>

Data indicates that Roma and Traveller children face obstacles in accessing education: in 2003, Ofsted estimated that around 12,000 Roma and Traveller children of secondary school age were not registered in school.<sup>119</sup> The attendance level of Gypsy and Traveller children in schools and higher education institutions continues to be the lowest among all minority ethnic groups. The average attendance rate for Roma and Traveller pupils is around 75%; well below the national average.<sup>120</sup> Ofsted have also expressed concern that *"[t]here is a growing trend among Traveller families for secondary age pupils, in particular, to be educated at home. The adequacy,*

<sup>111</sup> s.17 Race Relations Act 1976.

<sup>112</sup> Ofsted, *The Education of Traveller Children* (1996).

<sup>113</sup> Ofsted, *The Education of Traveller Children* (1996), para. 45.

<sup>114</sup> DfES *Committee of Enquiry into the Education of Children from Ethnic Minority Groups, Education for All*, (The Swann Report) (1985).

<sup>115</sup> Ofsted, *Raising the Attainment of Minority Ethnic Pupils* (1999).

<sup>116</sup> DCSF, *Inclusion of Gypsy, Roma and Traveller Children and Young People* (2008).

<sup>117</sup> Ofsted, *Provision and Support for Traveller Pupils* (2003), p. 6.

<sup>118</sup> DCSF, *Inclusion of Gypsy, Roma and Traveller Children and Young People* (2008).

<sup>119</sup> Social Exclusion Unit Report, *Breaking the Cycle*, September 2004

<sup>120</sup> Ofsted, *Provision and Support for Traveller Pupils* (2003).

*suitability and quality of such provision are very uneven.*<sup>121</sup> One problem facing Roma and Traveller communities is that there is a huge shortage of sites for Travellers across England,<sup>122</sup> which makes it difficult for some children to access education.

Roma and Traveller children also have very poor educational attainment. In 2003, 22% of Roma pupils, and over 17% of Irish Traveller students in England obtained no GCSE passes, compared to 6% among the population at large.<sup>123</sup> In 2005, only 30% of Irish Traveller pupils gained the expected level in writing at Key Stage 1. Only 22.5% gained 5+ A-C GCSEs compared to a national average of 54.9%.<sup>124</sup> The Government should, as a matter of priority, address the low levels of educational access and attainment of Roma and Traveller children.

### Children of African and Afro-Caribbean origin

As noted above, it is unlawful for bodies in charge of educational establishments to discriminate against children on the ground of race in relation to school admissions, exclusions and access to benefits and facilities.<sup>125</sup> However, a 2006 review commissioned by the DCSF (then the Department for Education and Skills) found evidence of *“discrimination against the grandchildren and great grandchildren of the early Black migrants persists in the form of culturally unrepresentative curricula and low expectations for attainment and behaviour on the part of staff.”*<sup>126</sup> The review found that Black pupils face institutional racism in the English education system, which creates a significant barrier to their access to education and educational attainment: evidence suggests that *“Black pupils are disciplined more frequently, more harshly and for less serious misbehaviour than other pupils; that they are less likely to be praised than other pupils; that this differential treatment by school staff can be observed very early on in a child’s education; and that such a differential approach is likely to be unwitting on the part of teachers.”*<sup>127</sup>

This systemic racism has resulted in high rates of exclusion among Black pupils (see below), which impairs their access to education, and also results in disparities in the educational attainment between Black pupils and their peers. For instance, Black pupils will be one third less likely to receive 5 GCSE’s at a high level (A\* - C).<sup>128</sup>

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<sup>121</sup> Ofsted, *Provision and Support for Traveller Pupils* (2003), p. 5.

<sup>122</sup> Tom de Castella, ‘Travellers Speak Out’, *Children and Young People Now*, 25 June – 1 July, p.20.

<sup>123</sup> All in *Breaking the Cycle*, Social Exclusion Unit Report, September 2004

<sup>124</sup> Letter from Lord Adonis, 16<sup>th</sup> November 2006, cited in *Irish Traveller Movement in Britain – Policy Paper on Education*.

<sup>125</sup> s.17 *Race Relations Act 1976*.

<sup>126</sup> DfES, *Getting It. Getting it Right.* (2006), p. 3.

<sup>127</sup> DfES, *Getting It. Getting it Right.* (2006), p. 11.

<sup>128</sup> DfES, *Getting It. Getting it Right.* (2006), p. 23.

#### **RECOMMENDATIONS:**

- The Government should initiate compulsory training of school staff (particularly teachers) to sensitise staff to the experiences of minority ethnic students in the education system, and reduce the negative stereotyping and low expectations staff may have about children, based on their ethnic background.
- The Government should ensure that LAs increase the number of Traveller sites in their area to allow children to become more settled and better able to access education.
- The Government should provide targeted, ring-fenced funding to schools to increase access to the education system for children from Roma and Traveller backgrounds.

#### ***Children with disabilities and special educational needs (SEN)***

It is unlawful in England for children to be discriminated against on the ground of disability in accessing education.<sup>129</sup> School Governors and LAs are also under a duty to use their best endeavours to ensure that children with SEN receive educational provision that meets their needs.<sup>130</sup> Many children with SEN will also have a disability: a special educational need is defined at law to include “a disability which either prevents or hinders [a child] from making use of educational facilities of a kind generally provided for children of his age in schools within the area of the [LA]”.<sup>131</sup> However, not all children defined by law as having SEN will also have a disability for the purposes of the *Disability Discrimination Act 1995*.<sup>132</sup> Therefore, not all children with SEN will be entitled to the protections contained in the *Disability Discrimination Act 1995*.

Pursuant to English law, LAs must ensure not only that an adequate range of education is available to meet the needs of children with SEN, but also that children with SEN are able to access suitable education, either in a mainstream or specialist school. In practice, children with disabilities and / or SEN experience obstacles accessing both mainstream and specialist educational provision. Reviews by the Audit Commission in 2002, and by Ofsted, in 2004, identified a number of serious flaws in the fair access to schools for children with SEN. According to a report by the House of Commons Education and Skills Committee, these flaws have not yet been adequately addressed.<sup>133</sup>

#### **Ensuring children with SEN have access the most suitable educational placements**

In securing a suitable educational placement for a child with SEN, LAs may make a Statement of Special Educational Needs (SEN Statement). LAs are required to make a SEN Statement where, following a formal assessment of a

<sup>129</sup> s.28A *Disability Discrimination Act 1995*.

<sup>130</sup> s. 317 *Education Act 1996*.

<sup>131</sup> 2 312(1) and (2)(b) *Education Act 1996*.

<sup>132</sup> The definition of Special Educational Needs is defined as arising not only from a disability but also from “a significantly greater difficulty in learning than the majority of children his age”: s. 312(2)(a) *Education Act 1996*.

<sup>133</sup> House of Commons Education and Skills Committee, *Special Educational Needs: Third Report of Session 2005 – 06, Volume 1*, para. 141.

child, it considers that the child probably has SEN and it is necessary to determine what type of provision would meet the needs of the child because provision cannot be made out of an ordinary school budget.<sup>134</sup> The extent of SEN Statements varies widely by LA area, which is considered by the House of Commons Education and Skills Committee to be “a major concern.”<sup>135</sup> There is currently no national guidance on when a SEN Statement should be issued, and variation across LAs in making SEN Statements has been found to amount to a “postcard lottery.”<sup>136</sup> In the 2005/06 review of SEN by the House of Commons Education and Skills Committee, many parents stated that local authorities had been unwilling to make a SEN Statement for their child.<sup>137</sup> This impairs the ability for LAs to place a child with SEN in the most appropriate educational provision, and can make it difficult for parents to ensure that LAs meet their obligations and that their child receives suitable education. Parents also reported that inaccurate assessments had been made by professionals who were not sufficiently independent of LAs, and that placement decisions had been badly made, resulting in their child being placed in an unsuitable school, thus compromising their ability to access suitable, quality education and reach their full potential.

#### Access to mainstream schools

A report conducted by the House of Commons in 2005/06 found unwillingness on the part of successful mainstream schools to accept admissions from children with SEN.<sup>138</sup> The review found strong evidence that the system of measuring the performance of schools according to league tables operated as a disincentive for schools to accept children with SEN. Though children with Statements of SEN which name the school that the child must attend will have top priority in the school admission process, problems in accessing mainstream schools still apply for children with SEN who do not have statements.

Concerns have also been raised that many mainstream schools are not inclusive, as they have not adapted adequately to meet the needs of children with SEN (see below for a fuller discussion).

#### Achievement levels of children with SEN and disabilities

A lack of nationally standardised data on the performance of children with SEN has made it very difficult to measure and monitor the educational attainment of these pupils. A 2004 report by Ofsted found that comprehensive data about the performance of children with SEN is not always available and methods for measuring outcomes vary widely between schools:

*“Many schools have difficulty setting targets and knowing what constitutes reasonable progress by pupils with learning difficulties or*

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<sup>134</sup> s.323(1) – (3) *Education Act 1996*.

<sup>135</sup> House of Commons Education and Skills Committee, *Special Educational Needs: Third Report of Session 2005 – 06, Volume 1*, para. 143 [herein referred to as “SEN Third Report”]

<sup>136</sup> House of Commons Education and Skills Committee, “SEN Third Report”, para. 148.

<sup>137</sup> House of Commons Education and Skills Committee, “SEN Third Report”, para 145.

<sup>138</sup> House of Commons Education and Skills Committee, “SEN Third Report”, para. 180.

*disabilities. Few [LAs] have effective systems for monitoring progress for pupils with SEN. Data provided by most [LAs] are not in a form which allows schools easily to compare how well they are doing with the lowest-attaining pupils when compared with other schools. This weakens the drive to challenge underachievement.*<sup>139</sup>

However, the Ofsted review did find evidence that many pupils with SEN fail to make good progress in schools.<sup>140</sup> The House of Commons Education and Skills Committee review found that the government's failure to set challenging targets continues to have a negative impact on the educational attainment of children with SEN.<sup>141</sup>

#### **RECOMMENDATIONS:**

- The Government should encourage mainstream schools, including well-performing schools, to accept more children with SEN and disabilities
- Admissions of children with SEN should be carefully monitored to ensure that all mainstream schools are accepting an adequate number of children with SEN and disabilities.
- The Government should develop a national framework setting out minimum standards on the provision of suitable education for children with SEN. In particular, the Government should act on the recommendations of the House of Commons Education and Skills Committee and ensure that LAs develop a child-centred approach with regard to each stage of the statementing process, in particular in the assessment of needs, allocation of resources and placement.
- The Government should set challenging targets for LAs on educational outcomes for children with SEN.

## **2.2 High Rates of Exclusion**

*The Committee is concerned at the still high rate of temporary and permanent exclusion from school affecting mainly children from specific groups (ethnic minorities, including black children, Irish and Roma travellers, children with disabilities, asylum-seekers etc.).*

A very large number of children continue to be excluded from schools every year. There were 8,680 permanent exclusions of children from schools in England in 2006/07 and 363,270 fixed period exclusions.<sup>142</sup> In addition to formal exclusions of children, many more children are informally excluded from school. Research undertaken by the DCSF (then the Department for Education and Skills) in 2006 found a large body of qualitative and anecdotal evidence of schools using methods other than official exclusions to keep children off school premises, including persuading parents to remove the child

<sup>139</sup> Ofsted, *Special Educational Needs and Disability* (2004), para. 35.

<sup>140</sup> Ofsted, *Special Educational Needs and Disability* (2004).

<sup>141</sup> House of Commons Education and Skills Committee, "SEN Third Report", para. 139.

<sup>142</sup> DCSF, *Permanent and Fixed Period Exclusions from Schools and Exclusion Appeals in England, 2006/07*, 24 June 2008.

from school, or have the child stay at home unofficially for a period of time.<sup>143</sup> This indicates that the rate of exclusions of children from schools is higher than the official figures suggest.

Excluding a child from school, even for a short-term fixed period, can significantly impair a child's ability to access quality education and achieve, and can have damaging consequences to the child's life and future opportunities. Children who have been permanently excluded from school may experience significant gaps in their education, may receive only part-time education for a significant length of time,<sup>144</sup> or may stay long-term in a Pupil Referral Unit upon being unable to secure an alternative placement expediently.<sup>145</sup> As noted above, children in Pupils Referral Units have significantly poorer educational attainment levels than children in mainstream schools. Some children who are excluded may never return to full-time education. Exclusions are regarded as a significant blemish on a child's school record, and can impair their future educational achievement.<sup>146</sup>

In the longer-term, school exclusions can lead to social exclusion and disengagement. Diane Abott MP states that excluding a child is "*not just a question of disrupting a child's education; it can have a knock-on effect on the rest of someone's life.*"<sup>147</sup> A report from Crisis found that children who had been excluded from school were 90 times more likely to end up living on the streets than those who stayed in fulltime education and passed exams.<sup>148</sup> Other research has found that prisoners were twenty times more likely than the general population to have been excluded from school.<sup>149</sup>

While, according to Government guidance, exclusions are only supposed to be used as a last resort measure, the number of exclusions, combined with data which shows that the most common reason for exclusion is for persistent disruptive behaviour,<sup>150</sup> indicates that schools are not using exclusion only as a very last resort in responding to poor behaviour in schools. The Government must ensure that LAs and schools develop effective mechanisms for responding to challenging behaviour in schools, as an alternative to excluding pupils (e.g. earlier SEN interventions and better support for children with challenging behaviour).

### ***Discrimination in rates of exclusion***

Exclusions continue to affect particular groups of children at a disproportionate rate, which demonstrates that the Government has failed to

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<sup>143</sup> Department for Education and Skills, *Exclusion of Black Pupils: Getting it. Getting it Right* (2006), p. 9.

<sup>144</sup> Neville Harris, 'Education law: Excluding the Child' (2000) 12 (1) *Education and the Law* 31, at p. 37.

<sup>145</sup> Angela Jackman, 'Exclusions: Keeping the Balance' (2003) 153 *New Law Journal* 46.

<sup>146</sup> Angela Jackman, 'Exclusions: Keeping the Balance' (2003) 153 *New Law Journal* 46.

<sup>147</sup> Ms. Diane Abott, MP for Hackney North and Stoke Newington, House of Commons Hansard Debates, 1 April 2008 at Column 226WH.

<sup>148</sup> Crisis, *Prevention is Better than Cure* (1999).

<sup>149</sup> Social Exclusion Unit, *Reducing Offending by Reoffenders* (2002).

<sup>150</sup> DCSF, *Permanent and fixed Period Exclusions from Schools in England and Exclusion Appeals in England, 2006/07*.

address the inequalities in access to education in England. Children with SEN are over 9 times more likely to be permanently excluded from school than the rest of the school population.<sup>151</sup> Students from particular ethnic groups are also more likely to be excluded. Permanent exclusion rates are higher than average for Gypsy, Roma and Traveller, Black Caribbean, Black African and White/Black Caribbean pupils.<sup>152</sup> In the 2007 School Census, Roma and Travellers combined had by far the highest percentage exclusion rate compared to all other groups<sup>153</sup>- Traveller pupils are four times more likely to be permanently excluded than other pupils.<sup>154</sup> Pupils from Black Caribbean or mixed White / Caribbean origin are nearly three times more likely to be permanently excluded from school than children from White British backgrounds.<sup>155</sup>

It can also be suggested, through DCSF (then the DfES) data linking exclusions with pupils on free school meal programmes, that children living in poverty are being disproportionately excluded from schools. In 2006/07, students receiving free school meals were over three times more likely to receive a permanent exclusion than the whole-school population.<sup>156</sup> Also, children in care are by far more likely to be excluded from school than their peers. In 2005, children in care received almost 10 times the number of permanent exclusions than children from the whole school population.<sup>157</sup>

Therefore, children who are from marginalised or disadvantaged groups are more vulnerable to school exclusion. The Government should address this as a matter of urgency. Excluding these children from school will only further marginalise them and may cause them to be vulnerable to low achievement in education, social exclusion, and involvement in crime.

**RECOMMENDATIONS:**

- The Government should initiate targets for reducing the number of both fixed-term and permanent exclusions and identify and eradicate informal exclusions. These targets should aim at reducing the disproportionate rate at which groups of children – including Black and Minority Ethnic children, children in care, children from disadvantaged backgrounds and children with SEN – are excluded.

<sup>151</sup> DCSF, *Permanent and fixed Period Exclusions from Schools in England and Exclusion Appeals in England, 2006/07*.

<sup>152</sup> Department for Education and Skills, *Ethnicity and Education: the Evidence on Minority Ethnic Pupils*, (2005); Office of the Commissioner for Human Rights, *Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights on his Visit to the United Kingdom, 4<sup>th</sup> - 12<sup>th</sup> November 2004*, CommDH(2005)6, 8 June 2005, para 22.

<sup>153</sup> DCSF, *Inclusion of Gypsy, Roma and Traveller Children and Young People* (2008).

<sup>154</sup> Letter from Lord Adonis, 16<sup>th</sup> November 2006, cited in *Irish Traveller Movement in Britain – Policy Paper on Education*.

<sup>155</sup> DCSF, *Table 15: Number of Permanent Exclusions by Ethnic Group, 2006/07*.

<sup>156</sup> DCSF, *Permanent and fixed Period Exclusions from Schools in England and Exclusion Appeals in England, 2006/07. Table 18: Number of Permanent and Fixed Period Exclusions by Free School Meal Eligibility*.

<sup>157</sup> John Coleman and Jane Schofield, *Key Data on Adolescence*, 2007, p. 25.



- Initiatives aimed at reducing exclusions should include new initiatives and approaches to respond to challenging behaviour in schools without resorting to exclusion.

### 2.3 Wide-spread bullying in schools

*The Committee is concerned at the widespread bullying in schools.*

Despite Government attempts to tackle bullying, it is still very common in many schools across England, and continues to cause many children to miss school for periods of time, or to withdraw from attending school completely. Research carried out by the Thomas Coram Research Unit in 2002 found that just over half (51%) of pupils in Year 5 reported that they had been bullied during the term.<sup>158</sup> Research undertaken by Bullying UK in 2006 confirmed that bullying continues to be a wide-spread problem in schools in England. The research found that, out of a sample of over 2,100 parents, 87% reported that their child had been bullied in the past 12 months, and 77% reported that their child had been bullied more than five times.<sup>159</sup>

Some children have been found to be particularly vulnerable to bullying. Children with SEN have been found to experience bullying more frequently than other pupils. 11 Million (then the office of the Children's Commissioner) have found that children with disabilities and visible medical conditions are twice as likely to be bullied than their peers.<sup>160</sup> Mencap have found that nearly nine out of ten children with learning disabilities have experienced some form of bullying, with over two-thirds having experienced it on a regular basis.<sup>161</sup> According to another research project, over 90 per cent of parents of children with Asperger Syndrome reported that their child had been bullied in the previous 12 months.<sup>162</sup> Racist bullying is also prolific in English schools. According to a survey carried out by the DCSF of 34,428 pupils across four different age groups, virtually every single pupil of minority ethnic heritage had been verbally abused on the ground of their ethnicity.<sup>163</sup> In addition, homophobic bullying is particularly widespread. In a survey of 1,154 secondary school pupils, almost two thirds of young lesbian, gay and bisexual

<sup>158</sup> Thomas Coram Research Unit, *Tackling Bullying: Listening to the Views of Children and Young People* (2002) The views and experiences of pupils were investigated using both qualitative (focus group) and quantitative (questionnaire survey) methods. Twelve schools (six primary and six secondary) from different parts of the country took part in the research. In total, 230 pupils participated in the focus group stage of the research and 953 pupils participated in the questionnaire survey.

<sup>159</sup> Bullying UK, *Adult Survey Results*, available at:

<[http://www.bullying.co.uk/adults/National\\_Bullying\\_Survey\\_2006/Adults.aspx](http://www.bullying.co.uk/adults/National_Bullying_Survey_2006/Adults.aspx)>

<sup>160</sup> NCH, *Bullying and Disability: Spotlight Briefing*, April 2007, available at <[http://www.anti-bullyingalliance.org.uk/downloads/pdf/spotlight\\_brief\\_issue9.pdf](http://www.anti-bullyingalliance.org.uk/downloads/pdf/spotlight_brief_issue9.pdf)>

<sup>161</sup> Mencap, *Bullying Wrecks Lives: The Experiences of Children and Young People with a Learning Disability* (2007), available at: [www.mencap.org.uk](http://www.mencap.org.uk)

<sup>162</sup> L. Little, 'Middle-Class Mothers' Perceptions of Peer and Sibling Victimization among Children with Asperger's Syndrome and Non-Verbal Learning Disorders' (2002) 25(1) *Issues in Comprehensive Paediatric Nursing* pp. 43 – 57.

<sup>163</sup> DCSF, *Bullying around Racism, Religion and Culture* (2006), p. 37.

children had experienced homophobic bullying at school. Almost all survey respondents had heard derogatory homophobic comments.<sup>164</sup>

Bullying has been found to impact negatively on access to education for many children. Research by Bullying UK found that 60 per cent of parents surveyed said their children had taken time off school due to bullying, 65% of parents had kept their child at home for safety reasons and 63% of those children had missed more than five days at school as a result of bullying.<sup>165</sup> Many bullied pupils go on to refuse school, and may develop 'school phobia', and parents may be unable, or unwilling, to force them to continue attending school. The phobia may extend beyond the original school, and make it impossible for the pupil to be re-integrated into any school environment. A report by 11 Million (then the Office of the Children's Commissioner) found that schools often refuse to accept the validity of a pupil's absence on the basis that he or she is suffering from school phobia brought on by bullying, and as a result, work is not provided or marked. The condition of school phobia is rarely acknowledged by LA medical examiners. Pupils absent from school for this reason may not, therefore, receive the alternative education that an authority should provide for sick children. In addition, school phobia is rarely the basis for a Statement of SEN, even when the pupil has missed long periods of education, and is, therefore, far behind his or her peers academically.<sup>166</sup> Bullying, therefore, may not only affect a child's access to school, but also their access to alternative educational provision, causing some to miss out on receiving education all together.

The Government has produced a number of guidelines to schools on tackling bullying.<sup>167</sup> However, in practice, evidence points to inaction on the part of many schools in effectively tackling bullying. The study conducted by Bullying UK found that only 56% of parents who complained to the school felt their concerns were taken seriously and 74% of parents felt that measures taken by the school did not work, with 83% saying there were further instances of bullying after a complaint.<sup>168</sup> The study by Stonewall found that, where pupils involved in the survey had told a teacher of a homophobic bullying incident, 62% reported that nothing had been done about it. In addition, just 7% of teachers said that they respond to homophobic language every time they hear it.<sup>169</sup>

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<sup>164</sup> Stonewall, *The Experiences of Young Gay People in Britain's Schools* (2007).

<sup>165</sup> Bullying UK, *Adult Survey Results*, available at:

[http://www.bullying.co.uk/adults/National\\_Bullying\\_Survey\\_2006/Adults.aspx](http://www.bullying.co.uk/adults/National_Bullying_Survey_2006/Adults.aspx)

<sup>166</sup> Office for the Children's Commissioner, *Bullying in Schools in England: A Review of the Current Complaints System and a Discussion of Options for Change*, November 2006

<sup>167</sup> DCSF: *Safe to Learn: Embedding Anti-Bullying Work in Schools - Preventing and Responding to Homophobic Bullying in Schools – 2007; Bullying Involving Children with Special Educational Needs and Disabilities Safe to Learn: Embedding anti-bullying work in schools – 2008; Cyberbullying Safe to Learn: Embedding Anti-Bullying Work in Schools 2007; Bullying around Racism, Religion and Culture – 2006.*

<sup>168</sup> Bullying UK, *Adult Survey Results*, available at:

[http://www.bullying.co.uk/adults/National\\_Bullying\\_Survey\\_2006/Adults.aspx](http://www.bullying.co.uk/adults/National_Bullying_Survey_2006/Adults.aspx)

<sup>169</sup> Stonewall, *The Experiences of Young Gay People in Britain's Schools* (2007).

Although legislation provides that head teachers must determine measures to prevent bullying and these measures must be made in writing, publicised and must be shown at least once a year to the parents and pupils of the school,<sup>170</sup> in practice, many parents appear to be unaware of anti-bullying policies in their child's school. More than 26% of parents surveyed in the Bullying UK study did not know if their child's school had an anti-bullying policy.<sup>171</sup> It has also been found, in a study by the National Autistic Society, that almost one in four parents (23 percent) reported that they did not know if such a policy was in place at their child's school.<sup>172</sup>

English law does not provide that children must be included in the development and implementation of anti-bullying policies of schools and it is unclear to what extent children participate in drafting anti-bullying policies. There is guidance to suggest that children and young people should be included in the development of anti bullying strategies and schools should be inspected to ensure this happens. However, Ofsted appears to inspect only whether the children know about the anti-bullying policies rather than whether the children have been included in the development and implementation of the policy.<sup>173</sup> Seeking children's wishes and feelings does not equate with children being involved in the development and implementation of anti-bullying policies. Anti-bullying strategies are far more likely to be effective where they give direct consideration of the views and interests of children.

Children in England do not have recourse to any effective complaints mechanisms following inaction on the part of schools where they have been bullied. In relation to bullying, schools are not subject to the oversight of the Local Government Ombudsman. Therefore, even where schools fail to follow anti-bullying policies, children can only complain to school governors, the LA or the Secretary of State.

#### **RECOMMENDATIONS:**

- The Government should, as a matter of priority, investigate and share best practice in tackling bullying in schools. Anti-bullying strategies should include responding to particular types of bullying (racist, homophobic and bullying of children with disabilities or SEN in particular).
- The Government should mandate that schools develop more direct work with children and young people to enhance their participation in formulating and implementing anti-bullying strategies.
- In order to measure schools' progress in listening to pupils and to facilitate the sharing of best practice, the methods used by schools to consult with children and young people about bullying and in the

<sup>170</sup> s.89 *Education and Inspections Act 2006*.

<sup>171</sup> Bullying UK, *Adult Survey Results*, available at:

[http://www.bullying.co.uk/adults/National\\_Bullying\\_Survey\\_2006/Adults.aspx](http://www.bullying.co.uk/adults/National_Bullying_Survey_2006/Adults.aspx)

<sup>172</sup> The National Autistic Society, *B is for Bullied: The Experiences of Children with Autism and their Families* (2006), p. 5.

<sup>173</sup> Ofsted, *Bullying: Effective Action in Secondary Schools* (2003).

development of anti-bullying strategies should be included as a topic for Ofsted inspections.

- The Government should consider introducing an independent investigator to address bullying complaints when they remain unresolved.

### 3. ACCEPTABILITY OF EDUCATION

**The Government is obliged to set minimum standards of education, in relation to the medium of instruction, contents and methods of teaching to ensure that education is of high quality. The Government must ensure that the entire education system operates to protect and promote human rights.**

There are a number of aspects of the current English education system which may amount to a breach of the Government's obligation to ensure that education is acceptable – of high quality and operating to protect and promote human rights. The Government has failed to guarantee children participation rights in relation to many of the procedural and substantive aspects of the education system. In relation to the content and methods of the education system, the Government has created a schooling environment that focuses too heavily on testing, thus placing unacceptable stress on children and compromising the quality of the education system as a whole. Concerns are raised in relation to the quality and extent of sex and relationships education.

#### 3.1 Lack of participation of children in the education system

*The Committee is concerned that there has been no consistent incorporation of the obligations of article 12 in legislation for example in...education. The Committee recommends that the State party, in accordance with articles 12 to 17, take further steps to promote, facilitate and monitor systematic, meaningful and effective participation of all groups of children in society, including in schools, like school councils.*

Where the participation of children in the education system is actively fostered, education systems will inevitably respond better to the needs of children. They will be more likely to feel a sense of ownership over their education, and education will be accepted by children. Unfortunately, children in England are denied article 12 rights to participation in many aspects of education. In many areas, the law recognises the parent/s as the holder of the right to education, to the exclusion of children, which has, in practice, resulted in the denial of children's participation in decision-making concerning their education.

#### **Participation in school admission decisions**

According to English education law, children should be educated “*in accordance with the wishes of their parents, so far as that is compatible with the provision of efficient instruction and training and in avoidance of unreasonable public expenditure.*”<sup>174</sup> LAs are under an obligation to make arrangements for enabling a parent “*to express a preference as to the school at which he wishes education to be provided for his child*” and to give reasons for this preference.<sup>175</sup> The law does not impose an obligation on LAs to consider the wishes of the child by, for instance, allowing the child to make

<sup>174</sup> s. 9 *Education Act 1996*.

<sup>175</sup> s. 94 *School Standards and Framework Act 1998*.

submissions as to what type of educational provision would best suit him or her and at which school the child wishes to be educated. Likewise, the Code of Practice concerning school admissions make no mention of the participation of children in decision-making concerning school admissions.<sup>176</sup> Education is more likely to be accepted by children where they are accorded the ability to participate in decisions concerning school admissions.

### ***Participation in admissions and exclusions appeals and appeals concerning SEN provision***

The right to appeal school admission decisions and school exclusions are conferred on the parent. Children do not have a separate right of appeal. Likewise, children do not have a separate right to appeal LA decisions regarding SEN provision, as this right is also conferred on the parent or carer.<sup>177</sup> Denying children the right to appeal school admissions and exclusions is very concerning. It will mean, in practice, that, where parents are disinterested or anxious about pursuing an appeal on their child's behalf, the child will be unable to enforce important procedural rights in relation to their education. This is particularly concerning for children in care, who must rely on their foster carer, who is employed by the LA, to initiate an appeal. Children who are in care, but have not been placed with foster carers, must rely on their LA Social Worker to appeal school admission and exclusion decisions. The problem with this was highlighted by Julia Thomas, Legal Practice Manager of the Children's Legal Centre, in the House of Commons Education and Skills Committee's report on SEN:

*"We have a huge concern about looked after children because at the moment the only people who can make an appeal to the tribunal on behalf of a looked after child are social workers who are employed by the same authority that the appeal is being made against. This is a huge problem."*<sup>178</sup>

Research indicates that many children with SEN are looked after children. The NCH found that, out of a sample of 377 care leavers, 36 per cent had a statement of SEN and a further 14% had some learning difficulties.<sup>179</sup>

LAs are not under an obligation to ensure that children are able to participate in appeals against school admission decisions. In terms of school exclusions, the relevant guidance, to which LAs, schools and Independent Appeal Panels should have regard,<sup>180</sup> states that the Appeal Panel should permit children to attend and speak on their own behalf, but only if the parent agrees.<sup>181</sup> However, this 'right' to participate is not statutory, but rather depends on whether the Appeal Panel effectively applies the guidance. Also, the parent

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<sup>176</sup> DfES, *School Admissions Code of Practice*, DfES/0031/2003.

<sup>177</sup> See e.g. *S v SENT and City of Westminster* [1996] ELR 228 (CA).

<sup>178</sup> House of Commons Education and Skills Committee, *Special Educational Needs: Third Report of Session 2005 – 06*, Volume 1, p. 54.

<sup>179</sup> NCH, *Close the Gap for Children in Care* (2005):

<sup>180</sup> SI 2002/3178 Reg 7.

<sup>181</sup> DfES, *Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units*, para. 103.

may veto the child's participation in the appeal hearing. According to the relevant Guidance, children can attend a hearing appealing an LA's SEN provision (which will be made to the Special Educational Needs and Disability Tribunal),<sup>182</sup> and the Tribunal "may permit the child to give evidence and to address the tribunal."<sup>183</sup> However, this is of course at the discretion of the Tribunal, and does not guarantee children the right to participate in the hearing, or to present their views.

Research conducted on exclusions appeals indicates that children do not often participate in these hearings. A study published in 2000 found that children were only present at 40 per cent of exclusions appeal hearings observed, and at 46 per cent of hearings reported through a postal survey. It also found that, where children were present, it was unusual for them to be asked for their views.<sup>184</sup> A study by Save the Children in 2005, involving, in part, interviews with 40 children who had been excluded, found that few young people were given help in having their viewpoint put across during the exclusion process. The study also found that children felt angry and frustrated at not having been asked to give their side of the story in the exclusions process.<sup>185</sup>

### ***Participation of children in schools***

Many children in England do not have the ability to participate effectively in decision-making within their schools, and systematic forms of participation, such as participation in school councils, is not a statutory right for children in England. Research has found that participation by children in UK schools occurs on a one-off or isolated basis, and is generally not embedded in a systematic process.<sup>186</sup> The Children's Society's Good Childhood Inquiry conducted in 2005 found that 44% of children surveyed disagreed that they have a say in the running of their school.<sup>187</sup> According to another research paper, only 17 per cent of students in schools in the UK feel a sense of 'belonging' to the school.<sup>188</sup>

The DCSF has recently published updated guidance on student participation in schools,<sup>189</sup> which LAs and school governing bodies are under a duty to have regard to.<sup>190</sup> The guidance outlines options for schools in promoting participation of students in decisions affecting their education. While this is a promising step towards according children the ability to participate in schools, it does not guarantee that individual children will be able to participate in decisions affecting their education. It allows schools and governing bodies

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<sup>182</sup> *Special Educational Needs Code of Practice* Reg. 30(2).

<sup>183</sup> *Special Educational Needs Code of Practice* Reg. 30(7).

<sup>184</sup> Neville Harris and Karen Eden, *Challenges to School Exclusion* (2000), p. 155 – 158.

<sup>185</sup> Francesca Taylor, Save the Children, *A Fair Hearing? Researching Young People's Involvement in the School Exclusion Process* (2005).

<sup>186</sup> P Kirby et al, *Building a Culture of Participation: Involving Young People in Policy, Service Planning, Delivery and Evaluation*, DfES (2003).

<sup>187</sup> The Children's Society, *Good Childhood Inquiry: What You Told Us about Learning* (2005).

<sup>188</sup> Haydon and Blaya, 'Children at the Margins' (2005) *Policy Studies* 67 at p. 70.

<sup>189</sup> DCSF, *Working together: Listening to the voices of children and young people* (May 2008).

<sup>190</sup> Pursuant to s.176 *Education Act* 1996.

considerable discretion in determining the extent to which they ensure participation and the methods of fostering student participation. It certainly does not amount to a statutory right to participation of individual students in decision-making in schools.

### ***Right of parents to withdraw children from sex and relationships education and collective worship***

Parents have the unconditional right, in English law, to withdraw their child from sex and relationships education.<sup>191</sup> There is no obligation on the part of LAs or schools to consider the views of the child in relation to the withdrawal. Not only does this breach a child's right to participate in decisions affecting them, it also has the potential to expose children to health risks associated with ignorance of sexual matters, including STIs and teenage pregnancy. Likewise, parents have the unconditional right to withdraw their child from collective worship,<sup>192</sup> which is in breach of the child's participation rights and right to freedom of religion.

#### **RECOMMENDATIONS:**

- The Government should legislate to give children a statutory right to make representations, and to have these representations taken into account, concerning school admissions, including choice of school.
- The Government should give children a separate statutory right to appeal against school admission and exclusion decisions. It should also give children a separate right of appeal to the Special Educational Needs and Disability Tribunal concerning SEN provision by LAs. Children who make an appeal against school admissions, exclusions and SEN provision should have access to free, quality legal representation.
- Children should be given a statutory right to participate in decision-making in schools. This could include the right to participate in school councils.
- The unconditional right of parents to remove their child from sex and relationships education and collective worship should be withdrawn.

## **3.2 Content of education**

### ***Extent of tests and exams***

The average pupil in England will take at least 70 tests and exams before leaving school, making them one of the most tested groups of students in the world.<sup>193</sup> In England, the National Curriculum prescribes a national programme of study and assessment arrangements. National testing is designed to be a standardised means of validating students' achievement and driving up educational and school standards,<sup>194</sup> but the tests themselves have not necessarily been shown to raise the standards.<sup>195</sup> The effects of

<sup>191</sup> s. 405 *Education Act 1996*.

<sup>192</sup> s.71 *School Standards and Framework Act 1998*.

<sup>193</sup> GTC memo on Inquiry into Testing and Assessment, June 2007, pg. 4

<sup>194</sup> House of Commons, *Schools Report*, available at:

<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmchilsch/169/16905.htm>

<sup>195</sup> GTC memo on Inquiry into Testing and Assessment, June 2007, p. 4



excessive testing are a narrowing of the curriculum, the problem of ‘teaching to the test’, and the creation of a great deal of stress on students.

Research has found that students in England are very stressed by their own expectations, and the expectations of their parents, their teachers and their schools. A study undertaken at Cambridge University found that *“testing in our schools causes anxiety and stress in pupils.”*<sup>196</sup> A survey conducted by Ofsted of 111,325 children across England found that the children’s top worry was exams (51%).<sup>197</sup> The Children’s Society’s Good Childhood Inquiry found that *“[m]any children disliked the pressure that schoolwork and teachers place on them. Some children suggested that teachers had unrealistically high expectations of them, which made them feel as if they are ‘never quite good enough’. Some children believed that the stress of tests and exams had been the cause of self-harming and breakdowns.”*<sup>198</sup> In addition, almost half of the children polled agreed with the statement ‘I feel under a lot of pressure at school.’<sup>199</sup>

**RECOMMENDATION:**

- The Government should revise the National Curriculum, with the aim of reducing the number of tests faced by students.

**Sex and relationships education**

It is of fundamental importance that children receive high quality sex and relationships education (SRE), as this is imperative in helping to ensure that children avoid the health risks associated with sexual activity and are in a better position to make informed choices about their health and wellbeing. In English law, SRE is a compulsory subject, to be taught from the age of 11 – 16 years.<sup>200</sup> However, SRE does not form part of the National Curriculum, and is therefore not subject to national regulations concerning content and assessment of the subject. This means that, despite the availability of non-statutory guidance on the teaching of SRE in schools,<sup>201</sup> school governing bodies have significant discretion as to the extent and manner in which SRE is implemented in individual schools.

Several Ofsted reports, a report by the House of Commons Health Committee and other research reports have raised concerns about the quality and quantity of SRE in schools in England. The House of Commons Health Committee has found that schools do not prioritise SRE. In its 2003 report on sexual health, the Committee found *“strong evidence that sex education in schools is frequently starved of time and resources in order to accommodate subjects which are accorded a higher priority by schools because of their National Curriculum status.”*<sup>202</sup> The Independent Advisory Group on Teenage

<sup>196</sup> Tymms and C. Merrell, *Good Practice in the Provision of Full-Time Education for Excluded Pupils*, National Foundation for Educational Research (2007).

<sup>197</sup> Ofsted *Tellus2 Questionnaire Summary Sheet* (November 2007).

<sup>198</sup> The Children’s Society, *Good Childhood Inquiry: What You Told Us about Learning* (2005).

<sup>199</sup> The Children’s Society, *Good Childhood Inquiry: What You Told Us about Learning* (2005).

<sup>200</sup> S.80(c) *Education Act 2002*.

<sup>201</sup> DfEE, *Sex and Relationship Education Guidance*, 2000, DfEE/0116/2000

<sup>202</sup> House of Commons Health Committee, *Sexual Health* (2003) HC 69-1, para. 82.

Pregnancy, which was set up to advise the Government on teenage pregnancy, has recommended, since 2001, that the Government include SRE as a National Curriculum subject.<sup>203</sup> However, the Government has failed to do so.

Failure to include SRE as a National Curriculum subject appears to have had a negative impact on the quality of SRE in schools. A study undertaken by the UK Youth Parliament found that 40 per cent of young people aged 11 – 18 years surveyed thought that SRE was either 'poor' or 'very poor', and 33 per cent rated it as 'average'.<sup>204</sup> The House of Commons Health Committee found that SRE lessons tended to be delivered by teachers with expertise in other areas, unrelated to SRE, which was found to impact negatively on the quality of SRE provision in schools.<sup>205</sup> The Committee also found that some aspects of SRE were given insufficient attention, including STIs, relationships education and homosexuality.<sup>206</sup>

**RECOMMENDATIONS:**

- The Government should include SRE as a subject in the National Curriculum
- The Government should create posts for teachers who are specialised in SRE

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<sup>203</sup> See e.g. Teenage Pregnancy Independent Advisory Group, *Annual Report 2007/2008*, recommendation 5.

<sup>204</sup> UK Youth Parliament, *Sex and Relationships Education: Are You Getting It?* (June 2007).

<sup>205</sup> House of Commons Health Committee, *Sexual Health (2003) HC 69-1*, paras. 287 – 92.

<sup>206</sup> House of Commons Health Committee, *Sexual Health (2003) HC 69-1*, paras. 293 and 295.

#### 4. ADAPTABILITY OF EDUCATION

**The Government must ensure that the education system is adapted to the best interests of each child, especially regarding children with disabilities and children from minority groups.**

***Inclusion: Children with SEN in mainstream schools***

The *Special Educational Needs and Disability Act* (2001) places a duty on schools not to treat pupils with disabilities “less favourably” than other pupils and to make “reasonable adjustments” to ensure that they are not disadvantaged in mainstream schools.<sup>207</sup> According to Ofsted, this legislative framework creates an expectation that mainstream schools include all pupils fully by making appropriate changes to their organisation, curriculum, accommodation and teaching methods.<sup>208</sup>

However, in practice, many schools do not effectively adapt their systems, curriculum, and teaching methods to meet the needs of children with SEN. Ofsted’s research into SEN found that over half of the schools visited had no disability access plans and, of those with plans, the majority focused only on accommodation needs.<sup>209</sup> In relation to curriculum, mainstream schools are not making significant efforts to adapt the curriculum to so that pupils with SEN can gain important skills. The report found that “*[f]ew of the schools visited had made substantial adaptations to the curriculum they offer. Nearly all schools felt restricted by the National Curriculum...Although some changes had been made to remove barriers to inclusion there is much to do to achieve the aim of providing a full range of opportunities tailored to individual needs.*”<sup>210</sup> It is imperative, for inclusion to be successful, that a school’s curriculum is adapted to meet the needs of all pupils, including those with SEN.

Concerns have also been raised over the insufficient adaptation of teaching methods in mainstream schools to meet the needs of children with SEN. Ofsted found, in its report on SEN, that “*[t]he quality of teaching seen on the visits for pupils with SEN was of varying quality, with a high proportion of lessons involving pupils with SEN having important shortcomings.*”<sup>211</sup> Research has found that teachers in many schools in England have not been given adequate training to allow them to adapt their teaching methods to meet the needs of children with SEN in mainstream schools. A survey by the National Union of Teachers found that 44 per cent of teachers are not confident about teaching children with an autistic spectrum disorder, 39 per cent are not confident about identifying children with an autistic spectrum disorder and 76 per cent said that a lack of professional development on the subject was a barrier to teaching children with an autistic spectrum

<sup>207</sup> S.28C Education Act 1996.

<sup>208</sup> Ofsted, *Special Educational Needs and Disability* (2004), para. 2.

<sup>209</sup> Ofsted, *Special Educational Needs and Disability* (2004), para. 5.

<sup>210</sup> Ofsted, *Special Educational Needs and Disability* (2004), para. 52.

<sup>211</sup> Ofsted, *Special Educational Needs and Disability* (2004), para. 62.

disorder.<sup>212</sup> A study by the National Autistic Society has found that only 30% of parents of children in mainstream education are satisfied with the level of understanding of autism across the school.<sup>213</sup> Teachers are not required to have any training on autism, and 72% of schools report being dissatisfied with their teachers' training on autism.<sup>214</sup>

**RECOMMENDATIONS:**

- In accordance with the recommendation of the House of Commons Education and Skills Committee,<sup>215</sup> the Government should clarify its position on SEN, particularly on inclusion of children with SEN in mainstream schools, and produce a clear, over-arching policy for SEN.
- The Government needs to significantly increase investment in training its workforce so that all staff, including teaching staff, are fully equipped and resourced to improve outcomes for children with SEN and disabilities.

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<sup>212</sup> Mr Lee Scott MP, House of Commons Debates for 16 January 2008, col 931.

<sup>213</sup> The National Autistic Society, *Autism and Education: The Reality for Families Today*, 2006, p. 3.

<sup>214</sup> Barnard et. al, National Autistic Society, *Autism in Schools: Crisis or Challenge* (2002).

<sup>215</sup> House of Commons Education and Skills Committee, *Special Educational Needs, Third Report of Session 2005 – 2006, Volume 1*, p. 6.

## **CONCLUSION**

The Government has failed to implement fully the right to education in England. Unfortunately, since 2002, educational access and outcomes remain poor for some of the most vulnerable children in England. The Children's Legal Centre has made a number of recommendations throughout this report, which it hopes will assist the Committee in conducting its periodic review of the United Kingdom.

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