



## **Children, Young People and Education Committee inquiry on education access for disabled children and young people**

### **Equality and Human Rights Commission**

The Equality and Human Rights Commission is Britain's national equality body and a UN-accredited A-status National Human Rights Institution (NHRI).

Our job is to promote and uphold equality and human rights standards across Britain so that everyone gets a fair chance in life.

We do this by using the full range of our statutory powers to challenge discrimination, promote equality of opportunity, protect and promote human rights, and by safeguarding and enforcing the laws that protect people's rights to fairness, dignity and respect.

### **UN Convention on the Rights of Persons with Disabilities (CRPD)**

The CRPD includes Article 24 – a right to inclusive education. This guarantees all disabled learners a right to participate in all forms of mainstream education with appropriate support.

When the UK Government ratified the CRPD it placed restrictions on its obligations and two of these relate to Article 24. The first changes the UK's definition of a 'general education system' to include segregated education. The second reserves the UK's right to send disabled children to special schools outside their local area. The UK is one of only two signatories to retain a reservation and an interpretive declaration to Article 24.

In 2017 the UK's progress against the CRPD was reviewed by the UN Committee. Issues raised included the UK's reservation on Article 24, meaning that the UK does not fully accept the requirements of inclusive education. According to the UN

Committee inclusive education means that all parts and levels of the education system should meet the requirements of all students, so that disabled learners can learn alongside their non-disabled peers within mainstream school classrooms. This means that resources for improving education for disabled children should be focused on improving provision in mainstream schools, rather than on maintaining separate special schools. All parts of the education system – including teacher training, the curriculum and the physical school environment- should be reformed to be inclusive of all learners.

Therefore, the UN Committee recommended the UK should:

- Remove its reservations to this Article, so that it fully accepts that all disabled children should receive an inclusive education within their own communities.
- Develop laws and policies to support inclusive education, set a timeframe for improving the way schools include disabled children, and make sure that all teachers and all other professionals who work with children understand the importance of inclusive education.
- Do more to check whether schools are enrolling disabled children, and tackle disability-related discrimination or harassment.
- Put in place a fully-funded strategy with concrete timelines and measurable goals, to make education more inclusive. This strategy should cover implementation of laws and policies, teacher training, awareness-raising among parents of disabled children, and data collection about where disabled children go to school.

### **UN Convention of the Rights of the Child (CRC)**

In January 2023 the Commission submitted its report to the UNCRC. It covers a range of topics including the right to education. Within our report we highlighted the issue with Article 24 of the UNCRPD and how trends point to a system that may be becoming less inclusive.

The report highlights that the number of children in Wales with ALN has been decreasing since 2017/18. In February 2022 74,661 pupil with ALN were reported to

be in maintained school in Wales. This was down from 92,668 pupils in April 2021<sup>1</sup>. Welsh Government have explained this is likely due to the new ALN system and changes in the way that ALN are identified.<sup>2</sup>

Evidence within the report also shows that there has been a consistent increase in the percentage of children with ALN, being educated outside mainstream schools. In Wales, the percentage of children with ALN attending special schools has increased every year since 2013/14, rising from 4.1% of pupils to 7.3% of pupils in 2021/22.

Challenges remain in ensuring appropriate provision of education for children with ALN in mainstream schools in Wales, including where there have been reports of funding pressures and insufficient staff training.<sup>3</sup>

In September 2021, the Welsh Government began a three-year phased implementation of a new statutory framework to support children with ALN<sup>4</sup> in which every learner with ALN will be given a statutory Individual Development Plan. Before this, only those with the most complex needs, about 15%, had a statutory plan.<sup>5</sup> However, funding uncertainty remains<sup>6</sup> and, following significant delays, there are concerns about implementation. Since we published our report the Minister has announced extending the implementation of the ALN Act from three years to four years.

Recommendations for Welsh Government (and UK Government) in our UNCRC report included:

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<sup>1</sup> StatsWales, [Pupils with additional learning or special educational needs by sector and year](#) [accessed: 1 December 2022].

<sup>2</sup> Welsh Parliament, Senedd Research (2022), [Identifying additional learning needs: has the bar been raised or was it previously too low?](#) [accessed: 1 December 2022].

<sup>3</sup> [Special educational needs and disabilities](#); Welsh Parliament Children, Young People and Education Committee (2019), [Education committee response to Welsh Government Consultation: Draft Additional Learning Needs Code](#), for example see pp. 56–60.

<sup>4</sup> [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018](#).

<sup>5</sup> Welsh Parliament, Senedd Research (2022) [The new Additional Learning Needs system: the tough task of implementation](#) [accessed: 6 April 2022].

<sup>6</sup> Welsh Parliament Children, Young People and Education Committee (2022). [The 2022-23 Welsh Government Draft Budget](#) [accessed: 6 April 2022], pp. 48–49.

- Remove the reservation and interpretive declaration on Article 24 of the UN Convention on the Rights of Persons with Disabilities, and take concrete steps to facilitate genuine family choice and realise the right of disabled children to inclusive education. (While the Welsh Government may not be able to do this this principal could be adopted).
- Ensure the long-term sustainability of ALN provision, including by ensuring that teachers and other school staff are equipped to support the needs of children with ALN.
- Monitor implementation of the Additional Learning Needs and Education Tribunal (Wales) Act for any disproportionate impacts on particular groups.

## **Equality Act 2010**

### Accessibility strategies and plans

Schedule 10 of the Equality Act 2010 states that:

- A local authority must, in relation to a school for which it is a responsible authority, prepare, implement, review and update written accessibility strategies
- The responsible body for a school must prepare, implement, review and update written accessibility plans

An accessibility strategy must be in writing and local authorities must keep accessibility strategies under review and if necessary revise it. A local authority in Wales must, if asked by the Welsh Ministers, give them a copy of its accessibility strategy.

An accessibility plan is a plan for, over a prescribed period;

- a) Increasing the extent to which disabled pupils can participate in the school's curriculum
- b) Improving the physical environment of the school for the purpose of increasing the extent to which disabled pupils are able to take advantage of education and benefits, facilities or services provided or offered by the school, and

- c) Improving the delivery to disabled pupils of information which is readily accessible to pupils who are not disabled.

An accessibility plan must be in writing and the responsible body must implement its accessibility plan. A relevant inspection may extend to the performance by the responsible body of its functions in relation to the preparation, publication, review, revision and implementation of its accessibility plan.

In March 2018 the Children's Commissioner for Wales published '[Full Lives: Equal Access. A follow up report on wheelchair accessibility in schools in Wales](#)'. This was follow up research carried out in 2014. It reported that while there were some improvements in the overall level of accessibility strategies and plans in place, the Commissioner was not confident that all local authorities and schools were complying with their duties under the Equality Act 2010. It was also concerned to find that local authorities are not routinely consulting with children and their families when drawing together their strategies despite a statutory duty to do so.

In March 2018 Welsh Government updated its guidance [Planning to increase access to schools for disabled pupils](#). The guidance focuses on the preparation of accessibility strategies and plans and ensure local authorities and responsible bodies meet their statutory duties under Schedule 10 of the Equality Act 2010.

### Public Sector Equality Duty

The Public Sector Equality Duty (PSED) is also part of the Equality Act 2010. It includes a 'general duty' and 'specific duties.' The general duty sets out what local authorities, schools and other public bodies in Wales need to consider when making decisions and developing policies that affect learners with different protected characteristics, such as disability. They are required to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Equality Act 2010
- advance equality of opportunity between people who share a relevant protected characteristic and those who don't, and
- foster good relations between people who share a relevant protected characteristic and those who don't.

The aim of the specific duties is to support a public body in meeting the general duty. They include preparing and publishing equality objectives and having a strategic equality plan to improve outcomes and document the steps that will be taken.

Last year we commissioned [desk based research](#) to review the Strategic Equality Plans published by secondary schools, special schools and Pupil Referral Units (PRUs) in Wales. We found the overall proportion of schools with a strategic equality plan accessible on their website currently stands at about a quarter. Just over half of this number were out of date, having expired and not being reviewed from the autumn term 2021 onwards. Therefore, in total 33 schools, 12.4% of the total appear to have a current Strategic Plan accessible on their website.

Evidence collected by the Children's Commissioner for Wales in the report Full Lives: Equal Access, found that some local authorities have included their Accessibility Strategies within their wider Strategic Equality Plans. However, it was not clear whether these links were routinely being made by every authority.

Public bodies including Welsh Government, local authorities and schools must review and revise all its equality objectives at least once every four years. We are expecting updated objectives and strategic equality plans to be published by April 2024. In our role as regulator we will be working with organisations in Wales to help inform the equality objectives they set. As part of this we have recently published [PSED guidance for schools in Wales](#)

### **Impact of the pandemic**

The pandemic presented particular challenges for disabled pupils, including access to remote learning, therapies and equipment.<sup>7</sup> While schools closed to all except vulnerable children and the children of critical workers, attendance levels for vulnerable children remained low. We also know the shift to remote learning

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<sup>7</sup> Welsh Parliament Equality, Local Government and Communities Committee (2020), [Into sharp relief: inequality and the pandemic](#) [accessed: 16 September 2020], pp.30–32.

exacerbated some existing educational inequalities.<sup>8</sup> Many children lacked adequate access to computers and the internet at the start of the pandemic.

Welsh Government's 'Renew and reform: supporting learners' wellbeing and progression education recovery plan' was published in 2021. It recognised the particular impact of the pandemic on 'disadvantaged and vulnerable learners', including those with additional learning needs.<sup>9</sup> However, it is unclear how the Welsh Government's evaluation of the recovery plan's success will reflect children's rights and protected characteristics.

In 2022 Welsh Government announced additional funding to provide tailored support for children with ALN who have been affected by the pandemic.<sup>10</sup> At the moment it is not clear whether this will be sufficient to reduce the effects of the pandemic on disabled children.

A recommendation for Welsh Government from our CRC report included to:

- ensure that the education recovery programme takes into account the particular challenges faced by different groups of children during, and as a result of, the pandemic, including disabled children and additional learning needs.

## **Access to education**

Persistent absence<sup>11</sup> from school was rising before the pandemic and continues to do so. In Wales, the data shows a continued increase in the number of children who

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<sup>8</sup> Pensiero, N., et al. (2021), [Learning inequalities during the Covid-19 pandemic: A longitudinal analysis using the UK Understanding Society 2020 and 2021 data](#), School of Education, University of Southampton [accessed: 5 December 2022], for example see pp. 5–7.

<sup>9</sup> Welsh Government (2021), [Review and Reform: supporting learners' wellbeing and progression](#) [accessed: 22 February 2022], pp. 11-13.

<sup>10</sup> Welsh Government (2022), [Written statement: additional funding for additional learning needs provision](#) [accessed: 29 September 2022].

<sup>11</sup> A pupil enrolment is identified as a persistent absentee if they miss 10% or more of their possible sessions.

are absent for significant periods, with a particularly high rate among children with additional learning needs.<sup>12</sup>

Evidence suggests that the number of children who are in elective home education (EHE) has increased significantly in recent years.<sup>13</sup> National data is not yet collected, but evidence suggests that certain groups, including those with ALN, may be over represented among those in EHE. While EHE is a positive choice for many families, other reasons for EHE can include health anxieties related to COVID-19, insufficient ALN support in the school system, and the prevalence of bullying which may be related to a child's protected characteristics.<sup>14</sup> There are concerns that not all children in EHE will be receiving appropriate education and that, for some, there may be 'exposure to greater safeguarding risks'.

The Welsh Government delayed the introduction of statutory guidance and regulations governing the collection of data on EHE in 2020,<sup>15</sup> meaning that many local authorities continue to have limited responsibilities for and powers over children educated at home.<sup>16</sup>

Recommendations for Welsh Government from our CRC report included:

- Prioritise the introduction of statutory guidance on elective home education and the collection of data on those educated at home, including data on protected characteristics.

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<sup>12</sup> Welsh Government (2022), [Attendance review – implications of the COVID-19 pandemic for school attendance](#) [accessed: 6 October 2022], pp. 5–9.

<sup>13</sup> Welsh Government (2022), [Pupils educated other than at school: September 2021 to August 2022](#) [accessed: 6 October 2022], p.4.

<sup>15</sup> Welsh Government (2020), [Written statement: home education statutory guidance and draft database regulations](#) [accessed: 6 October 2022].

<sup>16</sup> Children's Commissioner for Wales (2021), [A review of the Welsh Government's exercise of its functions, by the Children's Commissioner for Wales](#) [accessed: 6 October 2022], p.24–25.



- Ensure that policies to improve school attendance rates include tackling barriers to education faced by children with particular protected characteristics, and ensure compliance with the Public Sector Equality Duty in the development and delivery of such policies.
- Use evidence on access to, and outcomes from, education recovery programmes for protected characteristic groups to ensure that support is tailored to meet their needs. This evidence should also inform wider programmes, such as those aimed at improving regional inequalities in educational performance.