State of Children's Rights in England
2017

Children's Rights Alliance for England

6

Briefing 6
Education, Leisure and Cultural Activities

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Article 18(3)   States Parties shall ensure the children of working parents benefit from childcare services and facilities.

Article 19   Children have a right to be protected from all forms of violence.

Article 23   A disabled child should enjoy a full and decent life in conditions that ensure dignity, promote self reliance and facilitate the child's active participation in the community. States Parties recognise the right of the disabled child to special care and ensure they have effective access to education, training, health care, rehabilitation, preparation for employment and recreation opportunities.

Article 28   States Parties recognise every child's right to education, on the basis of equal opportunity. School discipline should be administered in a manner consistent with the child's human dignity.

Article 29

The education of the child shall be directed to:
a) The development of the child's personality, talents, and mental and physical abilities to their fullest potential
b) The development of respect for human rights
c) The development of respect for the child's origins and identity, and for civilisations around the world
d) The preparation of the child for responsible life in a free society
e) The development of respect for the natural environment

Article 31   States Parties recognise the right of the child to rest and leisure, to engage in play and recreational activities, and to participate freely in cultural life and the arts.

Definitions and glossary

Children: All children and young people under-18 as set out by article 1 of the UN Convention on the Rights of the Child (CRC).

About this briefing

The UK ratified the UN Convention on the Rights of the Child (CRC) in 1991. This means that all areas of government and the state including local government, schools, health services, and criminal justice bodies, must do all they can to fulfil children's rights.

This briefing is part of CRAE's *State of children's rights in England 2017* and assesses the progress made in England towards implementing the UN Committee's recommendations relating to education, leisure and cultural activities. It highlights areas of progress and concern since last year's *State of children's rights in England 2016* was published in December 2016. It is based on written and oral evidence from CRAE's members and additional analysis of recent laws and policies, newly published research, official statistics, and responses to Freedom of Information (FOI) requests.

What is the CRC?

The CRC applies to all children aged 17 years and under, and sets out the basic things that children need to thrive: the right to an adequate standard of living, to be protected from all forms of violence, an education, to play, be healthy, and be cared for. Children's rights should act as a safety net, meaning children always receive at least the minimum standard of treatment whatever the changing economic climate.

The CRC has four guiding principles (General Principles) which are rights in themselves, but also the framework through which all the rights in the CRC should be interpreted. They are: non-discrimination (article 2), the best interests of the child (article 3), survival and development (article 6), and respect for the views of the child (article 12). England's compliance with these General Principles is covered in Briefing 2.

Key to UPR recommendations:
UPR Supported   UPR Noted

Concerns of the United Nations

In June 2016 the UK Government was examined by the **UN Committee on the Rights of the Child** (the UN Committee) on its compliance with the CRC for the first time since 2008. The UN Committee made a number of recommendations (Concluding Observations) for change. In May 2017 the UK was examined on all its human rights treaties, including the CRC, by the 193 member states of the Human Rights Council as part of the **Universal Periodic Review (UPR).**[1] This is a process where states can reiterate previous recommendations made by UN Committees and can be used by civil society and parliamentarians as an additional advocacy tool. The Government can choose whether to "support" (accept) recommendations or "note" them (reject or not agree). We are very disappointed that the Government has only supported 28% of the recommendations relating to children's rights compared to 42% of all the recommendations it received. Below are the relevant UN Committee and UPR recommendations for this briefing:

- Use permanent or temporary exclusion only as a means of last resort and ensure children have the right to appeal against their exclusion, are provided with legal advice, assistance and (where appropriate) representation CRC
- Enhance efforts to reduce the effects of the social background or disabilities of children on their achievement in school CRC UPR
- Allocate sufficient human, technical and financial resources for the development and expansion of early childhood care CRC
- Set up comprehensive measures to further develop inclusive education, ensure that inclusive education is given priority over the placement of children in specialised institutions and classes, and make mainstream schools fully accessible to disabled children CRC
- Abolish all methods of restraint against children for disciplinary purposes in all

institutional settings, both residential and non-residential. Ensure restraint is used against children exclusively to prevent harm to the child or others and only as a last resort. Abolish the use of isolation rooms CRC
- Ensure that meaningful sexual and reproductive health education is part of the mandatory school curriculum for all schools and provide age-appropriate information on confidential sexual and reproductive healthcare services, contraceptives and sexuality CRC
- Make children's rights education mandatory CRC
- Intensify efforts to tackle bullying including through teaching human rights, building capacities of students and staff members to respect diversity, and involve children in initiatives aimed at eliminating bullying CRC
- Adopt and implement play and leisure policies with sufficient and sustainable resources. Involve children in the planning, designing and monitoring of the implementation of play policies at local and national levels CRC

Introduction

This year has seen significant concerns raised about inadequate school funding and the impact of the new schools funding formula, as well as the Government abandoning plans to remove the ban on new grammar schools.

Despite welcome investment to address educational disadvantage, a significant attainment gap persists between children living in poverty and their peers. Children from certain ethnicities also perform especially poorly at school, particularly Gypsy/Roma and Traveller children. Increasing school exclusion rates, particularly for children with Special Educational Needs (SEN) and inadequate Alternative Provision (AP), continue to present a considerable challenge to ensuring all children have their right to education realised.

What progress has been made?

The Government has dropped plans to remove the ban on the opening of new grammar schools, which is welcome news. When the proposal was first mooted, the National Union of Teachers (NUT) and the then HM Chief Inspector of Education raised concerns that increasing selective schools will lower the standard for the majority of children, consigning them to a second-tier system.[2]

Very positively, Relationships Education (RE) in primaries and Relationships and Sex Education (RSE) in secondary schools is to become statutory across all types of schools from September 2019.[3] The decision follows many years of campaigning from children's organisations and a recommendation from the UN Committee. Draft regulations and guidance will be consulted on before being published by September 2018.

Encouragingly, the Government continues to give schools additional funding to support children from disadvantaged backgrounds through the Pupil Premium. It has also announced six additional "opportunity areas" in places identified by the Social Mobility Commission as "social mobility cold spots".[4]

What needs to improve?

Education

Funding for schools inadequate
Using Government data, figures compiled by five teaching unions have found that **91% or 17,942 schools will have seen or are due to experience a real-terms per pupil budget cut between 2015/16 and 2019/20**. For the average primary school this is a loss of £54,000 per year and for the average secondary school a loss of £205,600.[5] School funding reform plans and additional funding of £1.3 billion were announced by the Government in late summer. The Government argues that the new formula is designed to modernise the school funding system so that the right resources are reaching the schools that need it most.[6] There are also

new formulas for high need (largely SEN) funding and for services still centrally provided by local authorities. The Government argues that this will increase the overall budget in respect of core school funding and high need.[7] However any future protections or cash increases under the reforms do not provide redress for the £2.8 billion in cuts schools and academies have faced since 2015, or the funding pressures from rising pupil numbers and inflation - all of which schools have already absorbed.[8]

Risk of increased religious segregation
Concerns remain over proposals to remove the 50% cap on the number of children admitted to schools on religious grounds in new and current faith schools, on the basis that it will entrench segregation and undermine community cohesion. Recent Department for Education (DfE) commissioned research, which examined contact between White-British and Asian-British children at secondary schools in Oldham, supports this claim. It found: *'attitudes were more positive and mixing was more frequent in mixed rather than segregated schools'.* In addition: *'mixed schools result in more social mixing between ethnic groups over time, and mixing is reliably associated with more positive views of the outgroup.'[9]* Research has also found that lifting the 50% cap is likely to make faith schools more unrepresentative of their local areas, reducing the number of good school places available to children across the socioeconomic spectrum.[10]

Children from minority groups disproportionately excluded from school
Worryingly, both permanent and fixed term exclusions continue to rise. Permanent exclusions across all state funded primary, secondary and "special" schools have increased from 5,795 in 2014/15 to 6,685 in 2015/16. In state funded primary schools the number of fixed term exclusions increased from 49,665 in 2014/15 to 55,740 in 2015/16. In state funded secondary schools they increased from 239,240 to 270,135.[11] This is despite the UN Committee recommendation to: *'further reduce the number of exclusions'.* By studying census data, it was found that there are more than five times the number of children educated in schools for excluded

pupils than the number officially reported as permanently excluded each year. Alarmingly, the researchers concluded that this indicated that official exclusion figures may significantly underestimate the scale of the problem .[12]

Table 1: Increased use of exclusions

	2014/15	2015/16
Permanent Exclusions from all state funded primary, secondary and "special" schools	5,795	6,685 (▲890)
Fixed term Exclusions from state funded primary schools	49,665	55,740 (▲6,075)
Fixed term Exclusions from state funded secondary schools	239,240	270,135 (▲30,895)

Source: Department for Education (2017) *Permanent and fixed period exclusions in England 2015/16*

Gypsy/Roma and Traveller children, Black Caribbean pupils, children with SEN, children eligible for Free School Meals (FSMs), looked after children, and boys continue to be disproportionately excluded from school.[13] In 2015 the national average for fixed term exclusions in secondary schools for all school students was 8%. Shockingly, the rate was 46% for Gypsy/Roma children and 53% for Traveller children. The national average for permanent exclusions for all school students in secondary schools was 0.15%. This compared to 2% for Gypsy/Roma children and 1.5% for Traveller children.[14] Black Caribbean children were over three times more likely to be permanently excluded than the school population as a whole.[15]

Children with identified SEN accounted for almost half of all permanent and fixed period exclusions. Children with SEN support (children who have SEN or are disabled but don't have an EHC plan) were almost seven times more likely to receive a permanent exclusion than children with no SEN. Similarly children with an EHC plan or a SEN statement had the highest fixed period exclusion rate and were almost six times more likely to receive a fixed period exclusion than children with no SEN.[16] Looked after children are

more than five times more likely to have a fixed period exclusion than all children, with 10% of looked after children having at least one fixed period exclusion in 2015.[17] Pupils claiming FSM were around four times more likely to receive a permanent or fixed period exclusion than those who are not eligible. Boys were over three times more likely to receive a permanent exclusion and almost three times more likely to receive a fixed period exclusion than girls.[18]

Worryingly large numbers of very young children in reception and year 1 continue to be excluded from school. There were 290 permanent exclusions of children in these year groups in 2015/16 (25 girls and 265 boys) and 15,795 fixed term exclusions (2,010 girls and 13,785 boys). [19]

While there were some welcome clarifications in new statutory exclusion guidance,[20] it was a missed opportunity to fully address issues of concern. For example, the guidance clarifies that education must be arranged for the sixth day of exclusion (regardless of whether this is a result of one fixed period or more than one fixed period exclusion), which is encouraging, however it still lacks detail on what is expected in relation to AP. Just for Kids Law case work shows that some children are receiving just one hour a day of AP.[21]

Children (apart from disabled children) continued to be denied a legal right to appeal against their own exclusions, leaving them dependent on their parents or carers being willing to challenge the exclusion on their behalf.

Poor quality Alternative Provision

A DfE commissioned literature review found that AP often fails to offer a broad and rich curriculum, which reinforces children's marginalisation. While there is some increased focus on the achievement of meaningful vocational qualifications and maths and English GCSEs, many children are still being taught at a level of challenge below their capabilities.[22] New data analysis found that once a child is excluded they are twice as likely to be taught by an unqualified teacher. It also found that a child excluded in the North East is around eight times more likely to attend AP rated "inadequate" by Ofsted. In some local authorities with high levels of exclusion, 100% of children are in "inadequate" settings.[23]

Case study
Just for Kids Law
School exclusion used unnecessarily

Charlie* is a 14 year old boy with additional needs who has also been referred to Children and Adolescent Mental Health Services.

After starting at a new school he struggled to settle in. Charlie felt the Head Teacher at his new school did not like him and was picking on him. Worryingly, he was being excluded from school unnecessarily and for minor reasons. He was initially excluded for five days for not moving forward in a corridor. Charlie returned to school for a re-integration meeting, however, on the same day he was told off for talking whilst lining up for an exam and the Head Teacher decided to permanently exclude him.

A governing body hearing was held to get him back into the school but the governors upheld the school's decision. The case has now been taken to an independent review hearing and Charlie is awaiting the outcome.

*Not real name

Alarmingly, only around 1% of children in state AP receive five good GCSEs.[24] More positively, the Government has recently announced much needed plans to transform AP.[25]

Continued inequality in educational outcomes

Despite some progress, the educational achievement gap continues. The UN Committee recommended that more be done to: *'reduce the effects of the social background or disabilities of children on their achievement at school.'*

Disadvantaged children

Attainment in children's early development has increased nationally[26], but gaps between the most disadvantaged children and their peers persist. Recent analysis shows that one in two children eligible for FSMs started school without reaching a good level of development (which means they might struggle with talking in full sentences, using tenses, or forming deep relationships with children of the same age) compared to one in four of their peers - a gap of 18 percentage points (ppts). This gap in early development has remained stubbornly persistent

Nearly 1 in 2 school children who are eligible for Free School Meals are not at the expected level of development before starting school

Source: Save the Children (2017) *Early development and children's later educational outcomes*

over the last several years, it has dropped by only 1ppt since 2013 when the new curriculum was introduced.[27] These early gaps can persist throughout school.

Ensuring every child, particularly the most disadvantaged, has access to high quality childcare and early education could have a huge impact on closing gaps in early attainment. Key to achieving this is ensuring that the childcare and early education workforce is properly supported in training, development and qualifications. Ensuring every provider has a member of staff with a level 6 qualification is a crucial first step towards this. The Government has released a workforce strategy, which commits to conduct a study into supporting pre-school settings in the most disadvantaged areas to employ a member of staff with a level 6 qualification.[28] For more on childcare see Briefing 3.

The Education Policy Institute has found the attainment gap is closing, but at a very slow rate. **Despite significant investment and targeted programmes (such as the Pupil Premium) the gap between 16 year olds eligible for FSMs and their peers has only narrowed by three months of learning between 2007 and 2016.**

In 2016 the national gap at the end of secondary school was 19.3 months. For children who are persistently disadvantaged, the gap at the end of secondary school is 24.3 months- equivalent to over two years of learning.[29]

The first major study on free schools found that, while they are more likely to be located in areas of disadvantage, disadvantaged children are less likely to be admitted. In the most deprived areas 24% of reception aged children in free schools were eligible for FSMs versus 32% in other schools.[30]

Ethnicity
Outcomes for Gypsy/Roma and Traveller children continue to be exceptionally low for both progress and attainment. In 2015 just 17% of Traveller children and 8% of Gypsy/ Roma children achieved five or more A*-C grades at GCSE including English and mathematics, compared to 55% of all pupils. Ofsted has found that secondary schools (with very few exceptions) were not able to replicate the quality of support and guidance offered by primary schools.[31]

Attainment of pupils within the mixed ethnic group is slightly below the national average of

Table 2: Attainment gap at different stages

	Early years: % of children achieving a good level of development	Primary schools: % of pupils achieving the new expected level	Secondary schools: % of pupils achieving 50+ points in Attainment 8 (2017 points scale)
Non-disadvantaged pupils	72%	60%	46%
Disadvantaged pupils	55%	39%	21%
Persistently disadvantaged pupils	N/A	33%	16%

Source: Education Policy Institute (2017) *Closing the Gap: Trends is educational attainment and disadvantage*

63% at 62.6%, while White children and Black children remain below the national average at 62.8% and 59.2% respectively. Attainment by ethnicity is even more varied when figures are broken down further by ethnic group, FSM eligibility and gender. **In 2016 White children eligible for FSM are the lowest attaining major ethnic group in all main indicators of attainment at the end of key stage 4.** The gap increases to 15.9 ppts when only White FSM boys are considered.[32]

Looked after children

The percentage of looked after children reaching the expected standard or above at key stage 2 is still much lower than other children. In the year ending 31 March 2016, 46% looked after children reached the expected standard or above in writing, compared to 74% of non-looked after children. These figures were 41% compared to 70% respectively in mathematics, and 44% compared to 73% in grammar, punctuation and spelling. More positively, there has been an increase in the percentage of looked after children achieving an A*-C in English and mathematics from 16% to 17.5%. However, the attainment gap remains with the average Attainment 8 score for looked after children being 23 compared to 48 for non-looked after children.[33]

Inclusive education continues to decline

The percentage of children with SEN in mainstream schools has continued its downwards trajectory. Following its examination of the UK in 2017, the UN Committee on the Rights of Persons with Disabilities raised concern about the: *'increasing number of children with disabilities in segregated education environments; and that the education system is not equipped to respond to the requirements for high-quality inclusive education.'* It recommended that the UK Government: *'Adopt and implement a coherent and adequately financed strategy, with concrete timelines and measurable goals, on increasing and improving inclusive education.'* [34] This follows the UN Committee's recommendation to: *'guarantee the right of all children to a truly inclusive education.'* The percentage of pupils with a statement or EHC plan attending maintained "special" schools has

seen a year on year increase since January 2010, meaning fewer disabled children or children with SEN are attending mainstream schools. In January 2010, 38% of children with statements or EHC plans attended maintained "special" schools compared to 44% in January 2017.[35]

A recent survey of schools and colleges found that some were struggling to continuously provide children with SEN support with the help they need. Some of the barriers identified included a lack of knowledge among staff regarding SEN and a limited availability of those who had received specialised training. It also found difficulties in accessing support from external agencies either because of a lack of agencies in the local area or long waiting lists, or that school budgets did not allow for extra external support to be bought in.[36] A recent report by the Social Mobility Commission recommended the Government make additional funding available for schools to buy-in high quality specialist provision to support disabled children and children with SEN.[37] The additional funding announced will help but is likely to be inadequate.

High uses of restraint on children in "special" schools

FOI requests revealed 13,000 uses of restraint in "special" schools over the last three years, 731 of which resulted in injury. Worryingly, only 20% of local authorities were able to provide the information, meaning that not only are the figures likely to be an underestimate, but it also raises serious concerns about the lack of accurate recording of incidents.[38] DfE guidance requires "special" schools to produce detailed reports every time restraint is used,[39] yet these findings strongly indicate that this is not happening in practice. Evidence from CRAE members shows that children are regularly held in prone restraint positions, strapped to mechanical restraint devices, and locked in seclusion rooms. There has also been one reported case involving the use of a spit hood.[40]

Certain groups of children more likely to be bullied

One in 10 children have been bullied at least once in the past week.[41] Of those who had been bullied in the past year, 37% said that

they developed social anxiety as a result, 36% developed depression, 24% developed suicidal thoughts and 23% self-harmed.[42] Certain groups of children remain disproportionately more likely to be bullied including disabled children and LGBTQ children[43]. For more information on children who are more likely to be bullied, see Briefing 2.

Concerns remain over access to sex education and lack of rights education

As noted above, the introduction of statutory RE and SRE is a positive development. However at secondary school, parents will be able to withdraw their child from RSE (apart from what is part of the science National Curriculum). Positively, the Government is intending to consult further to clarify the age at which a child may have the right to make their own decisions.[44] There is also anxiety that the Children and Families Act 2017 requires that when RE or SRE is taught it must have regard to the child's '*religious background*'. The Government has also said: '*faith schools will continue to be able to teach in accordance with the tenets of their faith*'.[45] It is crucial that all children regardless of the type of school they attend have good quality and inclusive RE and SRE.

There has been no progress on ensuring that all children receive education on the CRC and children's rights.

See Briefing 2 on concerns about the Prevent duty and its impact on relationships between teachers and children.
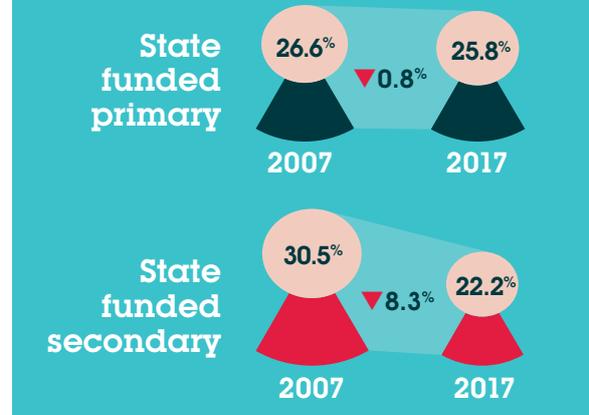
Play and leisure

Opportunities to play still limited

There continues to be no progress on developing adequately resourced play and leisure policy, despite it being crucial for a child's health and wellbeing as well as a recommendation made by the UN Committee.

An evaluation of a three year Street Play project (which supported communities to hold regular road closures enabling children to play outside) found that Street Play increased the time that children spent outside. This led to higher levels of physical activity and contributed to weight management. Another study found that such

Percentage of pupils with a statement or EHC plan by type of provision
(England, January 2007-2017)

State funded primary: 26.6% (2007) ▼0.8% 25.8% (2017)

State funded secondary: 30.5% (2007) ▼8.3% 22.2% (2017)

Source: Department for Education (2017) *Special Educational Needs in England*

initiatives within disadvantaged communities face significant barriers, such as parents having concerns about gangs or the behaviour of other children, traffic levels being so high that road closures may be problematic (or not possible at all), complex procedures to close roads, and non-traditional street layouts, especially high-rise housing.

Play England has also warned that fear of litigation (on the part of those who design play spaces) leads to uninspiring and boring play areas.[46] Following research showing that indiscriminate "risk minimisation" policy can be a source of harm, a new Declaration has been made by the International School Grounds Alliance to encourage parents, school officials, legislators and insurers to devise policies and processes that permit schools to provide activities with beneficial levels of risk.[47] Encouragingly, the Mayor of London has launched a new £9m fund to create and improve green spaces, which could be used to transform paved spaces into play areas.[48]

There continues to be a decrease in the number of children visiting a library. In 2016/17, 65% of children aged 5-15 had visited a library in the last 12 months, compared with 75.3% in 2008/09. More positively, 97.4% of children aged 5-15 had engaged in the arts and 63.3% of children aged 5-15 had visited a museum in the last 12 months, remaining fairly consistent since 2008/09.[49]

Recommendations

1. The Government must urgently allocate significant additional resources for schools to maintain funding in real terms and to reverse the affects that cuts have already had.

2. The 50% cap on the number of children admitted to schools on religious grounds should remain in place for new and current faith schools.

3. The Government should urgently address the overrepresentation of certain groups of children being excluded from schools.

4. The Government should introduce a statutory right for children to appeal against exclusion decisions.

5. The Government should enforce the ban on informal exclusions and give further resources and training to schools, in order to assist with the inclusion of disabled children and children with SEN in mainstream schools.

6. The Government must urgently improve the quality of Alternative Provision and ensure that children are offered a broad curriculum and taught at a sufficient level of challenge.

7. The Government should invest more in high quality childcare and early education. In particular, starting with the most disadvantaged areas, it should ensure that there is an EYT or equivalent specialist in children's early development in every nursery in England.

8. The Government should ensure that the Pupil Premium continues to be provided as a separate and clearly identifiable grant targeted at disadvantaged children. Schools should share best practice examples of how Pupil Premium resources can be used most effectively.

9. The Government should adopt and implement a coherent and adequately financed strategy, with concrete timelines and measurable goals, on increasing and improving inclusive education.

10. The Government should abolish all methods of restraint against children for disciplinary purposes in all institutional settings, including "special" schools, and ensure it is used against children exclusively to prevent harm to the child or others and only as a last resort. The use of isolation rooms should be abolished.

11. Schools should better train teachers to tackle bullying. Training should also be provided on how to support vulnerable groups, such as children with SEN and LGBTQ children.

12. The Government should make sure that regardless of the religious character of the school, Relationships Education and Sex and Relationships Education provides children with comprehensive, accurate and unbiased information.

13. The Government should ensure that all children receive education on children's rights.

14. In consultation with key stakeholders, including children, the Government should develop a national play policy with adequate resources for its implementation.

15. Local authorities must provide sufficient play and leisure provision, including for children with additional needs, and simplify the process for applying for road closures to enable more Street Play.

Endnotes

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In this series

About CRAE

The Children's Rights Alliance for England (CRAE) works with 150 organisations and individual members to promote children's rights, making us one of the biggest children's rights coalitions in the world.

We believe that human rights are a powerful tool in making life better for children. We fight for children's rights by listening to what they say, carrying out research to understand what children are going through and using the law to challenge those who violate children's rights. We campaign for the people in power to change things for children. And we empower children and those who care about children to push for the changes that they want to see.

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