



Children's
Rights Alliance
for England

CHILDREN WITH SPECIAL EDUCATIONAL NEEDS AND DISABILITIES

STATE OF CHILDREN'S
RIGHTS IN ENGLAND

2014

CHILDREN WITH SPECIAL EDUCATIONAL NEEDS AND DISABILITIES

ARTICLE 23 - A disabled child should enjoy a full and decent life in conditions which 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 the disabled child has effective access to education, training, health care, rehabilitation, preparation for employment, and recreation opportunities.

STATE OF CHILDREN'S
RIGHTS IN ENGLAND

2014

What does the Convention say?

Disabled children are children first, and they have a right to the same opportunities as every child. That means removing the barriers - whether social, cultural, attitudinal or physical - which impede their inclusion in education, play and recreation, and society, and providing whatever protective measures, health and social care services they might need. It also means promoting understanding of their equal rights and protecting them from discrimination. Disabled children and their families sometimes require special care and assistance which should, where possible, be delivered free of charge.¹

In 2008, the UN Committee on the Rights of the Child highlighted its concern about a number of areas relating to disabled children's rights in the UK. Among these, it recommended that the UK Government:

- Tackle discrimination against disabled children
- Develop a national inclusion strategy for disabled children in society
- Develop ways of identifying disabilities or impairments as early as possible
- Invest to ensure the right of all children to an inclusive education
- Ensure that children can appeal against decisions about their education
- Assess why some disabled children live in institutions and review their treatment

In 2009, the UK Government ratified the Convention on the Rights of Persons with Disabilities (the "Disability Convention")² which covers disabled people of all ages, including children. It should be read alongside the UNCRC when we look at the rights of disabled children.

There are four general principles, which underpin each of the specific rights outlined in the rest of the Convention:

- Article 2 - children should not be discriminated against in the enjoyment of their rights
- Article 3 - the child's best interests should take precedence in every decision and action taken relating to a child
- Article 6 - children have a right to life and develop to their full potential
- Article 12 - children have a right to express their views and have them given due weight

What progress have we made?

There is no definitive list of indicators which determines whether or not children enjoy their rights. This section presents indicators which have been used to illustrate particular rights issues facing children in England, and is based on a combination of official statistics, published research and additional material gathered through Freedom of Information requests. In addition, it summarises significant laws or policies which affect children's human rights.

Context

Around 7% (0.9 million) of children under 16 in the UK are disabled - meaning they have a long-standing illness, disability or impairment which causes substantial difficulty with day-to-day activities.³

There is a significant overlap between disabled children and those with special educational needs (SEN). A child or young person has SEN if they have a learning difficulty or disability which calls for special educational provision to be made for them. Where a disabled child or young person requires SEN provision, they will also be covered by the SEN definition.⁴

In January 2014, 1,492,950 children in English schools (17.9% of all pupils) had special educational needs.⁵ The proportion of SEN pupils who are eligible for Free School Meals (FSM) is significantly higher than the total pupil population. There are more SEN pupils from a Black and minority ethnic background than SEN pupils from a White British background. This may be an indication that existing services are not meeting the range of culturally different needs of SEN children from Black and minority ethnic communities.

1 UN Committee on the Rights of the Child (2006) General Comment no.9: the rights of children with disabilities. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/452/05/PDF/G0745205.pdf?OpenElement>

2 UN (2006) Convention on the Rights of Persons with Disabilities and Optional Protocol. <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

3 DWP/ONS (2014) Family resources survey 2012/13

4 DfE/Department of Health (2014) Special educational needs and disability Code of Practice: 0 to 25 years. Statutory guidance for organisations who work with and support children and young people with special educational needs and disability. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/342440/SEND_Code_of_Practice_approved_by_Parliament_29.07.14.pdf

5 DfE (2014) Children with special educational needs 2014: an analysis. Table 1.9 <https://www.gov.uk/government/statistics/children-with-special-educational-needs-an-analysis-2014>

PROPORTION OF PUPILS WITH SEN ELIGIBLE FOR FREE SCHOOL MEALS ⁵	JANUARY 2009	JANUARY 2014
SEN pupils	28.4%	29.1%
All pupils	15%	16.3%

PROPORTION OF BLACK AND MINORITY ETHNIC (BME) PUPILS WITH SEN ⁶	2009	2014
BME pupils with SEN	Data not comparable	18.9% without statements 3.5% with statements
White British pupils with SEN	Data not comparable	16.5% without statements 3.2% with statements

This has been a transition year for special educational needs and disability with extensive reforms first proposed in 2011⁷ coming into force from September 2014. Part 3 of the Children and Families Act 2014⁸ creates a new system through which the education, health and care needs of disabled children and young people should be met. More detail can be found below. Although the statistical information in this report predates these developments, the new system is building on what was there before.

Support for disabled children and their families

Disabled children have a right to be included in their community and society. Disabled children can face a number of barriers which make it harder for them to participate in different areas of life. Parents mention:⁹

- Others' attitudes (35%)
- Financial obstacles (25%)
- Poor services (23%)
- Lack of help or assistance (20%)
- Lack of special aids or equipment (14%)
- Not enough time available (10%)
- Lack of information (5%)
- Badly designed buildings (4%)

A recent survey carried out by Mumsnet and Scope found that four in ten parents said that their disabled children "rarely" or "never" have the opportunity to socialise and mix with children who are not disabled.¹⁰

In 2008, the UN Committee on the Rights of the Child recommended that the UK government develop a strategy to set out how it intended to make this aspiration a reality. *Fulfilling Potential*¹¹ is the UK government's disability strategy. It covers both children and adults, and is meant to be centred round inclusion. In reality, however, disabled children have been virtually invisible in the policy debates about *Fulfilling Potential*. To date, there has been no government-led public awareness-raising campaign focused on the rights and needs of disabled children. Disabled children who spoke to the Office of the Children's Commissioner believe there should be, if they really are to be treated as equals.¹²

6 DfE (2014) Table 1.13

7 DfE (2011g) Support and aspiration: A new approach to special educational needs and disability. A consultation. <http://webarchive.nationalarchives.gov.uk/20130401151715/https://www.education.gov.uk/publications/eOrderingDownload/Green-Paper-SEN.pdf>

8 Children and Families Act 2014, Part 3. <http://www.legislation.gov.uk/ukpga/2014/6/part/3/enacted>

9 ONS (2010) Life opportunities survey: wave 1 results. <https://www.gov.uk/government/publications/life-opportunities-survey-wave-one-results-2009-to-2011>

10 Aiden, H and McCarthy, A (2014) Current attitudes towards disabled people. London: Scope. file:///G:/ongoing%20work/CRAE%20work%202014/SOCR/Draft%20sections/Disabled%20children/original%20docs/Current-attitudes-towards-disabled-people.pdf

11 DWP (2013) Fulfilling potential: building a deeper understanding of disability in the UK today. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/320509/building-understanding-main-report.pdf

12 Office of the Children's Commissioner (2014) "They still need to listen more": A report about disabled children and young people's rights in England. London: Office of the Children's Commissioner

Special educational needs

Article 24 of the Disability Convention covers education, and calls for an inclusive education system. Children with special educational needs and disability have a right to education without discrimination and on the basis of equal opportunity. Disabled children should not be excluded from the general education system because of their disability and have a right to receive the support required to facilitate their participation. Teachers and other education staff should be trained to work with children with SEN and disabilities. When it ratified the Disability Convention, the UK government inserted its own Interpretative Declaration to the Convention, which allows for the continuation of special, as well as inclusive, education: *'The general education system in the United Kingdom includes mainstream, and special schools, which the UK Government understands is allowed under the Convention.'*¹³

Early education and childcare

In 2008, more than one-third of local authority Family's Information Services (then called Children's Information Services) reported there was not enough childcare for disabled children in their area, and 25% were not sure.¹⁴ That situation has not improved, despite the government commitment to free early education and childcare provision for all three and four year-olds and for disadvantaged two year-olds.

*In 2014, only 28% of local authorities in England reported having a sufficient supply of childcare for disabled children in their area.*¹⁵

A parliamentary inquiry into childcare for disabled children¹⁶ found much the same:

- Children were unable to access the full 15 hours per week early education entitlement
- There was a lack of training in disability issues for early years providers
- Some providers did not understand their duty¹⁷ to make reasonable adjustments to ensure disabled children can join in all the activities with the other children
- Parents were being charged higher than average fees for paid childcare
- Parents unable to afford suitable childcare had been forced to give up work
- Parents were concerned about the quality of the childcare for their disabled child

All early years providers are required to identify and support children with SEN or disabilities, to promote equality of opportunity for children in their care and to have access to a Special Educational Needs Coordinator (SENCO).¹⁸ However, inspections, which focus on the children being cared for at the time they are inspected, do not pick up on providers' ability to cater for the diverse needs of SEN and disabled children throughout the year.¹⁹

	2008-09	2012-13
Proportion of children achieving a good level of development at Early Years Foundation Stage ^{20 21}	15.4% SEN 55% no SEN - attainment gap of 39.6	14% SEN 56% of no SEN - attainment gap of 42

(The EYFS has been revised, with a new version coming into effect in 2012, so these figures are not directly comparable).

13 UN Treaty Collection (2006) Convention on the Rights of Persons with Disabilities (Declarations and Reservations - United Kingdom of Great Britain and Northern Ireland. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=iv-15&chapter=4&lang=en#EndDec

14 Daycare Trust (2009) Childcare costs survey 2008. London: Daycare Trust. <http://www.familyandchildcaretrust.org/childcare-costs-surveys>

15 Rutter, J and Stocker, K (2014) Childcare costs survey 2014. London: Family and Childcare Trust. <http://www.familyandchildcaretrust.org/childcare-costs-surveys>

16 Buckland, R and Glass, P (2014) Parliamentary inquiry into childcare for disabled children. London: Contact a Family. <http://www.edcm.org.uk/media/155556/parliamentary-inquiry-into-childcare-web.pdf>

17 Equality Act 2010, s.20. <http://www.legislation.gov.uk/ukpga/2010/15/part/2/chapter/2/crossheading/adjustments-for-disabled-persons>

18 DfE (2014) Statutory framework for the Early Years Foundation Stage . Setting the standards for learning, development and care of children from birth to five. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/335504/EYFS_framework_from_1September_2014_with_clarification_note.pdf

19 Ofsted (2014) Framework for the regulation and inspection of provision on the Early Years Register. <http://www.ofsted.gov.uk/resources/framework-for-regulation-of-provision-early-years-register>

20 Early Years Foundation Stage Profile Achievement by Pupil Characteristics, England 2008/09

21 DfE (2013) Early Years Foundation Stage Profile Attainment by Pupil Characteristics, England 2013. <https://www.gov.uk/government/statistics/eyfsp-attainment-by-pupil-characteristics-2013>

Schools

Until September 2014, schools were able to meet the needs of most SEN pupils under one of two schemes: School Action, which brings in extra support to the classroom; and School Action Plus, where the school brings in additional advice and support from external providers to address the child's special needs. Children whose needs could not be met under these school-based schemes would have a "statement" which brought with it a right to additional resources from their local authority.

As part of the Children and Families Act²² reforms, this system was abolished in September 2014, and children who currently have statements should transition across to the new system by 2018. There are two key differences under the new system: a single school-based stage of support (called "SEN Support"); and a new Education, Health and Care (EHC) Plan which brings a new entitlement to health services and incorporates existing duties in relation to social care, alongside the previous educational rights established by the statement.

Inclusive education

Article 24 of the UN Convention on the Rights of Persons with Disabilities states that disabled children should be able to access '*an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live.*'²³ The proportion of SEN pupils attending special schools has gone up since 2009, despite the government's commitment '*to continuing to develop an inclusive system where parents of disabled children have increasing access to mainstream schools and staff, which have the capacity to meet the needs of disabled children.*'²⁴

The proportion of children with a statement of SEN attending maintained special schools has increased from 37.5% in 2009 to 40.5% in 2014. The proportion attending independent schools rose from 3.9% to 5.1%.^{25 26}

The UK entered a Reservation to Article 24 of the Disability Convention, to support special education provision away from a child's home:

*The United Kingdom reserves the right for disabled children to be educated outside their local community where more appropriate education provision is available elsewhere. Nevertheless, parents of disabled children have the same opportunity as other parents to state a preference for the school at which they wish their child to be educated.*²⁷

It is the most severely disabled children who receive residential special education - children whose high levels of need cannot be met in mainstream schools, and whose parents or carers are finding it difficult to cope.²⁸ Residential special education can be described as a placement of last resort. Arguably, the continued use of residential special schools demonstrates the government's failure to increase the capacity of mainstream schools and staff to provide an inclusive education to SEN and disabled pupils.

The schools - which can be state-funded, independent or third sector - often specialise in providing care and education to children with specific impairments. The children may be living some distance from home because of the specialist nature of the care they require. Some are day pupils, some will go home on the weekends, and some will only go home a few times a year. Schools can operate for either 38 or 52 weeks a year. Those taking boarders all year round are classed as children's homes.

In response to a Freedom of Information request made by CRAE, the Department for Education (DfE) gave us the following figures, which show that the number of boarders attending residential special schools is falling. It is unclear whether this shows that more SEN and disabled children are day pupils in a local school, perhaps because local authorities have less to spend on residential special education; or an indication that there is less specialist provision available, which means some children with very high level needs may not be having their right to education met.

22 Children and Families Act 2014, Part 3. <http://www.legislation.gov.uk/ukpga/2014/6/part/3/enacted>

23 UN (2006) Convention on the Rights of Persons with Disabilities and Optional Protocol. <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

24 UK Government Interpretative Declaration to the Convention on the Rights of Persons with Disabilities. Cited on ALLFIE website. <http://www.allfie.org.uk/pages/work/article24.html>

25 DCSF (2010) Special educational needs in England, January 2009. Table 1A

26 DfE (2014) Op cit.

27 UN Treaty Collection (2006) Convention on the Rights of Persons with Disabilities (Declarations and Reservations - United Kingdom of Great Britain and Northern Ireland). https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=iv-15&chapter=4&lang=en#EndDec

28 Abbott, D and Ward, L (2000) Disabled children at residential school. JRF. <http://www.jrf.org.uk/sites/files/jrf/420.pdf>

RESIDENTIAL SPECIAL SCHOOLS IN ENGLAND	JANUARY 2009	JANUARY 2013	JANUARY 2014
Total number of residential special schools	190	177	171
Total number of pupils enrolled	-	13,465	13,059
Number of pupils who are boarders	-	3,975	3,185

Other, more inclusive, models of education are being tested for pupils with high levels of need. For example, the National Autistic Society, in partnership with Surrey County Council and the Cullum Family Trust, is opening four specialist centres in mainstream secondary schools to enable pupils to alternate mainstream classes with special sessions in the centres.²⁹

DfE figures showing levels of attainment at Key Stage 4 indicate that, using this limited measure of progress, results for pupils in residential special schools are improving.

GCSE RESULTS FOR PUPILS IN RESIDENTIAL SPECIAL SCHOOLS	2008-09	2012-13
Total number of KS4 pupils in residential special schools	1,914	1,800
5+A*-C grades	4.8%	5.7%
1 to 5 A*-C grades	20.2%	25.6%
1 to 5 A*-G grades	34.4%	40.1%
1 to 5 C-G grades only	40.4%	39.9%
No A*-G GCSEs or equivalent	19.2%	17.1%

Educational attainment

All children have a right to education which allows them to realise their potential - a high quality education suited to their capacities, needs and learning styles. Children with SEN or disabilities should receive special assistance to help them to achieve their best. Currently, educational "success" is based on attainment scores, which ignores the wider aims of education under the UNCRC - an education that will help children achieve their potential without discrimination, is child-centred and empowering, provides children with life skills, and strengthens their capacity to enjoy the full range of human rights. Using attainment as the only measure of the value and quality of a child's educational experience arguably discriminates against those who have moderate or severe learning difficulties. However, under the assessment system in use, the attainment gap for SEN pupils remains stubbornly high at all assessment stages, though there has been some improvement at Key Stage 2 and A-level or equivalent.

²⁹ National Autistic Society (2014) Pioneering autism centres open in Surrey. 1 Oct 2014 Press Release. <http://www.autism.org.uk/news-and-events/news-from-the-nas/pioneering-autism-centres-surrey.aspx>

LEVEL OF ACHIEVEMENT ^{30 31 32}	2008-09	2012-13
Early Years Foundation Stage profile - good level of development	15.4% SEN 55% no SEN - attainment gap of 39.6	14% SEN 56% no SEN - attainment gap of 42
Key Stage 2 Level 4 or above (reading, writing, maths)	31.0% SEN 85.5% no SEN - attainment gap of 54.5	35% SEN 88% no SEN - attainment gap of 53
GCSEs 5 or more A* to C including English and maths	16.5% SEN 61.3% no SEN - attainment gap of 44.8	23.4% SEN 70.4% no SEN - attainment gap of 47
A-level or equivalent (Level 3 qualification) at age 19	54.9% no SEN pupils 20.4% on School Action 13.7% on School Action Plus 8.8% with a statement	64.1% no SEN pupils 32.7% on School Action 20.7% on School Action Plus 12.5% with a statement

(The EYFS has been revised, with a new version coming into effect in 2012, so these figures are not directly comparable).

Exclusion from school

A permanent exclusion is the removal of a child from the school roll. Disproportionate numbers of SEN pupils are excluded, usually for disruptive behaviour.

Despite a reduction in the total number of exclusions since 2008-09, SEN pupils still make up the bulk of exclusions.

The UN Committee on the Rights of the Child regards this as a sign of an unequal education system where school exclusions affect particular groups of children more than other groups; this is exclusive, and potentially discriminatory.

	PERMANENT EXCLUSION FROM SCHOOL ^{33 34}		FIXED TERM EXCLUSION FROM SCHOOL	
	2008-09	2012-13	2008-09	2012-13
Total number - all schools	6,550	4,630	363,280	267,520
Pupils with SEN	4,680 - 71%	3,160 - 68%	235,090 - 65%	164,590 - 62%

30 DfE (2013) Early Years Foundation Stage Profile Attainment by Pupil Characteristics, England 2013. <https://www.gov.uk/government/statistics/eyfsp-attainment-by-pupil-characteristics-2013>

31 DCSF (2010) Level 2 and 3 attainment by young people in England measured using matched administrative data: attainment by age 19 in 2009. <http://webarchive.nationalarchives.gov.uk/20130401151655/http://www.education.gov.uk/researchandstatistics/statistics/allstatistics/a00196352/level-2-and-3-attainment-by-age-19>

32 DfE (2014) Op cit.

33 DfE (2010) Permanent and fixed period exclusions from schools and exclusion appeals in England, 2008/09. Tables 12 and 15. <https://www.gov.uk/government/statistics/permanent-and-fixed-period-exclusions-in-england-academic-year-2008-to-2009>

34 DfE (2014) Permanent and Fixed Period Exclusions in England: 2012 to 2013. <https://www.gov.uk/government/statistics/permanent-and-fixed-period-exclusions-in-england-2012-to-2013>

There is some evidence that the cuts in overall exclusion numbers may mask other ways of excluding children, especially those with higher support needs. Parents who responded to a survey undertaken by Contact-a-Family reported that their child was regularly excluded due to staffing problems, particular school activities or trips being considered not suitable for their child to take part, or because their child was feeling angry and frustrated and “having a bad day,” leading to their parents being called to take them out of school temporarily. This is a clear breach of their rights to a full, inclusive and non-discriminatory education.³⁵

Post-16 education and training

Article 24 of the Disability Convention obliges governments to ensure that disabled people are able to take part in further, vocational and adult education, and to work, on an equal basis with others.

Fewer SEN pupils continue in education, but that is likely to change as a result of the implementation of the duty to participate. Part 1 of the Education and Skills Act 2008 requires 16 and 17 year-olds to remain in some form of education or training to the age of 18. It came into force for 16 year-olds in 2013, and will extend to 17 year-olds in 2015. The success of the policy for children with learning difficulties and disabilities will depend on the range of provision available to them, and how inclusive and supportive colleges and workplaces prove to be.

The Children and Families Act 2014³⁶ contains new rights for disabled young people to remain supported in education. There is now a single duty to put in place an Education, Health and Care Plan which can run from 0 to 25 where a child or young person has significant educational needs which require additional support. The new “local offer” (published by every local authority) must include details of post-16 provision, including apprenticeships and provision which supports young people to live independently.³⁷ However, young people may lose their Education, Health and Care Plans once they have turned 18 if the local authority considers that the outcomes it (not the child) requires have been achieved – and at present there is no appeal right in relation to the outcomes section of the Plan.

When asked what they want to do, disabled 16 year-olds talk about the same aspirations as their non-disabled peers. They expect to work full-time for the same level of earnings. However, *‘...by the age of 26, disabled people are nearly four times as likely to be unemployed compared to non-disabled people. Among those who were in employment and with the same level of qualification, earnings were 11% lower for disabled people compared to their non-disabled peers.’*³⁸

	PARTICIPATION RATES AT AGE 16 AND 17 ^{39 40}		PERCENTAGE ACHIEVING LEVEL 3 QUALIFICATIONS AT AGE 19 ⁴¹	
	2009	2012-13	2009	2012-13
SEN students	Not available	85.5%	47.8%	29.9%
No SEN students	Not available	90.5%	54.9%	75.4%
Participation gap	Not available	4.7	-	-
Attainment gap	-	-	-	45.5

35 Contact a Family (2013) Falling through the net: illegal exclusions, the experiences of families with disabled children in England and Wales. http://www.cafamily.org.uk/media/639982/falling_through_the_net_-_illegal_exclusions_report_2013_web.pdf

35 DWP (2013) op cit, p.34

36 Children and Families Act 2014. <http://www.legislation.gov.uk/ukpga/2014/6/part/3/enacted>

37 The Special Educational Needs and Disability Regulations 2014, Schedule 2. <http://www.legislation.gov.uk/uksi/2014/1530/schedule/2/made>

38 DWP (2013) Fulfilling potential: building a deeper understanding of disability in the UK today, p.34. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/320509/building-understanding-main-report.pdf

39 DfE (2010) Participation in education, training and employment by 16-18 year olds in England. <http://webarchive.nationalarchives.gov.uk/20130401151655/http://www.education.gov.uk/researchandstatistics/statistics/allstatistics/a00196072/participation-in-education-training-and-employment>

40 DfE (2014) Participation in Education, Training and Employment by 16-18 year olds in England: End 2013. <https://www.gov.uk/government/statistics/participation->

41 DfE (2014) Attainment gap at age 19 between Free School Meals pupils and the rest. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300218/Indicator-9_L3at19by_FSM_-_DR.pdf Children and Families Act 2014, Part 3. <http://www.legislation.gov.uk/ukpga/2014/6/part/3/enacted>

Spotlight on: The special educational needs and disability reforms

The UN Convention on the Rights of the Child (UNCRC) requires governments to ensure that care and assistance for disabled children is designed to help them access and benefit from education, training, health care services, recovery services, preparation for employment and recreation opportunities.

Part 3 of the Children and Families Act 2014⁴² provides the legislative basis for far-reaching reforms which aim to integrate education, health and social care provision for disabled children, young people and young adults up to the age of 25. The new system includes:

- Joint commissioning of services involving education, health and social care, and covering services for children and young people with special educational needs and/or disabilities (SEND) from birth to 25
- A legal duty to have regard to the views, wishes and feelings of the child and their parents, and to ensure they participate as fully as possible in any decisions
- Information, advice and support available to children and parents in each local area
- A local offer, describing what provision SEND children and young people can expect
- A single Education, Health and Care (EHC) plan from birth to 25 to replace SEN statements and Learning Disability Assessments for school-age pupils and post-16 students
- A legal presumption that children with an EHC plan will be educated in a mainstream nursery, school or college, though children without an EHC plan can be placed in special academies or post-16 academies if allowed for in the academy's funding agreement
- A legal duty⁴³ to ensure co-operation between children's and adult services
- Personal budgets for disabled children and young people who have EHC plans, though only if the education provider agrees

The scheme in the Children and Families Act 2014 continues to prioritise educational needs over care and health needs – for example, significant educational needs will be required before a disabled child can access an Education, Health and Care Plan, which brings with it a specific entitlement to services. Detail is outlined in a statutory Code of Practice.⁴⁴ The Council for Disabled Children has produced guides for the children and young people who will be affected by the reforms.⁴⁵

Health and social care

Like all children, disabled children have a right to enjoyment of the highest attainable standard of health - without discrimination, and taking their views into account. They have a right to information about their health needs, condition, care and treatment. Under the UNCRC, disabled children have a right to special care appropriate to their condition and circumstances. Where it is necessary for children to be cared for outside their families, they have a right to alternative care provided by the state.

Disabled children can have a broad and diverse range of health needs: long-term conditions, sensory impairments, mental health problems, challenging behaviour, communications difficulties, or multiple and complex needs. In the 2011 census, disabled children up to 15 in England and Wales were asked how they rated their health.⁴⁶ Only half of those living in more deprived areas rated it as "good", compared with 81.2% in the general population. Those who spend a lot of time in health settings feel the amount of time they spend in treatment hampers their ability to enjoy the same things as other young people.⁴⁷

The Children and Families Act 2014 contains a new right for disabled children and young people to have their health needs met – if they are eligible for an EHC Plan. Since most disabled children and young people will not receive an EHC Plan, they will not benefit from this new entitlement. The national framework⁴⁸ governing continuing healthcare for children – the way in which packages of support are put in place for children with complex needs – has no statutory foundation, unlike the equivalent framework for disabled adults.

42 Children and Families Act 2014, Part 3. <http://www.legislation.gov.uk/ukpga/2014/6/part/3/enacted>

43 Care Act 2014. Sections 58-66 <http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>

44 DfE (2014) Special educational needs and disability Code of Practice: 0 to 25 years. <https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

45 <https://www.gov.uk/government/publications/sen-and-disability-support-changes-information-for-young-people>

46 ONS (2014) How do people rate their general health? An analysis of general health by disability and deprivation. http://www.ons.gov.uk/ons/dcp171776_353238.pdf

47 LaValle, I and others (2012) Listening to children's views on health provision. London: National Children's Bureau. http://www.ncb.org.uk/media/723497/listening_to_children_s_views_on_health_-_final_report_july_12.pdf

48 Department of Health (2012) National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care, November 2012 (revised). https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213137/National-Framework-for-NHS-CHC-NHS-FNC-Nov-2012.pdf

All disabled children are “children in need”⁴⁹ Children in need are entitled to an assessment by the local authority and, potentially, to services under s.17 of the Children Act 1989.

In its General Comment on disabled children, the UN Committee on the Rights of the Child notes how much more vulnerable they can be to all forms of abuse, including bullying.⁵⁰ The NSPCC’s annual child protection review⁵¹ identifies disabled children as a group more vulnerable to maltreatment because of their impairments, their dependency on others for personal assistance, and communication difficulties or an inability to understand what is happening or seek help. Disabled children are three to five times more likely to be abused or neglected than non-disabled children.

The proportion of those referred for an assessment of need because of their disability has fallen slightly since 2009-10, as has the number subsequently taken into care.

CHILDREN IN NEED ^{52 53}	2009-10 (Children in Need 1st complete year of census)	2013-14
	Total 375,900	Total 397,630
Child’s disability	45,000 (12%)	41,560 (10.5%)

CHILDREN IN CARE ⁵⁴	2008-09	2013-14
	Total 60,900	Total 68,100
Child’s disability	2,220 (4%)	2,260 (3%)

The Care Act 2014⁵⁵ creates a comprehensive new system of care and support for disabled adults and their family carers, but does not apply to disabled children. The duty to provide social care to disabled children dates back to 1970, and is neither child nor rights-centred.⁵⁶

Play and recreation

Article 31 of the UNCRC recognises the right of every child to play, leisure and recreation, and to participate fully in cultural and artistic life. Disabled children should be provided with equal opportunities to participate.

In 2007, *Aiming High for Disabled Children*⁵⁷ committed significant resources to opening up opportunities for disabled children, including funding for short breaks. Since 2011, local authorities have been required to provide short break services for parents of disabled children.⁵⁸ However, funding for the programme is no longer ring-fenced and significant reductions in expenditure on short breaks have been reported. In 2013, Mencap reported that eight out of 10 families had reached breaking point due to a lack of short breaks.⁵⁹

49 Children Act 1989, s.17. <http://www.legislation.gov.uk/ukpga/1989/41/part/III/crossheading/provision-of-services-for-children-and-their-families>

50 UN Committee on the Rights of the Child (2006) General Comment no.9: the rights of children with disabilities, para.3

51 Jütte, S and others (2014) How safe are our children 2014? NSPCC. <http://www.nspcc.org.uk/Inform/research/findings/how-safe/how-safe-2014-reportwdf101938.pdf>

52 DfE (2010) Children in need, including their characteristics and further information on children who were the subject of a child protection plan. (Children in need census - final), year ending 31 March 2010. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/219362/osr28-2010v3.pdf

53 DfE (2014) Characteristics of children in need in England, 2013-14. SFR 43/2014. <https://www.gov.uk/government/statistics/characteristics-of-children-in-need-2013-to-2014>

54 DfE (2013) Children looked after in England (including adoption and care leavers) year ending 31 March 2013. [includes data for 2008/9]. <https://www.gov.uk/government/statistics/children-looked-after-in-england-including-adoption> DfE (2014) Children looked after in England (including adoption and care leavers) year ending 31 March 2014. SFR 36/014. <https://www.gov.uk/government/statistics/children-looked-after-in-england-including-adoption-2>

55 Care Act 2014. <http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>

56 Chronically Sick and Disabled Persons Act 1970, s.2. <http://www.legislation.gov.uk/ukpga/1970/44/section/2>

57 DCSF (2007) Aiming high for disabled children: better support for families. <http://webarchive.nationalarchives.gov.uk/20130401151715/http://education.gov.uk/publications/eorderingdownload/213.pdf>

58 Children and Young Persons Act 2008, s.25. <http://www.legislation.gov.uk/ukpga/2008/23/part/2/crossheading/care-breaks> The Breaks for Carers of Disabled Children Regulations 2011 <http://www.legislation.gov.uk/uksi/2011/707/made>

59 Mencap (2013) Short breaks support is failing family carers: reviewing progress 10 years on from Mencap’s first Breaking Point report. https://www.mencap.org.uk/sites/default/files/documents/Short_Breaks_report.pdf

Disabled children are as likely as other children to visit a library or museum at least once a year, but less likely to take part in sport.⁶⁰ Young disabled people like competitive sports but, outside school, lack awareness of what might be available.⁶¹ An Ofsted survey into youth work provision for disabled young people shows similar results: the disabled young people who accessed youth services found them enjoyable and beneficial, but participation rates were low. Only 4% to 6% of disabled young people were accessing local provision.⁶²

Standard of living

The UNCRC notes that poverty is both a cause and a consequence of disability. Disabled children and their families have the right to an adequate standard of living, and to the continuous improvement of their living conditions. Governments should allocate adequate resources to services for disabled children and their families, and ensure children's basic needs are met where their families are unable to meet those needs.⁶³

"Income" can be measured before housing costs (BHC) or after housing costs (AFC). In 2012-13, disabled people were less likely to be living in poverty than in the mid-2000s.

LEVELS OF CHILD POVERTY IN THE UK ⁶⁴ CHILDREN IN FAMILIES WHERE SOMEONE IS DISABLED	2008-09	2012-13
Relative low income BHC	0.9 million children - 29%	0.8 million - 21%
Absolute low income BHC	0.8 million - 27%	0.9 million - 25%
Relative low income AHC	1.2 million - 38%	1.2 million - 33%
Absolute low income AHC	1.1 million - 36%	1.4 million - 37%
LEVELS OF CHILD POVERTY IN THE UK CHILDREN IN FAMILIES WITH A DISABLED CHILD ⁶⁵		
Relative low income BHC	31%	20%
Relative low income AHC	40%	30%
Low income [70% median] and material deprivation BHC ⁶⁶	31%	21%

However, in April 2013, a series of benefit cuts came into force reducing housing benefit levels through the introduction of a benefit cap. Households with disabled children who are receiving Disability Living Allowance (DLA) or Personal Independence Payments (PIP) are exempt from the benefit cap. PIPs are available to disabled people

60 DWP (2013) Fulfilling potential: building a deeper understanding of disability in the UK today. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/320509/building-understanding-main-report.pdf

61 English Federation of Disability Sport (2013) Disabled people's lifestyle survey, September 2013. Loughborough: Sport England. http://www.efds.co.uk/assets/0000/7297/Disabled_People_s_Lifestyle_Survey_Report_Sept_2013.pdf

62 Ofsted (2013) Critical issues in the provision of youth work for young disabled people. <http://www.ofsted.gov.uk/sites/default/files/documents/surveys-and-good-practice/y/Critical%20issues%20in%20the%20provision%20of%20youth%20work%20for%20young%20disabled%20people.pdf>

63 UN Committee on the Rights of the Child (2006) General Comment no.9: the rights of children with disabilities, para.3

64 DWP (2014) Households below average income: An analysis of the income distribution 1994/95 – 2012/13. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325416/households-below-average-income-1994-1995-2012-2013.pdf

65 Ibid, Table 7.1t

66 Questions in the survey changed in 2010/11 so not directly comparable. HBAI Table 7.2ts

from age 16 to 64 whose condition limits their mobility and ability to care for themselves. The parents or carers of children under 16 can claim DLA if they can show their child needs a lot more personal care than the child's peers and has mobility problems. In February 2014, around 116,000, or approximately one in eight, disabled children were receiving DLA.⁶⁷ This means that a significant number of families with disabled children who receive housing benefit could be affected by the cap. A child rights impact assessment of budget decisions undertaken by the Office of the Children's Commissioner⁶⁸ showed that families with disabled children have been hit harder by the cuts.

In August, the Disability News Service reported that the UN Committee on the Rights of Persons with Disabilities may have begun an inquiry investigating the UK for alleged violations of the Disability Convention. It is believed that this could be in response to the disproportionate impact the benefit cap and other benefits changes are having on families with disabled children and disabled adults. The story is unconfirmed because all such inquiries are carried out confidentially.⁶⁹

Recommendations

- Create an integrated system that can meet disabled children's health and care needs
- End out of area residential school placements for disabled children
- Provide families (including kinship carers) with adequate support at home, so that disabled children do not have to reside in educational institutions
- Provide every child in residential schooling with safety and ensure disabled children and/or an independent advocate are involved in decisions and case conference proceedings about them
- Ensure that all services commissioned by the state support the participation of disabled children and young people in service design and evaluation
- Implement a Disability Convention awareness-raising programme in schools which involves disabled children and young people in the development of such programmes
- Ensure the effective enjoyment of the right to life of people with mental health issues and/or a learning disability on an equal basis with others
- Ensure that changes to the legal aid system do not impact on disabled people's right of access to justice in a discriminatory way
- Clarify what steps the UK is taking to 'build the capacity of mainstream schools' to be inclusive of disabled learners
- Ensure the state party carries out assessments of the extra costs of disability to gauge real ongoing annually up-rated support, beyond subsistence and poverty levels, to meet their obligations under Article 28 of the Disability Convention
- Carry out an impact assessment on the cumulative effects of welfare reform on disabled children and their families
- Provide information on the degree of accessibility of centres and facilities that host sporting, cultural and leisure activities, and indicate whether there are plans to make currently inaccessible sites accessible

67 DWP (2014) Quarterly statistical summary. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/344650/stats-summary-aug14.pdf

68 Office of the Children's Commissioner (2013) A Child Rights Impact Assessment of Budget Decisions: including the 2013 Budget, and the cumulative impact of tax-benefit reforms and reductions in spending on public services 2010 – 2015. http://www.childrenscommissioner.gov.uk/content/publications/content_676

69 Pring, J (2014) Activists welcome UN inquiry decision. Disability News Service. <http://disabilitynewsservice.com/2014/08/activists-welcome-un-inquiry-decision/>

CRAE believes that human rights are a powerful tool in making life better for children. We're one charity working with over 100 organisational and individual members to promote children's rights, making us one of the biggest children's rights coalitions in the world. Our vision is a country that values and upholds every child's human rights.

We fight for children's rights by listening to what children 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.

CRAE has produced an annual State of Children's Rights in England report since 2003. This report is one chapter from the full report State of Children's Rights in England 2014.

ISBN: 978-1-898961-41-3



Children's
Rights Alliance
for England

Telephone: 020 7278 8222
Email: info@crae.org.uk
www.crae.org.uk

30 Angel Gate
326 City Road
London, EC1V 2PT