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SENDISS

Should schools be fined for illegally excluding pupils?

“Headteachers who abandon children with special needs must be punished, charity tells ministers”

This article, published by the Guardian (January 2018) calls for schools to be held more accountable for their exclusions.:

<https://www.theguardian.com/education/2017/dec/17/call-to-fine-schools-that-illegally-exclude-poorly-performing-pupils>

Children and young people with SEND are 7 times more likely to receive a permanent exclusion than those without SEND

Exclusion of pupils with SEND is unlawful as it is, in effect, punishing pupils for their SEN or disability; it falls under disability discrimination legislation. Yet we know that pupils with SEND count for almost half of permanent exclusions. Is this right and if not, what should be done?

Pearl Barnes discussed the recently published review by the Childrens Commissioner for England regarding punitive approaches to schools who illegally exclude pupils with SEND

Pupils with an EHCP have the highest rate of exclusion, with being almost 6 times more likely than non-EHCP pupils

Sadly, it has been known to me for a long time that pupils with SEND are often excluded from schools due to some aspect relating to their individual needs. Would it help to fine these schools? Over the last three years, schools have implemented the revised SEND code of practice, which has changed a number of areas, including:

- transfer of statements of SEN to EHCP
- revision of SEND registers to SEN Support and EHCP only
- more emphasis upon differentiated teaching and teachers taking more responsibility for supporting children with SEND

We know that schools have reduced the number of pupils categorised as SEND, due to budget restraints and other pressures, by nearly 7 per cent. Yet the number of exclusions remains stable.

We also know that teachers are expected to do far more, and have far less training and support from the Local Authority than pre-2010.

Pupils with SEND count for almost half of permanent exclusions, yet account for less than 15 per cent of pupils in school

THE LAW

All children are entitled to an education under the law. It is the responsibility of all schools to work with parents and the LA to ensure appropriate support is put into place to prevent the need for exclusion. No one should be discriminated against due to their performance, special educational need or disability.

Once an SEN or disability has been identified, the school are obliged to make reasonable adjustments which enable access to the school environment and learning opportunities on offer.

The SEN Code of practice (CoP) states:

“Schools and Colleges must make their best endeavours to ensure that additional support and provision is made for those who need it. Special educational provision is underpinned by high quality teaching and is compromised by anything less.”

The CoP and Equality Act (2010) both support that schools must do whatever is reasonable to support their pupils with identified SEND. This related to:

- practicality
- cost
- resources available
- interests of other pupils
- will it overcome the disadvantage?

For further information visit www.sendiss.co.uk
Pearl Barnes is an SEND Consultant and Executive Director of SENDISS providing independent support for schools and parents of children with SEND



DfE (2017) clarification of legal duties upon schools states that:

“All schools have a duty to adhere to the Equality Act for pupils with disabilities, to have regard for the SEND code of practice and to use their best endeavours to meet pupils’ needs. This means doing everything they can to meet children and young people’s special educational needs. All schools have a duty to admit a young person, where the school is named in an EHC plan and engage with parents on the support provided for their children and involve them in reviewing progress.”

It therefore appears that exclusion of pupils with SEN or disability, should be a last resort, when adequate support has been put into place and after parents have been consulted regarding the behaviour of their child.

The Problem

Since 2015, there has been a push to revise SEND registers and remove pupils who would otherwise be accessing additional support. Pupils accessing support are protected in law. If they are dismissed from the SEND Register (as 7 per cent have been) they are not only not receiving the additional support which they need (arguably to prevent the exclusion from happening in the first place) but they become much more vulnerable as the law is not there to protect them in the same way as it is for those with SEND.

With budgets having been cut and more and more pupils being refused a statutory assessment (40% increase in appeals - due to an increase in refusals - and of those going to a tribunal 80% of appeals win, as we found out through BBC freedom of information disclosure earlier this month) where funding and support would follow, schools are struggling to fund the provision and support needed to enable pupils with SEND to achieve.

Schools are directed to find the first £6,000 of support from their devolved SEND budgets, but many schools do not have this extra cash to finance additional support. Hence, is it any wonder that their SEN registers have been cut back; this merely reflects their cuts to funding.

To exacerbate the problem, there is often a push upon schools to perform well, and the Progress 8 measures merely compound the problem. Progress 8 places a huge pressure upon schools to raise attainment in academic subjects, purporting to impact upon their own performance if it is found to be below national targets. But it rules out the opportunity for pupils to study vocational courses, courses which would be hands-on, useful and purposeful and provide more fulfilment as they are more achievable for pupils with SEND.

Are pupils with SEND therefore being doubly disadvantaged? They are not only not provided with the additional support they so desperately need, but they are being made to study programmes of subjects which often challenge their weakest areas (reading, spelling, memory, writing) without providing the opportunity for them to excel in any way shape or form. Pupils with SEND often excel in practical and creative subjects, but these do not feature in the Progress 8 programme.

Hence, it could be argued that the problems raised by the Children's Commissioner in her report, are not a fault of the schools, but a highly prescriptive and bureaucratic system which appears to exclude the individual from studying a course programme which enables them to be successful and provides them with the support they need to be successful. Is it any wonder that they become disaffected? It is like judging a fish by its ability to climb trees!

The Solution

Pupils with SEND are 4 times more likely to grow up in poverty and twice as likely to be living in care than those who are not excluded. Over half of all pupils who are excluded experience a mental health difficulty. (Public Policy Research, 2017).

Sure Start Children's Centres were set up to work with families to prevent exclusion and antisocial behaviour in later life, but they have been cut.

Services need additional funding and resources to provide the support for the most vulnerable children and young people in our society.

Teachers need more training in identification and differentiation strategies. But most importantly, schools need to be given the flexibility to offer the range of subjects which will engage and motivate our children, provide them with the skills for life to be able to live fulfilling and independent adult lives.