

Disability Rights UK

Response to: Revised *Behaviour in Schools Guidance* and *Suspension and Permanent Exclusion Guidance* Consultation 2022

Disability Rights UK (DR UK) is a national organisation led by Disabled people. Our vision is a world where Disabled people have equal rights, opportunities, and access to power. Our work is rooted in the lived experience of Disabled people. We are a membership organisation and work closely with organisations led by Disabled people, across the UK.

We recognise that this consultation does not ask for responses from the charity sector, however, we believe it's important to highlight the below issues as per our responsibility to ensure the voices of Disabled students are heard.

It's essential that both the [Behaviour in Schools Guidance](#) and the [Suspension and Permanent Exclusion Guidance](#) considers the broad experiences of Disabled students, particularly neurodivergent pupils. This consultation response will outline DR UK's overall concerns with the current guidance and the ways in which this guidance is commonly delivered to disproportionately impact students classed as having Special Educational Needs and Disabilities (SEND).

I. The education system's understanding of behaviour and how to manage it is based on the experiences and outcomes of non-Disabled and neurotypical students.

It's important to remember that the education system in England is built, and has always been built, for non-Disabled and neurotypical children. The behaviour management tools and policies that schools have set up rarely consider neurodiversity and how some approaches will be ineffective for neurodivergent children. This often results in quick escalations of Disabled children's punishments (e.g., exclusions) and disproportionate school refusals, impacting the outcomes of Disabled pupils.

It's essential that schools create their own inclusive and accessible behavioural management policies, rather than give up on supporting Disabled students with their behaviour all together. The behaviour guidance outlines "how schools should act if a pupil has a SEN or a disability that at times affects their behaviour" – suggesting that disruptive behaviour is an inevitable consequence of having a disability. There is a lack of awareness and appreciation that it's often the inaccessible and distressing environment that's causing Disabled students to behave disruptively.

Schools must evidence what reasonable adjustments they've implemented before they can escalate punishments for Disabled children's behaviour.

The inclusive way to deal with Disabled children's behaviour is to resolve the inaccessibility of their education, rather than accept that all Disabled students will be disproportionately punished for struggling to access an inaccessible environment.

- ***Recommendation: Meaningfully consult with DPOs on ways in which schools' behavioural management guidance and tools can be inclusive to neurodivergent students. Improve training for teachers on the range of neurodiversity in school and the best ways to support all students.***

II. Disabled students are disproportionately excluded, this is an issue of discrimination.

The suspensions and permanent exclusions guidance states that “suspensions and permanent exclusions will sometimes be necessary as a last resort to maintain this environment.” It’s already been established that this environment is catered to the non-Disabled and neurotypical – therefore it’s unsurprising that Disabled students are disproportionately excluded for disrupting this environment.

Despite only making up 15% of the school population, [SEND students account for nearly half of all exclusions](#). The consistency with which Disabled students are excluded highlights that the current behaviour and exclusions guidance is not effectively supporting Disabled children to access their education.

It’s important to understand this disproportionality in the context of the impact of exclusions. [The shadow UNCRPD report](#) highlights how “life outcomes for excluded pupils are poor. According to one study, the proportion of excluded children who experience mental distress is likely close to 100 percent” and “pupils officially excluded from school at age 12 are four times more likely to be in prison by age 24.” MPs have urged previously that “the rise of exclusions is creating a pipeline of young people into our prison system. There is no fiscal or moral case to go on like this.”

III. In practice, finding and solving the trigger of disruptive behaviour is often de-prioritised over punishing the student whose being disruptive.

There can be an assumption that disruptive behaviour is an inevitable nuisance of children with SEND, rather than a consequence of an inaccessible system. Where the problem is often assumed to be that Disabled children are inevitably disruptive, finding and removing the triggers of disruptive behaviour is rarely a priority for educators.

The Behaviour in Schools guidance does acknowledge triggers and the need for preventative measures – including, for example, clip on ties for students who have sensitivity to constrictive clothing, and routine movement breaks for students who cannot sit still for an extended period – yet these are rarely the first response of schools, especially for students who can’t access a diagnosis or Education Health and Care Plan (EHCP). For those with a diagnosis and EHCP, the removal of triggers is often still de-prioritised over punishment.

The guidance does not acknowledge how disruptive behaviour may sometimes be the consequence of reasonable adjustments not being delivered. If, for example, a child is partially sighted but learning material is never provided in a larger font and

the child cannot read it – then they are more likely to disengage with the task and make clear their frustration with not being able to access their learning.

Both the behaviour and exclusions guidance highlight the need to consider whether, if disruptive behaviour is consistent, the student requires additional support – including requesting an EHC assessment. However, in practice this support is only awarded to the minority of Disabled students.

IV. The chronic lack of support given to Disabled students, which makes school an inaccessible and distressing environment, has not been addressed.

The Behaviour in Schools Guidance highlights that schools should not assume “a pupil’s SEND automatically requires behavioural support to be put in place”. However, the majority of students who do require behavioural support are currently not being granted access to that support.

The Exclusions Guidance has been revised to “reflect the government’s ambition to create high standards of behaviour in schools so that children and young people are protected from disruption and can learn and thrive in a calm, orderly, safe, and supportive environment.” It’s clear from [the lack of EHCPs awarded](#); the [rise in children moving into specialist education](#); and the [consistent inequality in outcomes between Disabled and non-Disabled students](#) that Disabled children are rarely given the opportunity to “learn and thrive” in a “safe, and supportive environment”.

The SEND review highlighted that, although there are 1.4 million students identified as having SEND, only 51,800 have been awarded an EHCP. That’s less than 4%. EHCPs are only ever awarded to the students who local authorities deem to have the ‘most severe’ needs. This leaves the majority of Disabled children without support, and more likely to be permanently excluded.

[The UNCRPD shadow report](#) highlights the impact that having an EHCP has on how a student’s behaviour is managed. Disabled pupils without an EHCP are five times more likely to receive a permanent exclusion than non-Disabled pupils, whereas those with an EHCP are 2.5 times more likely.

- ***Recommendation: Legal obligations under the Equality Act must come first in a school’s response to a Disabled child’s behaviour, not act as an after-thought. This must be made clear in both the revised guidance documents. Before schools can reprimand any Disabled student – especially suspend and exclude them – they must provide evidence of the reasonable adjustments they have implemented to make the pupil’s school environment accessible. If they cannot evidence this, the child’s distressed reaction to an unsafe and inaccessible setting should not be the responsibility of the child or their parents, but of the school who have failed to meet their legal obligations under the Equality Act 2010 (and the Children and Families Act 2014 where the child has an EHCP that is not being effectively implemented).***

V. The delays in accessing a diagnosis, and the psychological impacts of a late diagnosis, have not been addressed.

[Children are currently waiting up to 5 years for an NHS autism assessment](#), and up to 4 years for an ADHD assessment. This delay in diagnosis prevents support and reasonable adjustments being put in place for Disabled students. Aside from the difficulties accessing an inaccessible education, the way in which Disabled children waiting on a diagnosis are treated under current behaviour guidance has a dramatic impact on a child's wellbeing and their engagement at school. It can also have lasting psychological impacts after their diagnosis.

For example, students with Dyspraxia are often taught that their difficulty with organisation and meeting deadlines, or their handwriting, is laziness. Whereas students with other neurodivergent conditions like ADHD are often taught that they are naughty, or not skilled academically. This can leave students disengaged and not wishing to continue their education as they're taught to believe that they are the problem, and that school isn't for them.

Earlier identification of these conditions in school, and less delays for a formal diagnosis, would help to solve this.

VI. Disabled students are disproportionately bullied at school and are rarely granted access to the emotional support required to deal with this.

Disabled children are [significantly more likely to experience bullying](#), experiencing double the rate of bullying than their non-Disabled peers. This makes school a more distressing environment for Disabled students and means that their requirement for emotional and behavioural support is higher. Once again, the guidance's aim to ensure "children and young people are protected from disruption and can learn and thrive in a calm, orderly, safe, and supportive environment" isn't being met for Disabled children who can't access an education free from bullying and harassment.

Disabled children may even be punished for reacting in distress to being bullied by their peers. This is something that could be identified and tackled quicker if schools prioritised understanding the triggers of a Disabled student's disruptive behaviour.

VII. Academia is prioritised over behavioural and social education, often the latter is not effectively covered. Neurodivergent students are more likely to need support in these areas.

The Behaviour in Schools guidance states that "being taught how to behave well is vital for children to succeed personally and for them to successfully navigate the communities they inhabit", however the current guidance and the way in which it is delivered fails to teach this to neurodivergent students.

As previously mentioned, the current school system's approach to behaviour is built for non-Disabled and neurotypical children. The guidance acknowledges the importance of this education, and a school's responsibility to provide it, yet in practice there is not efficient provision for neurodivergent students to learn these same skills.

VIII. Mainstream schools must have the same expectation and responsibility to support Disabled students with potentially disruptive behaviour as specialist schools do.

Funding for [specialist schools is currently being prioritised over implementing reasonable adjustments in mainstream education](#) for Disabled students. Since 1999 the percentage of children in England with an EHCP attending segregated education settings has risen from 35.4% to 49.6%, while those attending mainstream school has fallen from 64.6% to 50.4%. Mainstream settings have the same legal duties to implement reasonable adjustments and make education accessible to Disabled students, yet more frequently Disabled students are left with no choice but to move to specialist education settings because mainstream schools continue to be unsafe and inaccessible environments.

[In 2021 there was an additional 11,655 pupils without an ECHP educated in segregated settings.](#) This highlights how it's becoming easier to access specialist segregated settings than it is to access legally binding support in mainstream education.

It's imperative that the solution to disruptive behaviour by Disabled students isn't to remove them from their mainstream setting on the justification that specialist school is the only suitable provision for them. Specialist education should be a choice for students and parents, not a necessity due to the negligence of mainstream schooling.

Response to be sent to:

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