



Response to “[Solving the Special Educational Needs and Disabilities \(SEND\) Crisis](#)” Education Select Committee Inquiry

Introduction

Disability Rights UK (DR UK) is a national organisation led and run by Disabled people for 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 other organisations led by Disabled people across the UK.

Funded by the Department for Education, we provide support to Disabled students via our [Disabled Students Helpline](#) and [Advice and Information Resources](#). We also engage with young people directly via [our TikTok](#) and engagement networks, like the [Disabled Apprentice Network \(DAN\)](#). We aim to empower young Disabled people with knowledge of their rights and an awareness of their options.

Background

The scope of this inquiry is disappointing.

For too long, Disabled children and their families have been blamed for the failures of the SEND system, and those failures have been misrepresented. Growing demand, financial unsustainability, and pressure on local authorities and schools are the most common issues highlighted, always implying that the problem that needs solving is the needs of Disabled children, not the system built to gatekeep and delay support.

Equal access to education, as per every young person’s human right, is not an economic debate. Treating it as such is what has led to a vacuum of accountability, poorer outcomes for Disabled people, and the vilification of parents and young people fighting to access what they’re entitled to. To chronically underfund SEND provision is a political choice, not inevitable nor necessary.

The SEND crisis is a consequence of entrenched and systemic ableism in the Education system — from the top to the bottom, in policy and practice. Trying to solve the crisis without acknowledging this will only exacerbate current inequalities. Pretending that a crisis built from ableism can be fixed via system tweaks is misguided, and prioritising financial sustainability is insulting to all the Disabled young people currently being failed.

Transformative change, co-produced with disabled people and with the necessary funding, can provide Disabled children with equal access to education.

The evidence we submit to this inquiry will provide an overview of some of the key barriers that require urgent action and suggest recommendations.

Support for children and young people with SEND / Current and future models of SEND provision

The education system is institutionally and systemically ableist.

The SEND crisis goes beyond the barriers to Education, Health, and Care Plans (EHCPs) and the delays in identification and diagnosis. The education system was never built with us in mind, and Disabled pupils face disproportionate barriers compared to their non-disabled peers. This is highlighted by the increased reliance on specialist settings, as mainstream schools have become less equipped to meet the needs of every child and often refuse to try.

Between 1999 and 2021, [the percentage of children in England with an EHCP attending mainstream settings fell](#) from 64.6% to 50.4%, while those attending 'special schools' and other segregated settings rose from 35.4% to 49.6%. In 2021, an additional 11,655 pupils without an EHCP were educated in segregated settings.

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 are deemed unsafe and inaccessible environments.

- **Recommendation:** *The only way to improve inclusion in mainstream settings is to remove the systemic barriers that were originally designed to exclude us. The education system requires transformative change, co-produced with Disabled people.*

Policy and practice prioritise gatekeeping support.

The current default is to refuse support and waste time and resources on tribunals. 2023-24 saw [21,106 appeals](#) to the SEND First Tier Tribunal – an increase of 54.53% from the previous year. These appeals were not only to secure an EHCP but also to dispute a lack of support provision in previously agreed plans – and local authorities almost always lose. You can read more on appeals and tribunals in the accountability and financial sections of our evidence.

A concerning response to the rise in appeals and tribunals has been proposals to limit the rights that give us access to tribunals. The law is not the issue – it is local authorities' consistent refusal to act on their legal obligations until they are forced to via tribunal.

Families face hurdles at every stage, from years-long waiting lists to get diagnosed to battling councils for the support they're entitled to and getting schools to take them seriously. They are expected to become legal experts and self-advocates, but many parents don't have the capacity or resources to do this — nor should they need to.

- **Recommendation:** *The priority in SEND provision must be meeting the child's needs and delivering their rights, rather than restricting resources wherever possible. It would be far more efficient and less distressing if councils followed their legal obligations at the outset and didn't unlawfully deny support at the first hurdle. A better accountability process must be in place when this happens.*

The current SEND system ignores provision for the majority, despite legal obligations.

According to [the SEND review](#), less than 4% of pupils identified as having SEND have an EHCP.

EHCPs are extremely difficult to obtain and are restricted to those considered to have the 'highest' support needs. However, when they are unlawfully rejected or don't provide the necessary level of support, the tribunal process enables families to challenge those decisions. For those deemed unqualified for an EHCP, there isn't the same infrastructure that can help to challenge a lack of support.

Too often, when discussing the SEND crisis, the conversation is limited to the delivery of EHCPs, which, although incredibly important, is only part of the emergency.

Education providers' legal obligations go beyond the Children and Families Act 2014. They also include the Equality Act 2010 and the Human Rights Act 1998. The Government is also responsible under the articles of the United Nations Convention on the Rights of Disabled People (UNCRDP). Regarding domestic legislation, this should mean that education providers cannot discriminate against a Disabled person, that a Disabled child has equal access to education, that we should not be put at a significant disadvantage, and that reasonable adjustments must be provided. Regarding international law, the Government is obliged to proactively work towards building an inclusive education system and co-produce policy with Disabled people. At every stage, on every level, these laws are not being delivered.

- **Recommendation:** *An accountability framework must be created to ensure the adjustments and support we're entitled to are delivered for the many Disabled young people currently being overlooked. Education providers must understand that their obligations go beyond EHCPs, and no Disabled person should be put at a disadvantage at school.*

The crisis in support provision happens before the classroom.

The SEND crisis is about more than barriers to support plans. It's about the systemic barriers to education and the inequalities exacerbated by policy that prevent us from getting to and staying in school.

There are many examples of this, but some notable ones include the crackdown on attendance, disproportionate exclusions, transport restrictions, and inconsistent financial support.

- **The crackdown on attendance**

Policy and practice that tackle low attendance have become increasingly harmful and unnecessarily aggressive. [Parents are being criminalised](#) for supporting Disabled children who cannot attend school – often due to the fact that school is an inaccessible and unsafe place and support isn't being delivered. [Campaigners at Square Peg](#) have heard experiences of schools forcing entry to homes, with community police, and demanding children come to school immediately. Scaring children into school does not overcome the barriers that lead to their absence.

- **Disproportionate exclusions**

Despite only making up 15% of the school population, Disabled students make up [nearly half of all school exclusions](#). In primary school alone, [we made up nearly 90% of those permanently excluded](#) over the past five years.

The way in which schools manage behaviour is discriminatory - disciplining a child's reaction rather than removing the trigger, often caused by an inaccessible environment and the school's failure to deliver reasonable adjustments. [Disabled pupils without an EHCP are five times more likely to receive a permanent exclusion](#) than their non-Disabled pupils.

- **Transport restrictions**

Cuts to funding mean [families face many barriers to accessing transport](#) – particularly post-16. Once a young person turns 16, there is no automatic right to free transport, even for those with an EHCP – despite the fact that everyone must remain in education or training until 18. Local authorities set their own transport policies, which often result in reduced provision and requests for families to contribute to costs. This has a disproportionate impact on Disabled students who may need to travel further to their most suitable education setting and may require additional support to travel safely.

- **Inconsistent financial support**

Disabled students in non-advanced Further Education face significant financial barriers due to the limitations of social security. Child Benefit and Child Tax Credit or the equivalent under Universal Credit are available to families while their child is in full-time education, but these are stopped if part-time study is more appropriate for a Disabled student's needs. All child-related benefits end once a young person turns 20, which disproportionately affects Disabled students who may take longer to achieve their education goals. Parents cannot claim child-related benefits beyond the age of 20, and there is no access to any maintenance funding – unlike the Higher Education system. This can push young Disabled people out of education and into poverty.

- **Recommendation:** *Policies must be reformed, and co-produced with Disabled people, to ensure that Disabled students aren't disadvantaged, penalised, or treated unfairly due to circumstances beyond their control. For a more detailed overview and recommendations on these barriers, read our previous consultation responses on [our website](#).*

Accountability and inspection of SEND provision

The SEND system has a vacuum of accountability at every stage and level, which has enabled and normalised widespread unlawful practice.

As the committee's last inquiry highlighted in 2019, there are failures at every stage of the SEND system. Central Government aren't held accountable for chronic underfunding, the Department for Education aren't held responsible when they fail to oversee the implementation of their policies, and Local Authorities and Schools aren't challenged when they ignore their legal obligations.

The following will provide an overview of some of the key concerns we have regarding accountability in the SEND system.

- **Tribunal outcomes highlight the extent of unlawful behaviour**

Last academic year saw [the lowest Local Authority SEND tribunal success rate](#) on record at 1.3%. This means that Councils' original decisions were found to be unlawful 99% of the time. These numbers are completely unacceptable and demonstrate how unlawful refusal of support has become the expectation rather than the exception for nearly all Disabled pupils across the country. These numbers prove that local authorities' priority is to gatekeep support first, wasting resources in the long run. Devaluing the needs of the child and prolonging the distressing process.

- **Ableist attitudes are common and not challenged**

Institutionalised ableism can be identified in all of the above examples, but this isn't just demonstrated in discriminatory policies – it's also demonstrated in a culture of explicit bias.

This culture is set at the top of the system – where the Government underfunds SEND provision to breaking point and then scapegoats Disabled children and their parents as the cause of the crisis. Disabled children's needs are de-prioritised in the curriculum and in practice. This includes a lack of training for staff to support us, no education on our rights or inclusion, and a lack of co-production with families who have lived experience of the SEND system - opposed to tokenistic parent engagement.

This dismissive culture is also emphasised on an individual level. Warwickshire County Council demonstrated a microcosm of the entrenched culture across the SEND system last year when several councillors received complaints following [ableist comments made in a public meeting](#) – dismissing the traumatic experience of families and undermining the legitimacy of their obligations to provide support. All complaints were dropped by the council, and the councillors faced no consequences.

- **The current accountability systems we have for schools do not represent the needs of Disabled young people.**

Current education accountability systems don't effectively consider the needs of Disabled young people. The marketisation of education values scores and league tables over individual pupil experience, and this leads to marginalised pupils being left behind. Schools' rigid focus on outcomes in line with OFSTED benchmarks is not a framework that prioritises supporting each individual child to reach their full potential. The focus on assessment outcomes also ignores the child's well-being. Assuming that as long as a young person gets satisfactory grades, then they must not require support can negatively impact their wellbeing, confidence, and aspirations for the rest of their lives.

There are also biases within OFSTED frameworks which disproportionately impact Disabled pupils. For example, the focus on attendance is discriminatory. Schools have long celebrated attendance, awarding the children who come to school the most – with no recognition that many children face unavoidable barriers to coming to school. The prioritisation of attendance in OFSTED scoring can also lead to the social exclusion of Disabled children – where classes compete and are awarded for their overall attendance score, and the individual children who bring down the average are unfairly penalised by students and teachers alike.

Nothing currently holds the system accountable when it fails to deliver SEND provision, and wider education accountability systems do not consider or represent the needs of Disabled pupils.

- **Recommendation:** *Develop a tangible accountability process for all services currently failing the SEND system. For example, introduce a SEND ombudsman for local authorities and co-produce new OFSTED regulations with Disabled people and our organisations which prioritise assessing inclusion and don't overlook the experiences of marginalised groups.*

Finance, funding and capacity of SEND provision

Ensuring Disabled children have equal access to education, as per their human right, must be a given – not an optional financial decision.

As already discussed, the Government have failed in their duty to fund local authorities and enable them to deliver the necessary support. This must change. The narrative that chronic underfunding can't be helped and Disabled children's needs are an unmanageable burden must also be challenged.

Additional funding is needed from the Government, but the misallocation of funds by local authorities must also stop. Local authorities justify gatekeeping support as a necessary defence against the growing demand for SEND provision, but the reality is that their insistence to make unlawful decisions is a huge waste of resources that could be spent on delivering support.

[Research by Special Needs Jungle](#) found that in 2023-24, local authorities allocated approximately £153 million to tribunal appeals. In the same year, SEND tribunals

cost the Department for Education £13.5 million. Overall, over £165 million in resources was wasted on tribunals last year, which, as highlighted earlier, local authorities would have lost almost every time.

Since the SEND reforms in 2014, it's estimated that local authorities have spent half a billion pounds (£580 million) defending SENDIST tribunals and only scoring an average 4% success rate at hearings over that period.

Research also suggests that wider costs, particularly to the Ministry of Justice, will likely [reach tens of millions of pounds per year](#).

There's a common narrative that despite unprecedented investment, outcomes for Disabled pupils have not improved. This narrative ignores the fact that no investment has ever come close to filling the spiralling deficit in SEND resources, and there has never been any effort to remove the systemic barriers to education that prevent Disabled pupils from reaching their full potential.

- **Recommendation:** *The Government must urgently fill the growing deficit in the SEND system, to enable local authorities and education providers to meet their obligations. The culture in local authorities of gatekeeping support at the first stage must also be challenged, and councils who unlawfully reject support must face strict accountability. Rights shouldn't be limited in the tribunal system, but a shift in culture should mean less reliance on tribunals.*

Conclusion

The normalised framing of SEND provision as an issue of 'financial sustainability' rather than an indispensable human right is a failure by all involved. A Disabled person's equal access to education is not a political pawn, and the distressing experiences of those fighting to get what they're entitled to are not an acceptable scapegoat for the failures of the system.

The SEND crisis requires urgent action and strong challenge from the committee – not an echo of the Government's excuses.

We aren't in education forever, and every day that the SEND emergency isn't resolved, we fail more Disabled children who leave school, and the trajectory of their life is set by a neglectful and discriminatory education experience.

The most powerful way to tackle disability inequality in this country is to co-produce transformative change in education with Disabled people and our organisations, to create a system that no longer sets Disabled children up to fail.

Inquiry response to be sent to: educom@parliament.uk