# World of Inclusion submission to the UK Parliament Education Select Committee, special educational needs and disabilities inquiry.

1. **World of Inclusion Ltd** ( Co. No. 07207792 [www.worldofinclusion.com](http://www.worldofinclusion.com) ) is an organisation providing consultancy, advice, training and resources on achieving disability equality and inclusive education to schools and colleges in the UK and around the world. World of Inclusion has considerable experience in identifying and combating disability discrimination, harassment and bullying and developing school and local authority policies promoting disability equality and inclusive practice. We are a DPO and operate from a social/human rights approach. Richard Rieser our CEO is a disabled teacher, writer, trainer, consultant and film maker and has played a leading role in the development of policy and practice for disabled students. He was a contributor to the 2014 SEND Code of Practice with regard to disability discrimination and was at the United Nations contributing to the development of Article 24 of the United Nations Convention on the Rights of Persons with Disabilities (2006) and the UNCRPD Committee General Comment No 4 (2016)[[1]](#footnote-1).
2. **Scope of our response** Your Committee Chair, Robert Halfon MP, has said ‘One of the primary objectives of the Education Committee is to address social injustice in education. Understanding and addressing the challenges faced by children and young people with special educational needs and disabilities is an important part of this work’. Then it is necessary for the Committee to not just examine the impact of the Children and Families Act 2014, Part 3, but also the context created by other Government Policies and the wider International Human Rights’ obligations in the education of disabled children and young people.
3. **The UNCRPD,** ratified by the UK Government in July 2009, places strong obligations on the Government and devolved administrations with regard to the education of disabled children and young people. All those identified with Special Educational Needs (SEN) are also likely to ‘have a long term physical or mental impairment that has a substantial negative impact on their ability to carry out normal day to day activities’[[2]](#footnote-2) which means they are disabled. The Government placed a reservation and interpretive declaration against Article 24 and this continues to limit the Article’s scope.
4. **UNCRPD reservations** When the UK government ratified the UNCRPD in June 2009 it placed restrictions on its obligations. Two of those relate to Article 24. The first  changes the UK’s definition of a ‘general education system’ to include segregated education:

*“The United Kingdom Government is committed 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. The General Education System in the United Kingdom includes mainstream, and special schools, which the UK Government understands is allowed under the Convention.” (Interpretative Declaration on Education – Convention Article 24 Clause 2 (a) and (b)).*

As someone who helped write Article 24, special schools are not part of inclusive education. The second reserves the UK’s right to send disabled children to special schools outside their local area:

*“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.” (Reservation: Education – Convention Article 24 Clause 2 (a) and 2 (b))*

The UK is one of only two countries in the world to place restrictions on Article 24 (the other being Mauritius). This is completely unacceptable and we are working to get these restrictions overturned.

In September 2016, the UN Disability Committee published a General Comment on Article 24 setting out how governments can move towards greater inclusion. The UK has ignored this and remains out of step with the rest of the world.

1. **UNCRPD Criticisms of Education in England** In August 2017 the UN Disability Committee scrutinised the UK government’s implementation of the UNCRPD. Their findings published in October 2017 highlight the UK’s failings across all the Convention articles, including Article 24, reproduced in Appendix 1 *[[3]](#footnote-3).*
2. World of Inclusion submitted evidence to this UNCRPD Committee Review [[4]](#footnote-4)and we concur that the conclusions are justified and seriously be considered by the Select Committee. However, even the UK Government reservation says ‘*parents should have increasing access to mainstream schools and staff which have increasing capacity to meet the needs of disabled children*’. This has not happened. An increasing number of mainstream schools say they ‘can’t meet need’ when local authorities seek to place disabled children at their school. The Committee should investigate the factors involved.
3. **Statistical Trends** from data over the last 10 years. A drop in numbers on school support and a rise in numbers and proportion of students with higher needs in segregated special schools.
4. From 2010 to 2017, numbers on school support have fallen in both primary and secondary schools, more so after the 2014 reforms, particularly steeply in sponsored academies. In primary 2012 24%, compared to 14% in 2017. In sponsored secondary academies and free schools the drop over the same period was 26% to 13% . Such differences are not occurring for those with EHCP/statements, which have remained constant at 2.8%[[5]](#footnote-5) .
5. The numbers and proportion of those with EHCP/statements in mainstream have reduced radically since 2007, more so since 2014 and the numbers in special schools have increased by 20,765 or 22.37%. The increase in population has only risen by 6.23%[[6]](#footnote-6) and shows a definite rise in segregation and away from inclusion for this group of students with higher needs. The numbers with an EHCP/statement has also more than doubled[[7]](#footnote-7). In 2018, 128,144 children and young people with an EHCP/statement were in all types of mainstream schools and 126,960 in all types of special school. If the 2,330 in alternative provision are added, this leads to 50.02% children with higher level SEN in segregated provision than mainstream schools[[8]](#footnote-8). The presumption of mainstreaming in legislation since 1981 appears to no longer hold. The doubling of Higher Needs learners in independent special schools which are **much more costly** (7760 in 2007 to 14,065 in 2017) is also of concern.
6. **Mainstreaming** Section 33 of the C&F Act has a presumption of mainstreaming which is clearly no longer working.*“ In a case within section 39*[*(5)*](http://www.legislation.gov.uk/ukpga/2014/6/part/3/enacted#section-39-5)*or 40*[*(2)*](http://www.legislation.gov.uk/ukpga/2014/6/part/3/enacted#section-40-2)*, the local authority must secure that the plan provides for the child or young person to be educated in a maintained nursery school, mainstream school or mainstream post-16 institution, unless that is incompatible with—(a)the wishes of the child’s parent or the young person, or(b)the provision of efficient education for others.”*  Article 33 specifies that the local authority in general (3), in particular (4) and governors, proprietors or principals of schools (5) can only rely on an exception if they can *‘show that there are no reasonable steps that they or the local authority could take to prevent the incompatibility’.* The very useful statutory guidance Inclusive Schooling [[9]](#footnote-9) was no longer in force from September 2014. This explained how schools should interpret the law around Section 316 of the Education Act, as amended by 2001 Act, whether the school could meet need and what steps they should take to accommodate students. No new guidance was introduced to replace it. However, there are now many other factors making it more difficult for schools to meet need of children with SEN.
7. **The SEND reforms are not a leading part of the Government’s education changes.** Its policies all militate against the inclusion of children and young people and those with special educational needs. These include:-
8. Setting up more free schools and sponsored academies which have their own admission policies, parents have no recourse to independent appeal panels or the Ombudsman, are reducing numbers of disabled learners and with special needs faster than other schools. This is leading to a large number of new special free schools , academies and alternative provision which are increasing the pressure for segregation against Government international obligations to develop inclusion.
9. The expansion of grammar school places are selective and drain more able learners from the surrounding schools, reducing scope for peer support and peer tutoring.
10. The introduction of a new knowledge based, narrower curriculum with less emphasis on project work and creative arts makes it more difficult to maintain interest and differentiate. The loss of National Curriculum levels with teacher moderation which were effective at identifying progress. The abolition of the p-scales, introduced as a teacher assessment tool in the face of the inadequacies of the 1988 National Curriculum for learners, with SEN working towards level 1 of the NC. The Rochford Report[[10]](#footnote-10) which the Government proposes to replace them with, will provide no continuity or progression for those working below the National Curriculum, instead replacing this with a statutory duty to assess pupils not engaged in subject-specific learning against the following seven aspects of cognition and learning and report this to parents and carers: responsiveness, curiosity, discovery, anticipation, persistence, initiation, investigation.
11. High stakes testing devalues the achievements of those who work below their expected national curriculum level. Progress 8 and Attainment 8 start at 2 NC levels above the previous curriculum level. There is insufficient recognition of alternative qualifications such as entry level, ASDAN or BTEC which evaluate students fulfilling tasks and course work. The Baccalaureate and new GCSEs reliance only on examinations have an echo of a Eugenic past, where intelligence testing condemned generations of people with learning difficulties to institutions.
12. The narrow rigidity of the OFSTED framework does not seem to recognise good inclusive provision and does not value good below expected level progress for learners with SEN. This can lead to the dire consequences of placing a school in a category[[11]](#footnote-11) and creating a fear of admitting students with SEND.
13. Government rigid policy on behaviour not recognising that many impairing conditions can lead to inappropriate or continuing disruptive behaviours, often at a low level, which account for the largest number of fixed term and permanent exclusions. The largest number are those with Social, Emotional and Mental Health impairments (1.84% permanent and 43.23% fixed term). There is little enforcement of the right to reasonable adjustments where impairment impacts on their behaviour, such as anger management, peer support and behaviour support to keep these students in school and allow them to thrive, as required by the Equality Act 2010. Primary pupils in mainstream with school support are 18.6 times more likely to be excluded on a fixed term than a pupil without SEN and 33x more if they have an EHCP/statement. With teenage behaviour, the level of exclusion goes up for the whole cohort, but secondary mainstream students with SEN support are 4.13x more likely to be excluded than those with no SEN and those with an EHC Plan or statement are 4.13 times as likely to be excluded fixed term in 2015/2016 in English schools.[[12]](#footnote-12)Ambitious about Autism obtained figures from Government that show a 44% rise in exclusions from 2011/12 to 2015/16[[13]](#footnote-13).
14. The increasing reliance on placing
15. **Against the bias to inclusion** Governments since 2010 have a misguided and unsubstantiated policy ‘against the bias to inclusive education’[[14]](#footnote-14). This has been highly damaging to disabled children in mainstream schools. There was never such a bias, but this policy has acted as a brake on supporting and developing inclusion in our mainstream schools. Throughout this period, at least 90% of children with identified disabilities or SEN have attended mainstream schools until last year. (DfE statistics in 2016 show the vast majority, 90.6 percent, of school pupils and students with SEN are in mainstream schools -121,525 with statements or EHC Plans and 991,980 school support In 2017, this drops to 86% 116,255 with EHC Plans or statements and 915,355 school support. [[15]](#footnote-15) ) The Children and Families Act and subsequent SEND Code of Practice mainly concentrated on the minority with a statement, converting these to Education Health and Care Plans, little addressing the needs of the majority of disabled children in mainstream schools. Section 33 & 34 ensure placement for the large majority without a plan or statement in mainstream school ‘*Those concerned with making special educational provision for the child must secure that the child engages in the activities of the school together with children who do not have special educational needs’.* Increasingly teachers and schools are finding the pressures from beyond the school are making this difficult. There is not sufficient wholeschool training with grants available and insufficient input on initial teacher training. [[16]](#footnote-16)
16. An emphasis in the reforms on SEN –[Assess, Plan, Do, Review](http://www.specialneedsjungle.com/assess-plan-review-involving-parents-new-sen-graduated-response/) hardly compensates. The SEND Code of Practice limits itself to Chapter 1 to talk about disability. But the vast majority of children with special educational needs also tick the definition of disability under the 2010 Equality Act. This definition is not a high threshold and was drawn up in this way to protect from discrimination.
17. A major failure of the reforms was to not give sufficient weight to the Equality Act Duties schools have towards disabled learners, a lack of enforcement and scrutiny of these duties. To be recognised by the school as disabled, the child **does not need a medical diagnosis**. The school can be told by the parents or surmise this for themselves. Thus, if the school has placed a child/young person on SEN Support, it is very likely that the definition will apply to them. It is also likely to apply to young people with medical needs and mental health issues who are not on SEN support. As soon as the school is informed, they have a duty to make **individual reasonable adjustments** including providing auxiliary aids and support for those who count as disabled. The duty to make reasonable adjustments is an**anticipatory duty**.
18. There is a duty on Governing bodies or proprietors of schools, before knowing about an individual, to adjust their policies, provision, criteria and practices to not put disabled people at a substantial disadvantage and take steps to meet the likely needs of disabled learners with the need to make reasonable adjustments. For example, admissions, exclusions, sports activities, school activities and trips, lunch time/after school activities and access to learning, should have been regularly reviewed and adjusted so as not to place disabled people at substantial detriment. **This is not happening!** The school is under a duty to not discriminate directly, indirectly or on the basis of issues arising from disability, and to eliminate bullying and harassment. Disabled children and young people experience the highest level of [bullying](http://www.specialneedsjungle.com/tips-to-help-a-bullied-child-anti-bullying-week/) and harassment in our schools. The Anti Bullying Alliance focuses on this. Unless school staff and students take ownership of zero bullying, not much will change.[[17]](#footnote-17) The Government does not provide clear advice, training or guidance on these duties.
19. World of Inclusion find that schools and their leaders no longer prioritise this type of training. This compares to our previous organisation Disability Equality in Education, which between 2000 and 2008, provided highly evaluated training to 150,000 teachers and other educational professionals. Independent evaluations demonstrated that this training changed attitudes and practices. It was based on a Social model approach in line with the UNCRPD, to which the Government says it subscribes. There is little evidence of this in the Department for Education edicts, SEND Code of Practice or legislation. This training is essential for the vast majority of schools to take seriously their responsibilities on disability equality or inclusion.
20. If there are breaches in the current Equality Act or presumption of inclusion, it is left to individual parents or the affected young person to apply to the SEN Disability Tribunal for redress. There is no statutory body that oversees schools on implementation such as school inspectors - **OFSTED or the Equality and Human Rights Commission should do this.**
21. OFSTED have a responsibility for ensuring ALL schools in England have an up to date Access Plan under the Equality Act, 2010 Section, Schedule 10 covering access to the environment, learning and formats other than written English-e.g. Braille, BSL and Easy Read.[[18]](#footnote-18)
22. There is no separate funding stream to schools from Government to implement this legislation. It is not monitored and there is no end date when all schools have to meet access standards. Only new or refurbished have to meet access standards. Lack of physical access or access to the curriculum is regularly used as an excuse to keep disabled students out of the school. This is a breach of Article 9 UNCRPD -Accessibility and the right to temporary adjustments until the necessary structural changes have been made.
23. **Funding** The current ‘perfect storm’ around SEN funding has to be tackled urgently otherwise the whole structure will be put in jeopardy.
24. Higher Needs Budgets are not keeping up with big increases in demand, partly caused by expansion to 19-25.
25. 4,152 students with an EHC plan are not placed in school in 2017/18 compared to 776 in 2010[[19]](#footnote-19).
26. The unlawful practice of off rolling is being widely practiced with upwards of 100,000 learners, mainly with SEN , not in school[[20]](#footnote-20).
27. The large increase in home education of SEN children has caused concerns to the School Adjudicator[[21]](#footnote-21).
28. There are at least 4 Judicial Reviews from parents against Local Authorities for proposed cuts in EHC Plan provision.
29. The cuts in SEND school support are massive, with reductions in teaching assistants and specialist teachers in nearly every school to meet budget reductions.
30. **Parental Satisfaction with the Reforms.**

I n 2008 in a Warwick University survey for the Lamb Inquiry 25% of parents reported they had no confidence in the SEN system for their child.[[22]](#footnote-22) Research commissioned by DFE into parental satisfaction published in 2016[[23]](#footnote-23) found overall satisfaction but a minority 20-25% not satisfied. A qualitative survey in 4 Local Authorities only it identifies barriers in structures, procedures, skills and resources. Another larger scale survey of parents with EHC Plans completed in 2015 found 33% of parents not satisfied overall. [[24]](#footnote-24) This should not be happening after Pathfinder surveys before the reforms and suggests a similar level of dissatisfaction as in 2008.

1. **The Select Committee should be proposing**
2. A ring fence on school notional SEN budgets so the money cannot be used for non SEN support. Schools are using their notional SEN budget to cover cuts.
3. Reversal of school budget cuts. Despite increases in funding this is not keeping up with extra costs or roll rises.
4. Increase in Higher Needs Budgets to keep up with the increasing demand for EHC Plans.
5. Mandatory annual training for all teachers on effectively including learners with SEND in the curriculum and school social life. Many teachers continue to say they are not equipped to cope with SEND pupils.
6. Revision of OFSTED framework to include practice on SEN/Inclusion, Anti-Bullying, implementation of Equality Act Duties and school access plans.
7. Revision of assessment criteria to reward schools financially for the progress of students with SEND.
8. Valuing alternative continuous assessments and broadening the curriculum to restore creative subjects.
9. Strong Government guidance on implementing the Disability Equality duties in school, including differentiated behaviour policies linked to earmarked funding for training.
10. Reinstating powers to local authorities to increase mainstream resourced provision.
11. Mandatory meeting of school staff with parents of students with SEND three times a year. This is not happening.

**Richard Rieser CEO World of Inclusion [rlrieser@gmail.com](mailto:rlrieser@gmail.com) 07.06.2018**

**Appendix 1 UNCRPD Committee Conclusions on UK Article 24 Education October 2017**

*“The Committee takes note of the information provided by the State party about its reservation to article 24 (2) (a) and (b) of the Convention in relation to new evidence or research findings.*

*51. The Committee recommends that the State party withdraw its reservation to article 24 (2) (a) and (b) of the Convention without further delay. The Committee is concerned at:*

*(a) The persistence of a dual education system that segregates children with disabilities in special schools, including based on parental choice;*

*(b)The increasing number of children with disabilities in segregated education environments;*

*(c)The fact that the education system is not equipped to respond to the requirements for high-quality inclusive education, particularly reports of school authorities refusing to enrol a student with disabilities who is deemed to be “disruptive to other classmates”;*

*(d)The fact that the education and training of teachers in inclusion competences does not reflect the requirements of inclusive education.*

*53. The Committee recommends that the State party, in close consultation with organizations of persons with disabilities, especially organizations representing children and young persons with disabilities, and in line with the Committee ’ s general comment No. 4 (2014) on the right to inclusive education and targets 4.5 and 4.8 of the Sustainable Development Goals:*

*(a) Develop a comprehensive and coordinated legislative and policy framework for inclusive education and a timeframe to ensure that mainstream schools foster real inclusion of children with disabilities in the school environment and that teachers and all other professionals and persons in contact with children understand the concept of inclusion and are able to enhance inclusive education;*

*(b) Strengthen measures to monitor school practices concerning enrolment of children with disabilities and offer appropriate remedies in cases of disability-related discrimination and/or harassment, including deciding upon schemes for compensation;*

*(c) Adopt and implement a coherent and adequately financed strategy, with concrete timelines and measurable goals, on increasing and improving inclusive education. The strategy must:*

*(i) Ensure the implementation of laws, decrees and regulations on improving the extent and quality of inclusive education in classrooms, support provisions and teacher training, including pedagogical capabilities, across all levels providing for high-quality inclusive environments, including within breaks between lessons and through socialization outside “ education time ” ;*

*(ii) Set up awareness-raising and support initiatives about inclusive education among parents of children with disabilities.”*

1. UNCRPD –United Nations Convention on the Rights of Persons with Disabilities <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

   UNCRPD Committee General Comment No 4 [www.ohchr.org/Documents/HRBodies/CRPD/GC/.../CRPD-C-GC-4.doc](http://www.ohchr.org/Documents/HRBodies/CRPD/GC/.../CRPD-C-GC-4.doc)

   The purpose of World of Inclusion and Richard Rieser’s recent CV can be found at <http://worldofinclusion.com/about> [↑](#footnote-ref-1)
2. The definition of disability in the 2010 Equality Act <https://www.gov.uk/definition-of-disability-under-equality-act-2010> [↑](#footnote-ref-2)
3. **Committee on the Rights of Persons with Disabilities :** Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland Concluding Observations Oct 017 United Nations CRPD/C/GBR/CO/1

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   [↑](#footnote-ref-3)
4. <http://worldofinclusion.com/world-of-inclusion-ltd-response-to-united-kingdom-response-to-list-of-issues-and-report-to-un-convention-on-the-rights-of-persons-with-disabilities-committee-for-forthcoming-scrutiny-on-23rd-and-24th> [↑](#footnote-ref-4)
5. Dr Alison Black Summary of recent trends research-rising special school placement, an academisation effect? In SEN Policy Research Forum May 2018 [↑](#footnote-ref-5)
6. Office of National Census 2018*Population Estimates for UK, England and Wales, Scotland and Northern Ireland* [Online] Available from:https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/pop

   ulationestimates/datasets/populationestimatesforukenglandandwalesscotlandandnorthernireland [↑](#footnote-ref-6)
7. https://www.gov.uk/government/statistics/statements-of-sen-and-ehc-plans-england-2018 [↑](#footnote-ref-7)
8. ibid [↑](#footnote-ref-8)
9. http://webarchive.nationalarchives.gov.uk/20110907141006/https://www.education.gov.uk/publications/eOrderingDownload/DfES-0789-2001.pdf [↑](#footnote-ref-9)
10. <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/561411/Rochford_Review_Report_v5_PFDA.pdf> [↑](#footnote-ref-10)
11. <https://www.teachers.org.uk/files/exam-factories.pdf> [↑](#footnote-ref-11)
12. Statistical First Release <https://www.gov.uk/government/statistics/permanent-and-fixed-period-exclusions-in-england-2015-to-2016> Jul 2017 [↑](#footnote-ref-12)
13. <https://specialneedsjungle.com/shocking-rise-in-autistic-pupils-being-excluded-from-englands-schools> [↑](#footnote-ref-13)
14. <http://www.bbc.co.uk/news/10088172>

    <https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1467-8578.2011.00514.x>

    <https://www.theguardian.com/commentisfree/2018/apr/16/pupils-special-educational-needs-children-mainstream-schools> [↑](#footnote-ref-14)
15. <https://www.gov.uk/government/statistics/special-educational-needs-in-england-january-2017> [↑](#footnote-ref-15)
16. The Carter Review whose recommendations on intioal teacher training were not made mandatory <https://www.gov.uk/government/publications/carter-review-of-initial-teacher-training> [↑](#footnote-ref-16)
17. <https://www.anti-bullyingalliance.org.uk/tools-information/all-about-bullying/sen-disability/what-does-research-say> [↑](#footnote-ref-17)
18. <http://www.legislation.gov.uk/ukpga/2010/15/schedule/10> [↑](#footnote-ref-18)
19. <https://www.theguardian.com/commentisfree/2018/apr/16/pupils-special-educational-needs-children-mainstream-schools> [↑](#footnote-ref-19)
20. <https://www.independent.co.uk/news/education/education-news/exclusions-teachers-off-rolling-exam-results-national-foundation-education-research-a8252436.html> [↑](#footnote-ref-20)
21. <https://www.tes.com/news/admissions-watchdog-disturbed-schools-using-home-education-roll-pupils> [↑](#footnote-ref-21)
22. <https://warwick.ac.uk/fac/soc/cedar/projects/completed2010/lambinquiry/report_v4.pdf> p75Full Lamb Report is relevant here as much of what recommended were ignored in the CFAct 2014 Reforms <http://www.specialeducationalneeds.co.uk/uploads/1/1/4/6/11463509/full_report.pdf> [↑](#footnote-ref-22)
23. <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/518963/Mapping_user_experiences_of_the_education__health_and_care_process_-_a_qualitative_study.pdf> [↑](#footnote-ref-23)
24. DFE 2O16 https://www.gov.uk/government/publications/education-health-and-care-plans-parents-and-young-people-survey [↑](#footnote-ref-24)