Special educational needs in 2005

> The whole of this Bill is about the best interests of the child and meeting them. It is about making special educational needs provision better. It is about improving the tribunal system. It is about ensuring that more resources are available in our schools for children with disabilities or special educational needs.
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> (House of Lords Hansard, 1 March 2001, Column 1295)

Baroness Blackstone committed the Government to these goals during the passage of the Special Educational Needs and Disability Act 2001 (SENDA). Three years after the Act came into effect, how does the Government score?

Ofsted says not very well. Its October 2004 report[1] found:

- no increase in the proportion or range of needs of pupils with special needs attending mainstream, and that 'progress towards inclusion in mainstream schools has slowed';
- only a minority of the mainstream schools it surveyed were offering children with difficulties high quality support, and few evaluated the effectiveness of their support;
- even the more committed schools did not think they could cope with children with high levels of need;
- a 10 per cent increase in the number of pupils placed in independent special schools and a 25 per cent increase in the numbers of pupils in pupil referral units between 2001 and 2003, indicating less ability to meet needs in state schools, whether ordinary or special;
- although SENDA requires schools to draw up disability access plans covering curriculum as well as buildings, 'over half of the schools had no disability access plans and, of those that did exist, the majority focused only on accommodation'.

Just two weeks before the publication of the Ofsted report, the Government's big annual statistical digest on schools was released[2]. More disturbing than Ofsted's conclusions was the revelation that while permanent exclusions of pupils *without* special needs had gone down by 579, permanent exclusions of children *with* special needs had risen by 334, a jump in one year of 6 per cent. Pupils with SEN constitute two-thirds of permanently excluded pupils, and pupil referral units (PRUs) now have more than two-thirds of their pupils classed as having special needs – discarded from mainstream. Indeed, PRUs are an enormous growth area, with pupil numbers climbing steeply from around 5,000 in 1995 to 13,000 in 2004. And the rise from 2001 is from 9,290 to that 13,000 high – an enormous percentage rise of 40 per cent.

Within the figures for exclusions of children with special needs, there is a contrast which spells trouble for the Government's policy of reducing statements of special need. Exclusions of children with statements have fallen by 9 per cent, while those of children with special needs but without the protection of statements have risen by the same percentage.

Swelling this chorus of bad news on special needs, disability and inclusion is the Qualifications and Curriculum Authority's 2004 annual report on inclusion, which included the observations that:

- there was a perception that SEN had fallen off the agenda in all mainstream high-profile initiatives;
- all respondents expressed strong views that performance tables militated against the inclusion of pupils with SEN in many popular schools.

The view on the ground

These official views confirm what many of those attempting to support parents and children (including ACE's advice workers) have seen as indicators of growing problems rather than successes.

John Wright of the Independent Panel for Special Education Advice (IPSEA) says that two things are evident from IPSEA's casework:

- an increase in local education authorities refusing to assess children's special educational needs;
- an increase in authorities refusing to quantify the help children need in statements, and instead leaving it for schools to decide what to do.

As can be seen from the exclusion figures, statements are useful. They give individual children real support, especially where parents know how they should be set out and what they are for. But local government, under pressure from Ofsted as central government's enforcer, has been attempting to reduce the number of new statements they issue. Authorities often refuse statutory assessment (which initiates statementing), even where

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[1] Ofsted (2004) *Special Educational Needs and Disability: towards inclusive schools*

[2] DfES (2004) *Statistics of Education: Schools in England, 2004 edition*

it is the school (whose professionals know the child best) which has asked for it.

Appeals against statementing decisions go the Special Educational Needs and Disability Tribunal. Appeals against refusals to assess have risen from 30 per cent of all appeals in 1997/8 to over 40 per cent in 2002/3.

However, it's only a minority of parents who appeal against decisions in statementing, and many parent advisers believe, like John Wright, that local authorities are routinely refusing to assess and are largely getting away with it. Indeed, says John, LEAs are dressing up this strategy as an inclusion policy.

Local authorities justify refusals to assess by pointing out that schools have now got much larger budgets for special needs because authorities have delegated this funding, and so should be able to cope with all but the most exceptional cases. Given Ofsted's conclusions above, this confidence may well be unmerited.

SENDA was accompanied by regulations requiring local authorities to give parents information about these delegated funds, information that would assure them that their child's needs could be properly met without a statement. This much vaunted transparency and accountability, although required by law, has not happened. And the information parents can expect from schools is to be reduced by the Government's new plans to cut schools' duty to report annually to parents.

But is lots of special needs money going into schools' budgets and improving life for pupils with special needs even if parents can't find out what's going on and advisers think that things are getting worse? In the National Union of Teachers' survey of SENCOs in March 2004, 'a common theme in all the responses was that pupils with SEN at the first two stages of assessment [i.e. without statements] received insufficient support'. Currently there are reports of local authorities with deficits slashing the special needs budget.

Rights and remedies

SENDA brought in a new right for parents to make claims against disability discrimination by schools. Has this helped parents and children?

Overall, it seems not. There has been a very low number of discrimination claims to the Special Educational Needs and Disability Tribunal (SENDIST) (at a peak of 81 in 2003/4), and a low success rate for the claims that were made. SENDIST's first President, Trevor Aldridge, was concerned that these results were probably not a true representation of life as it is lived in schools, that disability discrimination was indeed happening, but that parents and schools were ignorant of how to identify it and what to do about it. He suggested that governors described what it is and how to remedy it in their annual report to parents[3]. Perhaps that is unrealistic considering how often advisers see school policies that have obviously not been reviewed in the light of SENDA.

Even if more parents understood it, for many the process is too complex, the rewards are too little, and the threat of a total breach with the school their child attends is too great. Experts on this area point out that all successful cases have been taken against schools from which parents have already removed their children.

While cases remain so rare, there is little hope of this new legal remedy acting as an incentive to cultural change and the establishment of good practice. And David Wolfe, a leading education barrister who has argued some of the current leading cases in this area, thinks there is huge resistance to change:

> My experience is that, despite clear Government guidance and the decision of the Court of Appeal in H -v- Hounslow, many schools, LEAs and even SENDIST chairs have still not realised that the law now says that, where a parent wants their child included in mainstream, mainstream cannot be refused on the grounds that it is 'not suitable' for the child – it must be made suitable. And there is clearly a long way to go before the full implications of the Disability Discrimination Act permeate into schools.

The most drastic result of discrimination in education must be permanent exclusion, and for this parents do not appeal to SENDIST but to local non-expert appeal panels. ACE recently raised with the DfES three major problems specific to disability discrimination and exclusion appeal panels. We asked how many disability discrimination claims were made in cases of permanent exclusion. It appears that the Department does not know. Surely a Government that was determined to make their inclusion strategy work would want to know that where schools were taking the most penal action they could against pupils, and where so many of the pupils being excluded had special needs, there was an effective remedy for disability discrimination?

It looks, then, as though the practical help that children need if they have learning difficulties and/or disabilities is actually reducing, as is the political will to do something about it. The Government should try harder for the sake of vulnerable children and their frequently hard-pressed families.

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[3] Special Educational Needs and Disability Tribunal (2003) *Annual Report 2002/3*, p. 3.