

Written evidence submitted by IPSEA

Submission to the House of Commons Education Committee from IPSEA

Inquiry: Education: Are prisoners being left behind?

February 2021

Introduction

1. IPSEA (Independent Provider of Special Educational Advice) was established in 1983 and currently advises more than 4,000 parents and carers of children with special educational needs and/or a disability (SEND) every year.
2. We deliver two free and independent telephone advice services to parents/carers and young people. Our Advice Line provides legally-based next step advice on any educational issue that relates to a child or young person's SEND, such as exclusion from school, discrimination and the process for securing additional support. On our Tribunal Helpline we give next step advice on proceedings in the First-tier Tribunal (Special Educational Needs and Disability) – more commonly known as the SEND Tribunal. This is also the gateway to our Tribunal Support Service through which we represent parents who are making appeals or claims to the SEND Tribunal. The Tribunal hears disputes between parents and local authorities regarding educational support for children and young people with SEND and also claims of disability discrimination against schools.
3. Our helplines and Tribunal Support Service are largely delivered by volunteers, which enables us to provide our services to parents free of charge. The range of services that IPSEA delivers across England places us in a unique position to identify trends and common issues.
4. As well as training parents and carers on the SEND law framework, IPSEA also provides regular training to bodies such as SEND Information, Advice and Support Services (SENDIASS), education professionals and local authorities.
5. We have noted the Committee's terms of reference. This submission addresses point three of the call for evidence, specifically **how well individuals' additional learning needs are being met by the prison education and youth custody systems, including SEND and language and communication needs**. We also share the Committee's interest in **how school exclusion policy impacts on youth custody**, and will comment on this.

Unidentified and unmet need among young people with SEND in the prison system

6. The Government has stated that education and health should be at the heart of youth custody.¹ However, there is evidence from a number of sources of a high level of

unidentified and unmet special educational needs among the prison population, with many children and young people not receiving the provision and support they need.

7. We know that there is a disproportionate number of children and young people with special educational needs and/or a disability in youth custody. Ministry of Justice figures show that 32% of young people entering custody have learning disabilities or learning difficulties,² but it is unclear how they are supported. A new report by HM Inspectorate of Prisons finds that 25% of young people in secure training centres and young offender institutions report having a disability, with only half of this group saying they are getting support. Children who reported having a disability were significantly more likely to report that they had felt unsafe in detention than children who said that they did not have a disability.³
8. The most recent statistics from the Department for Education show that school pupils with SEN are increasingly identified with communication difficulties as their primary need.⁴ There is also a rise in children and young people with mental health difficulties as their primary need. Some of these children and young people will end up in youth custody. It is not clear how many of these young people receive any or all of the special educational provision they require, such as the therapeutic interventions that should be available through an Education, Health and Care (EHC) plan or SEN Support if they were in school. A lack of support can result in behaviour problems, resulting in young people being placed in behaviour management programmes without their underlying needs being addressed.
9. **There is not enough information on what happens to young people who enter custody with unidentified special educational needs, and whether these needs are identified and met.** However, the SEND Code of Practice is clear that providers in relevant youth accommodation should:⁵
 - Meet the educational needs of all detained persons, including those with SEN, whether they have an EHC plan or not;
 - Ensure SEN provision, identification and support of SEN follows the same model as for schools and colleges;
 - Have staff who are suitably qualified to support this and make referrals to other specialist support where this is appropriate;
 - Liaise and co-operate with the local authority where a detained person has an EHC plan.
10. We urge the Committee to recommend that:
 - The Ministry of Justice should collect detailed information on the number of children and young people in custody who have SEND, in the same way that data is collected

¹ Ministry of Justice (2016), The government response to Charlie Taylor's Review of the Youth Justice System.

² Ministry of Justice (2017), Key characteristics of admissions to youth custody April 2014 – March 2016.

³ HM Inspectorate of Prisons (2021), Children in custody 2019-20.

⁴ Department for Education (July 2020), Special educational needs in England 2019-20.

⁵ Department for Education/Department of Health (January 2015), Special educational needs and disability code of practice: 0 to 25 years (para 10.77).

on their ethnic background. This information should be broken down by types of need.

- Secure training centres, secure children’s homes and young offender institutions should all be required to report on how they are identifying and meeting the needs of children and young people with SEND.

Variable rights to special educational provision for young people in custody

11. The Committee has concluded in a previous wide-ranging inquiry into provision for children with SEND that too many children and young people do not receive the provision and support they need.⁶ This is also the case for young people within the youth justice system.
12. This is partly because the Children and Families Act 2014 and the SEND Code of Practice⁷ are not always implemented as they should be, and partly because some young people in custody are not covered by the current SEND legal framework.
13. **Too often, young people in custody get very little education at all, let alone additional help for their particular needs:** a recent HM Inspectorate of Prisons report states that only 49% of children and young people in custody said they had learned something that would help them on release.⁸
14. The SEND Code of Practice places an obligation on local authorities to meet the special educational needs of children and young people in custody with EHC plans “if practicable”. **If a child or young person has an EHC plan, this does not cease while they are in custody⁹. If practicable and it remains appropriate, the special educational provision set out in their plan *should* continue to be delivered, as well as any health care provision included in the plan¹⁰. This is in contrast to children and young people with EHC plans in the community for whom local authorities and responsible health bodies have an *absolute duty* to secure the provision specified in EHC plans¹¹: While the contents of their EHC plans should inform their provision, this absolute duty does not apply to children and young people in custody.**
15. However, this does not apply to all young people in custody. Part 3 of the Children and Families Act 2014 does not have any applicability to young people aged 18 and under who are detained in young offender institutions used “wholly or mainly” for individuals over the age of 18 or in prisons, or detained young people between the ages of 19 and 25¹².

⁶ House of Commons Education Committee (October 2019), Special educational needs and disabilities, First report of session 2019.

⁷ Department for Education/Department of Health (January 2015), Special educational needs and disability code of practice: 0 to 25 years.

⁸ HM Inspectorate of Prisons (2021), Children in custody 2019-20.

⁹ Section 74(2) Children and Families Act 2014.

¹⁰ Section 74(4) to 74(7) Children and Families Act 2014.

¹¹ Sections 42(2) and 42(3) Children and Families Act 2014.

¹² See definition of “detained person” section 70(5) Children and Families Act 2014.

16. These cohorts of young people are put outside the statutory framework completely. Therefore, regardless of whether they had an EHC plan prior to entering custody, **these young people are entirely reliant on their places of detention for identification of, and support for, their special educational needs.**
17. For these groups of young people, an EHC plan ceases to have effect in law from the date they are detained by order of the court or the date they move out of relevant youth accommodation. Their home local authority has no obligations under Part 3 of the Children and Families Act 2014 to review, maintain or keep the plan. Furthermore, they have no rights of appeal to the SEND Tribunal because these are set out in Part 3, which is disapplied.
18. The SEND Code of Practice states that for young people detained in adult custodial establishments, if they have an EHC plan before they enter custody, or if they are issued with a plan while in relevant youth accommodation, their home local authority “must” maintain this and review it when the young person leaves detention, if they intend to stay in education. However, by virtue of section 70(1), Part 3 of the Children and Families Act 2014 does not apply to these young people therefore there appears to be no statutory mechanism for this.
19. For children and young people who do not have an EHC plan at the time they are detained in relevant youth accommodation, an EHC needs assessment can be requested while they are in detention. Section 71 of the Children and Families Act 2014 and the Special Educational Needs and Disability (Detained Persons) Regulations 2015 set out how this works. Notably the assessment is of their “post-detention” education, health and care needs and an EHC plan must be “prepared” when it “is necessary for special education provision to be made for the detained person in accordance with an EHC plan **on release from detention**”¹³ (our emphasis).
20. We urge the Committee to recommend that:
- There should be an absolute obligation to deliver the provision set out in EHC plans for all children and young people up to the age of 25, regardless of the type of detention they are in. At the very least, the provisions which apply to young people under 18 in relevant youth accommodation should also apply to those up to the age of 25.
 - Young people in detention should have an EHC assessment of their “in-detention” needs. Where an EHC plan is needed, this should be issued and provision made while they are in detention.

Disproportionate level of exclusion from school of young people with SEND

21. Education for children and young people in custody should be considered alongside school exclusion policy, as the two are closely linked. There is evidence that pupils with

¹³ Section 72(1) Children and Families Act 2014.

SEND are more likely to be excluded from school, and children and young people who are excluded are more likely to go on to be involved in (or victims) of crime.

22. The Timpson review of school exclusion¹⁴ found that exclusion from school is an important indicator for a young person's future involvement in criminal activity. Data from the prisons inspectorate shows that more than eight out of ten children in custody have been excluded from school.¹⁵
23. The Timpson review also emphasised that children with SEND are significantly more likely to be excluded from school than their peers who have no special educational needs. This has a range of negative consequences, both short- and long-term, and damages young people's educational opportunities and attainment.
24. Once excluded, children and young people with SEND are at heightened risk of being drawn into criminal activity (and of being victims of crime). A report in 2020 by Just for Kids Law found that children who are outside of mainstream education are more vulnerable to becoming victims of childhood criminal exploitation.¹⁶ A report by Public Health England concluded that, "School exclusion does not directly make young people criminals, but it does increase the risk that they end up in contact with the criminal justice system."¹⁷
25. Children and young people with SEND are entitled to have their needs identified and met. They need to be supported at school, not excluded, to maximise their chances of achieving their potential and avoiding involvement with the criminal justice system.
26. We urge the Committee to recommend that:
 - There should be greater incentives for schools and colleges to adopt inclusive policies and practices, avoid exclusions and address children and young people's underlying needs.

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¹⁴ Department for Education (May 2019), Timpson review of school exclusion.

¹⁵ Cited in Just for Kids Law (August 2020), Excluded, exploited, forgotten: childhood criminal exploitation and school exclusions.

¹⁶ Just for Kids Law (August 2020), Excluded, exploited, forgotten: childhood criminal exploitation and school exclusions.

¹⁷ Public Health England (August 2019), Collaborative approaches to preventing offending and re-offending by children (CAPRICORN): summary.