

## **Written evidence from the Alliance for Inclusive Education (COV0160)**

The [Alliance for Inclusive Education](#) (ALLFIE) is the only national organisation led by disabled people working on educational issues and, in particular, working to promote the right for disabled pupils and students (including those with SEND) to be included in mainstream education, as set out in Article 24 of the UN's Convention on the Rights of Persons With Disabilities (UNCRPD).

ALLFIE uses the term 'disabled children and young people' because many will fall under the definition of disabled persons in the Equality Act 2010.<sup>i</sup>

### **Disabled students' human right to mainstream education**

ALLFIE has surveyed its members and invited Facebook posts to enlist disabled school pupils, university students, parents and education professionals' experiences of the provision of education services throughout the Covid-19 pandemic. We have found that since schools and colleges closed that:

- 83% of parents are expected to home school their disabled children.
- 54% of parents are not receiving any support from either the local authority or their children's school to help with home schooling.
- 34% of parents are receiving some (but not sufficient) support to help with home schooling.

The Disabled Children's Partnership reported that:

- 76% of families say ALL support has stopped since lockdown.
- 8% of families say support has stayed the same.
- 16% of families say they have been offered an alternative such as online education.

### **Children and Families Act 2014 easements, the Equality Act 2010 and the relevance of human rights**

The Coronavirus Act 2020<sup>ii</sup> gives notice to modify the Children and Families Act 2014's s(42)<sup>iii</sup> so that local authorities are only required to use reasonable endeavour to secure the SEND provision specified in the child's education, health and care plan (EHCP) from 1st May and has been a disaster for many families; it has meant that disabled children are

left unable to participate in any form of mainstream education including engagement with online learning platforms. We strongly believe that the practical outcome of the Children and Families Act easements and non-implementation of the Equality Act's reasonable adjustment duties has resulted in many disabled students' human rights to mainstream education being violated by the state.

### **United Nations Convention on the Rights of Persons with Disabilities Article 24**

The Government is under a positive duty to develop a fully inclusive education system that welcomes all regardless of impairment, health condition or ability under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) Article 24 and comment 4.<sup>iv</sup> The UNCRPD Monitoring Committee has published Covid-19 and the Rights of Persons with Disabilities Guidance.<sup>v</sup> The Committee's observation includes:

“To reduce the impact of disruption in education, some States are adopting remote learning practices. In these cases, however, students with disabilities are facing barriers on account of the absence of required equipment, access to internet, accessible materials and support necessary to permit them to follow online school programs. As a result, many students with disabilities are being left behind, particularly students with intellectual disabilities.”

### **ECHR Article 2 Protocol 1**

The Government accepted they had a responsibility to provide online devices and internet connections for children from financially disadvantaged backgrounds to avoid the state discriminating against accessing education based on socio-economic background under European Convention on Human Rights (ECHR)<sup>vi</sup> Article 2, Protocol 1 and ECHR Article 14 when read with the Education Act 1996<sup>vii</sup> s(19).<sup>1</sup> Disabled children going without or being denied access to ICT equipment has meant they are unable to participate in compulsory education; this is a similar breach of their human rights under the same duties. A specialist teacher highlights:

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<sup>1</sup> S19 of the Education Act 1996 is a “longstop”. Its purpose is clear; to ensure that all children of compulsory school age receive suitable education at school or otherwise.

*“Many of [our] learners are without the equipment needed to access Microsoft Teams which is where [the] school is currently setting work. We’ve got 400 laptops in the ICT suite sitting there idle. Let’s give them to the children. Let’s give them whatever they need so they can access learning.” (Specialist Teacher ALLFIE Professional Survey April 2020)*

Article 14 prohibits disability discrimination as grounds for denying disabled people the right to participate in mainstream education. Similarly to the Equality Act 2010 provisions, the ECHR Article 14 makes it clear that the Government, relevant public bodies and education providers are expected to make reasonable accommodations for disabled students. (Enver Şahin v Turkey 2018 Ceyda Evrim Çam v Turkey 2016)<sup>2</sup>

Since the closure of most education institutions, learning has transferred from face-to-face to virtual online platforms. The Department for Education sponsored Oak Academy School’s online platform providing over 160 lessons that are not inclusive, factoring in the needs of disabled children. For instance, online lessons fail to include BSL interpretation or audio description for disabled pupils with sensory impairments. Furthermore, disabled university students have experienced barriers in accessing online learning platforms provided by higher education institutions.

*“The Virtual Learning Environments (Blackboard) but the content isn’t accessible 90% of the time. Curriculum content and learning platforms haven’t been changed except more material added - the average accessibility of that online content has actually decreased as speed/readily available content has been prioritised above access. The learning platforms are unchanged in their structure, but the content/university led design of them hasn’t been adapted or adjusted to account for access features/designs.” (ALLFIE Disabled Student May 2020)*

*“Continued online assessment, exams moved online. Doesn’t make a difference though, can’t access the learning materials*

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<sup>2</sup> <https://www.allfie.org.uk/news/briefing/march-2018-briefing-judgements-european-court-human-rights/>

*properly so the exams are just pointless and discriminatory.”*  
(Disabled Student Survey, April 2020)

Providing online learning is not simply about having appropriate computer kit and software uploaded for learning but also accessing the curriculum. Not all disabled students can continue with their learning online for a wide range of reasons.

Indeed, 89% of ALLFIE’s respondents said no alternative provision has been arranged if online learning is not accessible for the disabled students. This parent highlights:

*“I have to sit with him the whole time he is learning to keep him on task. Rather than Google Classroom, some kind of face time with a [learning support assistant] or teacher would help, we need proper support to teach new concepts.”* (ALLFIE Parents Survey, April 2020)

We believe the Government, local authorities and education providers are breaching disabled students’ right to mainstream education by providing no alternative curriculum or uploading inaccessible course content onto the website.

## **ECHR Article 8**

ECHR Article 8 covers individuals’ personal development, autonomy, physical and psychological integrity under the right to family and private life. The Government has a positive duty to adopt specific measures, including the provision of an effective and accessible means of protecting the right to respect private life. Various therapeutic interventions are used to maintain disabled students’ physical and emotional integrity. Without physiotherapy and occupational therapy, for many disabled students their physical health deteriorates.

*“We now have no respite and have no break from 24/7 care needs plus we are expected to home school two children, including modifying home-schooling work for [a] visually impaired child. We now have no therapy intervention at all. This has been detrimental to my SEN child’s progress and health.”* (Disabled Children’s Partnership, June 2020)<sup>viii</sup>

Similarly, disabled students often require personal/learning support assistance to structure their learning opportunities and keep their focus on tasks, among other hurdles in order to assist with their personal development. Disabled students without in-person support to learn will be denied opportunities for personal development through their engagement with education.

*“One of [my child’s SENCO’s] comments was to tell him he didn’t need to do the work set but this doesn’t address his right to learn..”*  
(ALLFIE’s Parent Survey, April 2020)

*“Non-medical help support has become non-existent, with very little left being distanced “Skype” like calls and support which does not really work.”* (ALLFIE Disabled Student Survey, April 2020)

One of the central goals of education is to facilitate individuals’ personal growth and the development of their personality. For many disabled people, they need a variety of support to facilitate their learning whilst maintaining positive emotional and physical wellbeing.

## **Conclusion**

We are therefore concerned that overwhelming numbers of disabled students’ human rights to mainstream education under ECHR Article 8, Article 2 Protocol 1, and Article 14, as well as UNCRPD Article 24 are being violated by the Government, local authorities and education providers.

## **Recommendations**

- ALLFIE wants the withdrawal of the Children and Families Act 2014 easements and the strengthening of the registered rights of disabled children on SEND provision.
- Additional funding to be put in place to provide extra support that disabled people need in accessing mainstream education.
- National guidance around making online learning inclusive of all.

The United Nations’ Covid-19 Response <sup>v</sup> suggested that States and other stakeholders should take the following actions:

- Provide clear guidance to education and school authorities on the scope of their obligations and the variety of available resources when providing education outside schools.
- Ensure access to the internet for remote learning and ensure that software is accessible to persons with disabilities, including through the provision of assistive devices and reasonable accommodation.
- Provide guidance, training and support for teachers on inclusive education through remote learning.
- Establish close coordination with parents and caregivers for early education of children with disabilities.
- Provide guidance and distance support for parents and caregivers to assist in setting up equipment and to support the education program of their children with disabilities.
- Develop accessible and adapted materials for students with disabilities to support remote learning.
- Develop accessible educational audio-visual materials to disseminate through different media (e.g. online, on demand, televised educational programs, etc.)

15/07/2020

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<sup>i</sup> Equality Act. (2010). Retrieved from <http://www.legislation.gov.uk/ukpga/2010/15/contents>

<sup>ii</sup> Coronavirus Act. (2020). Retrieved from <http://www.legislation.gov.uk/ukpga/2020/7/contents/enacted>

<sup>iii</sup> Children and Families Act. (2014). Retrieved from <http://www.legislation.gov.uk/ukpga/2014/6/section/42>

<sup>iv</sup> Convention on the Rights of Persons with Disabilities. (2008). Retrieved from <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-24-education.html>

<sup>v</sup> United Nations. (2020). *Covid-19 and the Rights of Persons with Disabilities: Guidance*. Retrieved from [https://www.ohchr.org/Documents/Issues/Disability/COVID-19\\_and\\_The\\_Rights\\_of\\_Persons\\_with\\_Disabilities.pdf](https://www.ohchr.org/Documents/Issues/Disability/COVID-19_and_The_Rights_of_Persons_with_Disabilities.pdf)

<sup>vi</sup> European Convention on Human Rights. (1970). Retrieved from [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>vii</sup> Education Act. (1996). Retrieved from <http://www.legislation.gov.uk/ukpga/1996/56/contents>

<sup>viii</sup> Disabled Children's Partnership. (2020). *#LeftInLockdown – Parent carers' experiences of lockdown*. Retrieved from <https://disabledchildrenspartnership.org.uk/wp-content/uploads/2020/06/LeftInLockdown-Parent-carers%E2%80%99-experiences-of-lockdown-June-2020.pdf>