
THE PRACTICAL REALISATION OF CHILDREN AND YOUNG PEOPLE'S RIGHTS

SPECIAL EDUCATIONAL NEEDS IN ENGLAND

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The CRC and CRPD

- SEN at intersection of children's and disability rights. UN Convention on the Rights of the Child (CRC) and the UN Convention on the Rights of Persons with Disabilities (CRPD).
- Art.12 is 'linchpin' of CRC (Freeman). Child capable of forming own views has the

'right to express those views freely in all matters affecting the child, the views...being given due weight in accordance with the age and maturity of the child'.
- Article 12 applies equally to those with/without disabilities.
- CRPD Art 7.3 – parallels Art.12 CRC and requires assistance to be given.
- Cttee RC General Comment No.12 – presumption of child's capacity.
- Cttee on RC General Comment No.9 on RPD – participation in policy making forums. Training of professionals on child participation.
- Child as 'object of a legally recognised relationship between the school and the child's parents rather than the subject of ... rights in education' (UN Rapporteur).
- '[L]ittle progress in enshrining article 12 in education law and policy' in UK (UN Cttee RC, 2008).
- Govt 2010: will give 'due consideration to the UNCRC when making new policy and legislation'.
- JCHR: authorities should be placed under duty to have regard to children's rights, as in Wales and Scotland. Dept for Education has better children's rights record than other departments.
- Legislation covered by CRC impact statements.

SEND and CYP participation

- SEND traditionally strongest area of education recognising CYP rights.
- *SEN Code* (2001) chapter on ‘pupil participation’ – ‘about the right of children with [SEN] to be involved in making decisions and exercising choices’. Code not legally binding.
- Green Paper on SEN (*Support and Aspiration*, 2011) – little on CYP autonomy apart from dispute resolution.
- Launch of 20 SEN Pathfinders (2011-2013 and 2013-2014), to test out reform principles including CYP engagement.
- Evidence from Pathfinders: CYP involvement at a low level; improving picture, but CYP participation sub-optimal.

Children and Families Act 2014 part 3: overview

- Retains definition of 'special educational needs' as 'learning difficulty or disability' calling for special ed. provision. [Children with SEN 14.4% of school pop. 2017](#)
- Assessment and support on more integrated basis (ed., health and care needs).
- CYP with needs requiring support from outside school's own resources to have an 'education, health and care plan' (EHCP). [2.8% of school pop. have EHCP \(2017\)](#)
- Age range covered by SEN legislation extended from 0-18/19 to 0-24. Legal distinction between children (0-15) and young people (16-24).
- Young people as independent actors contingent on 'capacity', as defined.
- Pivotal duty on LAs (s.19) to have regard to CYP's views, wishes and feelings and maximum participation; and the importance of providing info and support.
- The 'local offer' as an information gateway for provision.
- Personal budgets.
- Mediation promoted but appeal rights continue.

The Children and Families Act 2014: children and young people's rights

- A key aim of pt 3 Act to 'place the views and interests of children and young people at the heart of decision making'.
- Children and young people (CYP) to be given 'greater control... to make them authors of their own life stories' (Department for Education (DfE) 2012).
- YP 16-24 have full independent participation rights.

Summary of CYP rights

CYP participation: general	LA to have regard to CYP engagement and support.
Local provision and 'local offer'	LA to consult with CYP when keeping SEN provision and local offer under review.
Advice and information	Right to advice and information re SEN for CYP and parents.
(Re)assessment of needs	YP have right to request one; must be given reasons for decision.
LA's decision to assess	YP to be consulted if LA minded to assess or school requests assessment; LA to take account of CYP's views.
The assessment process	CYP to be consulted; views, wishes, feelings taken into a/c; IAS for YP if necessary; YP notified of EHCP decision.
Content of an EHCP	YP to be consulted; right to make representations and request naming of school; CYP's 'views, interests and aspirations' to be recorded in EHCP.
Cessation of EHCP	YP to be consulted over it and notified of decision.
Personal budget and direct payment	If there is EHCP, the YP has right to have a personal budget prepared; they may also give consent to direct payment.
Right of appeal (to First-tier Tribunal)	YP appeal right (specific grounds); must be informed of it.
Mediation	YP to be informed of it and to participate. C may attend with consent. Mediator to take reasonable steps to ascertain C's views
Resolution of disagreements	YP (or child's parents) to be informed of these services.

The ESRC project

- Online survey of all 152 local authorities (LAs) in England.
- 56 LA responses (37%)
- 20 Key informant interviews
- 24 CYP case studies across 3 socio-economically representative local authority areas. (Work in progress.)
- Parallel work (Sheila Riddell and colleagues, Edinburgh) in Scotland forms part of the project.

Local arrangements and implementation

There is a need for appropriate structures and cultural awareness for proper implementation of CYP rights:

- Only half of LAs have an official with CYP SEND participation responsibilities.
- In most LAs there has been some training on CYP SEND participation, in-house or commissioned.
- LAs report need for investment of considerable time and resources to support SEND CYP engagement.
- But almost all LAs report substantially increased workload for staff due to implementation of 2014 Act as a whole.

CYP consultation and strategic decision-making

Policy making, planning and engagement with children and young people's views:

- Two-thirds of respondent LAs always consult with YP over local offer and local provision.
- LAs positive about benefits of consultation.
- LAs also claim responsiveness to CYP feedback.
- DfE monitoring indicates CYP engagement 'moderate' only, particularly among children.
- One-fifth of LAs and just over half of Parent Carer Forums report children's engagement poor or non-existent.

EHC assessment and planning processes

CYP engagement/involvement in needs assessment and planning:

- Thom et al (2015) and Adams et al (2017) for DfE reveal mixed but reasonably favourable picture of LA attempts to support CYP engagement.
- Actual participation levels less favourable: DfE Parent Carer Forum survey (2018): nearly 30% reported poor/non-existent child participation (21% for YP).
- LAs: mostly consult with YP on assessment, unless YP deemed to lack capacity.
- YPs' **views** are mostly presented, but fewer YP submit **evidence**.
- LAs do not always provide IAS to YP regarding assessment.
- YP tend not to request naming of school in EHCP. Parents tend to be involved.
- In assessment and planning most LAs will seek to ascertain child's view.
- LAs claim to give much weight to YPs' views and to take a/c of child's views.
- LAs: child's/young person's own views? Many YP prefer parents to decide.
- Ofsted: parents & CYP insufficiently engaged in EHC planning/reviewing.
- Few YPs request a personal budget.

Disagreement resolution, appeals, mediation and discrimination complaints

DR, mediation, appeals and discrimination complaints - separate avenues.

YP now hold redress rights independently: 2014 Act.

Barrier and problems (Cullen et al 2017 and Walsh 2017).

Lack of understanding of processes (Adams et al 2017).

CYP participation in redress of grievance processes:

■ ***Dispute resolution* rarely used by YP (they are not always informed of it)**

■ ***Mediation* requests from YP are received by few LAs. YP tend to be offered advocacy support. Few YP speak in mediations.**

■ ***Appeals* from YP involve a minority of LAs; 55% of LAs had none in part year; 35% had had only 1-2 cases. Difficulties in ensuring child's views are before the tribunal – lack of parental consent, question over whether parent presenting child's actual view, uncertainty over capacity of child; child's direct participation rare.**

Case study 1: KJ

- Female, aged 17, dyslexia, attends college in rural county town.
- Gained 10 GCSEs grades A-C in school, where well supported.
- Difficulties in reading and writing. College offers limited learning support (one hour 1-1 provision). Staff otherwise supportive.
- College won't increase K's learning support without an EHCP.
- LA refuses K's mother's request for an EHCP.
- K dropped out of Geography A level at college due to lack of support.
- K and mother unaware of SEN and equality rights.
- They experienced growing disillusionment and helplessness.
- **YP such as K need more information and independent support to be able to realise their independent rights. Rights are often difficult for individuals to utilise but especially for inexperienced children and young people. Assistance from a parent may continue to be important notwithstanding YPs' status as independent actors. The mere conferment of rights does not in itself confer agency on YP.**

Case study 2: OD

- Female, aged 9, MLD, attends mainstream primary school, deprived urban area (24 pupils out of 27 in class attract pupil premium).
 - Her academic achievement below expected level for age.
 - 25 hrs per week of 1-1 communication and literary support. EHCP.
 - School works at inclusive practice. Seeks to involve pupils in reviews.
 - O able, with support, to present own perspective at last review meeting.
 - 'You need the right people there to make sure that kids do get what they're entitled to' (Support Worker)
 - Mother and school unaware of children's statutory rights but supported practice underpinning core principles.
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- **Children's individual involvement and participation is as much dependent on schools' adoption of good practice and professionals' commitment as on formal rules. The new legislation per se seems to have had little influence.**
 - **Family background and prior experience of the SEN system main factors in parental acquisition of awareness of rights and processes. The agency of primary school children with SEN hinges on parental involvement. O's case demonstrates that schools can support it too.**

Conclusion

- Rights framework in the 2014 Act constitutes a significant advance in recognition of SEND rights of CYP.
- Uneven practical realisation of the new rights. Role of schools.
- CYP participation in EHC assessment/planning is sub-optimal.
- LAs are very supportive in principle of the new rights framework.
- LAs' current time/resources constraints are significant barriers.
- More professional support and training needed by LA staff: recent DfE contract with CDC hopeful sign.
- Improvement in IAS for CYP needed to support autonomy: recent CDC contract £20m.
- Qs of capacity and how it is judged are problematic.
- Parents' agency – how to manage it, resolve parent/CYP conflict and ensure CYP autonomy.
- Unrealised potential in reforms to date.

Project website

- <https://www.ed.ac.uk/education/rke/centres-groups/creid/projects/autonomy-rights-sen-asn-children>