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Convener
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Dear Convener

Scottish Parliament Inquiry - Autism & ADHD Pathways & Support ("Inquiry")
Evidence Session, 30 September 2025 – Follow Up

I am one of the trustees of STAND. As you know, our COO, Dani Cosgrove, gave evidence to your Committee on 30 September. During that session a member of the committee, Dr Sandesh Ghulane MSP, raised an issue that we consider to be absolutely key to any debate about the appropriate education of neurodivergent children. Dr Ghulane said :

".....I have a big concern about the presumption of mainstreaming. There is a lack of support teachers for those with ADHD and other diagnoses - those who are deaf, for example - who have additional support needs.....".

The "presumption of mainstreaming" refers to the legal principle that a child will be placed in a school other than a special school unless certain conditions can be proven. In practice it means that unless parents can prove that the mainstream school cannot or will not meet the needs of the child, any alternative placing request will fail. This provision is contained within the Standards in Scotland's Schools (2000) Act (s15). The way it is currently applied (and has been for 25 years) has the effect of creating a legal default that arguably disadvantages parents and does not always produce the best outcome for the child.

Consequently we think it is important that the members of the Committee understand the finer detail, history, background and impact of a legal provision that has underpinned the functioning of additional support needs education since the 2000 Act was passed.

History

The Warnock Report in 1978 (Report of the Committee of Enquiry into the Education of Handicapped Children and Young People) was a landmark in the development of attitudes to and support for all disabled people. The term "handicapped" was dispensed with and the term "special educational needs". (SEN). It also promoted inclusive practices and the integration of "SEN" children into mainstream schools. The Report strongly influenced the Education Act 1981, which created a new legal framework for identifying and providing for the needs of these children. In order to ensure appropriate support for "SEN" children in Scotland, the Education (Record of Needs) (Scotland) Regulations 1982 were introduced. These regulations were replaced by the "co-ordinated support plan" provisions in sections 9-11 of the Additional Support for Learning (Scotland) Act 2004. These newer provisions are

frequently ignored by local authorities, and when used are less effective than the 1982 provisions.

The 2000 Act

Section 15 of this Act takes the principle of integration established by the Education Act 1981 and tightens it up to the point where a legal default is effectively in place. It creates an adversarial situation where the parents have to prove that the mainstream school can't meet needs. It should be up to the education authority to prove that it can meet those needs in the setting that it is offering.

In this way, a principle that in its day was positive and laudable has become (as applied by authorities) a barrier to the appropriate care and effective education of children with additional support needs. Why has this happened?

Money

When discussing complex and sensitive matters such as the education of children with additional support needs, there is often a reluctance to discuss the biggest barrier to appropriate support: insufficient availability of resources (money). However, there is no denying that costs are higher. Children may be non verbal, have additional medical issues, may also have specific sensory sensitivities and indeed may not learn in the same way as neurotypical children. They may be unpredictable; they could have a form of difficult-to-detect frontal lobe epilepsy (which is more common amongst autistic people than in the general population). Specialist staff are needed, and in greater numbers, in order to ensure a) the safety of children and indeed staff, and b) the effectiveness of the care and education. Specialist equipment may be needed - indeed rooms may have to be adapted, even soundproofed.

In practice, education authorities tend to assume that a single extra classroom assistant will suffice, and sometimes not even that.

This is why the integration of children with significant additional support needs has not worked; the necessary supports, adaptations and specialist assistance haven't been provided and are still not being provided. The responses to the [2024 Additional Support for Learning Enquiry](#) echo this conclusion.

Teachers are generally not trained or supported to undertake such specialised work. We do not have enough trained ASN teachers in Scotland. In February 2025, a [report from Audit Scotland](#) on additional support for learning said:

“Providing ASL is an increasingly core part of what classroom teachers do. However, the Scottish Government has not planned effectively for the potential impact of this inclusive approach to ASL. It is not specifically reflected in funding formulas for education and education planning, such as training for teachers and support staff, class sizes and the

design of school buildings. The Scottish Government and councils need to fundamentally evaluate how education is funded, staffed and assessed to support all pupils to reach their full potential. They also need to consider the continual growth in pupils requiring ASL within their wider approach to improving child development”

In order to have a meaningful debate about support for autistic/ADHD/neurodivergent children in Scotland, we all have to be prepared to talk about money as a deciding factor in decisions.

SPECIAL SCHOOLS - Why are they needed?

They are needed a) because the needs of some children are so significant and so complex that a mainstream school simply can't safely or effectively do it. b) because children sent to mainstream usually don't get anywhere near the adaptations, adjustments or supports that they need. We are unaware of any examples of autistic children being accepted to special schools who do not have a diagnosis, or at least who have had a neurodevelopmental assessment, and we know of some schools that only accept children who have an additional learning disability too. This is because they wouldn't get a funded place at the school without a diagnosis; and the school would not be able to provide the necessary educational and medical support for the child without a diagnosis. Hence the importance of diagnosis; we have seen from statements made during the course of this enquiry that the importance of diagnosis is not well understood, either by some members of the Committee or by Ministers. For ease of reference, this (from the National Autistic Society) guide to the assessment process provides an example (autism), and explains why it matters:

<https://www.autism.org.uk/advice-and-guidance/topics/diagnosis/assessment-and-diagnosis/what-happens-during-an-autism-assessment>

Scotland has in some respects led the way in the development of specialised education support for neurodivergent children, with the creation of world class purpose built environments such as Scottish Autism's New Struan School in Alloa (Autism). However, such facilities rely on funded referrals from local education authorities in order to sustain their existence.

In recent years, as local authority budgets have been squeezed more and more, they have become ever more resistant to funding places at special schools. As a consequence, these resources are seriously under threat. For example, Scottish Autism has just announced the closure of New Struan School due to a lack of referral from local authorities. These local authority budget challenges are also resulting in the loss of special units within mainstream schools - Falkirk Council has recently consulted on plans to close 15 of its special units. It is disappointing that Scottish Ministers seem content to allow this to happen.

Interpretation, application and effect of the law

In 2019 the Scottish Government issued [guidance](#) on the presumption to provide education in a mainstream setting, clarifying the exceptions to this duty and supporting the practical implementation of the policy. It states that the purpose of the Presumption is:

- Promote Inclusion: The policy aims to create more inclusive, empathetic, and just societies by promoting diversity and ensuring that all children can learn and develop together.
- Equitable Access: It seeks to provide equitable access to quality education, allowing children to reach their full potential by being educated alongside their peers.
- Legislative Duty: The presumption places a legal duty on education authorities to provide education in mainstream settings unless certain exceptions apply, such as the provision being unsuited to the child's ability, incompatible with the efficient education of other pupils, or incurring unreasonable public expenditure.

However, if we look at the relevant section of the 2000 Act, we see that, whilst the phrase “mainstream schools” appears in the title of s15 of the Act, there is no such reference in any of the subsections of the Act. Instead, the phrase “a school other than a special school” is used throughout this section:

“15 Requirement that education be provided in mainstream schools

(1)Where an education authority, in carrying out their duty to provide school education to a child of school age, provides that education in a school, they shall unless one of the circumstances mentioned in subsection (3) below arises in relation to the child provide it in a school other than a special school.

(2)If a child is under school age, then unless one of the circumstances mentioned in subsection (3) below arises in relation to the child, an education authority shall, where they—

(a)provide school education in a school to the child, provide it in; or

(b)under section 35 of this Act, enter into arrangements for the provision of school education in a school to the child, ensure that the arrangements are such that the education is provided in a school other than a special school.

(3)The circumstances are, that to provide education for the child in a school other than a special school—

(a)would not be suited to the ability or aptitude of the child;

(b)would be incompatible with the provision of efficient education for the children with whom the child would be educated; or

(c)would result in unreasonable public expenditure being incurred which would not ordinarily be incurred,

and it shall be presumed that those circumstances arise only exceptionally.

(4) If one of the circumstances mentioned in subsection (3) above arises, the authority may provide education for the child in question in a school other than a special school; but they shall not do so without taking into account the views of the child and of the child's parents in that regard."

The effect of this has been that in practice "a school other than a special school" always means the mainstream school that the education authority has allocated as its preferred destination for the child. This is a presumption and is not based on the specific needs of that child. Indeed, in the absence of a proper assessment and diagnosis it could not possibly be based on needs, because the authority could not know what those needs are. However, we are concerned that these provisions within the 2000 Act seem to be routinely interpreted in isolation from the provisions of the UNCRC.

UNCRC

In July this year, the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 came into force. We believe that this is a good opportunity to ensure that the ongoing practical effect of s15 of the 2000 Act, and its interpretation by the Scottish Government and local authorities, is compatible with the rights in the UNCRC.

Article 29 of the United Nations Convention on the Rights of the Child (UNCRC) outlines the aims of education, stating that it must be directed to developing a child's personality, talents, and abilities to their fullest potential.

We do not believe that s15 is, in practice, being read and defined in a way that is compliant with Article 29, and indeed we take the view that any form of education that does not take full account of a child's needs (however complex) cannot possibly comply with article 29. Further, we would suggest that placing a child with profound and complex educational and care need in a mainstream setting without adequate support and adaptation is also inconsistent with article 28 of the Convention, which recognizes the right to education for every child, requiring that primary education be compulsory and free, and that secondary and higher education be available to all children on an equal and accessible basis. It also mandates that school discipline must respect a child's dignity. Inappropriate education is not "accessible".

Conclusion

We would like to thank the Committee for the opportunity to contribute to the work of this enquiry. The process has drawn out many of the most important issues and allowed us to give an insight into the challenges faced by the families of ADHD/Autistic children with significant support needs. We hope that this letter will be of some assistance to the members of the Committee in understanding the impact and complexities inherent in the "presumption of mainstream" principle as applied in Scotland.

We have set out here a) the flaws in the principle as applied, b) why it is not working, c) how it might be improved, and d) how we think the relevant provision should properly be interpreted and applied. Therefore, we consider that it would be helpful within the context of the enquiry if the Committee could consider these points. While I understand that, on the face of it, it seems outwith the remit of a discussion about pathways to diagnosis and support for autism and ADHD, it is in fact central to those discussions if there is any hope that a “needs-based” system (albeit recognising that timely diagnosis is a need in itself) can be meaningfully implemented. Appropriate education is a fundamental need, and many of the supports will be provided via or in an education setting. It is impossible to fully consider the available support for autistic and ADHD children without recognising the failures of the existing education system to meet their support needs.

In addition, we are aware that the Minister for Social Care, Mental Wellbeing and Sport will attend the meeting of the Committee on 28 October as part of the Inquiry. We would be interested to hear his views on these points, and in particular whether he considers that the application of s15 of the 2000 Act by local authorities should be assessed in light of the requirements of the UNCRC (Incorporation) (Scotland) Act 2024 as part of the ongoing review of the SG’s Neurodevelopmental Specification, particularly given the important role schools play in the support for autistic and ADHD children..

Yours sincerely

Mike Berry
Trustee
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