
Equality or Utilitarianism? Developing Inclusive Education a contradiction in terms: the Education and Inspections Bill 2006

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ABSTRACT This article argues that the White Paper's attack on the role of local authorities will have a detrimental effect on the promotion of inclusive education.

Introduction

There are now, and have been from the beginning of New Labour's education policies, major fault lines running through the Government's commitment to raising standards for all, while at the same time developing inclusive education. For the First and some of the Second Term, the commitment to develop a more inclusive system seemed to be a local branch line train compared to the standards express, but it was still moving forward, if not always in a planned direction. However, now the White Paper is hell-bent on structural reform and the demise of the Local Authority as a provider of services with the introduction of 'choice and diversity' of providers through more Trusts, Faith Based Schools and Academies. 'Bog standard comprehensives' are rejected in favour of this greater new diversity. But we are not talking about increasing the diversity of pupils admitted, rather the diversity of providers. It is clear that in most parts of the country, comprehensives were never truly 'comprehensive' as 1-2% of pupils were separated off because they were disabled to go to separate special schools where achievement levels are far below those of the 'bog standard comprehensive' and yet the White Paper speaks of increasing the role of special schools and therefore, presumably, of decreasing the diversity of disabled pupils in mainstream schools.

Threat to Local Authorities and Inclusion

When Local Education Authorities were secure, well-funded and with a clear egalitarian purpose, it was possible to move inclusive education forward considerably. However, the White Paper proposals are designed so that Local Authorities cannot set up the schools that are needed or change the nature of schools. For example, in the London Borough of Newham, teachers and schools have developed capacities for including a wider diversity of pupils, while at the same time raising standards at a faster rate than the national average over the last 8 years. Inclusion was seen as a matter of human rights, and structural decisions supported by parents of disabled children were taken accordingly in the previous 14 years with the planned closure of special schools and the development of both resourced schools (18) and the development and encouragement of local schools to admit and support disabled pupils in their local catchments. The Authority has moved from funding by statements to delegated budgets with extra money for exceptional needs for disabled pupils with low incidence impairments. To check that money is being used effectively and to develop good practice, Newham employ Inclusion Monitoring Officers. It has been argued by Newham's detractors that the Borough has just exported its disabled pupils. While some parents have exercised their rights through placement decisions of the SENDIST to seek other settings out of the Borough, these accounted for only 0.023% of pupils in 2004. This is far lower than for any other London Borough.

Nor have other Local Authorities who have been developing inclusive approaches, such as Nottinghamshire and Nottingham City, Cumbria, Cornwall, Oxfordshire, Bristol, Norfolk or East Sussex, achieved lower standards because they have a wider diversity of pupils with physical, mental and sensory impairments. The evidence is that the standards in mainstream schools are no worse than in the schools in Authorities which have not taken up the challenge of inclusion to the same extent, relying to a much greater degree on special schools (DfES Research Report 578).

Progress Towards Inclusion in Peril

It seems unlikely that this progress towards inclusive education will be possible under White Paper proposals. Though Local Authorities as commissioners will be able to propose special education provision in mainstream voluntary, foundation and trust schools there is no guarantee that these schools will accept these proposals. If the current attempts by many Local Authorities to persuade community schools to take 'hard to place' pupils, or those with BESD, are anything to go by, then many schools have a whole armoury of excuses and strategies to prevent this currently. It will get more difficult with the Local Authority only as a *commissioner* and not the *owner* or *designer* of schools.

Local Authorities will not be able to take and implement strategic decisions under the 1944 Education Act to ensure there are sufficient places in resourced and mainstream or special schools. Instead, they will need to organise

competitions and the promotion of Trusts will take over, with the encouragement by a School Trusts Commissioner of outside bodies ranging from businesses to faith groups or parents groups to put forward proposals for the schools that they think will benefit their narrow interests. Inevitably the provision for disabled pupils will suffer in mainstream schools. This should not be a new specialism, as proposed in the White Paper, but a requirement on all schools. It will also become much harder for Local Authorities to develop innovative schemes to meet special educational needs through providing resourced provision for particular needs in a rational way as the priority will be to develop new trust schools outside Local Authority control. It is difficult to see how this will represent an advance for disabled pupils or those with special educational needs.

DfES Position

Ian Coates, Head of SEN and Disabilities at the DfES had to issue a letter of clarification the day the White Paper was published as it does not address many of the key issues of developing a more inclusive education system:

We are looking to build on existing best practice and to implement the SEN strategy, 'Removing Barriers to Achievement', by creating the right framework for a flexible continuum of SEN provision. Such a continuum of provision should draw on the contributions of a range of different settings and services, in order to create an 'educational offer' that will meet the needs of every individual child, enabling them to achieve against the five Every Child Matters outcomes.

This concept of a flexible continuum of provision misses the essential point about inclusive education, which is to ensure that the appropriate support is brought to the disabled child in their local school. The educational offer will mean that mainstream schools, the majority of which have not developed the ethos and capacity required according to OFSTED (October 2004), can too easily say they cannot include the child. As long as there are alternatives available, they will be used.

Detractors Take Centre Stage

This contradiction at the heart of Government SEN policy was significantly exacerbated by the Special Schools Working Group which Baroness Ashton set up in the wake of the SEN and Disability Act, 2001. Certain interested parties clamouring for the protection of their interests lay behind this move. The owners of non-maintained special schools such as RNIB, NCH and NAS who rely largely on funding from the state, through fees charged to Local Authorities, and a group of special school headteachers, organised through the NAHT, got their way and achieved assurances of continuing support for a special school sector. This ignores the very poor results that these schools

achieve, the life-long damage to the self-esteem of their pupils and the isolation and segregation they promote of disabled children.

Last summer Baroness Warnock and David Cameron MP led a high profile campaign for more protection and indeed growth of the special school sector which led directly to the setting up of a Parliamentary Select Committee. This, despite the fact that from 1997 to 2005 the number of pupils in special schools has changed only from 1.40 to 1.39% of pupils. Lord Adonis, Minister for SEN and Disability, has said a number of times the Government is sticking with its policy in *Removing Barriers to Achievement*. A big concern, however, is with the new emphasis on choice and diversity in provision in the White Paper; when, if ever, will the Post Code Lottery for disabled children be tackled? It is still the case on the most conservative estimates that if you are a disabled child you are ten times more likely to go to special schools in one borough than another. This is not about the complexity of the child's impairments; it is to do with the capacity of the mainstream system. It is difficult to see how boosting the role of special schools further will increase that capacity. Special schools, whatever else they do, are not experts on developing inclusion.

This situation is going to lead to a huge growth in demand for the protection of statements of Special Educational Need, as the parents of disabled children will become much less certain that their needs will be met in this confusing new welter of providers. Yet the Government in the Green Paper *Achievement for All* (1997) and the *SEN Action Plan* put great emphasis on reducing the proportion of disabled children whose needs are met through Statements. This was reflected in the SEN Code of Practice (2001) which laid much greater emphasis on School Action and School Action Plus to meet pupils' needs, where the Local Authority supported schools in making provision. In 2005 in England 17.8% or some 1.47 million pupils were identified as having special educational needs. Currently only 242,000 of these have Statements and over 74% of these attend mainstream schools. Only 19,500 of those with statements attend resourced mainstream provision; the rest are in mainstream classes. These pupils present the biggest challenge to mainstream schools and teachers. There has been a lack of capacity building and targeted funding by Government which has exacerbated the current position.

Making Reasonable Adjustments

In a recent project I carried out for the DfES examining how schools were making reasonable adjustments for disabled pupils (*Implementing the Disability Discrimination Act in Schools*, available to schools from the 29 March 2006) it was very apparent that the schools which were effective at making adjustments had an inclusive ethos, a welcoming attitude and a 'can do' attitude towards disabled pupils. Yet even before the White Paper, as OFSTED (2004) has reported, these schools represented a growing minority, perhaps as much as 10% to 20%. However, by no means do all schools regard themselves as having

the experience, skills and resources to make effective provision. How will the capacity of mainstream schools to include disabled pupils be developed, as it has to be, under a regime which still views crude league tables and standard tests as the best indicator of improvement in standards?

Parents and Choice and Social and Disability Inequality

Under the White Paper proposals parents are to be encouraged to move their children to so called 'good' or 'high performing' schools. However, there is no necessary link between school success in standard tests and their inclusiveness or ability to meet pupils' special educational needs. Indeed, the disparity between value added and crude league tables may suggest that schools that are good at progressing the achievement of all pupils may not be the same schools that are good at achieving high standard test scores. The social composition of the intake of a school is still the best indicator of outcome as the White Paper suggests.

The proportion of pupils entitled to Free School Meals (FSM) is both a very effective indicator of poverty, and it has also been found to be the best indicator of the proportion of pupils who will have special educational needs at an aggregate school level. E.g. 81% of non-FSM pupils achieve Level 4 and above in English, while only 58% of FSM pupils achieve the same level. Not surprisingly, the White Paper tells us that 65% of those who do not achieve Level 4 in English have Special Educational Needs. So two-thirds of the under achievement the Government claims to be concerned about is accounted for by children with special educational needs. And what is the solution that is offered to create many more schools which are good at getting children without special educational needs through standard tests! In addition, the solution being put forward is 'catch up' classes, personalised learning and more streaming, not the development of an inclusive pedagogy building on what we know works in inclusive schools.

Pupil Grouping

The White Paper urges greater use of setting and streaming within schools to increase levels of attainment. There is no evidence to support this view. The research there is, some of it commissioned by the DfES, shows a much more varied picture. Lower ability pupils achieved less in sets or streamed situations and did better in mixed ability classes. More able pupils achieved the same or better in sets or streamed groups. The way pupils learn to work with peers seems to have a far greater impact on learning. Inclusive teaching methods can deal effectively with the needs of all in well organised and supported classes.

Building Schools for the Future

The White Paper says that Building Schools for the Future monies and capital funds will be used to encourage the development of new Trust Schools. Nearly half of the BSF is to be delivered through Public Private Finance Initiatives. We already know that schools built under PFI are built to the minimum standards due to commercial pressures and that the BSF templates do not provide for all the access needs of inclusive schools, e.g. the classrooms are too small for pupils who use mobility aids, and the plans do not provide for a range of smaller spaces for time out, small group work and 1:1 work. So where does the Government expect these needs to be met?

Behaviour and Exclusions

The White Paper draws on the Steer Committee recommendations on behaviour which specifically excluded from their consideration children whose challenging behaviour is caused by underlying disability or SEN. Yet we know from the Audit Commission (2002) that 80% of primary permanent exclusion and 60% of secondary exclusion are such pupils with SEN or disabilities. Recently a survey by the National Autistic Society found that 27% of pupils with autism experience exclusion. The largest proportion of disability discrimination cases upheld by SENDIST against schools are for unlawful exclusions of disabled pupils. The Steer Group talks about consistency across the school in the implementation of the schools behaviour policy. Yet in the Reasonable Adjustment Project we found that what effective schools, including, schools with low exclusion rates, did was to implement a differentiated behaviour policy. This means that a child with SEN or Disability is not expected to follow exactly the same rules as others; instead they and their classmates understand they may be judged by different yet improving standards. A good example for a child on the autistic spectrum or with ADHD is to operate a system of 'time out' where teachers and pupils recognise if they are shown an orange card they need to withdraw themselves for 5 minutes. If they are shown a red card, then they need to leave the class and get help at the Learning Support Department. This is just one of many system that defuse the situations that lead to exclusions. Schools desperately need to develop these differentiated behaviour policies. They are not mentioned in the White Paper.

Admissions

There is a considerable weight of evidence and research to suggest that in a situation of choice, oversubscribed schools choose pupils rather than parents choose the school. It is also the case that a minority of schools that develop a reputation for being good with disabled pupils attract a higher proportion of disabled pupils than do other schools. This is clearly demonstrated in Tables I and II.

Proportion	Up to 2%	2 to 5%	5 to 10%	10% and above	Total schools
% Primary	71.3	24.2	3.8	0.6	17,642
% Secondary	43.9	49.1	6.8	0.2	3,385

Table I. Proportion of maintained primary and secondary mainstream schools with the number of pupils with a statement in England 2005

Proportion	Up to 5%	5 to 25%	25 to 35%	35 to 50%	50% & above
% Primary	3.4	76.7	14.6	4.6	0.6
% Secondary	5.9	75.4	13.3	4.5	0.9

Table II. Proportion of maintained primary and secondary mainstream schools with the number of pupils with SEN and no statement in England 2005. Source: Table 4a and 4b in *Special Educational Needs in England 2005*, DfES SFR 24/2005

Indeed schools by just not being welcoming of an initial inquiry made by parents of disabled children can get put off applying. This subtle discrimination is widespread and is likely to get worse in a trust school situation, despite being unlawful under the Disability Discrimination Act. If parents, or more particularly, articulate and motivated parents, are to have more power in setting up schools and determining admissions, then it is most likely they will devise ways of keeping out pupils who are perceived as 'difficult' or more likely to require a higher proportion of school resources to address the barriers they face. With weakened Local Authorities left to police admissions, schools are likely to become less inclusive.

What is to Be Done?

Since the publication of the White Paper, some concessions have been made by the Government in terms of enforceable admissions code and allowing Local Authorities with the permission of the Secretary of State to build schools. Government policy remains that they want to raise standards while creating greater equality and access! Worthy aims, but the mechanism they wish to use will reinforce the polarisation of intakes both in terms of social class and disability. The research by Professor Ann West of the London School of Economics suggests the more choice there is in the system the greater the polarisation. What is needed is a fair admissions system which adheres to anti-discrimination legislation and gives priority to disabled and other socially disadvantaged pupils. But is also beneficial to all pupils to attend as socially and as culturally diverse schools as possible. This means investing in comprehensive schools, halting the insidious rise of faith schools and academies and making the best of our existing comprehensive system. Schools need more rigour and more investment, not bribes to change their status and all teachers need to have their capacity to include raised by training and the development of

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inclusive pedagogy. Something which never happened in the majority of comprehensive primary and secondary schools. We owe it to ourselves and future generations to give them an education fit for the 21st Century where they will be able to relate to all members of society as well as developing ways of working collaboratively to have the necessary knowledge and skills.

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