Realising Rights in Practice: A Human Rights Response to SEND Reform

18 May 2026

The British Institute of Human Rights co-produced response to the Department for Education Consultation: "SEND REFORM: PUTTING CHILDREN AND YOUNG PEOPLE FIRST"

"More than anything, I want to remind the system that disabled children are just as deserving as anyone else, whatever their care and support needs to look like. Every child deserves an education, whether that is traditional or not. These proposals are heavily implying that disabled children deserve to be deprioritised and seen as less than." Charli Clement, Autism and Mental Health Lived Experience Expert

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About BIHR

The British Institute of Human Rights (BIHR) is a charity working in communities across the UK to enable positive change through the practical use of the Human Rights Act. We equip civil society, communities, public bodies, and policymakers to integrate human rights into law, policy, and services, enabling everyday justice and systems change. Our approach enables us to provide policy analysis which is based on both human rights law, and people's experiences of their human rights. You can read more about our work with people accessing and delivering SEND services in appendix 1.

About this response

This is our response to the Department for Education's open consultation: SEND reform: putting children and young people first, which sets out proposals to reform the SEND system in England. This response combines BIHR's legal and practice expertise on the Human Rights Act together with the perspectives of members of our RITES Committee. Our RITES Committee is a co-production group of Lived Experience Experts who have experience of navigating the structures, processes and systems this White Paper seeks to reform either for themselves or people they support. We urge the Government to hear these voices, the voices of people who will be directly impacted by reforms to the SEND system, including people with SEND, their families, practitioners working in the system, and civil society organisations providing much needed support and advice. You can find out more about the members of BIHR's Committee who worked on this with us in Appendix 2.

We have opted to respond in the whole rather than engaging with individual questions, focusing on human rights concerns identified in light of our work in this area.

Executive Summary

BIHR's consultation response recommends that the Government ensure that:

1. The focus is on resourcing the system, not rewriting it. Children, young people, and families do not need more complexity or more paperwork, they need their rights to be realised in practice. Any changes to the current system must be firmly and explicitly grounded in the rights and duties of our Human Rights Act (HRA, 1998); not simply as a matter of principle, but

as a matter of law, SEND reforms do not override human rights law (s.3 HRA).

2. The reform process follows the Gunning principles – the legal standards for fair and lawful public consultation - and genuinely supports meaningful engagement. This includes recognising that the proposals have significant implications for a wide range of legal protected human rights, including (but not limited to) the right to education, affecting children, young people and their families; which the government has legal duties to uphold.

3. Robust routes for redress are available, meeting the requirements of the right to fair trial protected by Article 6, HRA and ensuring children and young people with SEND and their families can challenge decisions in a fair, consistent and judicially independent way, regardless of the complexity of their needs.

4. Reform must not lead to one-size-fits-all approaches to assessment and support which fail to account for people's individual human rights. The right to be free from discrimination protected by Article 14, HRA protects us from being treated the same as others when we require different treatment to access our rights.

5. Reform does not weaken the rights of children and young people with SEND and their families to be involved in decisions protected by Article 8, HRA, and do not prioritise resources over legally protected rights, including the range of relevant legal protections in the HRA.

6. Sufficient funding and support is available to public authorities across the SEND system to enable them to meet their legal duties under the Human Rights Act, ensuring the rights of children and young people with SEND and their families are respected, protected, and fulfilled.

"We don't oppose the emphasis on early intervention and more inclusive schools - we want those things. Everyone wants those things. But the law doesn't need to change to make those positive things happen. They're all there in existing legislation. If you read the SEND Code of Practice you think this is really great, there's so much detail, there's so much that should be going on. If they read it and implemented it, then they wouldn't need to be unpicking the Children and Families Act." Catriona Moore, Policy Manager, IPSEA (Independent Provider of Special Educational Advice)

Human rights must be the starting point

The UK's Human Rights Act takes the 16 fundamental human rights written into the European Convention on Human Rights and puts them into UK law. This means they can be enforced in UK courts rather than having to go the European Court on Human Rights in Strasbourg. This ensures that everyone is equally entitled to the rights and freedoms it was written to protect, regardless of factors like age or disability.

Section 6 of the HRA puts a legal duty to respect, protect, and fulfil human rights on all public authorities. In the SEND system, this can include:

- Local authorities: EHC case workers, social workers, educational psychologists, speech and language therapists, the SEN team.
- Local authority-run schools.
- Private specialist schools where places are funded by local authorities.
- Central and devolved governments, including the Department for Education and its Secretary of State.
- Courts and tribunals, including SEND First-tier Tribunals.

Section 3 of the HRA also means that other laws including the Children and Families Act 2014, the Equality Act 2010, and the Children Act 1989 – the laws which entitle children to support in relation to their special educational needs – must be applied in a way that respects human rights.

From working directly with parents, carers, and advocates, we know that key human rights which time and again are most relevant for children with SEND and their families include:

The right to be free from torture and inhuman and degrading treatment (Article 3)
This is an absolute right which protects us against very serious harm, including physical harm, and significant mental and emotional suffering. Rather than a fixed list of what constitutes "inhuman and degrading treatment", reference needs to be had to the impact of the treatment on the person, particularly in light of factors such as their age, sex, and mental and physical health. Harm which does not meet the threshold (i.e. is not considered "severe" enough) to engage Article 3 may still engage the right to respect for private life (Article 8) (see below).

For children and young people with SEND: issues with this right may arise from harm caused by public authorities, for example through the use of restrictive practice or seclusion in education settings which causes extreme pain or

suffering. It may also arise where public authorities fail to step in and prevent harm, for example if a child is out of education for long periods of time and this has a very serious impact on their physical or mental health.

The right to respect for private and family life, home and correspondence (Article 8)

This is a non-absolute right that protects many aspects of our lives, including our autonomy, wellbeing, ability to be involved in decisions that impact our lives, being part of a community, relationships with others, and family life. As this right is non-absolute it can be restricted where the three tests of lawful, legitimate aim, and proportionality are met by public officials seeking to make the limitation. In our experience, this framework is rarely discussed or evidenced, and in practice there is often room for making different more rights-respecting decisions when focusing on proportionality and the least restrictive approach to achieve the aim.

For children and young people with SEND: issues with this right may arise where a child or young person with SEND is not able to access appropriate education and this is negatively impacting on their wellbeing and that of the wider family. This right could also be affected where decisions are made by public officials about SEND provision without involving the children, young people and families who will be affected or without exploring alternatives which would lessen the restrictions on this right.

The right to be free from discrimination (Article 14)

This right protects equal enjoyment of other human rights and is often referred to as a "piggy-back right" (or conjunctive right) because it can only be raised in connection with another right in the Human Rights Act. For example, it could be raised in connection with the right to respect for private life (Article 8). The other right does not have to be breached, just impacted, in order to raise the right to be free from discrimination along with it. Discrimination is always unlawful; however not all differential treatment (or lack thereof) will be classed as discrimination. It will not be discrimination if it is objectively and reasonably justified.

For children and young people with SEND: It may be objectively and reasonably justified for an educational setting to treat a child or young person with SEND differently in order to protect their rights, and a failure to do so could give rise to discrimination issues. This right can also be at risk where incorrect assumptions are made about the type of support someone should receive based purely on a diagnosis, rather than based on that person's individual needs.

The right to education (Article 2, Protocol 1)

This right protects our right to an effective education within the UK's existing educational institutions. It relates to primary, secondary, and higher education. Often, this right is used in conjunction with the right to be free from discrimination (Article 14). Part of this right is absolute, which means that the Government must provide access to education for all children in the UK and this cannot be restricted or limited for any reason. However, part of this right is also non-absolute, which means that the Government can consider the needs and resources of the community in determining what educational provision is being made available, and resources should be distributed fairly to ensure inclusive education. It also means that the religious and philosophical beliefs and principles of parents should be considered, but a school does not have to adhere exactly to what the parents wish for as long as this can be objectively and reasonably justified.

For children and young people with SEND, issues with this right may arise if a local authority fails to provide suitable transport to enable children with SEND to access an education. However, other rights in the Human Rights Act, such as those summarised above, arise more frequently in practice than the right to education (Article 2, Protocol 1).

The right to a fair trial (Article 6)

This right protects access to a fair and public hearing within a reasonable time by an independent and impartial tribunal. It applies to both civil and criminal proceedings and includes key safeguards such as the right to be heard, equality of arms, access to relevant information, and the opportunity to challenge decisions that affect one's rights. While aspects of Article 6 can be subject to practical limitations, the core requirement of fairness must always be upheld. In practice, this means that processes must be transparent, timely, and enable effective participation, particularly where individuals may face barriers to engaging with complex systems or procedures.

For children and young people with SEND: issues with this right may arise where they and their families face barriers in accessing appeals, complaints, or tribunal processes related to education, health, or care decisions. This could include delays, lack of accessible information, or insufficient support to participate effectively in proceedings. Article 6 may also be engaged where decisions about SEND provision are made without a fair opportunity for the child, young person, or their family to present their case, challenge evidence, or be involved in a meaningful way.

BIHR's human rights concerns about the broad approach

1. The Government has misdiagnosed the problem to be solved

"The biggest issue is not that schools need more documents or different rules. They need time, space, staff and funding to make support real. At my school, learning support staff care deeply, but there are not enough of us. There is also not enough space. Our department has two rooms and a small office, used for meetings, assessments, quiet work, exams, mentoring and supporting students who are overwhelmed or anxious. That is not enough for an entire secondary school and sixth form. Staff turnover is also high because the work is demanding and not well paid, which makes it harder for students to build trusting relationships with consistent adults. When support is under-resourced, children's right to education, wellbeing, family life and non-discrimination are put at risk. We need properly resourced implementation, not more complexity."Hanna Gawron, Lived Experience Expert and Learning Support Assistant in a Secondary School

There is no denying that the current system in place to support children and young people with SEND and their families is plagued with deep rooted issues. Successive Governments have accepted that reform is necessary. In 2025, the UK Parliament's Education Committee said the SEND system was "in crisis, failing far too many children and their families, as well as creating intense pressure on local authority funding and education systems"

"In practice, what we describe as a "SEND system" is experienced by families as a series of barriers they must repeatedly overcome, often at significant emotional and financial cost. As a practitioner, I regularly see families who understand their child's needs clearly but are positioned as adversarial for asserting them. The gap is not between law and aspiration; it is between law and consistent implementation. This creates cumulative distress: repeated assessments, delayed provision, and escalating crisis points that could have been prevented through early, rights-based intervention. For many families, the system functions reactively rather than protectively. Rights exist on paper but are often realised only through persistence, knowledge, or challenge — which introduces inequality between those who can navigate the system and those who cannot." Daisy Long, Chief Social Worker, DCC Interactive Ltd (DCC-i)

The question BIHR poses to Government is: what is causing these issues, and what therefore requires reform? BIHR is clear that the evidence shows the law is not the problem. The Children and Families Act 2014 (C&FA) and its Code of Practice, underpinned by the rights and duties set out in the Human Rights Act, clearly establish the entitlements of children and young people with SEND and the legal responsibilities of public authorities within the SEND system. The expectations on decision-makers are already set out in law. That 95% of appeals to the SEND Tribunal are decided in favour of families strongly indicates that these legal duties are too often not being applied at the point of decision-making, with legal entitlements only upheld after families have been forced to challenge unlawful decisions.

We are all too aware that this is a system in which fairness too often depends on access to advocacy. Yet that advocacy is itself grounded in the HRA and the C&FA: it is the law that provides the framework to challenge poor practice, secure accountability, and obtain redress. This demonstrates that the solution is not to weaken or rewrite existing legal protections, but to ensure they are properly understood, embedded, and consistently applied in practice.

National Education Union statistics shared by Daniel Kebede with the Education Select Committee in Oral Evidence on 14 April 2026 show that when asked why schools were failing children and young people with SEND:

- 97% said workload
- 99% said lack of staff
- 91% lack of external specialists

The law already provides the tools for change; what is required is resourcing of the system, structures and processes so that children and families can realise their rights without having to fight for them.

BIHR recommends

We're deeply concerned that the Government's proposals represent a misdiagnosis of the problem. Children and families are not the problem, nor is the current law. The problem is in implementation of the law and stems from a system which has been under resourced and neglected for many, many years.

The Government must focus on fixing the system, not rewriting it. Children, young people, and families do not need more complexity or more paperwork, they need their rights to be realised in practice. 1.7 million pupils in England have

special educational needs, and 638,745 children and young people have an Education Health and Care Plan (EHCP).The HRA and the C&FA, if properly implemented, would make rights respecting education a reality; where children and young people get the right support at the right time. We believe this can be achieved if priority is given, not to new roles and responsibilities but to proper support and funding to implement what we currently have. This will create consistency for everyone involved, avoiding a maze of law and policy which our experience tells us leads to decisions which can risk, or even breach, people's human rights.

"The current SEND system could work effectively for children and young people if it was fully implemented as set out in the law and the Code of Practice and if accountability mechanisms were strengthened." Catriona

"The conversation about SEND by both media and governments has been extremely stigmatising in the past couple of years and the blame placed on schools and parents who are simply trying to access needed support shows a complete lack of care for their wellbeing beyond a desire to cut funding. Having gone through the system and watched or supported countless others to do so, it is abundantly clear that the system is not working, but the White Paper proposals show a total disregard for young people and their families." Charli

2. What follows misdiagnosis is an undemocratic consultation process

The Gunning principles, established in a 1985 legal case, state that consultation must take place when a proposal is at a formative stage and can still be changed, and the outcome of any consultation must be taken into account in the decision-making process.

BIHR recommends

The Government must ensure the consultation process on any policy or legislative change to the SEND system follows the Gunning principles and genuinely supports meaningful engagement. BIHR can support linking Government teams involved in the process with Lived Experience voice. We would be open to offering briefings, meetings, roundtables in the coming weeks and months to both government and parliament.

This consultation does not ask if reform is needed, but how the changes already decided by the Government could be delivered. This places reform as a foregone conclusion, giving little space for the people directly involved in the SEND system to share an alternative view.

At BIHR, we are reminded of the previous Government's Bill of Rights Bill, referred to widely as the 'Rights Removal Bill', which was published in 2022 and eventually shelved in 2023. This threatened to repeal the Human Rights Act and replace it with a system of reduced human rights protections, with a similar pattern of asking how, rather than if, change was needed. It is disappointing to see the new Government falling into the same habits of its predecessors.

What's more, the consultation does not ask questions about some of the most fundamental changes which could undermine children and families' rights. This is currently the subject of a legal challenge issued by 8-year-old Jessica Hayhurst and her mother Melissa, represented by Rook Irwin Sweeney, arguing that the consultation is "unfair, including in failing to provide consultees with sufficient information about the proposals and to ask key questions of consultees".

This consultation is fundamentally flawed in that it assumes legislative overhaul is needed. Families of children with SEND have already shared their views on what's going wrong and what's needed to fix it, giving their time and energy, often unpaid and juggled with their other responsibilities. Framing the consultation as a fait accompli in this way can make those families feel devalued and unheard and puts an additional burden on them to share their opinions yet again.

"There is a significant emotional and cognitive toll for families asked to repeatedly engage in consultation processes that feel predetermined. Participation is often framed as influence, yet many families report little observable impact from previous consultations. This risks eroding trust not only in the reform process but in institutions more broadly. Meaningful consultation must include genuine openness to retaining, strengthening, or abandoning proposals. From a practice perspective, this contributes to disengagement and consultation fatigue, particularly among families already managing high levels of stress and advocacy demands. A rights-based approach requires participation to be authentic, not procedural." Daisy

"Families in the system at this time are struggling with the lack of easily understandable information at this time and are panicking that their current support is going to be cut or changed. It is extremely difficult to already be being traumatised by a system that then does not properly inform you of when and how (or if) things will change. Families are having to advocate and

push not only for their child through tribunal and schools, but now against the government for this as well. They have no capacity left. Reform probably is needed, but the focus of the consultation is in the complete wrong place." Charli

"As someone with lived experience of the SEND system, both as a student and now as a Learning Support Assistant, lived experience should be part of the process from the beginning, not added after decisions have already been made. The people who will live with these reforms every day, students, families, SENDCos, teachers and support staff, need to be meaningfully involved in shaping them. Otherwise, there is a risk that reform becomes something done to children and families, rather than with them, which can undermine children's right to education and their right to family life by excluding those closest to them from meaningful decision-making. Human rights in practice means listening to people whose rights are most affected before changing the systems they rely on. If the problem is that the current system is flawed or not working as intended, the first question should be why, not how quickly we can replace it." Hanna

BIHR's human rights concerns: The White Paper

1. A step away from human rights: rolling back on accountability and enforceability

In our work, we advocate for a culture of respect for human rights in the provision of public services, including education. This means decision-makers embedding the rights and duties of the Human Rights Act in their decision-making, as part of a preventative approach to unnecessarily limiting people's rights, or worse breaching them. However, legal challenge through the courts must always be available as an important backstop for when things do go wrong. The same rules apply in the SEND system: we want it to work well, but there needs to be strong safeguards and routes for redress when that doesn't happen. Unfortunately, many of the proposals in this consultation point towards a reduction in accountability and enforceability across the SEND system.

The White Paper introduces Individual Support Plans (ISPs) for all children with SEND, with a duty on schools to produce them. Under the current system, children with SEND either receive non-statutory SEND Support, or an Educational, Health & Care Plan (EHCP) which is statutory support. Local authorities must secure and maintain an EHCP where it is 'necessary' for this provision to be made (S.37(1),

C&FA 2014). Under the proposals, the threshold shifts so that EHCPs are 'protected' for 'children with the most complex needs'. This seems intended to narrow the scope of who is eligible for EHCPs, meaning more children will fall into mainstream educational settings with ISPs only.

We are concerned that the duty on schools is to create and monitor ISPs, not to deliver their contents. This leaves a sizeable gap in protections and falls short of ensuring enforceability of suitable support for children and young people with SEND. An important clarification that is needed is how decisions about whether a child needs an ISP or the contents of an ISP will be legally enforceable. There appear to be similarly limited options for redress available if a parent is concerned that the universal support offered will not meet a child's needs, or with the 'layer of support' that has been determined for their child. Accountability appears to rely heavily on individual school complaints processes which can differ significantly. This effectively will leave schools marking their own homework on the crucial question of whether they have upheld a child's rights. This change risks damaging relationships between schools and parents by pitting them against one another. There are also no plans to extend the Local Government and Social Care Ombudsman's remit to school complaints about SEND, despite this being recommended by the Education Committee.

"We're concerned that ISPs could be changed with no more incorrect evidence or without proper process for a review and amendment and no right of appeal against the updated special educational provision. At the moment when a local authority wants to amend or update an EHC plan there is a very clear process to follow. Those are the sorts of things that would need to be all spelled out." Catriona

"The distinction between creating a plan and delivering provision is critical in practice. Without enforceability, plans risk becoming administrative artefacts rather than mechanisms of change. Families already experience significant difficulty challenging unmet support even within the current system; introducing plans without clear routes of redress risks compounding this. Reliance on school-level complaints processes introduces inconsistency and may deter challenge, particularly where relationships are already strained. Legal enforceability provides a necessary safeguard where systems fail. Removing or weakening these safeguards risks shifting the burden further onto families to evidence, negotiate, and advocate for provision that is already recognised as necessary." Daisy

"For migrant families, the relationship with schools is frequently already adversarial. Language barriers, cultural misunderstandings, and power imbalances mean that many parents are already unable to effectively challenge school decisions. The local authority, however imperfect, has functioned as an intermediary with statutory duties. Shifting accountability entirely to schools (with complaints processes as the primary remedy) removes the only structural lever available to families with the least advocacy capacity. A school complaints process conducted in English, without translation support or legal backing, is not meaningful accountability for the families most at risk of falling through the gaps." Karen Torres, Advocacy, Research and Campaigns Manager, IRMO (Indoamerican Refugee and Migrant Organisation)

Enforceability is also being stripped back for those who will continue to be eligible for an EHCP, as the consultation proposes changes to the SEND Tribunal's powers. The SEND Tribunal adjudicates on appeals about needs assessments, EHCPs, and education placements. Under the new system envisaged by the Government, Tribunals would no longer be able to name a specific school placement and will only be able to quash the local authority's original decision and order them to reconsider. The Tribunal already has this power, but it rarely exercises it for fear of extending delays in children and young people receiving the provision they need.

Reducing the Tribunal's powers in this way could risk an increase in the number of children and young people without a suitable school place, which may in turn impact on their wellbeing, community, and family relationships, protected by their Article 8 right to respect for private life, or even their Article 3 right to be free from inhuman and degrading treatment if the impact is severe. As noted above, it is important to note that the consultation does not invite comment on this specific change, despite the significant impact it could have.

"We strongly oppose any reduction in tribunal powers. The tribunal's function is simply to apply the law, not to take sides. The tribunal is on the side of the law being correctly applied. It's able to look at the evidence and decide what is suitable for an individual child." Catriona

If fewer children are eligible for EHCPs due to the increased threshold, and yet the ability to secure the right support through ISPs is weak, this will lead to unmet need and will not deliver actual change for children and families.

BIHR recommends

The Government must ensure that robust routes for redress are available where children and young people with SEND and their families can challenge decisions

in a fair and consistent way, regardless of the complexity of their needs, in line with the requirements of the right to a fair trial (Article 6, HRA).

"I have noticed that concerns can sometimes be taken more seriously when a child has parents who are confident, persistent, or known to challenge decisions. I do not think this is usually intentional, but it reflects the reality of a stretched system where staff are under pressure and follow-up can be inconsistent. This creates a risk that children with less vocal or less resourced families receive less support, even when their needs are significant. If the reforms rely more heavily on school-level plans and complaints processes, this inequality could become worse. A child's access to support should not depend on how confident their parent is, how well they understand the system, or how able they are to keep pushing. There needs to be a clear, independent and accessible route for accountability." Anonymous

2. A step away from human rights: individualized assessments to a rigid one-size-fits-all approach

Human rights law requires public authorities to understand the individuals whose rights are impacted, making decisions both in their policies and process, and in individual decision making. This approach is mirrored in the current SEND system, where assessments of children and young people with SEND are based on their individual needs. However, the consultation sets out proposals to shift to a one-size-fits-all system of standardised groups.

It is proposed that children and young people with 'the most complex needs' will receive 'specialist' support, assessed against seven nationally defined 'Specialist Provision Packages' (SPPs). The categories in draft form are already causing confusion:

"Every parent I know has tried to work out where their own child would fit and most parents have been baffled and can't figure out where their child would sit among the existing draft packages." Catriona

We are concerned that applying standardised criteria and packages of support instead of tailoring provision to a child's individual needs may risk unlawful interference with human rights. If this leads to children falling through the gaps of this new system and being unable to access the support they need, this could impact on their wellbeing and the wider family's life (Article 8), and if this causes serious harm or distress their right to be free from inhuman and degrading

treatment could be affected (Article 3). Unlawful interference with these rights may also give rise to discrimination issues, protected by Article 14 of the HRA. For example, denying a child an EHCP based on banded SPP criteria instead of an individual assessment could be vulnerable to challenge, because the same rules would be applied to everyone even though they may disadvantage some children and young people with SEND.

"As a Learning Support Assistant in a mainstream secondary school, I support students with very different needs, even when they share the same diagnosis. For example, I know two autistic students who both have EHCPs. One needs close support in lessons, help understanding questions, support with writing, and supervision when overwhelmed, including when she leaves the classroom or becomes distressed. Another student is high-masking, has a strong friendship group, is doing well academically, and benefits mainly from weekly check-ins and mentoring. On paper, they have the same diagnosis. In reality, their needs are completely different. Giving them the same support package would not make sense. This is why individualised assessment matters. Children are not categories or tiers. Support has to reflect the actual child, their learning style, environment, risks, strengths and stage of development." Hanna

BIHR recommends

The Government must ensure that reforms of the SEND system will not lead to one-size-fits-all approaches to assessment and support which fail to account for people's individual human rights.

"If there are not personalised approaches, children will struggle worse than ever. The school system is already not built for us and so personalised adjustments and specialist settings are the only way to achieve the same access to education, wellbeing, community and autonomy that our peers have. It will also likely cost more money in the long run." Charli

"A move toward standardised tiers or packages risks prioritising system manageability over individual need. In practice, children do not present in neat profiles or thresholds - needs fluctuate, overlap, and interact with environment, sensory experience, and relational context. Rigid categorisation risks excluding those who do not meet narrow criteria while still experiencing significant functional impact. For neurodivergent children in particular, needs may not appear "complex" in traditional terms but still require highly tailored, responsive support." Daisy

The impact of being out of school can take its toll on young people's rights, as we have heard from our lived experience experts:

"When I was an inpatient in a mental health facility, my school sent me work, but because I was in my first year of A levels and the school only went up to GCSE, there was limited support to help me understand it. The more work I received without enough explanation, the more overwhelmed and demotivated I became. My EHCP assessment happened while I was there, and the support was put in place when I returned to school. This included regular tuition, SENDCo support, mentoring, and access to the learning support building when I felt overwhelmed. I cannot know whether an earlier EHCP would have changed everything, but it may have reduced the length of my break from education and made returning easier. The longer a young person is out of education, the harder it can be to rebuild confidence, motivation and learning." Hanna

3. A step away from human rights: reduction in choice and control

According to the current SEND Code of Practice, if a parent or young person requests a specific educational setting the local authority must comply with their preference unless it would be unsuitable for the child, or if the child's attendance at that setting would be 'incompatible with the efficient education of others, or the efficient use of resources'. The consultation proposes that parents and young people will be able to choose from a list of recommended settings able to provide the SPP, provided by the local authority, instead of being able to choose any setting as is currently the case.

The right to respect for private and family life (Article 8) protects our autonomy, ensuring that people can make decisions about their lives as much as possible. As a non-absolute right, this should only be restricted if doing so would be lawful, for a legitimate aim, and the least restrictive option. We are concerned that reducing the options available to children with SEND and their families may limit their right to autonomy.

Not only this, but the impact of a child ending up in an unsuitable school placement can affect their rights in other ways, as well as the rights of their families. It is important to consider how this could impact on a child's wellbeing, on their ability to form relationships and be part of a community, all of which are protected by the right to respect for private life (Article 8).

"As someone who has spent time as an inpatient in the mental health system, I know how much it can affect people when support is only available far from home. I met people who had been moved away from their families and communities because there was no suitable provision nearby, or because their needs had escalated. That separation can be deeply isolating. It affects relationships, recovery, identity and family life. I worry about similar thinking being applied to education. If "value for money" becomes a major factor in placement decisions, whose value is being measured? The local authority's budget matters, but so does the cost to the child and family of being placed somewhere unsuitable or far away. Education is not just a service. It is part of a child's community, relationships and daily life." Hanna

Looking more widely, according to research by Ambitious about Autism, 90% of parents of autistic children said the stress of getting their child the right support at school caused them to lose sleep, and almost a third of parents have had to give up their jobs due to school exclusion. It is clear that the impact of being in an inappropriate school placement can be severe and widespread, and we are concerned that limiting parental preference may increase the likelihood of this occurring.

"I was diagnosed with autism at 17, but my mum had raised concerns from when I was very young. She brought this up when I was around four, because I was struggling socially, but her concerns were dismissed as over-worrying. Autism was raised again when I was 14 and in treatment for anorexia, but the assessment was not completed because I was not engaging. During that assessment, I briefly looked up and smiled when someone mentioned cats, and this was taken as evidence that I could make eye contact and there was no concern. Although this is a mental health-related example, it shows what can happen when family concerns are not seriously considered. If the SEND system gives families less choice and control, similar mistakes could happen in education, risking children's right to education, family life and non-discrimination." Hanna

The Government also plans to strengthen local authorities' ability to factor in 'value for money' in future decisions about placements. The right to respect for private and family life, home and correspondence (Article 8) includes specific wording to specify that it may be restricted in the interests of 'the economic well-being of the country'. Therefore, whilst it would not inherently risk Article 8 rights if decisions about SEND placements were made in part for financial reasons, human rights still must be fully considered as part of that decision. The more severe the impact of that decision, the greater justification would be needed. If the decision leads to children being out of education and this affects their

wellbeing, or even causes serious mental or physical harm affecting their right to be free from inhuman and degrading treatment (Article 3), SEND authorities would need to act to ensure rights are upheld. If a financial decision about SEND provision risks an absolute right, this would never be justified.

"From a practice perspective, restriction of parental choice shifts the balance of power further toward systems already under strain. While resource considerations are legitimate within a legal framework, they must not become the primary organising principle for decisions about children's lives. Where families are limited to pre-determined options, the role of professional judgement risks being reoriented toward fitting children into existing provision rather than identifying what is required. This can lead to placements that are technically available but practically unsuitable, increasing the likelihood of breakdown, exclusion, or disengagement from education." Daisy

"Parents are the people who best understand their child's needs, and the complex web of factors that make a school placement workable in practice. For the families IRMO supports, school choice is rarely about the school in itself. It encompasses proximity to therapists they have waited years to access, sibling schools, community networks, safe travel routes, and cultural and linguistic fit that can make the difference between a child engaging or withdrawing entirely. Replacing the right to name a specific school with a local authority-curated list, filtered by "value for money", strips away this knowledge and concentrates decision-making power in the hands of the body that has most frequently failed these families." Karen

BIHR recommends

The Government must ensure reforms to the SEND system do not weaken the rights of children and young people with SEND and their families to be involved in decisions, and do not prioritise resources over legally protected rights.

This proposal sets a dangerous precedent, giving local authorities more power to refuse to fund a particular school placement for a child or young person with SEND. Although the right to education (Article 2, Protocol 1) does not give anyone the right to secure a specific educational placement, it does prevent the state from denying a person an effective education. This right may be at risk if a local authority can decide that it would not represent 'value for money' for a child with SEND to receive an education that meets their needs, and we are concerned that this is regressive, rolling back on the Education Act 1981 which first gave children with SEND the right to a suitable education.

"Who decides what is "value for money"? Thousands of neurodivergent and disabled children are currently out of school because of system failures, which surely costs more than providing the right setting. There is no point placing young people in the wrong setting, because they will simply land in the same position as before." Charli

"At the moment, the rights-based framework says that the bottom line is what a child needs, not what's available in the area or what a local authority has to spend. This [consultation] introduces value for money and affordability into the whole thing. There may be people who don't have any connection with SEND or who haven't thought very hard about the whole thing, who might nod their heads at this point and say 'well quite right, local authorities have a lot to spend money on'. But the question then becomes, how are those children going to be educated? Are they going to receive an education? And the logical next step is to ask, are we saying that there are children who are too disabled to receive an education? […] That takes us into the realms of things that policymakers get very queasy about." Catriona

4. A step away from human rights: raising expectations, not realising rights

The move to boost inclusion in mainstream schools is welcome and aligns with the Education Committee's calls for culture shift and funding to make mainstream education 'genuinely inclusive'. As we have made clear throughout this response, for children and young people with SEND and their families, accessing this support can be a battle, sometimes leading to situations where rights are risked. For example, lengthy waits for SEND assessments can see children unable to access the support they need, potentially impacting on their and their family's wellbeing, protected by Article 8.

Schools desperately need more resources and support to meet the needs of children with SEND, and yet under the proposals they will be given further duties to create and review ISPs. Without funding, schools are at risk of being overwhelmed by their new responsibilities, possibly forcing children to fail again and again before they are finally able to receive the correct support.

Not getting the right support at the right time could have negative implications for children and young people's mental and physical wellbeing, as well as wider consequences for their families, affecting the right to private life (Article 8). Being left without essential SEND provision, especially if this is for a long period of time and leads to children being out of education entirely, could cause serious harm to

children and families with SEND, protected by the right to be free from inhuman and degrading treatment (Article 3). This is an absolute right, which cannot be limited by public body decisions under any circumstances, including for cost-related reasons.

"We see hundreds of autistic young people who end up in CAMHS inpatient care, often not due to a separate mental health condition but due to the lack of support, the masking they are doing, lack of self-understanding, and collapse from sensory and social difficulties which are seen in the school system. I was one of them. What , and it is despicable that nothing has changed in ten years. My CAMHS admission traumatised me and my family further and I know it cost the NHS thousands of pounds that could have been prevented." Charli

"Schools are already under extreme pressures and have a significant lack of capacity. Placing more of the duties and responsibilities onto schools is only going to make disabled children be deprioritised further, and parents deserve access to the legal system when needed." Charli

"Frontline organisations supporting families know that even under the current system, families with legally enforceable EHCPs in mainstream schools struggle enormously to secure the provision their children are entitled to. Plans go unimplemented, annual reviews are missed, EHCP drafts aren't sent out (or not translated), complaints go unanswered. If this is the reality with the strongest legal protections available, replacing EHCPs with unenforceable ISPs in the same under-resourced settings will not improve outcomes, it will entrench failure while making it significantly harder for families to challenge. The conditions in schools for this reform to succeed do not exist." Karen

"Across all proposals, there is a recurring tension between system efficiency and individual rights. In practice, when systems are under strain, efficiency tends to take precedence. Reform must explicitly safeguard against this by ensuring that rights remain the starting point for all decision-making, not a consideration secondary to capacity." Daisy

BIHR recommends:

The Government must ensure sufficient funding and support is available to public authorities across the SEND system to enable them to meet their legal duties under the Human Rights Act, ensuring the rights of children and young people with SEND and their families are respected, protected, and fulfilled.

Conclusion

At its core, this debate is not about whether change is needed, it is about what kind of change will truly uphold the rights of children and young people with SEND and their families. Human rights must remain the starting point, not an afterthought. The rights set out in the Human Rights Act are clear: all children are entitled to dignity, autonomy, family life, inclusion, wellbeing, and freedom from discrimination. Yet for too many families, these rights exist only on paper.
The evidence does not point to a failure of the law itself, but to a failure in its implementation. When parents are successful in the vast majority of SEND tribunal cases (95%), it is a clear signal that the system is not applying the law as it stands. Reforming the legal framework without addressing this fundamental issue risks compounding, rather than solving, the problem.

The proposals set out in the White Paper raise serious concerns. Moves away from individualised support, weakened routes to accountability, reduced tribunal powers, and increased bureaucracy without adequate resourcing all risk creating further barriers for children and families seeking to realise their rights. In particular, shifting towards systems that are less enforceable and less responsive to individual need risks leaving many without meaningful access to support and therefore without meaningful access to their human rights.

There is a real danger that these reforms will create a more complex, less accountable system, where rights are harder to access, harder to enforce, and easier to overlook. This is not progress. It is a step away from the principles that should underpin the SEND system.

What is needed is not wholesale legal change, but a renewed commitment to making the existing framework work. That means properly funding the system, supporting schools and local authorities to implement the law effectively, and embedding a culture of respect for human rights in everyday decision-making. It means strengthening accountability, not weakening it.

At BIHR, our message is clear: any reform must be firmly grounded in existing human rights law. Government must focus on fixing the system, not rewriting it. Children and families do not need more complexity, they need their rights to be realised in practice. Only by centring human rights, investing in implementation, and ensuring meaningful accountability can we build a SEND system that truly works for those it is meant to serve.

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"The system is at its absolute limit, there is no denying it. But this is not the way forward. Placing more pressure - both time and financial - on individual schools is going to leave disabled young people behind even more than they already are." Charli

Appendix 1: BIHR's work in SEND

We focus on making change across five everyday systems where HRA advocacy can make a tangible difference in people's lives. One of those key areas is education, pushing for the implementation of the HRA to enable people to learn in safe, equitable environments.

BIHR collaborates with people with direct experience of the current system in place to support children with special educational needs and disabilities (SEND) and their families:

- In 2021, we delivered a large-scale human rights capacity-building programme for staff in Child and Adolescent Mental Health Services (CAMHS) across 16 Provider Collaboratives, commissioned by NHS England. The programme was co-developed with young people and families with experience of inpatient mental health services.
- From 2022-2025, we ran a UK-wide community programme, offering free awareness-raising workshops to organisations including Joining the Dots Parent Carers in Wales and the Association for Young People's Health, as well as co-designing a detailed human rights guide with Parent & Carer Alliance CIC to empower parents and carers of children with SEND to use human rights when challenging decisions of local authorities and schools.
- Our work with other community groups also often intersects with education. For example, BIHR is currently partnered with the Indoamerican Refugee and Migrants Organisation (IRMO) which supports Latin American migrant families living in the UK. They tell us that accessing an appropriate education is a key issue faced by the communities they serve, which includes children with SEND and their families.

Appendix 2: Lived Experience Experts

Catriona Moore, Policy Manager, IPSEA (Independent Provider of Special Educational Advice)

Daisy Long, Chief Social Worker, DCC Interactive Ltd (DCC-i)

Charli Clement, Autism and Mental Health Lived Experience Expert

Hanna Gawron, Lived Experience Expert and Learning Support Assistant in a Secondary School

Karen Torres, Advocacy, Research and Campaigns Manager, IRMO (Indoamerican Refugee and Migrant Organisation)