**World of Inclusion Ltd response to United Kingdom response to list of issues and report to UN Convention on the Rights of Persons with Disabilities Committee for forthcoming scrutiny on 23rd and 24th August 2017.**

1. World of Inclusion Ltd is a not for profit consultancy based in the United Kingdom with the aim of supporting the development of an inclusive system for disabled children and young people in the UK and around the world. We operate from a social model perspective and are run by disabled people. We provide research, training, resources and advice on developing an inclusive education system. Our CEO Richard Rieser represented the UK Disabled People’s Movement at the Ad Hoc Committee that drew up the Convention and played a leading role in framing Article 24. More recently, World of Inclusion Ltd made presentations to the 2 drafts of CRPD General Comment No 4 on Article 24 and made an oral presentation at the General Day of Discussion.

1. We are of the view that the UK and in particular the English education system has gone into reverse on pursuing the goal of Inclusive Education for disabled children and students since 2006 and more specifically since the election of the Coalition Government in 2010 and the Conservative Government in 2015.
2. **Article 8 Awareness Raising as it should impact on Schools and colleges.**

The Revised National Curriculum 2013 Citizenship was a good chance to raise awareness in English Schools, but the Secretary of State chose not to explicitly mention disabled people of disability rights[[1]](#footnote-1). The only mention relevant is that ‘pupils should be taught about human rights and international law’. Neither does the citizenship curriculum make any reference to the Equalities Act 2010 and the Public Sector Duty on all publicly funded schools to promote equality for those with protected characteristics. Schools represent more than half the public bodies this duty applies to.

“ In summary, those subject to the equality duty must, in the exercise of their functions, have due regard to the need to:

* Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
* Advance equality of opportunity between people who share a protected characteristic and those who do not.
* Foster good relations between people who share a protected characteristic and those who do not.

These are sometimes referred to as the three aims or arms of the general equality duty. The Act explains that having due regard for advancing equality involves:

* Removing or minimising disadvantages suffered by people due to their protected characteristics.
* Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.”
* Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.”[[2]](#footnote-2)

1. There is little evidence that schools are in any regular or systematic way promoting disability equality for disabled students and children or complying with Article 8 2b “b) Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;” In is response to the list of issues the UK Government’s only reference is to state that “resources are available to raise disability awareness” (para. 39).
2. No requirement is explicitly placed on schools by the state party, neither is it mentioned anywhere in the revised National Curriculum and nor does the English Schools Inspection agency OFSTED ask to see or record any evidence in this area. See OFSTED Common Inspection Framework[[3]](#footnote-3) . Unlike earlier Statutory guidance that explicitly mentioned bullying this has now been removed in the interests of streamlining. This is most unfortunate.
3. T**he School Inspection Handbook' for the new OFSTED Framework**(commencing September 2012) included the following guidance regarding judgements of **'Behaviour and Safety'. This was replaced in 2015 and Inspections no longer have the focus below**:

* “Inspectors should consider:  
   types, rates and patterns of bullying and the effectiveness of the school’s actions to prevent and tackle all forms of bullying and harassment - this includes cyber-bullying and prejudice-based bullying related to special educational need, sexual orientation, sex, race, religion and belief, gender reassignment or disability;
* the  effectiveness  of  the  school’s  actions  to  prevent  and  tackle  discriminatory and derogatory language – this includes homophobic and racist language, and language that is derogatory about disabled people;
* pupils’  respect for, courtesy and good manners towards each other and adults, and pride in themselves and their school;
* the views expressed by pupils, and different groups of pupils, of their experiences  of  others’  behaviour  and  attitudes  towards  them;
* the views of parents and carers, staff, governors and others
* the extent to which pupils are able to understand and respond to risk
* overall and persistent absence and attendance rates for different groups.”[[4]](#footnote-4)

1. The negative impact of this approach is that bullying of disabled children and young people is at a higher level in English schools than for other minority groups. This as research has shown has a life-long negative impact on life chances and mental health[[5]](#footnote-5),[[6]](#footnote-6).
2. **Evidence.** Primary school pupils with special educational needs are twice as likely as other children to suffer from persistent bullying. At age 7, 12% of children with special needs and 11% of those with a statement said they were bullied ‘all of the time’ by other pupils, compared to just 6% of their non-disabled peers. (Institute of Education 2014)

* Fifteen-year-olds with statements of special educational needs were significantly more likely to be frequent victims of threats or acts of physical violence and theft, even when other factors that increase the risk of bullying were taken into account. They were also more likely to be excluded by a group of schoolmates or called names – a form of victimisation that is often referred to as “relational bullying”. (Institute of Education 2014)
* 83% (or roughly eight out of ten) of young people with learning difficulties reported experiencing bullying (Luciano and Savage 2007, and Mencap 2007)
* 82% of young people who are disfluent (those with a stammer), 59% of them at least once a week, and 91% by namecalling have experienced bullying (Mooney and Smith 1995)
* 70% of children with autistic spectrum disorders combined with other characteristics (for example, obsessive-compulsive disorder (OCD) have experienced bullying (Bejerot and Mortberg 2009)
* Young people with speech difficulties are three times more likely to be bullied than their peers (Savage 2005)
* 30 per cent of children with reading difficulties (Sweeting and West 2001)56% of children with a learning disability said they cried because of bullying, and 33% hid away in their bedroom. Nearly half of children with a learning disability had been bullied for over a year, and many were bullied for even longer. (Mencap 2007 - Bullying wrecks lives: the experiences of children and young people with a learning disability)
* Children and young people receiving special education services in schools were more likely to report receiving an online interpersonal victimization in the past year, even after adjusting for other explanatory factors. (Wells, M. and Mitchell, K.J. 2013)
* Over 90% of parents of children with Asperger Syndrome reported that their child had been bullied in the previous 12 months.(L. Little, 'Middle-Class Mothers' Perceptions of Peer and Sibling Victimisation among Children with Asperger's Syndrome and Non-Verbal Learning Disorders' - 2002 - 25(1) Issues in Comprehensive Paediatric Nursing pp. 43 - 57.)
* There is a growing evidence base linking bullying to mental health problems which has changed both government and societal attitudes to bullying. Findings showed that 61.5 per cent of participants reported being bullied, with 62.5 per cent of bullied participants reporting that being bullied was an important reason for their attendance at the CAMH service. (Dyer, K. and Teggart, T. 2007 Bullying experiences of child and adolescent mental health service-users: a pilot survey. Child Care in Practice, vol.13, no.4 Oct. pp351-365)
* Children bullied during their early years are up to three times more likely to self harm than their classmates when they reach adolescence. It found that half of 12-year-olds who harm themselves were frequently bullied. The research also showed that victimised children with mental health problems were at greater risk of self-harming in later life. The authors suggest that efforts should focus on improving the ways in which children cope with emotional distress. They also call for more effective programmes to prevent bullying in schools. (Bullying victimisation and risk of self harm in early adolescence: longitudinal cohort study Helen L Fisher and others. BMJ Online, 26 April 2011)[[7]](#footnote-7)

1. The UK Government has been financially supporting the Anti-Bullying Alliance to develop work in schools to challenge disabilist bullying and name calling[[8]](#footnote-8). However its lack of a robust approach to bullying in schools and colleges is likely to be a breach of its duties under Article 15.

**Article 24.**

1. The UK Government reservation allowing education outside their local community and to have a choice of mainstream and special schools, is in light of General Comment No 4 no longer a viable option for the UK Governments interpretation of Article 24.(UK Gove response to issues 103) Furthermore it is leading to many human rights abuses.
2. In paragraph 230 of the UK Government report it is stated ‘Disabled people in the UK have the right to education on an equal basis with non-disabled people’. Changes in the Law for England enacted in the 2014 Children and Families Act have encouraged new barriers for schools, especially Academies who are their own admission authorities, to refuse to admit disabled children to mainstream schools. Section 33 states “the local authority must secure that the plan provides for the child or young person to be educated in a maintained nursery school, mainstream school or mainstream post-16 institution, unless that is incompatible with— (a) the wishes of the child’s parent or the young person, or (b) the provision of efficient education for others”. The law is ambiguous and this is leading to increasing numbers of mainstream schools refusing to admit children on the basis ‘that they cannot meet need’.
3. But Section 35 of the Children and Families Act states “Children with SEN in maintained nurseries and mainstream schools

(1) This section applies where a child with special educational needs is being educated in a maintained nursery school or a mainstream school.

(2) Those concerned with making special educational provision for the child must secure that the child engages in the activities of the school together with children who do not have special educational needs, subject to subsection (3).

(3) Subsection (2) applies only so far as is reasonably practicable and is compatible with— (a) the child receiving the special educational provision called for by his or her special educational needs, (b) the provision of efficient education for the children with whom he or she will be educated, and (c) the efficient use of resources”. This is what the Government means by statutory limitations. During the drafting of this Law many DPOs and NGOs pointed out that this legislation needed amending to be in line with Article 24, but the Government refused steadfastly to move on this question (Government Issues response 104)

1. These extra caveats and increasing pressure on mainstream schools to improve normative test results is leading to an unprecedented growth is special school numbers in England as more mainstream schools are refusing to admit disabled children. The population of maintained special schools has gone from 87,010 in 2007 to 105,365 in 2016[[9]](#footnote-9). In addition to this increase in the use of segregated education. Add to this the number of children with an SEN statement or a new Education, Health and Care Plan (EHCP) in independent schools has risen over the same period from 7,760 to 13,500. This is a definite trend away from mainstream in terms of placement.
2. Recently a report into the way children and young people with high learning level learning needs (including those on the autistic spectrum) have shown there is no room for complacency and a significant number of young people are a being placed in Assessment and Treatment Units hundreds of miles from home out of touch with their families with no access to education. This degrading and inhuman treatment is a direct result of the failure of our mainstream school system to accommodate them.[[10]](#footnote-10) A further report on education directly is now overdue.
3. A disproportionate number of disabled children and young people are prevented from what is offered to other students because they are either excluded on a fixed term or permanently. Recent statistics show that the majority of such fixed term exclusions are for minor and repeated behavioural infractions and that the largest number are those with Social, emotional and mental Health impairments (1.84% permanently and 43.23% fixed term). There is little enforcement of the right to reasonable accommodation where their impairment impacts on their behaviour.[[11]](#footnote-11)
4. These statistics are divided into permanent exclusion and fixed term exclusion. There is a high disproportionate number of disabled children and young people excluded in both categories. It needs to be remembered that schools in England spend an extra £600O P.A. for those on school support and those with an EHC Plan or Statement access Higher needs funding above this amount. Yet schools do not in the main appear able to make the reasonable accommodations such as anger management, peer support, buddies and behaviour support to keep these students in school and allow them to thrive. So primary age pupils in mainstream with school support are 18.6 times more likely to be excluded on a fixed term than a pupil without SEN and 33x more if they have an EHCPlan or Statement. With teenage behaviour the level of exclusion goes up for the whole cohort, but secondary mainstream students with SEN support are 4.13x more likely to be excluded than those with no SEN and those with an EHC Plan or statement are 4.13 times as likely to be excluded fixed term in 2015/2016 in English schools.
5. This does not fit the picture the UK Government give in their response to the list of issues (105).Despite there being an equality duty on schools to promote disability equality in all they do (Equality Act 2010),there are many instances of schools failing in these duties. We notice very little emphasis in the SEND Code of Practice or in Government initiatives to develop this increasing capacity. In fact in recent years, a large increase in numbers of parents seeking special schools in would suggest a reduction in capacity to meet the needs of disabled children.
6. **The Statutory Inclusion guidance was dropped in September 2014 and has not been replaced.** The Government is increasing the provision for special schools and not encouraging good inclusive practice in mainstream schools. This is despite them introducing the

***Interpretative Declaration when they adopted the UNCRPD in 2009.*** *“Education – Convention Article 24 Clause 2 (a) and (b)  
The United Kingdom Government is committed to continuing to develop an inclusive system where parents of disabled children have****increasing****access to mainstream schools and staff, which have the capacity to meet the needs of disabled children. The General Education System in the United Kingdom includes mainstream and special schools, which the UK Government understands is allowed under the Convention.”*

1. The Government is also signed up to the Sustainable Development Goals, with [No.4 specifically being the development of an inclusive, quality education system for all.](http://www.ohchr.org/Documents/HRBodies/CRPD/GC/.../CRPD-C-GC-4.doc) Despite recommendations from an independent report to increase the initial teacher training on SEN and Inclusion in 2015 there has so far been no increase in requirements beyond a day or half a day in the various rotes that lead to Qualified Teacher Status. In Response the Carter Inquiry[[12]](#footnote-12) into Initial Teacher Training made recommendations in 2016 which the Government accepted, but as non-statutory guidance . This does not fit the vague response to issue f (para 113). So not enforceable on the multiple providers. This is still likely lead to teachers being unprepared. In other words they were not prepared to introduce statutory standards. The areas recommended were:-

* [Developing behaviour management content for initial teacher training](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/536889/Behaviour_Management_report_final__11_July_2016.pdf)
* [A framework of core content for initial teacher training](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/536890/Framework_Report_11_July_2016_Final.pdf)
* [National standards for school-based initial teacher training mentors](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/536891/Mentor_standards_report_Final.pdf).

1. The Scottish Universities in contrast have developed an excellent training framework based on inclusion for all beginner teachers and adopted by the devolved administration[[13]](#footnote-13)
2. The main problem is that the SEND reforms are not a leading part of the Government’s education changes. Its policies all militate against the inclusion of children and young people and those with special educational needs. These include the push for more selection with grammar schools; setting up more free schools, especially special schools; the reduction in real funding and reorganisation of funding to one national formula; the introduction of a new knowledge based, narrower curriculum; more testing of our children; the abolition of national curriculum levels and the loss of parental control through the replacement of governors with proprietors of academy chains.
3. **Equality Act and disability**

To have rights under the disability part of the Equality Act, a child or young person needs to have a physical or mental impairment (loss of function) that has a substantial (more than minor or trivial) long term impact on their ability to carry out day to day activities (for 12 months or more, or likely to last 12 months or more).

To be recognised by the school as disabled, the child **does not need a medical diagnosis**. The school can be told by the parents or surmise this for themselves. Thus, if the school has placed a child/young person on SEN Support, it is very likely that the definition will apply to them. It is also likely to apply to young people with medical needs and mental health issues who are not on SEN support.

As soon as the school is informed, they have a duty to make **individual reasonable adjustments** including providing auxiliary aids and support for those who count as disabled. However, the duty to make reasonable adjustments is an**anticipatory duty**.

1. This means that before knowing about an individual, they have to adjust their policies, provision, criteria and practices to not put disabled people at a substantial disadvantage and take steps to meet the likely needs of disabled learners. Governing bodies or the proprietor are under this duty. Policies, criteria, provision and practices need to take account of the need to make reasonable adjustments. For example, for admissions, exclusions, sports activities, school activities and trips, lunch time/after school activities and access to learning, should have been regularly reviewed and adjusted so as not to place disabled people at substantial detriment. The school is also under a duty to not discriminate directly, indirectly or on the basis of issues arising from disability, and to eliminate bullying and harassment. Disabled children and young people experience the highest level of [bullying](http://www.specialneedsjungle.com/tips-to-help-a-bullied-child-anti-bullying-week/) and harassment in our schools. The Anti Bullying Alliance focuses on this, but unless school staff and students take ownership of zero bullying, not much will change. He Government does not provide clear advice, training or guidance on these duties so they are largely acknowledged in their default.
2. The UK Government states in para. 110 of their response to the list of issues that young people without an EHC Plan must be educated in mainstream schools in most circumstances. This presumption of inclusion is being weakened by the setting up of 69 new free special schools and academies that are segregated schools and have the right to admit students without an EHC Plan if their parents agree. This not a right that other parents have for maintained special schools-some 1250 in England. It also means that disabled students admitted under these arrangements will not have the right to annual review and scrutiny.
3. In para. 113 of their response the UK Government state that Disability Awareness is available to teachers. As a leading training provider of Disability Equality and Inclusion Training for school staffs, World of Inclusion find that schools and their leaders no longer prioritise this type of training. This compares to our previous organisation Disability Equality in Education, which between 2000 and 2008, provided highly evaluated training to 150,000 teachers and other educational professionals. Independent evaluations by Oxford Brookes University demonstrated that this training changes attitudes and practices for 60% of participants. The training was based on a Social model approach in line with the UNCRPD, which the Government says is subscribes to, but there is little evidence of this in the Department for Education edicts, SEND Code of Practice or legislation. Until such training is reintroduced it is unlikely that the vast majority of schools will take seriously their responsibilities on disability equality or inclusion.
4. If there are breaches in the current Equality Act or presumption of inclusion it is left to individual parents or the affected young person to apply to the SEN Disability Tribunal for redress. There is no statutory body that oversees schools on implementation such as school inspectors - OFSTED should.
5. OFSTED have a responsibility for ensuring ALL schools England have an up to date Access Plan under the Equality Act ,2010 Section, Schedule 10.

“1)The responsible body of a school in England and Wales must prepare—

(a)an accessibility plan;

(b)further such plans at such times as may be prescribed.

(2)An accessibility plan is a plan for, over a prescribed period—

(a)increasing the extent to which disabled pupils can participate in the school's curriculum,

(b)improving the physical environment of the school for the purpose of increasing the extent to which disabled pupils are able to take advantage of education and benefits, facilities or services provided or offered by the school, and

(c)improving the delivery to disabled pupils of information which is readily accessible to pupils who are not disabled.”[[14]](#footnote-14)

1. The problem with this legislation is that there is no separate funding stream to schools from Government to implement this plan, it is not monitored and there is no end date when all schools have to meet access standards. Only new schools and refurbished schools have to meet access standard. There is also no end date for when schools have to be accessible. Lack of physical access is regularly used as an excuse to keep disabled students out of the school. This appears to be a breach of Article 9 Accessibility and the right to temporary adjustments until the necessary structural changes have been made.
2. The UK Government also maintains Medical Standard to Teach , Fitness to Teach [[15]](#footnote-15)which discriminate against disabled teachers on a regular basis. They have previously been to by the Disability Rights Commission to change to a competency standards approach, but refused. The Scottish Government did adopt this approach and have found it to work well. The UK Government should not continue to use a medical model restriction to teaching. Not least to get a range of disabled role models amongst teacher. Because of the lack of support from Government for competency standards, there is a continuing problem with School managements unfairly treating disabled teachers leading to their dismissal on capability procedures which do not allow for reasonable accommodations.[[16]](#footnote-16)

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1. <https://www.gov.uk/government/publications/national-curriculum-in-england-citizenship-programmes-of-study/national-curriculum-in-england-citizenship-programmes-of-study-for-key-stages-3-and-4> [↑](#footnote-ref-1)
2. Equality and Human Rights Commissionhttps://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty [↑](#footnote-ref-2)
3. https://www.gov.uk/government/publications/common-inspection-framework-education-skills-and-early-years-from-september-2015 [↑](#footnote-ref-3)
4. <http://www.abqm-uk.com/ofsted/4556843113> [↑](#footnote-ref-4)
5. <https://www.anti-bullyingalliance.org.uk/sites/default/files/field/attachment/bullying-and-disability.pdf> [↑](#footnote-ref-5)
6. <https://www.anti-bullyingalliance.org.uk/sites/default/files/field/attachment/Mental-health-and-bullying-module-FINAL.pdf> [↑](#footnote-ref-6)
7. <https://www.anti-bullyingalliance.org.uk/tools-information/all-about-bullying/sen-disability/what-does-research-say> [↑](#footnote-ref-7)
8. <https://www.anti-bullyingalliance.org.uk/tools-information/all-about-bullying/sen-disability/disablism-class> [↑](#footnote-ref-8)
9. <https://www.gov.uk/government/statistics/special-educational-needs-in-england-january-2016> [↑](#footnote-ref-9)
10. # <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/585376/Lenehan_Review_Report.pdf> Lenehan review into care of children with learning disabilities

    [↑](#footnote-ref-10)
11. Statistical First Release <https://www.gov.uk/government/statistics/permanent-and-fixed-period-exclusions-in-england-2015-to-2016> Jul 2017 [↑](#footnote-ref-11)
12. <https://www.gov.uk/government/publications/carter-review-of-initial-teacher-training> [↑](#footnote-ref-12)
13. <https://pure.strath.ac.uk/portal/files/43889675/Barrett_etal_PCE2015_developing_inclusive_practice_in_scotland.pdf> [↑](#footnote-ref-13)
14. <http://www.legislation.gov.uk/ukpga/2010/15/schedule/10> [↑](#footnote-ref-14)
15. <https://www.swhwcornwall.co.uk/documents/managers/Fitness%20to%20Teach.pdf> [↑](#footnote-ref-15)
16. <http://disability-studies.leeds.ac.uk/files/library/DRC-Maintaining-Standards-Summary-Report.pdf> [↑](#footnote-ref-16)