



**Response to Call for Evidence
on
Educational Underachievement
Linked to Socio-Economic Disadvantage**

**Children's Law Centre
16th October 2020**

Children's Law Centre
2nd Floor
127 – 131 Ormeau Road
Belfast
BT7 1SH

Tel: 028 90 245704
Fax: 028 90 245679
Website: www.childrenslawcentre.org

For further information contact: Rachel Hogan BL, SENDIST Representative
rachelhogan@childrenslawcentre.org

Contents

Introduction	2
Main Causes of Educational Underachievement	3
Workforce	4
Child as Rights Holder	4
Main Impacts of Educational Underachievement	5
Informal Exclusion	5
Mental Health	7
Equality of Opportunity	7
Five Interventions	8
What has Worked?	10
Impacts of COVID-19 Lockdown and Restart Policies	12
Lauryn's experience	14
Conclusion	14

Introduction

The Children's Law Centre (CLC) is an independent charitable organisation which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and where every child can achieve their full potential.

We offer training and research on children's rights, we make submissions on law, policy and practice affecting children and young people and we run a free legal advice, information and representation service. We have a dedicated free phone legal advice line for children and young people and their parents and carers called CHALKY as well as a Live Chat service for young people through REE Rights Responder and a youth advisory group called Youth@clc. Within our policy, legal, advice and representation services we deal with a range of issues in relation to children and the law, including the law with regard to some of our most vulnerable children and young people, such as looked after children, children who come into conflict with the law, children with special educational needs, children living in poverty, children with disabilities, children with mental health problems and complex physical health needs and children and young people from ethnic minority backgrounds.

Our organisation is founded on the principles enshrined in the United Nations Convention on the Rights of the Child (UNCRC), in particular:

- Children shall not be discriminated against and shall have equal access to protection.
- All decisions taken which affect children's lives should be taken in the child's best interests.
- Children have the right to have their voices heard in all matters concerning them.

From its perspective as a children's rights organisation working with and on behalf of children, CLC is grateful for the opportunity to make a submission of evidence to the Expert Panel on Educational Underachievement linked to Socio-Economic Disadvantage.

Main Causes of Educational Underachievement

The Children's Law Centre's work is wide-ranging across all children's legal rights issues. However, the largest area of demand upon our service is education and in particular special educational needs. Frequently, our cases will have elements comprising education, SEN and disability, mental health and well-being and family support. Lack of support across these areas is in our experience inextricably linked to avoidable educational underachievement for children.

The Children's Law Centre holds the view that the main cause of educational underachievement can be crystalised as "persistent inequality". Groups who are protected under s75 of the **Northern Ireland Act 1998** are recognized by law to be particularly vulnerable, alongside those who suffer the impacts of income poverty. It is Children's Law Centre's experience that failures to collect appropriate disaggregated data; failures to equality screen and deficiencies in equality screening that does take place are resulting in failures to have due regard to the need to promote equality of opportunity which is at the heart of the problem of educational underachievement. Early and effective, evidence-based equality screening of education, health and social care policies is fundamental to the solution of persistent educational underachievement. This process carried out in compliance with s75 duties will enable identification of the inequalities and the corresponding mitigations required.

Lack of cooperation between government departments and children's services providers, including failures to target effective working practices through pooling human and financial resources, are in our experience exacerbating the issues which underpin educational underachievement caused by socio-economic disadvantage. This is particularly true regarding cooperation between the areas of Education and Health. The **Children's Services Co-operation Act 2015** imposes the legal duty to co-operate and contains mechanisms by which to achieve child-centred service provision and measurable outcomes which will improve the well-being of children and young people in Northern Ireland. Strategic direction, deployment of resources and implementation of the duties and powers contained in this legislation at an operational level are urgently required. Improvement of the well-being of children as defined in this legislation is the foundation upon which educational achievement can be built.

Failure of early Intervention is a key driver of persistent educational underachievement in our view, particularly in the area of special educational needs. The SEN legal framework and Code of Practice provides a robust set of legal rights with a strong emphasis on early intervention. It is well documented by CLC and other agencies working to support children, through the media and through the Northern Ireland Assembly Education Committee that the operational processes in place to implement the legal requirements to identify and provide for children with SEN and

disabilities (first through the 5 ELBs and now through the EA) are entirely deficient, and have been for many years. We understand that the EA is undertaking an improvement process within statutory operations and we welcome this.

It is vital in tackling the reasons for educational underachievement that significant resources are targeted at improving early identification and intervention within education. Stage 3 SEN services are under-funded, lacking in human resources and are subject to lengthy waiting times. We are seeing consistent dilution of services over the last ten years of austerity cuts, to the point where proven specialist interventions are inaccessible at the point of need e.g. EA specialist literacy support.

Thus, a two-tier system has been developing, where those with financial means can pay for earlier independent health assessments and educational psychology reports and can afford tuition and private therapies; and those without, can wait, with no intervention. Even those families who can afford to pay privately, or go into debt to do so, will have waited for lengthy periods before realizing help is simply not coming.

It is a well-known fact that the majority of parents who access appeal rights via SENDIST, a critical challenge function against a maladministered system, are well-educated middle-class people. It is notable that legal representation is not funded for SENDIST hearings and that there is no parity of arms, with the EA having access to legal representation as a matter of course. Parents who themselves have been educationally disadvantaged face many barriers in accessing appeal rights to try to help their children.

Workforce

The education workforce, both teaching and non-teaching have had their capacity to support underachieving children decimated through a sustained programme of austerity cuts over at least a ten year period. They are being asked to do more and more, with less and less resources. They are reporting to us that they cannot access training opportunities and that they feel misinformed, demoralized and disempowered. Programmes to support vulnerable groups of children tend to be piecemeal, limited and unsustainable. The education workforce requires to be properly resourced and supported to enable implementation of targeted supports to be rolled out for children who experience educational underachievement. Support needs to be sustained and real, and based on need rather than budget driven. School workforce capacity to respond to the needs of the school population requires to be significantly built up.

Child as Rights Holder

It is critical to recognise the child as an individual legal rights holder within the education system. Compliance with basic human rights standards under the UNCRC

and UNCRPD would dictate that the child should be given their place as a person with the legal right to an effective education. Fundamental to this is the right to be enabled to participate in decisions; the right to give views in a manner that supports the child's needs and for those views to be given due weight; that all decisions should be made in the best interests of the child and that each child should be treated as an individual with interventions tailored to meet their individual needs. Giving the child the recognition they are entitled to is instrumental to enabling effective access to education.

The Main Impacts of Educational Underachievement

The Children's Law Centre has major concerns about persistent and growing inequality within the education system in Northern Ireland linked to educational underachievement. It is our experience through our legal casework that equality of access to education has been steadily deteriorating in recent years for the most vulnerable groups of children. In our work, we see this deterioration particularly in relation to the area of Special Educational Needs (SEN) and disability. Sustained budgetary pressures within schools and within the EA, alongside sustained growth in the numbers and increasingly complex presentations of children with SEN, and larger class sizes are aggravating and feeding existing inequalities, producing a regressive effect upon educational access.

Legal caseworkers at the Children's Law Centre are dealing with increasing numbers of enquiries about disability discrimination in education; increasing numbers of cases where children are not attending school or are attending part-time due to informal exclusion; significantly increasing dissatisfaction relating to special educational provision and access to SEN support services; increasing communications from schools who do not have sufficient training, support or resources to provide inclusive education for children with SEN and disabilities and/or are unable to access appropriate specialist support for vulnerable children from the EA. We are aware of delays, failures of basic legal compliance (such as time limits for finalizing statements of SEN) and, in many cases, a breakdown in communication with and responsiveness to service users (i.e. children, parents and carers) due to continuous unchecked pressure on the system and what appears to be inadequate financial and human resourcing.

Informal Exclusion from School of Children with SEN and Disabilities

CLC is regularly contacted by parents of young children with special educational needs and/or disabilities who are sent home early from school; are educated part-time over a lengthy duration, or who have no suitable school placement to attend. These exclusions are potentially unlawful disability discrimination and are often indicative of unidentified learning difficulties or unmet need. They are unregulated, potentially illegal exclusions.

Public authorities are often complicit in supporting such exclusions from education of children with SEN and disabilities. Such exclusions are not formally documented or reported upon as such, resulting in a lack of data being available. In evidence to the Education Committee the Education Authority stated on 24/06/20 that:

“We do not have the data; as it stands, we do not know how many children are excluded and to what extent, but we know that there are children who are being informally excluded”.

In our experience those primarily affected by this issue are children with SEN and disabilities who have behavioural difficulties, anxiety disorders, autism or learning disabilities. To improve the educational opportunities for this group of children, proactive steps are required by the Department of Education and the Education Authority to prohibit and prevent informal exclusions from school, and to support schools to maintain all of their pupils safely and with relevant supports in place.

While the policy of inclusion brought in through SENDO 2005 is having an impact, with increased numbers of children with SEN attending mainstream school, the resources, attitudinal shifts, training and inclusive practices required to enable equal access to educational opportunities are lagging behind.

It is also noteworthy that even in relation to formal suspension, which again may disproportionately affect protected groups, a right of appeal has been enacted but has never been commenced into operation which we believe is detrimental to the educational rights and outcomes of disadvantaged children.

Data from Children’s Law Centre Advice Service (CHALKY) illustrates the growing problems with barriers to specialist education placement and access to a full day at school for children with SEN and disabilities:

Discrimination - SEN Placement

1 st April 2019 – 05 th March 2020	252
1 st April 2018 – 31 st March 2019	219
1 st April 2017 – 31 st March 2018	135

Discrimination – Reduced Access

1 st April 2019 – 05 th March 2020	92
1 st April 2018 – 31 st March 2019	43
1 st April 2017 – 31 st March 2018	29

Mental Health

The Iveagh Centre is the regional unit for young people with learning disabilities and mental health needs. These young people are amongst the most complex in Northern Ireland, all of whom have special educational needs. Those young people who are medically fit to do so, attend the school to which they were registered prior to admission. However there have been persistently recurring issues around the responsibility of either the EA/HSCTs to provide transport for these children to attend school. During the lockdown period these young people were unable to attend school and due to COVID restrictions many had reduced contact with family, reduced outings and restricted opportunities. There is a teacher on site at the Iveagh Centre however that teacher has no classroom assistance support.

Beechcroft is the regional unit for young people with mental health needs in Northern Ireland. It has a separate school, the Beechcroft Education Unit (BEU) which is on site and operated by the EA. Details of its 2019 inspection can be found at: <https://www.etini.gov.uk/sites/etini.gov.uk/files/publications/asos-eotas-inspection-beechcroft-education-unit-belfast.pdf> This report made a number of recommendations but is incomplete due to ongoing industrial action at the time. However, issues that have arisen in the course of our case work include the limitations of the curriculum offered and the inability of those 16+ who were not registered with a school prior to admission to attend the unit to recommence education when they are medically fit to do so.

Equality of Opportunity

Specific targeted action is required to reduce and prevent the severe adverse impacts upon children and young people of inequality and discrimination within education and to remove barriers to their equality of opportunity and take steps to promote equal opportunities for all children within the education system.

Children have the human right to an effective education regardless of background or status. The right to education is a fundamental human right. It is widely acknowledged to be a passport to all other human rights. A child who grows up facing barriers to educational access and who does not meet their educational potential will suffer multiple losses to personal development and denial of basic life opportunities which others enjoy unhindered.

It is vital in the current financially constrained environment and in light of the ongoing public health emergency that the assessment of equality impacts of government policies is not merely a tick box exercise or an “afterthought”, but is by design geared from the very outset of policy formulation to have maximum positive equality impacts and formulated to identify and mitigate against significant adverse equality impacts.

We attach and refer to the following as evidence which we would like the panel to consider as part of this submission.

- CLC Response to the Education Authority's Equality Action Plan and Disability Action Plan 2018 - 2022
- CLC Response to the Department of Education's Disability Action Plan 2019 – 2024
- [NI AUDIT OFFICE REPORT ON SEN](#)
- [NICCY Report - Too Little Too Late](#)
- [Hansard - Education Committee re EA Internal Audit 4th March 2020](#)
- [Hansard Education Committee EA Audit Update 24.6.20](#)

Five Interventions which have most impact on underachievement

The Children's Law Centre has serious concerns about educational underachievement of children with socio-economic disadvantage including in particular those with SEN and disabilities and we have questions to ask about how educational progress and achievement might best be measured. Government statistics focus upon 5 "good" GCSEs and exclude the achievements of children attending special schools. Comparisons are made between the general mainstream school population and those on FSME when measuring academic output.

The Children's Law Centre believes that whilst academic achievement is important it is too narrow a measure and new measures require to be developed by education experts to track progress and achievement across a wider variety of measures to include personal, social, emotional and behavioural development, life skills, development of personal talents, maintenance of strong mental health and promotion of well-being.

Children's Law Centre also believes that FSME is too narrow a comparator and that this should be extended to a more sophisticated model to ensure all s75 protected groups are properly monitored in addition to those suffering economic disadvantage. The outcomes for our most vulnerable groups reflect the human rights and equality standards of our society. Particular attention could for example be paid to children with disabilities, young carers, school-aged mothers, Roma and Traveller children, and looked after children including children in need of asylum.

If we pause to consider the narrow measure of 5 A*-C GCSEs including maths and English for those children attending mainstream schools it is clear that children with SEN in mainstream schools suffer even greater disadvantage than those with FSME.

5 GCSEs A* - C including Maths & English

	No Sen	Stage 1-4	Stage 5	FSME
	%	%	%	%
2016/2017	78.4	41.5	24.4	47.5
2017/2018	79.3	44.6	26.5	48.6
2018/2019	-----no SEN data available-----			49.5

5 A* - C GCSEs in any subject

	No Sen	Stage 1-4	Stage 5	All School Leavers
	%	%	%	%
2016/2017	89.4	66.2	54.2	83.8
2017/2018	90.2	70.1	60.3	85.2
2018/2019	-----no SEN data available-----			86.4

All of the above figures are extracted from [DE SCHOOL LEAVERS BULLETINS](#)

We note there is no SEN data for 2018/2019 and the reason given is that the coding system for SEN changed during that year. We are puzzled as to why that prevented the data from being collected as children will still have been categorized as being at a particular stage of the Code by the time GCSEs were taken and those could have been collated.

The panel has requested in its online survey that we choose 5 items and categorise these in order of importance from our perspective. To try and assist the panel, we would suggest that the following 5 from the list given are all urgent priorities, whilst acknowledging the issue is much wider than this in practice and all of the items listed are very important:

1. Greater focus on early years development (and timely intervention)
2. Effective classroom teaching
3. Family engagement
4. Greater focus on mental health, well-being and resilience
5. Stronger links between school and community

In addition to the list suggested the Children's Law Centre holds the view that the following are of critical importance in tackling educational underachievement linked to socio-economic disadvantage:

1. Full compliance by public authorities with s75 statutory equality duties to enable due regard to the duty to promote equality of opportunity between those who are in protected groups and those who are not.
2. Greater focus of human and financial resources upon genuine inclusion of children with SEN and disabilities within education and associated services and in preventing avoidable suspensions and expulsions amongst this group.
3. Specific actions to enable coherent, organized, structured and accountable multi-disciplinary working in accordance with the children's Services Cooperation Act (NI) 2015.
4. Independent review of the problem of informal exclusion from school in Northern Ireland.
5. Creating governance structures at DE and EA level capable of monitoring and eradicating unlawful informal exclusion and enabling supports to be provided rather than enabling unregulated exclusion.
6. Operationalising the right of appeal against formal suspension.
7. Independent end to end process review of all EA SEN statutory operations and of the fitness for purpose of all EA Stage 3 SEN Services.
8. Consider that DE should research, resource and implement a system that enables remote **teaching** and non-teaching support using both synchronous and asynchronous approaches for children who are at home during the school day while their peers are being taught, for a range of accepted reasons both during the pandemic and in the longer term e.g. using C2K Collaborate.

What has worked to address educational underachievement in our experience?

The Children's Law Centre operates upon three fundamental principles enshrined in the UNCRC:

- Children shall not be discriminated against and shall have equal access to protection.
- All decisions taken which affect children's lives should be taken in the child's best interests.
- Children have the right to have their voices heard in all matters concerning them.

We find that when we put these basic principles into practice in our day to day work with young people and their families, we get the most successful results.

To condense this into its most basic form, when working on barriers to education on an individual case level we will, for example, try to do the following:

1. Treat the evidence and views of parents/carers with due weight, given that they are in the best position to observe and understand their own children; Look at and weigh all available evidence and identify any gaps.
2. Listen to the child in a way that suits them by creating a safe, supported space to enable open communication without judgment. Ask what the child sees as being the problems and ask what they think will help. Make clear to the child that their views are very important and valuable.
3. Explain issues, equip the child and family with information and invite discussion.
4. Request multi-disciplinary cooperation to share information and to enable cohesive planning.
5. Enable and support the parent and child to give their views, to ensure they are fully respected partners in any discussion who understand what is happening and set concrete steps to problem solve, which can be reviewed and monitored.
6. If important decisions are being made, ensure decision-makers are listening to the child and parent/carer and acting upon relevant information.
7. Ensure decisions are evidence-based and thereby justifiable and more likely to be valid and acceptable.
8. Ensure the best interests of the child are a primary consideration in all matters.
9. Ensure individually tailored support is provided to the child as early as possible and to the family if needed.
10. Ensure there are set goals which can be measured, reviewed and monitored.
11. Ensure the child/family is enabled to raise concerns if needed to ensure early resolution of problems.
12. Hold decision-makers to account where necessary to ensure promises are kept and process flaws are remedied.

Through these types of approaches we have assisted children and young people to access education that is appropriate to their individual needs in terms that they and their parents/carers can accept and engage with.

In cases involving looked after children we note that Social Workers often need support to navigate educational issues and to gather relevant educational information where the child has moved placements and it is important that “statutory parents” are equally equipped to advocate for looked after children.

In cases involving Newcomer children there can be many barriers to engagement and it is vital that parents/carers are enabled to access all processes at the same level that other parents/carers can access the information e.g. through translation services and using the EA Intercultural Education Service to understand cultural norms.

In brief, whatever the barrier, the 3 basic principles stated above from the UNCRC should be followed and adapted as necessary.

In addition, access to justice is a critical tool in our work as we support educationally disadvantaged children to gain necessary services by helping their parents to navigate the SENDIST processes. Legal representation is not funded for this Tribunal and we are able to provide specialist advice and support to families free of charge. Ideally, if the operational issues which have been identified in EA statutory services can be improved significantly, then parents would be much less likely to need to use the SENDIST process to challenge flawed decisions. Valuable time and energy could be reserved for parents to the benefit of their children.

Impacts of the COVID-19 Lockdown and Education Restart Policies

During the Coronavirus pandemic, there have been serious and grave human rights impacts upon vulnerable children with special educational needs and disabilities as a result of the out-workings of the Coronavirus Act 2020 which enabled the diminution of the entirety of the legal obligations within the SEN framework in Northern Ireland through issue of “Modification Notices” by the Department of Education. The legislation passed without proper scrutiny. Modification notices and a raft of education policies followed, in the absence of proper equality screening or any consultation, resulting in avoidable and predictable adverse impacts upon vulnerable children with SEN and disabilities.

Education Restart policies have not to the best of our knowledge been equality screened or properly consulted upon (Equality Coalition Briefing Paper refers – please see link below).

In order to comply with Human Rights obligations including derogation from rights protection in emergency situations, decisions which restrict legal rights in a way which impacts adversely upon protected equality groups must demonstrably be necessary, proportionate to the goal to be achieved and must stay in place for the shortest possible period of time. The Children’s Law Centre takes the view that no meaningful consideration has been taking place on the part of the Department of Education in relation to these duties. Further, due to the lack of proper consultation with affected parties, we not believe that the Department has been or is in a position to make evidence-based decisions on these thresholds in compliance with their Human Rights obligations.

As a result, during the lockdown which commenced in March 2020, pre-existing issues, such as lack of access to education and disrupted education placement were swiftly exacerbated by the national emergency caused by the pandemic. Children’s services in education which had been run down through sustained austerity cuts, were unable to cope with the level and type of need that emerged and they simply stopped direct provision.

The Children’s Law Centre had to issue pre-action correspondence and court proceedings in relation to a number of children with severe learning disabilities, autism and challenging behaviour who have been left at home during school closures. These

children and their families have suffered harm due to the loss of the protective factor of school attendance at specialist schools alongside disruption of health and social services supports. They have not been enabled to access any form of education throughout the entire lockdown. We have three sets of court proceedings pending in the High Court and it is likely further cases will issue due to cessation of family support provision through the HSCTs.

Despite making numerous enquiries, we are not aware of any contingency plans for the current situation of restriction or for future periods when children may be at home during school term for a variety of reasons related to the coronavirus pandemic.

The most severely disabled children living in the most vulnerable family situations suffered the greatest impacts and accessed the least help from the education system. When potential support systems did emerge, such as the vulnerable child process, they were unfit for purpose due to lack of consultation with key stakeholders and were often too late to be of any use as schools were about to close for the summer. Some schools refused to open for vulnerable children, and the Government provided insufficient direction and support to enable opening. Some very vulnerable children were not identified at all as needing help, despite being known to services, and others who were identified were unable to avail of any practical help as it was not designed to meet individual need. Children, their siblings and parents suffered harm to their physical and mental health. Children were medicated to reduce displays of distress, including challenging behaviour, self-harm and aggression. Some families are still at breaking point and children are living on the edge of care.

To compound matters, there are extensive delays in health assessments for children with SEN and disabilities in Northern Ireland which is blocking access to early intervention. The coronavirus epidemic has exacerbated these inequalities with children unable to access education, particularly when their parents cannot afford to pay for private assessments. The Children's Law Centre are aware of children who have been unable to get medical appointments for assessment for ADHD, Autism, Occupational Therapy, Speech and Language Therapy and ENT appointments. For example, we are working with a parent of a young child who is on 3 separate waiting lists for speech & language therapy, ENT appointment to assess the extent of a hearing loss and assessment for Autism/ADHD. The current waiting list in the relevant HSC Trust area is 22 months. The child has started mainstream school with no support and no statement of special needs in place, and is struggling and displaying signs of distress, including aggression in the home.

Vulnerable children and their families are still suffering the lasting impacts of the coronavirus pandemic, which has exacerbated pre-existing problems and they tell us they cannot sustain further damage. We are dealing with numerous ongoing crisis situations as we have been throughout the pandemic on behalf of at-risk children and young people.

The best way for the panel to appreciate the impact of the lockdown upon a vulnerable family is to look at the below article and video made by **Open Democracy** with Children's Law Centre and one of our clients. **Tina is able to tell you directly**

through this piece of work about the experience of her daughter Lauryn and the whole family.

The [video](#) and [article](#) about Lauryn's experience of lockdown can be accessed here.

We also ask that you also consider the below and attached evidence:

- [DEPARTMENTAL NOTICES DILUTING SEN LEGAL DUTIES](#)
- CLC letter to DE re Modification Notices (attached) and failure to carry out a full EQIA
- [EQUALITY COALITION BRIEFING - EDUCATION _ RETURN TO SCHOOL](#)

An issue that we would like to emphasize in conclusion is that we are working with a significant variety of children who are at home during the pandemic whilst peers are being taught and supported in school. For example, children with clinically vulnerable parents (kidney transplant, cancer diagnosis); children with profound needs who are clinically vulnerable; children who are isolating or whose school is closed due to infection rates; children whose parents are afraid to send them to school for fear of infecting vulnerable grandparents. These children at home are purportedly engaged in "online learning". Some of these children have very significant SEN and disabilities. Some of them are with parents who themselves are not well educated or economically well off. Income poverty and digital poverty are severely impacting. There is a wealth of survey evidence that the DE and indeed the panel will be aware of showing that it is **home teaching and direct support** that children require as well as **peer interaction**, particularly those who are already disadvantaged. We believe the Department of Education should direct and resource school staff to teach and support pupils who are at home during term time using available technology portals such as C2K to enable access to live teaching time, classroom assistant support, Stage 3 supports and pre-recorded lessons. The Department has power to make a Temporary Continuity Direction to direct that a given standard of remote education is provided and we have asked for consideration of this matter. The panel may want to consider this group of children, as well as the significant group who are out of school during "normal times", who will continue to suffer severe educational disruption and disadvantage for the foreseeable future in the absence of creative solutions.

Conclusion

The Children's Law Centre is grateful to have the opportunity to provide a submission to the Expert Panel on Educational Underachievement. We hope that our comments

and attached information have been useful and constructive and we look forward to the opportunity to meet with the panel as they continue in their important work.