

## **Remote education as set out in the legislation**

Digital Exclusion/Inclusion Case Study for HEAR Equality and Human Rights Network

### **Who is ALLFIE?**

The Alliance for Inclusive Education (ALLFIE) is the only national organisation led by disabled people working on educational issues and, in particular, working to promote the right for disabled students (including those with SEND) to be included in mainstream education, as set out in Article 24 of the UN's Convention on the Rights of Persons With Disabilities (UNCRPD).

### **Remote Education and Covid-19**

Now that education institutions are continuing to use online learning for the foreseeable future, ALLFIE wanted to know how inclusive this style of learning has been for disabled students. ALLFIE and Disabled Students UK's survey respondents identified five major barriers experienced in engaging in remote education during the Covid-19 pandemic and lockdown: adaptive and assistive technology, virtual platform accessibility, in-person support, and coursework and examination arrangements, alongside emotional wellbeing.

### **Adaptive and Assistive Technology**

Technology provision has a role to play in facilitating inclusive remote education practice. When disabled students own adaptive and assistive technology then they are more likely to be able to continue with their education, as this parent explains:

*“Online eye gaze via Zoom and Skype from Speech and Language Therapists. Same for physiotherapy [and] mental health support via Zoom, i.e. we meet up with the rest of the class.” (ALLFIE Parent Survey May 2020)*

However, many disabled students do not have this kind of ICT set up at home which would have been freely available on campus, as Disabled Students UK and related practitioners have reported:

*“A large proportion of disabled students report to us that they have not been given the same tools, software or adapted furniture which they had used and relied on at university...”*

*“Many of [our] learners are without the equipment needed to access Microsoft Teams which is where [the] school is currently setting work. We’ve got 400 laptops in the ICT suite sitting [there] idle. Let’s give them to the children. Let’s give them whatever they need so they can access learning.” (Specialist Teacher ALLFIE Professional Survey April 2020)*

There is no system in place which allows disabled students to either borrow or access the equipment from the education institution during lockdown. Whilst grants are available for online devices and internet connections, both of which can be used at home, disabled students have nevertheless reported a lack of responsiveness from Student Finance England (SFE) who administrated the non means tested Disabled Students’ Allowance grants scheme which covers assistance with purchasing of adaptive and assistive technology. Disabled students have reported that SFE does not acknowledge additional costs and support needed to set up and conduct remote learning. Whilst parents can apply to the Family Fund for online devices and internet connection, we have no information on the application process that includes the provision of their financial situation.

### **Accessibility of Virtual Platforms**

Since education institutions closed, education providers have moved swiftly from onsite to online learning. Inclusive online learning is not solely about uploading standard lessons and

lectures incorporating audio and BSL capturing, amongst other accessibility features, as this disabled student explains:

*“The Virtual Learning Environments (Blackboard) but the content isn't accessible 90% of the time. Curriculum content and learning platforms haven't been changed except more material added - the average accessibility of that online content has actually decreased as speed/readily available content has been prioritised above access...” (ALLFIE Disabled Student Survey)*

Many courses are one-size-fits-all, and the content is not pitched at students at varying levels of ability. The differentiation of course curriculum has not happened so many disabled students have been left unable to engage in online learning, as this parent explains:

*“Every two or three days a teaching assistant sends us five or six maths worksheets and her art teacher sets work for the whole art class but [that is] not differentiated for my daughter... So, I go onto the Twinkl website on a Sunday and I spend two or three hours looking at Key Stage 1 and Key Stage 2 worksheets thinking about how I can move my daughter on..” (ALLFIE Education Professionals Survey)*

Education institutions are generally not making their virtual online platforms and curriculum materials accessible for and inclusive of disabled students.

### **In-Person Support**

Remote learning is often undertaken within the student's own home and therefore a degree of independent study is often expected. Without the structure on-site learning provides, disabled students are expected to develop their own structure to keep up to date with and complete their education. Whilst at home, disabled students do not have such support readily available as and when it's needed. In-person support such as

therapists, learning support assistants, and support workers are essential to support disabled students' experience of remote education. This professional explains:

*“They’re trying to put them on this Microsoft Teams setting where the work isn’t being differentiated so it’s not really accessible for those children. But no one seems to care. It’s just like it doesn’t matter, and it does matter because these children are going to forget the quickest. These are the ones that have problems with their memory, retaining learning... A lot of our children don’t have that independence.” (ALLFIE Professional Survey June 2020)*

Remote Education does not make teachers redundant as they are required to adapt the curriculum to accommodate disabled students' needs. Teachers are still required to personalise their students' learning such as understanding concepts and keeping focused as these parents explain:

*“I have to sit with him the whole time he is learning to keep him on task. Rather than Google Classroom, some kind of FaceTime with a [learning support assistant] or teacher would help, we need proper support to teach new concepts.” (ALLFIE Parents Survey April 2020)*

*“There’s a shocking lack of offer of support... There was no offer from [the child’s] school or local authority. Speech and Language Therapy as part of his mainstream SEND unit provision, nothing.” (One parent posting on Facebook April 2020)*

Whilst the virtual online platforms themselves may not create any barriers, nevertheless being left alone without any support can still result in disabled students not benefiting from education opportunities.

*“Many students will require more **study skills tuition, assistive technology training, etc,** than the hours that are*

*currently included in their needs assessments.” (Disabled Students UK 2020)*

Disabled students and their parents have reported difficulty with either maintaining or increasing the level of in-person support necessary to facilitate effective remote learning. Parents are left being their child’s therapist, counsellor, learning support assistant, and teacher; this is not achievable. Many disabled students are left without study skills tuition, assistive technology training, or mentoring. Furthermore, parents and disabled students are highlighting their difficulty in securing existing and increased support through the SEND and Disabled Students’ Allowance routes.

### **Online Coursework Assignments and Examinations**

Universities are expecting students to complete their courses including submitting assignments and sitting their examinations. The quality of the work and the final grade awarded will be affected by the student’s ability to access the course curriculum.

*“Continued online assessment, exams moved online. Doesn't make a difference though, can't access the learning materials properly so the exams are just pointless and discriminatory.” (Disabled Student Survey April 2020)*

### **Emotional Impact of Remote Education**

Parents and disabled students have reported the negative impact that remote education is having upon their mental health and emotional wellbeing. Remote education has created stress and anxiety and heightened the impact of pre-existing mental health conditions, physical health conditions, concentration, and energy levels, which in turn are affecting their studies. Parents have reported deterioration in disabled children’s behaviour arising from the change in routine and relationships with family. Parents and disabled students have highlighted the

need for mental health support to help manage disability and mental health related anxiety, as well as stress related behaviour affecting engagement with remote learning.

## **Civil and Human Rights Frameworks**

We decided to look at the civil and human rights frameworks that should support disabled students' rights to access inclusive remote educational opportunities, on par with their non-disabled peers.

## **Children and Families Act**

The Children and Families Act is the legal framework governing SEND children and young people and their entitlements to SEND assessment, provision, and educational placement; as such, local authorities are required to secure and arrange the SEND provision outlined in a person's Education, Health, and Care Plan (EHCP). The parent of a deaf child with an EHCP explained:

*“Work is set online but I am in almost daily contact with the Teacher of the Deaf via email to discuss any issues and to share information. We have a means of video contact with Communication Support staff for planned contact time using BSL. Work is set online and accessed daily via an app. Work is not equivalent to a full day in school but I feel it is an appropriate amount for the current situation. We can make video calls to specialist TOD and Communication Support Workers as needed.” (ALLFIE Parents Survey May 2020)*

If remote education, online device access, and assistive technology is in a child's EHCP then the local authority are under a duty to secure the provision. For the overwhelming majority of children and young people with EHC needs but without a plan, they are reliant on the school to use their best endeavours to secure the provision including remote education.

The Emergency Coronavirus Act allows the Secretary of State for Education to amend the local authority's duty to secure EHC provision in a person's plan.

## **Web Content Accessibility Guidelines**

[Web Content Accessibility Guidelines](#) (WCAG) are international standards aimed at enabling website content to be presented in a way that can be understood, operated, and accessed by all, including adaptive and assistive technology users. WCAG 2.1 A, AA, and AAA requires different levels of accessibility standards. The AA level is commonly used in testing website content accessibility standards that would accommodate most disabled students. The websites of specialist disability charities and educational providers incorporate WCAG 2.1 AAA accessibility standards to ensure that disabled students with specific impairments are accommodated.

## **Public Sector Bodies (Websites and Mobile Applications) Accessibility Regulations**

These regulations require public bodies to make their websites and mobile apps accessible for all people, including those who use adaptive and assistive technologies.

The Public Sector Bodies (Websites and Mobile Applications) Accessibility Regulations require Government Digital Services to play a monitoring role and EHRC to act in an enforcement role if required. Education institutions' websites and mobile apps should comply with accessibility standards by September 2020 and June 2021 respectively., The regulations also apply to intranet content (eg uploaded educational videos and online curriculum materials) as well as other digital systems accessed through a browser,

Websites and apps must upload an accessibility statement setting out improvements in content that remains inaccessible for disabled students. The regulations include third party

content which institutions develop or fund (ie purchase). This includes e-books, journals, study guides, curriculum resources and assessment.

The majority of Higher and Further Education Institutions are expected to meet the website content accessibility standards, as set out in WCAG level AA by September 2020. School and nursery websites are covered under website and mobile app content and considered to be “essential online administrative functions”, which is without a legal definition. Consequently, education institutions failing to comply with the regulations could find themselves in breach of the Public Sector Website Regulations.

### **Equality Act 2010**

The Public Sector Website Regulations and WCAG standards do not cover situations where in-person support is required to access remote education.

*“One of [my child’s SENCO’s] comments were to tell him he didn’t need to do the work set but this doesn’t address his right to learn...” (ALLFIE Parents Survey)*

This parent’s situation will not be covered by the Public Sector Website Regulations. However, these disabled students still have rights under other legislation.

The [Equality Act 2010](#) is the main piece of legislation that protects disabled people from discrimination in various areas including education. Under the Equality Act, when providing remote education, education institutions including schools are still required to:

- Have regard for the public sector equality duty when developing policies around remote education and blended learning.

- Anticipate and arrange reasonable adjustments that disabled students may require without prior request.
- Make reasonable adjustment around the arrangements of remote education and blended learning when requested by individual disabled students.
- Cover the provision of auxiliary aids for disabled pupils in their reasonable adjustment duties.
- Publish an accessibility plan covering increasing the accessibility of the curriculum and information for disabled students.

Disabled students and parents can use the Equality Act 2010's reasonable adjustment provisions to ensure that education providers' curriculum, assessment, and in-person support arrangements are in place to promote inclusive education practice. Some examples are as follows:

*“Standing frame & some resources sent home and signposting to suitable online resources.” (ALLFIE Parent Survey)*

*“Awarded a grade based on previous coursework or exam performance.” (ALLFIE Disabled Student Survey)*

*“My one to one specialist sessions are now via video call. University are funding extra sessions so that I can have them more frequently.” (ALLFIE Disabled Student Survey)*

Whilst there is no Equality Act 2010's “reasonable adjustments” legal definition in terms of meeting website accessibility requirements, nevertheless we believe that education institutions are still required to anticipate and arrange any reasonable adjustments necessary to enable disabled students to participate in remote education on par with their non-disabled peers.

**United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) Article 24**

UNCRPD is an international treaty setting out universal standards of human rights for disabled people. The Government is under a positive duty to develop a fully inclusive education system that welcomes all regardless of impairment, health condition, or ability under [UNCRPD Article 24 and comment 4](#).

The United Nations Human Rights Office of High Commissioner published its “Covid-19 And The Rights of Persons with Disabilities” rapid response includes guidance. The response made a range of recommendations on how education institutions can take appropriate action to ensure compliance with UNCRPD Article 24.

In April 2020, The United Nations Human Rights Office of High Commissioner published [recommendations on how States should comply with their Article 24 obligations](#) with a specific emphasis around the provision of remote education and the role teachers and other education practitioners play in ensuring that all disabled people entitled to an education can continue to learn during the Covid-19 pandemic.

### **(UNCRPD) Article 30: Right to participate in cultural life, recreation, leisure and sport**

Under [Article 30](#), disabled people have a right to access cultural materials, television programmes, films, theatre, and other cultural activities in accessible formats which open the doors for the inclusivity of digital accessibility and inclusivity.

### **Human Rights Act 1998**

The [Human Rights Act](#) incorporates the European Convention on Human Rights into common law.

## **ECHR Article 2 Protocol 1 and ECHR Article 14**

[ECHR Article 2 Protocol 1](#) – A right to an education.

ECHR Article 14 prohibits disability-related discrimination within educational settings for disabled people.

States, local authorities, and education providers are under a duty to ensure that access to mainstream education during lockdown is accessible and inclusive including remote education. Where remote education is not possible, then alternative educational provision is to be provided so that disabled students are able to continue with their education at home or within a mainstream educational setting.

## **ECHR Article 8 – Right to Family and Private Life**

The Government has a positive obligation under ECHR Article 8 to promote individuals' personal development, autonomy, and physical and psychological integrity under the right to family and private life. The provision or withdrawal of therapeutic interventions such as speech and language, physiotherapy, occupational and psychological therapy could promote or violate disabled persons' rights to bodily and psychological integrity.

*“We now have no therapy intervention at all. This has been detrimental to my SEN Child’s progress and health.” (Disabled Children’s Partnership June 2020)*

Similarly, disabled students often require personal/learning support assistance to structure their learning opportunities and keep their focus on tasks, among other assistance to aid personal development. Disabled students without in-person support to learn would be denied opportunities for personal development through their engagement with education.

*“Online support and contact newsletters, with additional resources and ideas. Occupational Therapists and Speech and*

*Language Therapists ideas etc. Mental health [and] well-being has been at the forefront of the thinking of our school.” (ALLFIE Parent Survey May 2020)*

*“Non-medical help support has become non-existent, with very little left being distanced "Skype" like calls and support which does not really work.”*

One of the central goals of education is to facilitate individuals’ personal growth and the development of their personality. For many disabled people, a variety of support is required to facilitate their learning whilst maintaining positive emotional and physical wellbeing. Without assistance, disabled students are at risk of being prevented from engaging with remote education, which could be a breach of their human right to mainstream education.

Education institutions are required to make mainstream education inclusive and accessible for all. Education institutions are also expected to have websites incorporating remote education opportunities that comply with Public Sector Website Regulations and WCAG standards. Education institutions are still required to make reasonable adjustments around remote learning, curriculum differentiation, assessment arrangements, and the availability of in-person support services under the Equality Act and Human Rights legal provisions.

We want to further investigate how the human and civil rights frameworks can be used to campaign for inclusive remote education for disabled people, who are able to benefit from such functions. Where remote learning is not possible, education institutions must offer alternative learning opportunities.

## **Recommendations**

- Further research is needed to investigate the whole area of developing and supporting inclusive remote education

opportunities which complies with Government's legal and human rights obligations and duties. The remote education research must be led and involve disabled pupils and students where recommendations are shared with disabled peoples and parents lead organisations and education institutions and virtual learning platform providers and policy makers.

- The same duty for all education institutions to arrange remote education under the revised Secretary of State for Education's direction that is inclusive of all disabled students.
- The courses that disabled students have enrolled onto will be provided in a different manner if remote education is an unsuitable method of learning for them.
- The Department for Education's statutory guidance clearly setting out who is responsible for making various aspects of remote education inclusive of disabled students under both the Public Sector Bodies (Websites and Mobile Applications) Accessibility Regulations 2018, and Equality Act provisions. This would cover local authorities, education institutions, virtual learning platforms and online lesson providers.
- Greater Government enforcement regarding education institutions with websites and virtual online platforms that fail to comply with the requirements under The Public Sector Bodies (Websites and Mobile Applications) Accessibility Regulations 2018.
- OFSTED and Office for Students and other inspection bodies must have the power to inspect remote education arranged by education providers.

- The Department for Education must clearly set out that remote education should complement rather than replace face-to-face learning.
- The Department for Education must publish inclusive remote education good practice guidance.

