11 MILLION

The right to appeal?

Children and young people’s views on extending the right to appeal permanent school exclusions and special educational needs decisions.

Findings from 11 MILLION supported by research by the Children’s Rights Alliance for England.

July 2009

‘They should have some sort of little say…. Just to say something so that they could at least try and get themselves back into school… If grown ups get that right to have a say, why shouldn’t we?’

“The 11 MILLION children and young people in England have a voice”
Children’s Commissioner for England, Professor Sir Albert Aynsley-Green

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1 Who are we?

11 MILLION is a national organisation led by the Children's Commissioner for England, Professor Sir Al Aynsley-Green. The Children's Commissioner is a position created by the Children Act 2004.

The Children Act 2004

The Children Act requires the Children's Commissioner for England to be concerned with the five aspects of well-being covered in Every Child Matters – the national government initiative aimed at improving outcomes for all children. It also requires us to have regard to the United Nations Convention on the Rights of the Child (UNCRC). The UNCRC underpins our work and informs which areas and issues our efforts are focused on.

Our vision

Children and young people will actively be involved in shaping all decisions that affect their lives, are supported to achieve their full potential through the provision of appropriate services, and will live in homes and communities where their rights are respected and they are loved, safe and enjoy life.

Our mission

We will use our powers and independence to ensure that the views of children and young people are routinely asked for, listened to and that outcomes for children improve over time. We will do this in partnership with others, by bringing children and young people into the heart of the decision-making process to increase understanding of their best interests.

Our long-term goals

1. Children and young people see significant improvements in their well-being and can freely enjoy their rights under the United Nations Convention on the Rights of the Child (UNCRC).

2. Children and young people are more highly valued by adult society.

For more information

Visit our website for everything you need to know about 11 MILLION: www.11MILLION.org.uk

Acknowledgements

Our sincere thanks go to all of the children and young people who gave their time to share their experiences with us. Without their comments and stories we would not have been able to write this report. We would also like to acknowledge the assistance of the teachers and the support staff who allowed us to work with their students and who helped organise the interviews at short very short notice.

We would also like to thank Paul Buddery for the support he provided with this research, and the expert support from staff from the Children's Rights Alliance for England in carrying out the research interviews.

The authors

This report was commissioned from the Children's Rights Alliance for England (CRAE) by 11 MILLION.

CRAE seeks the full implementation of the UN Convention of the Rights of the Child in England. Its vision is of a society where the human rights of all children are recognised and realised. CRAE protects the human rights of children by lobbying government and others who hold power, by bringing or supporting test cases and by using national, regional and international human rights mechanisms. CRAE provides free legal information and advice, raises awareness of children's human rights, and undertakes research about children's access to their rights. CRAE mobilises others, including children and young people, to take action to promote and protect children's human rights. Each year CRAE publishes a review of the state of children's rights in England.

This report was written by Dr. Ciara Davey, CRAE's senior researcher, and edited by Sam Dimmock, CRAE's head of policy and public affairs.

1 Executive summary

Research methodology and scope

This report examines children and young people's views on extending the right to appeal exclusions from school and special educational needs (SEN) decisions. It is based on the responses of 69 children aged nine to 16 who have either been permanently excluded from school or who have recognised SEN. The interviews took place in the following settings:

Setting	Interviewees with experience of permanent exclusion	Interviewees with SEN
One pupil referral unit	15	0
Four special schools	26	25[1]
Traveller community	3	
Total	**44**	**25**

The research was carried out by the Children's Rights Alliance for England (CRAE) for 11 MILLION as part of a consultation on Government proposals to extend to children and young people the right to appeal exclusions and SEN decisions, and the right to bring a disability discrimination claim. In this report, children and young people are hereafter referred to as children.

Key findings from the research

The 44 children we spoke to who had been permanently excluded from school emphasised the importance of allowing children to have a say when decisions about exclusions are being made. The importance of listening to children and taking their views into account when making life-changing decisions was also consistently highlighted by the 25 children with recognised SEN that took part in the research.

Using the right to appeal an exclusion

The majority of children who had been excluded said they would use a right to appeal an exclusion for one of the following reasons:

- If they disagreed with the reasons for their permanent exclusion
- If appealing against the decision would reduce the amount of time they spent out of school
- To ensure they had the right to defend themselves against any accusations and have their side of the story taken into account

Children were particularly concerned to minimise the disruption to their education and to avoid boredom.

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[1] Six children in this sample had complex needs and were unable to communicate verbally.

Using the right to appeal a SEN decision

Most children with recognised SEN said they would use a right to appeal because children are in the best position to talk about the effect decisions made in SEN assessments and statements have on their lives and on their education. They felt that:

- Allowing a child to make an appeal in his or her own right would empower children with SEN to assert their independence: ‘Everyone should be able to make a complaint’
- Being able to appeal in their own right might address children’s concerns that a statement of SEN would label them as disabled when they did not consider their needs to be disabling, and that a statement might give their school an excuse to exclude them
- Not being allowed to appeal might mean that some children did not get the support they needed to do well in school

Who should have the right to appeal?

Most children agreed that 12 year-olds should be able to appeal a permanent exclusion from school. However, a significant minority said that a child should be able to appeal against an exclusion at any age. There was a particular feeling that children lacking parental support, and those whose parents or carers were unwilling or unable to make an appeal on their behalf, should have the right to appeal. Children with SEN and complex needs felt they should be able to appeal to a SEN tribunal at the age of 16.

Children felt that a discussion with parents, carers or a teacher about why a child wanted to appeal an exclusion would be sufficient to determine whether a child had the maturity to make an appeal. Children with SEN agreed, and also felt that a doctor, psychiatrist or psychologist should be available to talk to the child about the appeals process if parents weren’t able to do so.

Support for engaging in the appeals process

Children asked for support from a trusted adult in negotiating the exclusions process, and identified parents or carers, key workers, social workers, teachers and peer mentors (those with experience of making an appeal) as individuals that could play this role. They wanted accessible material explaining exclusions, appeals, and where they could go for independent advice, and asked for more support for children with behavioural difficulties to help them avoid exclusion in the first place. Children with SEN gave very similar responses with regard to engaging with SEN tribunals, and asked for a DVD to be produced, accessible to children with a wide range of disabilities, explaining the entire process.

Resolving disagreements between parents and children

Should a disagreement arise over whether to appeal an exclusion, most children said they would either talk directly with their parents or carers to resolve it, or use a mediator (in the form of a trusted adult) to do so. There were mixed views on whether children's or parents' views should carry more weight when deciding whether to appeal. Children gave very similar responses in relation to appealing SEN decisions at a tribunal.

Dealing with issues before they become a crisis

One of the clear themes running throughout many of the interviews was the missed opportunity when difficulties could have been identified at an early stage and a plan been put in place to meet the young person's needs. Early intervention is always preferable to managing a crisis and it is clear from the young people's stories that many were keen to find solutions to their difficulties well before exclusions or statements were made.

3 Introduction

The context of this research

This research with children and young people was commissioned in response to the Government’s consultation on how best to extend to children the right to appeal a permanent exclusion, the right to appeal decisions taken in special educational needs (SEN) assessments or statements, and the right to make a disability discrimination claim.

The Government is exploring whether the right to appeal a permanent exclusion should be extended to 16 and 17 year-olds, and whether those aged 11 and over should have the right to appeal SEN assessments and statements (subject to a competency test to determine their level of understanding). It also asks what support children and young people would need to support them to exercise any new appeal rights.

The consultation is being undertaken in the context of the Government’s commitment to increase children’s participation in decisions that affect them (in line with their right to have a say under article 12 of the United Nations Convention on the Rights of Child[2]), and as a result of specific concerns from the UN Committee on the Rights of the Child in relation to school exclusions, SEN decisions, and the rights of young disabled people.

11 MILLION felt it was important to talk to children and young people directly affected by exclusions, SEN decisions and discrimination on the grounds of disability to find out how they felt about the right to appeal.

The law

In England, the right to appeal a permanent exclusion, a SEN assessment or SEN statement, and the right to bring a disability discrimination claim lies with parents or those with legal parental responsibility for children.[3] Those under the age of 18 do not currently have the right to bring their own appeal.

However, children are encouraged to take part in exclusion proceedings – sharing their views and attending appeal panel hearings (subject to their age and understanding); they also have the right to attend a SEN tribunal unless there are good reasons for them to be excluded. Local authorities are also required to submit children’s views to a SEN tribunal (or to explain why they have not done so) before any decisions are made.

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[2] Article 12 of the UN Convention on the Rights of the Child states that all children capable of forming views have the right to express those views in all matters and decisions affecting them, in line with their evolving capacities.

[3] Students aged 18 or over have the right to appeal a permanent exclusion.

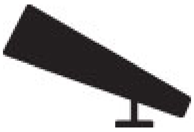
Elsewhere in the UK, children have different rights to appeal such decisions. In Wales, children aged 11 and over have had the right to appeal a permanent exclusion since 2004; in Scotland, children aged 12 and over have been able to appeal permanent exclusions since 2000. Also in Scotland, 16 and 17 year-olds have the right to appeal within SEN procedures, and those aged 12 and over can bring disability discrimination claims relating to schools.

The advantages of giving children the right to appeal

The Government has outlined its reasons for wishing to extend the right to appeal to children and young people. These include enabling better compliance with the Government's international human rights obligations towards children; ensuring a fairer and more equitable system for children; addressing the over-representation of boys, children from certain ethnic minorities, Gypsy and Traveller children, children in care and children with SEN or disabilities in exclusions from school; providing additional safeguards to ensure the needs and views of children are considered in exclusion and SEN processes; and to ensure that children whose parents or carers are unwilling or unable to appeal on their behalf have recourse to redress.

The proposal to extend the right to bring a disability discrimination claim to children would bring the approach for disability discrimination claims in line with that of other equality strands such as race and gender.

4 The background to the research



This section includes information about:

- The children and young people involved in this research
- The settings in which the research took place
- The methodological approach to the research
- The measures taken to ensure the fullest possible engagement of children with complex needs

The sample

Sixty-nine children who had either been permanently excluded from school or who had special educational needs (SEN) participated in this research, through 17 one-to-one and 13 focus group interviews. Focus group interviews were the preferred method used because they can generate a rich exchange of views between children. Where it was not possible to interview children in a group (on account of severe emotional, social or behavioural difficulties), one-to-one interviews were conducted instead. Eleven of the 17 one-to-one interviews were carried out with children who had been permanently excluded from school.

All of the interviewees were aged between 12 and 16, with the exception of one focus group where the children were aged between nine and 11. We interviewed 44 children who had been permanently excluded from school, 37 of whom were boys, and seven girls. Within this sample, nine were from a black or ethnic minority background. We interviewed 25 children with SEN, all of whom were boys and six of whom were unable to communicate verbally; we also spoke to three children from a Gypsy and Traveller community. The interviews took place in pupil referral units, special schools and Traveller communities in the East Riding of Yorkshire, Hampshire, Lancashire, London, Surrey, and West Yorkshire.

Setting	**Interviewees with experience of permanent exclusion**	**Interviewees with SEN**
One pupil referral unit	15	0
Four special schools	26	25[4]
Traveller community	3	
Total	**44**	**25**

The methodology

Prior to the fieldwork beginning, each of the professionals organising the interviews received a flyer about the research, a consent form and an information booklet for children. The information booklet outlined the aims and purpose of the research and what would happen to children's

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[4] Six children in this sample had complex needs and were unable to communicate verbally.

views.[5] These professionals, along with three specialists working with children, were also asked to feed into the development of the interview questions. These were then piloted with students from a school unable to participate in the research but eager to be involved in the consultation.[6] This proved useful to highlight changes that needed to be made to the language, format and delivery of the questions.

The same basic interview questions were used for all children, including those with complex needs who were unable to communicate verbally.[7] With the invaluable assistance of a teacher at a special school taking part, picture cards were developed for children with complex needs based on responses from children who had participated in previous interviews. These picture cards enabled children to point to their preferred answer or use eye and head movements to indicate their response. This method ensured that the data was grounded as far as possible in children's views. Each interview was conducted by an experienced researcher in the presence of at least one support worker, with additional assistance provided where necessary to facilitate the participation of children unable to communicate verbally.

The children who participated in the interviews often had a range of complex needs, even though not all of them could describe the specific nature of their special educational needs. Indeed, some children struggled to understand the terms "appeal" and "disability discrimination claim"; as a result, the concept of making a complaint against a decision was used to describe the essence of the processes we were discussing. As a result of schools using terms such as "managed moves" (a recognised process often used as an alternative to exclusion[8]), some children were even unaware that they had been permanently excluded from school.

In order to mitigate against the possibility that the children interviewed might not have had the opportunity to say everything they wished, the questions were given to participants at the end of the interviews. They were invited to return these forms to the researcher if they had any additional views they wanted to be included in the research report. Three children took up this opportunity.[9]

Each interview lasted between 20 and 40 minutes, and all but three were tape-recorded. It was not unusual for children to negotiate the request to record the interview, a result of their apprehension about who would listen to the recording and how the data would be used. Where it was not possible to record the conversation, notes were taken instead. All the quotes used in this report are reproduced verbatim and, to ensure anonymity, all of the children's names have been removed.[10]

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[5] See Appendix A
[6] See Appendix B
[7] See Appendix C
[8] For more detail on "managed moves", see DCSF guidance on exclusions from school at http://www.teachernet.gov.uk/_doc/12798/Exclusions_guidance_2008_FINAL_pdf_110808.pdf
[9] See Appendix D
[10] Given the similarity in opinion among children educated in PRUs and special schools, references to particular settings have not been included in the quotes from children.

All participants received a summary of the findings of the research along with a certificate acknowledging their participation, a campaign pack about taking action on children's rights, and a small gift in appreciation of their willingness to share their experiences. Each setting that facilitated an interview also received a copy of the report along with a framed certificate recognising their participation in the research.

The layout of the report

The report is divided into two sections. The first looks at children's responses to questions relating to the process of appealing permanent exclusions from school; the second examines children's responses to questions relating to the right to appeal SEN decisions.

5 The right to appeal permanent exclusion from school

This section examines children's responses to questions relating to permanent exclusion from school. It includes children's views on:

- The actions they feel justify a permanent exclusion from school
- The extent to which they felt engaged in the exclusions process
- The impact of being excluded from school
- Whether the right to appeal should be extended to children
- The age at which children should be able to appeal an exclusion
- How children might use a right to appeal
- The support children might need to make an appeal

General comments relating to permanent school exclusion

To contextualise the questions and allow time for participants to settle into the discussion, each interview began by asking children whether it was ever right to permanently exclude a child or young person from school, and if so, what they felt were justifiable reasons for an exclusion.

In response, the majority of children said the justification for a permanent exclusion 'depends on what they do'. It was reasoned that some behaviour (particularly that which endangered the safety of others) was unacceptable in a school environment and deserved punishment through a permanent exclusion. This argument was made on the basis that removing a child who exhibited such behaviour 'could make them realise it's not right'. To qualify this, it was argued that someone who placed other students or adults' lives in danger by being 'bad' was likely to be permanently excluded. Examples given of such behaviour included:

- Carrying weapons into school
- Damaging school property
- Having a serious fight
- Hurting or assaulting other students or teachers
- Selling drugs and alcohol to other students

At the other end of the spectrum, it was agreed that permanent exclusions should not be given 'for stupid things' like:

- Being rude or swearing
- Going to the shop or playing truant
- Throwing a chair
- Not doing your work
- Wearing the wrong colour of clothing / wearing jewellery
- Pushing or spitting on someone
- Smashing windows

- Smoking

Although most children agreed that certain behaviour was more likely to result in a permanent exclusion, and in fact, some admitted that they had deserved to be excluded from school because of what they did, this did not necessarily mean that they had thought through the consequences of their actions – even when they knew they were behaving recklessly.

‘If you smash the windows then you don’t hurt nobody. You don’t get nowt out of it apart from getting excluded afterwards. And afterwards, after you’ve done it, you think, why did I do that?’

For others, getting excluded was a conscious choice of behaviour.

‘When I was younger I knew when I’d misbehaved I’d get excluded, so I did it and then I wouldn’t have to do any work.’

When asked why they had been permanently excluded, many of the boys and girls we spoke to did not want to share this information on the basis that they were ‘embarrassed’ about what they had done.

‘It’s shameful because you just act dumb but when you’re doing it you’re not acting dumb. You just think that the teacher’s done something wrong, you want to tell them you’ll be rude and you’ll tell them what you think and then afterwards you think, why did you do it it’s not worth it. It’s embarrassing saying oh yes I’ve been excluded from school.’

Children’s responses also suggested that different schools operated different policies regarding how many “chances” students had before a decision would be taken to permanently exclude them. For example, some children said they could not remember why they had been permanently excluded, other than having been in trouble ‘numerous times’. Others said they had been given two or three chances before they were excluded – but children considered this insufficient for such a serious and life-changing decision.

One boy suggested that children should have:

> '…at least five chances because if you have a school then you should do cards. You know like you have a warning, then yellow, then a second yellow, then a red then you should go to a different classroom and sit down and write words out of a dictionary.'

Schools that afforded students more chances seemed to be those that tried to support the child by, for example, calling in parents or carers to discuss behaviour, or placing the child in an isolation unit or 'chill out room' where they received support to help reintegrate them back into the school community. Comparing his experiences of schools with and without isolation units, one boy said:

> 'You go down there [to the Educational Support centre] and there is support staff and you can phone up and say can you come and collect [name of child] he's been a bit bad… Well all right I agree you've got to have certain consequences for being bad but in other schools if you've been bad they haven't got something like this, they just say get out of my classroom, go to the head teacher and then they exclude you. They don't say you can do down there and chill out for a bit and still do your work.'

As well as differences in the provision of 'chill out' rooms able to accommodate children exhibiting challenging behaviour, there was also significant variation in the nature of incidents which could lead to permanent exclusion – examples ranged from setting fire to a school to swearing at a teacher.

When the decision was being taken to permanently exclude a student, some children were able to exercise their right to have a say under article 12 of the UN Convention on the Rights of the Child (UNCRC) and 'tell their side of the story'. At least one child had written down their version of events before a decision to exclude had been made. Having a say during this process was highly valued by children, in part because 'you might not have done anything wrong and the teacher might just not like [you]', but also because 'children have got experiences that parents couldn't possibly have' and were therefore in a better position to defend themselves than their parents or carers could be. Listening to a child's side of the story prior to a permanent exclusion, however, seemed to be more the exception than the rule in the experiences of the children we spoke to.

‘It was like, you’re excluded. They didn’t even give me a reason why they excluded me. They called my mum and said we have permanently excluded me and that was it.’

Interview 1
Interviewer: ‘What was the exclusions procedure like in your school? Did they tell you all the information?’

Child: ‘No’

Interviewer: ‘Did you understand what was going on; did they explain this is what’s happening?’

Child: ‘No. It went out in a letter, and then I had to go home.’

Interview 2

Interviewer: ‘You were saying at the start that one of the reasons why you think it’s good that children are excluded is if they’ve been naughty or have assaulted teachers. Do you think it was right that you were excluded?’

Child: ‘It was right but in a way it wasn’t. I should have had some sort of little say. I shouldn’t have been permanently excluded; I should have just been excluded, but not permanently.’

Not being allowed back into a particular school had several effects on the lives of the children we spoke to. The most widely criticised effects were the negative consequences and disruption a permanent exclusion could have on a child’s education.

‘I got excluded a lot when I was at school because when I first started with ADHD and stuff like that… I couldn’t read and stuff like that and I couldn’t spell. I was fighting and messing around and not doing any work … and I was out of school for two years and it let my education down a bit and I had to be tutored for a bit as well and I was not like any other kid. Like they’re all doing this work and stuff like that and you don’t even know what it means.’

Although some children did have a home tutor, others said they instead received a ‘big folder of work’ sent to them at home, or they did ‘nothing’. Although many initially enjoyed not having to go to school, the novelty of staying at home soon wore off when they found there was little to do. Not having their friends to spend time with coupled with the time taken by local authorities to arrange suitable placements in new schools heightened children’s awareness that they were missing out on their basic right to an education.

‘The process is boring… you just sit at home until they find you a new school.’

‘I was happy at the time but then I started getting bored and wished I was back at school.’

‘You’re missing your work and you won’t get any education.’

‘I spent five months in a row just playing on the computer. I got sick and tired of the ******* computer.’

‘…they could go home and their mum might not care…and they can do whatever they want when they go home. And then until we find a new school, we just do whatever we want. My friend hasn’t been to school for two months and he just sits at home.’

Many children also thought that being at home with nothing to do following an exclusion from school might lead to them getting into trouble, as well as causing them to miss out on their education.

‘If you exclude them, they’re missing out on their education, plus when they get excluded they could be going out thinking they’re at home they can do what they want.’

As a result of being able to ‘do whatever’, some children felt they had inadvertently become more streetwise and resilient. In one sense they felt this helped them gain important life skills that they were unlikely to learn in a classroom.

‘I think the [person] who has been excluded they can deal with being rejected they’ve gone through more – not gone through more but experienced more – they can deal with things more.’

To avoid boredom and getting into trouble as a result of nothing to do, one child suggested that children might actually be tempted to appeal their exclusion from school – not because they disagreed with the decision itself, but because they did not want to be bored at home.

> ‘Because they might have actually done something wrong and they know they’ve done something wrong but they just want to appeal because they don’t want to be sitting at home. They want to be at school seeing their friends and that so they appeal, so they don’t get in trouble.’

Should children be able to appeal a permanent exclusion?

All the children participating in the research emphasised the importance of allowing children to have a say when decisions about exclusions are being made. The majority agreed with the principle that children should be able to appeal a permanent exclusion from school. There were mixed responses, however, in relation to the age at which this right should be applied (see below). There was a particular feeling that children lacking parental support, and those whose parents or carers were unwilling or unable to make an appeal on their behalf, should have the right to appeal.

At what age should children be able to appeal a permanent exclusion?

When asked at what age children should be able to appeal their exclusion, the most common answer given was 12 or 13:

> ‘That’s when it all changes really isn’t it? Because you go from a small school to a whole new school with new people and then that’s when you start getting into trouble. Because you’ve got new friends and you’re like the class clown and you just get into trouble all the time.’

Moving to a new secondary school often placed children under significant pressure to cope with school work as well as having to make new friends in a bigger and unfamiliar environment. Those children who found it difficult to adjust said they “played up” in class as a way of dealing with these pressures.

The second most common answer in relation to the age at which children should be able to appeal an exclusion was as soon as ‘you get your first exclusion', because children could be excluded at any age. This was an argument which extended the right to appeal to all children fairly and equally on the basis that 'you can get kicked out of school from the age of five'. Children felt that:

> 'You might have had exclusion for doing something wrong and next time you haven't done something wrong you get excluded and you should be able to appeal instead of waiting. It could be too late then.'

The third most common answer was that 10 year-olds should be given the right to appeal an exclusion because 'you can be arrested at the age of 10 so you should also be able to appeal your exclusion.'

In general, however, children felt that those of primary school age might be too young to be able to make an appeal on their own because 'they [wouldn't] be able to do it; they would just make up lies and think its funny'. This finding may be reflective of the age of the sample (the majority being of secondary school age).

Leading on from this discussion, children were asked how they thought they could prove a child of a particular age could understand the appeals process and was mature enough to make an appeal in his or her own right. Most children answered that understanding and maturity come with age and that 'if you're old enough to understand, you're old enough to have a say'.

> 'At the age of 12 you have the maturity - any younger and you'd be wasting government money.'

Two issues emerged as pertinent to ensuring that children possessed the necessary maturity to make an appeal in their own right – firstly:

'you need to know why you've been kicked out and why you're going to appeal';

and secondly, that you need to understand the consequences that could result from this process:

'because you might not understand that you've done something wrong and you're saying that you haven't in your appeal and that comes back as saying that you have to do the exclusion and it will make you upset, so you have to understand it'.

When pressed to explain how it could be proven that a child of a particular age was mature enough to make an appeal, the most common answer was to talk to them.

> ‘I’d just rather sit there and talk to somebody straightforward like I am now. Like when I’m trying to work things out I just like to sit and talk.’

Children focused less on capability tests to prove maturity than on the need for support to enable children to make appeals.

> ‘Ask them if they understand and if they don’t understand they can have a parent or child carer or someone from the school with them and they could explain it to them more.’

If talking to the child or young person to see if they were mature enough to make an appeal was not possible, an alternative suggestion was to observe them either at school or at home as a means of gaining an insight into both their behaviour and their ability to handle what could prove to be a stressful process. One boy recommended that:

> ‘You should go straight to the school and just watch them [the young person]. If they’re sitting around watching in lessons, see what they do, see how agitated they get and when they get agitated, see... how quick they calm down and that… because if they can’t calm down and that, there’s no point in really letting them go for the appeal.’

Support needed to appeal permanent exclusion from school

When asked what support children might need to appeal against an exclusion from school, children put forward a wide variety of suggestions. The most common was having a trusted adult who could guide and support them through the process. Parents, carers, key workers and social workers were the most commonly mentioned individuals to undertake this role, although teachers were also put forward as possible advisers and advocates.

> ‘People that would understand the way we feel about it. Not just the adults’ point of view.’

Children felt that those who wanted to appeal an exclusion should be able to discuss this decision with a parent or carer, a teacher or, if in dispute with the school, someone independent of the school.

> ‘It shouldn’t be the teachers should it? It should be a different person who comes in like in primary school when they come in and review, because they don’t know you.’

There were also suggestions that children who had experience of the appeals process and of being permanently excluded should undertake a mentoring role.

> ‘I think they should get someone who’s older that was kicked out of school and then maybe tell their story. I think you should get someone like that who can come in and talk to us and say it’s not worth it or whatever. Someone who’s been kicked out and still able to pick themselves up and get a great job.’

In addition to having an adult supporter, it was also suggested that a booklet should be produced to explain the process in a simple step-by-step guide. Children felt this guide should include information on what happens after a permanent exclusion, and contain telephone numbers and an address ‘showing you where to go for advice’. Although there were mixed opinions as to whether children or adults should design this information, it was generally agreed that it should be informative, interesting and have short paragraphs and pictures to illustrate what was likely to happen during the appeal process.

Another common suggestion to support a child through an appeals process was to obtain a character reference from the headteacher of the school or pupil referral unit where the child had been temporarily placed. Children felt this might emphasise the potential of the student and show what they could achieve if they had the right support to develop their capabilities to their fullest extent.

> ‘If I were to appeal I’d get the people that work here [in the PRU] to sort of say like she’s doing this and this and this. Since she’s come here she’s got better or whatever. And made them think of she’s been kicked out of there, she’s changed here. Why can’t she do the same there?’
>
> ‘I’d get my school report because once I was naughty and then I was good and then I’d just done the last thing and I got expelled. I’d get my report because it’s always been good.’

Other suggestions for ensuring support was in place included creating a television advert to publicise where children could get information about the appeals process; giving children access to a lawyer or someone with a legal background working in the field of children’s rights; establishing a free telephone helpline; and making a DVD about the entire process. Having access to information on the internet through a dedicated website for excluded students, and running seminars to give children the skills to appeal their exclusion before an independent appeal panel, were also suggested. If all this failed, children thought that schools should operate what one child called a ‘trial run’.

> ‘Could they give you like a trial run so you can go back to school and see how you get on with them and if they don't like it just don’t go back?’

Would children use the right to appeal a permanent exclusion from school?

Children had mixed reactions when asked whether they would use a right to appeal, primarily because the answers they gave were influenced by their particular experience of exclusion.

Children said that they would use their right to appeal if they had been blamed wrongly for an incident which led to a permanent exclusion. Using their right to appeal would give them the opportunity to clear their name – ‘if they’re accusing you of something you haven’t done’ or if they ‘kicked you out for a stupid reason’.

‘…someone [beat] me up on a bus and I got excluded. I should appeal against that because I didn’t do anything.’

‘If you didn’t do anything wrong and you just got kicked out, you could put that point forward and say it wasn’t me and you could tell them what actually happened.’

‘If it was for something serious and I’d done nothing wrong then yes I would appeal. But most exclusions are for a reason.’

The last quote is indicative of the sense of propriety most children displayed regarding acceptable and unacceptable behaviour. As one child succinctly put it when asked if he would appeal his permanent exclusion: ‘If you agree with it what’s the point?’

Children also said they might use the right to appeal to avoid any further disruption to their education. The children participating in this research had been out of school for varying periods of time, yet most placed a high value on their right to receive an education. The majority were very conscious of missing out on important learning opportunities while the local authority sought to place them in another school. Those who were keen to achieve qualifications lamented this and felt that they were much less likely to do well in their education if they were placed in a pupil referral unit because ‘…in a normal school you get more GCSEs and so you might want to stay there’. Traveller children, traditionally perceived as attaching little value to education, were keen to take advantage of their right to appeal an exclusion if they disagreed with the reason and wanted to return to their original school.

‘You’re more likely to get a job interview if you go back to school if you get your schooling.’

‘I would rather go back to school and learn more education so I could get GCSEs and all that and go and get a better job than I could get….because if you get a better job then it’s more open and the more things you can get the more things you can do. But see if you haven’t got much education then you can only go for duff jobs can’t you? But you can go for big jobs if you’ve got loads of education.’

Not being able to “hang out” with school friends and having to get used to a new school and a new teaching regime were also given as reasons to make an appeal.

‘I think it would be better going back there because you've got all my friends there and if I start in this school I’m going to have to try and make friends all again. It would be easier going back there.’

Children who did not have the option of going back to their original school commented on the negative impact permanent exclusion had on their friendships. One child said, ‘When you go to one school and you get excluded, you don’t know all your mates after that because you’ve got to move school.’ Attempts to keep in contact with friends were further strained because of the effect of permanent exclusion on a child’s reputation: ‘Some people like they say he’s a bad one, don’t let him in, he does everything wrong, gets everybody in trouble’.

The third most common reason children gave for using a right to appeal was the importance of listening to children and empowering them through enabling them to defend themselves if they felt they were being blamed unfairly. It was not uncommon for children to single out a particular teacher as responsible for instigating a permanent exclusion. Irrespective of whether they felt an exclusion was justified, many children stressed that their views should always be taken into account when such important decisions were being made, especially given the propensity, as they saw it, for particular teachers to ‘make up stuff’ and for the system to ‘believe the teachers more than the kids’. Children wanted the opportunity to have their say and to be listened to.

‘Adults shouldn’t always have the right to a say, should they? Us young ‘uns should as well, we should have the right too.’

‘The children will respect the teachers more for listening to them.’

‘They should be fairer, not just listen to what the teacher says but listen to what the kids say as well, because some teachers like to single one kid out and just pick on them.’

‘They should have some sort of little say…. Just to say something so that they could at least try and get themselves back into school… If grown ups get that right to have a say, why shouldn’t we?’

Listening to children's views and according those views the respect they deserve was seen by at least one student as synonymous with empowering children to seriously reflect on their actions and change their behaviour.

> 'I think it would make you change because you'd think this is your last chance here and now it's your last chance to be back here and then you'll just be good because you want to stay here. If you got kicked out and you wanted to go back so much and you actually got to go back, then you would want to be good so that you could stay there, because otherwise it would just be pointless.'

Although many reasons were given for extending the right to appeal school exclusions to children, when reflecting on their own experiences of being permanently excluded many children said they would be unlikely to use a right to appeal because they did not wish to return to the school they had been 'kicked out of'. This was because many had very bad memories of their previous school and therefore had no desire to return. Underpinning this sentiment was the suspicion that even if they won an appeal, the school would just find another excuse to 'kick them out' again.

> 'Say if they said you had pulled the fire alarm they'd still think of a reason to exclude you. They say something like you've got someone else to do it.'

Another student said he had seriously considered appealing his permanent exclusion from school 'because I got kicked out for some stupidness - someone said something to me and I got kicked out'. But he changed his mind because:

> 'My mum just said there's no point because they're just going to put you on your last chance anyway and you will get kicked out a couple of months later.'

It was also the case that some children actually preferred not being in a mainstream school, as pupil referral units or special schools tended to be smaller and enabled them to receive the support and attention they felt they needed.

> ‘If you want to stay at this school [the pupil referral unit] then no [I won’t appeal my exclusion]. Because you could come to a school like this that could help you more because it means smaller classes and getting more help than you do at a bigger school. You get more help from the teachers.’

Children felt that those with particularly complex behavioural needs might receive better support and attention if they were educated outside a mainstream school, especially ‘if they’re bad and the school can’t handle them’. This option was considered to be beneficial for children at the mainstream school as well, on the basis that ‘if you carry on being naughty, how are the other kids going to learn?’ In fact, it was as a result of moving to a smaller school that was able to deal with serious behavioural difficulties that one boy said being excluded ‘was the best thing that ever happened to me’, although he was aware that this was not the case for everyone.

Children also demonstrated some apprehension that returning to their original school would be traumatic, especially if they had missed a significant amount of schooling and were likely to have fallen behind in their studies.

> ‘Personally I think there’s no point in appealing now and then waiting to get an answer, and then go back to mainstream because by then all your lessons will be different and you will have to get settled back into mainstream.’

How would children resolve a disagreement with parents over whether to appeal?

To tease out their ideas for conflict resolution if a disagreement arose between parents or carers and the child over whether to appeal a permanent exclusion, children were asked what they would do to address the situation. The most common suggestion was to use the services of a mediator to work with the child and their parent or carer to resolve the dilemma. It was suggested that this role could be fulfilled by a teacher, headteacher, key worker, social worker, or an independent person who was a good listener and negotiator. Children did not generally feel that accessing a suitable advocate would be a problem.

Interviewer: ‘What would happen if, for example, you and your parents disagreed about whether to appeal your school exclusion? How would you deal with this?’

Child 1: ‘Have a social worker as a mediator.’

Interviewer: ‘What if you don’t have one?’

Child 1: ‘Get one.’

Child 2: ‘You can’t just get one.’

Child 1: ‘You can. I just got one. I just called the police on my step dad and then I got a social worker straight away.’

Having a mediator was considered to be instrumental in helping reach a compromise that both parties could agree to.

‘I’d get the social worker to sit down and talk to them and discuss each others’ point of view because it’s going to cause violent arguments otherwise.’

When asked whose opinions were most important when attempting to resolve a disagreement over whether to make an appeal – those of the parents or those of the child – there was an almost even-split in opinion. Half the sample stated that the child’s opinion was most important, while the other half felt that the adult’s opinion should always carry more weight.

Those who said children’s opinions should carry more weight reasoned that if they were made to return to their old school against their will, they would simply act up to ‘get myself excluded again’. Some children believed that they held the “trump card” because they could behave in such a way that would result in them being excluded again.

Interviewer: ‘What would you do if your parents and you disagreed about your appeal?’

Child 1: ‘Agree with them.’

Child 2: ‘It will save an argument.’

Interviewer: ‘Agree with whom?’

Child 1: ‘My mum and dad and then hopefully if you keep on agreeing with them, they might take your side.’

Child 3: ’Or you could agree with them, appeal and then get excluded again. Then your parents wouldn’t be bothered to do it again. But if they are, do it again then get excluded again. If you don’t want to go to that school keep on doing it until your parents give up.’

The significance of children’s power through the constant pestering of parents to sway them toward the child’s point of view featured highly in responses to this question.

‘I’d just keep on bugging them until they’d say go on then [and appeal].’

‘Just keep on nagging your mum and dad to go back to school.’

‘I would say mum it’s up to me. It’s not up to you. It’s my education. I think you should do what I want to do.’

Children also emphasised the importance of finding a school that they were happy in.

‘Because why do you want to go to a school that you don’t like? You are just going to sit there and play up and not get anything done. But if you go to a school you like, you might actually sit there and do the work.’

On the other hand, children who thought their parents’ opinions should carry more weight than their own when there was a disagreement about whether to appeal a permanent exclusion tended to trust parents, carers and authorities to act in their best interests and on the basis of wider experience…

‘I’d just do what my mum says because she’s been through it already when she was little.’

‘If your mum was saying she wanted you in school and you were saying you didn’t want to go back to school you should listen to your mum because it’s better for you if you’re in school.’

…or they were resigned to the fact that no matter what the child said, the opinion of the adult would always hold more weight:

‘If they excluded you then there must have been a good enough reason. But if it’s just me that disagrees, then I don’t know, obviously I’m wrong if everyone else agrees.’

‘There’s no point talking to them because they’re just going to do it.’

‘The parents’ opinions count for more… [because] they’re like the boss of the family really.’

Messages children wanted to give the Government about exclusion from school

At the end of the interview, children were asked what messages they would like to give the Government about their experiences of exclusion from school. This generated much discussion, not least because it provided an opportunity for children to reflect on concerns they may not have raised during the interview.

The key message children highlighted was the importance of empowering children to have more of a say when decisions were being taken to permanently exclude a child from school.

> ‘People should be treated fairly. Don’t just point the finger, and accuse. Listen to what people have actually got to say.’
>
> ‘Get more of the child’s side then ask the adult and ask witnesses or whoever was there.’
>
> ‘Get more truth because of the teachers lie anyway.’
>
> ‘You should be able to tell people what you want. Not what they want for you, what they think is right for you. Only you know what’s right for yourself.’
>
> ‘Let them appeal…let them actually say that they want them to get in there and they want them to listen to them, and say I don’t feel like I should be excluded for this because it’s just really a little thing and they’re taking it a bit out of hand. And they’re saying you’re not coming to school because we feel that your past has does this – how is my past coming into it? And why hasn’t everyone been helping me because of my past?’

The final comment demonstrates the way in which some children explained their behaviour in relation to the education system. A further extension of this argument was the request to know the grounds upon which children could refute the reasons for their exclusion. As one child put it: ‘There should be national rules for why you get excluded – it shouldn’t be up to the individual school’.

When reflecting on the factors that led to exclusion, poverty emerged as a topical area, not least in part because differences in the financial situation of individuals were often seen as a reason for children engaging in anti-social behaviour such as stealing or fighting, thus making them susceptible to exclusion.

> ‘The poor people go around getting arrested and various things because they’ve got nothing to do…. But if they’ve got a lot of money they can go around doing things. They get in trouble because they’ve got no money to pay for things.’

The issue of clothing was seen as one of the most visible manifestations of having ‘no money to pay for things’. Children asked for money to be put aside to help families to afford school uniforms.

> ‘Because [children] look more tidy and respectable when they go to school [and that’s important because] if you look tidy and respectable then it doesn’t look like your mum and dad aren’t looking after you.’

Children wanted more money to be allocated to schools in poorer areas in order to give children “fun” things to do at school; they felt that this would stop children getting bored and getting into trouble as a result.

> ‘I’d give them more things to do at school than just do work all the time. I’d let them have more trips out and that, go to the seaside I don’t know, maybe every few weeks and that. …Like if you go out for one day it just relieves you…’

Several of the interviews were held in very deprived areas, which may account for the focus of many children on the impact of poverty on their behaviour and achievement.

In addition to providing ‘better things in the playground’ such as ‘a football pitch, a bike shed, basketball nets and everything’, some children wanted more CCTV cameras to be installed in school as a means of solving disputes that might otherwise result in exclusion. Children were also of the opinion that the onus should be on the school to support the child to deal with his or her behaviour before ‘kicking them out’. This included providing counselling or ‘therapy sessions’ for children, and having access to more ‘time out’ rooms. Children felt these ‘time out’ rooms gave them the space and support they needed to help them manage their behaviour, or at least to reflect on the incident that had caused their removal from class.

> ‘The school that I went to I got excluded from [but] when I was at this school instead of excluding me they brought in this person and we went to classes because I used to misbehave and try and show off in front of everybody they used to take me out and stuff like that. And I didn’t kick off or anything like that, then I’d get a reward or something and you get to chill out.’

Most importantly, children felt that ‘time out’ rooms limited the disruption to their education, because ‘when you’re in isolation you still learn stuff, you're still getting work to do. When you're excluded you ain't got nowt to do. That's it'.

Children also talked at length about the effects being permanently excluded had on their lives. Some said that as a result of having nothing to do at home they engaged in behaviour that could be termed anti-social 'because there is nothing else to do so you think what have I actually got to lose'. This in turn led to problems at home and conflict with family members.

For others, being permanently excluded had the opposite effect and encouraged them to reflect on and change their behaviour. Thinking back to the disruption her behaviour caused to her studies, one girl commented:

> 'It's easier being good, it's less hassle.'

Others said that the experience of being excluded led them to think again about their behaviour in school.

> 'Because it's boring not being good. You just end up sitting listening to the teacher saying something over and over again.'
>
> 'See sometimes in class you're shouting and messing about. Sometimes you can have a laugh when you're in class. And when you're in high school in year 7 you've got to at least try and put your head down and do some work to get a good education…. If you actually want to get a job, raise a family and do what you want with your life, get a good education and put your head down.'

6 The right to appeal special educational needs decisions

The second part of this report examines children's views on whether the right to appeal special educational needs (SEN) assessments and statements should be extended to children and young people. It includes views on:

- The statementing process
- Whether children think they should be able to appeal SEN decisions and participate in SEN tribunals
- The age at which children should be able to appeal
- The support children might need to make an appeal
- Resolving disagreements between parents and children over whether to make an appeal
- How children might use a right to appeal.

General comments on statements of SEN

To set the interview in context, the discussion opened with a general look at what children thought of the statementing process. Although there were more negative than positive issues raised about SEN statementing, there was a consensus that, at the very least, a statement entitled children to the support they needed. Many children liked the fact that special schools tended to be smaller with more teachers and fewer students.

However, some children felt having recognised SEN labelled them as "disabled" when they did not consider their needs to be disabling. Having a statement also meant that their special educational needs were formalised in a public document – 'it gets known basically' – and some children were concerned that this might affect their career opportunities.

> 'I don't think we should have it on our record because if we go for a job it will **** up our career.'
>
> 'Who's going to employ you if you go to a special school when you've got behavioural problems and you've got a record.'

There was also concern that schools could use the statementing process to remove a child from their school, through arguing that the child would receive better care and support with their education elsewhere. As one child put it, 'they make a statement and then they kick you out'. Another student also raised questions about the reliability of the information contained in the statement, not least because a child's educational needs changed over time. This raised questions about whether children always got the specific help that they needed.

Should children be able to appeal a SEN decision?

The importance of listening to children and taking their views into account when making life-changing decisions was consistently highlighted by the 25 children with recognised SEN that took part in the research. The majority felt that children should have the right to have a say in decisions being made about their education and their particular needs, including in an appeals process.

At what age should children be able to appeal a SEN decision?

To determine how old a child should be before they could appeal an assessment or statement of SEN, we presented children with four cards. Each displayed one of the following categories: primary school age, 12 and over, 14 and over, 16 and over. From these choices, the most common response was that children should have the right to appeal when they are 16 because 'you're older', 'you're more mature', and 'know your own mind'.

> '[At 16] you're older. You've got a bigger brain. You will understand because you can talk, you can read, you can do whatever.'
>
> 'By that age you're grown up and you mature as you get older and it's the time you should be given the opportunity to speak your mind and to tell people what your feelings are and your views.'

Children felt that primary aged children were 'just too young' and as such 'don't know enough about their needs'. The tendency for children to apply appeal rights only to older children may be a result of the majority of our sample being of secondary school age.

When asked how a SEN tribunal could determine whether a 16 year-old with SEN had the maturity and understanding to appeal their assessment or statement, the overriding response was to talk to the child to ensure they understood the process and the potential outcomes. Children felt that parents or carers and teachers were best placed to handle this discussion, although doctors, psychiatrists and psychologists were also noted as sources of support. It seemed impossible to the children we spoke to that support similar to that they already received from adults in their day-to-day lives might not also be available to them if they were making an appeal. It was also felt that talking through the appeals process would be much easier than being put through a capability test because 'you get more information from talking', especially as the child is best placed to 'know their needs'.

Some children seemed confused as to why a SEN tribunal would need reassurance that a child was mature enough to appeal a SEN statement. The logic behind this argument was that if a child is willing to make an appeal, then surely they must understand the reasons for putting themselves through this process. As one child remarked:

> ‘If I knew I understood it, then obviously I’d make a complaint, but if found it hard to understand it then I couldn’t make a complaint.’

If it could not be determined whether a child understood why they were appealing his or her SEN assessment or statement through a discussion with the child, an alternative suggestion was to observe them at school or at home in order to:

> ‘…watch them physically, watch how they operate, and watch how they do stuff, if they act sensibly or are mature enough to do that task.’

Only three children said that the level of maturity to make an appeal might be affected by the severity of a child’s needs. The majority of children, on the other hand, said that their disability did not prevent them from exercising their right to have a say or from obtaining the necessary support and assistance which could enable them to take full advantage of their right to education.

Support to appeal a SEN assessment or SEN statement

When asked what type of support children might need to assist them in making an appeal to a SEN tribunal, the most popular request was for information about the process to be made available in DVD format.

> ‘…because it’s easy for people to understand. Some people can’t read properly so they might be able to listen to what a DVD is trying to tell them and then they can take in the information that way…Or maybe words can come up on the screen and we can set the subtitles into the DVD and why don’t you write Braille as well… that would be perfect for the blind person… you could get stickers with Braille so what you could do is stick it on the CD, on all of the CD so they can feel.’

It was suggested that both adults and children should be involved in producing this DVD and that it should feature children who had themselves been through an appeal process: they would have a unique insight into what to expect from a child’s perspective.

‘…children are the ones experiencing it, so it’s the truth.’

‘Get young people who have been through this process to give a talk because they’ve been through it and they know how the system goes and stuff like that.’

Children also wanted parents or carers, a teacher, or ‘someone you can trust’ to guide them through the appeal process. One child suggested a lawyer might also be useful because ‘you want someone who knows about your rights’. In addition to having someone who could support the child, those who could not communicate verbally also suggested ‘get[ing] someone to help you write it down’ so they could submit their views in writing. The third suggestion was for information to be made available in a leaflet or letter which ‘explain what happens’. The children who put forward this idea thought adults should produce this literature.

One child thought there should be some form of monetary incentive to encourage children to make an appeal. He felt this would result in children being more likely to take action when they thought their SEN assessment or statement was inappropriate. Therefore, in the longer-term, he felt this would enable more children to get the help they needed to meet their particular needs.

How would children resolve a disagreement with parents over whether to appeal a SEN decision?

This proved to be one of the more challenging questions for children with complex needs to answer. This may have been because the idea of disagreeing with their parents or carers was difficult to comprehend because of their reliance on parental support for managing their disability. It may also have been because some children seemed to find it difficult to empathise with a situation that required them to consider someone else’s point of view.

That said, the majority of children who did answer this question asserted their right to have a say. They were prepared to negotiate the disagreement about whether to appeal either directly with their parents or carers, or with the help of a mediator. These children emphasised how important it was for them to have a say in decisions affecting their lives ‘because the child knows more about himself than anyone else’, albeit that they had different ideas about the best approach to take to resolve a disagreement. For example, the most common suggestion to address disagreements between a child and his or her parents or carers were to talk it through either face-to-face or (as suggested by one child) with the aid of the DVD to help demystify the appeal process.

‘I would talk to them, make them a cup of tea, tea and toast, sit them down, calm them down and talk to them…’

‘Make your parents watch the DVD [explaining the process of making an appeal] … they might change their mind about the way children feel about it.’

‘Say I had a disagreement with my mum about what was right and what was wrong. I’d have to say, right mum, I think we need to sit down in a quiet room and talk calmly about this and try and sort things out instead of stating that’s it, I don’t like what you’ve said, I’ve fallen out with you and not speaking to you ever again. I’d just sit down in a room and say… we need to talk about this calmly.’

If the direct approach did not work and a compromise could not be reached, it was suggested that a mediator should facilitate the discussion. It was felt this mediator could be another family member, a teacher, a Connexions adviser or ‘someone you trust and feel comfortable with’. One child who had disagreed with his parents over the information contained in his statement recommended talking to a medical professional. He said:

‘When my parents disagreed with me on changing my statement, I talked to my psychiatrist about it because she understands me and what’s wrong with me and everything and my psychologist does as well.’

Would children use a right to appeal?

Almost all of the children we interviewed said they would appeal their SEN assessment or statement if they thought it was necessary. Their reasons for doing so were because ‘everyone should be able to make a complaint’ as ‘it’s only fair’, ‘because everyone has their own rights’ and ‘we know what we want’. Two main arguments were put forward for extending the right to appeal to a SEN tribunal to children. The first was that children are in the best position to know why they disagree with the information on their statement because:

‘[Children] know themselves better than anyone so they know what they can do and what they can’t do and everything.’

The second argument was that the failure to extend the right to appeal to a SEN tribunal to children could result in a child not receiving appropriate support.

‘[You] should be able to make a complaint because its like you gave him [a child] some medicine and it’s not really right, it can damage inside your body and obviously you’re going to make a complaint about it.’

For many of these children, being able to appeal a statement which concerned their physical and mental capacity was, in their view, a way to assert their independence, take ownership of their life and responsibility for themselves.

‘It sounds a bit selfish this maybe, but this [making an appeal] is what you want at the end of the day. If somebody else is saying right [Child X] should have this, [Child X] should do this, I mean it’s like, why doesn’t Child X get a say in all this? In fact, hang on a minute, Child X don’t want all this. Child X wants this to happen…and then this to happen and if that doesn’t happen, then what’s my life at the end of the day?’

It is interesting that the importance children attached to the right to appeal for all children with SEN was not wholly reflected in the discussions they had about the age at which children should be allowed to appeal in their own right.

Messages children wanted to give the Government about appealing SEN decisions

At the end of the interview children were asked what messages they would like to give the Government in relation to appealing SEN decisions. These lively discussions produced several key points.

The first was a need for greater awareness of how a disability can affect a person’s life. Children and young people with physical disabilities expressed frustration with popular and misconceived ideas about the mental capability of those with a physical disability, pointing out that ‘because you’re in a wheelchair [you haven’t] less cognitive ability’. Having to deal with such misconceptions alongside the reality of their physical disability led some children to experience deep depression.

In the same way, children argued that ‘some people think to be disabled you have to be in a chair’. Those with mental and behavioural difficulties generally felt that not being visibly disabled did not make an individual's behavioural, emotional or social problems any less difficult to manage for the child, albeit these difficulties may have been less immediately obvious.

‘For me personally, I do think I have problems and not many people are aware of that because it’s not obvious. And we’ve not got a wheelchair or something to show that we’re different, but there needs to be more awareness because I got bullied a lot when I was younger and stuff and people sometimes look at me funny.’

Underpinning the discussion was a desire to be respected as individuals in their own right.

‘I know we’re different from normal people but that’s how we operate and that is our life. We’re in a wheelchair, we don’t feel comfortable in a wheelchair and we’re trying to get across to the people that we don’t want to be in a wheelchair. We want to be talking… and it just very uncomfortable for me to be watched. People stare at me… we get stared at and we don’t like it.’

Finally, children wanted to articulate their thanks for the opportunity to participate in the consultation and to have a voice in such an important decision-making process. In fact, one of the most striking findings during the fieldwork for this research was the large number of children who thanked us for listening to their views.

‘I would just like to say thank you for listening to us and getting our views across to you and you can pass it on to the Government…. So thank you, it’s really good.’

Appendix A: Consent form

Children's Rights Alliance
for England

CONSENT FORM

Thank you for agreeing to participate in research examining if children and young people should have the right to appeal school exclusions and special educational needs (SEN) decisions, and to make disability discrimination claims.

The Children's Commissioner for England would like your permission to use the views you share with us in his wider work to promote children's rights. Your name will **not** be used and your identity will be kept private.

Please **tick the box** if you are happy for your views to be used in the Children's Commissioner's work.

Please fill in one of the boxes below.

If you are **17 or 18** please complete the following:

I give permission for my views to be used in work to promote children's rights.

Young person's signature:

Date:

If you are **16 or younger we need your permission and that of your parent/carer.**

I give permission for my views to be used in work to promote children's rights.

Young person's signature:

Parent/carer signature:

Please return to: cdavey@crae.org.uk or Dr. Ciara Davey, Children's Rights Alliance for England, 94 White Lion Street, London N1 9PF

Adult flyer advertising the research

11 MILLION

Children's Rights Alliance
for England

Opportunity for young people to participate in a Government consultation on giving children a right to appeal

The Children's Rights Alliance for England (CRAE) is carrying out research on behalf of 11 MILLION[11] to inform the Government consultation on whether to give children and young people the right to appeal permanent exclusions, special educational needs (SEN) decisions and to make disability discrimination claims.[12]

Can you help us conduct this research?

To ensure children and young people have a say in this consultation, CRAE would like to talk to children and young people who:

- have been permanently excluded from school
- have experience of SEN statements and assessments and/or experience of making a disability discrimination claim.[13]

We would like to conduct focus group interviews with **5 young people** (**aged 12-15**) in each of the following settings:

Setting	No of interviews	No of young people taking part
Pupil referral unit	4	20
A school/special school[14]	2	10
A youth inclusion project	1	5
Gypsy and Traveller communities	2	10
Residential special school [15]	3	15

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[11] 11 MILLION is the office of the Children's Commissioner for England.

[12] The consultation is available from: http://www.dcsf.gov.uk/consultations/index.cfm?action=consultationDetails&consultationId=1607&external=no&menu=1

[13] Young people should have experience of assessments (for example, they may have been on School Action Plus and as a result, received an Individual Education Plan). A child who has SEN but does not have a statement may still participate in the research.

[14] Either of these schools should have a high rate of admissions of excluded students.

[15] Interviews will include children who communicate non-verbally and who have complex needs.

How will the research be organised?

- We need to conduct these interviews between **4- 27 June 2009**.
- Each interview will last 90 minutes. The first half of the interview will discuss children and young people's experiences of appeals to permanent exclusions from school, and the second half will discuss appeals against SEN decisions and making a disability discrimination claim.
- An experienced researcher who has an enhanced CRB check will conduct the interviews.
- A risk assessment and a copy of the questions will be sent to the organiser prior to the interview.
- The research will be engaging and interactive and use photographic aids to support the questions.

Children participating in the research will receive:

- A leaflet explaining why we are conducting this research and what will happen to their views.
- A summary outlining the key findings of the research and a copy of the research report.
- Refreshments during the research.
- A thank you letter from the Children's Commissioner acknowledging their participation.

Information leaflet for children and young people

Children's Rights Alliance
for England

We want to hear what you think!

Who are we?
The Children's Rights Alliance for England (CRAE) and the Children's Commissioner for England are carrying out research to find out what children and young people think about having the right to appeal permanent exclusions and special educational needs (SEN) decisions, and the right to make disability discrimination claims.

Why are we here?
At the moment, only a parent or carer can question or 'appeal' a school's decision to exclude a pupil.

But the Government is thinking of changing the law so that children can appeal themselves. We'd like to know what you think about this.

Some children also have special educational needs and their school or local council must make sure they get the help they need in school.

At the moment, only a parent or carer can question or 'appeal' the decision of the school or local council if they don't think the child is getting the help they need.

But the Government is thinking of changing the law so that children can appeal themselves. We'd like to know what **you** think about this.

We want to talk to you today because you are the experts!

What will the research involve?
With your friends sitting beside you, we'd like to hear what you think about these issues and what help you think children and young people might need to help them make an appeal.

The discussion will last for an hour and a half with breaks.

Why should you take part?
What you tell us could help change the law and make the system fairer and better for children and young people.

Do you have to take part?

You do not have to take part in the discussion if you don't want to, and you do not have to answer a question you are not comfortable with.

You can change your mind about taking part at any time. If you are under 16 we will need written permission from your parent or carer for you to take part.

What will happen to what you tell us?

The Children's Commissioner for England will use your views to help promote children's rights. We will **not** use your name and your identity will be kept private.

If you tell us that you or another child is in danger of being harmed we will have to pass on this information to the right people so that we can get that young person the help they need.

Where can you make a comment or complaint if you are unhappy with the research?
Please contact Sam Dimmock, CRAE's Head of Policy and Public Affairs on 020 7278 8222 (Ex 23) or email sdimmock@crae.org.uk

What happens next?
Once we have written our report based on your views, we will send you a summary of what we found out. You will also receive a thank you certificate from the Children's Commissioner for England for taking part.

After 28 July 2009, the Government will decide (based on the views they receive) whether to make any changes to the appeals process.

This could include new rights for children and young people to have a say in exclusion and SEN decisions and better support for young people faced with exclusions or discrimination.

Appendix B: Interview questions

Questions for children permanently excluded from school

WHAT DO YOU THINK ABOUT SCHOOL EXCLUSION?

- Is it ever right to exclude children from school?
- What are the good reasons for doing this?
- What are the bad reasons for doing this?

SHOULD CHILDREN BE ALLOWED TO APPEAL EXCLUSIONS IF THEY DON'T AGREE WITH THEM?

- At what age?
- Do they need a certain level of understanding / are they mature enough?
- How should it be decided if they have that level of understanding / are mature enough?

WHAT SUPPORT MIGHT YOU NEED WHEN MAKING AN APPEAL?

IF YOU AND YOUR PARENTS / CARERS DISAGREED ABOUT WHETHER TO APPEAL, HOW WOULD YOU DEAL WITH THIS?

WOULD YOU USE A RIGHT OF APPEAL IF YOU HAD ONE?

WHAT OTHER MESSAGES HAVE YOU GOT FOR GOVERNMENT ON USE OF EXCLUSION?

Questions for children with special educational needs

WHAT DO YOU THINK ABOUT CHILDREN BEING ASSESSED FOR THEIR SPECIAL EDUCATIONAL NEEDS?

- What are the good things about being assessed?
- What are the bad things about this?

SHOULD CHILDREN BE ALLOWED TO APPEAL AGAINST SEN ASSESSEMENT OR DISABILITY DISCRIMINATION?

- At what age? (Use cards with primary school age, 12 and over, 14 and over, 16 and over, and other written on them

- Do they need a certain level of understanding / are they mature enough?
- How should it be decided if they have that level of understanding/are mature enough?

WHAT SUPPORT MIGHT YOU NEED WHEN MAKING AN APPEAL?

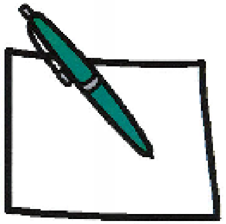
IF YOU AND YOUR PARENTS / CARERS DISAGREED ABOUT WHETHER TO APPEAL, HOW WOULD YOU DEAL WITH THIS?

WOULD YOU USE A RIGHT OF APPEAL IF YOU HAD ONE?

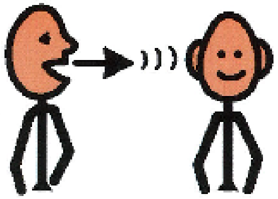
WHAT OTHER MESSAGES HAVE YOU GOT FOR GOVERNMENT ON SEN ASSESSMENT OR DISABILITY DISCRIMINATION?

Appendix C: Cards to assist the participation of children unable to communicate verbally

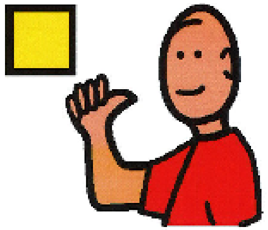
test



talk

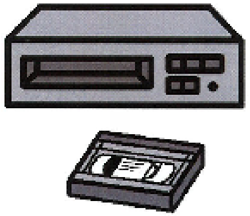


individual needs



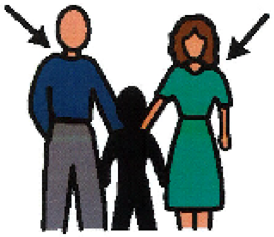
CD

dvd/video

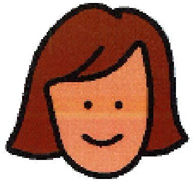


friends

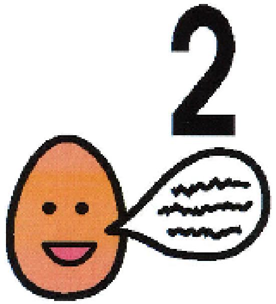
parents



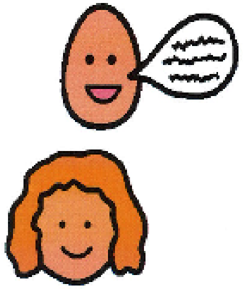
other person



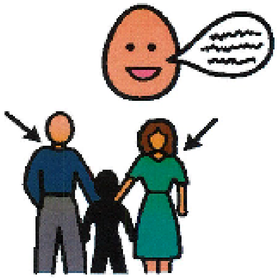
have 2 appeals



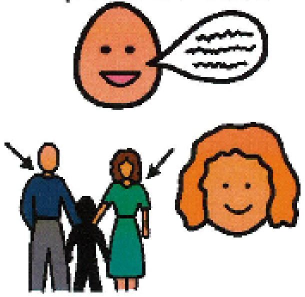
child to appeal



parents to appeal



parents to appeal but speak for child



Appendix D: Information sheet to supplement material gathered through the interviews

Children's Rights Alliance
for England

Have you anything else
to say about being excluded?

Sometimes when there's a discussion, not everyone gets a chance to say everything they want to. Please use this form to tell us anything else you think we should know.

1. Should **children** be allowed to appeal exclusions if they don't agree with them? Why?

2. How **old** should someone be to appeal a permanent exclusion?

3. Does a child or young person need to have a **certain level of understanding** to appeal a permanent exclusion?

4. **How should it be decided** if they have that level of understanding?

5. What **support or help** might you need when appealing a permanent exclusion?

6. Would you **use** a right to appeal if you had one? Why?

7. What would you do if you and your parents **disagreed** about whether to appeal your permanent exclusion?

8. Have you any messages you'd like us to give Government about exclusions?

Thank you for sharing your views.

We'll make sure we tell the Government what you said.

Have you anything else to say about SEN assessments or disability discrimination claims?

Sometimes when there's a discussion, not everyone gets a chance to say everything they want to. Please use this form to tell us anything else you think we should know.

1. Should **children** be allowed to appeal against a SEN assessment or disability discrimination if they don't agree with it?

2. How **old** should someone be to appeal a SEN decision or make a disability discrimination claim?

3. Does a child or young person with SEN need to have a **certain level of understanding** to make an appeal?

4. **How should it be decided** if they have that level of understanding?

5. What **support or help** might you need to appeal a SEN assessment or disability discrimination?

6. Would you **use** a right to appeal if you had one? Why?

7. What would you do if you and your parents **disagreed** about whether to appeal a SEN decision or make a disability discrimination claim, how would deal with this?

8. Have you **any messages** you'd like us to give Government about SEN assessments or disability discrimination claims?

Thank you for sharing your views.

We'll make sure we tell the Government what you said.

"The 11 MILLION children and young people in England have a voice"

Children's Commissioner for England, Professor Sir Albert Aynsley-Green

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