



Centre for Research in
Education Inclusion
and Diversity

Children with additional support needs in Scotland: Inclusion and rights



Professor Sheila Riddell

**Centre for Research in Education Inclusion & Diversity
(CREID)**

University of Edinburgh

www.creid.ed.ac.uk

**Presentation to the International Seminar on Children's Rights, University
of Burgos, 18.11.21**



Centre for Research in
Education Inclusion
and Diversity

The research project



Presentation draws on findings from an ESRC funded project entitled *Autonomy, Rights and Children with Special Needs: A New Paradigm?* (Ref. ES/P002641/1)

Collaboration between researchers at the Moray House School of Education, University of Edinburgh and the School of Law, University of Manchester from 2017 - 2019

**Details of project available at
<https://www.ed.ac.uk/education/rke/centres-groups/creid/projects/autonomy-rights-sen-asn-children>**

Delighted that a parallel project was funded in Spain led by Dr Raquel Casado Muñoz, University of Burgos



Centre for Research in
Education Inclusion
and Diversity

Structure of the presentation



Key question: has there been a major shift in the empowerment of children with additional support needs (ASN) in schools, or are the changes mainly cosmetic?

Presentation begins with brief overview of ASN provision in Scotland & key elements of policy and legislation.

Presents some official statistics to show characteristics of the system & change over time.

Uses some brief vignettes to illustrate challenges in realisation of children's rights and tensions between inclusion and rights



Centre for Research in
Education Inclusion
and Diversity

Inclusion in Scottish schools



Prior to the 1970s, Scotland, like many other countries, used system of medical deficits. Children sent to special schools based on diagnosis of ‘disability of body or mind’

Growing emphasis on inclusion – legislation passed in 2000 established the ‘presumption of mainstreaming’ – less than 1% of children in special schools/units

But exceptions - the local authority might decide to place a child in a special setting if:

- **A mainstream school would not be suited to the ability and the aptitude of the child;**
- **Would be incompatible with the provision of efficient education for the children with whom the child would be educated; or**
- **Would result in unreasonable public expenditure being incurred which would not ordinarily be incurred**



Centre for Research in
Education Inclusion
and Diversity

**Official statistics don't tell the full story
– Inclusion may mean different things to
different people**



**Inclusion may include long periods in a
behaviour or learning support unit**

**Low level of official exclusions but
evidence of increase in unofficial
exclusions**

**Growth in use of 'flexible' provision – part
time in school, part time in 'vocational'
setting**



Centre for Research in
Education Inclusion
and Diversity



Changes to ASN system as result of 2004 legislation



Centre for Research in
Education Inclusion
and Diversity

ASN reforms prioritise parents' rights over children's rights



Legislation passed in 2004 (Education (Additional Support for Learning) (Scotland) Act 2004 made some important changes to system:

ASN replaced SEN – much broader umbrella category

Massive expansion of ASN population – from 5% in 2005 to more than 30% at present – largest expansion in percentage of children with social, emotional and behavioural difficulties

Parents (but not children) given right to appeal to tribunal if dissatisfied with provision. Also able to use independent adjudication and mediation.

Legal redress used much more extensively by more socially advantaged

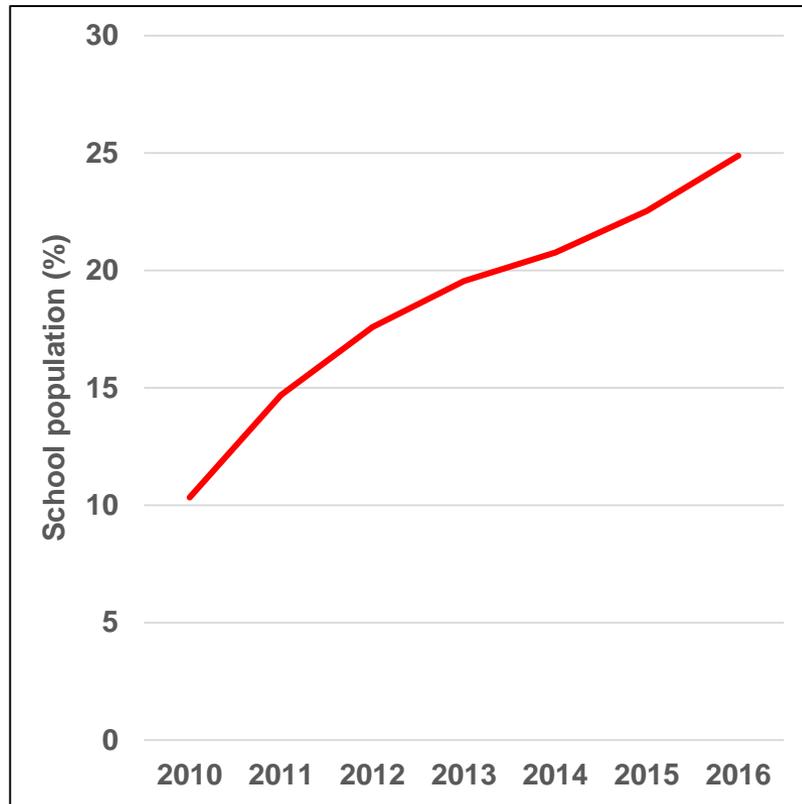


Centre for Research in
Education Inclusion
and Diversity

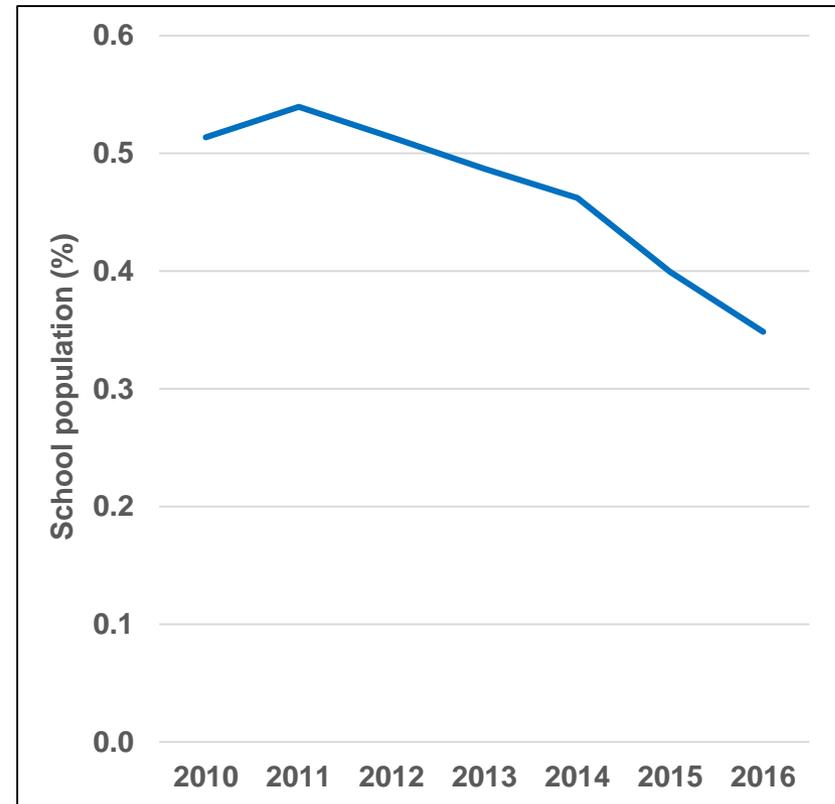
Massive expansion of ASN population – from 5% in 2005 to more than 30% at present, alongside decrease in statutory support plans



ASN increasing..



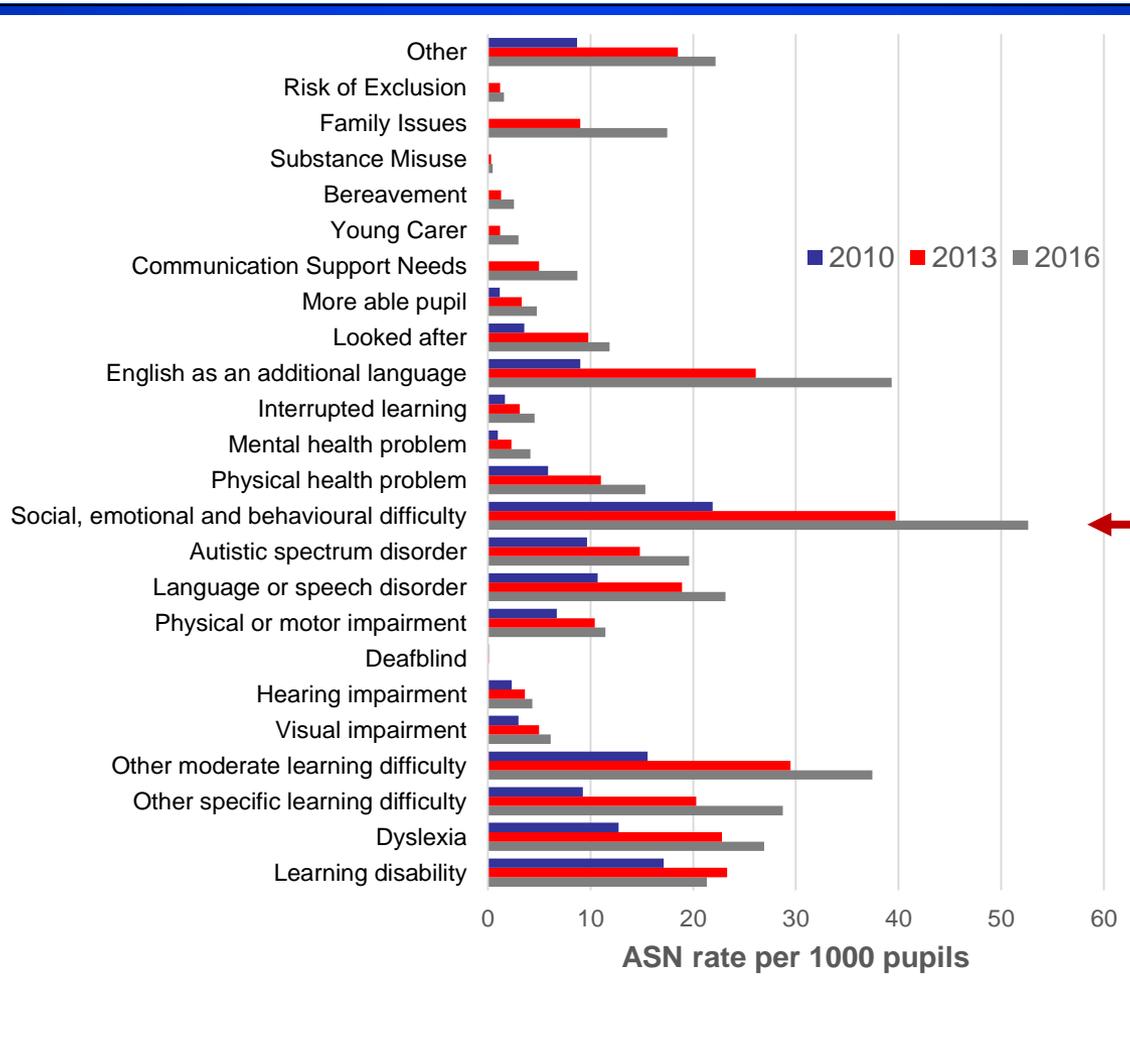
CSPs decreasing..





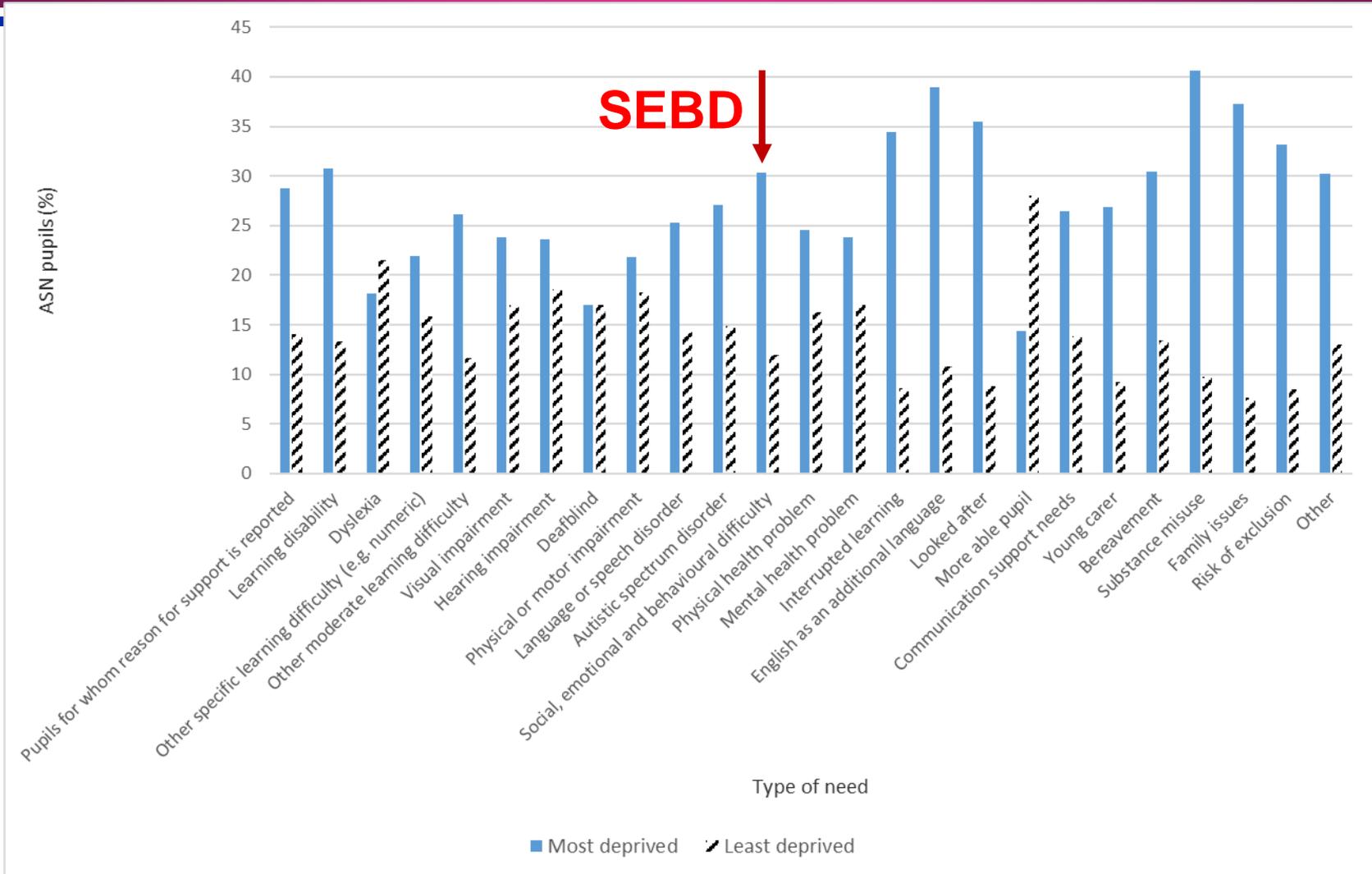
Centre for Research in Education Inclusion and Diversity

Major expansion in ASN particularly pupils labelled as having social, emotional and behavioural difficulties.



SEBD

Strong association between deprivation & SEBD, substance abuse, risk of exclusion, English as an additional language, interrupted learning.





Centre for Research in
Education Inclusion
and Diversity

Subsequent emphasis on children's rights: International treaties



United Nations Convention on Rights of the Child (UNCRC) Article 12:

- States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
- For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.



Centre for Research in
Education Inclusion
and Diversity

International treaties on children's rights



United Nations Convention on Rights of Persons with Disabilities (UNCRPD) Article 24 emphasises importance of inclusive education:

States required to ensure 'an inclusive education system at all levels' which is directed to 'enabling persons with disabilities to participate in a free society'. Disabled children and young people should have access to primary and secondary education 'on an equal basis with others in the communities in which they live.'

However, UK entered a reservation that children with disabilities could be educated outside their local community if 'more appropriate education provision is available elsewhere.' Article 24 of the UNCRPD also stipulates the need for disabled students to 'feel valued, respected, included and listened to.'



Centre for Research in
Education Inclusion
and Diversity

Children in Scotland now have virtually the same rights as their parents – described by SG official as **‘the biggest expansion of rights in Europe’**.



Table 3.2. Summary of new rights accorded to children aged 12–15 (C) and young people (YP) with additional support needs in Scotland (post Education (Scotland) Act 2016).

Right to ask local authority to:

Find out if they have ASN (C)

Request a specific assessment (C)

Find out if they need a CSP) (C)

Ask for a CSP to be reviewed (C)

Right regarding information and advice:

About their ASN (C)

Receive a copy of the CSP (C)

Be told about decisions about their rights(C)

Be asked if they are happy for information to be shared when they leave school (C)

Rights regarding having their views heard and considered:

Be involved in decisions about support(C)

Access to support and advocacy to have their views heard (My Rights My Say) (C)

Right to be involved in resolving disagreements disputes

Ask for independent adjudication(C)

Make a reference to the First tier Tribunal(C)

Attend tribunal and have views heard and considered (C)

Opt for mediation (YP only)

Be asked for their views during mediation (C)



Centre for Research in
Education Inclusion
and Diversity

Caveats around children's rights



In order to exercise a right, the child must ask the LA to determine whether they have the capacity to do so and whether exercising this right would be detrimental to their well-being

Rights reserved to parents:

- Child cannot request mediation**
- Child cannot make a placing request – potential clash with goal of inclusion**



Centre for Research in
Education Inclusion
and Diversity

Perceptions of 2016 legislation on children's rights: Scottish Government optimism



It's the biggest extension of rights in Europe at the moment that we can evidence ... So in that sense, in terms of principles, I think it's massive. ...And so we've gone from one right to twenty two rights which is huge. We don't know yet what the extent of the actual change will be ...the numbers of people using the right, we don't know that. But I can already see from discussions we've been having with authorities that the children's rights agenda has come up the agenda. You know, they are thinking about, 'Well actually we now need to ask the child about that. I need to think about how a child's going to respond to that'. (Scottish Government officer)



Centre for Research in
Education Inclusion
and Diversity

Questions addressed by research



How are children using their new rights to have their voices heard in all major decisions affecting their lives?

And how do their choices promote inclusion?

Some vignettes ...



Centre for Research in
Education Inclusion
and Diversity

Laurie



Middle class boy aged 14 with diagnosis of ASD. Residential special school placement negotiated by parents without child's involvement

At primary level, refused to attend school and spent most of his time alone in his bedroom. Parents researched residential special schools and threatened legal against LA – who finally agreed to fund the placement:



Centre for Research in
Education Inclusion
and Diversity

Laurie



Middle class boy aged 14 with diagnosis of ASD. At primary level, refused to attend school and spent most of his time alone in his bedroom. Parents researched residential special schools and fought legal battle with LA to get them to fund the placement:

We did some research and we went and visited a couple a' schools. And we visited Castle House a good couple a' years ago and then it all kinda went a bit quiet again. And then we sat down one day and said, 'Look this isn't working. We've got an opportunity now. He's got no social interaction, he's not meeting any milestones whatsoever in terms of academia, therefore we need to do something about it. We basically took it into our own hands and said, 'We need to do something about it.' And at that point we really really fought wi' the region for them to accept it. And we thought there was gonna be more of a fight because we thought [the placing request] would be rejected and we'd have to go through the lot, the courts and so on and so forth but actually we didn't ... (Father)



Centre for Research in
Education Inclusion
and Diversity

Laurie



Residential special school placement negotiated by parents without child's involvement. Laurie only told of the plans after funding agreed:

In October, my Mum and Dad told me about this school and when I finally agreed to it they told me that they had actually been looking at the school for three years. And it was only last October that I found out about it. And yeah they told me that I'm gonna be staying there and that was like a big worry for me. Like I didn't wanna stay at a different school, like a boarding school. I didn't wanna wake up in a different building miles away from home. But obviously as time went on I started to think about how well my education would be and how good my future would probably be. So yeah I decided to give it a go ... (Laurie)



Centre for Research in
Education Inclusion
and Diversity

Colin



Colin: Secondary school aged child from socially deprived background spending all his time in special unit. Very quiet during observation period – occasionally puts his head down on desk and cries. Colin’s teacher describes him as a ‘work avoider’ and blames his mother who is described as having literacy difficulties:

***I think that by observing Colin in the setting for a couple a’ days, you’ll see that ... he is a bit of a work avoider. He is showing a lot of classic traits of work avoidance, one of which is going to the toilet. ... I feel that his work avoidance issues mean that he often delays on the way to the toilet and sometimes there are toilet accidents. And unfortunately, the pattern we’ve identified is sometimes he will, we believe, deliberately have those accidents because then subsequently the amount of time to change will get him out of work. So I would say that is Colin’s strategy. That is his way of voicing his opinion. And we would obviously much rather at the age of thirteen, for himself and his own development and social skills, we would like him to voice his opinion in a different way.
(Colin’s teacher)***



Centre for Research in
Education Inclusion
and Diversity

Colin



Colin's mother believes that the school completely ignores her concerns and has given up trying to be heard:

To be honest, [the primary school] was no that great. I think they just kinda shoved him in a corner and just left him to get on wi' it. I mean obviously he did what he could do but just like they didn't have any time for him without putting something doon in front a' him and telling him tae get on wi' it, without even trying tae help him..... It was like fighting a losing battle. I was sick a' phoning them up and arguing wi' them and having meetings. And it just got me absolutely naewhere so I kinda gave up. I thought, 'I'm wasting my time'.



Centre for Research in
Education Inclusion
and Diversity

To end on a more optimistic note: examples of pupils using their voice to effect change – and schools allowing them to do this



Ruth: Very able middle class girl educated in mainstream school but spends some time in separate support unit. Has diagnosis of autistic spectrum disorder. A classroom pass enables Ruth to leave the mainstream classroom when she needs to. She insists that, without the support unit, she would be unable to cope with the stress of mainstream:

I don't like other people, other noise ... Some people who go [to the support unit] are down there because they misbehave and they swear a lot. But then there's others like me who can't cope with classes. And then if I'm really upset they have like a tent in one of the [additional support] classrooms and then I can just sit in there. (Ruth)



Centre for Research in
Education Inclusion
and Diversity

Summary & conclusion



In line with international treaties, Scotland has strong commitment to dual principles of inclusion and children's human rights

Statistics also reveal very low use of special schools (less than 1% of children in special schools & units)

Since 2004, massive expansion in ASN population (About a third of school population) –with no expansion of resources.

Biggest category is social, emotional and behavioural difficulties – socially stigmatised category disproportionately applied to boys from socially deprived backgrounds.

Children with SEBD unlikely to have a statutory support plan and are more likely to be excluded (formally or informally)



Centre for Research in
Education Inclusion
and Diversity

Summary & conclusion



Recently, massive expansion in the rights accorded to children with ASN – now have effectively the same rights as their parents

But major caveats – parents (not children) have right to make placing request and local authority ultimately decides which school a child will attend

Local authority decides whether a child may exercise a particular right – so rights only provisional

Local authority may ignore presumption of mainstreaming in many circumstances as a result of legal caveats – but may also refuse special school placing requests because of additional costs.



Centre for Research in
Education Inclusion
and Diversity

Summary & conclusion



Vignettes indicate some of the tensions between inclusion and rights

Common issues:

- **Parents and children from socially disadvantaged areas frequently disrespected and ignored – the voices of middle class parents and children much more likely to be heard**
- **Children rarely involved in choice of school or dispute resolution**
- **Balance of power probably still lies with local authorities and parents - but also examples of children exercising agency in school to ensure that their voices and needs are attended to.**