

Howard League for Penal Reform

Howard League for Penal Reform's submission to the SEND review consultation

22 July 2022

1. The Howard League for Penal Reform runs a specialist legal service for young people aged 21 and under in custody. Our legal work includes advising young people who struggle to effectively participate in prison disciplinary hearings, helping young people to seek assessment for potential SEND, and advocating for better provision from local authorities.
2. The Howard League recently published a joint briefing with the Independent Provider of Special Educational Advice (IPSEA) about educational provision for children in prison. The briefing explained that while practitioners have concerns about the speech, language and communications needs and mental health needs of most children in custody, SEND provision in secure training centres and Young Offender Institutions is deeply inadequate (Howard League and IPSEA, 2022).
3. For example, children who cannot attend the main classes in prisons and secure training centres – including those with additional learning support needs – are put on what are sometimes called “outreach” timetables, where they have lessons on a one-to-one or smaller group basis. In practice, the Howard League finds that children often get less education when they are placed on outreach, as the time is determined by how many children need support from the worker rather than by each child’s support needs.
4. The Howard League endorses IPSEA’s warning about the replacement of the existing law on SEND with new National Standards, which could water down young people’s existing rights and entitlements. Successful appeals are a sign that local authorities are making unlawful decisions, and do not mean that the redress process needs to change. Instead, the solution must be better compliance with the existing law.
5. The Howard League believes that young people’s rights must be strengthened rather than undermined. For young people in custody – who, as the review recognises, are disproportionately likely to have SEND – this should include improvements to SEND law and practice so that children in custody have the same rights of appeal to the SEND Tribunal, the “best endeavours” duty applies in custody as in other settings, and young adults are included in the definition of detained children and young people in the Children and Families Act 2014.
6. Practice should also improve so that young people in custody get the right support and are no longer punished for their support needs. Academic research finds that in both the education and the justice systems, staff focus on the presenting behaviour of young people with SEND rather than the underlying needs which might explain it (Day, 2022). The Howard League sees this in its

legal work, and finds that the behaviour of Black boys and young Black men in custody is especially likely to be interpreted as a problem or a threat, rather than a sign of unmet need.

7. The review does not address the racial disparities which exist within the SEND system. There is a long history of discrimination within SEND provision, including the unjust labelling of many Black Caribbean children as “*educationally subnormal*” in the 1960s and 1970s (Coard, 2005). Children from Caribbean backgrounds are still disproportionately likely to be assessed as having social/behavioural needs – the type of SEND which is most likely to lead to school exclusions – and to be excluded from school (Strand and Lindorff, 2018; Department for Education, 2021).

References

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