



APPLICATION NO 44654/18
CASE OF M.C. AND A.C. v. ROMANIA

WRITTEN SUBMISSION BY:

European Network on Independent Living (ENIL)

Alliance for Inclusive Education (ALLFIE)

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1. Introduction

These written comments are submitted by the Alliance for Inclusive Education (ALLFIE) and the European Network on Independent Living (ENIL), pursuant to leave granted by the President of the Fourth Section of the European Court of Human Rights in accordance with Rule 44(3)(a) of the Rules of Court, on 27 June 2019.

This submission aims at informing the Court of the types of support and adaptations required to ensure that children with additional social, emotional and mental health needs, and other support needs, can be fully included in learning and other school activities, in mainstream settings. Furthermore, provisions in law and policies that are required to ensure that children with disabilities are able to attend mainstream schools alongside their peers are briefly set out, alongside examples of good practice in implementing Article 24 of the United Nations Convention on the Rights of Persons with Disabilities ('CRPD').

2. Social model of disability

The focus of this submission is on disabled children identified as having social, emotional and mental health needs (SEMH), which covers difficulties in social and emotional functioning, regulating oneself and one's behaviour, or mental health and wellbeing.

The submission uses the social model of disability¹, whereby disabled people are seen as being disabled not by their impairments (such as blindness or autism) but by society's failure to take their needs into account. Being disabled is part of the normal spectrum of human life; society must expect and include disabled people. For example, if a wheelchair user cannot enter a building, the social model would state that the problem is that there are no ramps, rather than the disabled person's inability to walk. Consequently, education providers must ensure that all aspects of education are accessible to and inclusive of disabled students. This is preferable to the medical model², because it allows disabled people to access the full range of opportunities as everyone else.

3. Inclusive education versus integrated education

Inclusive education must be differentiated from *integrated education*. Integrated education is when disabled students are expected to fit into the standardised education system designed exclusively for non-disabled people. Disabled students are only allowed into mainstream education with little-to-no adaptations to learning environments, the curriculum and associated materials, assessments and discipline regimes, all of which take little account of their impairments and health conditions.

Instead, inclusive education involves transforming the education system, which includes removing the barriers disabled people encounter in mainstream education.

¹ For more information about different models of disability, please see: <https://www.allfie.org.uk/definitions/models-of-disability/>.

² According to the medical model, disabled people are disabled by their impairments (for example, blindness or autism). Disabled people's impairments can be fixed or cured by medicine, therapy or intervention with the intention of normalising functioning.

As explained in the General Comment 4 on Article 24 CRPD: “*Inclusion involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and environment that best corresponds to their requirements and preferences.*”³

Inclusive education is based on seven principles:

1. Diversity enriches and strengthens all communities.
2. All students’ learning styles and achievements are equally valued, respected and celebrated by society.
3. All learners are able to fulfil their potential by taking into account individual requirements and needs.
4. Support is guaranteed and fully resourced across the whole learning experience.
5. All learners need friendship and support from people their own age.
6. All children and young people are educated together as equals in their local communities.
7. Inclusive education is incompatible with segregated provision both within and outside mainstream education.

Examples of inclusive education practices:

- Martin finds the GCSE Maths course difficult to complete. Rather than telling Martin that he should attend a course for students with learning difficulties, his teacher differentiates the subject content.
- Linda, who has autism, gets very angry if she has to sit in a classroom with fluorescent lighting. The teacher asks Linda to sit near the window whilst the light is turned off.
- Sara, who also has autism, experiences high levels of anxiety if she does not know what is happening during the school day. The head of inclusion works with teachers to develop a visual timetable for Sara.

4. Supports and adaptations required for inclusive education

Schools can be very highly charged, pressured and rigid environments which can create barriers towards disabled pupils with SEMH. Disabled children unable to conform to social and academic demands within a school setting are left feeling anxious, stressed and distressed, often displayed through behaviours presented as challenging to others. Understanding how modern schooling and how our education system creates stress for disabled pupils is the key to knowing how the environment impacts students’ emotional wellbeing.

In order to put inclusive education in practice, there is a need for a whole-school approach to the promotion of disabled pupils’ inclusion. Special Educational Needs

³ Convention on the Rights of Persons with Disabilities, Committee on the Rights of Persons with Disabilities. General comment No. 4. (2016, CRPD/C/GC/4). Retrieved from <https://www.refworld.org/docid/57c977e34.html>

and Disability (SEND) provision for pupils with SEMH, including autism, needs to be implemented throughout school year groups and their various activities.

What follows is a sample of interventions and supports that has worked in promoting the inclusion of pupils with SEMH, used by a variety of schools in the United Kingdom.

4.1. Agent of change

Good inclusive schools will see themselves as having the confidence to challenge existing segregated and integrated education practices, whilst also championing inclusion. Inclusive schools are often pioneers, using approaches or trying new initiatives for individual students or groups of disabled children within their learning environments.

4.2. Developing school environments

Schools' physical, social, communication and emotional environments will have an impact upon disabled pupils' behaviour and their participation in learning. Creating a calm and relaxing school environment includes considering how disabled pupils' sensory, learning and playing experiences are catered for within a variety of learning environment layouts, thus facilitating small group work and one-to-one interactions. Providing a variety of settings, such as classrooms, soft play and sensory rooms, will positively impact emotional regulation.⁴

Furthermore, fully accessible environments that promote disabled pupils' autonomy will lessen their level of frustration, which often may be displayed through presenting behaviour that challenges others. As well as making the school environment accessible, inclusive schools will have disability equipment made available onsite, alongside facilities for therapies and bathrooms, all of which allow disabled pupils to have their health and social care needs met within mainstream educational settings.⁵ Thus, schools that pay attention to and incorporate accommodations for disabled pupils with SEMH will find themselves having fewer disciplinary issues.

4.3. Providing a flexible provision for learning

Disabled pupils with SEMH often experience difficulties fitting into fast-paced academic schools. Rigid timetables and a structured curriculum providing few opportunities for pupils to explore personal interests can create tension. However, disabled pupils are less likely to experience boredom when flexible subject content is embedded within the curriculum. What will be included in the curriculum will vary between disabled pupils as they are likely to have different intensive interests.⁶ One teacher utilised an autistic pupil's special interest to teach a mathematics class.

⁴ Morewood, G., D. (2019). *Understanding Emotional Regulation in the Context of Whole School Inclusive Systems*. Retrieved from <http://www.gdmorewood.com/wp-content/uploads/2019/01/INCLUVISION-3L.pdf>

⁵ Morewood, G. (2016). *Lucid Exact: Empowering every child at Priestnall School*. Retrieved from <http://www.gdmorewood.com/wp-content/uploads/2016/10/Lucid-Case-Study.pdf>

⁶ Wood, R. (2019) Autism, intense interests and support in school: from wasted efforts to shared understandings. *Educational Review*. Retrieved from <https://www.tandfonline.com/doi/abs/10.1080/00131911.2019.1566213?journalCode=cedr20>

One teacher used an educational version of the popular game Minecraft to interest her students in math. According to the teacher, it was a success!⁷

Similarly, one secondary school allowed a disabled child to use her personal interest to engage in geography content that was inclusive of all pupils.

In a Geography lesson, the class were learning about Angel Falls, the world's tallest waterfall! Katie struggles with her fine motor skills and the thought of constructing a model or making something is always a daunting task...and then she had an idea. She asked Mr Crockett if she could make it out of cake. Katie absolutely loves to bake, it is her ultimate passion. By modifying the project to making a cake Katie was motivated, excited, eager to learn about Angel Falls and very proud of the end result.⁸

Some autistic children are more relaxed and are in a better place to develop their knowledge and communication and social skills if the curriculum is centred on their intensive interests. Content is not the only aspect of the curriculum that will affect disabled pupils' engagement in and access to it. For many disabled pupils, using multisensory teaching techniques will help children learn through more than a single sense. Some teachers have provided examples of using a variety of senses and differentiation in the curriculum.

Eastlea School's teacher working with children with complex needs is helping mainstream specialist subject teachers and teaching assistants to differentiate the curriculum for pupils with varying abilities, including those with complex needs. For example, in an English Literature class on the Merchant of Venice, students were assembling news stories about the play's storyline using picture collages whilst their peers were reading the book.⁹

[The] geography teacher and teaching assistant worked together to help Katie to learn the keywords and definitions for energy and climate change. So I set to work to differentiate the homework. I found an image for each word, I modified the definition by simplifying the words where possible, I then cut them up and made them into a word/picture matching game to gain an understanding of the different words and their definitions and then we progressed to Katie being able to tell me what each word and definition meant. It was good fun.

Children's daily timetables need to be adaptable, so they may be withdrawn from lessons in which the cognitive and/or social demands are considered to be too high. These periods provide an excellent opportunity for specialist support and intervention of the kind noted above, or to pre-learn key concepts or language for future lessons.

⁷ Vrana, C. (2017, January 23). Leveraging Special Interests to Help Children with Autism: An Autistic Person* Shares Her Experiences. *StagesLearning*. Retrieved from <http://blog.stageslearning.com/blog/leveraging-special-interests-to-help-children-with-autism-an-autistic-person-shares-her-experiences>

⁸ The Alliance for Inclusive Education. (2017). *The Geography Story*. Retrieved from <https://www.allfie.org.uk/news/inclusion-now/inclusion-now-47/the-geography-story/>

⁹ The Alliance for Inclusive Education (Spring 2018) Eastlea Community School Retrieved from <https://www.allfie.org.uk/news/inclusion-now/inclusion-now-45/eastlea-community-school/>

Being reasonably flexible with school rules and routines is also vital. For example, some autistic learners experience disturbed sleep patterns and can arrive to school late. Such examples require staff to be prepared and understanding of the child's needs, allowing them time to get settled in a designated area and providing them with the tools to express their readiness to join the class.

Whilst in mainstream education, the unit lead, [working with] 6 Learning Support Assistants (LSAs), created a flexible [timetable] to facilitate active engagement and access to [the] curriculum. Each child has their own work station, including three trays, numeracy and literacy. They tend to work in short bursts on this, backed by [the] flexible use of the sensory motor circuit, social skills group work, daily Attention Autism sessions, other specified activities and outdoor play. Each child has their own visual timetable, and a behaviour policy with a rewards and consequences (not sanctions) system operates here and across the school. All staff are Team Teach trained and have developed a range of de-escalation and positive handling techniques.¹⁰

Children's behaviour can be affected by the pace, content and level of school work they are expected to undertake. When children feel the curriculum is relevant to them, this allows them to pursue their interests at the right level. A notable benefit of this is that they are less likely to feel bored and frustrated, and this will be reflected in their behaviour. Sometimes children have not had the experience of being responsible for themselves and others.

4.4. Teaching and development of staff

In order to create a calm learning environment, children with SEMH benefit from predictability and a consistent approach in terms of boundaries and relationships. As such, a whole-school approach to working effectively with disabled SEMH children requires well-trained teachers open to self and professional development. Training ensures that everyone takes a similar approach to working with disabled children in a consistent manner. Inclusive education training includes disability equality, social model of disability and behaviour approaches, in conjunction with other strategies that promote the understanding of children's behaviour and helping them to develop coping mechanisms.

4.5. Direct support and intervention

Speech and language therapists and education psychologists work with both individual children and the school as a whole in a holistic manner. Professionals are onsite to not only conduct one-to-one work with disabled pupils, but to monitor and adapt programmes in response to children's progress made *in situ*. Educational psychologists focus not only on the cognitive but also the emotional development of children during assessments, which inform any therapeutic interventions. Speech and language therapists and educational psychologists are involved in helping teachers to develop direct individual or small group interventions, alongside a systemic whole-school approach. Following some initial training, school staff can effectively implement a range of programmes aimed at developing the disabled child's social, communication, academic, cognitive, motor, adaptive and self-help skills through

¹⁰ The Alliance for Inclusive Education. (2019). *Visit to West Lodge Primary School*. Retrieved from <https://www.allfie.org.uk/news/inclusion-now/inclusion-now-53/visit-to-west-lodge-primary-school/>

various therapies and interventions, including autism-related, SEMH, speech and language therapy (oral, understanding the use of language, developing a communication method such as Picture Exchange Communication System, Signalong, Makaton and Proloquo2Go), occupational therapy, physiotherapy, art therapy, drama therapy, and Lego therapy, among others.

4.6. Emotional coaching

Being able to work through a challenging situation with a young person is key to them learning how to deal with difficult emotions. A child may not always understand or communicate their emotional response to a situation, so asking “Why?” is not always a good idea. Instead, there are other methods that can de-escalate a situation and allow a child to process an emotion and fully understand it. This includes empathising, validating, naming the emotions and working together with a student to find a solution to the issue.

4.7. Social stories

Social stories are short descriptions of a particular situation, event or activity, which include specific information about what to expect in that situation and why. Schools have used social stories to, for example, cover all aspects of a residential outdoor education trip such as the sleeping arrangements, food and activities included. The staff used a virtual reality to create the social stories. For example

The school worked with the pupil to develop a “social story” book that includes opportunities to consider other things she might do with her hands, such as waving instead of hitting someone else.

4.8. Nurture group provision

Nurture groups are a short-term, focused intervention for children with particular social, emotional and behavioural difficulties which are creating a barrier to learning within a mainstream class setting.¹¹ Nurture groups assess learning and social and emotional needs and give much-needed help to remove barriers to learning. Activities in the nurture group include emotional literacy sessions, news sharing, nurture breakfast and regular curriculum activities.

4.9. Peer education and awareness

Disabled pupils with SEMH can feel like they are outsiders simply because they are different from their peer group. Research (2014) by the Institute of Education in the UK found that disabled primary pupils and those with Special Educational Needs (SEN) were twice as likely to be bullied as their non-disabled peers.¹²

Not only staff but children are educated about disability equality and understanding how to treat their disabled peers in a respectful manner. The purpose of peer education is not only to challenge perceptions of disability but also to provide children with the tools of how they can become more inclusive of their disabled peers. For example, teaching British Sign Language (BSL) in the language curriculum allows deaf and non-deaf pupils to communicate with one another freely.

¹¹ nurtureuk. (2018). Nurture Groups: For all educational settings. Retrieved from https://www.nurtureuk.org/sites/default/files/nurture_groups_booklet_online.pdf

¹² The Alliance for Inclusive Education. (2013). *We Can Stop Bullying*. Retrieved from <https://howwasschool.allfie.org.uk/wp-content/uploads/2014/08/We-Can-Stop-Bullying-BW.pdf>

*The school recognises that British Sign Language is another language such as French. Pupils including deaf children learn BSL together in lessons. As a consequence, a non-disabled pupil asked to have [a] Christmas book including BSL.*¹³

The curriculum provides good opportunities for teachers to pass on the body of knowledge and skills needed to create an inclusive society that will uphold disabled people's human rights. Some good inclusive schools have embraced the Rights Respecting School Award, an initiative run by UNICEF UK, which encourages schools to place the UN Convention on the Rights of the Child at the heart of its ethos and curriculum. Schools use Disability History Month, International Disabled People's Day, Autism Acceptance Day and Learning Disability Awareness Week to introduce lessons about disability equality and diversity.

The How Was School project published a free schools pack consisting of 6 worksheets, plus teachers' notes, all of which support a discussion on equality and diversity and provide an opportunity for all students to learn together in an accessible, stimulating and thought-provoking way; these have been used to explore disability-equality issues within physical education and personal, social, and health education (PSHE) courses.¹⁴

Schools also include disability-related issues in a range of academic curriculum subjects. For instance, critiquing the portrayal of disabled characters in children's books as part of English Literature, eugenics in biology, disabled people's civil rights in history and models of disabilities as a theory around health and inequality in sociology.

Aside from the curriculum, schools use specific interventions to help foster peer relationships and friendships in a positive manner. Schools recognise that peers can have a real impact upon pupils' self-esteem. Schools that prioritise peer relationships and friendships have found that giving children responsibility can help in developing a caring and calm environment that often benefits disabled pupils.

4.10. Circle of friends

Circle of friends is an approach to enhancing the inclusion of any young person experiencing difficulties in a mainstream setting. It involves mobilising the young person's peers to provide support and engage in problem-solving with the person in difficulty.¹⁵

"The young people were able to do what no adult could do - intervene directly in an on-going way – in classrooms, in the playground, in the corridor. They would stand in the way if he started staring at someone, or remind him not to, or explain very directly what is acceptable and what isn't. The more often they intervened, the more conscious he became of behaviour that was causing

¹³ The Alliance for Inclusive Education Bromstone Primary School

¹⁴ The Alliance for Inclusive Education. (2013). *Schools' Pack*. Retrieved from https://howwasschool.allfie.org.uk/resource_type/schools-pack/

¹⁵ Inclusive Solutions. (2019). *What is a Circle of Friends?* Retrieved from <https://inclusive-solutions.com/circles/circle-of-friends/>

offence and proactively tried to adjust it. It would be wrong to claim he changed overnight – it was part of his Asperger's, after all – but his circle kept him out of trouble....Thanks to them, he was able to see school through to the end and continue university."¹⁶

4.11. Buddy system

Buddy systems play an important role in helping to create safe school environments. A buddy system can also help students to feel valued and supported, teach important social skills and create a caring ethos in the school. School buddies assist in many ways, some of these are helping children who have fallen over, sorting out playground disagreements fairly, encouraging shy children to join in or simply keeping them company, alerting staff when there are problems and setting a good example by caring for others.¹⁷

Schools that encourage pupils to become better educated on how they can become more welcoming and inclusive of disabled pupils are schools that have been described as having a caring ethos. The lessons children learn in the classroom are taken into the wider community and elsewhere.

Schools have included opportunities for looking after animals as a way of encouraging children to care for others and to develop self-esteem. The school introduced a dog training course that covered dog behaviour, grooming, healthcare and basic agility. The course helped to develop the children's confidence in communication and leadership skills, whilst seeing the benefits of setting boundaries for their own and their dog's behaviour in order to achieve their goals, which were subsequently transferred into classroom settings.

*The interest from other students in David's animated stories about the [dog training] sessions was even more powerful, as verbal interaction and reciprocal communication had previously been virtually non-existent.*¹⁸

Research has shown that pets can increase empathy and responsibility in children¹⁹; teach children how to nurture, care and have respect for all life will improve academic achievement by helping children to concentrate and feel calm at school. Studies have shown that sustained contact with animals in a structured learning programme can increase focused attention in children with Attention Deficit Disorder as effectively as medications like Ritalin.²⁰

¹⁶ Special Children (October 2012) A Circle of Friends Retrieved from <https://inclusive-solutions.com/circles/circle-of-friends/>

¹⁷ Better Buddies. (2019). *Benefits to your child*. Retrieved from <https://www.betterbuddies.org.au/bb-parents/benefits-to-your-child.phps>

¹⁸ Morewood, G. D. (2015) A Touch of Animal Magic. *nasen Special Magazine*. Retrieved from <http://www.gdmorewood.com/wp-content/uploads/2015/05/Animal-Magic.pdf>

¹⁹ Arm the Animals. (2015). *How Pets Teach Children Empathy and Compassion*. Retrieved from <https://www.armtheanimals.com/blogs/news/17234297-how-pets-teach-children-empathy-and-compassion>

²⁰ Pet Health Council. (2001). *A little pet therapy can lift back to school blues!* Retrieved from [http://www.pethealthcouncil.co.uk/images/file/Back%20to%20School%20Press%20Release%2010808\(2\).pdf](http://www.pethealthcouncil.co.uk/images/file/Back%20to%20School%20Press%20Release%2010808(2).pdf)

5. Embedding inclusive education in law and policy

Article 24 CRPD clearly sets out the States' obligation to develop a fully inclusive education system with the ultimate goal of ending segregated education. In the United Kingdom, for example, the Children and Families Act 2014 is the main piece of legislation that sets out the legal framework for disabled students' right to school and further education provision. Section 33 of the Act places a duty on the local authority to ensure that a child or young person with an education, health and care plan is educated in a mainstream setting. The only exceptions to this rule are (1) if this goes against the wishes of the young person or their parent(s), (2) if this would impact the efficient education of others or (3) if there are no reasonable steps that could be taken to overcome this.

The Joint Committee on Human Rights, when reviewing the Children and Families Act s(33), noted that there would be uncertainty in practice regarding the circumstances in which a child with special educational needs whose parents wish them to be educated in a mainstream school can be denied such a place and educated instead in a special school. The Joint Committee said:

If the scope for such uncertainty exists, the UK'S obligation under Article 24 UNCRPD, to take steps to increase access to mainstream education for people with disabilities, might require the Government to remove the uncertainty by clarifying the law and/or the relevant guidance.²¹

Moreover, the Equality Act 2010 protects disabled pupils from discrimination and sets out schools' duty to make reasonable adjustments for such pupils. In *C&C v The Governing Body of a School*, the Upper Tribunal upheld that disabled children with behaviour-related issues are protected under the Equality Act.²² In the UK, the overwhelming majority of children with special education needs fall under the Equality Act's disability definition.

5.1. Whole-school approach with policies that support inclusive learning

At the level of schools, a whole-school approach is required for policy development and embedding practices, underpinned by inclusive education principles. Attendance, behaviour, safeguarding, health and safety, curriculum and extracurricular and catering policies will have an impact upon disabled people. Consequently, mainstream schools must consider how disabled pupils with SEMH will be affected in the design or review of specific policies.

5.2. School behaviour policies

Traditional behaviour policies consisting of awards and sanctions for prescribed "good" and "bad" behaviours have been borne of tension between schools, parents and disabled children. Too often disabled children feel targeted for low-level disruptive behaviours such as fidgeting, playing with specific objects or not paying attention. Such actions are simply coping mechanisms when the child experiences some type of discomfort or boredom during the lessons.

²¹ Joint Committee on Human Rights. (2013). *Legislative Scrutiny: Children and Families Bill; Energy Bill*. Retrieved from <https://publications.parliament.uk/pa/jt201314/jtselect/jtrights/29/29.pdf>

²² Local Government Lawyer. (2018). *Physical abuse and school exclusions*. Retrieved from <https://localgovernmentlawyer.co.uk/education-law/394-education-news/38994-physical-abuse-and-school-exclusions>

Schools use zero-tolerance behaviour and discipline policies containing rewards and sanctions schemes to instil certain types of behaviours, leading to an exodus of disabled pupils being educated outside of mainstream education.²³ Lawyers have spoken out about the lawfulness of zero tolerance behaviour policies, commonly void of any reasonable adjustments for disabled pupils with impairment-related behaviour.²⁴

Various inclusive school policies focus on school values and promoting positive relationships between pupils and staff. Awards are given for demonstrating school values of kindness, friendship and honesty, as well as academic achievement. When values are not being upheld by pupils, the consequences are explained together with specific interventions that attempt to repair any harm between the parties affected. One of the schools ALLFIE have worked with have embedded the following values of Courtesy, Honesty, Excellence, Co-operation, Kindness, Equality and Respect (CHECKER) into the school culture where staff and school staff are fostering positive and trusting partnerships with parents, children, school and external agencies.²⁵ A Restorative Justice approach is used to resolve any differences within the school community as a whole. Teachers use questions to help to explore what is going on and what needs to change to limit the possibility of a negative interaction being repeated.

6. Conclusion

Good inclusive schools recognise that all pupils, including disabled pupils, have a right to be educated alongside their non-disabled peers within their local mainstream school setting. A whole-school approach is adopted where the whole school, rather than any individuals in particular, take responsibility for the inclusion of all children, underpinned by inclusive education and the social model of disability's principles in the development and implementation of policies. At their core, schools recognise that a child's behaviour is a reflection of how she or he is feeling and that the goal is to understand the source of the emotions and remove the barriers towards learning and participating in all aspects of school life, including break-time and extra-curricular activities.

²³ Department for Education. (2018). *Permanent and Fixed-Period Exclusions in England: 2016 to 2017*. Darlington, England: Department for Education.

²⁴ Holland, R. (2018, March 10). Are zero tolerance behaviour policies legal? *SchoolsWeek*. Retrieved from <https://schoolsweek.co.uk/are-zero-tolerance-behaviour-policies-legal/>

²⁵ Flood, T. and Bowles, C. (2013, Spring). Creative Learning at Bromstone Park. *Inclusion Now*. Retrieved from https://issuu.com/chloeatallfie/docs/inc_now_vol_34