

A blue-tinted photograph of a child with their hand raised in a classroom setting. The child is in the foreground, looking towards the right. The background is blurred, showing other children and classroom furniture. The overall mood is educational and hopeful.

**THE DANISH
INSTITUTE FOR
HUMAN RIGHTS**

**CHILDREN WITH
DISABILITIES
AND PRIVATE
SCHOOLING**

**2018
SUMMARY**

CHILDREN WITH DISABILITIES AND PRIVATE SCHOOLING: SUMMARY

DEPARTMENT OF EQUAL TREATMENT, THE DANISH INSTITUTE FOR
HUMAN RIGHTS

Authors: Tinne Steffensen, Nikolaj Nielsen og Mette Frandsen
Editors: Nikolaj Nielsen og Tinne Steffensen

The full report can be found (in Danish) at: menneskeret.dk/udgivelser/boern-handicap-paa-frie-grundskoler

© 2018 The Danish Institute for Human Rights
Denmark's National Human Rights Institution
Wilders Plads 8K
DK-1403 Copenhagen K
Phone +45 3269 8888
www.humanrights.dk

Provided such reproduction is for non-commercial use, this publication, or parts of it, may be reproduced if author and source are quoted.

At DIHR we aim to make our publications as accessible as possible. We use large font size, short (hyphen-free) lines, left-aligned text and strong contrast for maximum legibility. For further information about accessibility please click www.humanrights.dk/accessibility

SUMMARY

Private schools are a central part of Danish school culture and have served as an alternative to public schools for primary education for more than 200 years. Despite the fact that they are in part publicly funded, private schools are only subject to limited state control. The freedom to admit and exclude pupils, and thereby define the pupil composition of the individual school, is one of the fundamental principles of private schools in Denmark.

The rights conferred by international human rights conventions complement the national regulation of private schools. This report has its origin in the rights and obligations arising from the United Nations Convention on the Rights of Persons with Disabilities and the European Convention on Human Rights. The human rights protection of children with disabilities includes the right to inclusive education and a prohibition of discrimination on the grounds of disability as well as an obligation to provide reasonable accommodation to ensure that persons with disabilities can participate on an equal basis with others.

This report examines how children with disabilities are secured the right to an inclusive education and the right to non-discrimination with regard to being admitted to and excluded from Danish private schools.

The report is based on three background analyses that examine aspects of access to private schools for children with disabilities: 1) a legal analysis that links the regulatory framework for private schools with relevant human rights (Danish Institute for Human Rights 2018); 2) interviews with 10 staff members from municipal pedagogical-psychological advice units (PPR) and 10 principals of private schools as well as a document analysis of the websites of 150 schools (DEFACTUM 2018); and 3) an analysis of register data for all 486,655 primary school children in general education classes in 2014 and 2015 (VIVE 2018).

The main conclusions of the report will be introduced in the next pages, after which a set of recommendations is presented for how the rights of children with disabilities at private schools can be strengthened and safeguarded.

FREEDOM OF THE SCHOOLS AND RIGHTS OF THE PUPILS

In Denmark 17% of children attend a private school for their primary education. Contrary to public schools, private schools are free to define their pupil composition by deciding which pupils to admit and exclude. The freedoms and the activities of private schools are codified in the Act on Private Independent Schools. The law does not include specific regulation of the legal relation of

children and parents to the school, including the rights of children with regard to admittance to and exclusion from a private school.

Children with disabilities are protected through a number of human rights, including the right to equal treatment, as described in the International Human Rights Conventions, which is based on the fundamental prohibition of discrimination and an obligation to provide reasonable accommodation.

Human right law does not prevent private schools from excluding or expelling a pupil, but the right to inclusive education and the right to non-discrimination must be respected. In relation to admitting and excluding pupils from a private school, protecting human right law may collide with the schools' fundamental freedom to decide which pupils can attend their school.

EQUAL DISTRIBUTION OF CHILDREN WITH DISABILITIES, BUT SPECIFIC CHALLENGES WITH CHILDREN WITH EXTERNALIZING BEHAVIORS

Taking into account that private schools do not have the option to include special needs classes, an analysis shows that the same percentage of children with disabilities attend regular classes at private schools and at public schools (VIVE 2018).

The difference between the percentage of children with a disability at private and public schools varies slightly depending on the diagnosis. With regard to accommodating special needs pupils, for some diagnoses, there is a difference between how many pupils go to private and public schools.

In the interview study (DEFACTUM, 2018) of staff members from municipal pedagogical-psychological advice units, several of the interviewees point to the fact that there are special challenges related to accommodating children with externalizing behaviors, and that some private schools can be selective when it comes to these children.

The results from the registry-based study confirm (VIVE, 2018) that there are certain differences among schools with regard to both the distribution and enrollment of children with ADHD, ODD and CD that can be associated with externalizing behaviors. Large private schools have a lower percentage of children with ADHD etc., while schools that have the highest percentage of parents with a level of education exceeding that of lower secondary school are less likely to admit a child with ADHD etc. during a school course.

PRIVATE SCHOOLS ARE LESS LIKELY TO PROVIDE INFORMATION ABOUT SPECIAL SUPPORT OPTIONS

One of the ways in which parents can seek information about a future school is through the schools' websites, on which the schools are free to present their approach to running a school and teaching.

In a document analysis of 150 randomly selected schools (75 private and 75 public), DEFACTUM (2018) finds that only 25% of private schools provide information about the support options available for special needs children. Among public schools, considerably more schools (40%) provide information about such support. There is no legal obligation for private to provide information on their websites about accessibility and special support options.

CHILDREN WITH DISABILITIES FACE A HIGHER RISK OF CHANGING SCHOOLS

Changing school can lead to a significant change in a child's everyday life and routine. In many cases, a change of school may be the result of a child not thriving or the parents' dissatisfaction with the school. In cases where a school excludes a child, the decision is particularly intrusive. There are no binding rules for how private schools must handle a pupil's exclusion, and no options for appealing the decision to exclude a child exist, nor is it possible to make a formal complaint.

For the first time VIVE (2018) explore the correlation between disability and change of schools with a focus on shifts between the two types of schools (private and public). Using register data VIVE (2018) finds that children with a disability overall are at greater risk of changing schools compared with classmates without a disability. This is the case for children at both private and public schools.

A higher percentage of children with disabilities change from private schools to public schools compared classmates without a disability. Children with disabilities at private schools have a 31% increased risk of changing to a public school compared with classmates without a disability. For children with a disability who attend public schools the increased risk of changing to a private school is 16%.

POOR LEGAL SAFEGUARDING

While children and their parents in public schools are provided essential legal safeguards through the schools' obligation to comply with the Public Administration Act, children and their parents in private schools do not enjoy the same legal safeguards. The legal safeguards include that a decision communicated in writing must set out the grounds for the decision, that parties of a case have a right to access files and a right to be heard. These measures can

be of great importance in cases where a child has been excluded or suspended from a school.

It follows from the lack of central legal safeguards that pupils who experience that their right to an inclusive primary education or their right to non-discrimination based on disability is violated are put in a vulnerable legal position. In general, the school principal determines cases regarding exclusion, and it can be difficult for the parents to obtain relevant documentation about their child's case history.

If a child or its parents experience illegal discrimination in connection with admittance, exclusion or the child's school attendance in general, they have the option to file a complaint to the Board of Equal Treatment, provided that the conditions are covered by the Danish Equal Treatment Act. As of July 1, 2018 Danish anti-discrimination legislation covers cases of discrimination on the grounds of disability both on and outside the labor market. In the context of law, written documentation concerning a child's school course may prove decisive for the case, as the Board of Equal Treatment deals with complaint cases based on written documentation.

Children with special needs in private schools and their parents do not have access to appeal decisions made by the principal concerning rejection of an application for special education support or other special pedagogical support (SPS). This stands in contrast to the situation in public schools where parents have access to appeal such decisions. As a consequence, parents to a child with a disability attending a private school rely on the good will and cooperation of the principal in cases where parents disagree with a decision regarding special pedagogical support.

FOCUS ON EDUCATIONAL ENVIRONMENT AND ACCESSIBILITY

In addition to access to support for the individual pupil, the general framework of a school, including the school's educational environment, may also affect whether a child with disabilities can attend a specific school.

Danish legislation regarding schools does not include specific provisions concerning the development of an inclusive educational environment for children with disabilities. Private schools and public schools are subject to the Education Environment Act that aims to promote pupils' possibilities for learning and developing. As such, the act also covers the physical, psychological and aesthetic environment of the place of education, including physical, educational and social accessibility.

In accordance with the Education Environment Act, schools must prepare an assessment that includes an analysis of the school's educational environment, a description of possible problems, an action plan for how these problems can be solved and a guideline for how the action plan can be carried out. Although the Education Environment Act does not mention pupils with disabilities, the preliminary work leading up to the act mentions that accessibility can be included as a topic.

The Danish Center for Teaching Environment carries out the supervision of the Education Environment Act that was introduced in 2017.

RECOMMENDATIONS

In order to strengthen the protection of the rights of children with disabilities, the Danish Institute for Human Rights recommends:

- That the Ministry of Education initiates the entering into force of provisions of the Public Administration Act concerning access to files, the obligation to hear all parties in a case and the obligation to provide written grounds for decisions or principles that are equivalent to the provisions in force for private schools of primary education.
- That access to appeal a decision regarding special pedagogical support (SPS) is established for children at private schools corresponding to the conditions at public schools.
- That the Parliament imposes an obligation to introduce reasonable accommodation in the area of education in the act on prohibition of discrimination on the grounds of disability.
- That the Ministry of Education ensures inspections of how private schools comply with the prohibition of discrimination on the grounds of disability, including in cases of exclusion, and that children with a disability in general are secured the right to an inclusive education.
- That the Ministry of Education ensures that an inclusive educational environment for children with disabilities is included as an element in educational environment assessments, cf. sections 6 and 7 of the Act on Educational Environment. Moreover, that the Danish Center for Educational Environment is required to conduct inspections of whether private schools provide and maintain an inclusive educational environment for children with disabilities.