We didn't know at the time that the school was acting illegally - no one helped us.

# when will they we learn?

Your guide to getting justice for all unlawfully excluded children



### You can find adaptable letters for your use at page 7.

#### About us

Ambitious about Autism is the national charity for children and young people with autism. We provide services, raise awareness and understanding, and campaign for change. Through TreeHouse School, Ambitious College and the Ambitious about Autism Schools Trust we offer specialist education and support.

Our mission is to make the ordinary possible for more children and young people with autism.

#### About autism

Autism is a lifelong developmental disability which affects one in 100 people in the UK. It affects the way a person communicates and how they experience the world around them. Autism is described as a spectrum condition. This means while people with autism including Asperger syndrome share certain characteristics, they will be highly individualised in their needs and preferences. Some people with autism are able to live independent lives, but others may face additional challenges including learning disabilities.

Early intervention, education and support are critical if children and young people with autism are to lead fulfilling lives, learn, thrive and achieve.

The number of children receiving extra help for autism in schools has risen by 93% since 2010. Currently 108,403 children are receiving extra help as a result of their autism. The majority of children with autism (78,200) are educated in mainstream schools and academies.<sup>1</sup>

<sup>1</sup> For a detailed breakdown of statistical sources, please visit: ambitiousaboutautism.org.uk/whenwillwelearn-stats

## 'when will we learn'

Last year, Ambitious about Autism published a high profile research report which revealed that the education system was failing many children and young people with autism by denying them the right to a full education.

In July, the government released new exclusions guidance. Unfortunately the amended guidance doesn't prevent organisations from systematically acting outside of the law. Hundreds of people contributed to Ambitious about Autism's response to the government's consultation on the exclusions guidance this spring. As a result, we were able to provide compelling evidence about the number of children missing out on school due to being unlawfully excluded. Our response to the consultation said incidents of unlawful exclusion of children from school should be recorded and illegal practices sanctioned.

- We surveyed families of children with autism and a massive 95% thought it was essential that parents were told within the guidance what action would be taken if they reported an illegal exclusion. This was matched by 95% of respondents who believed that head teachers' and governing bodies' guidance should outline the consequences for schools, head teachers and governing bodies when schools are shown to be acting unlawfully.
- We believe that if no agency is responsible for ensuring schools act within the law, children with autism will continue to be disadvantaged in our education system and excluded unlawfully, unreasonably and unfairly.
- We estimate that as many as 26,000 children and young people with autism were unlawfully denied a full education last year - this is too many children to be ignored.

#### Anne Longfield OBE, Children's Commissioner for England

"Illegal exclusions from school are a very serious issue, and one that disproportionally effects some children – including those with special educational needs. In 2013, my office conducted an Inquiry into illegal exclusions from school and found that some children were being let down by a system that excluded them without accountability and causing significant impact both on those children's

The resources in this pack are intended to be used to support people responsible for children's education to understand their responsibilities and the scale of this issue in order to ensure that less children are unlawfully deprived of their right to a full education.

There are simple letters for parents to use to let schools, Ofsted and the Secretary of State know when exclusions are happening outside of the law. There is also a letter for professionals to use to whistleblow about unlawful practice.

We reference statistics from our October 2016 'when will we learn' report which heard from 745 young people with autism, parents and carers. The report collected statistics from Freedom of Information requests, research from other organisations and the Department for Education.

Together the research showed the damning reality for children and young people with autism at school today and made a compelling case for changes to our education system. It also contains figures from a poll taken from 425 parents in April 2017 about what they think the guidance should contain.

Thank you to every parent and professional who shared their experiences with us. Some individuals in these reports wanted to remain anonymous; their names have been changed to protect their privacy.

experience of childhood, and on their later life chances. I am glad that Ambitious about Autism are supporting families to challenge illegal exclusions of children with autism through the practical guidance they are publishing today and that this will ultimately help to put an end to the illegal exclusion of children and young people with autism from our schools."

# Overview

Ambitious about Autism have been working closely with the government since 2011 to influence the new Children and Families Act and make sure it considered the rights of children and young people with autism. In 2014, we released our '*Ruled Out*' report, which showed that four out of ten children and young people with autism had been illegally excluded at least once.

Two years after that campaign and the Act becoming law, our '*when will we learn*' report in 2016 and response to the government's consultation on exclusion guidance in April 2017 showed that little has changed. **Families of children with autism still struggle to get their needs met and children are still not receiving the education they are entitled to.** 

Last year children and young people with autism were excluded 9,190 times from school.

Children with autism were three times more likely to be permanently excluded than any other child.

Children receiving extra help for special educational needs make up 50% of all children permanently excluded from school.

Nearly half (45%) of the families we surveyed said their child had been sent home from school, or denied a full education by schools acting outside of the legal guidance.

School leaders confirm this picture – 33% of them said they knew at least one child with autism who had been excluded from their school illegally in the last year. 28% of classroom teachers said the same.

<sup>2</sup> 'Always Someone Else's Problem': https://www.childrenscommissioner. gov.uk/wp-content/uploads/2017/07/Always\_Someone\_Elses\_Problem.pdf These illegal practices have a real impact on families:

"Last year between October and December my son George was unlawfully excluded for eight weeks. He missed 40 half days of school as a result of being sent home from school every day at 1.00pm. George found this very difficult and has made four attempts to end his own life as a result of these exclusions."

This type of exclusion goes unrecorded, which means it is impossible to track exactly its impact across England. If we assume the parents' experiences in our survey are typical that would mean 26,000 children and young people with autism were unlawfully deprived of education last year.

Judith

This is not a new problem. Back in 2013, The Children's Commissioner found widespread illegal activity with:

- 6.7% of schools sending children home for disciplinary reasons without recording it as an exclusion. If these were evenly spread across the country, it would represent 1,600 schools, or to put it into context, an average of ten schools in every local authority area.
- 2.7% of schools having sent children with statements of SEN home when their carer, classroom support or teaching assistant is unavailable; that's more than four schools in every local authority.
- 2.1% of schools having recorded pupils as authorised absent or educated elsewhere when the school had in fact encouraged them not to come into school; if these were evenly spread across the country it would represent approximately 540 schools.<sup>2</sup>

The exclusions guidance has gaps on the tracking, reporting and consequences of unlawful exclusions which must be filled if the policy and the exclusion system are to be fit for purpose. We are concerned that this puts thousands of families in a position where they must either accept unlawful treatment of their children or advocate for their children's lawful treatment within a system where they hold no power and no means to seek redress.

To support families of excluded children to secure fair and legal treatment of their children Ambitious about Autism have created this guidance and resource pack.

#### The pack aims to tell you:

- What an unlawful exclusion is,
- Whose responsibility it is that schools act within the law,
- What you can do to ensure people who are accountable know what has happened and take appropriate action,
- How you can ensure the government understand the scale of the problem, and take action.

#### What is an unlawful exclusion?

Informal' or 'unofficial' exclusions, such as sending a pupil home 'to cool off' are unlawful, regardless of whether they occur with the agreement of parents or carers. Any exclusion of a pupil, even for short periods of time, must be formally recorded.

Any exclusion, no matter the reason or length of time that is not formally recorded is unlawful.

## My child isn't autistic – can I use this guidance?

Yes – the exclusions guidance applies to all children. Any child who has been excluded unlawfully can use this resource to ensure that action is taken to prevent future illegal practice. Occasionally we will reference support which is particularly focused towards autistic children – where this is the case we will clearly signpost to it.

# Isn't it better my child gets excluded informally than have an exclusion on their record?

It's not legal to 'informally' exclude children. Schools unlawfully excluding children are not fulfilling their obligation to provide a full education for your child, you lose your right to appeal, and are unable to use exclusions as evidence that your child needs more or different support in school.

An unlawful, illegal or informal exclusion will not trigger the right for the child to receive alternative education which must be provided after six days of formal exclusion.

In the short term it may feel easier to just take your child home to maintain friendly relationships with school and to prevent a mark on your child's record, but in the long term it reinforces behaviour that means that the most vulnerable children are the least likely to get a full education. The best way to protect your child's rights, is to work with the school within the law.

#### Who can exclude a child?

Only the head teacher has the power to exclude a child and it must be on disciplinary grounds.

For an exclusion to be legal the parents of the child must be notified in writing and the exclusion must be formally recorded. If it's a permanent exclusion, if a public examination or national curriculum test will be missed, or an exclusion which lasts more than five days, then the local authority and school governing body must also be notified.

If this does not happen, or a child is excluded because of their autism or behaviour linked to it, then it may be illegal. If your child has received a formal recorded exclusion we recommend contacting the Independent Parental Special Education Advice (known as IPSEA) who have some great support sheets covering exclusions, or if your child is autistic, contact National Autistic Society's Exclusion helpline on 0808 800 4002.

#### How do I know if my child's exclusion was unlawful?

Any exclusion, regardless of the reason for it or how long it is, must be formally recorded. A school cannot send a child home to 'cool off' or ask a parent to collect a child from school before the normal end of the school day or bring them in late without formally recording this as an exclusion.

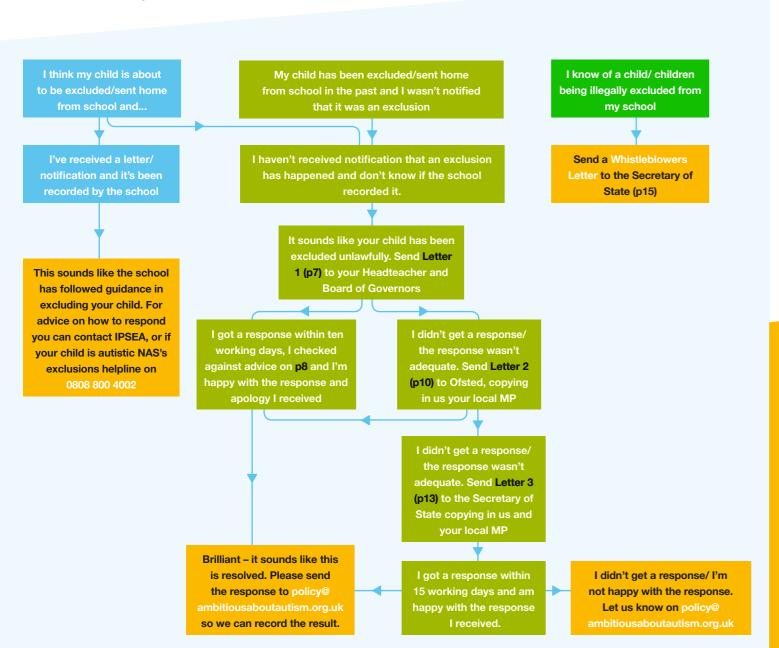
If your child is sent home and you don't get a written communication about it, the head teacher is breaking the law.

The quidance says:3

14. 'Informal' or 'unofficial' exclusions. such as sending a pupil home 'to cool off', are unlawful, regardless of whether they occur with the agreement of parents or carers. Any exclusion of a pupil, even for short periods of time, must be formally recorded.

#### What should I do if I think a child is being/ has been illegally excluded from school?

If you know of a child who has been illegally excluded you should report it. You can use the flowchart below to work out the right action to take, and access resources and proforma letters that will be useful to you at this stage.



### Stage 1

#### Reporting it to the school

The first thing to do is formally write to the school's head teacher and chair of governors (for some multi-academy trusts this role may be undertaken by the academy trust themselves) saying that you have reason to believe that a child attending their school has been excluded but the head teacher has not recorded it as an exclusion, and in so doing acted unlawfully.

#### You can do this by using our standard letter.

[Headteacher's name] [School address]

[Date]

Dear Mr / Mrs / Ms ....

#### Re: [name of child]

I am writing regarding my [son/daughter], [name of child].

I am concerned that my child has been unofficially excluded from [name of school]. On the following dates, my child has been asked to leave the school during school hours;

[list of dates here]

Having taken advice, I understand that my child can only be sent home from school, during school hours, if they are formally excluded. Unofficial exclusions are unlawful.

[if the exclusion is ongoing]: I am concerned that my child is currently out of school due to an unofficial exclusion. I would ask that you allow my child to return to school immediately. Failing that, please provide me with lawful notice of the exclusion without any delay.

I understand that exclusion is only lawful if the decision to exclude is taken by you, as the headteacher. I also understand that when you make the decision to exclude, you must write to me to provide notice of the exclusion. This notice must contain the following:

- Confirmation of the period of the exclusion,
- Whether the exclusion is for a fixed period, or permanent,
- The reason for the exclusion,
- Parental rights to make representations to the Governing Body about the exclusion,
- The process for making representations,
- Parental rights to attend at an appeal hearing, and to bring representation, if the exclusion is permanent.

[Parent's name and address]

I do not appear to have received adequate notice of the exclusion(s) listed above. I am concerned that my child has been unlawfully excluded. If notice was provided, please do forward those letters to me at the above address as soon as possible.

I should be very grateful if you could let me know why my child was sent home on the above dates. I would also be grateful if you could assure me that my child will not be sent home again without formal notice of an exclusion being provided. Please also confirm where I should send further representations regarding the exclusions.

If my child requires additional support in school, please let me know. If this is the case, I am very happy to attend a meeting with you and my child's classteacher and/or SENCO to discuss what we need to do next.

I would be very grateful if you could respond to this letter within ten working days. If I have not heard from you by then, I will have to raise my concerns with Ofsted and my Member of Parliament.

I look forward to hearing from you.

Kind regards

[Parent/s' name/s]

Cc Chair of the Governors, policy@ambitiousaboutautism.org.uk

### Is the response adequate?

The following sets out the response that parents should expect to receive from the Stage 1 letter to the headteacher / governing body:

#### Has the school provided notice?

The first stage is for the headteacher to address the issue of whether notice was provided.

If the school is able to establish that notice was sent out for each of the dates, then the exclusion was technically lawful. However, the issue is why parents did not receive the notice of the exclusions.

If the school claims that it did send out notice, parents should expect to be sent copies of those notice(s) within the response from the school.

If the school's response suggest that there is a communication breakdown, parents need to make sure that the school have correct and up to date contact information. Ideally, email contact with the school should be maintained, especially for shot-term fixed exclusions.

#### The school did not provide notice

If the school is unable to establish that it did in fact provide notice, parents should, in the first response, expect an apology. It is not difficult to make an apology and, if a child has been unlawfully excluded, that is the minimum expectation parents should have.

What parents should then also expect is as follows:

- Confirmation that the school will not send the child home / require collection from school without providing formal notice of an exclusion,
- Clarification of the reasons for each of the unofficial exclusions,
- Confirmation of how to make representations about the exclusions,

Confirmation of whether the school considers that the child has additional needs (special educational needs).

If the school does not provide this information, along with an apology, parents should consider advancing this matter to Stage 2.

#### **Special Educational Needs (SEN)**

Recent statistics indicate that children with SEN are substantially more likely to be excluded than children without SEN. If your child is facing exclusion, or particularly repeated exclusion, SEN must be considered.

Even if the school does not indicate that it thinks that your child has SEN, if there has been a number of exclusions, all for similar reasons, it would be sensible to request disclosure of your child's complete academic record. The purpose of doing this will be to look at the progress measures and see how your child is progressing.

If the school indicates that your child may have SEN, or your reading of the records suggests that your child is struggling, you should have a meeting with the Special Educational Needs Coordinator (SENCO) at your child's school. Every school must have a SENCO.

At the meeting, it is worth asking what support the school is putting into place. Children with SEN should be supported in school by a process of Assess/Plan/Do/ Review. If the school have identified your child as having difficulties, ask to see this plan. If the school has not identified your child as having SEN, ask about using Assess/ Plan/Do/Review.

Further detailed guidance about securing SEN support is available from IPSEA.

## What if the school doesn't reply / I am not happy with the response?

Parents must make sure that they keep a copy of the letter that they send to the school.

If the school does not reply within ten working days, it is worth calling the school to find out if a response will be made. Parents may decide to allow the school a small amount of further time to provide a detailed response.

If the school fails to respond/the response does not provide what has been requested, parents should proceed to Stage 2.

# Template letters

#### Stage 2

#### Reporting to the school inspectors and Ofsted

It may be that by taking Stage 1 and reporting it to the head teacher and school's governors they change the way they approach exclusions, but if you don't get a reply or one you feel does not assure you the school is committed to lawful exclusions practice the next step is to report it to the school inspectors.

We asked 425 people who they thought should be responsible for monitoring and reporting illegal exclusions – two thirds of people felt that Ofsted should hold this responsibility.

In 2013, the Office of the Children's Commissioner spoke to Ofsted about illegal exclusions and they said that it would probably award an 'inadequate' rating to any school it finds to be excluding illegally.

Ofsted inspects schools and local authority education services and by reporting the unlawful exclusion to them they should be able to build up a picture of unlawful actions and use this in their inspections.

It is important to remember you are reporting the school's handling of exclusions and that by unlawfully excluding children they are not providing a level of education which meets the needs of the pupils within the school

When reporting the school to the inspector also copy in your local MP.

#### [parents' name and address]

#### National Director, Education

Ofsted **Piccadilly Gate** Store Street Manchester M1 2WD Also by email: enquiries@ofsted.gov.uk

[Date]

Dear Sirs

#### [name of child] Unofficial exclusion Re:

I am writing to raise concern that my child has been subject to an unlawful exclusion.

I wrote to my child's school, [name of the school] on [date of letter]. I enclose a copy of the letter that I sent to my child's school.

Within the enclosed letter, you will see that I raised concern about exclusion[s] on [insert dates]. I have not received clarification from the school about [insert dates not dealt with] / [any of these exclusions].

I have endeavoured to work with the school about my concerns. Despite my best efforts, I have not received written confirmation from the school about:

- The period of the exclusion,
- Whether the exclusion is for a fixed period, or permanent,
- The reason for the exclusion,
- Parental rights to make representations to the Governing Body about the exclusion,

- The process for making representations ,
- Parental rights to attend at an appeal hearing, and to bring representation, if the exclusion is permanent.

I am worried that my child has been subject to unlawful exclusion[s]. I am also worried that the school are failing to identify my child's needs by failing to record the exclusions properly.

Having tried to work with the school, I feel that I have no option to raise this issue with you.

I am aware that in 2012 Ofsted indicated that evidence of unofficial exclusions could form the basis for an 'inadequate' assessment. Further, the FAQ page concerning Ofsted's assessment of schools indicates that inspectors will have regard to any evidence of the use of unofficial exclusions.

I should be very grateful if you could let me know when the next inspection for [school's name] is going to take place. If no date has been set, I would ask that you consider conducting an emergency inspection on the basis of the concerns raised in this letter. Please ensure that a copy of this letter is passed to the Inspection Team.

I look forward to hearing from you as soon as possible. If I do not hear from you within one month, I will forward this correspondence to the Secretary of State.

I should be grateful if this letter could be held centrally for future reference.

Yours faithfully

[parents' name(s)]

Cc : Local MP, Headteacher and governing body of the school

### Is the response adequate?

This guidance is intended to help parents who have already sent a Stage 2 letter and have received no response, or an incomplete response.

The purpose of writing to Ofsted is:

- To potentially trigger an inspection,
- To ensure that concerns regarding unofficial exclusion are included within the next inspection,
- ▶ To ensure that Ofsted acts as a central recipient for all parents, nationally, to raise concerns of unofficial exclusions. This will enable any body to submit a Freedom of Information request about the number of letters of this nature that are being

received. This will enable a more accurate picture of the use of unofficial exclusions nationally.

If Ofsted does not agree to trigger an inspection, parents will need to consider whether to raise this matter with the Secretary of State.

As a guide, if there are two or more incidents of exclusions being used for a young person, and no evidence that notice had been provided, Ofsted should respond to carefully consider an inspection. As long as Ofsted at least considers making an emergency inspection, that would likely be an adequate response.

The second and third bullet points are the crucial points above; if Ofsted refuse to ensure that the next inspection team are

provided with a copy of your letter or refuse to store the correspondence centrally, parents should immediately proceed to Stage 3 of this process.

It would also be helpful if the MP could engage with this correspondence. However, in reality there is little that the MP will be able to do. The MP might be able to do is raise the issue again with the school and encourage the school to correct the original defects and engage with you, especially regarding the SEN issue (see Stage 1 guidance).

Parents should keep a copy of the letter sent to Ofsted. If no response is received within one month, parents should escalate the issue to Stage 3. Equally, if Ofsted fail to deal with all of the issues, Stage 3 should be explored.

## Template letters

### Stage 3

### Report it to the Secretary of State for Education

If you are not happy with the reply from the school inspectors, Ofsted, write to the Secretary of State asking them to use their power to issue a direction to a schools governing body because they have acted unlawfully and unreasonably in carrying out the schools legal duties in relation to exclusions.

It's helpful to copy us into this email as recent Parliamentary Questions have highlighted that:

No agency or authority under the Department for Education holds data on the improper reporting of pupil exclusions.

#### Secretary of State for Education

Department for Education C/o Ministerial and Public Communications Division Department for Education **Piccadilly Gate** Store Street Manchester M1 2WD

Also by email: enquiries@ofsted.gov.uk

[Date]

Dear Sirs

#### Re: [name of child] Unofficial exclusion

I am the parent of [name of child]. I am writing to raise concern about my child's school [name of school].

I appreciate that the Secretary of State does not investigate complaints regarding schools. However, this is not a complaint. I am writing to alert you to illegal practices, contrary to guidance, within my child's school so that you may record these and consider issuing a direction to the school's Governing Body.

I wrote to my child's school on [date original letter was sent] to raise concern that my child had been subject to unofficial exclusion[s]. A copy of that letter is enclosed.

As I did not receive a satisfactory response from the school, I wrote to Ofsted on [date Ofsted letter was sent]. Unfortunately, I did not receive a satisfactory response from Ofsted.

- If the Department identified that a governing body had acted unlawfully then the Secretary of State could issue a direction about this but the Department for Education does not routinely collect data on where/ how often this has happened.
- The Department would pass to Ofsted any relevant evidence that fell within the inspectorate's remit, but it holds no records of where this has happened.

If we know when letters have been sent to the Secretary of State we can support the Department to understand the scale of this issue.

[parents' name and address]

[If any response from school / Ofsted received: I have enclosed copies of the responses that I have received from Ofsted / my child's school]

I wrote to Ofsted in the hope that my concerns would be logged and potentially action taken. Unfortunately, Ofsted has failed to deal with my concerns or inspect the school further to the issues that I have raised.

I am very concerned that the school is making use of unofficial exclusions. Such an approach is likely to mean that the Department for Education is receiving inaccurate information regarding the use of exclusions. I am also still concerned that my child's needs have not been appropriately met, or catered for.

I would be very grateful if you could store this correspondence and let me know what action the Department will now take in respect of this issue.

I look forward to hearing from you.

Yours faithfully

[parent name/s]

Cc Minister of State for School Standards

#### Keep us updated

Please do send us copies as this will help us build up a picture of how seriously schools and inspectors are looking to hold head teachers to account for unlawfully excluding children.

We can use this information to help build the bigger picture and to bring about change when we meet with ministers and others, the more we can show the effect and level of illegal exclusions the faster we can stop them.

## Template letters

#### Whistleblowers

### Whistleblowing letter to the Secretary of State & Ofsted

Our research in 2016 showed that a third of school leaders knew of a child with autism that had been illegally excluded in the last year. We know that school staff feel strongly about fairness - if you know of a child who has been illegally excluded you can whistle blow anonymously using the letter below.

#### Secretary of State for Education

Department for Education C/o Ministerial and Public Communications Division Department for Education Piccadilly Gate Store Street Manchester M1 2WD

Also by email: enquiries@ofsted.gov.uk

[Date]

Dear Sirs

#### Re: [name of school] Unofficial exclusion

I am an employee of [name of school].

[if willing to disclose identification - set out here job title, role and responsibilities and time at the school]

[if unwilling to disclose identification] I am sorry that I am not able to confirm my identification. I only do so to protect my position in the school. I trust that my concerns will not be disregarded as a result of my anonymity.

I am writing to raise concerns that [name of school] is imposing unofficial exclusion[s] on pupils, contrary to statutory guidance issued by the Department. In my experience at the school, I have been aware of the following incidents of unofficial exclusions;

• [provide here list of pupils year groups and dates of exclusions - e.g.: Year 7 – 5 June 2017

I am very concerned that the school is failing to comply with the legal requirements concerning the reporting and recording of exclusions. In light of the above list of incidents, it would seem that any exclusion data that [name of school] is providing to the Secretary of State is invalid.

I trust that this information is useful to the Department for Education and that appropriate action will be taken.

Yours faithfully

[author - if willing to disclose] [Anon – if unwilling to disclose]

Cc: National Director, Education, Ofsted, M1 2WD





#### **Every Child**

## Every child with autism deserves an education that supports them to reach their potential.

Children with autism are more likely than other children to be excluded from school, to be bullied and to leave school with no plans for adult life or getting a job. Their parents tell us that securing the right school placement can be stressful enough to lead to family breakdowns. This is not acceptable, nor is it inevitable. The National Autistic Society and Ambitious about Autism's 'Every Child' campaign is working to get the right educational support so every child and young person with autism can reach their potential.

Ambitious about Autism and The National Autistic Society believe that four things need to happen for every child with autism to succeed in education.

#### Every child and young person with autism must have:

- their needs assessed fully and promptly,
- ▶ access to school and college places that meet their needs.

#### Every teaching professional and the schools they work in must have:

- ▶ the training and resources to meet children with autism's needs,
- ▶ the tools to prepare every child with autism for their lives after school.

### Together we are determined to make sure Every Child with autism gets the right educational support.

Visit **ambitiousaboutautism.org.uk/everychild** or **autism.org.uk/everychild** for more information.



Address The Pears National Centre for Autism Education, Woodside Avenue, London N10 3JA Telephone 020 8815 5444 Email info@ambitiousaboutautism.org.uk

Website ambitiousaboutautism.org.uk

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@ambitiousautism



/ambitiousaboutautism

@ambitiousaboutautism

Thousands of people right now are supporting our campaigns for children with autism. Join **Team Ambitious** and together we can make a difference.

We never use government funding for our campaign work. We rely on the support of people like you. If you would like to support or invest in our campaigns to make the ordinary possible for children and young people with autism, please visit: ambitiousaboutautism.org.uk/our-campaigns.

For more information about this campaign, please visit www.ambitiousaboutautism.org.uk/when-will-we-learn

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