



FOLKETINGETS
OMBUDSMAND

29 June 2021

Thematic report 2020

Institutions for children and young people with disabilities

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1. Introduction

1.1. Institutions for children and young people with disabilities was the theme of the monitoring visits that the Ombudsman carried out in the children's sector in 2020 in cooperation with the Danish Institute for Human Rights (IMR) and DIGNITY – the Danish Institute Against Torture.

The institutions that the Ombudsman visited in connection with the theme had different target groups. The target groups varied from children and young people with mild or moderate physical, mental or cognitive disabilities to children and young people with substantial physical, mental or cognitive disabilities.

For instance, there were children and young people with cerebral palsy (spastic paralysis), scoliosis, heart defects, epilepsy, vision and hearing impairment, intellectual disabilities and autism spectrum disorders.

1.2. The Ombudsman carried out a total of eight monitoring visits in order to examine the theme of the year. The Ombudsman visited six open residential institutions and two private accommodation facilities. All visits were fully or partly announced in advance.

Six visits were carried out physically while two visits were carried out virtually due to the COVID-19 situation.

The Ombudsman visited four in-house schools in connection with the monitoring visits – three in-house schools at residential institutions and one in-house school at a day-care facility.

1.3. During the monitoring visits, the focus was especially on:

- Use of physical force
- Prevention of violence and sexual assaults and the procedure in connection with suspicion of assault
- Education.

During the monitoring visits, focus was also on for instance healthcare conditions, including the medicines management by the visited facilities and institutions.

2. What have the thematic visits shown?

2.1. Main conclusions

Use of physical force

- The visited facilities and institutions were generally reflective in relation to the dilemmas that could arise in the field of tension between force and care, and overall, the monitoring visits left the impression that the facilities and institutions were good at handling these dilemmas pedagogically in a constructive and development-oriented manner.
- To a great extent, the deadline for recording and reporting use of force was not observed, and the report forms in many cases did not contain an adequate description of the course of events or grounds for the necessity of the measure.

Prevention of violence and sexual assaults and the procedure in connection with suspicion of assault

- Not all facilities and institutions had written guidelines on both prevention of violence and sexual assaults and on the procedure in connection with suspicion of assault. A few facilities and institutions also needed to ensure that the staff, including through written guidelines, had sufficient knowledge about signs of sexual assaults.

Education in in-house schools

- None of the in-house schools that were meant to have an agreement with the municipality of location regarding schooling had an agreement that fully observed the legislative requirements.
- Several of the in-house schools were challenged with regard to observing the rules on teaching the full range of subjects and on the number of teaching hours, and with the rules on exemption from lessons in subjects, mandatory tests and examinations of the Danish Folkeskole (the Danish municipal primary and lower secondary school).

2.2. General recommendations

Based on the monitoring visits, the Ombudsman generally recommends that accommodation facilities and residential institutions:

- ensure the observation of deadlines for recording use of force and deadlines for reporting to and informing the relevant authorities and custodial parents of use of force.
- ensure that report forms on use of force contain an adequate description of the course of events, including a description of how specifically the child or young person was led or restrained as well as the grounds for the necessity of the measure.
- ensure that the staff are sufficiently familiar with the Danish Act on Adult Responsibility towards Children in Foster Care and with what restraining holds to use in connection with use of force so that the force is used as gently as possible, and that the facilities and institutions have written guidelines on use of physical force.
- ensure that children, young people and custodial parents are informed on arrival about their rights in relation to use of force and other restrictions of the right of self-determination, including the right to complain. In this context, the Ombudsman recommends that accommodation facilities and residential institutions consider drawing up written material on rights and channels of complaint which can be given to the children, young people and custodial parents on arrival.
- ensure that the staff at institutions for children and young people with disabilities are aware of what physical and mental signs that – taking into account the target group and the specific group of children – they must look out for in relation to suspicion of sexual assaults, and that the institutions have written guidelines on prevention of violence and sexual assaults and on the procedure in connection with suspicion of assault.
- ensure that the instructions on medicines management are prepared in accordance with the Danish Health Authority's guidelines on the drawing-up of instructions.

Based on the monitoring visits, the Ombudsman also generally recommends that facilities and institutions with in-house schools:

- in cooperation with the municipality of location ensure that the agreement on schooling in the in-house school is in accordance with the applicable rules.
- ensure that all pupils are taught the full range of subjects and number of teaching hours, and that exceptions from this are only made if a pupil – based on a concrete and individual assessment – is exempted from lessons in one or more subjects or has the teaching time reduced in

accordance with the applicable rules, and ensure that exemptions from lessons in subjects are decided in accordance with the rules, and that there is documentation for this.

- ensure that exemptions from mandatory tests and Folkeskole examinations are decided in accordance with the rules, and that there is documentation for this.

The Ombudsman will discuss the follow-up on these general recommendations with, respectively, the Ministry of Social Affairs and Senior Citizens, the Ministry of Children and Education, and the Ministry of Health.

The Ombudsman will also follow up on the general recommendations during future monitoring visits.

2.3. Background for the choice of theme and focus points

2.3.1. Children and young people with physical, mental or cognitive disabilities may often be vulnerable and have few resources. They may find it difficult to understand the world around them and to interact and communicate with other children and adults. The Ombudsman is only rarely contacted by children and young people with disabilities who are placed outside the home, and when it does happen, their functional capacity is typically only affected to a lesser extent by their disability.

With this theme, the Ombudsman wanted a more general view of the conditions for children and young people who are placed in care or attending institutions for children and young people with disabilities.

2.3.2. During the visits, the Ombudsman focused on the extent to which physical force is used in institutions for children and young people with disabilities. Among other things, this is due to the fact that it can be a distressing experience to be the subject of physical force or to witness others being the subject of physical force. The Ombudsman also endeavoured to examine whether the institutions find that dilemmas arise between force and care, for instance in connection with fall prevention, daily hygiene (showers/baths, tooth brushing, etc.).

The Ombudsman also wanted an insight into how institutions for children and young people with disabilities prevent violence and sexual assaults, and what procedure the institutions follow in the event of suspicion of assault. This is because investigations show that children and young people with disabilities are at greater risk of being the subject of violence or sexual assaults than children and young people without disabilities. In addition, some children and

young people with disabilities cannot or find it difficult to express that they have been subject to an assault, for instance because they have no language or due to their cognitive level.

Moreover, the Ombudsman wanted to follow up on a general recommendation in the thematic report for 2015 to institutions where children and young people go or live due to their substantial and permanent functional impairment that the institutions draw up written guidelines on how they prevent sexual assaults and on which procedure they follow if there is suspicion of assault.

During the monitoring visits, the Ombudsman also wanted to examine whether children and young people with disabilities who are placed in care and attend in-house schools are getting the education they are entitled to according to legislation.

In addition, the Ombudsman wanted to examine the children and young people's access to health services and the medicines management by the visited facilities and institutions. This is because it is important that the staff manage medicines in accordance with the applicable rules in order to prevent medication errors, among other things.

2.4. How did the Ombudsman proceed?

2.4.1. Prior to most of the monitoring visits, the Ombudsman asked the facilities and institutions for a range of information with a view to shedding light on the conditions that the Ombudsman would focus on during the visits. This included the following information:

- A summary of the number of times when force has been used within the most recent three years with a copy of the five most recent reports on use of physical force towards children and young people at the facility or institution.
- An account of the reasons for any development in the use of physical force, how the facility or institution prevents the use of physical force, and how children and young people who have been involved in an episode where physical force was used get the opportunity to comment on the episode.
- Any guidelines on use of physical force and information on how children, young people and custodial parents are informed of their rights in relation to the use of force and other restrictions of the right to self-determination, including the right to complain.

- An account of the reason for any development in the number of cases of violence and sexual assaults, respectively.
- Any guidelines on preventing, discovering and handling suspicions of violence and sexual assaults.
- The facility or institution's instructions for medicines management and an account of how the children and young people's access to health services is organised.

If the facility or institution had an in-house school, the Ombudsman also asked for, for instance, a copy of the three most recent exemptions from lessons in one or more subjects, the three most recent exemptions from mandatory tests and the three most recent exemptions from Folkeskole examinations. Furthermore, the Ombudsman asked for a copy of the agreement with the municipality of location regarding the schooling in the in-house school where such an agreement had been made.

2.4.2. In the week leading up to the monitoring visits, the Ombudsman informed the children and young people of the visit. This was done by sending the children and young people a card with a QR code. By using the QR code, the children and young people had access to a film with information about the Ombudsman's Children's Division, the upcoming monitoring visit and the subjects that the visiting teams would like to talk with the children and young people about. The film can be seen in Danish here: <http://boernekontoret.ombudsmanden.dk/besoeg/>. The aim was to reach as many children and young people as possible, because their experience of how it is to live in the facility or institution is a significant and important source of information.

During the monitoring visits, the visiting teams interviewed 24 children and young people aged 10-17. The reason they did not speak with more was that many of the children and young people living at the facilities and institutions had very limited language or none at all due to their disabilities.

To get an insight into the facilities and institutions as well as the children and young people's conditions at the facilities and institutions, the visiting teams also spoke with a number of the children and young people's relatives, primarily parents. The visiting teams spoke with 53 relatives. In addition, the visiting teams spoke with staff at the facilities and institutions, including in-house school teachers and those responsible for medicines who also contributed with information about the visited facilities and institutions and the children and young people's conditions. Finally, the visiting teams obtained information about the visited facilities and institutions in connection with the discussions with management during the monitoring visits.

2.4.3. The monitoring visits were carried out as part of the Ombudsman's general monitoring activities pursuant to the Parliamentary Ombudsman Act, and as part of the Ombudsman's task of preventing that persons who are or who can be deprived of their liberty are exposed to for instance inhuman or degrading treatment, cf. the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

In addition, the Ombudsman has a special responsibility for protecting children's rights pursuant to the UN Convention on the Rights of the Child, among other things.

The Ombudsman's work on preventing degrading treatment etc., pursuant to the Protocol is carried out in cooperation with the Danish Institute for Human Rights and DIGNITY – Danish Institute Against Torture.

The Danish Institute for Human Rights and DIGNITY contribute to the cooperation with human rights and medical expertise. For instance, this means that staff with expertise in these areas participate on behalf of the two institutes in the planning and execution of and follow-up on monitoring visits.

In addition, a special advisor on children's issues from the Ombudsman's office participates in monitoring visits to the children's sector.

2.4.4. At the Ombudsman's website, there is a summary of all the monitoring visits carried out in 2020, including the recommendations given to the individual facilities and institutions: [Monitoring visits to institutions etc. for children in 2020 \(ombudsmanden.dk\)](https://ombudsmanden.dk/monitoring-visits-to-institutions-etc-for-children-in-2020).

3. Use of physical force

3.1. The rules

The best interest of the child shall be a primary consideration in all actions concerning children, says the UN Convention on the Rights of the Child.

According to the Act on Adult Responsibility, staff at accommodation facilities and residential institutions can use physical force towards a child or a young person when certain specified conditions are met.

However, physical force must only be used as an exception. And use of physical force must never take the place of care and social-pedagogical measures. In addition, the use of force must always be in reasonable proportion to the aim and must be exercised as gently and as briefly as

conditions allow, and with the highest possible regard for the personal integrity of the child or young person.

USE OF PHYSICAL FORCE AT ACCOMMODATION FACILITIES AND OPEN RESIDENTIAL INSTITUTIONS

Who and what

Staff can *restrain* or *lead* a child or a young person to another room.

When

Physical force can be used when the child or the young person exhibits a behaviour, including persistent harassment, which *endangers the child or the young person or others at the location*.

Documentation and hearing

The facility or institution must *record and report* use of physical force.

The child or young person must be *informed of the report* and be given the *opportunity to comment*.

Information

The child or young person and custodial parents must be *informed of their rights in relation to the use of force and other restrictions of the right to self-determination*, including channels of complaint, when they arrive at the placement.

Restrain means that a child or a young person can be restrained physically, for instance by holding the child or young person in the form of placing your arms around the child or young person while you are standing still. Restraint must never include violence, including violent armlocks, punches or kicks. Nor is the one carrying out the restraint allowed to lie down on top of the child or young person and restrain the individual with his or her body weight.

Lead to another room means that a child or young person can be taken to another room in the placement facility or institution such as the individual's own room. Restraining or leading can for instance be done by having a firm hold of the child or young person's hand and leading him or her to another room. You can also lead the child or young person while you have your arms around them. The crucial factor is that the child or young person is not harmed.

The rules on use of physical force in the Act on Adult Responsibility apply to children and young people placed at an accommodation facility or a

residential institution. However, the rules do not apply to children and young people who are in respite care at an accommodation facility or a residential institution.

The Act on Adult Responsibility's rules on the use of physical force also apply to the in-house schools connected with accommodation facilities and residential institutions. However, they only apply to pupils who have been placed at the accommodation facility or residential institution or another accommodation facility or residential institution. With regard to other pupils who are in an in-house school, the rules of the Executive Order on Measures for the Promotion of Good Order in the Folkeskole apply.

3.2. Extent of the use of physical force

There was great variation between the sizes of the visited facilities and institutions and between the extent and nature of the children and young people's disabilities. For this reason, among others, the annual number of incidents of use of physical force at the facilities and institutions varied a great deal. As such, the number of incidents of use of force in 2019 varied from 1 to 137 incidents.

Some of the visited facilities and institutions stated that a significant amount of the use of force was centred on a single child/young person or a few children and young people. One place stated that, out of the 121 incidents of use of force that took place there in 2019, 107 concerned three children, of which 98 concerned one child. In several cases, it was stated that the child or young person who had been involved in a relatively large number of incidents was no longer staying at the facility or institution or would be moved to a different placement facility or institution.

All the visited facilities and institutions explained to a relevant extent how they worked on preventing the use of force. For example, they used Low Arousal, KRAP (cognitive, resource-oriented and acknowledging pedagogics), ART (Anger Replacement Training), ICDP (International Child Development Program), diversion, staff changes, information sharing and risk assessments.

The Ombudsman recommended four places to continue their work of preventing and reducing the number of incidents of use of force.

3.3. Examples of reports on the use of physical force

Accommodation facilities and residential institutions must record use of physical force in a specific form. The form can be seen in Appendix 1 a of the Executive Order on Adult Responsibility for Children and Young People in Out-of-Home Care.

In connection with the monitoring visits, the Ombudsman asked to receive the five most recent report forms on use of physical force.

The Ombudsman received a total of 46 reports on use of physical force. The review of the reports formed a basis for discussions between the visiting teams and the visited facilities and institutions during the monitoring visits.

The visited facilities and institutions generally used the correct form to record use of physical force, but the Ombudsman recommended one place to use the form in the Executive Order.

3.3.1. Observance of deadlines for recording and reporting use of physical force

If force has been used towards a child or a young person, the manager of the placement facility or institution (or the deputy manager) must, pursuant to the rules on adult responsibility, record the incident in the report form in Appendix 1 a mentioned above within 24 hours. The short deadline is primarily out of regard for the legal rights of the child or young person, but also out of regard for the staff involved in the incident.

Then the manager (or deputy manager) of the placement facility or institution must without undue delay send a copy of the report form to the placing municipality and inform the custodial parents. By the requirement of 'without undue delay' is meant as quickly as possible within 24 hours once the recording has been completed. At the end of the month, a copy of the report form must be sent to the local social supervisory authority, and a possible municipal or regional operator must be informed.

If the use of force has taken place in an in-house school, the use of force must in addition be reported to the municipality of location (the municipality in which the school is placed).

The review of the 46 report forms showed that none of the visited facilities or institutions fully observed the deadlines for recording and reporting use of physical force.

The deadline for *recording the use of force* was thus only observed in 12 out of the 46 forms. In a number of instances, the deadline for *reporting the use of force* was not observed.

Only in four out of the 46 forms (corresponding to nine per cent), all deadlines for recording, reporting and informing of a use of force was observed.

On that basis, the Ombudsman recommended to six places that they observe the deadlines for recording and reporting use of force, while two places were

recommended to ensure that the report forms are completed correctly as far as the time of recording and reporting are concerned.

On that basis, the Ombudsman generally recommends that accommodation facilities and residential institutions ensure that deadlines for recording use of force and the deadlines for reporting to and informing the relevant authorities and custodial parents of use of force are observed.

3.3.2. Documentation for use of force

Use of physical force that takes place at an accommodation facility or residential institution must be recorded in the report form mentioned in sub-heading 3.3 above. The report form must contain a description of what happened in connection with the use of force as well as grounds for the necessity of the measure.

An adequate description of the course of events in connection with a use of force and a precise account of how the child or young person was led or restrained are a prerequisite for being able to assess whether the use of force was in accordance with the rules of the Act on Adult Responsibility.

Some of the report forms that the Ombudsman received did not contain an adequate description of the course of events or of how the use of force was carried out. For example, in several instances, it was only stated that a child or young person was restrained gently or laid down but not how this happened or where and how the staff member restrained the child or young person. Furthermore, some forms did not contain information about the basis on which the child or young person was assessed to endanger themselves or others.

Therefore, the Ombudsman gave recommendations to three places with the purpose of ensuring that the report forms would in future contain an adequate description of the course of events in connection with use of force and the grounds for the measure.

The Ombudsman generally recommends that accommodation facilities and residential institutions ensure that report forms on use of force contain an adequate description of the course of events, including a description of how specifically the child or young person was led or restrained as well as grounds for the necessity of the measure.

3.3.3. Inclusion of the child or young person

Children and young people who have been involved in a physical force incident must be informed of the recording of the episode and be given the opportunity to comment on the episode. This follows from the legislation on adult responsibility.

The review of the report forms that the Ombudsman received on use of physical force showed that the visited facilities and institutions did not in all instances make the child or young person aware of the recording or give the child or young person an opportunity to comment on the episode.

However, in most of the instances, this was due to the extent and nature of the child or young person's disability, for instance a very low cognitive level or limited language. It was the visiting teams' general impression that the facilities and institutions spoke with the children and young people about the use of force to the extent possible, taking into account their disabilities.

The Ombudsman gave no recommendations on the inclusion of the children and young people.

3.4. Knowledge of the Act on Adult Responsibility and use of force

Children and young people living at accommodation facilities and residential institutions or attending in-house schools in accommodation facilities and residential institutions must be treated with dignity, consideration and in accordance with their rights. In order to ensure this, it is, among other things, crucial that staff are familiar with the rules applying to use of physical force towards the children and young people.

Use of physical force must be applied as gently and as briefly as circumstances allow and with the greatest possible consideration for the personal integrity of the child or young person. Among other things, this presupposes that staff know what restraining holds to use in connection with use of force.

In that connection, written guidelines on use of physical force can provide support and help in the daily work.

The visiting teams got the impression during the majority of the monitoring visits that the facilities and institutions focused on ensuring that the staff were familiar with the rules of the Act on Adult Responsibility, for instance through training courses. In addition, many of the facilities and institutions had written guidelines on use of physical force.

The Ombudsman recommended two places to continue the work with ensuring that the staff had sufficient knowledge about the rules on use of force, and recommended two places to consider a training course for the staff on using gentle holds in connection with the use of force.

Moreover, the Ombudsman recommended five places to consider preparing or developing existing guidelines on use of physical force.

In the light of this, the Ombudsman generally recommends that accommodation facilities and residential institutions ensure that staff have sufficient knowledge of the Act on Adult Responsibility and of what restraining holds to use in connection with use of force so that the use of force is carried out most gently, and that the places have written guidelines on use of physical force.

3.5. Dilemmas between force and care

Children and young people with disabilities may find it difficult or be unable to understand or foresee the consequences of their actions. For example, they may be unable to foresee the consequence of not taking their medication, not brushing their teeth or refusing to participate in a medical examination. Due to this, dilemmas may arise between force and care.

Most of the facilities and institutions stated that they experienced dilemmas between force and care. For instance, there were dilemmas in connection with tooth brushing and giving medicine, and dilemmas could arise between force and care in connection with the children and young people going to the doctor, dentist or hairdresser.

The visits left the impression that the facilities and institutions were generally reflective in relation to the dilemmas that could arise in the field of tension between force and care, and they were good at handling these dilemmas pedagogically in a constructive and development-oriented manner.

The Ombudsman gave no recommendations concerning the places' handling of dilemmas between force and care. However, the Ombudsman took initiative to open a case about an institution's use of beds with high sides (cots) and the institution's locking system with a view to clarifying the legal grounds for the use thereof. In a statement in the case, the Ministry of Social Affairs and Senior Citizens assessed that – depending on for instance the age of the children and young people and whether or not they have functional disabilities – in accordance with institution status and on certain conditions, there was access to using cots as well as access to using locking systems with, for instance, several doorknobs, door-openers or similar on some outer doors at open residential institutions. When the institution stated that its use of cots and its locking system were in accordance with what was set out by the Ministry, the Ombudsman took no further action in the matter.

3.6. Information on rights

When a child or a young person is placed at an accommodation facility or a residential institution, the manager must inform the child or young person and the custodial parents of their rights in relation to use of force and other restrictions of the right to self-determination, including channels of complaint

to the National Social Appeals Board and the municipal council. This follows from the legislation on adult responsibility.

If information on rights and channels of complaint is given in writing, the language should be easy to understand.

The visits showed that several facilities and institutions had not on arrival informed children, young people and custodial parents of their rights in relation to use of force etc.

The Ombudsman recommended to four places that they ensure that the custodial parents – and to the extent possible also children and young people with disabilities – are informed on arrival of their rights in relation to use of force and other restrictions of the right to self-determination, including channels of complaint. In addition, The Ombudsman recommended to one place that it complete the preparation of written material with information to children, young people and custodial parents of their rights in relation to use of force etc., including channels of complaint.

The Ombudsman generally recommends that accommodation facilities and residential institutions ensure that children, young people and custodial parents are informed of their rights in relation to use of force and other restrictions of the right to self-determination, including channels of complaint, when moving in. In this connection, the Ombudsman recommends that accommodation facilities and residential institutions consider drawing up written material on rights and channels of complaint which can be given to the children, young people and custodial parents on arrival.

4. Prevention of violence and sexual assaults and the procedure in connection with suspicion of assault

4.1. Rules etc.

Children must be protected from all forms of violence, sexual exploitation and sexual abuse. This follows from the UN Convention on the Rights of the Child.

In 2015, the Ombudsman visited a number of institutions for children and young people with substantial and permanent functional impairment. Based on the monitoring visits, the Ombudsman generally recommended that such institutions draw up written guidelines on how sexual assaults can be prevented and on which procedure the institution follows if there is suspicion of assault.

The Ombudsman discussed the follow-up of his general recommendation with the Ministry of Social Affairs and the Interior (now the Ministry of Social Affairs and Senior Citizens), the National Board of Social Services and the social supervision authorities.

Subsequently, the National Board of Social Services has issued a handbook about preventing, discovering and handling violent and sexual assaults against children with cognitive or physical disabilities. The handbook is available in Danish at the National Board of Social Services' website ([Vold og seksuelle overgreb mod børn med handicap - Socialstyrelsen - Viden til gavn](#)), where there is also a template with suggestions for the contents of a policy for preventing and discovering violence and sexual assaults against children and young people with disabilities.

4.2. Recording violence and sexual assaults

4.2.1. The places that the Ombudsman visited in connection with the monitoring visits in 2020 did not have consistent practices for recording violence, threats, harassment, etc. For example, there was variation in what types of incidents the places recorded, how the incidents were classified, and how severe an incident had to be in order to be recorded. For example, one place stated that an incident was recorded as violence merely if there had been physical contact, whereas in another place, it took more (several punches) before the incident was recorded. A third place registered incidents where a child was bothered by another child's noises on an overview of violence and harassment.

In relation to the number of recorded episodes, one place had recorded no incidents of violence in the period 2017-2019, and other places had recorded few incidents of violence. A few places had recorded relatively many incidents of violence etc. In the latter case, by far most of the recorded incidents of violence etc. were exercised by one child (or few children) and were directed at staff at the facility or institution.

4.2.2. The places visited by the Ombudsman also did not have consistent practices for recording sexual assaults etc.

Most of the places had not in the period 2017-2019 recorded any sexual assaults, whereas a few places stated that such incidents had been recorded during the period. The incidents were few, and only children or young people had been involved.

4.3. Prevention of violence and sexual assaults

4.3.1. The places prevented violence for instance by having the staff:

- talk to the children and young people about how to express frustration and anger in the most appropriate way.
- receive training and supervision in relation to conflict management.
- use conflict de-escalating methods and approaches, including KRAP, Low Arousal, diversion, clearly defined settings and structure, etc.
- use risk profiles and risk assessments systematically.

4.3.2. The places prevented sexual assaults by for instance:

- having a sexual harassment policy with guidelines for various situations, including showering or bathing.
- ensuring that staff had knowledge about children and young people's sexuality, sexual development etc. and knowledge about signs that a child or young person had been subject to a sexual assault.
- having group meetings or individual conversations with the children and young people about love, sexuality, sexual development and boundaries as well as behaviour online or on other digital media etc.
- employing or affiliating with staff who were trained sex counsellors or trained in preventing, discovering and handling suspicion of sexual assaults against children.
- having increased attention on children who, because of their diagnoses, found it difficult to set boundaries or understand others' boundaries.
- having a night watch who was awake.

Some places stated that they had challenges in relation to the children and young people's use of mobile phones with internet connection, including use of social media, because not all children and young people understand the consequences of their actions online. It was stated that this could manifest itself in the children and young people, for instance, sending nude photos to strangers who contact them via social media or by sharing such photos. Some places found it difficult to protect the children and young people within the existing legal framework.

4.4. Guidelines on prevention of violence and sexual assaults and on the procedure in connection with suspicion of assault

Some of the visited facilities and institutions had written guidelines involving both prevention of violence and sexual assaults and the procedure to be followed in the event of suspicion of assault.

Other places had no or only partly written guidelines in this respect.

The Ombudsman recommended to six places that they ensure that the places had written guidelines on both the prevention of violence and sexual assaults and on the procedure in connection with suspicion of assault.

In individual places, the Ombudsman also recommended that they ensure that the staff had knowledge about signs of sexual assaults, for instance by updating the place's sexual harassment policy, and that they ensure that there is attention on the children and young people learning to manage their sexuality to a relevant extent.

The Ombudsman generally recommends that accommodation facilities and residential institutions for children and young people with disabilities ensure that the staff are aware of what physical and mental signs that – taking into account the target group and the specific group of children – they must look out for in relation to suspicion of sexual assaults.

The Ombudsman also generally recommends that accommodation facilities and residential institutions for children and young people with disabilities have written guidelines on prevention of violence and sexual assaults and on the procedure in connection with suspicion of assault.

5. Education in in-house schools

5.1. The rules

A child is entitled to education. This follows from the UN Convention on the Rights of the Child.

The rules on primary and lower secondary school education appear from the Danish Folkeskole Act with related executive orders and guidelines. Among other things, an executive order has been issued on special educational teaching and other kinds of specialist pedagogical assistance under the Act in day-care facilities and at other placement facilities and institutions.

Children and young people attending an in-house school are entitled to the same education as children and young people attending a Folkeskole. This means that they must be taught the full range of subjects of the Folkeskole

and the number of hours laid down in the Folkeskole Act, unless they can be exempted from lessons in one or more subjects or have the class hours reduced in accordance with applicable rules.

5.2. The visited in-house schools

The Ombudsman visited four in-house schools in connection with the monitoring visits in 2020. They consisted of one in-house school at a day-care facility and three in-house schools at one municipal and two regional residential facilities, respectively.

In the three in-house schools at residential institutions, there were both children and young people living at the facility or institution (live-in pupils) and children and young people who did not live at the facility or institution (external pupils). The external pupils either lived at home with their parents or were placed at another facility or institution.

There was great variation between the pupils at the in-house schools. While for some pupils, it took a lot of effort to participate in schooling, the visiting team also met a pupil whom a teacher at the in-house school assessed would be able to sit the Folkeskole's final examinations and attend an upper secondary school targeted at young people with the same disabilities as the pupil.

5.3. Agreements

5.3.1. Accommodation facilities, regional residential institutions and day-care facilities with in-house schools must enter into an agreement with the municipality of location regarding schooling. The Executive Order on Special Educational Teaching, etc. (mentioned above under heading 5.1) lists a number of elements which the agreement must observe as a minimum, including the pedagogical-psychological services and the recording and reporting to the municipal council of use of force towards pupils.

At the time of three of the monitoring visits at facilities and institutions with in-house schools, Executive Order No. 702 of 23 June 2014 on Special Educational Teaching, etc. applied. Before the visit to the fourth place with an in-house school, the Executive Order was amended, meaning that it included additional requirements for the contents of the agreement. On that basis, the fourth place was recommended to update the agreement in accordance with the new Executive Order.

5.3.2. During the monitoring visits, the Ombudsman examined whether – to the extent required – the places had entered into an agreement with the municipality of location, and whether the contents of the agreement met the requirements of the Executive Order.

Three of the visited facilities and institutions with in-house schools were required to enter into an agreement with the municipality of location regarding schooling, and all three places had entered into such an agreement. However, none of the three agreements fully met the Executive Order's requirements to the contents of an agreement.

One of the agreements did not contain a correct and adequate description of the pedagogical-psychological services. The agreement also did not contain a correct description of the rules on recording and reporting use of force towards pupils in the in-house school. Furthermore, two agreements contained references to previous – and not applicable – rules on the subject.

On that basis, the Ombudsman recommended three places with in-house schools to – in cooperation with the municipality of location – update their agreement regarding schooling.

The Ombudsman generally recommends that facilities and institutions with in-house schools – in cooperation with the municipality of location – ensure that the agreement regarding schooling in the in-house school is in accordance with the applicable rules.

5.4. Teaching the full range of subjects and hours

5.4.1. As mentioned above, children and young people attending an in-house school are generally entitled to schooling in the full range of subjects of the Folkeskole and for the number of hours stipulated in the Folkeskole Act.

Range of subjects and hours, including the minimum hours in, respectively, Danish and history and the overall annual minimum hours, vary from grade to grade. There is also a minimum number of hours required in maths that does not vary from grade to grade.

5.4.2. The visits showed that two of the four in-house schools did not observe the rules on teaching the full range of subjects and hours.

On that basis, the Ombudsman recommended to observe the rules on teaching the full range of subjects and hours, including the rules on reduction of class hours.

The Ombudsman generally recommends that facilities and institutions with in-house schools ensure that all pupils are taught the full range of subjects and number of hours, and that exceptions therefrom are only made if a pupil – based on a concrete and individual assessment – is exempted from

lessons in one or more subjects or has the class hours reduced subject to the applicable rules.

5.5. Exemption from lessons in subjects

5.5.1. It is possible to exempt pupils from lessons in one or more subjects, though not in Danish and maths. This follows from the executive orders on special educational teaching issued pursuant to the Folkeskole Act.

It is only possible to exempt a pupil from lessons in a subject if the pupil has extraordinary difficulties in mastering the subject, so that it is not deemed meaningful to give the pupil special educational teaching in the subject in question.

Exemption from lessons in a subject must be decided on the basis of a concrete and individual assessment of the pupil's difficulties with the subject. It is for instance not possible to exempt a pupil – or a group of pupils – from lessons in a subject on the grounds that the in-house school does not have a teacher who can teach the subject, that the in-house school does not have a classroom specially fitted for the subject, or that there are only one or a few pupils to be taught the subject in question.

A decision to exempt a pupil from lessons in a subject is made by the head of the school on the basis of a pedagogical-psychological assessment. In addition, the parents must give their consent to the exemption.

If a pupil is exempted from lessons in one or more subjects, the pupil must have other lessons instead of the subject(s) in question. It is therefore not possible to reduce the teaching hours of a pupil by exempting the pupil from lessons in one or more subjects.

5.5.2. The visits showed that, at three of the four in-house schools, there were problems with observing the rules on exemption from lessons in subjects.

One place stated that actual decisions were not made on exemption from lessons in subjects, but the issue of exemption was discussed at half-yearly meetings in which the parents participated. There was no documentation for the basis of the pupils' exemptions for lessons in subjects, even though most of the pupils at the in-house school were exempted from lessons in a number of subjects.

At another place, it appeared from the pupils' teaching plans in which subjects they were exempted from lessons, but in most cases, the teaching plans did not contain information documenting that the conditions for

exempting a pupil from lessons in the subject in question were met. At a third place, the exemptions from lessons in subjects appeared to be general and standardised, and thus not as concrete and individual assessments of the individual pupil's difficulties in the subjects in which they were exempted from lessons.

Furthermore, several places lacked documentation that the decisions on exemption from lessons in subjects were made on the basis of a pedagogical-psychological assessment.

It is important that pupils are only exempted from lessons in one or more subjects if the basic conditions are met. It is therefore also important that the in-house schools can document the grounds for the exemption, that the parents have given their consent to the exemption and that the decision has been made on the basis of a pedagogical-psychological assessment. This is because such documentation is decisive when verifying if the conditions for exempting a pupil from lessons in one or more subjects are met.

The Ombudsman recommended to three places that they ensure that the rules on exemption from lessons in subjects are observed.

The Ombudsman generally recommends that facilities and institutions with in-house schools ensure that decisions on exemption from lessons in school subjects are made in accordance with the rules, and that there is documentation for this.

5.6. Exemption from tests and examinations

5.6.1. Pupils in in-house schools must complete mandatory tests and sit the Folkeskole examinations in the same way as pupils taught in the Folkeskole, unless the pupils are exempted according to the applicable special rules. This follows from executive orders issued pursuant to the Folkeskole Act.

In connection with a decision on exemption from a mandatory test, the head of the school must, after consultation with the pupil's parents – and as far as possible with the pupil – determine which other methods for assessment of the pupil to use instead of the mandatory test.

Similarly, a decision on exemption from an examination test must be followed by a decision on how the pupil's benefit from the schooling can be assessed in another way.

5.6.2. The visits showed that, at three of the four in-house schools, there were problems with observing the rules on exemption from mandatory tests and Folkeskole examinations.

Although not all pupils at the in-house schools participated in mandatory tests and Folkeskole examinations, none of the three in-house schools had written documentation for exemptions from participation in mandatory tests and Folkeskole examinations, nor documentation that the procedure for exemptions had been followed.

For example, one place stated that the pupils at the in-house school did not participate in mandatory tests or Folkeskole examinations, but that exemptions were not made for each individual pupil.

On that basis, the Ombudsman recommended three places to ensure observance of the rules on exemption from participation in mandatory tests and Folkeskole examinations.

The Ombudsman generally recommends that facilities and institutions with in-house schools ensure that decisions on exemption from mandatory tests and Folkeskole examinations be made in accordance with the rules, and that there is documentation for this.

6. Health

6.1. General

A child has a right to the enjoyment of the highest attainable standard of health, access to facilities for the treatment of illnesses and rehabilitation of health. This follows from the UN Convention on the Rights of the Child.

A number of children and young people at the facilities and institutions visited by the Ombudsman had various health-related challenges of both a physical and mental nature, and several children and young people received medication.

During the visits, the facilities and institutions accounted for the children and young people's access to health services, including doctors, dentists and specialist doctors. The visits generally left the impression that the places to a relevant extent had focus on the children and young people's health-related conditions and their access to health services, and that the places followed up on any health-related challenges in an appropriate way.

The Ombudsman gave no recommendations on the children and young people's access to health services.

6.2. Medicines management and instructions on medicines management

Correct medicines management is crucial to patient safety, and the Danish Health Authority has issued guidelines on drawing up instructions as well as guidelines on prescription and management of medicines. In addition, the Danish Patient Safety Authority has issued a folder on correct medicines management as a tool for care facilities, home care, community nursing, accommodation facilities, etc. (*'Korrekt håndtering af medicin – Et værktøj for plejecentre, hjemmepleje, hjemmesygepleje, bosteder m.v.'*; in Danish only).

None of the facilities and institutions were given recommendations concerning their medicines management, but some places were given recommendations concerning their instructions on medicines management, for instance to either draw up or update their instructions on medicines management in order to ensure that they were in accordance with the Danish Health Authority's guidelines on issuing instructions.

The Ombudsman generally recommends that accommodation facilities and residential institutions ensure that instructions on medicines management are drawn up in accordance with the Danish Health Authority's guidelines on drawing up instructions.

Yours sincerely,



Niels Fenger