

Double Blind Peer Reviewed Proceedings of the Making Inclusive Education Happen: Ideas for Sustainable Change, Sept. 28-30, 2009, Te Papa, Wellington.

School for All: Children's Right to an Inclusive Education in New Zealand

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Abstract

For some students with diverse needs in New Zealand, the ideals of current legislation and policy do not match their realities. Children have the same basic human rights that adults have, but as a vulnerable population group, children with disabilities have the added need for protection and promotion of their rights. The Office of the Children's Commissioner (OCC) is committed to supporting these rights as determined by section 13 (1) (b) of the Children's Commissioner Act 2003 and the United Nations Convention on the Rights of the Child (articles 3, 23, 28 & 29). Complaints to OCC's advice lines indicate that students with disabilities (including behaviour) are most at risk of exclusion from school. Inclusion means increasing the presence, participation, and achievement of all students. This paper details the nature of the complaints received by OCC and the advocacy role it played to achieve positive outcomes for those students.

Introduction

Office of the Children's Commissioner

As determined by section 13 (1) (b) of the Children's Commissioner Act 2003 and the United Nations Convention on the Rights of the Child (articles 3, 23, 28 & 29), the Children's Commissioner has a statutory responsibility to be an independent advocate for children and young people and to take cognisance of the diversity of children in Aotearoa New Zealand.

In addition to the core functions of advocacy, monitoring or investigation matters, another key function of the Commissioner's role is to promote the participation of children and young people in decision-making affecting them. To support the Office in this role, eight to ten young people, aged between 12 and 17 years are selected to be members of our Young People's Reference Group (YPRG). They come from diverse backgrounds and represent rural and urban communities. Their role is to provide advice about issues concerning young people; assist in the strategic direction of the office; assist in the achievement of office goals; facilitate consultation with children and young people; and inform the Children's Commissioner of regional issues. Making "inclusive education happen" continues to be a key concern for the Young People's Reference Group. As stated by YPRG member, Katherine Rees:

Disability is not one of those things that can be approached with a "one size fits all" mentality because we are all so different in terms of our needs. Schools need to be more open with the student and listen more to what they have to say and make them more aware of what they are entitled to.

Definition of Inclusion

Inclusion is the process of increasing the presence, participation and achievement of all students in schools, with particular reference to those groups of students who are at risk of exclusion, marginalisation, or underachievement (Booth & Ainscow, 2002). This means means minimising all barriers in education for all students by increasing the participation of students in, and reducing their exclusion from, the cultures, curricula and communities of local schools. According to Booth and Ainscow (2002) inclusion involves restructuring the cultures, policies and practices in schools so that they respond to the diversity of students in their locality (p. 3).

New Zealand has an inclusive education system, as mandated by the Education Act 1989. Inclusion is a key principle of the New Zealand Curriculum. The curriculum applies to all students in English-medium state schools (including integrated schools), irrespective of their gender, sexuality, ethnicity, belief, ability or disability, social or cultural background, or geographical location (MoE, 2007, p. 6). As stated in the document: "The curriculum is non-sexist, non-racist, and non-discriminatory; it ensures that students' identities, languages, abilities, and talents are recognised and affirmed and that their learning needs are addressed" (MoE, 2007, p. 9).

Student Voice

Consideration of students' perspectives about their experiences is relevant to the wider study of inclusion because it is only through trying to understand their own views of their experiences that schools can effect change by restructuring their cultures, policies and practices as suggested by Booth and Ainscow (2002). Context plays a key role in the way that students conceptualise and are affected by their experiences. Yet while the environment is important, it is actually the individuals' experience of the environment that counts. YPRG member Katherine Rees has a physical disability and now shares her experience of inclusive education in the New Zealand school system:

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I've been asked to write about my experience of inclusive education, but the truth is I can't do it. The simple fact is that, for me, inclusive education doesn't exist. I've almost finished my journey with non-inclusive education and I'm already breathing a sigh of relief.

For 13 years I've navigated the school system trying to get the help I needed to achieve what I wanted. I began my education at Carlson School for Cerebral Palsy but by age six had moved to a fully mainstreamed school because it had become apparent that I was bored. But being in a fully mainstreamed school meant getting minimal support and never when I needed it (I could either have a teacher aide in the morning or the afternoon). Apparently getting help from nine to three was too tall an order.

Armed with this experience the decision was made to try what was then referred to as "integrated mainstream schooling." That meant having my day structured in a way that meant I had physiotherapy and occupational therapy sessions during school hours as well as teacher aides when I needed them. At intermediate (Years 7-8) it worked really well and I thought I'd finally found the answer to inclusive education. My teacher aide sat in the back of the classroom and as I needed her I'd turn around and put my hand up and she would do whatever I needed and then go back to doing something else. My classroom teacher always asked me how much help I wanted as well. For example, in Food Technology I was asked whether I wanted my teacher aide to be with me or not. I chose to have her there, but that was my entirely my own decision.

And then I got to high school where all of a sudden the needs of a "system" came before mine. When I initially challenged it, I was told that there were aspects of this infamous system that I didn't understand, or that it was easier that way, or everything had worked for many years so it was the best way to do it. For my school "the best way to do it" was that three or four students with disabilities would all go to class together and share one teacher aide between them all - which didn't bother me too much. What did bother me was being told that I HAD to sit with the teacher aide because they also had to help the other students and the only way this could be done was if we all sat together. The end result is that students in class will not talk to me because I'm seen as the girl with the "helper". Having a group of people with disabilities always sitting in the front row of the class, completely cut off from their peers, is supposedly the only way that everyone's needs can be met. Meanwhile I sit in mainstream classes feeling cut off from my peers and labelled as "the girl with the helper". Do I blame my peer group for not wanting to talk to me in class? Not at all. After all, having someone old enough to be your parent sitting beside you like a babysitter hardly encourages anyone to speak to you. Even on days where my teacher aide is away, no one will sit with me because that's my "helper's" seat. So I put up with a system that makes me feel ostracised and segregated. But what sticks out for me is that at no point was I asked what I needed or wanted as I had in the past. I was just told that things were the way they were and everything was presented to me in a way that said "all or nothing".

I've had situations where liaison teachers have decided to send me to a class without support (on my request), only to have the mainstream teacher panic and say I desperately need help, so help was sent. Nowhere in that equation had anyone asked me why I hadn't wanted the support. At no point did anyone sit down with me and explain why I needed support in that subject. See, if anyone had explained the problems to me, I could have offered solutions and the teachers would have been able to explain their side of the story.

What I think should happen is that all support staff and liaison teachers (teachers that deal with the special needs department and mainstream school) should discuss various options open to the student and also look at how they have had support provided to

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them in the past and see where they can match this. If it can't be done, then the reasons for that should be shared with the student and other options come up with, while also allowing the student to be more involved in the "problem solving" part of receiving support. After all, they are the ones that will be working with their support staff - in most cases for several years - so they should be proactively involved in how they get that help.

Schools do try to break down the barriers and create inclusive education with disability awareness programs. But from my experience these don't seem to work either. A few weeks ago, I asked several Year 13 students at my school what they had thought of disability awareness and whether it had helped them. Not a single one remembered ever having had it. When I described exactly what that disability awareness had been, I still got blank faces.

For some students, the current system works. In fact, they couldn't ask for better. But there are several of us out there for whom the system is failing. Disability is not one of the things that can be approached with a "one sizes fits all" motto.

I know for a fact that I am not the only one who thinks like this so my plea to education staff is to not disregard this as one person's rant. For years I've swallowed a system and I wasn't even planning on speaking out. But then I remembered that I am one of many and as hard as it is, I have to tell this story because otherwise it may never be told.

The solutions to these problems don't involve extra funding or any other sort of far-fetched miracle. They're very straightforward. Students need to be actively involved in how their support needs are met. All staff involved - that's mainstream teachers and support staff - need to sit down with students and discuss how they have previously accessed support and how this has or hasn't worked for them. Where it can be matched it should be, and if it can't then substantial reasons should be given as to why that is. Everyone needs to be made a part of the problem solving. Schools need to be more open to the fact that this may involve trying something new. In short communication needs work. Add into the mix a student-led disability awareness programme based on a straightforward peer support concept and right there you have an inclusive education system. Today mainstream inclusive education doesn't exist for me and many other students with disabilities. But the tools to make inclusive education happen are right there in front of us waiting to be picked up.

Policy and Legislation

New Zealand has a range of policy and legislative initiatives that aim to increase the presence, participation and achievement of students such as Katherine within an inclusive education system. All children in this country have the right to "quality education that meets their specific needs as learners"; therefore schools have a legal and ethical obligation to cater for all students, irrespective of age, gender, ethnicity and ability (ERO, 2003, p. 2). As stated in New Zealand's Special Education Policy Guidelines (MoE, 2003), young children and students with special education needs have the same rights to a high quality education as people of the same age who do not have special education needs.

The United Nations Convention on the Rights of the Child grants children the right to education that develops respect for human rights, their identity and democracy (Article 29). Similarly Section 8 of the Education Act 1989 states that ...people who have special educational needs (whether because of disability or otherwise) have the same rights to enrol and receive education at state schools as people who do not... All students are entitled to an education and it is against the law for any school to treat a student differently (e.g., by denying or restricting access to any services) by reason of any disability.

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The Human Rights Act 1993 reinforces the Education Act with its statement that people have the right not to be discriminated against on grounds of colour, race, ethnic or national origins, sex or sexual orientation, marital status, religious or ethical belief, disability, political opinion and family status. This Act stipulates that nobody (including children) can be treated less favourably than anyone else because of a disability. State and integrated schools are governed by Part 1A of the Act, which outlaws discrimination on the grounds of disability in education establishments. The Human Rights Commission has the power to inquire into any matter where discrimination is occurring. In addition, the New Zealand Bill of Rights Act 1990 states that everyone has the right to be free from discrimination, including disability.

The Health and Disability Commissioner Act 1994 set out consumer rights in a special code. For example, the provision of school services, such as physiotherapy, is classified as a disability service under this Act and must be provided at an appropriate standard (Darlow, 2008). Described as a long-term plan for changing New Zealand from a disabling to an inclusive society (p. 7), the New Zealand Disability Strategy (2001) outlines 15 objectives that aim to advance New Zealand towards a non-disabling society. While all objectives are indirectly related to the inclusion of disabled students in mainstream schools, the third one is particularly relevant, with the objective being to “provide the best education for disabled people” (p. 18). Neilson (2005) considers the New Zealand Disability Strategy to be “an illustration of the rights discourse in action” (p. 16). There are eight actions associated with the education objective:

1. Ensure no child is denied access to their local school because of their impairment;
2. Support the development of effective communication by providing access to education in New Zealand Sign Language, communication technologies and human aids;
3. Ensure that teachers and educators understand the learning needs of disabled people;
4. Ensure that disabled students, families, teachers and other educators have equitable access to the resources available to meet their needs;
5. Facilitate opportunities for disabled students to make contact with their disabled peers in other schools;
6. Improve schools’ responsiveness to and accountability for the needs of disabled students;
7. Promote appropriate and effective inclusive educational settings that will meet individual needs; and
8. Improve post-compulsory education options for disabled people, including: promoting best practice, providing career guidance, increasing lifelong learning opportunities for learning and better aligning financial support with educational opportunities.

In addition to Objective Three, schools might implement the Strategy by promoting and supporting the participation of children, young people, and staff with disabilities in school settings through Objective Four, which is about providing opportunities in employment and economic development for disabled people (ERO, 2003).

New Zealand ratified the United Nations Convention on the Rights of Persons with Disabilities on 26 September 2008. This first human rights treaty of the 21st century does not create new rights for disabled people; rather it builds on conventional understandings of requirements for implementing existing human rights as they relate to disabled people. According to the Office for Disability Issues (2009) the Convention will provide greater impetus and support for implementation of the Disability Strategy because the Convention makes it explicit that States must ensure the full realisation of all human rights and fundamental freedoms for all disabled people, on an equal basis with others, and without discrimination of any kind on the basis of disability. Already a feature of New Zealand law,

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Courts can choose to use the Convention as an international legal framework for their decision-making (Office for Disability Issues, 2009).

Special Education Policy

In 1996, New Zealand's first special education resourcing policy (SE000) was introduced, with the "overall aim to achieve a world class inclusive education system that provides learning opportunities of equal quality to all students" (MoE, 1996, p. 5). There are seven principles that guide the special education policy:

1. Young children and students with special education needs have the same rights to a high quality education as people the same age who do not have special education needs;
2. The primary focus of special education is to meet the individual and developmental needs of the young child and student;
3. All young children and students with identified special needs have access to a fair share of the available special education resources;
4. Partnership between students, families, whanau and education providers is essential in overcoming barriers to learning;
5. All special education resources are used in the most effective and efficient way possible taking into account parent choice and the needs of the young child or students;
6. A young child or student's language and culture comprise a vital context for learning and development and must be taken into consideration in planning programmes; and
7. Young children and students with special education needs will have access to a seamless education from the time their needs are identified through to post-school options (MoE, 2003).

While New Zealand has a range of policy and legislative initiatives that support the rights of children with disabilities to an inclusive education it can also be argued that labels such as *special education* and *special needs* are, by their very nature, exclusionary terms. The special education policy framework, however, is designed to meet the needs of a diverse range of learners with moderate and high needs through a variety of policy initiatives aimed at providing appropriate and equitable support within an inclusive education framework (O'Brien & Ryba, 2005).

Notwithstanding the necessary supports required by both students and teachers for inclusion to be successful (Prochnow, Kearney, & Carroll-Lind, 2000), inclusive education is still more about attitude than legislation (Forest & Pearpoint, 1992; Kearney, Bevan-Brown, Haworth, & Riley, 2008; Mentis, Quinn & Ryba, 2005; Spedding, 2008). Teacher attitude is paramount and contributes more to a child's success in education than funding or policies or legislation. Inclusive values and beliefs should underpin the whole school culture because they determine the policies and practices that will be put into place (Mentis et al., 2005; Ministry of Education, 2009). The following quote by Howie and Sleek (1987) is as relevant today as it was some years ago.

...Legislation is not a panacea. Along with the enactment of a legal right to education must go the provision of adequate facilities and equipment, the training of sufficient staff, and, most important of all, the instilling of the right attitudes in all those who participate in implementing the right. Nevertheless, it should not be forgotten that as often as changes in attitudes lead to changes in law, changes in law lead to changes in attitudes (p 69).

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Although much of it has had a couple of decades to “bed down”, the ideals of current legislation and policy do not match the realities of many students with diverse needs in New Zealand. Furthermore, in the area of inclusion a variety of tensions exist both in theory and practice because opposing discourses bring with them opposing practices (Kearney, Bevan-Brown, Haworth & Riley, 2008). There may well be agreement regarding general underlying principles of inclusive education, as well as general agreement around the purpose of inclusive education, but as stated by Kearney and colleagues (2008), there is also disagreement in practice. The Office of the Children’s Commissioner shares their opinion. Inquiries and complaints to the Office’s two advice lines indicate that students with disabilities (including behaviour) are most at risk of exclusion from school.

Nature of the Complaints Received by the Office of the Children’s Commissioner

The Office’s two advice lines field many inquiries from parents, professionals, and sometimes school principals and teachers, with concerns about individual children being denied access to education by their exclusion from all or part of the curriculum because of their disability. Collaboration with other organisations such as the Human Rights Commission, Families Commission, YouthLaw, IHC, and the Ombudsman’s Office indicate that they receive similar complaints to the ones received by the Office of the Children’s Commissioner.

The following examples of exclusion have been regularly reported:

- Students with disabilities are being sent home whenever they ‘misbehave’;
- Students with behavioural difficulties are not allowed to go on school camp;
- Parents are asked to keep ‘difficult’ children home during Education Review Office (ERO) visits;
- Students with diverse educational needs have faced Board of Trustees disciplinary hearings and are regularly stood down, suspended, or excluded for behaviour that is a recognised symptom of a medical condition or disability;
- Students with high physical and intellectual needs are not taken on school outings because they require too many resources;
- Children with diverse needs are often the targets of bullying by their peers.

Despite being a breach of the Education Act (s8), students with diverse needs are sometimes unable to fully participate at school because of limited attendance. Indicative situations included children: (1) not being allowed to remain at school over the lunch break; (2) only being allowed to attend school some days of the week; or (3) attending school during the hours each day that teacher aide support is funded. There have been cases where children have only been allowed to go on a school trip or camp if a parent accompanies them. Furthermore, some parents have been told that their child’s continued attendance at school is dependent on them “parent-helping” at the school for a number of hours per week which, in effect, is another way of asking parents to “top up” the teacher aide hours. For children already excluded from one school, there were cases of very slow transitions into their new schools. For example, one ten-year-old boy with high and complex needs was offered one hour a day in the school library with his teacher aide. The child’s behaviour fluctuated because he got angry about being kept in a room on his own when he wanted to be in the classroom with the other students. The transition progressed to the boy being allowed to attend school three days a week for four hours a day (9.00-11.30 am and 1.30-3.00 pm). A support agency provided funding for a full-time teacher aide to ensure the student’s successful transition into full-time attendance. The school, however, used that funding to employ a qualified remedial teacher instead, which given a teacher’s salary is much greater than a

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teacher aide's meant the child still remained out of school for large periods of the school week.

In some cases parents were expected to contribute to staff salaries when they were asked to "top up" teacher aide salaries. Other parents reported schools putting pressure on them to "voluntarily withdraw" their child, the rationale being that another school might better satisfy their child's needs. Some children were refused enrolment unless the child came with ORRS funding and others were refused enrolment altogether.

There were obvious cases of discrimination because of a child's specific disability. For example, one child was excluded from school unless she used a wheelchair at all times (against written advice from both her doctor and physiotherapist). After hitting his new taxi driver, another child was kept out of school for a term until a restraint was obtained (even though the taxi firm was willing to drive the child without a restraint because they acknowledged that informing the driver about autism and the importance of driving the same route might have prevented the incident from occurring in the first place).

New Zealand legislation is clear that schools cannot:

- refuse to enrol a student because of disability;
- give a student with a disability terms of admission which are not as favourable as that given to other students;
- treat a student detrimentally by giving a student with disabilities less benefits or services that those provided for other students; or exclude a student by suspending or expelling him or her because of disability (Darlow, 2008).

Yet, despite the number of New Zealand policies and legislation already in place, the nature and extent of complaints to OCC suggest that some students with diverse needs continue to be denied access to an inclusive education. These complaints mirror a recent doctoral study by Alison Kearney (2009) that investigated the nature of school exclusion in relation to disabled students. Kearney categorised exclusionary practices as being: denied enrolment and/or fulltime attendance at school; being denied access to, and participation within the curriculum; being bullied; inappropriate teacher and/or principal beliefs and practices in relation to funding; a lack of caring, valuing and responsibility by school staff; limited teacher knowledge and understanding; poor relationships between parents and school staff; and exclusionary beliefs and practices in relation to teacher aides.

Advocacy Role Played by OCC to Achieve Positive Outcomes for Students.

Advocacy means working to bring about change and is a planned strategic process. It involves trying to make things better and requires empathy, understanding and effort. Advocacy is about striving for justice (for individuals or groups). The following discussion highlights the ways in which the Office of the Children's Commissioner advocates to make inclusive education happen. In its advocacy role for children, the education section of the Office of the Children's Commissioner endeavours to: (1) provide positive outcomes for schools and students by maintaining students within the education system; (2) reduce barriers to learning which are created by conflict between schools, students and parents; and (3) improve relationships between the school sector and the community.

To meet these objectives, the Office of the Children's Commissioner provides an education advocacy service. One arm of this service aims to train and coordinate a nationwide network of community-based advocates who are able to assist children and their caregivers in the resolution of education-related problems. The second arm of this service, the Parents

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Legal Information Line (PLINFO) provides free legal advice, education and advocacy services for parents. This service is contracted to the Wellington Community Law Centre.

From the number and nature of calls received, it is clear that parents do not always know their child's rights, which is consistent with the research literature (see Cullen & Carroll-Lind, 2005; Liberty, 2000). Parents have to navigate a very complex world of entitlements and families do not always have the necessary support, skills and personal resources to empower them to access their support needs, information and resources. Most of these issues involve information needs, threats to families' confidence and interpersonal and family distress (Liberty, 2000). Knowledge is the key to effective advocacy and, to ensure the best educational outcomes can be achieved, our education advocacy workshops aim to provide information as well as building participants' child advocacy skills, within a right-based framework.

The Office of the Children's Commissioner also aims to identify and progress collective issues consistent with Office policy and role. Regular meetings are held with government agencies and education stakeholders as part of our systemic advocacy.

Complaints Process

The Office of the Children's Commissioner is never contacted when things are going well for students. By the time complaints are received by the PLINFO or the Child Rights Line there is already a breakdown in communication between home and school. When parents are concerned that their child's needs are not being met at school, the Office advise the following actions.

1. Speak to the child's teacher.
2. If that meeting is unsatisfactory, request a meeting with the principal and emphasise a student's legal right to attend school and to receive an appropriate education.
3. If parents fail to reach an agreement with the principal, the next step is to write to the Board of Trustees who is the school's employer. Parents can ask to attend the meeting at which their complaint will be addressed but they will need to get permission to speak at the meeting beforehand from the chairperson.
4. Parents can take a support person to the Board of Trustees meeting. OCC can provide advocates if requested.

Students and families have a right to:

1. Be heard and listened to sensitively;
2. Be told that the matter will be investigated and that there will be a response;
3. Receive feedback on the situations reported and receive a response that is appropriate to the nature of the complaint;
4. Be provided with protection from negative consequences of the reporting; and
5. Expect the school to intervene to make inclusive education happen.

If parents are unhappy with the Board of Trustee's response, they can contact either the Office of the Children's Commissioner; Community Law Centre; Ministry of Education; Education Review Office; Human Rights Commission or the Ombudsman's Office.

The Office of the Children's Commissioner attempts to facilitate equitable solutions for individual complainants in an effort to achieve better learning outcomes in terms of support and resourcing for children with diverse needs. Once the Office of the Children's Commissioner receives an inquiry or complaint, the Office will determine the basis of the complaint. In the first instance, the Office ascertains that complainants have exhausted the appropriate avenues of complaint, for example, they have tried to seek a resolution with the school and then lodged a formal complaint with the Board of Trustees and in some cases,

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Group Special Education (Ministry of Education). In order to facilitate a solution, the Office requires copies of all correspondence. OCC will also write to the Board of Trustees requesting a report on the decisions made. In cases involving declined applications for the Ongoing and Reviewable Resourcing Schemes (ORRS) the Office checks that parents know how to initiate the review process and their right to arbitration.

Conclusion

The inclusion of students with disabilities is a matter of social justice. Children and young people have the same basic human rights that adults have, but as a vulnerable population group, children with diverse needs have the added need for protection and promotion of their rights. The school curriculum is for all students and responding to diversity will ensure that inclusive education in New Zealand is truly a school for all.

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