

Education at Risk—Educational Care as Part of the Parental Responsibilities for the Child

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Research shows that the most important factor for the child's success in school is support from the parents. According to studies from several European countries, children, who have grown up under public care, often have unsuccessful school biographies. In Norway, some few studies indicate that the situation is not better for the children. One interpretation is that the CWS (child welfare services) are not able to compensate for parental failure. The author's law dissertation from 2008 was an analysis of the structures of human rights and the Norwegian legislation which secures the child's right to education and protection against marginalisation in school. Focus points were the corresponding obligations upon parents, school and the CWS. The intention was to find out whether the law is broken when some children drop out of school, or if the law is not better than it allows it to happen. Home, school and CWS as social institutions have their own acts and two of them have their own professionals with responsibility for the child's education. They are expected to live up to their duties, but if they do not, the national law offer few remedies to protect the child's education. The sector-based legislation demands from home and professionals that they know just their own part. This construction leaves the child dependent upon necessary collaboration between the parties and makes it vulnerable, if they limit their engagement.

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Introduction—The Concept Right

The concept right in legal terms may be defined mainly in two different ways:

- (1) As a synonym to the concept freedom. It is a right which other people has to respect and it is limited by other persons' freedoms, such as right to life and right to privacy. This much resembles the freedom of speech;
- (2) A right directly related to some one else. A right in this understanding is based upon a relationship with two or more parties. A right for one part constitutes an obligation or a duty for the others—to do, to stand or endure, or to refrain from something. Such rights often occur in constructions of mutual binding deals.

The right to education is of the later kind.

Legislation

The right to education is the object of legislation at two levels—a human rights level and a national level. Human rights enshrined in conventions and common for many countries. Each country decides its national legislation, and hereby, decides how to implement and enforce the human rights.

The right to education is enshrined as a human right in the United Nations 1966 convention of economic, social and cultural rights article 13 and in the convention on the rights of the child, articles 28-29. In the European Convention of Human Rights, education is not mentioned. But, according to the First Protocol, articles 1-2, “No one shall be denied the right to education”. The state “In the exercise of all functions which it assumes in relation to education”, “shall respect the rights of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions”.

A prerequisite for this paragraph is that each country is expected to have an educational system. The concept of education as a human right has been interpreted in some cases by the European Court of Human Rights. In the “Campbell and Cosans” case from 1982, it decided that the substance of the right to education is broader than the concept of teaching. The court would point out that the education of children is the whole process whereby, in any society, adults endeavour to transmit their beliefs, culture and other values to the young, whereas teaching or instruction refers in particular to the transmission of knowledge and to intellectual development. This understanding has been followed up in a human rights context—in the Convention on the Rights of the Child.

As we see, the child’s education is not only a two-party relationship between the child and school. The parents as well have a role to play. And for some children, the child welfare authorities are also involved. Kari Berg and the author have in their dissertations on children’s right to education and on education for children under public care, identified what they have named “educational care” as common responsibility for parents and school for the child’s education (Berg, 2009; Collin-Hansen, 2008).

In this presentation, the author’s ambition is to clarify the roles of these four parties, based upon Norwegian law, highlighting the parents’ educational responsibility for their children.

The Parties and the Legal Relationships Between Them

The School—Child Relationship

The main parties in the legal relationship regulating the child’s education are school authorities and the child.

According to the 1998 Education Act, the child has a right to education and the school has the obligation to fulfil the child’s right.

But, it is not that simple—also parents have a part, according to the 1981 Children and Parents Act. Education primary and lower secondary education is mandatory. The child as well has an obligation to attend education—in some countries, also an obligation to attend school. In Norway, the parents may decide to educate their children at home, and quite a small number of parents actually do. But, they have to be monitored by local school authorities, and if they do not comply with the curriculum demands, the child may have to attend the public or a private school. The author keeps the questions that may arise outside in the following.

School, on the other hand, can expect the child to meet and take part of the lessons. A point is, however, that to arrange is an obligation of the parents, so that the child is prepared to go to school. If the child is illegally absent, they may be fined.

It is not a primary duty for school authorities to control the child’s attendance—subject to school control is the parents.

Upper secondary education is not mandatory. It is a right for the child after completed the lower secondary education. The parents have a duty to see to it that the child’s right is fulfilled. All children are expected to take

upper secondary education, but the authorities are worried about the drop-out numbers.

The Parents

The parents' role in the child's education is defined by their legal responsibilities towards the child as well as from their rights and duties towards school. Although these are interlocked, the author wants to clarify some main points

The parents—School relationship. The system described makes the parents a part in a legal relationship to school, enforcing the child's school obligations at home.

They also have a role as the child's spokesmen towards school.

The parents—Child relationship. The legal relationship between parents and children is complex and multi-dimensional. The author will state some main points. On that basis, the author will draw attention to a few points of special relevance for the child's education.

One main point is that, in our society, it is a private responsibility to reproduce the population and bring up of future generations. Parents' responsibility for their child is of a total character—based upon nature, so to say. The relationship between parent and child enjoys a human rights' protection. Within these limits, each country is entitled to develop its own family politics and legal regulations for parents to perform their responsibilities. Parents are expected to want their children's best, and interference into the relationship between them has to be pursuant to law and based upon decision of legal authorities. If necessary, this allows the authorities to separate parents and child.

Main expectations to parents are to take care of and protect their children, to provide for them, so that they survive, and develop independence and ability to care for themselves. Part of parental responsibility is to arrange daily routines, so that the child can attend school and benefit from education.

Two Norwegian criminologists, Ericsson and Larsen (2000), who have interviewed parents, teachers and children in primary school, talk of the parent's role as school parents. One part of it is to organize family life according to school lessons, week-ends and holidays, so that the child does its school work and they can support the child at home. They also are expected to cooperate with school about their own child, such as parents' conferences with and about the child, to take part in school democracy, parents meetings and parents arranged activities.

Research shows that parents is the most important factor for children's success in school. Ericsson and Larsen (2000) showed that the children at an early age are messengers between school and home, and thus, control the information each of the parties has about the other. Essential for the child is on one hand, if necessary, to mobilise support from one arena to solve problem on the other, and on the other hand, to avoid that trouble on one arena affects the other.

Research on children leaving public care shows that unless education is given specially attention, the young people's school biographies are often miserable (Egelund & Hestbæk, 2003). An interpretation may be that school functions, at its best, are in cooperation with well-functioning homes.

Parents also have a role as the child's legal guardian. A child under age is—as a main rule—not entitled to maintain its own rights. Sometimes, the child may need support from the parents to meet trouble at school. But, Ericsson and Larsen (2000) showed that it seems to be certain limits for schools' willingness to meet parent's wishes. Based upon interviews with parents, Nordahl (2003) reported that parents, out of fear of consequences for the child, often hesitate or avoid bringing up with the teacher child's school difficulties.

In the author's dissertation on the child's right to education, he have analysed Norwegian case law in cases of compensation for inadequate education. Court practice shows that children sometimes are dependent on parents who are able and willing to fight for their educational rights. School, on the other hand, has its mechanisms to strike back when parents are too demanding. The number of children without parents standing up for them, who drop out of school, is unknown.

Thus, parents may be said to have three roles in the child's education: as caretaker, as ordinary school parents and as barricade fighters. Usually, it is not necessary to distinguish among them. But, when the responsibility is divided among several hands, the child will suffer the loss, if it slips.

That seems to happen when the child welfare authorities are involved—which is the fourth party in the picture.

The CWS (Child Welfare Services)

The CWS—Parent relationship. According to the 1992 Child Welfare Act, The CWS in Norway is a municipal authority. It has in individual cases a double mandate, first and foremost to help children and families, when the child is at home, and if that not possible, to protect the child by separating it from the parents.

Without going into details its measures is of two kinds, assistance to the child and the family, while the child is at home and outside home placement by force.

As assistance measures, the CWS may itself decide to render measures when the child is in the family, which is advice and guidance, economic and practical help, evidence-based programs like PMTO (parent management training, Oregon) and MST (multi-systemic therapy). In more serious cases, monitoring of the home may be decides. Outside home, placement with parents' consent also is regarded as an assistance measure, following the same procedures. A care order, which means out of home placement without parents' consent, may be imposed by the county board, which is a state court-like body. The condition for measures by force is that the child is maltreated or exposed to abuse or neglect or if it shows serious or permanent behaviour problems.

In the assessment and deciding what measures to use, the child's school life and the parents' school parents' abilities should be relevant. We do not have much empirical knowledge of how the work is carried out—it functions. It seems to vary among municipalities. We may suppose that information of the child's school experiences is available only from the child. Research shows that many social workers regard talking with children as difficult, and in many offices, they avoid it. A reflexion is that without talking to the child of how it is at school, it should be difficult to guide the parents in this role.

One difference between out of home placement with consent and by force is the time factor—to have a decision made and find a place for the child may take several weeks. In a great part of cases, an intermediate decision has been made and the child is already moved to a time limited residence. A consequence for many children is that they have to move several times before a permanent residence is established, which will often bring the continuity of education at risk.

When a child in school age is moved out of home, the child welfare authorities have a complex responsibility, wherein handling the child's education is but one. At first, the CWS is in position to secure the continuity of school services. That means to plan and carry through the change of school, when that is necessary—sometimes, several times. Part of this is to give necessary information so that school is prepared

when the child arrives. They also have to arrange so that parental responsibilities are transferred to the new caretakers in parents' place and keep up the child's motivation for learning during the process. We here talk of the school parents' duties towards the child as well as their obligations towards the school. Their responsibility is to see to the conditions for school work at home and for following up day to day work and helping the young person in his/her long term life plans.

Some children with a drop-out school career will need special help to catch up what is lost through a troubled past and sometimes also periods of waiting. This has to be done in cooperation among the CWS, school and the child itself. Responsibilities are very unclearly defined. The author will come back to the end.

In Norway, the CWS traditionally has been regarded as an institution controlling parents. We, these days, see a change in practice. In an increasing number of cases, the initiative to contact is taken by parents themselves. Experiences, reported by young people who have received help, is that they had had too little, not too much CWS. Cooperating with parents has been a strategy since the beginning of 1990s, which seem to be successful, although the number of children moved by force also is increasing.

The school—CWS relationship. As mentioned before, school history of children, aging out of public care, are often unsuccessful. The double grown up attention—from home and from school—seems to have been insufficient for their development. From a legal point of view, a question may be, if this is due to a lack of regulation of responsibilities between school and the CWS.

If we study the acts, we find some fragments relating to the meeting points between these two institutions. The Education Act § 15-3 give school an obligation to be aware of conditions that may lead to measures from the CWS. If there is a reason to believe that the child is exposed to maltreatment, abuse or neglect or have serious or lasting behavioural problems, school employees have an obligation on own initiative with exceptions from the duty to confidentiality to notify the CWS. If the child needs special education, the CWS may as well consent to it on parents' behalf. There are no further regulations of the cooperation between them. If we study the preparatory work for home-school cooperation, a few foot-notes state that the same is to be followed, if the child is staying with others than the parents.

When outside home placement is decided, the authorities, according to CWS Act, shall look for a home where the child can have "care and education in stable surroundings". Care for daily life is carried out by the foster parents or the institution in parents' place. Very few questions the meeting points between school and the CWS have been discussed in the act or the preparatory works

Nevertheless, how the parents' educational responsibilities are understood seems to be crucial for the child's success in school. A reason why education is just only mentioned may be that it is such an obvious part of parental care that it is unnecessary to say more.

The picture of generally poor school achievements by children under public care may indicate a need to strengthen the awareness of the parental part of the child's right to education. Or, may be, it is the level on ambition on behalf of placed children that need to be strengthened.

Conclusions

The author has pointed out some aspects on the concept of educational care. It deserves attention as a part of school and parents' common responsibility for the child's education. The concept needs to be developed and recognized. This does not mean that a strict definition is necessary.

It is the author's belief that for children who carry a burden of earlier experiences, it is crucial with

flexible rules and a range of discretion for those responsible for his/her daily life. To catch up what is lost, it may be necessary to make adjustments in content and progress to enhance the child's personal interests and conditions for learning. That may demand a process of negotiations. The right of the child to be listened to should be an essential part of this process.

To protect the rights of the child, it is necessary to make clear some characteristics of education as a public service. A main point is that education has to be provided in a process where the child is an active part. The responsibility to adjust the conditions for the child's learning process should be a joint venture for school and parents, and sometimes, also the CWSs.

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