
The rights of disabled ākonga: Bridging the gap between law and practice

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ABSTRACT

All children in Aotearoa New Zealand have the right to enrol in and receive a quality, inclusive education. Despite this, a recent report by the Education Review Office (ERO, 2022), the government’s external education evaluation agency, identified numerous ways in which disabled ākonga are excluded from and within the education system. This article explores one of ERO’s key findings: principals lack understanding of their legal obligations with respect to disabled ākonga. Through contextualising this finding within national and international literature on principals’ legal literacy, the urgent need for professional development (PD) to develop principals’ understanding of the relevant law is highlighted. Recommendations for the content and delivery of this PD are outlined along with regulatory measures to safeguard the rights of disabled ākonga.

KEYWORDS

Human rights, legal literacy, principals, education law

Introduction

The release of the “Thriving at School?” report by the Education Review Office (ERO, 2022) serves as a call to action to improve the quality and inclusiveness of education for disabled ākonga in Aotearoa New Zealand. Making this call to action all the more urgent is the fact that many of ERO’s findings are not new. Rather, they echo those of numerous studies (Bourke et al., 2000; Kearney, 2009, 2016; Macarthur, 2009; Starr & Janah, 2016) and indeed previous ERO reports (2010, 2013, 2015) that have raised concerns over the significant barriers to education that are experienced by the estimated 11% of children under 15 years of age who are disabled (Stats NZ, 2014).

This article explores one of the key findings from ERO’s (2022) report: school leaders lack understanding of the rights of disabled ākonga. Throughout the article, the term “disabled ākonga” is used as this aligns with the human rights model of disability that underpins the United Nations Convention on the Rights of Persons with Disabilities (CRPD, 2007), the New Zealand Disability Strategy (2016) and the Enabling Good Lives Approach (2022). Based on human rights principles, this

model views disability as a natural part of human diversity and recognises all human beings as rights holders whose inherent dignity must be respected (Degener, 2016).

The article is organised into four sections. Part 1 sets out the legal framework in relation to the rights of disabled ākonga and the associated legal obligations of principals. Part 2 outlines the key ways in which ERO (2022) found that the rights of disabled ākonga are being breached. In Part 3, ERO's findings are considered in the context of studies that have examined principals' legal literacy, with a focus on recent research conducted by the author (Leete, 2022). To conclude, Part 4 sets out a series of recommendations to safeguard the education rights of disabled ākonga by bridging the gap between law and practice. Particular emphasis is placed on supporting principals through professional development (PD) to develop their legal literacy.

Part 1 – Legal framework: What are the education rights of disabled ākonga?

Education is a fundamental human right of all learners and a means of realising other human rights (Committee on the Rights of Persons with Disabilities, 2016). It is indispensable to societal wellbeing and development (World Declaration on Education, 1994). The value of education for disabled ākonga in Aotearoa New Zealand is reflected in legal protections set out in domestic and international law.

The Education and Training Act 2020 (ETA20) explicitly provides that disabled ākonga have the same rights to enrol, attend school full-time and receive education as non-disabled ākonga (ss. 34, 36 ETA20). Strengthening the right to education by making it explicit that disabled ākonga have the right to attend school during all the hours the school is open, was one of the specific purposes of ETA20 (Hipkins, 2020). Through doing so, the New Zealand government expressed its intention to move closer to meeting its international legal obligations as outlined below (Ghahraman, 2020). In addition to the rights under ETA20, section 19 of the New Zealand Bill of Rights Act 1990 (NZBoRA) affirms the right to freedom from discrimination on the grounds set out in section 21 of the Human Rights Act 1993 (HRA), one of which is disability. In accordance with section 57 HRA, it is unlawful for an educational establishment to refuse or fail to admit a student; to admit the student on less favourable terms than would otherwise be available; to deny or restrict access to benefits or services provided by the establishment; or to exclude a student, by reason of their disability.

Aotearoa New Zealand has also demonstrated its commitment to education for all children by ratifying numerous international treaties (CRPD; International Covenant on Economic, Social and Cultural Rights, 1966; United Nations Convention on the Rights of the Child, 1989 (UNCRC)). Article 24 CRPD is of particular relevance to the education of disabled ākonga. In accordance with this article, the New Zealand Government must ensure the realisation of the right of persons with disabilities to education through an inclusive education system. To meet the requirements of Article 24, an education system must provide the following for disabled ākonga: equal access to a quality, inclusive education; reasonable accommodation of their needs; support to facilitate their effective education within the general education system; and individualised support measures within an

environment that maximises their academic and social development and that is consistent with the goal of full inclusion (art. 24(2)). Protection for the rights of disabled ākonga is also specifically recognised within UNCRC, the most comprehensive international statement of rights to and in education. Among the Convention's 42 rights, Articles 23, 28 and 29 set out the child's education rights. The combined effect of these interrelated articles is to provide a disabled child with the right to special care to ensure he or she has effective access to and receives education that is directed to developing the child's personality and abilities to their fullest potential. Under Article 4 UNCRC and CRPD respectively, Aotearoa New Zealand undertook to take appropriate measures to translate the rights within each Convention into reality.

In Aotearoa New Zealand, the education rights set out in the CRPD and UNCRC sit within the context of our founding document, Te Tiriti o Waitangi (Te Tiriti). ETA20 specifically recognises the Crown's responsibility to give effect to Te Tiriti (s. 9). For the education system to give effect to Te Tiriti, it must deliver equitable outcomes for ākonga Māori including those with disabilities. Numerous policy documents reinforce the education rights of disabled ākonga and the actions required to give effect to these rights. These include The New Zealand Disability Strategy (Office for Disability Issues, 2016), The Statement of National Education and Learning Priorities (Ministry of Education [MoE], 2020a), The Child and Youth Wellbeing Strategy (Department of the Prime Minister and Cabinet, 2019), Ka Hikitia – Ka Hāpaitia/The Māori Education Strategy (MoE, 2021) and the Action Plan for Pacific Education (MoE, 2020b).

Part 2 – ERO's findings: How are the rights of disabled ākonga being breached?

Over the last two decades, ERO has conducted 11 evaluations of provision for disabled ākonga in Aotearoa New Zealand's education system. What is unique about the 2022 review, is ERO's evaluation approach. This is the first time that ERO has conducted an evaluation of provision for disabled ākonga in partnership with the Human Rights Commission (HRC) and the Office for Disability Issues (ODI). An Expert Advisory Group composed of academics, practitioners, individuals and whānau with lived experience of disability also provided guidance throughout the evaluation. As a result, and unlike previous reviews, this evaluation is informed by diverse perspectives rather than just school (primarily leaders') perspectives. Additionally, there is a greater emphasis on ākonga and whānau perspectives on the quality and effectiveness of school practices and outcomes for disabled ākonga than in previous evaluations.

A mixed methods approach was taken by ERO, with data gathered from online surveys, interviews, focus groups, policy reviews and a small number of school site visits with observations. School leaders, teachers, teacher aides, sector experts, stakeholders, disabled ākonga and their parents and whānau all participated in the evaluation. In terms of school principals, the focus of this paper, interviews were conducted with 21 principals and an online survey was completed by 101 principals. These principals were drawn from across the 10 education regions, varying deciles (now equity index) and school types (primary, secondary, intermediate).

Based on their evaluation, ERO identified three key ways in which the rights of disabled ākongā are being breached. First, disabled ākongā are being discouraged from enrolling at their local school, typically on the basis that the school lacks the funding and/or resources to meet the child's needs. Second, and closely related to the first, disabled ākongā who are enrolled at school, are being sent home or asked to stay at home due to resourcing issues. Often this is when a teacher aide is unavailable to support the child. These first two practices are in direct contravention of the education rights of disabled ākongā set out in Part 1 above. Third, disabled ākongā are being stood-down or suspended from school at a rate estimated to be two or two three higher than that for non-disabled ākongā. While ETA20 provides for students to be removed from school, temporarily or permanently, on disciplinary grounds (s. 80), the persistent overrepresentation of disabled ākongā in the rates of these exclusionary discipline measures is concerning. In particular, it suggests that the current law and/or the way the law is implemented has a discriminatory impact on disabled ākongā. Given the wealth of research demonstrating the significant and enduring adverse consequences of removal from school, this is deeply troubling (Gluckman & Lambie, 2018; Wolf & Kupchik, 2017).

One of the underlying reasons identified by ERO for these rights violations was a lack of awareness among principals of their legal obligations towards disabled ākongā. Even among the most well-intentioned school leaders, ERO found that the rights of disabled ākongā were not well understood. This included a lack of understanding of the reasonable accommodations schools need to provide for disabled ākongā. As ERO's findings highlight, the education rights set out in Part 1 above are of little value if those who are tasked with upholding these rights are unaware of their legal obligations.

Part 3 – Principals' legal literacy: What does the research show?

While alarming, ERO's finding that principals lack understanding of their legal obligations is perhaps not surprising when considered in the context of research in the field of education law. Based on the importance of principals having an understanding of the law that relates to their role, a considerable number of overseas studies have examined principals' legal literacy (see for example, Eberwein, 2008; Tie, 2014; Trimble, 2017). Although there is some debate in the literature over the level of legal knowledge principals require for their role, it is widely accepted that legal literacy goes beyond simply having an awareness of the law and legal concepts; it requires the ability to apply that knowledge in everyday practice (Butlin & Trimmer, 2018; Decker, 2014).

While most researchers have examined principals' legal literacy across a range of areas of law relating to education, in more recent years a number of studies have focused on specific areas of law such as special education (Boyd, 2017; Overturf, 2007; Power, 2007; Singh, 2015). A survey containing legal knowledge questions has typically been used in these studies to assess principals' legal literacy. Despite variations in the question content and format to reflect the laws of the country in which the research was conducted, the results have been remarkably consistent: Principals lack legal literacy.

There is a paucity of research examining principals' legal literacy in Aotearoa New Zealand. Of the three studies conducted to date, two were Master's theses with small sample sizes, each drawn from

one education region (Naidoo, 2018; Wardle, 2006). This point was recognised by the authors, both of whom recommended more extensive research into principals' legal literacy. Responding to these calls for further research, and concerns raised by child advocacy groups (Office of the Children's Commissioner for Aotearoa, 2020a; YouthLaw, 2019), the author recently conducted a mixed-methods study that explored principals' legal literacy in relation to student discipline (Leete, 2022). Specifically, it explored principals' understanding and application of laws relating to student discipline, along with how principals develop their understanding of the law.

A mixed methods design was used for the research, with data gathered in two sequential phases. Full details of the research method for each phase are set out in Leete (2022). During the first phase, 76 secondary school principals from across the 10 education regions in Aotearoa New Zealand completed a survey that contained 21 legal knowledge questions developed from statute and common law. Based on their responses to these questions, a legal knowledge score was calculated for each principal. The mean legal knowledge score of 59.5% was consistent with the results from overseas studies that have used surveys to assess principals' legal literacy (Alazmi, 2020; Eberwein, 2008; Findlay, 2007). Similarly, the range was reflective of the wide variation in principals' legal knowledge that has been reported in the literature (Boyd, 2017; Power, 2007; Stewart, 1996).

Of particular relevance to the rights of disabled ākonga, were the results for the questions relating to human rights. Two questions inquired into principals' understandings of the relevance of NZBoRA and UNCRC in the context of student discipline. Just over half of principals (52.6%, $n = 40$) recognised UNCRC as relevant in the context of student discipline, while 73.7% ($n = 56$) recognised NZBoRA as relevant. Both questions attracted a high number of unsure responses (UNCRC: 43.4%, $n = 33$; NZBoRA: 23.7%, $n = 18$). Of those principals who recognised UNCRC as relevant, just 42.1% ($n = 16$) could provide a brief explanation of the Convention's relevance. Similarly, only 15 (27.8%) of the 56 principals who recognised NZBoRA as relevant were able to explain the statute's relevance in the student discipline context.

These results are concerning given that as discussed in Part 1 above, these laws protect children's fundamental human rights. Moreover, in ratifying UNCRC the Aotearoa New Zealand Government undertook to take active steps to ensure the principles and provisions of the Convention are widely known (art. 42). The same obligation to raise awareness applies in respect of the CRPD (art. 8). The United Nations Committee on the Rights of the Child (2011, 2016) and the Committee on the Rights of Persons with Disabilities (2022) have repeatedly criticised Aotearoa New Zealand for failing to increase awareness of the Conventions among duty bearers and rights holders alike. Similarly, the Office of the Children's Commissioner for Aotearoa (2020b) and The Children's Convention Monitoring Group (2018, 2019), have urged the New Zealand Government to strengthen its efforts to increase understanding of human rights among educators. Without an understanding of these rights and how to apply them, principals may unintentionally contravene students' rights.

The survey also gathered data on the training undertaken by principals in laws relating to student discipline. Currently, principals in Aotearoa New Zealand are not required to undertake any specific postgraduate study or PD prior to taking on their role. Consistent with studies conducted in other countries such as Australia (Stewart, 1996; Trimble, 2017) where there is no requirement for

principals to hold any specific qualifications, the percentage of principals who had completed a postgraduate course with a legal component was low (5.6%, $n = 6$). After taking on their role, the majority of principals (85.5%, $n = 65$) had attended some form of PD in laws relating to student discipline. For most, this was a workshop (38.9%, $n = 42$) or seminar (47.2%, $n = 51$). Interestingly, and again consistent with results from a number of overseas studies (Boyd, 2017; McCann, 2006; Stewart, 1996), no statistically significant difference in legal knowledge scores was found between principals who had and had not attended PD (M difference = 2.5, $t = -1.99$, $df = 11.6$, $p = .07$). This highlights the need for careful consideration to be given to the nature and delivery of PD in this area.

The only variable that did impact on principals' legal knowledge score was legal action. Exactly fifty percent of the principals who completed the survey had experienced threatened or actual legal action as a result of a student discipline decision they had made. These principals had a significantly higher mean legal knowledge score than those who had not (M difference = 1.4, $t = -2.1$, $df = 74$, $p = .04$, Cohen's $d = 0.5$). This suggests that experiencing legal action may increase a principal's understanding of laws relating to student discipline. Clearly developing an understanding of the law in this way is undesirable for principals, whānau & ākongā alike.

The interviews that were conducted during phase two of the study provided further insight into principals' experiences of learning the law. Sixteen of the principals who completed the survey participated in a semi-structured interview. While the interview questions primarily focused on laws relating to student discipline, many principals spoke more generally about how they developed their understanding of the legal aspects of their role. Using thematic analysis (Braun & Clarke, 2021), the theme of "Learning Through Experience," was constructed to capture the way in which principals developed their understanding of the law. While most spoke of participating in an Aspiring Principals' Programme and/or a Beginning Principals' Programme, only one recalled there being a legal component in the programme. In the absence of PD, principals explained that the main way in which they learnt about laws relating to student discipline was "on the job" (P103). Understandably, this learning mode was a considerable cause of significant stress for some principals. Reflecting on the lack of preparation that principals receive before entering the role, P104 opined, "I think it's no small wonder that the attrition rate of principals is pretty high and that the wellbeing is pretty low, because we're thrown into a job that we're basically not prepared for". The fact that there was no correlation in the survey results between the number of years a principal had been in their role and their legal knowledge score ($r = -.01$, $N = 76$, $p = .97$), reinforces the problematic nature of this "on the job" learning mode.

Part 4 – Bridging the gap

Professional development for principals

Taken together, the results from the author's study, previous studies into principals' legal literacy, and ERO's report, highlight a clear need for principals to be supported to understand their legal obligations. This was reflected in ERO's recommendations, one of which was to review and

strengthen PD for principals. The author's study again provides some useful insights to inform the nature and delivery of PD in this area.

As discussed above, the survey results indicated that participation in PD did not increase principals' understanding of laws relating to student discipline. The interview data shed light on this result. Just over half of the principals who were interviewed had attended a workshop, seminar or presentation on education law that included some content relating to student discipline. These ranged in duration from one hour through to two days, were organised through national or regional principals' associations or private providers, and were typically delivered by lawyers. Principals' views on the value of these learning opportunities varied. Most considered that the content was relevant to their practice. However, the lecture style delivery mode was regarded by many principals as divorced from the reality of daily practice and therefore "a little bit artificial" (P109). As such, "experience on the job" (P103) and "finding out by doing" (P159) continued to be the main way that they developed their understanding of the law.

Based on their learning experiences, the principals who were interviewed made a number of recommendations for PD. There was a clear consensus that case-based instruction that focused on application of the law would be most valuable. Referring to the vignettes provided by the author to interviewees, P103 commented, "I think what's really valuable is like what you did, is putting out some scenarios and talking about as a group of principals, what would you do in this situation and I don't think we do enough of that actually". While not reflective of the workshops and seminars that these principals had attended, this case-based approach aligns with recommendations made in overseas legal literacy research (Decker & Pazey, 2017; Decker et al., 2019). These studies emphasise the need for training to not only impart legal knowledge but to teach principals how to apply the law through practice-based scenarios (Decker & Pazey, 2017; Schneider, 2021; Trimble, 2017).

The complexity of the legal issues that principals may encounter further highlights the importance of a case-based approach. In the context of human rights law for example, the rights of one student are often seen as in conflict with the rights of others. A common example affecting disabled ākonga is where the right to education of a child displaying challenging behaviour is perceived as conflicting with the right to education of other students. Simply being aware of the right to education is likely to be of little use to a principal faced with such a situation. Indeed, research indicates that when faced with such a conflict and with a limited understanding of human rights law, the rights of the majority are typically prioritised over the rights of the individual child (Gillett-Swan & Lundy, 2021). Research in Aotearoa New Zealand suggests that such a rationale often underpins principals' exercise of their statutory discretion to stand-down or suspend a student (Leete, 2022). This is significant given the overrepresentation of disabled ākonga in the rates of these exclusionary discipline measures. To support principals in meeting their legal obligations, it is essential that PD provides opportunities for them to apply the law to such complex, yet relatively common, scenarios. This includes recognising when legal advice should be sought.

Keeping with the strong practice focus for PD, it is suggested that guidance on policy development is provided. Under Aotearoa New Zealand's self-managing schooling system, policy development is an important aspect of the principal's role. Although the Board of Trustees as a legal entity is

responsible for this task (ETA20, s. 125(2)), research shows that in practice the task of policy development is led by the principal (Abel & Casswell, 1997; Anderson, 2009). ERO (2022) observed that while many schools had policies that reflected their legal obligations towards disabled ākongā, these were frequently externally sourced and pre-prepared. As such, principals' engagement with and understanding of the legislation referred to in the policies was unclear.

ERO's findings align with the legal literacy studies canvassed earlier. In their respective studies with principals in Aotearoa New Zealand, Wardle (2006) and Naidoo (2018) found that principals lacked confidence in policy development and the majority relied on pre-prepared policies without an understanding of the legality and suitability of these policies for their school context. The author similarly found in her research that many schools paid a private company, which undertakes to provide schools with policies that comply with all relevant legislation, to develop their policies and procedures (Leete, 2022). Lack of expertise in policy development, coupled with workload pressures, were the most common reasons given by principals for paying for this service. P162 for example, explained,

There is a lot of time spent on policy and policy isn't usually my strong suit and I usually rely on someone on the board who is good with policy but that can be a bit inconsistent. We had an outstanding person for about nine years but then they went and then suddenly I thought where do I go? You know, so yeah they're the reasons why we got involved with it.

Based on these findings and the inherent risks involved with relying on pre-prepared policies, guidance on policy development should be a key component of principals' PD. In particular, opportunities need to be provided for principals to review and critique their school's current policies in terms of their consistency with ETA20, UNCRC, CRPD and Te Tiriti, along with the school's culture and context.

Finally, it is important that PD explains the rationale behind specific laws. Research shows that even where principals are aware of the law, they may disregard it if it conflicts with other normative influences within the decision-making environment and/or with what they consider to be best practice (Ferguson & Webber, 2015; Leete, 2022). This is illustrated by reference to Kiwi Suspensions, an unlawful practice that involves removing a student from school without going through the formal discipline process set out in ETA20. YouthLaw's research in Aotearoa New Zealand (Walsh, 2016) indicates that as with formal removals, disabled ākongā are extremely disproportionately impacted by Kiwi Suspensions. The author's study found that on some occasions Kiwi Suspensions were used by principals with the best of intentions but without an appreciation of how their actions may compromise students' rights. It is therefore vital that PD for principals discusses the purpose of the various rights of disabled ākongā and conversely the detrimental impact on ākongā of breaching these rights.

Empowering disabled ākonga and their whānau

In addition to finding that many school leaders were unaware of their legal obligations vis-à-vis disabled ākonga, ERO found that some parents and whānau were unaware of their child's rights or how to raise concerns. This adversely impacted on their ability to advocate for their child. Although ERO did not inquire into knowledge of rights among ākonga, previous research conducted in Aotearoa New Zealand has highlighted widespread lack of awareness among children and young people of their human rights (McCluskey & O'Neill, 2021; Riak et al., 2016). This is significant given that in ratifying UNCRC and CRPD, Aotearoa New Zealand committed to not only teaching educators about the rights in these Conventions, but to also informing other adults and children about their rights (CRPD, art. 8; UNCRC, art. 42). This knowledge is essential for preventing human rights violations, eradicating discrimination and fostering respect for the rights and dignity of disabled persons (Office of the High Commissioner for Human Rights, 2019; United Nations Committee on the Rights of the Child, 2001). It is therefore vital that both whānau and ākonga are educated in age and developmentally appropriate ways about what their legal rights are, how they may be breached, and what they can do if a breach occurs.

Dispute resolution scheme

Just as crucial as supporting principals to understand their legal obligations, is the need to provide disabled ākonga and their whānau with a timely and accessible means through which to challenge rights breaches. The options that are currently available, such as complaining to the Ombudsman, are slow and in the case of judicial review proceedings, prohibitively expensive. In light of this, it is perhaps unsurprising that whānau who participated in ERO's evaluation and the Highest Needs Review (MoE, 2022) felt that their complaints about experiences of exclusion were not dealt with effectively.

Access to justice is a basic principle of the rule of law (Finlayson, 2009; New Zealand Law Society, 2020). As leading human rights scholar, Michael Freeman, has said, "rights without remedies are of symbolic importance, no more" (2010, p. 18). If the rights in Aotearoa New Zealand's domestic laws and international conventions are to have meaning, there must be remedies available to redress violations. For this reason, human rights advocates in Aotearoa New Zealand have long been calling for an accessible and efficient independent complaint mechanism through which to resolve disputes between ākonga, their whānau and schools (Human Rights Commission, 2020; Office of the Children's Commissioner for Aotearoa, 2020a; Tomorrow's Schools Independent Taskforce, 2019; YouthLaw, 2012, 2020). Aotearoa New Zealand has also been repeatedly criticised by the United Nations Committee on the Rights of the Child (2011, 2016) and the Committee on the Rights of Persons with Disabilities (2022) for failing to provide an independent mechanism to monitor compliance with the legal obligations set out in UNCRC and CRPD respectively.

It appeared these calls for an independent complaints mechanism had finally been answered with the introduction under ETA20 of provisions enabling the establishment of a dispute resolution scheme (ss. 216-236). Under the scheme, dispute resolution panels are intended to facilitate timely resolution of "serious disputes" (s 217 ETA20), which is defined as including disputes about the student's right to enrol and attend school, the learning support they receive, and student discipline

decisions (s 217 ETA20). However, over two and a half years after the enactment of ETA20, the wait for the establishment of the panels continues. Given the fundamental importance of access to justice, priority must be given to the establishment of the panels. As the Commissioner for Children, Justice Eivers, recently commented, “these panels are a necessity, not a luxury” (Gerritsen, 2022).

Beyond resolving individual disputes, it is suggested that the panels have an important role in bridging the gap between law and practice. A data management system could be used to identify trends in the types of issues being dealt with by the panels, with this information then being used to inform the delivery of PD and resources. Significant panel decisions could be disseminated to school leaders and whānau in an accessible format that clearly sets out the implications of the decision for school practices and processes. Without such measures, and based on the large number of education disputes dealt with annually by YouthLaw¹ (2020) alone, the panels could well be overrun with disputes. This may in turn result in significant delays in hearing disputes, which is particularly concerning in circumstances where ākongā are out of school during this time. A preventative approach is also desirable given the inevitable damage to the school-ākongā-whānau relationship caused by a protracted dispute.

Compliance monitoring

The final recommendations for bridging the gap between law and practice relate to data collection and compliance monitoring. Disabled ākongā are seldom identified in national achievement and engagement data. This is troubling as data are essential for understanding the extent to which the rights of disabled ākongā are being upheld or conversely, breached. Echoing calls from numerous organisations (Human Rights Commission, 2020; Office of the Children’s Commissioner for Aotearoa, 2020b), advocacy groups (IHC New Zealand, 2021; VIPs Equity in Education, 2020), and the United Nations Committee on the Rights of the Child (2016) and Committee on the Rights of Persons with Disabilities (2022), ERO recommended systematic data gathering and monitoring of educational outcomes for disabled ākongā. As well as using this information to strengthen learning support at a systems-wide level, ERO recommended that both they and the MoE investigate when a school repeatedly fails to meet their legal obligations towards disabled ākongā. Interestingly, in the author’s study, a number of principals supported compliance checks in relation to the use of exclusionary discipline measures. P103, for example, spoke of expecting to be questioned by the MoE over the high rates of stand downs and suspensions at his school.

I’ve never been questioned on how many stand downs or suspensions we have despite our statistics being quite high and I would have expected to be questioned on that and you know, had some conversations about the way we do things and checking that we do things correctly probably by the Ministry or someone. But that’s never happened.

Like P103, other principals expressed surprise at the lack of compliance monitoring at a national level.

¹ In their 2020 submission on the Education and Training Bill 2019, YouthLaw estimated that they deal with 350-400 education disputes every year, with many involving complex, multifaceted issues.

The need to strengthen the monitoring of data relating to the engagement of disabled ākonga is particularly important in light of the new and amended provisions within ETA20. In their select committee submission on the Education and Training Bill 2019, the New Zealand Principals' Federation (2020) warned that without additional resourcing, the strengthening of the right to education for learners with "special educational needs" in section 34 ETA20 would inevitably result in a significant increase in the rates of exclusionary discipline measures. To determine whether this prediction translates into a reality, data on exclusionary discipline measures needs to be disaggregated by disability. Similarly, there is a need to gather, monitor and disaggregate data by disability on the use of provisions under ETA20 that exempt students from attendance. Section 42 ETA20, for example, is a new provision that provides for the development of either a wellbeing or transition plan that reduces a student's hours of attendance. Concerns have been raised by disability advocates over the potential for parents to be coerced into a plan on the basis that if the student attends school full time without the necessary support misbehaviour may occur resulting in the student being stood down or suspended (Auckland Disability Law, 2020; Office of the Children's Commissioner for Aotearoa, 2020a; YouthLaw, 2020). Research has also raised concerns over section 45 ETA20 being used, contrary to its legislative intent, to send disabled ākonga home on disciplinary grounds (Walsh, 2016). Collecting data on the use of these provisions is a crucial step towards ensuring they are used for their intended purpose.

Conclusion

The education rights of disabled ākonga are protected in Aotearoa New Zealand through both domestic and international law. Yet, as ERO's (2022) report highlights, exclusion from and within education is the reality for many disabled ākonga. The need to give effect to the rights of disabled ākonga by ensuring they have access to quality inclusive education is urgent. Building on ERO's finding that principals lack understanding of their legal obligations vis-à-vis disabled ākonga, this article has argued that principals need to be better prepared through PD to understand the relevant law. Research into principals' legal literacy provides valuable insights into the content and delivery considerations that must be addressed when designing PD for principals. Actioning the recommendations outlined in Part 4 of this article is a crucial step towards ensuring all ākonga in Aotearoa New Zealand are able to develop to their fullest potential through education that respects their rights.

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