



Education Act update 2015

SUBMISSION TO	Ministry of Education
REGARDING	Education Act update 2015
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YouthLaw Aotearoa (“YouthLaw”) is a Community Law Centre vested under the Legal Services Act 2000. We were established in 1987 as a national centre providing free legal advice and advocacy for children and young people under 25 years of age. We also work to promote the interests of children and young people at local and national levels when decisions, laws or policies affecting them are being created.

ACYA (Action for Children and Youth in Aotearoa) is a coalition of non-governmental organisations which promotes the rights of children and young people through advocacy, monitoring and implementation of the UN Convention on the Rights of the Child and other international human rights instruments.

YouthLaw has particular specialty expertise in education law. We routinely provide advice on our 0800 legal advice line on all aspects of education law from enrolment, suspension, removal either formally or informally from school, special educational needs and accessing special educational support. Through our legal advice and advocacy work, we are able to see how the current education law and policies impact on our young clients and areas where the law could be revised to better enable access to education.

SCOPE OF SUBMISSION

Youthlaw & ACYA welcome the opportunity to participate in public consultation in relation to the Education Act update 2015. Youthlaw & ACYA support some key findings of the taskforce that there are aspects of the Education Act 1989 that require reconsideration in light of changing societal demands.

The following five proposals are subject to public consultation:

1. Making sure everyone knows the goals for education – What the goals for education should be, and how national priorities for learners aged 0-18 years could be set out.
2. Supporting school and kura boards to focus on what’s important – How the responsibilities of boards can be made clearer, unnecessary red tape can be removed, and boards can respond more effectively to lift student and school performance.
3. Enabling collaboration, flexibility and innovation – How resources can be better focused to get the best whole-of-community education outcomes.
4. Making every school and kura a great one – How a graduated range of responses could be developed to better support schools when difficulties arise.
5. Making best use of local education provisions – How local arrangements can support choice and diversity.

We wish to submit on all points above. Additionally, we wish to address the following in particular:

- (a) Barriers to inclusive education which impact on student achievement; and
- (b) How unclear responsibilities at a school board level can significantly impact any action taken pursuant to Section 14 of the Education Act 1989.

We also wish to respond to some of the high level recommendations made by the taskforce.

Making sure everyone knows the goals for education – What the goals for education should be, and how national priorities for learners aged 0-18 years could be set out.

Commentary by the United Nations special rapporteur on the right to education has set out that education should be available, accessible, acceptable and adaptable.¹

The United Nations Convention on the rights of the child in article 28 states that:

- (1) state parties are to recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity and shall in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in the case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
- (2) State parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the convention.....

Article 29 states:

- (1) State parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents, and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the charter of the United nations
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he is she may originate, and for civilizations different from his or her own
 - (d) The preparation of the child for responsible life in free society, in the spirit of understanding, peace, tolerance, equality of sexes and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin

¹ United Nations Committee on Economic, Social and cultural rights, General Comment 13.
< <http://www.ohchr.org/EN/Issues/Education/SREducation/Pages/InternationalStandards.aspx>>.

Our perusal of the taskforce papers details the historical background to the Education Act being established in response to an administrative review of the schooling system. As a result, the legislation has a very procedural nature. The task force papers set out that the current focus of the schooling system is raising student achievement and there is a desire to improve legislation and regulation to support this focus.

It is hypothesized that the Education Act 1989 does not provide a visible statement of desired goals and outcomes for the schooling system. It is postulated that schools currently receive a range of messaging from the government about the desired goals and outcomes for the schooling system through various pieces of legislation, regulation and guidance. It is also pointed out that national education goals (NEGs) are currently only found in third tier legislation. The task force has pointed out that the NEGs have not been subject to any significant amendment since 1989 despite significant changes to societal context that have occurred since. Some task force suggested responses include providing more guidance of goals in the Education Act itself and also reviewing or replacing the NEGs. A key recommendation is that the Education Act be amended in consultation with the schooling sector to contain a purpose section outlining desired outcomes for the schooling system which is enduring, inclusive, and student-centered.

What should the goals for education be?

The task force paper² has outlined the benefits in not prescribing curriculum and syllabuses in acts or regulations allowing flexibility and adaptation for the future. It is suggested that goals ought to be broad and formulated following consultation.

We concur with the recommendation that consultation with the sector to develop goals is necessary. We also note that it is vital that consultation with the sector, ECE and schooling is regularly reviewed in addition to this and there must be provision for the inclusion of students in a student centered process.

As a preliminary point we also suggest that an **education system needs to be child-centred**. Any formulations need to **recognise the emerging capacity of the child**.

We submit that education goals should reflect broad aims. We refer, by way of example, to broad goals cited in the ECE curriculum that all children ought to grow up confident and competent, able to communicate, and safe and secure in the knowledge that they make a valued contribution to society. There **ought to be recognition of concepts of social responsibility such as tolerance and respect for others**. We put forth that broad goals are useful which should include key elements such as:

- Fostering the urge to inquire;
- Nurturing self-esteem and well-being;

² On regulations affecting school performance (what are the essential things education should address?)

- Developing respect for others;
- Fostering participation in society.

We suggest some key concepts which should feed into development of goals can be sourced from the Strategic Review of Early years investment paper³ which could include:

- Effective early years intervention which supports both current and future generations to address cycles of poverty or violence. In other words, **a cross-generational early intervention approach**
- Implementation of measures that utilise the **benefits of engaging with parents and whanau**

We point out that the report of Next Foundation provides useful evidence that community based, “ground up” solutions are effective compared to those imposed from above. We also put forth that there is a need to evaluate innovation and emerging practice in research to capitalise on these benefits.

Whilst we applaud the emphasis on student achievement as the focus of the task force recommendations, we note that other factors which are canvassed above are also central to education goals. Despite the fact that these broader goals cannot be measured in the same manner as student achievement, we take the view that such broader aims are still vital to a functioning and flourishing schooling system.

There is already a significant amount of guidance regarding achievement education goals for schools and ECE in NEG, second and third tier legislation, and policy. Enacting at a primary or secondary tier would not necessarily alter the implementation of these aims. It may be useful to consolidate all policy centrally in consultation with all those in the sector particularly those responsible for the provision of education.

Whilst focus on student achievement is laudable, this must be accompanied by practical implementation measures which include monitoring, assessment and enforcement.

We suggest that **formative measures of assessment better reflect student learning**. Measures of progress are more appropriate for younger children as opposed to summative, standardized measures which may become outdated quickly and limit a child’s development to full potential.

Supporting school and kura boards to focus on what’s important – How the responsibilities of boards can be made clearer, unnecessary red tape can be removed, and boards can respond more effectively to lift student and school performance

³ Centre for social impact, A foundation North initiative “A strategic review of Early years investment” July 2015
<https://d2lpg680qnjw8a.cloudfront.net/1002/2015-07-31-strategic-review-of-early-years-investment-2306151.pdf>

The task force has questioned whether board structures are the most appropriate mechanism for all schools. An example cited is the following:

“A small school had run out of trustees. Every family in the valley had been on the board of trustees at one time or another. Although all families were committed to the school, family and business pressures were such that insufficient people remained on the board for it to remain legally viable. The Ministry of Education had to appoint a commissioner to take over the board. Such was the commissioner’s success that the school’s families approached the Ministry seeking permission for the commissioner to carry on. However, even when a commissioner does a successful job and has the support of the community the Education Act requires elections to be held for a board of trustees at the earliest possible opportunity.”

The taskforce has not proposed any dramatic elimination of the current board of trustee systems, however, has suggested introduction of changes that would challenge the current hegemony of traditional schooling arrangements. The task force has claimed that lifting quality of school governance will lift student achievement through the layers of the school system.

The task force⁴ claims that characteristics of effective boards include:

- Focus on student learning and achievement
- Exercise of scrutiny and making data-informed decisions
- Maintenance of positive relationships and clear roles
- Efficient use of time
- Engagement with the school and community
- Identification of priority learners and resource initiatives to improve learning

The taskforce identifies key challenges and issues with the current effectiveness of boards which includes:

- Lack of financial strategies for closing equity gaps
- Choice, competition and voice
- Teacher governance and monitoring
- Integrated approaches to education and poverty reduction
- Low decile schools, small schools and schools in remote areas are more likely to have difficulties attracting and retaining trustees with the right balance and range of skills
- Many boards seek external advice to manage appointment and appraisal responsibilities. However, the quality of advice is variable which means that poor processes can have a large impact on school performance
- Lack of clearly defined roles and responsibilities
- Lack of clarity and communication between boards and principals

⁴ Paper on regulations affecting school performance (a selective review of evidence about the regulation of schooling systems)

- Current board model only allowing focus on a trustee of the school as an organisation rather than focusing on students or wider outcomes
- Board member fees are low relative to responsibility
- The self-managing school model places heavy demands on members of boards who are essentially lowly paid volunteers
- Lack of capacity of boards to govern, lack of experience in human resources, finance, law, governance and education
- Lack of understanding of roles and lack of clear definitive guidance in legislation unlike tertiary institutes and councils or crown entities
- Boards interpret roles and responsibilities in diverse ways
- Few boards see themselves acting as a government agency. Due to the high level of autonomy granted to oversee, few consider themselves to be crown entities or subject to the accountability requirements which apply to other crown entities (this can also be partially explained by school accountability to communities)
- Tension between boards and principals due to lack of clarity
- Some boards undertaking activities which are not mentioned in the act or identifiable as core activities that can be inferred from the act
- Financial and legal risk to the Crown if schools undertake activities that jeopardise the core function of the school.
- Boards are unaware of the restrictions that apply to them as crown entities. For instance not being permitted to borrow money, give a guarantee, indemnify a person, acquire securities, or enter into a derivative transaction without the permission of the Minister of Education or Minister of Finance
- School charters are just a “box ticking” exercise despite the intent that a school charter should be a key part of the planning and reporting process of a school; functioning as an accountability document, a strategic plan, a way of communicating with the community, a guide for principals on board intentions and a contract between the school and the Crown.
- Division of powers between section 75 and 76 of the Act between principals and boards is confusing. The sections provide for absolute discretion and little else.
- A need for boards to have access to robust student achievement data and the ability to understand and interpret the information they receive.⁵
- A call for improvements in the current model of board training and support to boards
- The need to strengthen principal appointment and appraisal processes
- The importance of retaining flexibility for boards to exercise their governance role to suit the needs of their school and its community

⁵ Taskforce paper on Regulations affecting school performance : A selective review of evidence about the regulation of schooling systems

The taskforce has suggested resolutions which include changing the Education Act to clearly define roles and responsibilities or improve guidance about roles and responsibilities to Boards. There is benefit in sourcing boards that are reflective of the local community. The task force has also pointed to considering reporting responsibilities and involvement of parents and communities in key decisions. It has been reported (for example from anecdotal discussions with other professionals in the sector) that the partiality of parents could pose barriers, as well as motivations for parent representatives to act in their children's own interests rather than the individual child in question.

YouthLaw is aware through legal advice work carried out on our 0800 legal advice line that the bulk of board membership consists of well-meaning parents and community members who may have little or no knowledge of education law or financial and property management. This is often accompanied by a lack of understanding of the obligations and duties required and the statutory function that the board member is required to fulfil

We agree it may be **useful to clarify and expand on other duties and obligations**. This is particularly in light of the fact that boards carry out functions which have long lasting and large scale ramifications for a child's future pursuant to section 14 of the Education Act in discipline. Clarification of board duties that may fetter that discretion, such as relevant legislation and international conventions that have since been enacted/ratified (such as the Bill of Rights Act or United Nations Convention on the Rights of Persons with Disabilities), would be useful.

Moreover, with inclusion of parents and the community in reporting processes, we **strongly urge inclusion of children's voices** to be considered and included in conjunction with audit and monitoring processes.

Whilst it is commendable for the taskforce to state that boards ought to operating to achieve integrated approaches to education and poverty reduction, much of this should also rest with principals. Any such measures should also recognise that this can be very problematic for some schools and devise methods that can be enacted to prevent further entrenching of inequality.

We also dispute the assertion that there is a need for boards to interpret student data. We note that there may be conflict of interest issues that would arise particularly where there are small boards in rural areas. This would mean board members accessing data about other children in the community. Moreover, **teachers are expertly trained and in the best position to interpret student data** in adherence with a code of ethics and oversight by the Education Council.

We also strongly suggest **there should also be consideration of increasing payment for board members, requirements for ethnic diversity such as Maori (for example Mana Whenua representatives) or Pasifika, and provision for collaboration.**

What should the roles and responsibilities of a school or a kura board be?

The taskforce has claimed the clear definitions of roles and responsibilities of a board would emphasize the aspects of good governance that enables lifting of student achievement. Key issues that emerged from a stocktake of board of trustees undertaken by the ministry of education

Suggested inclusions from the taskforce comprise the following:

- Working collaboratively with parents and whanau to improve student wellbeing and achievement
- Working with other boards and education services within the community
- Working in partnership with their Maori community
- Having an inclusive school and kura
- Consulting with the community over guiding policies and practices.
- Setting policies to guide and direct school and kura management
- Ensuring the school or kura's curriculum and assessment practices meet the requirements of the Act
- Appointing staff and evaluating their performance
- Providing a safe physical and emotional environment for students and staff
- Setting a strategic plan that reflects the goal and priorities of the government and community
- Publicly reporting on progress against the strategic plan
- Undertaking regular self-reviews
- Operating in a financially responsible way
- Setting objectives for the school and monitoring results.⁶
- Monitoring and planning progress in relation to the school's charter and annual plans
- Reflecting government priorities
- Having sound fiscal and property management
- Being a good employer
- Ensuring school leadership maintains student and staff safety

Improving guidance to school boards on role/responsibility

We postulate that there are a number of ways through improving guidance to boards (either through second or third tier initiatives) such as the following:

⁶ We submit that this should be formatively and not summatively, especially for younger children; and not for public, league tables. The RAIN study (Thrupp, 2009) found principals in 7 schools in the Waikato altered and skewed results to give the appearance of better performance. We also note there is evidence that some schools prevent students from sitting national exams because the results bring down the average.

- **Implementation of uniform processes when investigating and disciplining students.** This could include “best practice” guidance and the ability to refer difficult situations to an advisory panel. Second or third tier guidance akin to recent search and seizure in education guidelines issued by the Ministry of Education could be considered. We contend that the guidance ought to be quite prescriptive, detailing the methodology of a fair investigation of misconduct, clear and detailed examples which warrant serious disciplinary action, and how to ensure a process is carried out that is consistent with natural justice obligations. A relevant qualified body such as the Ministry of Education should have a role in implementation, oversight and audit of these processes.
- **A bare minimum requirement either at a primary legislative level or even a second or third tier level requiring a minimum level of training** (which could be as straight forward as an online video) to be completed by inducted board members which would provide an overview of Education Law principles and statutory duties to be discharged. This could be accompanied by re-draft of legislation with consultation and input from principals and board members
- **Requirement that boards have at least one member who has particular qualifications.** For example, a professional member such as a lawyer for legal expertise in education and employment law matters and a member with financial or property qualifications to address board business such as fiscal and property management. This could build on training networks in place with STA. We acknowledge this may pose issues with small and rural schools so some flexibility may be required in such circumstances.

Discipline under Section 14

Given a lack of expertise in law, unfair outcomes for students may sometimes regrettably ensue when boards overstep their powers. In particular, there have been failures by the boards to comply with Section 13 of the Education Act 1989, which requires them to adhere to the processes of natural justice and due process⁷ when making disciplinary decisions pursuant to Section 14 of the Education Act 1989.

Boards have the power to permanently remove a student from school (following a decision to suspend by a school principal) and there is little ability to challenge this decision or seek recourse. Given the significant life disruption to a student and potentially catastrophic consequences and costs to the social welfare and justice sectors, it is vital that the responsibilities of boards when applying section 14 of the Education Act be clarified.

The board has a statutory function to act independently to review the principal’s decision to ensure it meets the statutory threshold justifying removal from the school. The only avenues of recourse that a student has following an adverse decision are to ask the board to reconsider, complain to the ombudsman (who can only issue a recommendation) or take a time consuming and costly judicial review in the High court which can only challenge process.

⁷ Equal Justice Project “Cross-examination: Trustee Issues – Balancing school discipline and Fair treatment”
<<http://equaljusticeproject.co.nz/2015/08/cross-examination-trustee-issues-balancing-school-discipline-and-fair-treatment/>>

Given the enormity of removal of a child from school on not only the future of that individual but also the potential social, criminal and welfare costs that may flow, it would appear vital that any consideration of board functions should consider on an ancillary basis how to reduce resort to discipline under section 14 and the incidence of exclusions from school where possible.

Some possible actions that could be utilised to address rates of exclusion which include:

- Developing the Rules/Guidelines in a more detailed and comprehensive manner and improving existing provisions to ensure a fairer process (such as in the Education Amendment Act 1998)
- Setting up off-site units for students in trouble at school
- Providing resources such as additional funding or services for schools that provide education to “at risk” students
- Providing a service which makes agreements with boards of trustees on behalf of parents and students who have been suspended (such as the non-enrolment truancy service)⁸

The need for an independent tribunal

We also contend that an additional layer of protection could be enacted through the establishment of an independent appeal tribunal to hear appeals from disciplinary decisions. Over time, a body of case law could be established to provide additional guidance and precedent value for boards carrying out functions under Section 14 of the Education Act.⁹ We take the view that this would be extremely beneficial for a number of reasons. Students that are subjected to decisions of stand-down, suspension, exclusion or expulsion grapple with serious flow-on consequences. There is no dispute that prolonged periods of exclusion from school result in significant disruption to academic progress. This goes on to limit career opportunities and increase the propensity for anti-social behaviour. It could be argued that a burden is placed on wider society to ameliorate these conditions through increased expenditure in the health, education, and welfare sectors. In light of such concerns, the need for Boards of Trustees to get it right when decisions are being made about a young person’s ongoing education is profound. Principal Youth Court judge Andrew Becroft has remarked the bulk of “traffic” in the Youth Court relates to young people who are disengaged from education.¹⁰

The current regime under the Education Act (more particularly section 14) affords students and parents very few opportunities for recourse. A decision by a board of trustees to exclude or expel is effectively final, with no direct right of appeal or challenge. To attain even a modicum of justice, students and parents must reply upon a patchwork of legal and quasi-legal mechanisms which can be time consuming, costly and provide little in the way of actual remedy.

The United Nations Special Rapporteur on the Right to Education has stated that the right to education need to be justiciable, meaning it is capable of enforcement and appeal to an

⁸ Discussion paper “Legislation for learning”

⁹ Youthlaw “Out of sight, out of mind” 2012

¹⁰ Equal Justice Project “Cross-examination: Trustee Issues – Balancing school discipline and Fair treatment”
<<http://equaljusticeproject.co.nz/2015/08/cross-examination-trustee-issues-balancing-school-discipline-and-fair-treatment/>>

independent body.¹¹ The process in New Zealand can be contrasted to England where in the event of an adverse decision, students and parents have the right to appeal to an independent appeal panel. The panel is able to provide an impartial forum in which both the substance and the procedural propriety of the decision can be challenged with the ability to order reinstatement. YouthLaw suggests that the implementation of a similar panel in New Zealand would preserve the flexibility of Section 14 whilst ensuring that students in the most serious of cases would be able to ensure a process consistent with natural justice principles. This would provide a layer of protection and accountability to the roles and responsibilities of boards particularly when exercising discipline under Section 14 of the Education Act.

Thought should be given to **implementing processes to reintegrate students who have been stood-down, suspended, excluded or expelled**. These should not be focused solely on the student, but should take account of the school climate including teachers' attitudes, other students' attitudes, the environmental factors and the support mechanisms (teacher aide time; catch-up work). A restorative, (as opposed to punitive) rehabilitative learning and social plan should be in place for students. **The student should have a voice in this process alongside parents, whānau and school staff.**

What changes could be made to simplify planning and reporting? How can we better provide for groups of schools and kura to work together more to plan and report?

High level recommendations from the taskforce include:

- More effective planning and reporting processes for schools to be designed in consultation with central government agencies
- Removal of red tape around planning processes
- Allowing high performing schools to move to longer planning and reporting cycles
- The obligation for planning and reporting to be clearly defined in the Act
- Development of mechanisms to identify to schools examples of good practice assisting with governance at a board level
- Introduction of detailed third tier legislation allowing effective three to five year strategic planning to take place with annual review
- Introduction of a regulated process through which charters are reviewed ensuring all charters are provided on uniform dates allowing the Ministry ample time to review the same. It is hoped that this would obviate a focus on compliance and allow proper focus on planning and raising student achievement.
- Removal of regulatory barriers to effective school management.

We note that there also needs to be a **process for audit and review external** to any school boards and it is vital that there is **provision for inclusion of children's views into the process**. There may be benefit in removal of regulatory barriers, however, it must include

¹¹ Equal Justice Project "Cross-examination: Trustee Issues – Balancing school discipline and Fair treatment"
<<http://equaljusticeproject.co.nz/2015/08/cross-examination-trustee-issues-balancing-school-discipline-and-fair-treatment/>>

children’s perspectives and ought to **address barriers to inclusive education that pose major obstacles to student achievement.**¹² We also point out that there is a substantial body of growing evidence that there is a direct correlation between socio-economic circumstances and student achievement. As such, it is vital that planning incorporate and address those issues.

How should schools and kura report on their performance and children and young people’s achievement to parents, family, whanau and communities? What should the indicators and measures be for school performance and student achievement and wellbeing? What freedoms and extra decision-making rights could be given to schools, kura and communities of learning that are doing well? What additional supports or responses are used to address problems that arise in schools and kura? How should area strategies be decided and how should schools, kura and communities be consulted? What should be taken into account when making decisions about opening, merging or closing schools?

Living document

There is also suggestion in the discussion paper “Legislation for learning” that the current school charter procedures do not meet the goal of student achievement. The possibility of a living document partnership is outlined. The document could lay out the direction to be agreed by the school, parents and government recording undertakings and obligations. There would be provision for regular review and reporting. It could also clarify when schools can make their own decisions and when there is a need for government intervention and provision of extra support. It is claimed that this would move the focus away from process to student achievement. We supports the idea of a “living document” as this would enable the strategic and operational priorities to be set and evolve with changing needs and requirements. We suport the idea of regular review and suggests that any such processes ought to include provision to include children’s voices in the formulation of the living document and also in any review processes.

Maori Medium sector

The taskforce has stated that the Maori-medium sector needs to be involved in the design of new regulation to ensure it is culturally responsive to the core principles and practices of Maori-medium education. It was reported that the predominant overarching comment was that the current regulations are not designed with kura in mind. In particular, the treaty relationship is not reflected in the current legislation and the competitive design of the system does that support the collaborative way or working that the Maori-medium sector sees as essential to success. It is suggested that parents and whanau ought to hold

¹² Kirsty Johnson “Education investigation: The great divide” NZ Herald 4 November 2015 <http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11539592>

educators accountable not the Ministry of Education. For Kura Kaupapa Maori, Te Aho Matua is the charter and governs reporting. It is claimed that the current board system does not work for kura. The preference is for governance bodies to be as large as possible to include all interested whanau. Board positions are often set aside for mana whenua who own the knowledge and tikanga that run the kura. Certain regulatory practices can have the potential to cause undue burden and it is suggested that flexibility be adopted and innovation be commended. It is noted that it is vital that the Maori-medium sector is involved in all consultation and formulation of policy moving forward. We express no opinion on how flexibility in regulatory requirements could be adopted and simply affirm that it is **vital to ensure that the system be culturally responsive to the needs of the Maori-Medium sector particularly in light of statistics that reflect that Maori students are disproportionately represented in stand downs, suspensions, exclusions and expulsions from school.**

We also make reference to the “Legislation for learning” discussion paper that projects that by 2051 one in five students will be from a Pacific cultural background. Most of these students will be in mainstream schools. Pacific parents report that many state schools do not meet the needs and aspirations of Pacific students. **It is vital that reformulation of education priorities is also culturally responsive to the needs of Pasifika students.**

Flexibility

The taskforce has also hypothesized that schools often do not use the flexibility available to them in the Education Act to enable them to carry out their primary function of raising student achievement. It is stated that the Education Act enables schools to be largely self-managing and the flexibility provided in governance, curriculum and student management is not used frequently. One example cited is the fact that the Education Act allows boards to co-opt members onto the board allowing broadening of skill base. Statistics gleaned show this is only used in approximately ten percent of boards. Moreover, less than one percent of boards have taken up the option under the Act which allows changes to the composition and number of board members with the agreement of the Minister. The taskforce puts forth that there is a need to ensure that the flexibility in the Act is simpler to access and use.

A further ancillary matter raised was whether schools have sufficient flexibility to set the school day and year to maximise student achievement. Concerns have been raised about the loss of learning over the long summer break and how it has been shown to be particularly damaging for students from low socio-economic backgrounds. For example the Maori-medium sector indicated that the inability to hold lessons on culturally significant public holidays (such as Waitangi day) can impede learning and is not culturally responsive. There is also some suggestion that cohort entry could be amended to minimise disruption to new-entrants by letting five year olds start in groups rather than individual birthdays.

We express no opinion on the proposed changes to flexibility, but agree that there is a **need to ensure that the regulation is culturally responsive particularly for the Maori-medium sector and to note that any revision to length, duration or otherwise of school terms, days and teaching periods must be premised on an inclusive education system.**

It is also reported¹³ that there are concerns about the way the legislation works with respect to enrolment and whether this enables flexibility for schools. These include where home zones are drawn, being unable to have a say in the composition of their student body, and parental attempts to find loopholes in the system to get a student enrolled at a school of their choice.

YouthLaw receives a significant number of queries related to enrolment issues on its 0800 legal advice line and we consider that there is a need for clarification of the provisions to address these issues. It is **vital that enrolment schemes ensure inclusive education and that any policies do not operate in ways that have unintended discriminatory consequences for young people.**

Collaboration

The taskforce claims that schools are not taking up opportunities to collaborate with other schools for the benefits of students. Taskforce suggestions include sharing innovative ideas and examples of best practice and utilising collaboration. The public discussion document suggests there might be provision for area strategies. It has been noted that the current funding system may provide disincentive for collaboration and this may need to be reviewed. The discussion paper “Legislation for learning” queries whether all schools should be required to report and be monitored in the same way to allow collaboration.

At present the Education Act allows schools to share funds and decision making for particular programs or resources with a school being a lead fund holder. It is suggested that a new initiative “investing in educational success” could be a means to focus on raising student achievement and support the education profession to build quality and consistent teaching. This would enable collaboration without regulatory change.

There are genuine queries as to whether a strong evidential link between increased use of flexible provisions and student achievement can be shown. It appears to be clear that some reporting processes may be quite onerous particularly for some schools.

We express no opinion on the suggested recommendations but simply note that although some flexibility may be desirable, **when considering the vital statutory functions that are carried out by boards, regulation and guidance ought to be the default position although a different position in relation to kura may be more appropriate.**

Small schools

A further issue that has been raised is regulatory burden on small schools. It is postulated by the task force that the design of new education regulation should consider the cost-benefit of compliance burden placed on small schools. It is suggested that second and third tier regulations be informed where possible to limit the compliance costs on small schools. Small schools (primary schools with less than 150 students or secondary schools with less than 300 students) make up 43% of all schools in New Zealand. These schools are often located in rural areas. This leaves principals with large amounts of work who are required in classrooms and also for reporting and compliance. There is little opportunity for

¹³ Taskforce paper on regulations affecting school performance: as relevant to primary and secondary education

collaboration given rural distance. Some suggestions include pooling resources for administrative support.

We express no opinion on this suggestion but simply note that **barriers to inclusive education are particularly prevalent in small and rural schools and this is a matter that needs to be addressed through increased support and training to those professionals working in those schools. Issues with board roles and responsibilities are also heightened given the limited pool of potential board members and rural and distance difficulties in rendering a cohesive program of oversight and implementation. As such, increased support and training is vital.**

Barriers to inclusive education

It has been canvassed above in our submission that we view the regulation of board roles and responsibilities as critical, particularly in the context of Section 14 of the Education Act.

We refer to the “Legislation for learning” discussion paper which tracks a trend of rising suspension rates. It is also noted that correspondence school is intended to be a last resort, however, YouthLaw can report through anecdotal evidence received on our legal advice line that students are increasingly being deflected from mainstream school into correspondence for convenience reasons rather than being a last resort. There is a vast amount of anecdotal evidence which indicates that this does not best meet the needs of these vulnerable students. These students are then left without mainstream schooling support and often their parents are ill-equipped to manage the supervision aspects of the correspondence curricula. The potential disruption to education and student achievement levels is immense if a board does not carry out functions pursuant to the Education Act correctly when determining a student’s continued future at school.

It is certainly laudable to wish to focus on a goal of student achievement. However, **fundamental barriers to student achievement include current barriers to inclusive education which need to be addressed before overall student achievement can be lifted.**

The taskforce paper outlining regulations affecting school performance¹⁴ notes that New Zealand’s education system is not working well for the most vulnerable students which include Maori and Pasifika students, students with special educational needs, and students from low socioeconomic backgrounds, who have a lower than average rate of achievement across a range of indicators. The paper notes that there may be opportunities to employ regulatory tools to compensate for disadvantage and support effectiveness throughout the education system.¹⁵

¹⁴ A selective review of evidence about the regulation of schooling systems

¹⁵ The taskforce paper on regulations affecting school performance (what are the essential things Education regulation should address?) notes that regulation can be very effective in setting and enforcing standards for safety and quality. The taskforce paper notes that the best systems have produced approaches to ensure that schools can compensate for the disadvantages resulting from a student’s home environment and background. The paper notes that New Zealand when compared to other jurisdictions (such as the United Kingdom, Sweden and the United States) has significantly less regulation. The paper also notes that the highest performing education systems across the OECD combine quality with equality. The vast majority of students in these systems have the opportunity to attain high-level skills, regardless of their background and personal circumstances. Investing in early, primary and secondary education for all, and in particular for

Whilst it has been stipulated that the scope of the consultation does not include considerations of how to increase allocated budgets, we propose that consideration of the spread of services is warranted.

We make reference to the taskforce paper discussing regulations affecting school performance¹⁶ which sets out the formula for calculating a school's operational grant. The key components of this include:

- A major per-student component which depends on the year level of each student
- A "base-funding" component which is significant for smaller schools but abates and becomes less significant in the context of other funding for larger schools
- Targeted funding for educational achievement which is based on the number of pupils and a school's socio-economic decile rating. Low decile schools receive more funding
- Most support for special education for students with special needs is provided centrally. Schools receive a special education grant as part of their operational funding and extra staffing for individual students with high and very high special education needs.

Our views on barriers to inclusive education

At present there are significant barriers to inclusive education which stem from the New Zealand state school resourcing system.¹⁷

The taskforce paper on regulations affecting school performance¹⁸ states that there is little evidence to suggest that the Tomorrow's schools reforms led to a systemic improvement in school standards. It is claimed that issues such as Maori underachievement were not addressed either.

The current funding system provides schools with operational grants to spend at their discretion. Special education funding is based on a hierarchy system whereby very high needs support is available upon application and is limited. For example, high needs funding under the ORS system is targeted at 1% of the school population. Where students may have more moderate needs, it is envisaged that schools will be able to use their allocated special education grant (SEG) which forms part of their operational grant. The SEG is not calculated based on the assessed need of a number of students with special needs but on the decile ranking and total enrolment numbers of a school. YouthLaw consistently receives reports from the sector that this formula is not effective in meeting actual student needs. Given the narrow criteria and arduous process to obtain high needs support, many students with serious need for support cannot obtain funding despite having very high needs. They are

children from disadvantaged backgrounds, is both fair and economically efficient. One of the most efficient educational strategies is to invest early and all the way up to upper secondary. Governments can prevent school failure and reduce drop out using two parallel approaches: eliminating system level practices that hinder equity; and targeting low performing disadvantaged schools.

¹⁶ The New Zealand state school resourcing system

¹⁷ Reference is made to the information cited in the 13 February 2014 Taskforce on regulations affecting school performance paper

¹⁸ A selective review of evidence about the regulation of schooling systems

unable to have their needs met within limited SEG funds. This is a significant hurdle to inclusive education and has a large effect on levels of student achievement. It is not only a student with special needs that does not receive adequate support that experiences barriers to student achievement. Without support, difficulties stemming from managing special needs students can disrupt and impede the learning of other students. Furthermore, if special needs students are all sharing and vying for limited support and resources, they simply cannot lift their academic achievement. **We suggest there is a need to consider the current spread of allocation of resources to ensure that barriers to inclusive education are removed so that student achievement levels across the board can be lifted.**

We also wish to point out wider issues that impinge on student achievement. **We note that there is evidence of a strong correlation between social economic circumstances and student achievement**¹⁹. It has been stated that “New Zealand’s gap between the pass rates of rich and poor is one of the widest in the world and persists”²⁰. It has been reported that there are key areas where the system is weak: “the decile funding model; the number of types of interventions; the lack of ability to attract and keep quality teachers and leaders in low-decile schools; [and] “Failure” to address the underlying issue of poverty.”²¹ It is stated that “...poverty [is a key factor] and the fact that Maori and Pasifika students are over-represented among the poor” and “attempts to close the gap by focus on classrooms or schooling alone [are] ... insufficient.”²²

We suggest that amendments and policies that are formulated need to take into account these factors in planning and moving forward. We also points out that with any process it is critical that provision is made for children’s voices to be included and for monitoring and independent audit as a check.

Other barriers to inclusive education and student achievement that are consistently reported to YouthLaw include reports of lack of **comprehensive training and professional support for staff to ensure staff are adequately resourced to deal with issues such as special educational needs** (for example there are no minimum qualifications to become a Teacher Aide or Special Needs Co-ordinator at a school). We suggest better support, training and minimum training requirements would be beneficial, at least at the senior level. Although all staff in schools should be equipped with training and ability to access support and assistance with special education (for example access to Resource teachers of learning and behaviour).

Summary

In sum, the central recommendation from the taskforce suggests a student achievement focus ought to be implemented.

¹⁹ Kirsty Johnson “Education investigation: The great divide” NZ Herald 4 November 2015
<http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11539592>

²⁰ Kirsty Johnson “Search continues for schools silver bullet” 5 November 2015
<http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11540372>

²¹ Kirsty Johnson “Search continues for schools silver bullet” 5 November 2015
<http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11540372>

²² Kirsty Johnson “Search continues for schools silver bullet” 5 November 2015
<http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11540372>

Our central submission is that rather than such a narrow focus, **a child rights based approach to reviewing the Education Act should be undertaken.**

There should be an **emphasis on ameliorating any barriers to inclusive education and safeguarding against processes for removal from education by boards which do not adhere to the principles of natural justice.** Education resourcing is an important consideration for student achievement, and we suggest per student funding would ensure **equitable and effective distribution.** There should be **implementation of processes that allow for active participation of all students (in accordance with the United Nations Convention on the Rights of the Child) and allowance for student voices within their education system which includes those who are more vulnerable such as Maori, Pasifika and disabled students.**

