

**Inquiry into the identification and support for students
with significant challenges of dyslexia, dyspraxia
and autistic spectrum disorders
in primary and secondary schools**

Education and Science Committee

2 October 2015

Introduction

1. The Human Rights Commission welcomes the opportunity to provide this submission to the Education and Science Committee on its Inquiry into the identification and support for students with significant challenges of dyslexia, dyspraxia and autistic spectrum disorders in primary and secondary schools ('the Inquiry').
2. This submission is predominately concerned with the application of human rights principles when developing frameworks for identifying and supporting students with dyspraxia, dyslexia and autistic spectrum disorders, in particular the right to an inclusive education under Article 24 of the UN Convention on the Rights of Persons with Disabilities. A human rights approach stands in clear contrast to the traditional "medical approach" to disability issues, which tends to describe individuals differences as deficits. Instead, a human rights approach celebrates diversity, emphasises individual strengths and serves to highlight systemic shortcomings in accommodating diversity amongst individuals.
3. As the Committee will no doubt be aware, failure to provide adequate educational support for children and young people with learning difficulties can result in lifelong disadvantage. This can include barriers to entering the workforce and obtaining well remunerated employment¹ and disproportionately high rates of contact with

¹ See Human Rights Commission, *Tracking Inequalities at Work*, <http://tracking-equality.hrc.co.nz/#/issue/employment>, accessed October 2015. For example, the disabled Maori have over 8 times the rate of unemployment as non-disabled males aged 45-64, over 70% of disabled women earn less than \$30,000 per annum.

the criminal justice system and incarceration². The Commission considers that an education system predicated on the human rights principles of inclusive education and reasonable accommodation of the needs of these students is well geared to address such disparities.

4. Further to these principles, the Commission encourages the Committee to directly focus its attention on the experiences and views of students and their families in order to ensure that their perspectives are strongly reflected in the Inquiry's resulting recommendations.

Dyslexia, dyspraxia and ASD – background information

5. Dyslexia and dyspraxia affect large numbers of New Zealand school students. Dyslexia, which causes difficulties in the acquisition of literacy and numeracy skills, is estimated to affect 70,000, or one-in-ten, primary and secondary school students.³ The Dyslexia Foundation of New Zealand describes dyslexia as a learning preference, rather than as a disability, which can be addressed through a creative, individualised approach to learning.⁴
6. Dyspraxia, also known as Developmental Co-ordination Disorder, is similarly widespread. The World Health Organisation Diagnostic and Statistic Manual IV (DSM IV) estimates approximately 6% of children are affected. Dyspraxia is described as a neurological disorder that “affects the planning of movement to achieve a predetermined idea or purpose”.⁵ It affects ideation, motor planning and physical execution of that planning and can impair learning. It has been described as a “hidden” disability that may occur concurrently with other neurological disorders, making diagnosis difficult.⁶
7. Autistic Spectrum Disorder (ASD) is less prevalent, estimated by the Ministry of Health to affect approximately 1% of the population⁷. ASD delays language skills,

² The Department of Corrections has estimated that around 71% of New Zealand prisoners have difficulty reading and writing; see Department of Corrections, *Education, job skills and working prisons*, August 2013, http://www.corrections.govt.nz/resources/education,_job_skills,_and_working_prisons.html

³ Dyslexia Foundation of New Zealand, <http://www.dyslexiafoundation.org.nz/info.html> accessed September 2015

⁴ http://www.4d.org.nz/edge/4d_edge.html

⁵ Dyspraxia Support Group of New Zealand, <http://www.dyspraxia.org.nz/index.php?page=what-is-dyspraxia>, accessed September 2015

⁶ *ibid*

⁷ <http://www.health.govt.nz/your-health/conditions-and-treatments/disabilities/autism-spectrum-disorder>

social behaviour and cognitive skills. A child with ASD will have difficulties or delays in all three of these areas as they grow and develop.⁸

8. ASD affects each child differently and covers a range of disorders, including Asperger's Syndrome and autism. Some children may experience only mild difficulties, or experience more significant problems in one or two areas of development, such those children with Asperger's Syndrome which predominately affects social behaviour. Other children experience severe problems across all three developmental areas.⁹

The human rights framework

9. When considering the design of educational practices that meet the diverse needs of this large group of students, a set of foundational principles can be found in Article 24 of the UN Convention on the Rights of Persons with Disabilities (CRPD), concerning the right to education. The Ministry of Education has referred to the CRPD as placing a binding obligation upon New Zealand to provide an inclusive education system, an obligation that is reinforced by the New Zealand Disability Strategy and supported by the National Curriculum¹⁰.

10. In particular, Article 24(2) provides for:

- a. The right to access an inclusive, quality education on an equal basis with others [Art 24(2)(b)].
- b. Reasonable accommodation of the student's requirements [Art 24(2)(c)].
- c. The right of students to receive support within the general education system, and that such support measures are effective, individualised, provided in environment that maximises academic and social development, and consistent with the goal of full inclusion [Arts 24(2)(d) and (e)].

11. The UN Convention on the Rights of the Child further reinforces these principles, providing for:

- a. The right of the disabled child to effective access to and receipt of education in a manner conducive to them achieving the fullest possible social integration and individual development [Art 23.3].

⁸ ibid

⁹ ibid

¹⁰ Ministry of Education, *Supports and Services for Learners with Special Education Needs/Disabilities*, April 2012

- b. The right of the child to education on the basis of equal opportunity [Art. 28.1].
- c. An obligation on the State to ensure that the provision of education is directed towards the development of the child's personality, talents and mental and physical abilities to their fullest potential [Art 29.1(a)].

12. In April 2015, the UN Committee on the Rights of Persons with Disabilities convened a Day of Discussion on the right to education under Article 24 of the CRPD for the purpose of formulating a General Comment on its interpretative scope and applications. To date, the UN Committee is yet to release its General Comment, however the Commission recommends that the Education and Science Committee takes note of this development and gives consideration to the General Comment when it becomes available.

13. The UN Committee on the Rights of the Child has, however, previously affirmed the right to an inclusive education in its General Comment No 9 concerning the rights of children with disabilities, noting that¹¹:

Inclusive education¹² should be the goal of educating children with disabilities. The manner and form of inclusion must be dictated by the individual educational needs of the child...

It is important to understand that inclusion should not be understood nor practiced as simply integrating children with disabilities into the regular system regardless of their challenges and needs. Close cooperation among special educators and regular educators is essential. Schools' curricula must be re-evaluated and developed to meet the needs of children with and without disabilities. Modification in training programmes for teachers and other personnel involved in the educational system must be achieved in order to fully implement the philosophy of inclusive education."

¹¹ CRC/C/GC/9, 27 February 2007, p 19, 20

¹² The CRC refers here to UNESCO's *Guidelines for Inclusion: Ensuring Access to Education for All* (UNESCO 2005) which provides the following definition: "Inclusion is seen as a process of addressing and responding to the diversity of needs of all learners through increasing participation in learning, cultures and communities, and reducing exclusion within and from education. It involves changes and modifications in content, approaches, structures and strategies, with a common vision which covers all children of the appropriate age range and a conviction that it is the responsibility of the regular system to educate all children...Inclusion is concerned with the identification and removal of barriers..." (p. 13 and 15)

Observations on issues arising from the terms of reference

Best practice approaches

14. When considering best practice approaches, the Commission would encourage the Committee to consider how the human right principles outlined above are incorporated into, and reflected by, current practices frameworks and guidelines. The Commission notes that, as part of the *Success for All* inclusive education policy agenda, the Ministry of Education has developed extensive guidance and advice materials for teachers for teaching students with dyslexia, dyspraxia and ASD.¹³
15. With regards to the realisation of the right to inclusive education guaranteed under Article 24 of the CRPD, ERO's final 2015 report on *Success for All* indicates that, while the policy's objective of a fully inclusive educational environment has not been reached, some progress has been made. ERO's 2014 evaluation of a sample of 152 schools found that 78% were mostly inclusive, compared to 50% in 2010. However, ERO also reported that only half of the schools were effective in promoting achievements and outcomes of students.¹⁴ ERO went on to issue broad recommendations for schools and the Ministry of Education focused at improving the use of achievement data, increasing teacher capability, and improving the information available to school boards.¹⁵ Regarding the use of data, the Commission notes that the current Better Public Services targets regarding education do not provide any specific focus on outcomes for disabled students. This perhaps points to a need for future measures to include a set of strength-based targets based on inclusive education principles and informed by disaggregated data.
16. The Committee may therefore wish to inquire as to what future measures the Government intends to take to achieve a fully inclusive education system, now that the *Success for All* programme has concluded.

¹³ <http://inclusive.tki.org.nz/guides/dyslexia-and-learning/> ; <http://inclusive.tki.org.nz/guides/category/asd/> ; <http://inclusive.tki.org.nz/guides/category/dyspraxia/>

¹⁴ Education Review Office, *Inclusive practices for students with special needs in schools*, March 2015, page 2, page 28 accessed <http://ero.govt.nz/National-Reports/Inclusive-practices-for-students-with-special-needs-in-schools-March-2015/National-report-summary>

¹⁵ *ibid* p3-4

17. However, it is important to note that while Disabled Peoples Organisations (DPOs) and advocacy groups have largely supported the objectives of *Success for All*, some are of the view that more systemic change is required in order to properly address the ongoing problems experienced by students and their families¹⁶. Furthermore, in its most recent report on New Zealand's implementation of the CRPD, the Independent Monitoring Mechanism of the Convention on the Rights of Persons with Disabilities (IMM) noted concerns from some stakeholders about aspects of the methodology used by the Education Review Office in its monitoring of the *Success for All* programme and the statistical significance of some of the findings.¹⁷
18. In reflection of this concern, the IMM, which includes DPO representation, has recommended that the Government establish an enforceable right to inclusive education within legislation¹⁸. The UN Committee on the Rights of Persons with Disabilities concurred with the IMM's position and made a similar recommendation in its inaugural Concluding Observations on New Zealand issued in 2014.¹⁹ Further to this position, the IMM has recommended that the Ministry of Education establish initiatives that "promote the value of difference and affirm the identity of disabled students."²⁰
19. The incorporation of inclusive education principles within the Education Act, or alternatively within the National Administration Guidelines, would support the implementation of inclusive practices in primary and secondary schools. The Commission encourages the Committee to give consideration to this issue.
20. When considering best practice approaches and the availability of resources, it is also important to note that individualised support measures are generally subject to a high qualification threshold. On its own, a diagnosis of dyslexia or dyspraxia is unlikely to qualify a student for individualised funding support. Affected students are therefore likely to access specialist education support through a referral to the Resource Teacher: Learning and Behaviour (RTL) for their school cluster or via any programmes or services that their school chooses to fund through its bulk-funded Special Education Grant (SEG).

¹⁶ For example, IHC - <http://www.ihc.org.nz/campaigns/education-complaint/>

¹⁷ IMM, *Second Report of the Independent Monitoring Mechanism of the Convention on the Rights of Persons with Disabilities*, June 2014, p75

¹⁸ *ibid* p79

¹⁹ CRPD/C/NZL/CO/1 para 49, 50

²⁰ IMM, p 79

21. Students with ASD are generally likely to require a higher degree of specialist support; and a student with autism, for example, may qualify for individualised Ongoing Resource Scheme (ORS) funding. This funding may be directed towards providing the student with one-on-one classroom support through a teacher aide.
22. ORS constitutes by far the largest category of Government special education spending. For example, funding directed towards RTLBs and SEG combined is less than the overall funding of the ORS scheme.²¹ This reflects the fact that students with high or very high levels of disability require more extensive individual support. However, it also serves to highlight the relative underfunding of services designed to support students with lower specialist educational needs, such as those with dyslexia and dyspraxia.

Current screening measures

23. Schools have an administrative obligation to ensure that students with special educational needs are identified and assessed. Under National Administration Guidelines 1c and 1d, vested under s 60A of the Education Act 1989, school boards, through the actions of principal and staff, are required to:
- a. On the basis of good quality information, identify students and groups of students who are not achieving, who are at risk of not achieving, who have special needs (including gifted and talented students) and aspects of the curriculum which require particular attention.
 - b. Develop and implement teaching and learning strategies to address the needs of these students and those aspects of the curriculum.
24. However, the effectiveness of at least some schools in meeting these obligations to date is questionable. The Principal Youth Court Judge has previously drawn attention to the link between youth offending (and subsequent custodial incarceration) and the existence of unmet needs due to recognised or unrecognised learning and behavioural disabilities²². This issue was the focus of a major 2012 report by the Children's Commissioner for England, *Nobody made the connection*:

²¹ Ministry of Education, Supports and Services for Learners with Special Education Needs/Disabilities, April 2012, Appendix One, p 16

²² Judge Andrew Becroft, *From little things, big things grow – emerging youth justice themes in the South Pacific*, Australian Youth Justice Conference, 20-22 May 2013, p 22-23

prevalence of neurodisability in young people who offend, which contained a number of deeply concerning findings, including²³:

- a. Indications that incidence rates of speech and language impairment amongst young offenders ranged from 60-90%.
- b. Specific reading impairments, such as those associated with dyslexia, affected between 43-57% of young offenders, as compared to 10% across the general population.
- c. Indications that incidence of ASD amongst young offenders was around 15% as opposed to 0.6% across the general population.

25. It follows that poor outcomes in the justice system may be indicative of problems within the primary and secondary school sector concerning screening, assessment and provision of ongoing support for these children and young people.

26. Furthermore, students who have behavioural problems that arise as a result of psychological or cognitive disorders, such as ASD, or learning difficulties, such as dyslexia, are at particular risk of being subject to disciplinary proceedings that lead to exclusion from school. Figures obtained in 2009 indicated that, at that time, approximately 40 percent of students subject to formal suspension procedures at school had prior support from Group Special Education or a specialist learning and behaviour teacher²⁴.

27. School-based early identification, assessment and ongoing support processes may help to mitigate against disengagement or exclusion from school and the subsequent risk of exposure to the criminal justice system. The Commission notes that there are current initiatives, such as the *Practical Functional Behavioural Assessment* (PFBA) processes, under the Ministry of Education's Positive Behaviour for Learning (PB4L) programme that can assist teachers identify root causes for problematic behaviour. More generally, as noted above, the Ministry

²³ Office of the Children's Commissioner for England, *Nobody made the connection: prevalence of neurodisability in young people who offend*, October 2012, p 9-10, <https://www.childrenscommissioner.gov.uk/sites/default/files/publications/Nobody%20made%20the%20connection.pdf>

²⁴ Action for Children and Youth Aoteroa, *Children and Youth Aoteroa 2010*, para 7.17, para 30 – refers to Ministry of Education data dated 23 September 2009. The data referred to was obtained under the Official Information Act 1982.

produces guides to assist teachers with the identification of dyslexia, dyspraxia and ASD.²⁵

28. As ERO has observed, inclusive schools are likely to have in place systematic and co-ordinated processes for identifying and responding to specialist learning needs.²⁶ In addition, early identification needs to be followed by early support, where trust is built, aspirations and talents are identified and focused on, and connections are made with community supports and other families.

Transitional supports and Special Assistance Conditions

29. The transition from one educational environment to another, or to a post-school environment, is a critical time for any student receiving specialist support with their learning. In particular, a transition between schools may result in individual learning needs being overlooked and support services diminishing or changing. For students with ASD, these transitions can be particularly challenging, due to the disruptions brought about to their social environment and routines while at school.

30. The Commission notes that the Ministry of Education has produced guidance for schools on managing transitions as part of its inclusive education strategy.²⁷ Furthermore, the Ministry entered into a joint pilot initiative with the Ministry of Social Development, entitled *Going Places*, as part of MSD's *Enabling Good Lives* programme, which was aimed at supporting disabled students who were transitioning from school. *Going Places* contained a number of innovative aspects, including.²⁸

- a. Establishment of a Transition Plan, with 6 months support from providers post school.
- b. A flexible approach to individualised support, including ORS and teacher aide support.

²⁵ <http://inclusive.tki.org.nz/guides/>

²⁶ <http://ero.govt.nz/National-Reports/Inclusive-practices-for-students-with-special-education-needs-in-schools-March-2015/Findings>

²⁷ <http://inclusive.tki.org.nz/guides/transitions-managing-times-of-change/>

²⁸ Ministry of Education, Transitions: What's new? Powerpoint, accessed <http://www.nzdsn.org.nz/uploads/news/Trans%20-%20Garth%20Transition%20Whats%20new%20July%202012%206%20Aug.pdf>

- c. A localised implementation group, consisting of Principals, SENCOs, service users, Ministry representatives and transition advisors
- d. Ministry of Education transition advisors.

31. The *Going Places* pilot was directed at students with high levels of need, and does not appear to have been intended for students with lower level learning difficulties. However, the early identification of needs and co-ordinated approach to implementation of transitional supports has application across the board. As ERO has observed, transitions are successful where they are specific to an individual, commence early, involve the student, family, teachers and specialists and are informed by a detailed transition plan to be passed on to the next teacher.²⁹

32. As regards Special Assessment Conditions (SAC), the Commission notes that the Dyslexia Foundation of New Zealand has raised concerns about significant inequities between high and low decile students with learning difficulties regarding applications for SAC for NCEA exams³⁰. NZQA figures indicates that 0.33% of students in decile 1 schools apply for SAC, as compared to 5.8% in decile 10 schools³¹. This is clearly a concerning outcome which indicates that clear barriers to accessing services exist for families in poorer communities. The Commission recommends that the Committee inquires about measures that the Ministry of Education is taking, or intends to take, to address this evident disparity.

Teacher training and professional development

33. Given that almost all students with dyslexia, dyspraxia and ASD will be taught in regular, mainstream classroom environments, teacher training and professional development aimed to developing skills to better identify and support these students is obviously essential.

34. It is therefore encouraging that ERO's 2015 report noted that almost all of those schools surveyed as part of *Success for All* had undertaken professional development and training designed to support students with specialist learning needs. Further to its findings, ERO observed that effective professional development

²⁹ <http://ero.govt.nz/National-Reports/Inclusive-practices-for-students-with-special-education-needs-in-schools-March-2015/Findings>

³⁰ Dyslexia Foundation of New Zealand, *Ministry of Education focus on lower decile schools fails to deliver SAC lift*, media release, 10 March 2015 http://www.dyslexiafoundation.org.nz/pdf/DFNZ_SAC_figures_10March15.pdf

³¹ *ibid*

was “purposeful, relevant to the needs of particular students, focused on improving teachers’ knowledge of students and taught useful strategies to respond to student needs.”

2008 NZ Autism Spectrum Disorder Guideline

35. Part 3 of the New Zealand Autism Spectrum Disorder Guideline sets out several detailed recommendations concerning best practice as regards assessments, interventions and strategies for children and young people in schools and other educational settings.
36. The Commission is not in a position to comment on the Guidelines’ current implementation progress, but notes that it broadly aligns with an inclusive education approach and reflects, among other things, the following positions:³²
- a. Teaching ASD students in isolation from others is not best practice.
 - b. A collaborative approach to support and service delivery, amongst specialist service providers, school and family, should be taken, with strategies implemented across the home, community and school settings.
 - c. The principles of positive behaviour support should be incorporated into educational interventions.
 - d. Transitions should be planned and new environments carefully prepared.

Conclusion

37. While the Inquiry is focused at a specific group of primary and secondary school students, it provides an opportunity for the Committee to consider wider issues regarding the progressive implementation of inclusive education principles in New Zealand schools.
38. More specifically, the Committee may wish to consider whether the current legislative and policy framework provides an adequate basis for supporting students with disabilities and learning difficulties enjoy their right to an inclusive education.

³² <http://www.health.govt.nz/our-work/disability-services/disability-projects-and-programmes/autism-spectrum-disorder-guideline/>

There has been considerable policy focus on this area in recent years, in particular the now concluded *Success for All* policy programme.

39. However, in order to sustain and further the progress made in recent years, it is arguable that the legislative and policy framework needs to be renewed in order to further progress the Government's human rights commitment to provide a truly inclusive educational environment for all students.

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