



Tomorrow's Schools Review / Ngā Kura Mō Āpōpō: He Arotake

SUBMISSION TO The Tomorrow's Schools Independent Taskforce

REGARDING Our Schooling Futures: Stronger Together / Whiria Ngā Kura Tūātinini

SUBMISSION BY YouthLaw Aotearoa Inc

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Ao Daze - Onehou Strickland

Before I even got there my name was blacklisted.
Existed on unwritten pages with headline 'Misfits'
See this is what you get when you're third in a line
of
Stricklands who talk twice as fast as they listen.

Big minds and bigger mouths are our inheritance.
A threat that may cause some resistance so
Bite it in the bum before it takes flight
Make her feel dumb so there is no fight and
eventually
She believes it.

Thoughts of a delinquent who's always gotta be
the victim
Second decile school equals second decile citizen
and
That's exactly how they'll be treated.

Act like one, speak like one.
Tired of listening to old people old words
Old disciplines so just hang in there till the bell
rings

Try to kill time by drawing in the back,
Old lady cries 'vandalism' in my own book.
What's up with that? Unfortunately my drawings
turn out to be extremely close to the ones they see
when they drive along Park Avenue. Words and all
"Strickly Cookie" well...shit! Second Decile Citizen.

Never realising that the length of your potential
Exceeds your vision but that's hard to believe
when
Your High School dean just wants to kick you out.
Another old lady who tells me what to do,

'There are some great courses you should think
to pursue
cause there's really no point in you trying to
continue.'

Two main components make up a schools
foundation.

Provide education, keep kids safe. Does my
personal

Value and development not fall in this
classification

Forever on the frontline of old accusations,
blacklist me for my sisters seems like

discrimination
and finally realising that confiscation means to
disclaim ownership.

Time is up, no more settling for second class
anything

and unlike my jacket I can still get back my
dignity.

Do my time graciously, work your way back up
and...

Listen to old lady.

Now, ultimately I was treated differently. More
respect, more engagement, more Mana to my
family.

There were still two who never no matter what
cared for me.

But none the less, I rocked the house Merit-ly.

What's up now!

To exceed expectation, go further than expected
and prove everyone wrong is the biggest and
hardest
slap in the face you can give. So get your back-
hand ready.

1 Introduction

- 1.1 YouthLaw Aotearoa (“YouthLaw”) is a Community Law Centre vested under the Legal Services Act 2000. We are part of the nationwide network of twenty four community law centres throughout Aotearoa / New Zealand.
- 1.2 YouthLaw was established in 1987 as a national centre providing free legal advice and advocacy specifically for children and young people under 25 years of age. We help with issues such as school suspensions, employment problems, family issues, debt, bullying, and minor criminal cases. Our lawyers can support children and young people with basic information and advice to help them resolve an issue themselves and, where the case is more complex, we may provide legal representation at hearings and tribunals. We run preventative legal education workshops and publish youth-friendly information resources. We also undertake research and make submissions on the law and policy affecting children and young people.
- 1.3 This submission is informed by YouthLaw’s insights from working with children and young people across New Zealand for over thirty years.

2 Structure of the submission

- 2.1 Ao Daze was written by Onehou Strickland from the South Auckland Poets’ Society for YouthLaw in 2013. We began with this poem because we believe that consideration of any reform of the education system must start with hearing from children and young people.
- 2.2 We will also begin our submission to the Tomorrow’s Schools Independent Taskforce (“the Taskforce”) by discussing children and young people’s rights to participate and be heard in both this review process and the education system itself. We will then focus on two main areas reflecting both the cases we see here at YouthLaw and our previous research. The first area is how suspensions, expulsions and exclusions operate in the education system. The second is the experience of students with disabilities in the education system.
- 2.3 We acknowledge that other recommendations in the report Our Schooling Futures: Stronger together Whiria Nga Kura Tuatinitini (“the Taskforce report”) will affect the students we work with and for. However, we have confined our submission to the above topics due to our expertise and our limited resources.
- 2.4 We have also had the opportunity to read the submissions made by our colleagues at Auckland Disability Law in response to the Taskforce report and endorse their comments and recommendations.

3 Children’s right to participate and be heard

- 3.1 Article 12 of the United Nations Convention on the Rights of a Child (“UNCROC”) provides that children¹ have the right to freely express their views about all matters that affect them and to have those views given due weight in accordance with their age and maturity. Children are also the experts in their own lives and are uniquely qualified to speak about any problems they are experiencing and what might work to solve them. As a result, hearing and incorporating children and young people’s voices is not only

¹ Defined in UNCROC as those up to the age of 18.

required to give effect to their rights under UNCROC, but also results in better decisions.

- 3.2 We also know that children and young people want to be involved in decisions about their education. One of the key insights the New Zealand School Trustees' Association and the Office of the Children's Commissioner drew from their 2017 engagement with 1,674 children and young people in relation to their views on education was that:²

“Children and young people experience a lack of choice or participation in decision making about their own lives and schooling. They really want to have a say in their education, and they want teachers to involve them in their learning.”

- 3.3 In our submission, children and young people's rights to participate and be heard are relevant to the Taskforce's work in two ways:
- 3.3.1 Children and young people must have the opportunity to share their views and their voices must be heard in the process carried out by the Tomorrow's Schools Taskforce to develop their recommendations.
- 3.3.2 The Taskforce's recommendations must be for an education system that provides for children and young people's rights to participate and be heard in decisions that affect them.

Understanding the rights to participate and be heard

- 3.4 In our submission, giving effect to children and young people's rights under Article 12 requires consideration of four separate factors:³
- 3.4.1 Space – It is essential that space is created for children's voices to be heard. Children also need to be given the space to choose whether to participate or not;
- 3.4.2 Voice – Children need to be informed that they have a right to participate in decisions made about them and encouraged to give their views if they so choose. Any process must also be flexible enough to hear student's voices in different ways. Some students may be able to verbally articulate their views and other students may feel more comfortable drawing a picture about what they want.⁴
- 3.4.3 Audience – This means children having a guaranteed opportunity to communicate their views to an identifiable individual or body with the responsibility to listen.⁵ There is also increasing recognition that children express their views in a variety of ways, not all of which are verbal. As a result, listening to children's views may also mean looking at their non-verbal cues and adults showing patience and creativity by adapting their expectations to younger children's level of understanding and preferred ways of communicating.⁶

² New Zealand School Trustees Association and Office of the Children's Commissioner *Education matters to me: Key insights* (January 2018) at 9.

³ This model of understanding Article 12 of UNCROC draws from Laura Lundy "‘Voice’ is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child" (2007) 33(6) BERA 927.

⁴ Law Commission, *Dispute Resolution in the Family Court* (NZLC R82), 2003 at 29.

⁵ Lundy, above n 3, at 937.

⁶ At 937.

- 3.4.4 Influence – Student’s views must be actively considered and acted on as is appropriate having regard to their age and maturity. The challenge here is what is appropriate or, using the wording of Article 12, what is “due weight”. In particular, there is a risk that adults will discount children’s views because of their own beliefs about children’s lack of capacity⁷ leading to children being listened to, but not heard.⁸ This is a challenge that must be met head on because tokenistic participation can be counterproductive, if not damaging.⁹
- 3.5 As Berryman and Eley recently argued: “[g]athering and reporting their voices is not enough—if we continue to ask students for their experiences and their opinions, but do not carefully attend to what they say, do not respect and value their thoughts, and fail to act on the solutions provided, we continue to do our young people a disservice. We owe this generation of young people an accelerated reform based on the concept of “nothing about us, without us, everything about us is with us”.¹⁰

Tomorrow’s Schools Taskforce process

- 3.6 We acknowledge that the Taskforce report states that the Taskforce had over 200 meetings with a range of stakeholders including students as well as receiving 2,274 online surveys and 94 formal submissions.¹¹ However, it is unclear how many of those meetings were with students or how many individual students were involved in meetings, surveys or making submissions or whether there were any child specific mechanisms for seeking their views. It is also unclear how any views that were shared by children and young people were taken into account in developing the recommendations contained in this report.
- 3.7 In the absence of clear evidence that children and young people’s views have been heard and listened to, YouthLaw Aotearoa is concerned that the Taskforce has failed to give effect to children’s rights in this regard. We are also concerned that even if children have had the opportunity to be heard:
- 3.7.1 The process for doing so has not been sufficiently flexible to hear children’s voices in ways that they would feel comfortable (see voice & audience discussed further above). For example, in our experience few young people would feel comfortable drafting a submission or wish to complete an online survey and.
- 3.7.2 That their voices have not been actively considered or acted upon (see influence). The Our Schooling Futures report does include a statement that the Taskforce has listened to the voices of those who have experienced the system as learners.¹² However, there are very few direct references to what the Taskforce heard from students,¹³ and as a result it is difficult to see how

⁷ At 938.

⁸ Vicky Johnson “Moving beyond voice in children and young people’s participation” (2017) AR 15(1), 104; Anne Crowley “Is Anyone Listening? The Impact of Children’s Participation on Public Policy” (2015).23(3) Int’l J Child Rts 602.

⁹ Lundy, above n 3 at 938 and above n 8 Crowley.

¹⁰ Mere Berryman and Elizabeth Eley “Gathering and Listening to the Voices of Māori Youth: What Are the System Responses?” in Burke and Loveridge (ed) *Radical Collegiality through Student Voice* (Springer, Singapore, 2018) at 105.

¹¹ Tomorrow Schools Independent Taskforce *Our Schooling Futures: Stronger together Whiria Nga Kura Tuatinitini* (Ministry of Education, November 2018) at 9.

¹² Tomorrow Schools Independent Taskforce, above n 11 at 21.

¹³ We could only find two direct references to what the Taskforce had heard from students in a review of the report focussing on this issue. These related to the challenges of being the only young person

students' views have been considered or acted upon in developing the recommendations (if indeed they have).

Children's right to participate and be heard in the education system

- 3.8 The introduction to the Taskforce report states that the Taskforce identified a number of common themes including "the importance of listening to student voice".¹⁴ The section relating to the purpose of the education system then goes on to state that to be meaningful, children's rights to have their views respected, listened to and acted upon must be enacted throughout classroom and school level decision-making processes.¹⁵
- 3.9 Despite this, neither this theme nor these rights appear to have been reflected in the Taskforce's design principles or its recommendations with the only reference being in Recommendation 1 which simply states: "[t]he student representative composition should also be reviewed to ensure enhanced opportunity for student voice." In our submission, this recommendation is not an answer to the issues identified by the Taskforce¹⁶ and is far from giving effect to children's rights to participate and be heard.
- 3.10 We are also concerned by the reference to "school level" decision-making process. It is unclear if this reference was intended to refer to the need to ensure that children's rights are respected at school level in addition to classroom and individual levels or is an intentional limitation to their rights to this level. In any event, in our view it is critical that students' voices are included in decision making at the Education Hub level as well as in setting national policy and processes.
- 3.11 In our submission, the Taskforce recommendations should be directed at ensuring that children's rights to have their views respected, listened to and acted upon are enacted throughout the education system as a whole. At a practical level this means:¹⁷
- 3.11.1 System-Wide Approaches – Students of all age levels should have the opportunity for involvement in system-wide planning, research, teaching, evaluation, decision-making, and advocacy. This includes a variety of opportunities as part of their individual learning experience, within their school, their region and at a national level.
- 3.11.2 Equitable student authority – Students' ideas, knowledge, opinions and experiences in schools and regarding education should be actively sought and acknowledged by teachers and all decision makers in the educational system. This acknowledgement should be supported by teaching focused on learning about learning, the education system and their rights including to rights to participate and be heard as part of a wider civics education programme.
- 3.11.3 Integrated strategies - Students should have opportunities for learning, teaching, and leadership throughout the educational system. In individual classrooms this can mean integrating student voice into classroom management practices or giving students the opportunity to to design, facilitate, and evaluate what they are learning. At a school leadership level it can mean students having equitable opportunities to participate with adults in formal

on a Board of Trustees (at page 43) and to the difference in quality of school amenities and academic, cultural and sporting options at different schools (at page 70).

¹⁴ Tomorrow Schools Independent Taskforce, above n 11 at 9.

¹⁵ At 33.

¹⁶ At 43.

¹⁷ Adam Fletcher, *The Guide to Meaningful Student Involvement* (2014, Olympia, WA) at 9.

school improvement activities. At the Board of Trustees and Education Hub levels it could mean students having full voting rights, and equal representation to adults. All these opportunities must be linked together with the intention of consistent and sustained schools for all learners.

- 3.11.4 Sustainable structures of support – Policies and procedures must be designed and/or amended to promote student participation including creating specific funding opportunities that support student voice, facilitating ongoing professional development for teachers and integrating this new vision for students into classroom practice and throughout the education system.
 - 3.11.5 High personal commitment – Both students and adults acknowledge their mutual investment and benefit. Teachers and other professionals in the education system must recognise students as significant partners in all aspects of the education system.
 - 3.11.6 Strong learning connections – What students learn in the classroom and their participation in the education system and decision making need to be directly connected e.g. through students receiving credit for their contributions.
 - 3.11.7 Supporting participation by diverse learners – Opportunities, policies and processes but be developed and implemented in ways that reflect the diversity of the student body in all its forms including making specific provision for children with special educational needs, of all cultures and ways of learning. If this does not happen we risk privileging certain student voices, usually the articulate achievers, and silencing others.
- 3.12 This approach should be supported by amendments to the Education Act to incorporate a positive obligation to respect and uphold children’s rights both generally and, in relation to children’s rights to participate and be heard in particular. This amendment could be similar in form to those introduced by the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017.¹⁸ For example:

“a child or young person must be encouraged and assisted, wherever practicable, to participate in and express their views about any process, or decision affecting them, and their views should be taken into account”

And:

“The child’s or young person’s rights (including those rights set out in United Nations Convention on the Rights of the Child and the United Nations Convention on the Rights of Persons with Disabilities) must be respected and upheld, and the child or young person must be—

- (a) treated with dignity and respect at all times:
- (b) protected from harm.”

¹⁸ Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017, Section 11 replacing section 5 of the Oranga Tamariki Act 1989.

4 Suspensions, Expulsions and Exclusions

- 4.1 YouthLaw Aotearoa has extensive experience with suspensions, expulsions and exclusions in New Zealand. During term time we generally assist with at least one new disciplinary case every day. Our submissions in this section are based on that case work experience together with specific research projects undertaken by YouthLaw Aotearoa staff.¹⁹
- 4.2 We were encouraged by the Taskforce’s identification of issues with the current disciplinary system of suspensions, expulsions and exclusions and their recommendation that decision-making move from Board of Trustees to Education Hubs. However, although we see merit in the Taskforce’s recommendations, we consider that a more radical overhaul of disciplinary practices is required.
- 4.3 In this section we will detail the fundamental issues with suspensions, exclusions and expulsions in statute and with Board of Trustees decision-making. We will then explore our concerns and questions with the Taskforce’s recommendations. Finally, we will explain the potential of a restorative model of student discipline that incorporates Te Ao Māori .

Punitive approach to school discipline

- 4.4 YouthLaw Aotearoa submit that the current punitive disciplinary system of removing students from school is inadequate and inappropriate. We are concerned about the significant link between poor educational performance, living below the poverty line, and the likelihood of imprisonment or what is referred to as the ‘school-to-prison pipeline’²⁰ (“the pipeline”). YouthLaw Aotearoa has had extensive experience with students who are in the pipeline, and like Gordon we consider that the current punitive approach to student discipline is exacerbating the problem rather than resolving it.
- 4.5 We also note that Māori are most likely to be stood-down, suspended or excluded, and male students are over four times more likely to be expelled than female students.²¹ Similarly, in 2017/18 Māori children and young people made up 65% of all children and young people with charges finalised in court.²² This overrepresentation is also getting worse - although the overall numbers of children and young people appearing in the Youth Court have decreased over the last ten years, the number of rangatahi Māori has decreased at a lower rate resulting in increased disparity between Māori and non-Māori.²³ These disparities are disturbing and need an urgent response. It is submitted

¹⁹ Jennifer Walsh *Barriers to Education in New Zealand: The Rise of Informal Removals of Students in New Zealand* (YouthLaw Aotearoa Inc, New Zealand, 2016) and Kenton Starr and Naushyn Janah *Challenging The Barriers: Ensuring Access To Education For Children With Special Educational Needs* (YouthLaw Aotearoa Inc, New Zealand, 2011) and YouthLaw Tino Rangatiratanga Taitamariki, *Out of School Out of Mind – The Need for an Independent Education Review Tribunal* (YouthLaw Aotearoa Inc, New Zealand, 2012).

²⁰ Liz Gordon “Teaching the ‘Poor’ a Lesson: Beyond Punitive Discipline in Schools” (2015) NZJES 211 at 212.

²¹ “Stand-downs, suspensions, exclusions and expulsions from school” (4 April 2019) Education Counts <<https://www.educationcounts.govt.nz/statistics/indicators/main/student-engagement-participation/Stand-downs-suspensions-exclusions-expulsions>> and Gordon, above n 20 “Teaching the ‘Poor’ a Lesson: Beyond Punitive Discipline in Schools” at 214.

²² Youth Justice Indicators Summary Report, April 2018 <https://www.justice.govt.nz/assets/Documents/Publications/children-and-young-people-in-court-data-highlights-jun2018.pdf> (accessed 22 February 2019)

²³ *Ibid.*

that, as the Waitangi Tribunal has previously found, the New Zealand government has an obligation to take active steps to reduce these disparities.²⁴

- 4.6 We submit that the current punitive approach to student discipline in the Education Act 1989 needs to be radically overhauled. We have previously been asked by Ministry of Education staff to give our views in relation to possible changes to the Education Act 1989 and we repeat our suggestions below:
- 4.6.1 The expressions “stand-down, suspension, exclusion and expulsion” are not well understood by young people, their parents or the general public. Most people do not know the difference between the four terms or what they mean. Also, the language is very aggressive, even military, in tone and not appropriate for the education system in the 21st century. It would be better and clearer to simply say that a student is “directed not to attend the school”.
- 4.6.2 It is not helpful or necessary to focus on the conduct of the student in terms of “gross misconduct” or “continual disobedience.” This is the education system not the criminal justice system and so it should not be about fault and blame. “Gross misconduct” and “continual disobedience” are also complex and loaded terms that have been assigned different definitions by different schools when imposing a suspension.
- 4.6.3 The focus in any decision to direct a student not to attend a school should be on the consequences of a student’s behaviour for the student and for other students in the school. It should only be if the behaviour of the student is likely to cause serious harm to the student or other students or cause serious disruption to the education of the student or other students that a direction that the student not attend might be considered.
- 4.6.4 All decisions should be subject to an appeal by an Education Review Tribunal or equivalent. This would have three key benefits:
- a. Justice for the student in the individual case;
 - b. Improving consistency across schools; and
 - c. Providing valuable feedback to schools in terms of precedent and direct feedback to ensure better quality first time decisions.
- 4.7 Our research report *Out of School, Out of Mind: The need for an Independent Education Review Tribunal* details the current law around suspensions, expulsions and exclusions, means of appealing a Board of Trustees decision, and outlines the need for an independent review panel to review Board of Trustees decisions.²⁵ We submit that it is essential for the Education Act 1989 to be changed and for an independent review body to be created. We will discuss the need for an independent review body later in this section.
- 4.8 YouthLaw Aotearoa also wish to emphasise the need for informal removals from school to be considered by the taskforce. Informal removals from school are when a student is removed from school without formally notifying the Ministry of Education.²⁶ Whilst informal removals are illegal and should be recognised as such, safeguards

²⁴ Waitangi Tribunal, *Tū Mai Te Rangī! Report on the Crown and Disproportionate Reoffending Rates*, 2017, (Legislation Direct, Wellington). Retrieved from: <https://bit.ly/2TezYxD> (accessed 1 March 2019) at 2.3.

²⁵ YouthLaw Tino Rangatiratanga Taitamariki, above n 19.

²⁶ At 26 – 27.

need to be built into the Education Hub to ensure that students who have been informally removed have recourses available to them such as being able to complain to the Education Hub.

Current issues with Board of Trustees decision-making about suspensions, exclusions and expulsions

- 4.9 YouthLaw Aotearoa have several concerns about Board of Trustees' decision making in relation to student discipline. We have heard from our clients that many Board of Trustees members are not the best people to make decisions about student discipline because they lack experience and objectivity. In particular, parents sitting on Boards of Trustees may not have the experience, legal acumen or the objectivity required to make the best decisions about a student's future at the school. There is concern that they may make decisions based on their own vision of what they believe the school should be instead of considering what is best for the student or the school.
- 4.10 There is also a significant risk that Board of Trustees decisions are inconsistent between schools. At YouthLaw Aotearoa we often receive suspension notices and principals reports from our clients the standard of these reports and letters vary significantly. Some letters and reports have clearly been written from a place of experience and have all the necessary information in them. Other letters and reports are confusing and it is obvious that the school has had limited experience of removing students from education. The variation in these letters and reports will often then led to uncertain Boards of Trustees who may struggle to understand the reasons for and grounds of the suspension and the appropriate process to then take.
- 4.11 Decision-making can also vary between different Boards of Trustees because of the experience and leadership of the Chairperson. An experienced Chairperson may be able to accurately observe natural justice rights and structure the meeting in a logical way. Another Chairperson who has less experience may fail to uphold natural justice rights, rely heavily on the principal for leadership, and hold the meeting in a disorganised manner. In a disorganised meeting with an inexperienced Chairperson students and parents may not be able, or be given the opportunity, to articulate information that would assist the decision-makers. A less experienced Chairperson may also fail to ask pertinent questions of the student and their family. These differences in leadership result in inconsistent meeting processes and decisions.
- 4.12 As we have previously argued, the current regime of stand downs, suspensions, expulsions and exclusions under section 14 of the Education Act 1989 also fails to provide an appropriate appeal body for students or their parents to challenge decisions made by Board of Trustees that may have been wrongly or improperly decided.²⁷

Taskforce recommendations

Education Hubs as decision-makers about suspensions, exclusions and expulsions

- 4.13 YouthLaw Aotearoa agree that making Education Hubs responsible for decisions on suspensions, exclusions and expulsions could may result in more consistent and quality decision-making. However, we have a number of concerns about this recommendation. Our first concern has been outlined above, we do not believe that the current system of suspensions, expulsions or exclusions is adequate. We also have a number of more specific concerns in relation to the Education Hub model.
- 4.14 We are concerned about how the Education Hub decision-making model about student discipline would work in practice. We understand that the Taskforce has indicated that

²⁷ YouthLaw Tino Rangatiratanga Taitamariki above n19 at 30.

each Education Hub would potentially have 125 schools under it. We have several concerns about this. We are concerned that students and their families may have to travel great distances to attend disciplinary meetings. We are also concerned about the potential for delay including whether Education Hubs will be able to meet the seven day deadline for a meeting after a suspension has been issued. Any period of absence has a detrimental impact on a student's educational development including through disruption to the student's academic progress and the risk that on return to school students will feel 'lost' and resist doing school work, further disrupting their progress as well as causing significant disruption to others in the classroom.²⁸ We are also concerned that the Education Hub may lack flexibility to change the dates and times of that meeting if the parents or student request it due to other commitments such as work or to ensure that they are supported at the meeting.

- 4.15 We are also concerned that students may feel even more intimidated and afraid in Education Hub disciplinary hearings because they may perceive the hearing to be more serious. We would also question whether the Education Hub disciplinary hearings would be more formal than Board of Trustees hearings. The issue with the perception of increased seriousness and more formal procedures is that students will not disclose information that would be helpful for the Education Hub to make decisions. Without the disclosure of this information the quality of the decision-making will be adversely impacted.
- 4.16 We are concerned that there could be situations where the Education Hub is required to make multiple decisions about the same student. We question whether this could lead to bias against the student because the Education Hub is familiar with them and that the history of the student's previous interactions with the Education Hub will be considered when not relevant to the immediate decision.
- 4.17 We also submit that Education Hubs need to be empowered to critique and refuse to enforce school rules set by BoT that are counter to the Education Act, the Bill of Rights Act 1990 and any other law. At YouthLaw Aotearoa it is common for us to assist clients who have been suspended for uniform violations. We note that the Chair of the Taskforce Bali Haque has stated that Education Hubs would not interfere with school rules and that "It's like uniforms, it's about the ethos and character of the school, we do not want the hubs to get into those sorts of issues because that is a school matter."²⁹
- 4.18 We strongly disagree with this statement. School rules about uniform can contravene a student's rights including freedom of expression and freedom from discrimination.³⁰ We raise the recent example of an Auckland school that did not allow students to wear headscarves as part of their uniform.³¹ We submit that it is entirely appropriate that the Education Hubs critique, and refuse to enforce, school rules that breach students' rights or are otherwise contrary to law.
- 4.19 In cases of disciplinary action to enforce school rules it is imperative for the Education Hub as the decision-maker to refuse to uphold suspensions based on rules that breach students' rights. Education Hubs should recognise that those school rules contradict

²⁸ YouthLaw Tino Rangatiratanga Taitamariki, above n 19 at 7.

²⁹ Simon Collins "Auckland Grammar boy's hair may be test case for school independence" (26 January 2019) Stuff <https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12195070>

³⁰ New Zealand Bill of Rights Act 1990, ss 14 and 19.

³¹ Alice Webb-Liddall "Auckland Diocesan School for Girls to allow hijab after uniform policy backlash" Newshub <<https://www.newshub.co.nz/home/new-zealand/2019/03/auckland-s-diocesan-school-for-girls-to-review-uniform-policy-after-hijab-backlash.html>>

law and then send that student back to school with clear guidance that the school rule breaches the law.

- 4.20 In the Taskforce's report they explain that Education Hubs will work with principals/tumaki to ensure that students have access to continued quality education³². It is important to acknowledge that the nature of expulsions is to remove a student over the age of 16 from school. In New Zealand students are only required to be in school until they turn 16 and the Ministry of Education and students former principals are not obligated to help them find another school to attend. This means that students who have been expelled find it near impossible to find another school to take them.
- 4.21 YouthLaw Aotearoa supports the Taskforce's recommendation that the Education Hub will work to ensure that students have "access to continued quality education".³³ We encourage the taskforce to also recommend that legislation be changed to ensure that schools have to accept students over the age of 16.
- 4.22 The Taskforce has also advised that the principal will continue to be included in Education Hub hearings. YouthLaw Aotearoa request that more information be provided about the role and place of the principal in the Education Hub hearings. We would like to know whether the principal will be exercising a decision-making role and/or an information giving role and whether there will be points in the hearing when the principal is included and other times when they will leave. We recommend that the Ministry develop clear guidelines about the role of principals in Education Hub disciplinary hearings.

Whānau and student advocacy service

- 4.23 The Taskforce has advised that Education Hub's will provide a whānau and student advocacy service. The whānau and student advocacy service will provide support when a parent or student has been unable to resolve an issue with the school.³⁴
- 4.24 YouthLaw Aotearoa support the creation of an advocacy service in principle but we note that there is little detail about how, where and when the service will operate. In particular, it is unclear whether the advocacy service would be available to assist students and parents through the suspension, exclusion and expulsion process in which the Hub is also involved or whether it will be reserved for other conflicts with the schools. We submit that it is essential that this service to be available for both students who are facing disciplinary proceedings and any other situations where a student or their family request assistance.
- 4.25 We consider that it is essential for the whānau and student advocacy service advocates to be legally trained. Advocates should be able to advise students and parents of their legal rights and obligations and be able to advise about whether the school and Education Hub are adhering for the law.
- 4.26 We are concerned about how the whānau and student advocacy service would be independent if the Education Hub provides both the service and makes disciplinary decisions. We are also concerned that even if the Education Hub attempts to impose separation between the two that the whānau and student advocacy service will still be perceived by students and parents as not being independent. Our concern is that the perception of the services bias could led to students and their families being resistant to receiving help from the service.

³² Tomorrow Schools Independent Taskforce, above n 11 at 53.

³³ At 53.

³⁴ Tomorrow Schools Independent Taskforce, above n 11 at 53.

4.27 We submit that it is inappropriate for the Education Hub to provide both services. In our view that a better option would be to have a truly independent whānau and student advocacy service. We submit that YouthLaw Aotearoa and other Community Law Centres would be very well placed to provide this service if sufficient resourcing was made available. YouthLaw Aotearoa and some other Community Law Centres already provide advice to students and their families but we have limited capacity to provide representation due to funding constraints. If YouthLaw Aotearoa were to receive Ministry support for this function we would be able to provide not only advice but also much needed representation at those meetings.

Independent appeal service

4.28 The Taskforce has recommended that Education Hubs provide an independent disputes and appeal service. This service would ensure the complainant is provided with a support person under all circumstances and a restorative approach taken so that concerns can be resolved in a positive and helpful manner.³⁵

4.29 YouthLaw supports the creation of an independent disputes and appeal service particularly for suspension, exclusion and expulsion decisions regardless of whether the Education Hub takes over responsibility for these decisions. Moving the locus of these decisions to the Education Hub may improve consistency of decision making but it does not mean that there is no longer a need for a mechanism to challenge bad decisions when they are made.

4.30 Any disputes and appeal service must address the following issues:

4.30.1 Resourcing / Risk of Delay – One of the issues with the existing options for challenging Board of Trustees’ decisions is that there is significant delay. For example, the average time for a complaint to be considered by the Ombudsman is around 50 days, meaning that even if a student is reinstated he or she will have lost out on educational opportunities which had been improperly denied.³⁶ The reasons for that delay can be primarily attributed to the resourcing of those services. Accordingly, it is essential that any independent disputes and appeal process is appropriately funded to hear appeals quickly or else delay will continue to occur and students may be out of school for even longer.

4.30.2 Model – The service should be modelled after England’s Independent Appeal Panel.³⁷ In England when a student has been permanently excluded from school by a school’s governing body, parents and students have a right of appeal to the Independent Appeal Panel (“the Panel”).³⁸ The Panel is empowered to determine whether the allegations resulting in the exclusion took place, and if they did then the Panel must determine whether the penalty is appropriate.³⁹

4.30.2 Independent – It is vitally important for the service to be independent so that students and parents will feel that their case is being heard fairly. The decision-makers in the service should also be different from the decision-makers in the Education Hub. The Ministry of Education should appoint independent panels of people who have never worked in paid employment at

³⁵ Tomorrow Schools Independent Taskforce, above n 11 at 53.

³⁶ At 20.

³⁷ At 30.

³⁸ Advisory Centre for Education *Fixed Period Exclusion: A Practical Guide for Parents Rights* (2008) at 2.

³⁹ Andrew Sharland “School Exclusions” (Paper presented at the 3rd Annual Education Law Seminar, Law Society, London, 13 June 2008) at 2.

the school but who understand the context of that school. We understand that it may be difficult to find such people. We recommend that when the Education Hub is created for a region that they ask each school to nominate people who would be appropriate candidates for a position on an independent appeals body. Those people should then be trained about how to be decision-makers.

We also recommend that the Chairperson of the appeals and disputes service have experience in education law and judicial review. Having such experience will enable consistent and quality decision-making.

- 4.30.3 Membership – In England the local authority appoints three to four members to the Panel. The Chairperson of the Panel is required to be a lay person who has not worked at the school in question in a paid capacity, and who is permitted to have a legal qualification.⁴⁰ The other members of the Panel are required to have experience in the same “phase of education” as the school from which the student has been excluded.⁴¹ Of the other members of the Panel at least one member must have been a current or former governor of the school, or a member of a management committee of a Pupil Referral Unit.⁴² A separate member must have had prior or current experience as a principal of a state-funded school, or as a teacher in charge of a Pupil Referral Unit within the last five years.⁴³

We recommend that the Taskforce adopt a similar approach to membership of the Education Hub appeal and dispute service. The membership of the service should consist of lay people and former school personnel. YouthLaw Aotearoa also strongly recommend that there be a requirement for at least two members of the service to have legal backgrounds. A legal background is essential because appeals will involve consideration of the statutory criteria of the Education Act 1989 and the principles of natural justice. It is also imperative that Māori, Pasifika and other minority groups be represented in the service as Māori and Pasifika students are disproportionately represented in stand down, suspensions, exclusion and expulsion statistics.⁴⁴

- 4.30.3 Grounds of review - It is essential for parents and students to be able to challenge the substance of the Education Hub’s decision. Currently, many of the options for challenging Board of Trustee’s decisions are limited to challenging the process through which the decision was made. For example, the powers of the Ombudsman are strictly limited to considering the procedural elements of the case (such as whether the requirements of the Education Act 1989 have been properly observed), and may only issue a non-binding recommendation that schools are not legally obliged to follow. Judicial review is also similarly limited in scope.

YouthLaw Aotearoa advocate that the service should be able to consider situations where a student’s right to education has been denied, terminated or disrupted.⁴⁵ This would allow the service to consider both formal actions under section 14 of the Education Act 1989 that remove students from school and

⁴⁰ Andrew Sharland “School Exclusions” (Paper presented at the 3rd Annual Education Law Seminar, Law Society, London, 13 June 2008) at 46.

⁴¹ At 47.

⁴² Pupil Referral Units are centres for children who are not able to attend a mainstream or special school, generally due to emotional and/or behavioural difficulties.

⁴³ YouthLaw Tino Rangatiratanga Taitamariki, above n 19 at 30.

⁴⁴ YouthLaw Tino Rangatiratanga Taitamariki, above n 19 at 33.

⁴⁵ At 31.

informal actions that undermine students right to education such as “kiwi suspensions’ and ‘partial enrolments’.

- 4.30.3 Appropriate powers - We also request that the service have the power to reverse decisions made by the Education Hub. It is essential for the appeal body to have appropriate powers. If the service only has the power to send decisions back to the Education Hub for reconsideration we are concerned that the effectiveness of having an appeal service will be undermined and students will be removed from school for even longer. The appeal service should have the power to; reinstate students back to the schools they were excluded from, send the decision back to the Education Hub to review, agree with the Education Hub decision and to make recommendations.

The service should be empowered to make any recommendations it thinks fit. It is essential that the service be empowered to recommend that the Education Hub provide assistance to advocate to the Ministry for funding for disability needs, or require the Education Hub to assist the student into some other form of education.

YouthLaw Aotearoa understand that the power to reinstate students may concern educators, Board of Trustees and the public. However, in England this power has been used sparingly, in only 2% of cases heard before the Panel was the student reinstated to the school they had been excluded from.⁴⁶

- 4.30.5 Advocacy – The Taskforce has indicated that Education Hub will provide an advocacy service and a support person to help students and their families through the disputes and appeal process. YouthLaw Aotearoa has explained some of our concerns about the advocacy service above. However we do support the introduction of an advocacy service and support person provided that these services are free and that they can provide meaningful independent advice to students and their families.

It is important for advocacy and support to be free because many of the students who are subject to disciplinary actions may be from lower socio-economic groups who will not otherwise be able to access support. It is necessary to have both an advocate and a support person because advocates provide a fundamentally different service than a support person. Advocates should be able to advise students and their families about possible Education Act 1989, New Zealand Bill of Rights Act 1990 and Human Rights Act 1993 defences or arguments. We recommend that the advocacy service be outsourced to community law centres. Support people should be able to provide emotional and practical support to students and families. We recommend that support people be people who have had experience with educational disputes and disciplinary proceedings.

- 4.30.6 Timing – It is also essential for there to be a time restriction that the service must meet when determining appeals. Currently, it is necessary for the Board of Trustees to determine the outcome of the suspension before the seventh day after it has been imposed. We submit that a similar time requirement should be imposed for the service. The time should begin from the moment that an appeal is received by the service.

⁴⁶ YouthLaw Tino Rangatiratanga Taitamariki, above n 19 at 32.

Need for restorative schools

- 4.31 The Taskforce has indicated that the advocacy service and the appeals and disputes service should adopt a restorative approach to resolve disputes.⁴⁷ We support this recommendation but we submit that the Taskforce must go further and recommend that restorative practices be incorporated into all aspects of discipline in the education system.
- 4.32 Restorative practices have been defined as “a diverse multi-layered concept, which requires a philosophical shift away from punitive and retributive control mechanisms. Restorative justice is based on core principles: repairing the harm, stakeholder involvement, and transforming the community relationship.”⁴⁸ When restorative practices are undertaken in school settings the focus is on the whole school community and reintegrating the student whose behaviour has breached the “social contract” between school and the student rather than exiling that student.⁴⁹
- 4.33 New Zealand has been described as being a world leader in regards to restorative practice in school.⁵⁰ However, restorative practice varies between different schools. We understand that some schools have adopted a “mixed model” where some behaviours are dealt with by restorative practices and other behaviours are addressed punitively, often in cases where there has been drug use or violence.⁵¹ However, it is commonly young people in the pipeline who have negative behaviour in regards to drug use and violence, and will be the ones affected by such a policy.⁵²
- 4.34 YouthLaw Aotearoa understands that the “mixed model” may be attractive to some schools because it allows the traditional understanding of discipline to prevail. However, “mixed models” are still founded on the idea that students should be removed from school for negative behaviour. We submit that schools should be adopting a “whole school” approach that does not set boundaries on what can be dealt with through restorative practices. However, we do acknowledge that restorative practices in school need to be adaptable to accommodate the situation and context. An example is that in cases of violence restorative practices will need to be adapted to ensure the safety of the victim.
- 4.35 We recognise that having a restorative approach to discipline requires culture change within the school and buy-in from the wider school community, but we argue that a restorative approach is the only way that students can be diverted from the pipeline and accordingly any reforms to disciplinary procedures must embed these practices.

Tamariki and Rangatahi Māori

- 4.36 As discussed above, Tamariki and Rangatahi Māori are most likely to be stood-down, suspended or excluded.⁵³ These disparities are disturbing and give rise to an obligation on the New Zealand government to take active steps to reduce these disparities.⁵⁴ YouthLaw Aotearoa further submit that Te Ao Māori and Treaty of Waitangi principles should inform how student disciplinary proceedings are conducted.

⁴⁷ Tomorrow Schools Independent Taskforce, above n 11 at 53.

⁴⁸ Thalia Gonzalez “Keeping Kids in Schools: Restorative Justice, Punitive Discipline, and the School to Prison Pipeline” (2012) 41(2) J L & Educ 281 at 299.

⁴⁹ At 300.

⁵⁰ Gordon, above, n 20 at 217.

⁵¹ At 218.

⁵² At 218.

⁵³ Above at paragraph 4.5.

⁵⁴ Ibid.

- 4.37 In the article “Claiming Space and Restoring Harmony within Hui Whakatika” consideration is given to how tikanga Māori principles about discipline could be used in a mainstream context.⁵⁵ The article identifies three principles of the Treaty of Waitangi; partnership, protection and participation and how they should be used to reclaim the student discipline space.⁵⁶
- 4.38 In that article partnership is understood as relating to issues about power sharing and decision-making.⁵⁷ We submit that the principle of partnership informs the practice of restorative justice, in that, the purpose of restorative practice is to work with the community, the victim and the perpetrator to restore/reintegrate that perpetrator back into the community. The partnership between the student, their whānau, the victims and the wider school community to restore the students place in the community should be a key underpinning of disciplinary practice in schools.
- 4.39 The principle of protection is about recognising and valuing “indigenous knowledge and pedagogical values.”⁵⁸ The current punitive approach to discipline prescribed in the Education Act 1989 is a reflection of colonial understandings about discipline. As we have explained above the punitive approach to student discipline succeeds at exiling and isolating students and feeding the prison pipeline. This situation is unacceptable and it is necessary for Māori understandings about discipline to be valued and adopted.
- 4.40 Participation is about ensuring “equity in access to resources and services.”⁵⁹ It is essential that any reforms recommended by the Taskforce consider equitable access. The Education Hub decision-makers, advocacy service and the disputes and appeal service need to be accessible to students and their families. The Taskforce should recommend that the education Hub and these services have Māori, Pasifika and other minority representation. Families and students should be able to request advocates who are of the same cultural background to them. Decision-makers in the disputes and appeal service should also be required to have cultural competency, to be able to understand the students and families that come to them. By requiring these things better quality decisions-making can occur and families and students can feel more able to access and understand these services.
- 4.41 Berryman and Bateman identify that Te Ao Māori understandings and practices around hui can enable “supportive and culturally grounded space for seeking and achieving resolution, and restoring harmony”.⁶⁰ The article then goes on to explain how using hui whakatika (translated to be a time for making amends) can help resolve student disciplinary matters without removing the right to education.⁶¹ In one of the case studies a hui whakatika was undertaken to address students using drugs on school grounds.⁶² Instead of suspending the students the school invited a local Kaumata in who facilitated the hui whakatika.

⁵⁵ Mere Berryman & Sonja Bateman, “Claiming Space and Restoring Harmony within Hui Whakatika” in Levy, M., Nikora, L.W., Masters-Awatere, B., Rua, M.R., Waitoki, W. (2008). *Claiming Spaces: Proceedings of the 2007 National Maori and Pacific Psychologies Symposium*, 23-24 November, Hamilton. Hamilton: Maori and Psychology Research Unit.

⁵⁶ Above n50.

⁵⁷ Above n50.

⁵⁸ Above n50.

⁵⁹ Above n50.

⁶⁰ Above n50.

⁶¹ Above n50.

⁶² Above n50.

- 4.42 YouthLaw Aotearoa advocate for the Taskforce to consider how the Treaty of Waitangi and Te Ao Māori can be included into a student disciplinary system. We recommend that practice guidelines be created by the Ministry in consultation with Māori to provide a framework for how hui whakatika and principles of the Treaty of Waitangi could be introduced into mainstream education.

5 Disability and Learning Support

- 5.1 YouthLaw Aotearoa has significant experience of the barriers faced by children with disabilities when they access mainstream education in New Zealand through our case work and previous research. In our report *Challenging the Barriers: Ensuring Education Access for Children with Special Educational Needs* (“*Challenging the Barriers*”) we outlined five barriers that we see in the education system for students with disabilities:

5.1.1 Lack of guidance and procedural frameworks for educational support.

5.1.2 Issues relating to the professional development and capacity of educators.

5.1.3 Funding support issues.

5.1.4 Assessment and reporting issues.

5.1.5 Inadequate enforcement mechanisms for the right to education.⁶³

- 5.2 We also outlined a number of recommendations to address those barriers. We will now consider the Taskforces recommendations.

Recommendation 12 – that the Ministry continue to lead national strategy and policy in Disability and Learning Support and that the Ministry work with the Education Hubs to support their work and learn from effective practice.

- 5.3 As identified in *Challenging the Barriers*, we believe that a lack of teacher knowledge and understanding about disability is a significant barrier faced by children with disability.⁶⁴ This lack of knowledge can lead to teachers not being able to recognise disability or meet the needs of children with disabilities.⁶⁵ We believe that the Taskforces recommendation 12 is an improvement on the current system but we submit that even more needs to be done. Below we consider the relevant aspects of this recommendation.

Lead national networks of expertise, ensure useful research is done, and make resources and learnings from these nationally available.

- 5.4 We support the Taskforces recommendation that the Ministry create national networks of expertise, undertake research and make learning resources nationally available.

- 5.5 We acknowledge that a lack of teacher knowledge and understanding has been identified as a major factor as to why disabled children are excluded at and from school.⁶⁶ However, we also submit that it is not only teachers who lack knowledge and

⁶³ Starr and Janah, above n 19.

⁶⁴ At 24.

⁶⁵ Alison Kearney “The right to education: What is happening for disabled students in New Zealand?” (2006) 36(1) DSQ.

⁶⁶ Alison Kearney “Barriers to School Inclusion” (PhD Thesis Massey University, 2008) at 188.

understanding but also Board of Trustees, other professionals, other students and their parents.

- 5.6 YouthLaw Aotearoa frequently interacts with parents of children with disabilities who are facing disciplinary proceedings. A common story we hear from these parents is that they have been trying for years to educate the school about their child's disability and seek support from the school and the Ministry. The parents tell us that the behaviour that their child has been suspended for is a result of their child's disability and the absence of school support and understanding.⁶⁷ Often there is no Individual Education Plan ("IEP") in place.⁶⁸ Understandably, parents are often frustrated about the situation and will bring this frustration to the Board of Trustees meeting. Parents will often tell us that the Board of Trustees have reacted defensively to them and their pleas for help not punishment. The Board of Trustees react in such a way because they feel that the school is being attacked for their inaction to support students with disabilities. The Board of Trustees may also be frustrated at the perceived lack of remorse, if parents attribute behaviour to their child's disability. As a result of this tense and adversarial environment the focus is diverted from the student onto the failings of the school and/or the parents and a decision may be made to exclude or expel the student
- 5.7 We consider that many of the issues named above could be resolved if appropriate support was provided to students with disabilities, disciplinary meetings were conducted in a restorative manner and decision-makers had knowledge about disabilities.
- 5.8 We submit that the Ministry need to commit to educating schools, Education Hubs, Board of Trustees, students, parents and other professionals about disability. We support information being available nationally and we advocate for this information to be created in partnership with both children with disabilities and with those that need to use and understand the information so that it is readily understood.

Work with Teaching Council so that in Initial Teacher Education students gain a good base understanding of what good inclusion in schools requires and looks like

- 5.9 We support the recommendation that Education Hubs work with the Teaching Council to ensure that initial education for teachers throughout the country ensures that they understand what good inclusion in schools requires and looks like. However, we advocate for the Ministry to also ensure that teachers who are already in the profession receive this education.
- 5.10 We understand that inclusion at schools is a process rather than an end point, and we support the Ministry committing to this process.⁶⁹

Work to increase the supply and cultural diversity of Learner Support specialists throughout the system

- 5.11 We support the recommendation to the Ministry to work to increase the supply and cultural diversity of Learner Support specialists. We submit that it is imperative for there to be an increase in Learner Support specialists of different cultural backgrounds. We

⁶⁷ Usually students with disabilities are suspended under the 14(1)(b) other students will be seriously harmed ground but we are seeing more cases where students with disabilities have been suspended under the Section 14(1)(a) continued disobedience ground.

⁶⁸ We support Auckland Disability Law's recommendation that there be a legal requirement for an IEP to be developed as soon as a student's disability is identified. We also advocate that there be a requirement that the IEP be updated regularly.

⁶⁹ Kearney above n 66 at 7.

also submit that Learner Support specialists need to have a wide understanding of different disabilities to enable them to work with students with varied needs.

Provide guidelines on identifying additional learning needs so there is national consistency

- 5.12 We question how the provision of guidelines from the Ministry about how to identify additional learning needs will be implemented. We acknowledge that there are many different forms of disability and that having a guideline for each disability and expecting every teacher to know about those guidelines will be a substantial burden on the Ministry and on teachers. We also acknowledge that having a guideline to certain disabilities may fail to recognise the full and varied nature of that disability.
- 5.13 We advocate for appropriate specialists to be involved in the creation of these guidelines. We also advocate for these guidelines to be easily accessible to teachers, students and parents. The guideline should be translated into different languages, braille and be in easily accessible formats. The Ministry should create guidelines that are available in text, video, online and other formats. Having a written guideline is not enough and does not recognise the busy lives that teachers live. Written guidelines may also be inaccessible to students and parents.
- 5.14 YouthLaw Aotearoa wish to emphasise that even if teachers are more knowledgeable about disabilities there is still an issue if students cannot access learning support services. In our experience often students with disabilities have been identified and are known by their teachers but their teachers do not have the time or the support required to address the additional learning needs of that young person. Often, these students have neurological disabilities and will not qualify for ORS support. This issue in these situations is not the teachers lack of knowledge but instead the inability to access learning support because the student's disability isn't severe enough. Unfortunately, we have found that students who cannot access learning support for their disability will often end up experiencing disciplinary action.
- 5.15 We also support Auckland Disability Law's submission on this recommendation.

Allocate national funding pools for additional learning needs.

- 5.16 We note that the Taskforce has recommended that the Ministry allocate national funding pools for additional learning needs. In *Challenging the Barriers* we considered issues about funding support for additional learning support.⁷⁰ Our view is that the current funding model in New Zealand is fragmented and complex and that there are issues with eligibility and allocation of funds.⁷¹ Our over-arching concern is that special education does not receive enough funding in New Zealand. We are concerned about how much these national funding pools will receive and whether it will be enough to meet the needs of students in New Zealand. We would like to know if the national funding pools will be replacing the General Special Education ("GSE") fund or other existing funding.
- 5.17 We would also question how the funds in the national funding pools will be distributed and allocated. We question whether different pools will be allocated to different forms of disability and how that decision will be made. We refer to the submission of Auckland Disability Law and their recommendation that the national funding pools need to be equitable, assess on individual need and not have arbitrary limits.

⁷⁰ Starr and Janah, above n 19 at 59.

⁷¹ At 59.

- 5.18 We strongly advocate for the national funding pools to be appropriately funded to help all students who have disabilities. We request for funding to be accessible to students who have learning difficulties and neurological disorders who are not able to access ORS funding. We also strongly request that the Ministry undertake a review into disability funding and consider how they can make the system less fragmented and complex.⁷²

Recommendation 13 - Learning Support Coordinator

- 5.19 In *Challenging the Barriers* we identify the confusion in the education sphere between the concepts of inclusion and integration noting that “inclusion in a mainstream environment does not necessarily mean inclusion into meaningful education.”⁷³
- 5.20 We support the Taskforces recommendation that a Learning Support Coordinator be assigned to every school to support that school to have inclusive practices. We note that the Taskforce has recommended that the allocation of this role would be linked to school roll and the degree of student socio-economic disadvantage. We are concerned that the learning support coordinator could be assigned to multiple schools and have hundreds of students under them.
- 5.21 We question what the job description of the learning support coordinators will be. The government has indicated that the coordinators will work alongside teachers and parents to provide individualised support to students with disabilities.⁷⁴ However, we note that the Taskforce under recommendation 14 envisions an interaction between the Education Hubs and the coordinators. We would question how this will impact the individualised support the coordinators have to provide to schools.
- 5.22 In *Challenging the Barriers* we identified the issues with the Special Education Needs Coordinator (“SENCO”) role. We identified that there is no requirement or provision for schools around the employment of a SENCO.⁷⁵ The lack of guidance is concerning in light of the important role of SENCO’s to assist teachers in the identification, assessment, provision of additional support for students with disabilities, and to coordinate with external providers and the Ministry.⁷⁶ We explained that not having adequate compensation for SENCO’s or qualification requirements leads to great variation in quality of SENCO’s across schools.⁷⁷
- 5.23 We advocate for there to be a requirement that Learning Support Coordinators have qualifications that would enable them to fulfil their role. We also submit that Learning Support Coordinators should be funded and required to attend professional development courses throughout the year to ensure that their knowledge about disability is increased. We are concerned that the same issues that have impacted the effectiveness of SENCOs will impact Learning Support Coordinators. Ultimately, the issue is one of funding. Learning Support coordinators need to be appropriately funded so that they can fulfil the very important and necessary role of assisting schools to be inclusive of students with disabilities.

⁷² The fragmented and complex disability funding in New Zealand is addressed in Starr and Janah, above n 19.

⁷³ Starr and Janah, above n 19.

⁷⁴ Jamie Ensor and Jenna Lynch “600 learning support coordinators in schools by 2020 – Prime Minister Jacinda Ardern” (4 November 2018) Newshub <<https://www.newshub.co.nz/home/politics/2018/11/600-learning-support-coordinators-in-schools-by-2020-prime-minister-jacinda-ardern.html>>

⁷⁵ Starr and Janah, above n 19 at 55.

⁷⁶ At 55.

⁷⁷ At 56.

Recommendation 14 - Education Hubs

- 5.24 We have previously acknowledged that educator capacity is a major barrier to students being able to access learning support.⁷⁸ We support recommendation 14 and the suggestions about how Education Hubs can help to lessen the load on educators. However, we have comments on certain aspects of this recommendation that we will address below.

Education Hubs are funded appropriately to employ specialist staff, RTLBs, Resource Teachers of Literacy, and a pool of teacher aides, and coordinates work with local agencies and other specialists to enable a seamless identification of student need and support

- 5.25 We question what it means for Education Hubs to employ specialist staff, RTLBs, Resource Teachers of Literacy, and a pool of teacher aides. We note that Education Hubs can have up to 125 schools under their jurisdiction and we would question whether it will be up to the Education Hub to distribute these specialist staff to the different schools under their structure. We are concerned about how decisions about allocation would be made and whether there would be restrictions posed on Education Hubs about how many people they can hire for these pools of specialist staff. . We acknowledge that schools, family and students may wish to have a part in choosing specialist support staff and ask for guidelines to be created for schools, family and students about this process
- 5.26 We support the Taskforce's recommendation that Education Hubs be appropriately funded to hire the learning support staff that are necessary for the schools they are responsible for.

Work closely with Learning Support Coordinators, parents, whānau and schools to provide professional learning and sharing of good practice for both Learning Support Co-ordinators and teacher aides

- 5.27 We support the Taskforces recommendations about the need for Education Hubs to work closely with learning support staff to increase knowledge and sharing of good practice. However, we are concerned about how and when this sharing will take place. We acknowledge that learning support staff have busy work lives, and we ask for this opportunity to share knowledge to be a funded part of their role. We ask for Learning Support Coordinators to have the power to request learning support staff undertake further training if they believe there is a need.
- 5.28 We support the recommendation that parents and whānau be included in this knowledge sharing. We recognise that parents and whānau have a different understanding of their child's disability and they can provide valuable perspectives to the school.

Make applications to national funding pools for students with additional learning needs. This will ensure consistency amongst applications and reduce the burdens on parents/whānau and schools.

- 5.29 We support the responsibility of applying for additional learning support to be delegated to Education Hubs. However, we are concerned about who would be responsible from the school for asking the Education Hub to apply for funding. We are concerned that under the new model the burden will still be on the teacher to advocate to Board of Trustees, senior management, and the Education Hub to ask for additional support to

⁷⁸ Please see paragraph 6.2.2 Issues relating to the professional development and capacity of teachers in the *Challenging the Barriers* report.

be applied for. We recognise that the burden of advocacy would place another demand on teachers who are already at maximum capacity.

- 5.30 We consider accessibility rather than consistency to be the greatest issue with current Ministry disability funding.

Legislative change

- 5.31 YouthLaw Aotearoa submit that it is imperative for the following legislative change to occur:

5.31.1 The introduction of an enforceable legislative statement that adheres with international law on the purpose of support in education for students with disabilities

5.31.2 The introduction of enforcement mechanisms for the right to education.

Each is addressed separately below.

Enforceable Legislative statement regarding right to education for students with disabilities

- 5.32 YouthLaw Aotearoa submit that a statement regarding the right to education for students with disabilities that aligns with international law must be introduced into statute. The Committee on the Rights of Persons with Disabilities has recommended that New Zealand introduce an enforceable right to inclusive education in New Zealand and that work be undertaken to increase the provision of reasonable accommodation to primary and secondary education and to increase the entry into tertiary institutions of persons with disabilities.⁷⁹ We submit that New Zealand is currently breaching the UNCRPD by failing to legislate an enforceable right to education.
- 5.33 The legislative statement should reflect the rights contained in United Nations Convention on the Rights of Persons with Disabilities (“UNCRPD”).⁸⁰ Specifically, the statement should reflect Article 7 which states that parties to UNCRPD shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.⁸¹
- 5.34 The legislative statement should also incorporate Article 24 which provides the right to education for persons with disabilities. Article 24 also provides that reasonable accommodation needs to be made for students with disabilities. We support Auckland Disability Law’s recommendation that the right to reasonable accommodation be incorporated into legislation.
- 5.35 It is necessary for such a statement to be included in legislation so that students with disabilities can use this statement to ensure that they are given access to education. Often we encounter students with disabilities who have been told that they are not allowed to enrol at a mainstream school and that if they do they won’t be able to stay for the full school day.⁸² The student and their family then have to barter with the school to come to an arrangement for that student. Students and their families should be able to inform schools that they have a right under legislation and be able to access

⁷⁹ Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of New Zealand*, 2014 at para 49-50.

⁸⁰ United Nations Convention on the Rights of Persons with Disabilities A/RES/61/106 (opened for signature 30 March 2007, entered into force 3 May 2008), art 24 and art 7.

⁸¹ Art 7.

⁸² Starr and Janah, above n 19 at 81.

education and support. Having the right to reasonable accommodation provided in legislation will also enable students and their families to advocate to schools to provide reasonable accommodation.

Enforcement mechanisms for the right to education

- 5.36 The current enforcement mechanisms available to students and their families are inadequate and are failing students.⁸³ We regularly come into contact with students with disabilities who have had their right to education removed because their schools are not able to adequately support them or have disciplined them for behaviour caused by their disability. These students find it almost impossible to enforce their right to education because the available enforcement mechanisms are inaccessible, overburdened and take too long to consider their cases. We strongly advocate that students and their families need to have accessible enforcement options against schools, Education Hubs and the Ministry of Education.
- 5.37 Auckland Disability Law in their submission outline the current appeal process available under Section 10 of the Education Act 1989. They identify that Section 10 is inadequate and needs to be amended to become more accessible to students and their families. We support Auckland Disability Law's submissions on Section 10 and request that Section 10 be amended to be more accessible.
- 5.38 The Taskforce has recommended that Education Hubs have a disputes and appeals body and an advocacy service. We advocate for the disputes and appeal body to have the jurisdiction to hear complaints about schools that are fail to adhere to the right to education or the right to reasonable accommodation. We also ask for the advocacy service to be available for students and their families.

6 Summary

- 6.1 YouthLaw Aotearoa's reflections and recommendations to the Taskforce can be summarised as follows:

Student Voice

- a) Children and young people must have the opportunity to share their views and their voices must be heard in the process carried out by the Tomorrow's Schools Taskforce to develop their recommendations.
- b) The Taskforce recommendations should be directed at ensuring that children's rights to have their views respected, listened to and acted upon are enacted at all levels of the education system.
- c) The Education Act should be amended to incorporate a positive obligation to respect and uphold children's rights both generally and, in relation to children's rights to participate and be heard in particular.

Suspensions, Expulsions and Exclusions

- d) We recommend that the Education Act 1989 be amended to move from a punitive model of student discipline to a restorative model.

⁸³ For a detailed analysis of current enforcement mechanisms please see Starr and Janah,, above n 19 chapter "Current enforcement mechanisms" page 83 – 85.

- e) We broadly support disciplinary decision-making moving from Board of Trustees to Education Hubs but have a number of concerns about the detail of this proposal including the risk of delay.
- f) We recommend that Education Hubs be empowered to critique and refuse to enforce school rules set by Board of Trustees that are counter to the Education Act, the Bill of Rights Act 1990 and any other law.
- g) We recommend that the Ministry develop clear guidelines about the role of principals in Education Hub disciplinary hearings.
- h) We support the creation of an advocacy service that is available to assist students and their families with appeals and disputes.
- i) We support the creation of an appeals and disputes service provided that it meets the requirements we specified in 4.30.
- j) YouthLaw Aotearoa strongly advocate for the education system to adopt a restorative approach to discipline and create guidelines about how mainstream schools should conduct hui whakatika.

Disability and Learning Support

- k) We support recommendation 12 with comments at 5.3 - 5.18.
- l) We support recommendation 13 with comments at 5.19 - 5.23.
- m) We support recommendation 14 with comments at 5.24 - 5.32
- n) We advocate for an enforceable right to education to be enacted into law and for enforcement mechanisms such as the advocacy service and the appeals and disputes service to be used as enforcement mechanisms.

7 Conclusion

“We know that about 35 per cent, we think, of young offenders before the youth court aren’t at school - the research is clear that better than psychological intervention, better than counselling, better than most things is attendance at school.”⁸⁴

- Judge Andrew Becroft, Children’s Commissioner

- 7.1 It is an unfortunate reality that many of our most vulnerable tamariki are born into the start of a pipeline that leads from school into prison rather than into employment and a future in which they fulfil their potential. We need to reform the education system and dismantle this pipeline so that all children can have the future that they deserve. This means moving away from the existing punitive and exclusionary approach to school discipline to one that is restorative and inclusive. It also means ensuring that all children receive the support they need to participate and to thrive in our education system.

⁸⁴ “Don’t expel, keep troubled kids in school – judge” (16 July 2012) Stuff
<https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10819919>

7.2 It is also critical that we make space for children’s voices, listen to what they have to say and then act on it. Or as one secondary school student told the Office of the Children’s Commissioner:⁸⁵

“Make it that people see me rather than doing nothing and treating me like a nobody.”

⁸⁵ New Zealand School Trustees Association and Office of the Children’s Commissioner, above n 2 at 41.