



Supporting the rights of young people in youth justice: An analysis of cross-sectoral responses

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The topic of human rights, particularly the rights of people who commit offences against others, generates intense and sometimes heated community debate. Professionals who work with young people who offend have to negotiate what Connolly and Ward (2008, p. 74) describe as “a tricky mix of imperatives”: supporting the young person’s needs, protecting their rights whilst also ensuring accountability for the offending. This article explores the ways in which professionals exercise their powers in the context of working with youth, using a recently trialled initiative between the Police and schools in New Zealand, ‘Cops in Schools’, to illuminate the issues.

Cops in Schools involves uniformed police officers being stationed at selected high schools in South Auckland for 15 hours per week. The scheme is a response to problems of disconnection with young people, limited responses to Māori and Pacific youth, pseudo-gang culture and violence before and after school.

The aim of the initiative is to have police officers embedded with selected schools to act as positive role models, to develop non-threatening

relationships with pupils, to liaise with education professionals and to provide police officers with an insight into current issues within the school environment such as bullying and truancy.

It is not a compulsory scheme, but one that has been developed in a partnership between the Police and participating schools. The scheme represents a significant change to the current educational landscape in New Zealand and is therefore a useful practice lens through which issues of a young person’s rights and professional powers can be explored. But first we will briefly outline the investigatory powers, duties and obligations of the Police and participating schools.

Legislative frameworks:

Duties and obligations

The powers and duties of police officers and school staff when investigating and responding to the actions of a child or young person are set out in legislation under the Children, Young Persons, and Their Families Act 1989 (CYPF Act) and the Education Act 1989 (EA89) respectively. Both the CYPF Act and the EA89 establish a set of purposive principles.

For police, s 208 of the CYPF Act prescribes a set of principles that apply in all matters arising under the youth justice system, which in essence is diversionary and holistic. The principles include:

- that criminal proceedings should not be initiated if there is an alternative means of dealing with the matter (s 208(a))
- that a child's or young person's age is a mitigating factor in determining whether sanctions should be imposed and in respect of the nature of any such sanctions (s 208(e))
- that sanctions should take the form most likely to maintain and promote the development of the child or young person within his or her family, whānau, hapū, and family group; and take the least restrictive form that is appropriate in the circumstances (s 208(f))
- that a child or young person who commits an offence should be kept in the community so far as that is practicable and in line with public safety (s 208(d))
- that, due to their vulnerability, a child or young person is entitled to special protection during any investigation relating to the commission or possible commission of an offence (s 208(h)).

For schools, and more specifically school principals and boards of trustees as the legal decision-makers, s 13 of the EA89 specifies a set of principles to be applied in all serious disciplinary cases where a student is stood-down or suspended. Whilst not as prescriptive or holistic as s 208 of the CYPF Act, s 13 of the EA89 establishes a framework where fairness, proportionality and the educational needs of the child or young person in question are central to the decision-making process. It requires that schools:

- provide a range of responses for cases of varying degrees of seriousness (s 13(a))

- minimise the disruption to a student's attendance at school and facilitate the return of the student to school when that is appropriate (s 13(b))
- ensure that individual cases are dealt with in accordance with the principles of natural justice (s 13(c)).

Both legal frameworks respond to the needs and rights of young people, and provide important guidance with respect to how the young person should be treated by professionals involved in their care.

Investigating or questioning students

When comparing the respective duties of school staff and police when investigating or questioning students, much more divergence emerges than is articulated in either Act.

The police operate under a prescriptive set of criteria under the CYPF Act when questioning children and young people suspected, upon reasonable grounds, of committing an offence. This includes:

- that prior to questioning, the police officer must explain to the child or young person, in language they can understand, their legal rights under the CYPF Act, including their right to legal advice or representation (ss 215, 215A, 221)
- that the child or young person is not obliged to agree to questioning and can terminate the questioning at any stage (s215(e))
- that the child or young person is entitled to consult with an adult of their choosing and have the adult present during the questioning. If a suitable adult is unavailable the police must arrange for an independent nominated person to be present (s222).

Schools, on the other hand, are not subject to any statutory criteria or administrative guidelines when questioning a student they

believe to have committed an offence. Such questioning is normally undertaken by a senior staff member, such as the principal, deputy principal or dean. There is no specific obligation for the school to ensure that the child or young person has a supportive adult present during such questioning. Arguably, this less prescriptive, more flexible response from the school provides a child or young person with fewer legal rights than if they had been questioned by a police officer. That said, any statement procured from a child or young person through less prescriptive questioning is unlikely to have much evidential value for police.

Whilst the school approach is less prescriptive and more flexible, the school is still obliged to ensure that a questioning process is conducted appropriately, with particular regard to its obligations under National Administration Guideline 5 (established under s 60A of the EA89) to ensure a safe physical and emotional environment for its students.

Role of parent/supportive adults/ professionals

The rights of children and young people to have support persons present during both police interviews and school disciplinary matters has been subject to recent examination by the Courts.

In *R v Z* (2008) the Court of Appeal examined the role of the adult nominated by a young person suspected of committing a serious offence and the duties and obligations of the police in such circumstances. In this case, the young person in question did not access legal advice prior to being questioned about a homicide. His father was present, and thus fulfilled the 'nominated person' requirement under the CYPF Act. However, the father was not adequately informed of the gravity of his son's position and accordingly did not act to procure legal advice

for his son prior to police questioning. The Court of Appeal found that this was in breach of s 215 of the CYPF Act.

The Court of Appeal commented that 'serious thought' may be needed in New Zealand towards nominated persons being provided at the outset with written notice of the importance of obtaining legal advice, as is the case in Canada. The Court also referred to a research paper on police interviews with young suspects in Northern Ireland, which concluded that parents, although providing a measure of comfort for their child, are incapable of providing impartial advice and assistance due to their emotional attachment (Quinn & Jackson, 2007). The Court noted these observations as being applicable in the New Zealand context.

The right of a young person to have a parent consulted during a principal's determination of a school disciplinary matter was also recently examined by the High Court and Court of Appeal. In *J v Bovaird and Board of Trustees of Lynfield College* (2007), the High Court found that a student is entitled to parental notification and support during the school questioning and investigation process, as part of a school's natural justice obligations under s 13(c) of the EA89. The Court of Appeal subsequently overturned this finding, ruling that whilst schools have an obligation to treat students fairly during these procedures, this does not extend to providing the child with a supportive adult in a manner analogous to s 221 of the CYPF Act (*Bovaird and Board of Trustees of Lynfield College*, 2008).

Decision-making procedures: Family group conferences and board of trustees suspension meetings

There is also a degree of contrast between the respective decision-making frameworks of

the youth justice system and the educational system. The youth justice system is diversionary by nature, encouraging accountability whilst focusing on sanctions that maintain and promote the development of the child or young person. Most cases are dealt with by diversion, either with or without the need for the matter to be referred to a family group conference. The family group conference itself is a non-adversarial, restorative forum described by Doolan (2009, p. 315) thus:

family members are brought together for a solution-focused meeting. Information about the offending is shared and the victim of the offending has an opportunity to talk about how it impacted upon them. Non-family conference members withdraw from the meeting while the family group then deliberates and develops a plan to address the issues raised at the conference. This is immediately followed by the whole group coming together again in order to reach a consensus over the plan.

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Decision-making in the context of school suspensions, however, is very different. Under the EA89, a school board of trustees convenes a meeting to determine school suspension matters in a quasi-judicial manner. The principal provides the board with the information setting out their account of the incident in question. This information is not subject to evidential rules and can contain hearsay accounts or anonymous statements.

The student and their family are, however, entitled to attend the meeting and receive copies

of this principal's information at least 48 hours prior. They then make submissions to the board, either in mitigation or rebuttal of the principal's information. After hearing from both sides, the board will usually retire and determine their decision in private.

Whilst the board is obliged under the EA89 to minimise the disruption to a student's education and facilitate their return to school where appropriate, a proportion of board suspensions result in the student being removed from school.

Ministry of Education reports have, for the past few years, consistently indicated that approximately 30% of all school suspensions result in an exclusion or expulsion. The most recent available statistics from the Ministry of Education indicate that 1,433 students were excluded in 2007, out of a total of 4,679

suspensions (30.6%). The Ministry's report states that the levels of exclusions have remained relatively constant since 2001 (Ministry of Education, 2008).

Having set out the obligations and duties of the school system and the police, we will now look at the ways in which these are enacted through the practice lens of Cops in Schools.

Police and schools working together: The Cops in Schools scheme

As noted earlier, the Cops in Schools scheme is an initiative between the New Zealand Police and participating schools in which police officers work at a school for 15 hours per week. With both systems effectively operating together within the school system, jurisdictional issues become complex if a student is accused of misconduct at school that may qualify as a

criminal offence; for example fighting, graffiti or damage to property, alleged drug involvement, or theft. In such a situation, dual jurisdictions apply – the principal and board’s powers under ss 13–17 of the EA89 or the police powers under Part 4 of the CYPF Act. The rights of a young person may be affected when both the police and the school run parallel processes of inquiry and censure, each with varying procedures for investigation and determination, and varying outcomes. In the context of a young person’s alleged offending at school, there can be tension between the restorative justice framework of the youth justice family group conferences, and the potential rigidity of the quasi-judicial board of trustee suspension process.

This can become problematic, leading to uncertainty and inconsistent treatment of the young person. For example, a school may be a ‘victim’ for the purposes of family group conferences plan, but at the same time act as both the prosecutor and determiner of fact in a school suspension process, the outcome of which may be at odds with the police position or the tenor of the family group conferences plan. Such a scenario could potentially raise natural justice issues, the right to which is protected under both systems, by virtue of s 13(c) of the EA89 and s 27 of the New Zealand Bill of Rights Act. This highlights the importance of clearly developing procedures and guidelines to deal with these tensions. The need for joint guidelines is also relevant in the context of the questioning of students. There is certainly a risk that if a young person is being questioned on the school premises under s 215 of the CYPF Act, their access to a lawyer, adult support person of their choosing or independent nominated person may be compromised, as the police officer in question

is able to readily access a school staff member for this purpose.

Whenever two systems come together in a joint initiative, the potential exists for a blurring of roles and responsibilities. This is particularly so as the systems are influenced by the beliefs and values of each other. For example, working jointly as in the Cops in Schools initiative could cause schools to neglect their pastoral care responsibilities, particularly with regards to difficult or at-risk students. A teacher who is having difficulty with a student in class may be more inclined to refer the matter to the police officer on the school campus than utilise the school’s student management system.

The Cops in Schools scheme’s guidelines go some way toward addressing this by stating that the police officer will not be in the school to do the school’s core business. In

this regard, a clear delineation of the respective core businesses of police and school in respect of student management is important, and so too is a clear articulation of the line between a school’s responsibility to deal with a difficult student or instance of misconduct at school and the role of police in responding to an allegation.

Conclusion

Cops in Schools is one of a number of similar initiatives that have developed over time to strengthen the police/school interface (see for example, International Centre for the Prevention of Crime, 2004; Australian Institute of Criminology, no date). There are nevertheless variations in focus. For example, while Cops in Schools primarily has a focus on enforcement, the Victorian Police Schools Involvement Program focuses entirely on education. In the

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Victoria programme, the police visit the school fortnightly as opposed to being stationed within the school environment (Australian Institute of Criminology, no date). All programmes, however, point to a developing interest in schools and police working together to support young people at risk.

There are certainly a number of very positive aspects of having local police involved in schools, particularly with respect to educational support, positive role modelling and communication with young people. It is, nevertheless important as we move forward with these and similar initiatives that we fully understand the ways in which professional values and perspectives influence responses to young people, and that we constantly interrogate initiatives to ensure that they are protective of young people's rights.

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