



Human Rights
Commission

Te Kāhui Tika Tangata

SCHOOL violence, bullying and abuse

A human rights analysis

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A human rights analysis of school violence, bullying and abuse

Executive Summary

- (i) The Human Rights Commission has long standing concerns about bullying, violence and abuse within schools.
- (ii) In 2008 the Commission received a complaint from parents of students subjected to bullying, violence and abuse by other students within a secondary school. As the Office of the Children's Commissioner had already begun to consider a comprehensive school safety inquiry, the Human Rights Commission undertook to analyse the human rights issues that arise when students are victimised by their peers.
- (iii) This work has focused on whether and to what extent the rights to education and to personal security and the principles of natural justice are promoted and protected by legislation and applied in policies and practices dealing with the management of peer-to-peer bullying, violence and abuse.
- (iv) New Zealand legislation and guidelines clearly articulate students' right to personal security. It is framed as the requirement on schools to provide a safe physical and emotional environment. There is insufficient focus on the impact of bullying, violence and abuse on victims' right to education. Students and their families are re-victimised when they are not accorded the right to be heard.
- (v) The Commission's review of legislation, regulations, policies and guidelines revealed significant gaps. When a student is disciplined for bullying, violence or abuse at school, there is no mandatory requirement that the principal or board consider the impact of their decision on the victim's attendance at school. The Ministry of Education guidelines do not stipulate that the victim's parents should be informed. Interagency protocols and guidance dealing with child abuse provide little or no information about peer-to-peer bullying, violence or abuse. This leaves schools with no clear steer about when or how to involve Police or Child, Youth and Family.
- (vi) A human rights approach highlights the need to ensure the rights of those most vulnerable are a priority and to ensure that bullying, abuse or violence between students at school is treated as seriously as incidents involving adults or that occur outside the school environment.
- (vii) The rights to personal security and education and the principles of natural justice must be supported by transparent accountability processes and opportunities for students to know their rights, acknowledge their responsibilities and respect the rights of others.
- (viii) The Commission recommends that the Ministry of Education provides specific guidance to schools clarifying:
 - that when a young person's right to personal security is threatened, their safety must be the paramount concern and the starting point for a school's response



- that parents should be informed if their child is bullied, abused or assaulted at school
- the range of rights involved in peer-to-peer bullying, violence and abuse and how they impact on schools' obligations around managing these issues. These should be cited explicitly within the revised *Guidelines for Principals and Boards of Trustees on Stand-downs, Suspensions, Exclusions and Expulsions*.
- that, based on the principles of natural justice, students who have been bullied, assaulted or abused at school (and their parents) have a right to be heard when the school decides whether and how to discipline the student(s) responsible and
- the process schools should follow when responding to complaints of bullying, violence and abuse - particularly the steps required to meet the needs of the victim and their family.

(ix) Furthermore, the Commission recommends:

- considering whether the Education Review Office (ERO) has sufficient powers to enable it to assess effectively schools' management and reporting of peer-to-peer bullying, violence and abuse
 - assessing, as part of the current review of the Breaking the Cycle interagency protocols and guide, whether these are appropriate mechanisms for addressing schools' need for clear advice about peer-to-peer bullying, violence and abuse and/or whether alternative protocols and guidance are required
 - explicitly including schools' human rights responsibilities within the National Education Guidelines and
- establishing a partnership between the Ministry of Education and the Human Rights in Education initiative to support schools to become human rights communities and meet the obligations envisaged in the UN World Programme for Human Rights Education.

Background information

1. Violence and bullying within schools was identified as a significant issue in the Human Rights Commission's 2004 status report *Human Rights in New Zealand Today: Ngā Tika Tangata o te Motu*. That document formed the basis for the 2005 *New Zealand Action Plan for Human Rights: Mana ki te Tangata* which recommended that schools and early childhood centres are supported to:
 - promote non-violent conflict resolution
 - combat bullying and harassment
 - promote respect for difference and prevent sexual and other abuse.
2. In some instances bullying complaints can be handled under the dispute resolution provisions of the Human Rights Act 1993. Where a student is bullied because of one of the grounds of discrimination in the Act (for example their race, sexual orientation or disability) this may be progressed as an unlawful discrimination complaint. A complaint might also be progressed if a school responded to a bullying complaint inadequately based on one of the grounds in the Act (for example by discriminating against a student because of their religion or sex).
3. The Commission received 20 complaints or enquiries about school bullying in 2006 and 15 in 2007. This figure jumped to 31



in 2008, with seven of those in response to publicity about the Commission's work in this area. The majority of complaints involved school students being bullied by other students, rather than by adults.

4. In late May 2008 the Commission received a complaint from parents of students subjected to bullying, violence and abuse by other students within a secondary school. The Commission was not asked to intervene in the specific incidents which had taken place within that school, as other processes were already underway. Instead it was asked to:

conduct an inquiry generally into violence and child abuse in New Zealand schools; how victims' and offenders' human rights are respected or infringed and then report to the Prime Minister on what legislative, administrative or other action should take place.

5. At the time the Office of the Children's Commissioner had already scoped its comprehensive *School Safety* inquiry. The Human Rights Commission undertook to contribute an analysis of the human rights issues arising from incidents of bullying, abuse and violence between students at school. In particular, this work has focused on whether and to what extent this range of rights is addressed in current legislation, policies and practices dealing with the management of peer-to-peer school bullying.
6. The key findings of this work are outlined below. Emerging issues were shared with the Office of the Children's Commissioner at regular meetings during their *School Safety* inquiry.

Human Rights Approach

7. Violence, bullying and abuse in schools encompass a range of human rights issues. An explicit 'human rights approach' offers a coherent and comprehensive way for these to be addressed.
8. A human rights approach involves the following six elements:
- Linking of decision-making at every level to the agreed human rights norms
 - Identification of all the relevant human rights of all involved and, in the case of conflict, balancing the various rights to maximise respect for all rights and rights-holders, prioritising those of the most vulnerable
 - An emphasis on participation of all in the school community in decision-making
 - Accountability for actions and decisions, which enables those in the school community to express concerns about decisions that affect them adversely
 - Non-discrimination through the equal enjoyment of rights and obligations by all in the school community and
 - Empowerment of individuals and groups in the school community by enabling them to use rights as leverage and to legitimize their voice in decision-making.
9. This paper now addresses the six elements in turn.

Human rights norms

10. Children and young people's right to education and to personal security are established in the Universal Declaration



of Human Rights (Articles 3, 8, 26 and 28) and codified in a number of international human rights treaties:

- the International Covenant on Economic, Social and Cultural Rights (article 13)
 - the International Covenant on Civil and Political Rights (article 9)
 - the Convention on the Rights of the Child (articles 19, 28, 29 and 40)
 - the Convention on the Elimination of all Forms of Discrimination Against Women (articles 2, 5, 10, 11, 12 and 16)
 - the Convention on the Elimination of All Forms of Racial Discrimination (articles 5 and 7) and
 - the Convention on the Rights of Persons with Disabilities (articles 14, 16 and 24).
11. As a signatory to these international treaties, New Zealand has a duty to respect, protect and fulfil the obligations they contain.
 12. In addition, in cases where bullying, violence or abuse results in criminal charges, the right to justice and the rights of victims of crime are invoked. The right to justice is outlined in the Universal Declaration of Human Rights (articles 7 and 10) and the International Covenant on Civil and Political Rights (articles 2 and 14). The specific rights of children and young people are set out in article 40 of the Convention on the Rights of the Child (UNCROC).
 13. There is no international treaty specifically covering the rights of victims of crime. Most of the standards are found in 'soft law' such as the United Nations (UN) Declaration of Basic Principles of Justice

for Victims of Crime and Abuse of Power, adopted by the UN General Assembly in 1985.¹ Although this document has considerable persuasive value, it does not have the status of binding legal obligations. However article 8 of the Universal Declaration of Human Rights states that those whose rights are violated have the right to an 'effective remedy' and there is increasing recognition that victims of crime have a range of rights which should be enforceable. Internationally this can be seen in the drafting of a proposed Convention on Justice and Support for Victims of Crime, Abuse of Power and Terrorism, while in New Zealand it is reflected in the Victims' Rights Act 2002.

14. This paper focuses on legislation and policies guiding schools' management of bullying, violence and abuse between students within schools. Although the rights of students victimised by this behaviour are not set out in a specific international human rights instrument they are integral to both a human rights approach and the international standards about the rights to education and personal security.

The right to personal security

15. The right to personal security for students who are bullied, harassed, assaulted or abused is reflected in the following domestic legislation:
 - sections 15 and 16 of the Health and Safety in Employment Act 1992 (and the Ministry of Education's Health and Safety Code of Practice for State and State-Integrated Schools)

¹ UN General Assembly resolution 40/34 of 29 November 1985.



- section 60A(1)(c) of the Education Act 1989, specifically through an unequivocal obligation in National Administration Guideline 5 (NAG5) requiring a board of trustees to provide a safe physical and emotional environment for the children and young persons in the school's care
 - the Education (Hostels) Regulations, including regulations 55, 58 and 67 which deal with policies about hostel relationships and protection from ill-treatment; abuse, harassment or serious neglect of boarders; and complaints respectively and the duty of care that school boards of trustees and teachers owe under general law, to safeguard students from harm. A breach of a duty of care could result from negligence, a breach of contract or fiduciary obligations.²
16. These provisions and obligations, particularly NAG5, are widely publicised by the Ministry of Education in its guidance to boards of trustees and through the range of anti-bullying programmes available to schools. Ministry of Education advice to Boards of Trustees is that "to fulfil National Administration Guidelines No. 5, boards are required to develop policies and procedures that ensure a safe learning environment for all students." It concludes "boards need to be aware that courts overseas have awarded damages where schools have failed in their duty to ensure the safety of students from persistent abuse such as bullying".³
17. As a result of changes to the Education Act 1989, through the passage of the Education Standards Act 2001, Codes of Ethics are binding on all teachers who hold a practising certificate. *The Code of Ethics for Registered Teachers* established by the NZ Teachers Council places an ethical obligation on registered teachers to "promote the physical, emotional, social, intellectual and spiritual wellbeing of learners". It also acknowledges the rights of caregivers to consultation on the welfare and progress of their children and involvement in decision-making about their child's care and education. Like other professional codes, this may be used as a basis to challenge the ethical behaviour of a teacher and could provide grounds for complaint if a teacher's practice fell short of these standards.⁴
- The right to education**
18. The UN Committee on the Rights of the Child has stated that "a school which allows bullying or other violent and exclusionary practices to occur is not one which meets the requirements of article 29(1)" of UNCROC.⁵ The right to education is compromised if a child or young person

² Kazmierow, M. & Walsh, P. (2004). Bullying in schools and the law. In P. Walsh, J. Hannan, & P. Walsh. Education law - continuing challenges. Wellington: New Zealand Law Society pp. 103-122. http://www.tki.org.nz/r/governance/positive_behaviours/publications/articles_e.php

³ Ministry of Education (1997) Education Circular 1997/12 – Responsibility of boards of trustees for student safety. Retrieved on 10 March 2009 from <http://www.minedu.govt.nz/educationSectors/Schools/PublicationsAndResources/Circulars/SchoolingCirculars/Circulars1997/Circular199712.aspx>

⁴ www.teacherscouncil.govt.nz/ethics

⁵ United Nations Committee on the Rights of the Child (2001) CRC General Comment 1 (Twenty-sixth session, 2001): Article 29(1): The Aims of Education, CRC/C/103 (2001) 150 at para 8. Retrieved on 10 March 2009 from http://www.bayefsky.com/themes/childrens-rights_education_general-comments.pdf, p. 4



does not feel safe at school or is absent from school for any significant period of time.

19. A school's disciplinary processes are one mechanism used to respond to a student who bullies, abuses or attacks another. Sections 13-18 of the Education Act 1989 set out the legally mandated processes a principal or board of trustees must follow when standing-down, suspending, excluding or expelling a student. These place some requirements on schools to consider the impact of their decisions on a student's right to education. Specifically, section 13(b) makes it clear that the purpose of these provisions includes minimising disruption to a student's attendance at school and facilitating their return to school when that is appropriate.
20. This protection is important. As the Ministry of Education's *Guidelines for Principals and Boards of Trustees on Stand-downs, Suspensions, Exclusions and Expulsions* state, these are serious, last-resort responses with far-reaching consequences and "should be made only after considering all the implications for the educational future and life chances of the student". The guidelines go on to note that violent behaviour "may be a symptom of serious underlying problems that may require the help of other agencies".⁶ In Child, Youth and Family's guide *Let's Stop Child Abuse Together* bullying and violent behaviour is also acknowledged as a possible indicator that the student responsible is a victim of bullying, violence or abuse themselves.⁷
21. In contrast, there are no explicitly mandated requirements that schools consider the impact of disciplinary processes or decisions on the education of the student who has been bullied, abused or violently assaulted. This is despite the likelihood that significant planning and care will be needed to ensure this student's right to education is not compromised, for example when the disciplined student returns to school after being suspended.
22. Section 77(b) of the Education Act 1989 requires the principal of a state school to take all reasonable steps to ensure a student's parents are told of matters that, in the principal's opinion:
 - Are preventing or slowing the student's progress through the school; or
 - Are harming the student's relationships with teachers or other students.
23. This places a requirement on schools to inform parents about bullying and violence at school if, in the principal's opinion, this is harming the student's progress or relationships at school.
24. When a student is stood-down or suspended, the principal's requirements to inform the student's parents are spelt out in Ministry of Education guidelines, including flow-charts pinpointing at what stage this should take place.
25. In cases where the disciplinary process is in response to bullying, abuse or violence against another student, there is no equivalent guidance to schools about

⁶ Ministry of Education (June 2004) *Guidelines for Principals and Boards of Trustees on Stand-downs, Suspensions, Exclusions and Expulsions*, p. 5.

⁷ Child, Youth and Family (2001) *Let's Stop Child Abuse Together – an interagency guide to Breaking the Cycle*, (revised from the 1998 version).



informing the victim's parents. While the Ministry of Education includes details about the section 77(b) provisions in an appendix to its 1997 circular *Responsibility of Boards of Trustees for Student Safety*, the circular itself contains no specific guidance stipulating when parents should be informed if their child is being bullied, abused or assaulted at school.

Children and young people's rights at school

26. The articles of the United Nations Convention on the Rights of the Child provide a powerful summary of the key human rights pertaining to children and young people at school. Every student has the right to:
- have their best interests considered when decisions are made (article 3)
 - protection from physical, emotional and sexual harassment or abuse from peers or others while in the school environment (article 19)
 - be treated with respect and dignity by other people (preamble, articles 2, 29 and 40)
 - be disciplined in ways which are positive (articles 3, 28, 37 and 40)
 - express their views, have a say in matters which affect them, present their side of a story and be treated fairly (articles 2, 12-14 and 40)
 - have matters of privacy protected (article 16)
 - be free from discrimination of any sort (article 2)

- learn and interact in a safe environment (article 3)
 - retain their own property and have it treated with respect (derived from article 17 of the Universal Declaration of Human Rights)
 - have their family/whānau informed and involved in matters that affect them (article 5) and
 - be taught, and have demonstrated to them, respect for the rights of others, and their responsibilities in relation to this (article 29).
27. This collection of rights has sometimes been referred to as a Code of Students' Rights.⁸ It encompasses the rights to personal security and to education as well as the principles of natural justice which are raised later on in this paper. There is a need for guidance from the Ministry of Education that identifies these rights and how they impact on schools' obligations around managing bullying, violence and abuse by one student to another.

Identifying and maximising respect for all the relevant human rights

28. The previous section has highlighted that there is a clear articulation in New Zealand legislation and guidelines of students' rights to personal security (framed as the requirement on schools to provide a safe physical and emotional environment). On the other hand, there is insufficient focus on the impact of bullying, violence and abuse on students' right to education. Nor is sufficient guidance provided about balancing competing rights and prioritising

⁸ New Zealand Police (2008) *Our Place. Teaching Guide for the Health Modules*, (revised edition) p. 38.



the rights of those most vulnerable. This does not equate to choosing one student's rights over the other's, rather it is about identifying when and how due attention is given to each.

29. When a young person's right to personal security is threatened by bullying, violent or abusive behaviour, their safety must be the paramount concern. Yet the most visible mandatory requirements centre on schools reporting to the Ministry of Education whenever a student is stood-down, suspended, excluded or expelled. In incidents where that young person has bullied, abused or attacked a co-student, there are no equivalent requirements to report on steps taken to keep the victim safe. As a result, boards of trustees may infer that keeping students in school is the most pressing issue, rather than ensuring the safety of victims.

Participation in decision-making

30. Participation is integral to whole-school approaches aimed at preventing and managing school bullying. The common law principles of natural justice are recognised in many statutes including section 27 of the New Zealand Bill of Rights Act 1990, and apply to decisions made by boards of trustees. These principles place an obligation on boards to "hear the other side"⁹ and to make decisions free from bias.
31. Under section 13(c) of the Education Act 1989, one of the purposes of the Act's stand-down, suspension, exclusion
- and expulsion provisions is to "ensure that individual cases are dealt with in accordance with the principles of natural justice". These requirements are then spelt out in more detail in the Ministry of Education's guidelines. The June 2004 version of the guidelines, currently under review, summarises the principles of natural justice as "the obligation to act fairly and reasonably in the circumstances". However recent case law highlights the more specific requirements on boards of trustees, particularly their obligation to hear both sides of the story.¹⁰ In addition, in order for a board's decisions to be free from bias the principal (who instigates the disciplinary proceedings) should not be present when the board makes its decision.
32. There is a fundamental gap in the information provided to boards of trustees, namely that the principles of natural justice apply to all those affected by its decisions, not just those being disciplined. Accordingly, students who have been bullied, abused or violently assaulted at school (and their parents) have the right to be heard, if they so wish. Further consideration is required about ways to ensure this right is realised within New Zealand's legal and policy framework.¹¹ Article 12(2) of UNCROC affirms a child's right to be heard in relation to any judicial or administrative proceedings that affects them. Arguably this also encompasses parents' right to be informed, and to state their views, when a principal decides to not take disciplinary action against a student

⁹ The audi alteram partem rule

¹⁰ *Bovaird v J* (2008) NZAR667

¹¹ The Education Act 1989 requires that any information to be presented to the board must be supplied to the suspended student at least 48 hours before the suspension meeting. It does not provide the option for witnesses or parties to attend a suspension meeting.



who has bullied, abused or attacked their child.

33. The Office of the Children's Commissioner advises parents and students that they should have the following expectations about their school's response to reports of bullying:¹²

- to be heard and responded to sensitively without being dismissed out of hand
- to be told the report will be investigated and that there will be a response
- to receive feedback on the situation reported
- to have the incident responded to in a way that is appropriate to its nature
- to be provided with protection from negative consequences of their reporting and
- that the school will intervene and support victims and respond to bullies.

34. Formal Ministry of Education guidance, supporting this advice and identifying the underpinning human rights, is required.

Accountability for actions and decisions

35. Accountability includes transparent processes for enforcing guidelines and protocols and taking appeals.

36. If a student has been excluded or expelled for bullying, abusive or violent behaviour the Education Act 1989 sets out a hierarchy of appeal processes. Ministry of

Education guidance is available for school boards of trustees and the Office of the Children's Commissioner has funded Youth Law to publish advice for students and their parents.

37. The Education Review Office (ERO) undertakes an education review of schools, visiting on average once every three years. In February 2009 the Minister responsible for ERO announced that from 1 March schools performing consistently well will be reviewed every four to five years. As part of that review process, each board of trustees is required to provide a Board Assurance Statement attesting that it complies with legislation, regulations, Ministry of Education circulars and other required documentation covering six areas of board operation. In the compliance section on Health, Safety and Welfare, ERO asks the board about the physical and emotional safety of its students, in particular behaviour management, handling of complaints, and internet safety.

38. Where a board attests that it is not complying (or that it is unsure about whether it is complying), ERO follows this up while at the school. In addition, as part of the safety aspect of every school review, ERO evaluates and reports on schools' management of bullying.

39. ERO has highlighted issues of bullying during individual schools' reviews and also in its May 2007 Safe Schools: Strategies to Prevent Bullying report.¹³ That document sets out ERO's expectations

¹² Cited in Wellington Community Law Centre (November 2005) Schools and the Right to Discipline: A guide for parents (4th edition) pp. 21-22. http://www.occ.org.nz/_data/assets/pdf_file/0005/3299/OCC_Schools_And_The_Right_To_Discipline_Guide_for_Parents.pdf

¹³ Education Review Office (2007) Safe Schools: Strategies to Prevent Bullying. Retrieved on 10 March 2009 from <http://ero.govt.nz/ero/publishing.nsf/Content/safe-schs-strats-bullying-may07>



of good practice in both the prevention and management of bullying, namely that schools should:

- acknowledge bullying behaviour as a risk to be managed
 - have documented policies and procedures around preventing bullying and managing bullying behaviour
 - carry out anonymous student surveys about student safety
 - provide staff training in recognising and responding to bullying
 - provide appropriate guidance and counselling for students
 - implement strategies/programmes/interventions to prevent/manage bullying and
 - ascertain their success in preventing/managing bullying.
40. Complaints received by the Commission have highlighted parents' and students' concerns that bullying, violence and abuse have not been acknowledged within their school. The failure to name this behaviour has implications not only for the students involved but also in terms of limiting ERO's ability to evaluate and report on a school's management of these issues. While individual teachers and students may volunteer information about specific incidents during an ERO review, a whole-school approach requires leadership by the school as set out in ERO's good practice expectations, stated in its Board Assurance Statement guidelines.

Non-discrimination

41. New Zealand and international research shows that a significant proportion of bullying is fuelled by prejudice, particularly based on a student's race, disability, sex, sexual orientation or gender identity.¹⁴ Since Term 3 2008, the Board Assurance Statement that a school completes during its ERO review must state whether the school provides anti-bullying programmes and if they include a focus on racist bullying, special needs bullying, homophobic bullying or sexual harassment.
41. Freedom from bias is the second component of the common law principles of natural justice. This includes ensuring that disciplinary processes are not founded on pre-determined biases about particular groups of students. Such bias, if based on one of the grounds of unlawful discrimination in the Human Rights Act 1993, could result in a complaint to the Commission. For example, the Commission is aware of parents' concerns that disabled students have been disciplined inappropriately for behaviours resulting from their impairments.
43. Furthermore, a non-discriminatory approach is broader than the grounds of discrimination in the Human Rights Act. It includes ensuring that bullying, abuse or violent assaults between students at school are treated as seriously as incidents involving adults or that occur outside the school environment.

¹⁴ Human Rights Commission (2004) Human Rights in New Zealand Today; Nairn, K., & Smith A. B. (2003) "Taking Students Seriously": their rights to be safe at school, *Gender and Education*, 15 (2), 133-149; United Nations General Assembly (2006) Report of the independent expert for the United Nations Study on Violence Against Children, at paras 51-52, retrieved on 10 March 2009 from <http://www.violencestudy.org/IMG/pdf/English-2-2.pdf>



44. The 1996 Breaking the Cycle interagency protocols and resulting guide Let's Stop Child Abuse Together are key documents setting out agencies' responsibilities in relation to child abuse. These emerged as a result of 1995 amendments to the Children, Young Persons and Their Families Act which established the framework for care and protection of children and young people. After considerable debate within the sector, Parliament's decision was to focus on education and voluntary reporting of abuse, rather than mandatory reporting. Accordingly, the governmental priorities were raising public awareness of child abuse and its unacceptability, identifying abuse prevention strategies and developing guidelines on how to report abuse including implementing interagency protocols.
45. Within a school environment, all of these educational components are equally essential to support a voluntary reporting framework. It is arguable that there is even a greater need for these protections when children and young people are required to attend school and therefore cannot easily remove themselves from an unsafe environment. Furthermore, when students truant because they do not feel safe at school, there is now an additional cost to their parents with maximum truancy fines doubling for first offences and increasing from \$400 to \$3,000 for subsequent offences.
46. The Children, Young Persons, and Their Families Act 1989 defines child abuse as "the harming (whether physically, emotionally, or sexually), ill-treatment, abuse, neglect, or deprivation of any child or young person". It encompasses incidents when the person responsible for this behavior is another child or young person. Yet when students are abused, bullied or violently assaulted by their peers at school, there is no clear guidance available advising adults or students when or how to report abuse to Police or Child Youth and Family.
47. The 1996 Breaking the Cycle interagency protocols for schools do not cover peer-to-peer bullying. They do include short guidelines supplied by the Office of the Children's Commissioner about responding to peer abuse, especially within schools, but these are focused solely on sexual abuse. When seeking practical advice about responding to specific incidents, schools are likely to refer to the 2001 interagency guide Let's Stop Child Abuse Together. That document includes no material about steps schools should take when the person answerable for the bullying, abusive or violent behavior is a fellow student.
48. These are glaring gaps. The current review of the Breaking the Cycle interagency protocols and guide provides an opportunity to assess whether these documents are the appropriate mechanism for addressing schools' need for comprehensive advice around bullying, violence and abuse by one student against another. If not, then alternative protocols and guidance are required.
- Empowerment of individuals and groups in the school community**
49. Within the human rights approach, empowerment is defined as enabling individuals and groups within a school to use their rights as leverage and to legitimise their voice in decision-making. This requires those rights to be transparent, alongside an unequivocal whole-school commitment to promote, protect and fulfil them.



50. The 1995 amendments to the Children, Young Persons and Their Families Act introduced the principle that the interests of the child are paramount. While this is an unambiguous benchmark for those working with adult perpetrators of child abuse, when two children or young people are involved decisions are not always as clear-cut. A human rights approach can provide a way forward, through identifying and balancing competing rights in a way that maximises respect for all rights and rights-holders, even when those of the most vulnerable are prioritised.
51. Currently there is no comprehensive Ministry of Education material identifying human rights obligations arising from instances of peer-to-peer bullying, violence or abuse, or guidelines about their implications for schools' policies and practices. Without such direction, it is very difficult for students to use these rights to legitimise their role within a whole-school response.
52. The Ministry of Education's Guidelines for Principals and Boards of Trustees on Stand-downs, Suspensions, Exclusions and Expulsions are due to be released for consultation in March 2009. These will contain the Ministry's legal advice about stand-downs, suspensions, exclusions and expulsions alongside optional good practice guidance for boards and principals. Compliance with common law obligations and international human rights treaties should be included within the legal advice to schools. In addition, the good practice guidance is an avenue for providing practical advice to boards and principals about ways to meet these obligations.
53. New Zealand has explicit international obligations to respect, protect and fulfil the human rights of young people to education and personal security. Schools bear these human rights responsibilities but are generally not aware of them as such. Clearer guidance, for example through an explicit mention of human rights responsibilities in the National Education Guidelines is recommended.
54. Any coherent attempt to address violence, bullying and abuse in schools must acknowledge that these problems are not isolated examples of individual behaviour. Since the adoption in 1948 of the Universal Declaration of Human Rights through to proclamation of the UN World Programme for Human Rights Education in 2004 there has been a recognition that concerted attempts need to be made to develop a stronger culture of human rights and responsibilities as a means of overcoming threats to personal and collective security. In other words, alongside specific human rights obligations there is a requirement on countries to develop awareness and understanding of the broader human rights standards upon which those obligations are based.
55. Building schools as communities where children and young people know their rights, acknowledge their responsibilities, and respect the rights of others is integral to whole-school responses to violence, bullying and abuse. Collaboration between government and non-government organisations to fulfil this obligation is envisaged in the UN World Programme for Human Rights Education.¹⁵ To date such a partnership with the Ministry of

¹⁵ <http://www2.ohchr.org/english/issues/education/training/planaction.htm>



Education is yet to emerge in New Zealand. Human Rights in Education remains an independent initiative promoting human rights-based education in schools, supported to a limited extent by the Human Rights Commission.¹⁶ This is despite emerging evidence internationally that a more explicit recognition of the human rights role of the school contributes to the development of a stronger rights-respecting culture, with a decrease in incidents of violence, bullying and abuse being amongst the benefits.¹⁷

Conclusions

56. In the words of the United Nations Committee on the Rights of the Child “children do not lose their human rights by virtue of passing through the school gates”.¹⁸ A child or young person who is bullied, abused or assaulted has rights, regardless of the age of their perpetrator or where the incident occurs. Any failure to treat bullying, abuse and violence seriously because it occurs between students, within schools, is a violation of a child’s human rights.
57. Self-managing schools operate within the New Zealand legal framework which requires them to provide a safe physical and emotional environment for the children and young people in their care. Schools are well-informed of these requirements yet there are no clear protocols and guidance about managing peer-to-peer bullying, violence and abuse within schools. Schools require more support in order to meet New Zealand’s international human rights commitments.
58. Currently a number of key guidelines and protocols are under review. School communities, including students and parents, must have an opportunity to articulate their rights and responsibilities and have their voices heard through these consultation processes. In addition cross-agency discussion is required about further measures needed to ensure that students’ rights to education and right to personal security are met, in line with the principles of natural justice including the rights of victims to be heard.
59. There must be zero tolerance for bullying, violence and abuse within schools, supported by policies for managing incidents when they occur. Prioritising the rights of those most vulnerable is central to a human rights approach. The needs of students who have been bullied, abused or violently assaulted have to be the starting point for a school’s response. The focus must be on their immediate and continuing safety, with measures to address bullying, violent or abusive behaviour flowing from that initial commitment.
60. As the Ministry’s guidelines indicate “many schools use restorative justice principles and develop behaviour management programmes that allow for all students to be catered for within the school”.¹⁹ However these will only be sustainable if the school’s responses convey clear

¹⁶ <http://www.rightsined.org.nz/>

¹⁷ Human Rights Commission (2007) Building Human Rights Communities in Education.

¹⁸ United Nations Committee on the Rights of the Child (2001), *ibid*.

¹⁹ Ministry of Education (June 2004), *ibid*.





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messages about students' rights and responsibilities', including what form of redress is required by a young person who has bullied, assaulted or abused another student.

61. Fair, transparent and lasting solutions require that victims of bullying, violence, and abuse and their families are able to be involved in decisions affecting their right to education and their right to personal security. This includes the opportunity to have their say within disciplinary processes, if they so wish.
62. Schools require unequivocal protocols and guidance outlining their responsibilities to inform parents about bullying, violence or abuse that involves their child, and strongly recommending when Police and Child, Youth and Family should be approached. Working with these and other agencies should be seen as a key component of a whole-school approach to preventing and managing bullying, violence and abuse - not as an optional extra.

