

**Response to Draft Cabinet Paper
Special Education - Proposed complaints and disputes resolution process**

IEAG: The Inclusive Education Action Group

15 August, 2011

Susan Dey
Ministry of Education
PO Box 1666
WELLINGTON

Dear Ms Dey

Thank you for the opportunity to comment on this draft proposal. We note that the Ministry is looking at making this process a universal one for all parents. It is vital that any changes are focused on the rights of children and young people to access a decent, fair and quality education in their local school. In this regard, *IEAG supports the development of a complaints process that is clear and expedient, and has positive outcomes. Above all, a complaints process should not abrogate children's and young people's rights by leaving them languishing in conditions that are detrimental to their achievement and social-emotional well being.*

We would like to make the following general points in relation to school complaints processes:

1. Complaints processes can be avoided by developing an inclusive education system

The Inclusive Education Action Group (IEAG) is committed to the development of an inclusive education system in New Zealand, consistent with the goals of the New Zealand Disability Strategy and the UN Conventions on the Rights of the Child and the Rights of Disabled People.

IEAG would like to emphasise that the preferred approach is to reduce the need for a formal complaints process in the first place. This means that the Ministry of Education needs to ensure that all schools have the policy guidelines, relevant teacher education and professional development opportunities, and practical supports needed to teach a diverse group of students well. When these things are in place, and New Zealand has an inclusive education system, a complaints process is less likely to be needed.

2. Complaints processes involving Boards of Trustees are aversive for parents and work against the goal of inclusive schools and communities

The current procedures in self-managing schools (which are retained in this draft cabinet paper) suggest that parents should work through three steps:

- i) speak first with the teacher
- ii) speak with the principal
- iii) make a formal complaint to the Board of Trustees

The retention of this process in the draft cabinet paper indicates no change, and risks leaving the way open for parents and children/young people to remain disadvantaged and disempowered. It is noted that parents sometimes complain to the Ministry of Education and to other bodies when school Board processes do not deliver the required changes, however these processes can also be drawn out. The Ministry of Education is currently restricted in terms of its capacity to uphold students' rights to quality education at school because it is the board that is ultimately responsible.

Boards of trustees comprise the school principal, a teacher and student representative, and parents from the complainant's own community. To ensure that children and young people learn well and have a sense of belonging, principals, staff, boards, parents and the wider school community need to work together. The Ministry guidelines for Boards (the NEGS and NAGS and the New Zealand Curriculum) supports this idea by providing Boards with guidance to foster all students' achievement and ensure they are physically and emotionally safe.

Within this context, which is intended to be mutually supportive, it is extremely difficult for parents to engage in a formal complaints process with their school's board of trustees. Pitfalls include:

Boards of trustees:

- may be poorly informed (e.g. about teaching and disability; children's rights; curriculum processes and procedures; teaching and learning) and may not understand or appreciate the issues raised in a complaint;
- may not have the knowledge or skills needed to resolve a complaint, particularly if the complaint involves the school principal;
- may be guided exclusively by the principal, in which case the complaints process simply becomes an extension of the second step – speak to the principal- and resolution can be impeded;
- are required to support their principal, this may prevent boards from hearing and fully understanding the concerns of parents and students;
- may have parent members who have conflicting loyalties between supporting the principal and supporting other school parents (i.e. those parents who complain).

Parents may:

- be unaware of, and/or not understand their school's complaints policy and process;
- feel anxious about questioning decisions and approaches made by school staff;

- be concerned about damaging relationships with principals and teachers who are responsible for their child's education;
- worry about engaging in discussions about difficult issues with teachers and the principal on their own;
- feel that their and their child's concerns are not understood or considered important by teachers, the principal or the board;
- be bullied by principals and/or other staff;
- feel that they are 'on their own' because other concerned parents are afraid to take a formal complaint to the board or do not understand the complaints process;
- be anxious about moving to a formal complaints process with their school's board (which includes parents from their own school community and could also include a student representative who is a peer of their child);
- be misunderstood and/or ostracised by staff and/or other members of the school community for taking a formal complaint to the board;
- be concerned about damaging relationships with principals, teachers, parents and other members of their school community;
- have few or no opportunities to express their views or to respond to any decisions the board and principal may make in relation to the complaint.

Some parents may decide not to take a formal complaint because they do not wish to risk going through a formal process on their own, without advice or support, which, in the end, could result in no change and may damage relationships. In some cases, the Ministry of Education may require more than one complaint to be lodged before intervening with a school. This is a dangerous requirement because it results in numbers of students being left in detrimental situations with no support, no one looking out for them, and with their rights breached. This requirement also minimises (if not rejects) the concerns of those parents who are prepared to make a formal complaint.

3. Complaints processes leave children and young people in schools unprotected and vulnerable.

Complaints processes are time consuming. The suggestions in the Cabinet paper (see **points 27 & 30**) still require parents to speak first with the teacher, followed by the principal, and finally the board. The parent may then be referred back to the school. Because Boards meet monthly, this lengthy process means that students can be left in inadequate and detrimental school situations. Phase two, in which district managers are engaged prolongs the process further and could result in students experiencing poor education over a period of several months. This situation clearly contravenes students' rights to achieve, to be socially included and supported, and to be physically and emotionally safe. It also leaves them without a voice. *We suggest that Boards' complaints policies include a timeframe for resolving complaints that requires the board to meet immediately, to resolve the complaint and reach a decision that is not detrimental to the child's/young person's rights and well-being.*

In relation to specific points in the draft Cabinet paper, IEAG would like to suggest the following:

Point 27, 28, 32, and 33 – This essentially describes the present complaints process and therefore indicates little change. As described above, this process can take time; it can leave children and young people languishing in poor quality school contexts that impact negatively on their learning, social and emotional experiences. Boards are reliant on the principal for guidance as he/she is the Board member most likely to understand education issues, yet the principal has also failed to resolve the issues of concern to parents at an earlier stage in the process. This is why parents have advanced the complaint to Board level. Where Boards are uninformed or are poorly informed about the issues, Boards may conclude that a problem does not exist, resulting in no change and the complaint remaining unresolved. *We suggest that the actions involved in these four points need to be concurrent and part of an integrated single approach that aims to support students' rights, enhance their achievement and ensure their social, emotional and physical; safety.*

Point 29 – Schools need to know more than just their legal obligations and funding options. They also need information and support from the Ministry of Education to address the complaint. *We suggest that the Ministry of Education keeps a register of all complaints, identifies local and systemic issues and uses these to assist in resolution processes and to prevent further complaints. This could include, for example, providing relevant professional development for principals and teachers, undertaking policy reviews and so on.*

Point 36. The selection by the Ministry of a 'valued and respected' member of the sector lacks transparency and ignores the complainant's right to be fully consulted and involved in a clear and supportive process.

Points 38 and 41– *Boards of Trustees should be required to forward copies of all complaints to the Ministry of Education. The process from that point should involve direct and supportive information and guidance by the Ministry of Education, and ongoing consultation with and involvement by parents who have complained.* The current process does not support parents to take a complaint to their Board. The Ministry's role and that of ERO to ensure that Boards have complaints policies and that the policies are followed does not support Boards to understand and make good decisions about parents' complaints. Complaints processes do not currently provide parents with opportunities to be listened to and treated fairly. Complaints can result in no change or ineffective change, leaving students vulnerable to face ongoing challenging situations at school.

Point 43 – This is a key point, and the consequences of Board's lack of knowledge have been addressed in this response. We have enclosed a list of questions for Boards of trustees that IEAG has produced. These questions support Boards to consider the extent to which their school is inclusive for all students.

Point 51 ; The UN Convention on the Rights of People with Disabilities says that governments SHALL provide disabled people with an inclusive education system. The UN Convention on the Rights of the Child is also relevant as children and young people have, for example, rights to be protected, to participate fully in society, and to express their views and have those views responded to. In this regard, IEAG suggests that *the Children's Commissioner needs to be involved in discussions about the proposed complaints process. We would like to see the Commissioner's Office provide support and information for parents who complain so that parents do not have to work through a challenging process on their own. Where the complaints process results in an unsatisfactory outcome for parents, we suggest that the Commissioner's Office could provide further support to effect a positive resolution through an independent appointee (see point vii below).*

IEAG suggests the following approach for an effective complaints and dispute resolution process:

- i) *The complaints process has as its primary concern the rights of all students to achieve, to be socially included, and to be physically and emotionally safe and secure.*
- ii) *The complaints process does not abrogate children's and young people's rights or leave them languishing in conditions that are detrimental.*
- iii) *The complaints process is clear, expedient, and has positive outcomes. All parents are well informed about their school's complaints process.*
 - a. *The process is easy for parents to follow, parents are kept well informed throughout the process, and the culture of the school is such that parents feel able to use the complaints process without negative consequences.*
 - b. *When a principal is unable to resolve a complaint, he/she informs parents about the process of making a complaint to the board of trustees, and gives them a copy of the school's complaints policy.*
 - c. *Schools' complaints policies and their application in practice are regularly reviewed by ERO. This includes follow-up interviews with parents who complain. ERO processes may need to be revised to ensure this follow-up occurs within a reasonable time rame so that children/young people are not at risk.*
- iv) *The **Office of the Commissioner for Children** provides parents who complain with a **helpline** that offers information and support for those who need it. The helpline is referred to in schools' complaints policies.*
- v) *The complaints process has **a resolution that is justified to all parties**;*
 - a. *Both the parent who complains and the school feel that they have had a fair hearing;*
 - b. *Both understand the rationale behind the final outcome;*
 - c. *a and b above ensure that both sides can look to a resolution because they understand the steps that need to be taken to resolve their differences.*

- vi) *Boards' complaints policies include a **timeframe for resolving complaints** that requires the board to meet immediately, to resolve the complaint, and reach a decision in a way that is not detrimental to the child's/young person's rights and well-being.*
- vii) *If the board is unable to resolve the issue to the satisfaction of the parent who complains, the parent can immediately refer the matter to an **independent appointee** through the Commissioner for Children. The appointee must review the board's decision, and if necessary call a meeting of the board and the parents. Both parties agree that **the appointee will determine the final resolution.***
- viii) *A panel of **'experts' with knowledge and experience in education is available to act as independent appointees.** This panel is selected by the Commissioner for Children, and the Ministry of Education provides remuneration. The Commissioner for Children allocate the independent appointee to each case.*
- ix) *Boards of trustees forward copies of all complaints to the Ministry of Education, along with the board's response to the complaint. **The role of the Ministry of Education is to:***
 - a. *keep a database of all complains with a view to identifying recurring issues within or between schools;*
 - b. *use the database to make systemic changes to policy and practice that prevent further complaints (e.g. providing relevant professional development for teachers; undertaking policy reviews);*
 - c. *provide boards with support and information to understand the broader context of a complaint and the schools' responsibilities in relation to that complaint;*
 - d. *ensure that Boards are well informed about educational processes; about the implications of their school's values; and about children's rights under the UN Conventions mentioned above;*
 - e. *provide leadership, guidance and support for schools as they engage in changes resulting from the resolution.*

Thank you for considering IEAG's response.

Yours sincerely

Dr Jude MacArthur
Co-convenor, IEAG