

How the rights of all school students and teachers are affected by special educational needs or disability (SEND) services: Teaching, psychology, policy

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Abstract

This paper considers how teachers, psychologists and policymakers can respect the rights of all school students, through methods that are principled, humane, cost-effective and democratic. It examines how special educational needs and disability (SEND) services affect all school students and teachers, and their rights. The paper considers the history of rights, their meaning and purpose, and how and why they are important. Respect for rights can grow in several ways: in understanding the social and medical models of disability; in choices about SEND services; in educational psychology services; in the way 'normal' and 'special needs' students learn to live and work together, or else to live separate lives when it is then harder for disabled people to join in mainstream society as children and adults. The conclusion relates inclusive and special school policies to larger political concerns.

Keywords: decision-making; educational psychology; equal rights; inclusion; justice; residential schools; segregation; SEND costs; SEND outcomes; SEND policies; social and medical models of disability

Introduction

In January 2017, 14.4 per cent of all school pupils in England (1,244,255) were said to have special educational needs or disabilities (SEND). And 242,185 of all pupils (2.8 per cent) had an SEN statement or an EHC (education, health and care) plan. Most of the others with identified needs were 'on SEN support' (DfE, 2017a). Over the next nine years in England, 17,000 additional children are expected to require SEND support (DfE, 2017a).

The Whole School SEND Consortium (WSSC, 2017) publishes practical advice for special and mainstream schools on ways to promote excellent SEND teaching, and to train and promote more teachers with this expertise. The consortium's director lists ten steps towards achieving these goals, beginning with '1. Understand children's rights':

Starting from a rights perspective will help develop an understanding of the duties that a school is required to fulfil. This helps to form a context for the implementation of the SEND Code of Practice, and also explains why ensuring that all children have their requirements met is an essential part of being a teacher (Knight, 2017: n.p.).

Knight (2017: n.p.) advises that 'It is also important to consider that good practice for children with SEND is, in many ways, good practice for all.' The consortium aims

to change the vision, culture and environment of SEND provision, as well as Ofsted's habit of downgrading schools when SEND students bring down their average scores in SATs and public exams. Valuable as all this work is, for real change to occur it is also necessary to look at the deep underlying values, assumptions and structures that shape education policy and practice. This paper aims to do so through the lens of children's rights. Deep assumptions to be questioned include:

- extra resources devoted to SEND students deprive all other students and undermine social justice
- segregation and streaming benefit everyone and enable them to fulfil their potential.

SEND services affect all school students and teachers and their rights in several ways, and the paper considers how teachers and psychologists can cultivate greater understanding and practical respect for the rights of all school students, through methods that are principled, humane, cost-effective and democratic. After considering the history, meaning and purpose of rights, the paper examines how and why rights are important in the social and medical models of disability, in special and inclusive schools and in educational psychology, as well as in decision-making about SEND choices. The paper concludes by suggesting how greater practical respect for rights could benefit all students and teachers.

History, meaning and purpose of rights

The American assertion that 'all men are created equal ... endowed by their Creator with certain unalienable Rights' (US, 1776) did not originally include black slaves or most other human beings. Gradually, respect for more groups of people has increased, so that today's universal human rights involve 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family' (UN, 1948), including children (UN, 1989) and persons with disabilities (UN, 2006). The lawyer Conor Gearty sees human rights that respect everyone's dignity through structures of accountability to an independent rule of law, community self-government and, especially, equity as

the ethical architecture necessary to decent everyday life ... the only contemporary idea with true universal and progressive appeal ... [in the Western] post-socialist, post-religious haze of market supremacy (Gearty, 2011: n.p.).

Human rights have emerged not only top-down from leading thinkers but also continually bottom-up throughout the millennia and across the world by oppressed people protesting against injustice. Philosophers and lawyers have gradually refined and strengthened the wording of age-old rightful demands by the majority for greater justice, freedom and equality, and systems to promote and defend them (Freeman, 2011; Gearty, 2016; Klug, 2000; Sands, 2016; Woodiwiss, 2005).

Children's rights have been variously denigrated (Guggenheim, 2005, among many others) and defended (Freeman, 2006, 2007, among others). Children, especially disabled children, are still seen by many as too vulnerable, dependent, unreliable, volatile and ignorant to be trusted to exercise their own rights, in notions that the maturity required for rational rights-holders is reached at 18 years of age, or even later. Neuroscientists, for instance, extend the stage of volatile pre-adult youth up to 25 years, when the synaptic balance in the brain is said to become more inhibitory than excitatory (Weinberger *et al.*, 2005). ('Children' here and in the 1989 UN Convention

on the Rights of the Child refers to everyone aged 0–17 years.) So are rights relevant to children, or is attention solely to their needs, interests and welfare, as defined by adults, not only sufficient but also better for children?

Students with SEND, who are seven times more likely to be excluded from school than their peers (WSSC, 2017), have many different problems. For example: Paul (aged 8) is deaf; Tina (aged 13) is self-harming and feels severely bullied at school and on social media; Fabiana (aged 10), a newly arrived immigrant, speaks little English and is haunted by flashbacks of her brothers being killed when her house was bombed; Jon (aged 12) is disruptive in class and very aggressive; Ahmed (aged 14) has dyslexia. How might referral to a special school or exclusion help or not help them and their peers? What powerful messages do referrals and exclusions convey about the purpose of mainstream schools, education as learning to live together, and the kinds of society that schools reflect, reinforce and lead students to expect to belong to as citizens? Are special needs the main cause of school exclusions or, since many mainstream schools succeed with SEND students that other schools would exclude, are exclusions caused more by school politics?

'Special needs' is a relative concept (Warnock, 1978) and a social construction when it connotes extra needs for which schools do not usually cater. A child wanting to be taught in Chinese would have special needs in London but not in Beijing. 'Special' can misleadingly imply that a special school is extra, better and a privilege. In contrast, 'inclusive schools' are here taken to mean schools that promote education and community, which treat all equally, celebrate differences, and avoid marginalization and discrimination. Inclusive schools respect equal rights when they cater for all the 'special needs' of the local children, which is possible given the requisite political will and if local special schools could be closed and their funding, resources and expertise transferred into mainstream schools. This was possible 20 years ago, as our research showed, and our republished book (Alderson and Goodey, [1998] 2018) has a foreword explaining how many of our findings are still relevant despite the changed political contexts. Inclusive schools can only work well when every adult and child is willingly involved, including the most disabled students (Alderson, 2013). Every child can then be respected for having 'special needs' in the sense of each individual having a unique mixture of strengths, limitations and hopes. The next section, on basic meanings of rights, was written with students like Paul, Tina, Fabiana, Jon and Ahmed in mind, and the relevance of rights to each of them and to their peers.

Rights as *freedoms to exercise self-determination* are vitally important. So also are rights as *defences and freedoms from* injustice, oppression, neglect and abuse. International rights treaties, agreed after the Second World War (Council of Europe, 1950; UN, 1945, 1948) in reaction to the Holocaust, aimed to prevent such atrocities against vulnerable people from ever recurring. The treaties introduced laws and processes to defend individuals from injustices, ranging from crimes against humanity through to oppressive education systems (Cunningham and Lavalette, 2016; Gearty, 2016; Sands, 2016; Willow, 2015).

Rights are central to:

- all individuals' survival and flourishing
- mutually respectful interpersonal relationships
- social structures – legal systems, education, health and social services.

Rights 'promote social progress and better standards of life in larger freedom' (UN 1945, 1989, 2006). Every government except the USA has ratified the UNCRC, meaning that they undertake to:

- respect all children's rights
- report regularly to the UN on their progress in implementing the UNCRC
- base planning and provision of all services for children on their rights to equal justice and respect
- ensure that, for example, all teachers and psychologists know about the UNCRC and inform 'adults and children alike' about it (UNCRC: Article 42).

The UNCRC (UN, 1989) is often divided into *provision* rights (to education, healthcare, an adequate standard of living) and *protection* rights (from neglect, abuse, discrimination). The third kind of rights, accepted for adults but often questioned for children, are the civil or *participation* rights (to life, a name, a nationality, privacy and family life, justice and due legal process, freedoms of information and expression, of thought, conscience and religion, association and peaceful assembly). Whereas adults have rights to self-determination, children's qualified rights to influence matters that affect them will be discussed later.

Rights are much more than simple statements; they are promises that governments make and are accountable for. Rights are universal yet also personal: a concern that seems minor to one person is immensely important to another, so that each individual's views matter, as well as the general principles. Rights cover welfare, needs and best interests but also involve respecting the rights-holder's own views.

Rights guard against the danger that the care provided by powerful groups can easily slip into control, coercion, and worse if people are treated as victims to be rescued, or problems to be dealt with, and not also each as a unique person to be respected. The Holocaust began with Hitler's personal physician administering euthanasia (good 'merciful' death) to disabled children in hospitals and church-run asylums. Through much of the twentieth century, eugenics (good birth) was a dominant ideology around Europe and the USA, whereby routine 'mercy killing' and sterilizations were carried out (Lifton, 1986; Proctor, 1988). Although some doctors and priests bravely protested, many others actively organized the Holocaust, convinced that they were doing good by promoting racial hygiene, and that they were physically and morally in line with their professional ethics (MacIntyre, 1966; Proctor, 1988).

They illustrated, first, how easily public and professional opinion, even among the most humane professions, can promote fearful and violent hostility towards 'the other' and deny the value of liberty, equality and solidarity for all. Second, they illustrated the crucial need for rights, in a levelling-up towards equality and nondiscrimination, to safeguard moral standards and listen respectfully to vulnerable people (Gearty, 2016; Sands, 2016).

The central rights to 'life, liberty and the pursuit of happiness' (US, 1776) value each person's fulfilment, beyond basic survival. Happiness here means happenstance (that which happens by chance), and opportunities for flourishing (such as through education) and for removing oppressive barriers (injustice, inequality, discrimination). The emphasis on universal equal rights then moves from Kantian respect for autonomous rational individuals to include everyone as rights-holders, especially the weakest, most vulnerable and disabled people. They too can share in being authors of their own life in solidarity with others.

Rights in the medical and social models of disability

Academics who were disabled have contrasted medical versus social models of disability (Oliver, 1990). The medical model identifies disabling problems within individuals and aims to diagnose, relieve and possibly cure these problems. It respects

rights to services, and can transform lives, but it is less helpful when impairments cannot be relieved or cured. It tends to treat disabled people as tragic victims to be rescued. In the social model, social contexts are the main disablers, not personal impairments: these contexts feature prejudice, discrimination, oppressive social exclusions and barriers such as inaccessible buildings and transport. All of these disablers can be left intact, or even increased, by the medical model. The social model aims for social and political change, and respects disabled people as active citizens with rights to equality, justice, liberty and social inclusion.

Educational psychologists tend to work on the medical model of diagnosing children's abnormalities, assessing the effects, prescribing remedies and referring children for special treatment. However, equal respect for every child's rights would involve psychologists in a more inclusive, preventative, public health model, as illustrated, for example, by John Snow in 1854. During a cholera epidemic in London, instead of solely treating his patients, he mapped the cases and investigated the causes for the spread of the disease. After he had the handle of an infected water pump removed, the numbers of new cases dropped immediately (London School of Hygiene and Tropical Medicine, 2013).

Public health psychologists would similarly identify causes and pathogens within systems, such as school routines that exacerbate early psychological disturbance, and they would work with teachers and students to prevent and reduce the problems and promote healthier, kinder communities to benefit everyone. Yet educational psychologists work mainly on individuals' abnormalities, though many disabled children I have interviewed see themselves as 'normal', not as victims; they assume broad notions of 'normality' that include them. Shakespeare and Watson (2002) slightly modify Oliver's theory by arguing, first, that the medical model can effectively prevent and treat many impairments and, second, that physical impairments are often social too in how they are experienced, coped with and alleviated or exacerbated. So also are many conditions for which most recorded SEND support and statements are allocated: moderate learning difficulties (22.7 per cent); speech, language and communication problems (20.5 per cent); social, emotional and mental health problems (16.3 per cent); dyslexia (12.8 per cent); and autistic spectrum disorder (9.5 per cent) (DfE, 2017b). Given the great uncertainties about the genetic or environmental, physical or social origins and exacerbations of many conditions, professionals have all the greater responsibility, with some humility, to respect and involve children and their families in detailed decisions about their SEND care and education.

Rights in mainstream and SEND schools

A systematic review concluded that inclusive education yielded little evidence of effectiveness in improved outcomes, and was mainly supported by a concern for children's rights (Lindsay, 2007). The review appeared to set a subjective ideology of rights against solid objective evidence about cost-effectiveness that responsible professionals would support. However, the review gave little evidence that segregated special schooling either justifies the costs or produces the hoped-for outcomes, such as employability and independence. Reviews rely on such measures as exam results, whereas matters of greatest importance to students and society also include the quality of their personal and social life, their relationships and their long-term adult prospects. These are hard to measure and research. Yet every individual has the right to family life (UN, 1948, 1989; and in the UK, Human Rights Act, 1998), which involves professionals working whenever possible with parents and children, offering support,

providing services that adapt to families' varying needs, and removing the child from the family only when there is serious danger. Given the short- and long-term dangers of placing vulnerable children in residential institutions (Cameron *et al.*, 2015), is it not the responsibility of professionals who refer children to special residential schools to provide evidence, first, that the hoped-for benefits in childhood and adulthood are likely to exceed the high personal and financial costs, and, second, whether less costly but still very generous SEND support in the child's home and local school could achieve the same if not better outcomes?

Children's provision rights to education are generally supported, but their participation rights *in* education are more contested. Few schools democratically inform and consult students, and share policymaking with them (Alexander, 2016). Yet attempts to force reluctant students to learn tend to fail and, for example, 50.3 per cent of all students failed to achieve Grade 5 or above in Maths GCSE in 2016 (*Schools Week*, 2018). Families may – willingly or unwillingly – ask for referral to a special school if their local mainstream school is failing or even harming their child through lack of expertise or resources. Yet there are alternatives, and this section reviews six ways in which truly rights-respecting inclusive schools can promote education for all.

First, inclusive schools work with all children on developing individual and group learning (Ainscow *et al.*, 2006; Alderson, 2013). UNCRC Article 29 sets guidelines for choosing, running and inspecting all schools. They should promote:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) The development of respect for human rights and fundamental freedoms ... [and] (c) for the child's parents, his or her own cultural identity, language and values ... (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples (UN, 1989: Article 29.1).

Schools can be creative communities where everyone learns through practical democratic experiences and relationships (Fielding and Moss, 2011), and through working closely with families and local communities. Methods may involve differentiated teaching, with lessons planned to suit a range of needs, interests and abilities. For this to work well, over-spending on highly staffed special schools has to be redistributed to support adequate staff and preparation time in mainstream schools.

States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents [or other legally responsible adults] (UN, 1989: Article 3.2).

The existence of SEND schools and units enables mainstream schools to rely on exclusions, instead of working towards more inclusive remedies. For example, every week in England two boys aged 4 or 5 years are permanently excluded from schools. One illustration can be found in the case of 'Jacob', aged 4, who became very agitated and was terrified when he was put in an isolation room. He damaged the room, and six teachers restrained him and called the police. Jacob looked set for referral to special school, but after representations by child rights lawyers the appeal hearing ruled that Jacob's permanent exclusion was unreasonable. With adequate support and new school policies, Jacob was able to settle well into the school, but it could have been so different (CRAE, 2016: 5).

Second, resources and expert staff can be transferred from special to inclusive schools. They can then support not only children with diagnosed SEND but also those in the early stages of developing SEND, to help to reduce and prevent their extra problems and needs (Beresford and Cavet, 2009; Goodey, 2015; Preparing for Adulthood, 2016; Luke *et al.*, 2014; McConkey *et al.*, 2013; Murphy and Fonagy, 2013; Morgan, 2009; Pearson, 2016). Crucially, they can also support countless borderline students with unidentified SEND. These students may be supported, tolerated or rejected by their mainstream schools. All too often, if they are not supported as having identified SEND, they are punished for not being 'normal'. When they feel confused, bored and angry, or anxious and distressed, many disrupt their classes and seriously hamper other students' learning. Current cuts in the SEND funding and resources of mainstream schools, the replacement of SEND statements with EHC plans that are not necessarily followed up, and millions of pounds' worth of cuts to legal aid to support families' appeals, all greatly increase these problems (Nettleton and Friel, 2017). The Code of Practice (DfE, 2016) allows for some means-tested support for families to appeal when they believe schools are failing their children, but they allow nothing for legal representation, which most families need. The government directly sets SEND students' needs in opposition to those of all their peers, in its policy that states that schools must cover the first £6,000 of costs of each student with an EHC plan before the state begins to provide extra funding. However, transferring resources from special to mainstream schools could help to prevent much of this distress, delay, statementing, complaints, litigation and other costly processes.

Third, inclusive schools prepare all children for rights-respecting inclusive societies to benefit everyone.

[A] mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community... [Extra appropriate support] shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development (UN, 1989: Article 23.1 and 23.3).

Selective schools, and mixed-ability ones with such strict streaming that there is virtually a separate special school within a mainstream school, identify and treat students as either 'special' or 'normal'. Streaming tends to have negative effects on all groups (Johnston and Wildy, 2016) and socially it can increase difficulties for disabled or 'special' children and adults in joining in mainstream society when they and their 'normal' peers are not used to living, learning, playing and working together in the relaxed, respectful ways encouraged in inclusive schools (Alderson, 2013; Alderson and Goodey, [1998] 2018; Franklin, 2013; Pearson, 2016; Preparing for Adulthood, 2016; McConkey *et al.*, 2013). They learn to see one another as friends, co-learners, potential colleagues, partners, employees and, indeed, potential managers or politicians, with disabled people's voices being heard at every level of society. Segregation explicitly or implicitly teaches most school students that their disabled and disturbed peers are rightly excluded and educated elsewhere, and teaches students in special schools and units that they cannot cope in mainstream schools and, by association, in mainstream society. Residential schooling teaches them to be inmates of institutions, bereft of the basic rights of association and assembly, such as meeting friends in the park, going to the shops or using public transport.

Fourth, schools and connected services are more likely to help students to progress to further training and employment when they are local and nearby students' homes. If disabled students are away at remote schools, sometimes for 52 weeks a year, they can lose touch with their family, friends and social workers (Pellicarno *et al.*, 2015). Without local contacts, it is harder to begin to search for work, with the result that they are more likely to join the 50 per cent of disabled adults who are unemployed (Griffiths, 2017). Many of those who stay in mental hospitals, prisons or secure assessment and treatment units continue experiences from childhood: over two-thirds of children looked after by their local authority have identified SEND (NAO, 2014), and most young prisoners have SEND and/or suffer from mental illness (Willow, 2015). Yet although a week at the notorious Winterbourne View (BBC News, 2012) costs between £4,000 and £10,000 per adult resident, the care home could not provide safe care, and showed the dangers of isolating disabled children and adults into remote and total institutions.

Freddie's case illustrates the importance of supporting local inclusive schools with other inclusive services in transitions to adulthood (Preparing for Adulthood, 2016). Towards the end of his school career, Freddie had numerous unhelpful assessments of his deficits, but then the National Development Team for Inclusion held a person-centred planning meeting to discuss what really mattered to Freddie and his family: his strengths and aspirations around employment, friends and independent living. When Freddie was listened to and at the centre of plans for his future, he was much less anxious. His behaviour improved greatly, instead of escalating into needing intensive and restrictive support, possibly in a secure setting. Now 23, he has made many local friends, mostly contacted through his inclusive primary and secondary schools where ten children with complex autism and severe learning difficulties were educated in their mainstream classes and in a resource base where their classmates also spent time. After two years at college and some work experience, Freddie now works as a coffee shop barista. The government's aims seem contradictory when they want not only to offer SEND students 'a genuine choice of educational settings, free from any bias towards inclusion in mainstream education', but also to 'enhance employability and independence' through separate special education from birth to age 25 (DfE, 2015; NAO 2011).

Fifth, inclusive education is cost-effective. Besides promoting social health instead of treating pathology, it is estimated that Freddie's 16 years at inclusive school and college cost approximately half of what the fees for residential special school and college would have totalled. Inclusive schools not only save public funds but also use them more effectively. There are 1,037 maintained and non-maintained special schools in England, and over 6,000 students aged 4–19 years attend residential special schools (DfE, 2017a; Pellicarno *et al.*, 2015), with local authorities usually paying the fees. Residential places can cost (at 2012 prices) £230,000 per student per annum, plus extras such as therapy, with clinical psychologists charging an average £135 per hour, and exorbitant taxi transport costs to schools far from the students' homes (Clifford and Theobald, 2012: 4.10, 5.12). One child's 12 years of residential schooling can cost therefore more than £3 million, potentially followed by a very costly institutionalized adulthood. This does not take account of the social costs to young people, their families and society when they lead far more restricted lives than they might or could do when their rights are respected and they are seen as partly authors of their own lives.

Sixth, local inclusive day schools are more open, public and accountable. In some residential schools, doctors, psychologists, therapists, dentists, opticians, dieticians and social workers are never available, or available only very occasionally,

and police, ambulance and hospital services sometimes refuse to help (Pellicarno *et al.*, 2015: 62–4), a refusal that would be unthinkable for a local day school attended daily by parents and other visitors. Yet UNCRC Article 3.3 requires that all services for children ‘shall conform with the standards established by competent authorities’. Some residential school staff are too coldly detached, and others are inappropriately close to students in attempts to replace their family, leaving students more bereft when they leave school. Current concerns about sexual abuse warn that residential institutions cannot necessarily be trusted. Although 287 special residential schools in England were invited to take part in a study by Pellicarno *et al.* (2015: 79), only 17 agreed, and these tended to have above-average Ofsted ratings. This raises questions about how confident some of the schools that refused were about their standards.

Segregated education is part of the general exclusion of disabled children and adults from the public polity and economy. The Committee on the Rights of the Child (UN, 2016, and see CRAE, 2016), commenting on the UK Government’s regular report on progress (or lack of progress) in implementing the UNCRC, listed several concerns, partly through comparing the recent 2016 report with the previous 2008 one:

- severe, persisting inequalities, which particularly affect disadvantaged and disabled children, especially boys, and involve increasingly frequent exclusions
- many more segregated special school placements than in the preceding report
- many more mainstream schools than in the preceding report without access for disabled students and adults
- painful ‘physical, chemical and mechanical restraints’
- punishing isolation and ‘seclusion that may amount to torture and inhuman treatment’
- ‘bullying and hate crime’
- denial of justice through lack of legal aid.

A UN inquiry (UNCRPD, 2017) found ‘a human catastrophe’ in the UK treatment of many disabled people. It criticized huge austerity cuts that affect them disproportionately, besides the increase in segregated school placements, and it called for civil rights legislation to ensure that mainstream schools provide ‘real inclusion’ for disabled children.

Decision-making: Families, teachers and educational psychologists

When questions are raised about a child’s use of SEND services, about referral to a day or residential special school, or about exclusion, discussion with the family is vital. If they are to be able to make informed decisions, they need both personal and general information, such as the above-listed six aspects of education as well as details of Ofsted reports and other records for each school being considered. Families also need to know about how to exercise their rights, which the Code of Practice (DfE, 2015) and the 2014 Children and Families Act state must be respected. Teachers and educational psychologists therefore have ‘to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike’ (UN, 1989: Article 42).

However, at a well-attended national conference about children’s rights for university tutors of educational psychologists, when everyone present was asked all replied that they had not read the UNCRC or had any training in children’s rights. The *British Journal of Educational Psychology* publishes papers on right-handedness and

the right side of the brain but not on rights. The editor immediately returned an earlier version of this paper, before review, as outside the journal's remit.

The British Psychological Society (BPS, n.d.: n.p.) makes vital statements: BPS 'is fully committed to supporting and implementing the *European Community Charter of Fundamental Rights*' (European Union, 2012) and the 1998 *Human Rights Act* in the UK. 'For psychologists, issues of human rights are daily realities.' The statement opposes discrimination, 'harassment and denial of job and housing opportunities and other services'. For psychologists,

human rights ... reflect formalised systems for ensuring that people's basic needs are satisfied – talking about 'human rights' is another way of describing how well-functioning societies work. Public services should therefore adhere to the principles of Fairness, Respect, Equality, Dignity and Autonomy (BPS, n.d.: n.p.).

Yet the BPS statement is about people with mental health problems, implicitly adults; children and SEND are not mentioned. Are children's human rights 'daily realities' for psychologists, and useful 'formalised systems' that support 'well-functioning societies'?

There are some basic standards when discussing SEND services and school referrals with families. Article 13.1 of the UNCRC sets out that 'the child shall have the right to freedom of expression ... to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice', such as their first language, in sign or body language, and by providing interpreters when needed. Crucially, listening enables adults to learn about the child's views and needs, and is therapeutic in preventing or reducing young people's fear, distress and frustrated rage, which arise when their views are ignored and overridden, potentially leading to escalating cycles of disputes and protests, containment, punishment and violence (Willow, 2015). If families complain or appeal against services or professionals' decisions, UNCRC Article 12.2 enshrines the child's right 'in particular to be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative'.

Most international rights (Council of Europe, 1950; UN 1945, 1948, 1966, 2006) apply to all ages (except, for most children, the rights to own property, vote, marry and found a family). However, children's rights are complicated by tensions between respecting children and protecting them. Further tensions arise between adults' and children's freedoms versus constraints that are imposed, for example, by professionals who organize education and health services and have to see that they are used wisely and shared fairly.

Decisions about special education will now be reviewed for how they are influenced by the attitudes of authorities, beliefs about children's best interests, by personal experience, the legal background, the general context, and the respect and information given to the child and parents.

Article 12.1 (UN, 1989) states: 'States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child.' Yet from birth, children form and express views, such as expressing hunger, distress or contentment; these are inevitable human activities rather than rights. Article 12.1 is qualified: 'the views of the child being given due weight in accordance with the age and maturity of the child.' Adults not only assess 'the age and maturity' of the child, but also how to give 'due weight' to the child's views: whether to dismiss or listen to the views, and how far to be guided by them.

Children's disagreements with adults may easily be dismissed as incompetent and immature, particularly when children with SEND and mental health problems are concerned (Franklin, 2013; Willow, 2015). Many authorities assume that children's views are inevitably ignorant and foolish, if not dangerous, and they set Article 12 on expressing views against Article 3.1:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Yet this assumed opposition is questionable in several ways. First, history records how authorities exert power by deriding the views of those they seek to dominate, whether women or other 'minorities', and by claiming that it is in everyone's best interests when the powerful group makes the decisions. In the past, professionals such as doctors took on the 'burden' of being the responsible decision-maker, and not requesting the informed consent that today is central to their work. Children (with prisoners and those certified as insane) are the last remaining group most likely to be overruled.

Second, children have unique and essential knowledge of their best interests. Adults who know this take account of the child's views and, if they decide they should override these, try to negotiate as respectfully as possible, to avoid conflict and coercion that are distressing and against anyone's best interests.

Third, children and adults hold views informed by their own experiences. Rather than the most advantaged and intelligent children being the best decision-makers, adversity, disadvantage, discrimination and disability can enable even young children to become highly informed and wise (Alderson, 1993, 2012, 2018; Alderson and Goodey, [1998] 2018).

Fourth, to assume that children's views are ignorant and foolish can overemphasize deficiencies in the child's view, and underestimate deficiencies in the context. If children end up doing crazy, dangerous things, such as joining a drug gang (Goffman, 2014), their decisions may be formed from motives of self-defence and survival that many rational adults would share, given the context. Children's views partly depend on the available options, and on how well they are informed, supported and respected by the adults around them – or not. Cunningham and Lavalette (2016) analysed the 'hidden history' of British school students going on strike (39 strikes were recorded between 1913 and 1962), often in protest against violent physical punishments. They were ridiculed by teachers, politicians and journalists but eventually, with pressure from the European Court of Human Rights, the UK government agreed with the students, and in 1986 banned physical punishment in state schools.

Fifth, the UN Conventions support national law that exceeds their standards, which English common law does, in respecting children as decision-makers. The Gillick case [1985] ruled that competent minors aged under 16 have the legal right to consent. A competent child is one who:

achieves a sufficient understanding and intelligence to enable him or her to understand fully what is proposed [and] has sufficient discretion to enable him or her to make a wise choice in his or her own best interests ... As a matter of law, the parental right to determine whether or not their minor children below the age of 16 will have medical treatment terminates if and when the child achieves a sufficient understanding and intelligence to understand fully what was proposed.

For complex legal and practical reasons, surgeons take informed consent very seriously, and heart transplant teams respect the views of 6- and 7-year-olds. 'I believe the child *always* has to be involved. We know that they literally have their life in their hands afterwards. If they stop taking their [daily, life-long] medications, for example, they will die,' said a senior nurse (Alderson, 1993: 161). If young disabled children are informed, respected and deemed capable of sharing in complicated, distressing, high-risk decisions about heart surgery, how much more might they be able to make decisions about their schooling? Referral to a residential special school involves personal matters on which children have views about: their hopes and ambitions, relationships with family, pets, friends and neighbours, everyday activities and what makes their life worth living.

Sixth, informed decision-making depends on being informed, such as about available options and how daily life might change, yet many families are not informed or involved in education decisions. In some cases, private companies and lobbyists promote special schools for profit, while being protected from inquiry by commercial confidentiality. Local authorities who pay the fees are criticized for lacking 'sufficiently complete or comparable information to fully understand the relationship between costs and outcomes across special education providers and between areas, or to fully inform student choice' (NAO, 2011: 10). They cannot 'ensure that Education, Health and Care Plans place greater emphasis on longer-term outcomes and progression [or] a fuller consideration of all viable placement options' (NAO, 2011). Inefficiency and secrecy can limit educationalists' and families' ability to make informed choices about schooling while, in the medical model, families may be informed about the child's problems with proposed remedies and referral, but not about other vital economic and everyday social matters and possible life-long effects.

Conclusion

Childhood and youth are times of greatest opportunity and potential for flourishing, and greatest vulnerability to harm with potentially life-long effects. 'Flourishing' may broadly be defined in two ways that reflect two visions of society. In the first, individual achievement is promoted through competition to help the brightest and best to excel and not to be held back by inferior peers. Similarly, at the global level, nation states and corporations rely on a well-educated elite to lead the competitive drive. In the second version of flourishing, everyone has strengths and weaknesses. We learn best by sharing a broad, rich curriculum at school, creative, intellectual and technical, which includes learning how to live together in very mixed groups.

Segregation and exclusions convey powerful messages about the purpose of schools, education, and the kind of society students can expect to belong to. They reinforce students' typecast or ascribed ability levels (Johnston and Wildy, 2016) whereas, in the second version of flourishing, effective education encourages everyone to keep finding that they can achieve more than they expected. Present funding in Britain and elsewhere tends to support higher achievers and those with identified SEND, but relatively to neglect the great majority in between. Many of these students have versions of SEND and mental distress, but, if they are included in the 'normal' spectrum, they may be more likely to be punished and excluded than given much-needed extra help to alleviate their difficulties and prevent more serious problems from developing. The Salamanca Statement (UNESCO, 1994: 2) states:

We believe and proclaim that ... regular schools with this inclusive orientation are the most effective means of combating discriminatory

attitudes, creating welcoming communities, building an inclusive society, and achieving education for all; moreover they provide an effective education to the majority of children and improve the efficiency and ultimately the cost-effectiveness of the entire education system.

The Salamanca Statement notes many ways of promoting inclusion at all levels of education services, teacher training (46) and the influence of universities (47). Educational psychologists in schools and universities could contribute greatly by working on the complicated processes of changing towards greater inclusion. Through research and analysis of practical examples, including research by children (Pearson, 2016), they can offer new depth and meaning to abstract philosophical notions of rights (Freeman, 2011; Woodiwiss, 2005). They can show how rights 'reflect formalised systems for ensuring that people's basic needs are satisfied [and] how well-functioning societies work' (BPS, n.d.), which would concentrate on promoting social inclusion and mental and social health for all.

The Salamanca Statement's welcoming communities, like the UNCRC's vision of 'The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples' (UN, 1989: Article 29.1), depend on children and adults having the compassion, courage and confidence to accept neighbours and strangers, not to judge and reject them. Such positive responses are ever more urgently needed in a world of growing inequalities, conflict over shrinking resources and enforced mass migration. If these dangers are to be counteracted, education from the earliest years in the second version of shared flourishing is necessary. If the rights of all children and young people are to be respected, families, teachers, educational psychologists and policymakers need to inform, and listen to, one another, and to share in making decisions that are adequately informed about their personal, social, economic and political aspects.

This paper contends that too often segregated schooling fails in several ways: it (1) does not respect students' rights; (2) absorbs much-needed funds, resources and expertise away from mainstream schools; (3) teaches everyone to live segregated childhoods ('special' or 'normal') and thereby prepares them for segregated adulthoods; and (4) allows mainstream schools to neglect and exclude children with identified and borderline SEND. The alternative, to channel resources so that all schools can educate and care for students across the spectrum of needs and abilities, could benefit them all, especially the vast numbers of neglected borderline students who linger in mainstream but not inclusive schools. That policy could also be more cost-effective, principled and humane in supporting rights-respecting and democratic future societies as well as schools.

Acknowledgements

I am grateful to all the disabled and other school students who have contributed to my research over the decades, and to two anonymous reviewers of this paper.

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References

- Ainscow, M., Booth, T. and Dyson, A. (2006) *Improving Schools, Developing Inclusion*. Abingdon: Routledge.
- Alderson, P. (1993) *Children's Consent to Surgery*. Buckingham: Open University Press.
- Alderson, P. (2012) 'Young children's human rights: A sociological analysis'. *International Journal of Children's Rights*, 20 (2), 177–98.
- Alderson, P. (2013) *Learning and Inclusion: The Cleves School experience*. London: Routledge.
- Alderson, P. (2018) 'Giving children's views "due weight" in medical law'. *International Journal of Children's Rights*, 26 (1), 16–37.
- Alderson, P. and Goodey, C. (2018) *Enabling Education: Experiences in special and ordinary schools*. London: Tufnell Press. Online. www.tpress.free-online.co.uk/ena.html (accessed 11 May 2018)
- Alexander, T. (2016) '7 steps to education for democracy for all'. Online. www.opendemocracy.net/wfd/titus-alexander/7-steps-to-education-for-democracy-for-all (accessed 20 April 2018).
- BBC News (2012) 'Timeline: Winterbourne View abuse scandal'. Online. www.bbc.co.uk/news/uk-england-bristol-20078999 (accessed 20 April 2018).
- Beresford, B. and Cavet, J. (2009) *Transitions to Adult Services by Disabled Young People Leaving out of Authority Residential Schools*. York: Social Policy Research Unit.
- BPS (British Psychological Society) Professional Practice Board (n.d.) *Policy Statement: Human rights*. Leicester: British Psychological Society. Online. www.bps.org.uk/sites/default/files/documents/ppb_humanrights.pdf (accessed 20 April 2018).
- Cameron, C., Connelly, G. and Jackson, S. (2015) *Educating Children and Young People in Care: Learning placements and caring schools*. London: Jessica Kingsley.
- Council of Europe (1950) *European Convention on Human Rights*. Strasbourg: Council of Europe. Online. www.hri.org/docs/ECHR50.html (accessed 20 April 2018).
- Clifford, J. and Theobald, C. (2012) *Summary of Findings: Extension of the 2011 cost comparison methodology to a wider sample*. York: National Association of Independent and Non-maintained Special Schools. Online. www.nassschools.org.uk/wp-content/uploads/sites/9/2014/08/NASS-Cost-Comparison-Report-October-2012.pdf (accessed 20 April 2018).
- CRAE (Children's Rights Alliance for England) (2016) *State of Children's Rights in England: Briefing 6 – Education, leisure & cultural activities*. London: Children's Rights Alliance for England. Online. www.crae.org.uk/media/118310/crae_scr2016_b6_education-web.pdf (accessed 20 April 2018).
- Cunningham, S. and Lavalette, M. (2016) *Schools Out! The hidden history of Britain's school strikes*. London: Bookmarks.
- DfE (Department for Education) (2015) *Special Educational Needs and Disability Code of Practice: 0–25 years*. London: Department for Education. Online. www.gov.uk/government/uploads/system/uploads/attachment_data/file/398815/SEND_Code_of_Practice_January_2015.pdf (accessed 20 April 2018).
- DfE (Department for Education) (2016) *Revised GCSE and Equivalent Results in England, 2014 to 2015*. London: Department for Education. Online. www.gov.uk/government/statistics/revised-gcse-and-equivalent-results-in-england-2014-to-2015 (accessed 20 April 2018).
- DfE (Department for Education) (2017a) *Special Educational Needs in England: January 2017: Statistical first release*. London: Department for Education. Online. www.gov.uk/government/uploads/system/uploads/attachment_data/file/633031/SFR37_2017_Main_Text.pdf (accessed 20 April 2018).
- DfE (Department for Education) (2017b) London: Department for Education. *National Pupil Projections: July 2017*. Online. www.gov.uk/government/statistics/national-pupil-projections-july-2017 (accessed 20 April 2018).
- European Union (2012) *Charter of Fundamental Rights of the European Union*. Brussels: European Union. Online. www.refworld.org/docid/3ae6b3b70.html (accessed 20 April 2018).
- Fielding, M. and Moss, P. (2011) *Radical Education and the Common School: A democratic alternative*. London: Routledge.
- Franklin, A. (2013) *A Literature Review on the Participation of Disabled Children and Young People in Decision Making*. London: Council for Disabled Children.

- Freeman, M. (2006) 'What's Wrong With Children's Rights By Martin Guggenheim – review'. *International Journal of Law in Context*, 2 (1), 89–98.
- Freeman, M. (2007) 'Why it remains important to take children's rights seriously'. *The International Journal of Children's Rights*, 15 (1), 5–23.
- Freeman, M. (2011) *Human Rights: An interdisciplinary approach*. Cambridge: Polity Press.
- Gearty, C. (2011) 'The rights' future: Exploring dignity, accountability, equality and commitment'. Online. <http://therightsfuture.com/about/> (accessed 20 April 2018).
- Gearty, C. (2016) *On Fantasy Island: Britain, Europe and human rights*. Oxford: Oxford University Press.
- Gill, K., Quilter-Pinner, H. and Swift, D. (2017) *Making the Difference: Breaking the link between school exclusion and social exclusion*. London: Institute for Public Policy Research. Online. www.ippr.org/files/2017-10/making-the-difference-report-october-2017.pdf (accessed 20 April 2018).
- Gillick vs. West Norfolk & Wisbech AHA [1985] 3 ALL 423.
- Goffman, A. (2014) *On the Run: Fugitive life in an American city*. Chicago: University of Chicago Press.
- Goodey, C. (2015) *Learning Disability and Inclusion Phobia: Past, present, future*. London: Routledge.
- Griffiths, M. (2017) 'Segregation is a choice, not an accident'. *Discover Society*, August. Online. <http://discoversociety.org/2017/08/02/viewpoint-segregation-is-a-choice-not-an-accident/> (accessed 20 April 2018).
- Guggenheim, M. (2005) *What's Wrong with Children's Rights?* Cambridge, MA: Harvard University Press.
- Johnston, O. and Wildy, H. (2016) 'The effects of streaming in the secondary school on learning outcomes for Australian students: A review of the international literature'. *Australian Journal of Education*, 60 (1), 42–59.
- Klug, F. (2000) *Values for a Godless Age: The story of the United Kingdom's new Bill of Rights*. Harmondsworth: Penguin.
- Knight, S. (2017) 'Ten steps to become a better teacher of pupils with SEND'. *TES*, 17 November. Online www.tes.com/news/ten-steps-become-better-teacher-pupils-send (accessed 20 April 2018).
- Lifton, R. (1986) *The Nazi Doctors: Medical killing and the psychology of genocide*. New York: Basic Books.
- Lindsay, G. (2007) 'Educational psychology and the effectiveness of inclusive education/mainstreaming'. *British Journal of Educational Psychology*, 77 (1), 1–24.
- London School of Hygiene and Tropical Medicine (2013) 'About John Snow'. John Snow Bicentenary. Online. <http://johnsnowbicentenary.lshtm.ac.uk/about-john-snow/> (accessed 3 May 2018).
- Luke, N., Sinclair, I., Woolgar, M. and Sebba, J. (2014) *What Works in Preventing and Treating Poor Mental Health in Looked After Children?* London: NSPCC.
- MacIntyre, A. (1966) *A Short History of Ethics*. New York: Macmillan.
- McConkey, R., Gent, C. and Scowcroft, E. (2013) 'Perceptions of effective support to families with disabled children whose behaviour is severely challenging: A multi-informant study'. *Journal of Applied Research in Intellectual Disabilities*, 26 (4), 271–83.
- Morgan, R. (2009) *Life in Residential Special Schools: A report of children's experience by the Children's Rights Director for England*. London: Ofsted.
- Murphy, M. and Fonagy, P. (2013) 'Mental health problems in children and young people'. In Lerner, C. (ed.) *Annual Report of the Chief Medical Officer 2012: Our children deserve better: Prevention pays*. London: HMSO, Chapter 10, 1–13.
- NAO (National Audit Office) (2011) *Oversight of Special Education for Young People Aged 16–25*. London: National Audit Office.
- NAO (National Audit Office) (2014) *Children in Care*. London: National Audit Office.
- Nettleton, M. and Friel, J. (2017) *Special Needs and Legal Entitlement: The essential guide to getting out of the maze*. London: Jessica Kingsley.
- Oliver, M. (1990) *The Politics of Disablement*. Basingstoke: Macmillan.
- Pearson, S. (2016) *Rethinking Children and Inclusive Education: Opportunities and complexities*. London: Bloomsbury.
- Pellicarno, E., Hill, V., Croydon, A., Greathead, S., Kenny, L. and Yates, R. (2015) *My Life at School: Understanding the experiences of children and young people with special educational needs in residential special schools*. London: Office of Children's Commissioner.

- Preparing for Adulthood (2016) 'Wilf's story'. Online. www.preparingforadulthood.org.uk/downloads/independent-living/wilfs-story.htm (accessed 3 May 2018).
- Proctor, R. (1988) *Racial Hygiene: Medicine under the Nazis*. Cambridge, MA: Harvard University Press.
- Sands, P. (2016) *East West Street: On the origins of genocide and crimes against humanity*. London: Weidenfeld and Nicolson.
- Schools Week (2018) 'Exam results news: GCSE results 2017: Subject tables'. Online. <https://schoolsweek.co.uk/gcse-results-2017-uk-subject-tables/> (accessed 20 April 2018).
- Shakespeare, T. and Watson, N. (2002) 'The social model of disability: An outdated ideology?'. *Research in Social Science and Disability*, 2, 9–28.
- UN (United Nations) (1945) *Charter of the United Nations*. New York: United Nations. Online. www.un.org/en/charter-united-nations/index.html (accessed 20 April 2018).
- UN (United Nations) (1948) *Universal Declaration of Human Rights*. New York: United Nations. Online. www.un.org/en/universal-declaration-human-rights/index.html (accessed 20 April 2018).
- UN (United Nations) (1966) *International Covenant on Economic, Social and Cultural Rights*. New York: United Nations. Online. www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx (accessed 20 April 2018).
- UN (United Nations) (1989) *Convention on the Rights of the Child*. New York: United Nations. Online. www.unhcr.org/protection/children/50f941fe9/united-nations-convention-rights-child-crc.html (accessed 20 April 2018).
- UN (United Nations) (2006) *Convention on the Rights of Persons with Disabilities*. Online. www.un.org/disabilities/documents/convention/convoptprot-e.pdf (accessed 20 April 2018).
- UNCRC (United Nations Committee on the Rights of the Child) (2016) 'Committee on the Rights of the Child reviews the report of the United Kingdom'. Online. www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20007&LangID=E (accessed 3 May 2018).
- UNCRPD (United Nations Committee on the Rights of Persons with Disabilities) (2017) 'Committee on the Rights of Persons with Disabilities reviews report of the United Kingdom'. Geneva: United Nations. Online. www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21993&LangID=E (accessed 20 April 2018).
- US (United States) (1776) *Declaration of Independence*. Online. www.ushistory.org/declaration/document/index.html (accessed 20 April 2018).
- UNESCO (United Nations Educational, Scientific and Cultural Organization) (1994) *Salamanca Statement and Framework for Action on Special Needs Education: Access and quality*. Paris: UNESCO.
- Warnock, M. et al. (1978) *Special Education Needs: Report of the Committee of Enquiry into the Education of Handicapped Children and Young People*. London: HMSO.
- Weinberger, D., Elvevåg, B. and Giedd, J. (2005) *The Adolescent Brain: A work in progress*. Washington, DC: National Campaign to Prevent Teen Pregnancy.
- WSSC (Whole School SEND Consortium) (2017) 'Whole School SEND'. Online. www.wholeschoolsend.com/ (accessed 20 April 2018).
- Willow, C. (2015) *Children behind Bars: Why the abuse of child imprisonment must end*. Bristol: Policy Press.
- Woodiwiss, A. (2005) *Human Rights*. London: Routledge.