

EDITORIAL

While the Editor, Katherine Lindsay, has carried out the hard work of editing the contributions for this 'bumper' issue of ANZJLE (i.e. Vol 8 Nos 1 & 2) for family reasons she has been unable to complete an Editorial. I am pleased to do so on her behalf and thank her for the time and energy she has expended on the issue.

In 2002 the Editor announced that Vol 8 of the journal would be a theme issue concentrating on the very important topic of Inclusion and Special Needs students and this is reflected in the majority of the contributions. There are in addition two other articles and a book review that complete the volume.

In the opening contribution Ann McEwin's 'Opinion' addresses some of the special needs of gifted students and explores possible legal avenues that might be used when a school fails to meet these needs. Ann uses a case note study to develop a claim in educational malpractice against a school alleging intellectual and emotional injury. The article addresses the issue of failure of an Education Authority to provide opportunities to promote equity for children with special abilities in accordance with legislation and policy. Ann's contribution also serves as a reminder that inclusion is not only about students with impairments but about any child with a special need and the gap that often exists between the rhetoric of legislation and the reality of life for many students.

The United States has a long history of trying to provide an equitable education system for all students including the large range of students with special needs. However, as Professor Ralph Mawdsley points out, meeting these needs comes at a great cost. In this regard it is pointed out that the provisions of the Individuals with Disabilities Education Act (IDEA) are expensive for school districts to implement and litigation is frequently resorted to when, because of a lack of resources, students do not receive the entitlements they believe they are eligible for under IDEA. This article examines the question of whether, in addition to the power of courts in the USA to order school districts to provide services or specific placement or indeed compensatory education, school districts might also be liable in damages.

It is now just over a decade since the Commonwealth enacted the Disability Discrimination Act (DDA) and in his article Ian Dempsey examines the extent to which the DDA has influenced educational policy, enrolment and educational outcomes for student with a disability. It is argued that while the legislation has resulted in minimal impact on enrolment of special needs students in regular classrooms there have been other benefits for these students emanating from the legislation.

Although issues to do with special needs students have not received overly much judicial attention in Australia, the cases that have been determined provide ample evidence that serious gaps exist in adequately and appropriately meeting their needs. Elizabeth Dickson argues that through a major case, currently before the High Court of Australia, an opportunity has been

afforded the Court to correct a “fundamental misunderstanding of the nature of disability” exhibited in decisions in lower courts. The article also canvasses the argument that the lower courts failed to consider the evidence that the relevant Education Authority did not respond appropriately to accommodate the special needs of the student.

The management of inclusion in regular school settings is the central issue of research being carried out by Mary Keefe. In her article a conceptual framework to clarify the tensions that exist between the life-world of the principal in the school governing inclusion and the systems world of the law is presented and argued.

Dr Doug Stewart’s article examines issues to do with allegations of direct and indirect discrimination made by a severely intellectually and physically impaired student against the government high school she attended. The cases discussed illustrate the considerable lengths school staff have to go to in order to ensure appropriate accommodation to meet the needs of special needs students. It is also argued that in many instances teachers are inadequately trained and qualified to meet the challenges imposed on them by inclusive education practices.

Andrew Knott’s case note deals with a recent House of Lords decision on the meaning of “Reinstatement.” Many issues which are relevant when balancing the competing interests of students with special needs and the school community generally, in a context where the special needs of the student lead to disruptive, indeed violent behaviour” are identified and discussed.

The remaining articles in this issue of the journal do not deal with inclusion although it can be readily argued that directly or indirectly at least two of them deal with special needs students. First though is an opinion from school psychologist Tim Corcoran who considers the relationships engaged in between principals, students and the legislation guiding school suspension and exclusion. Following constructionist practice he highlights several discursive strategies promoted through this engagement to show the dialogic quality of the relationship enacted.

Dr Christine Eastwood’s article examines the plight of sexually abused students when they are in the criminal justice system. Her research convincingly demonstrates the reality that sexually abused students, more often than not, suffer further trauma when they are giving evidence in courts. Compelling stories from a number of sexually abused students indicate that, because of the ways in which they were treated in the justice system, the majority of those interviewed would not have lodged a complaint had they known what was ahead of them.

The final article deals with home schooling as a growing phenomena in Australian education. Terry Harding and Dr Ann Farrell provide a critique regarding home schooling and issues of child protection and duty-of-care examined in the light of legislative frameworks. Current notions of State and parental responsibility for educational provision are discussed in light of critical theory.

Doug Stewart
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