Giovanni Tiso and Hilary Stace

Education is for Everyone Unless You are Special

When meeting with the parents of a prospective student with a learning disability or other impairments, a school principal has a range of options. If the child comes from outside the school's zone, they can refuse admission outright, or make it subject to the school's special enrolment conditions. Otherwise, the Education Act 1989 gives disabled children the same access to compulsory education as others. The question then becomes: how inclusive should the school be? A school not wishing to burden itself with children with disabilities can adopt a soft approach. The principal can, for instance, be less than totally welcoming at the pre-enrolment interview, or complain about the lack of funding, or praise the great work that the school down the road does in this area, or point to a drab, uninviting special room. Parents of children with special needs are quick to pick up on these signals and will look elsewhere.

Given the very different treatment disabled students receive at different schools, the temptation might be to blame the schools that practice varying degrees of neglect for the poor inclusion record of the education system, or, conversely, to take the most inclusive schools and present them as models for everyone else to follow. However, what we shall show in this article is that the policies that surround the resourcing of special needs education effectively create incentives that promote exclusion. These incentives are powerful and entrenched, and cannot be overcome by cultural shifts or better practice alone. A system that relies on exceptional schools to demonstrate effective inclusion, we shall argue, is not inclusive, and robs a significant portion of our student population of the choice and the rights that others take for granted.

First of all, however, we must answer the fundamental question: does New Zealand really have a problem? The

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Ministry of Education would say that it does not. It will point to our high rates of mainstreaming relative to the international average (Ministry of Education, 2014), or to the results of a recent review by the Education Review Office (ERO) that estimates the number of schools displaying mostly inclusive practices at 78% (Education Review Office, 2015). It will argue that its financial commitment in this area is significant, in the range of $500 million a year. What it will not be able to do, however, is back up these claims with any meaningful analyses of the disabled student population, since it does not collect the relevant data.

So, for instance, an ERO team might visit a school and find it inclusive, but it will not know if there are students missing from its roll: that is to say, children who were softly dissuaded, as in the scenario outlined above, from enrolling, or who have left to go to a more inclusive school. A similar argument applies to the rate of mainstreaming, which is certainly very encouraging and a key plank for our system to build on, but says little about the quality of the education provided. As researchers Nancy Higgins, Jude MacArthur and Missy Morton point out, mainstreaming is not the same as inclusion. Being at school is not the same thing as having meaningful access to the curriculum (Higgins, MacArthur and Morton, 2008). Given the staggering rates of underspending that have emerged this year in newspaper reports by journalists Jo Moir from the *Dominion Post* and the *New Zealand Herald's* education reporter Kirsty Johnston, focusing on the ministry's financial commitment appears to be no reliable indicator either (Moir, 2015; Johnston, 2015a); not if we cannot observe its effects in terms of reduced discrimination.

Most damningly, however, these reassurances are undercut by the pleas of families whose children are being failed by the education system. Kirsty Johnston has documented ongoing problems and a number of cases of discrimination in a series of articles on special education this year, including instances of parents having to pay for teacher aides. The ministry said it does not support the practice but refused interview requests for the story. Johnston's investigation found that '[s]ome schools are still turning special needs children away, while others only allow children to attend if a teacher aide is present. This is illegal' (Johnston, 2015b).

At the same time, a 'special education update' exercise conducted by the Ministry of Education attracted so much interest from parents wishing to be heard that they successfully petitioned for a second round of consultation, while the current select committee inquiry on the supports for dyslexia, dyspraxia and autism spectrum disorder attracted over 400 submissions. Many of these are publicly available and make for sobering reading (New Zealand Parliament, Education and Science Select Committee, 2015).

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None of these issues are new. In 2010 the Human Rights Commission noted in a report that 'many disabled students and their families have difficulty accessing inclusive education aimed at fulfilling the promises of the CRPD [United Nations Convention on the Rights of Persons with Disabilities]'. In 2008 IHC, the main New Zealand non-government organisation for those with intellectual disability and their families, lodged a complaint with the Human Rights Commission that educational practices contravened our international human rights obligations. The Crown Law Office on behalf of the Ministry of Education rejected the complaint, and also declined to participate in mediation via the commission. IHC is now itself funding litigation against the ministry 'as we believe strongly that the problems resulting in discrimination are to do with government policy, structures and systems' (IHC, 2015).

The IHC complaint followed from a court case taken by parents in 1998 and settled in 2004 with the promise of a broad review, and points to the lack of progress made since at least the watershed report by New Zealand Council of Education researcher Cathy Wylie in 2000. That extensive work, significantly titled *Picking Up the Pieces*, painted a stark picture of the state of special education four years into the implementation of the current policy framework.

In other words, this is a debate that has been going on for two decades. So if we were still somehow inclined to dismiss the ongoing concerns raised by so many families – or the pending human rights complaint, now in its eighth year – as having no evidential basis or value, we should at the very least ask ourselves the following question: if the litany of problems highlighted by Cathy Wylie have really been resolved, how did we do it? Resourcing has not substantially increased relative to student numbers, and the core aspects of policy have not changed in almost 20 years. Supports are as scattered and poorly coordinated as they have ever been. Student teachers are apparently still not being adequately trained in inclusive practice or how to deal with specific disabilities. Are we really expecting more awareness and a better attitude to have made all the difference?

Let us examine the Ongoing Resourcing Scheme, or ORS, the component of the system for those students with the highest needs, in some detail.

ORS: between competition and moderation

Before the Education Act 1989, disabled children had no rights to attend their local school, and, in the absence of a special school or unit, many were denied access to education altogether. Despite the breakthrough provided by section 8 of that act, which legislated for the right of all local children to attend their local school,

Table 1: Developments in special education since 1989

1989	Education Act: section 8 – all children can attend their local school; Tomorrow's Schools
1996	Special Education 2000 announced
1998	ORS, SEG (Special Education Grant), RTLB (resource teachers: learning and behaviour) roll-out; Daniels and ORS v Attorney General begins
2000	Wylie Report Picking Up the Pieces
2001	New Zealand Disability Strategy (objective 3: education)
2004	Daniels case resolved; Let's Talk Special Education consultation
2008	New Zealand ratifies UN Convention on the Rights of Persons with Disabilities (article 24: education)
2008	IHC begins complaint against Ministry of Education on grounds of discrimination
2010	Success for All: target of 80% demonstrating inclusive practices by 2014
2014	ERO review of 152 schools in term 2 reports that three quarters demonstrate mostly inclusive practices
2015	Special education update review; select committee inquiry

the resourcing to support teachers and disabled children in the new mainstream classrooms was inadequate from the start.

In response to the slow implementation of this policy, in 1996–97 the National government developed Special Education 2000 (Creech, 1997) (see Table 1). This included an Ongoing Resourcing Scheme, commonly known as ORS (which soon became the Ongoing Reviewable Resourcing Scheme or ORRS),[1] targeted at 1% of schoolchildren. Access to the scheme required filling out a very lengthy and complex application highlighting the child's deficits.[2] As at 1 July 2014, 1.1% of the total student population, or 8,252 students, almost two-thirds (65%) boys, were covered (Ministry of Education, 2014), with the latest budget stipulating a small increase.

Twenty years later, ORS remains one of the key resourcing mechanisms for the delivery of special education. Dressed up as a tool to assess objective need, it consists of a series of criteria under which disabled children as young as five can be enrolled. In reality, however, the scheme is designed not to evaluate children against the criteria but to grade them according to the level of need. This was captured in a telling piece of doublespeak in Labour finance minister Michael Cullen's final budget, in 2008, which, like the latest one from Bill English, provided a small boost to the scheme: 'This initiative, which is demand-driven, increases the number of students provided for by the Ongoing and Reviewable Resourcing Scheme (ORRS) from 6,700 students in 2007/08 to 6,950 students in 2008/09' (quoted in New Zealand Resource Teachers: Learning and Behaviour Association, 2008). How can a scheme be both demand-driven and artificially capped? The criteria for ORRS did not change before and after the 2008 budget; the verifiers just let more children through, children who would have previously been rejected based on the same criteria. But the application form always contained language enabling the verifiers to exercise latitude in excluding children. For example: 'This criterion is not for students who, despite major difficulties with communication and/or social behaviour, can be engaged to participate in meaningful learning in the curriculum' (Ministry of Education, 2015).

What is 'meaningful learning', and who decides? Evidently what we are talking about here is not the right to an education, but to *some* education. The logic was satirised by Tom Scott in a 1995 cartoon that is every bit as relevant 20 years later.

Minister of Education Lockwood Smith 28 November 1995 by Tom Scott. National Library of New Zealand. Ref: H-242-020 (used with permission)

Besides identifying that the driving principle of special education policy is to allocate resources – as opposed to guaranteeing the right of all children to an education – Scott correctly diagnosed the deficit model on which ORRS/ORS ended up being based: a model which requires that children be graded on a sliding scale of need, and evaluated always and only for their shortcomings, as if disability were exclusively a property of the individual and never a function of the environment.

As well as being restricted to a predetermined number of students, the scheme is periodically moderated to ensure an equal (as opposed to equitable) distribution of resources. To illustrate how perverse this process is, it may be worth bringing up personal experience. One of the authors of this article has a young son with type-1 diabetes whose care includes periodic outpatient clinics with a specialist paediatric team at Wellington Hospital. If during one of the visits the team finds that his haemoglobin levels have improved, they do not suggest reducing the amount of insulin he is allowed to receive; this would be absurd. Yet this is precisely what happens in the ORS moderation, where achievement and improvement as a result of funded interventions result directly in a reduction of the funding.

It is worth examining the process in some detail. Moderation involves rating the child according to seven categories: Physical Tasks and Mobility, Sensory, Learning, Eating and/or Drinking, Communication, Behaviour and Toileting. The child is rated in each category from 0 to 4, where 0 indicates 'typical age of peers', thus requiring 'no supervision/ support beyond school's regular systems', and numbers 1 to 4 indicate the need for increasing levels of support in order to enable the child to be at school, with descriptors which vary according to the category. So, for instance, a rating of 4 under Communication is described as follows (emphasis in original): 'Student requires *total* support to engage in *all* communication activities. Alternative and/or augmentative systems are *always* required. Specialist support and programmes in place' (Tiso, 2010). This may sound like the kind of information that could help the school and the funders respond to a meaningful need, but what counts is not the content of the assessment, it is the number. Not only are all 4s under Communication alike, but also a 4 under Communication is the same as a 4 under Behaviour, just as a 3 under Learning is the same as a 3 under Eating/Drinking or Toileting, in that they all contribute to the overall score in the exact same way: producing this total is the sole purpose of the exercise.

Let us say that the scores in each category are added up and the total is 21. This is the number the ministry will use to determine the dollar amount of the voucher component of the scheme until the next scheduled moderation. However, even if one subscribes to the deficit model adopted by the policy makers, a 21 could be made up of staggeringly different combinations of physical and intellectual disabilities or impairments. Yet to the institution a 21 is a 21, and all 21s are alike.

In fact, in key areas such as learning or communication there is no direct, straightforward relationship between the severity of a student's disability and the level of learning support she will need to access the curriculum. What might have happened from one moderation to the next is that the child has reached a point where she can tolerate being in the classroom. This is where the proper inclusion and teaching can begin, and the most intensive and specialised interventions be effective. But the equation dictates that progress in any area must be inversely proportional to teaching resources.

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In addition to the moderation process affecting individual children, regional moderation is also in place, to ensure that each area receives a level of funding proportional to the overall number of pupils enrolled at school. Once again, this pre-empts the actual assessment of objective need: any statistical blip in the number of children with disability in a particular area is smoothed out by means of a formula. In this case too, the primary goal is not to ensure inclusion but to ration the ministry's resources.

The Special Education Grant and the myth of school choice

Although the current regime for funding special education goes back to Special Education 2000, it is part of the larger reform programme initiated by the 1989 Education Act. The central plank of the programme, known as Tomorrow's Schools, introduced competition among state schools in the belief that this would cause parents to reward the best ones with their business (i.e. their children) and improve education. However, education isn't a consumer product; nor, more importantly, are children consumers: children are citizens whose equal right to education is unequally met. Like all other citizens, children come from a range of socio-economic backgrounds and with a range of abilities. And while the reforms went some way towards erasing the first difference – by granting greater funding to schools in poorer areas through the decile system – they gradually obliterated the second.

The consumerist attitude is reflected in the two principal means for funding – and therefore both enabling and structuring – special education in New Zealand: the voucher-like scheme targeted at selected individual children (ORS), and the Special Education Grant (SEG) that goes to every school. As we have seen, ORS is allocated through competition. The case of the SEG, while less directly discriminatory towards individual children and their whānau, is equally if not more symptomatic. The SEG is designed to supplement a school's operations fund to pay for the learning support needs of pupils. Therefore, one might reasonably expect each school to receive it in an amount proportional to the number of students with disabilities on its roll. The funds, however, are allocated to each school based on its raw number of pupils. So, a school with 1,000 children will get ten times as much money as a school of the same decile with 100 children, even though the latter may actually have more children with special needs on its roll. This is not a hyperbolic example: so-called magnet schools are a reality of our education system and are often victims of their own success at including children of all abilities.

The Special Education Grant must be disbursed to schools irrespective of the number of children with special needs on their roll because to do otherwise would mean allowing for the possibility that school competition has a downside. Only if the model worked in its purest form would children of different abilities be distributed in a statistically uniform fashion. But the model doesn't work, let alone perfectly. The ablest and wealthiest children are much freer to move, and are more easily drawn to the schools that spend money on attractive facilities rather than learning supports and teaching staff for disabled pupils, thus directing greater resources to those schools. In the crudest possible terms: most children can choose to go to a school that is not inclusive; disabled children can only go where they are accepted. Therefore, the freedom of choice of the former undermines the right to an education of the latter.

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This is how we produced a system that rewards schools for excluding children, and stubbornly refuses to measure and acknowledge – let alone analyse and comprehend – the unequal distribution of children with disabilities.

The incentives to exclusion

While the Ministry of Education lists inclusion as one of its main priorities, its policies ultimately promote exclusion. Consider a child receiving targeted funding under ORS, and therefore – at least in theory – best positioned to receive the highest levels of support. This funding is now openly referred to by the ministry as a contribution, as opposed to a provision, and leaves a shortfall of between $5,000 and $8,000 in the school budget for each child on the scheme.[3] A school that invests in children with high needs is likely to attract a disproportionate number of ORS students, thereby increasing the strain on the school's financial viability even further. This strain could potentially be alleviated by the other main source of funding in this area, the SEG. This, however, as we have seen, is allocated to schools based on their roll and decile; and there is no accountability for how the money is spent. We have heard anecdotally of schools that have used the funds for sports facilities or other programmes that have nothing to do with the inclusion of children with special needs.

But the incentives are broader than the flawed funding model alone. Since 2011, National Standards have been extended to children with severe intellectual disability receiving ORS, who were initially exempt. This requires subjecting these children to assessment tools that are grossly inadequate to evaluate their progress against the goals set in their individualised education plans (IEPs), then formulating an overall teacher's judgment and – inevitably – finding that they are well below the expectations set in the standards. All of these tasks require teacher time, therefore ultimately costing money, in exchange for no gain; they certainly do not improve our understanding of the learning needs of the children, and can be demoralising for both teachers and parents. To make matters worse, schools are required to include the results among the data reported to the Ministry of Education, but are not allowed to cite the special circumstances of the students. Children with severe impairments are therefore both included in the results – as if they could be reasonably expected to achieve a national norm – and 'hidden' inside them. This has a very immediate and concrete repercussion when the ministry publishes school results on its website, which is used by many parents to compare schools in a system supposedly based on virtuous competition. Schools that enrol a high number of children with learning disabilities will see their academic achievement record penalised compared to those who do not, and no context will be given to explain the poor results. Thus, a measure that might charitably be viewed as an attempt to 'include' children with disabilities ends up making it even less desirable for schools to enrol them.

In addition, the directive to measure this child population against the national norm is in direct contradiction with section 16 of the Education Amendment Act 2013, which states that the function of school boards is 'to ensure that every student at the school is able to attain his or her highest possible standard in educational achievement': *his or her* standard, not that of a typical child who faces none of the same challenges.

The combination of all of these policy settings – inadequacy of the ORS funding, inequitable distribution of the SEG, and a misguided assessment regime – actively disadvantages inclusive schools, thereby reducing the prospects of children with disabilities to access the same education system as their peers. Conversely, these settings incentivise schools to not practice inclusion, and principals – the executives in charge of ensuring the 'success' of each school – are more acutely aware of them than most. Can we really blame them for working within the system and responding to the signals the policy sends them?

Conclusion: shifting the burden

It is beyond the scope of this article to propose a comprehensive alternative policy model. International comparisons suggest that we could look at jurisdictions that perform well on several measures relating to inclusion – be it Sweden, Italy or the Canadian province of New Brunswick – but the reality is that all of them will be found to be wanting in some respect: inclusion is very much a work in progress, and not just in New Zealand. And while it is our contention that many of our officials and policy makers are in denial about the long-standing inequities that afflict our system, we also believe that New Zealand is perfectly capable of forging its own progressive path, and translating some of the strong commitments in our laws into effective policies that value and reward inclusive schools.

It starts with admitting that we have a problem, and for whatever reason, in spite of 20 years of a debate that has never made real progress, our Ministry of Education is clearly not there yet, as evidenced by the timid nibbling at the edges in this year's special education update, while parents clamour and petition for real change. The set of perverse incentives we have described emanates from a system that is almost pathologically obsessed with costly verification, placing little or no trust in educators and families. Under this regime, it is not probative to say that our levels of expenditure are relatively high by international standards when so much money is going towards guarding access to resources, as opposed to enabling inclusion. The system is also hopelessly fragmented. As New Zealand Disability Support Network head (and former special education district manager) Garth Bennie explained to Kirsty Johnston, 'you might have a bunch of specialists talking about whether a student needs an iPad – and once they have talked for an hour that's equal to the cost of the iPad' (Johnston, 2015b). This kind of scenario will be sadly familiar to virtually anyone who has had to apply for special education support in New Zealand.

It could start with something small, like a more equitable distribution of the SEG, which will require in turn the long-overdue gathering of data about the distribution of children with special education needs. It could end with something big, like a radical redesign of the funding mechanisms for individual schools and the delivery of specialist supports. In either case it should involve, we argue, a shifting of the burden. If a parent or teacher reports, and the school confirms, that a child has significant needs, they are unlikely to be lying and should not be subjected to endless assessments and reviews. It should be up to the Ministry of Education, rather, to argue that the need does not exist, or justify why the necessary supports are not to be provided. These are reasonable expectations to place on an education system that values all its participants and is committed to teaching all children.

At times the government appears to understand this. Its comprehensive and evidence-based 2008 *New Zealand Autism Spectrum Disorder Guideline*, for instance, makes no mention of the capping and rationing of resources. Instead, it advocates an education based on early intervention and 'individualised supports and services; systemic instruction; comprehensive and structured learning environments; specialised curriculum content; a functional approach to problem behaviours; and family involvement' (Ministries of Health and Education, 2008, p.127). It is the kind of service that our modern public education system outside of what we still call special education is philosophically primed to provide, and that our teachers and the national curriculum are ready to accommodate. Unfortunately, the mandate of the Guideline was underfunded and most of the policy never implemented, but at least the document acknowledged the existence of the problem and the need for a step change. It is what we are asking again today.

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In 2008, the same year the autism guidelines were published, New Zealand ratified the United Nations Convention on the Rights of Persons with Disabilities, whose obligations on states parties include the following:

> Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
>
> Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
>
> Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion. (United Nations, 2006, article 24)

We made this commitment in front of the international community, on behalf of our most vulnerable children. It is time we honoured it.

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1 It reverted back to ORS in 2011.

2 This could be a very distressing exercise for parents, particularly as it was often unsuccessful.

3 As reported by the principal of Berhampore School, Wellington, of which one of the authors of this article is a trustee.

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