

Preface

States, through their institutions and policies, exercise a fundamental responsibility for safeguarding and promoting the health of their populations. Child health is a particular concern, and while infant mortality rates have fallen continually throughout the past century across the developed world, they remain high in less developed areas. Wars, famine and the continual presence of diseases such as malaria (despite some scientific advances of late) in transitional states put the less severe health risks in the developed world into perspective. New threats are, however, constantly emerging; since the 1980s there has been HIV/AIDS, which, as Christa Van Wyk explains chapter 9 in this collection, affects directly or indirectly the millions of children in South Africa who live as members of families containing one or more infected individuals, including, in many cases, the child him or herself.

The growing international recognition of the importance of better health promotion is reflected in the range of legislative obligations placed upon and/or accepted by states. As Laura Lundy explains in the book's opening chapter, this responsibility is underscored by the international human rights framework and especially, in the case of children, the UN Convention on the Rights of the Child. Both internationally and within states sexual health is an area of particular concern. Teenage pregnancy and sexually transmitted diseases (STDs) among young people continue to beset many countries. As Gracienne Lauwers explains in chapter 7, the Russian Federation has a huge problem with sexually transmitted diseases and pregnancy among young people and, as elsewhere, is looking to the education system for some solutions. Indeed, it is a common theme of this book that in many states the role that schools and other educational institutions are expected to play in safeguarding health is growing. As Ann Blair explains in chapter 6, in an evaluation of the principles that underlie the state's growing attempts to regulate for better sexual health, 'education seems to be, at least for the moment, the best vaccine we have'.

The question is then: how should law and policy be framed? In the area of sex education in particular, issues of private morality, personal freedom and public welfare can come into conflict. In their respective chapters, Charles Glenn, in relation to the United States (chapter 4), and Paul Meredith, covering developments in England (chapter 5), highlight the problems that are faced by legislators in seeking to provide an appropriate legal framework in a pluralistic society where the health needs of often sexually active young people tend to play against the particular moral values held by parents and espoused by political ideologues. In England, which has a well-developed statutory framework, this conflict is partly resolved through the rather unsatisfactory means of conferring a right upon individual parents to withdraw their children from sex education at school.

Prevention, as already noted in relation to sexual health above, is another common theme in the book. It is linked to the notions of protection and risk. Education may have a crucial role in preventing ill-health, through sex education or, for example, the promotion of better diets and exercise, as Gerald Fain explains in chapter 11, evaluating health promotion in American schools. But the school environment itself can pose health risks, mirroring the risks in wider society. One area of particular concern is the threat to the mental and physical health of children caused by bullying by fellow pupils; in chapter 2, Neville Harris discusses the incidence of bullying in schools in the UK, highlights the evidence on its effects and assesses the various and wide-ranging legal responses to it. Another risk concerns society's so-called 'drugs culture,' from which schools and school pupils are by no means immune. This is a particularly difficult nut to crack; as Charlotte Walsh explains in chapter 3, drugs education seems to have had 'minimal primary preventive effects' and the UK government is struggling to find the right legal response to a pervasive problem.

Health also becomes important in the context of access to education. Illness or incapacity threaten to limit opportunities to receive schooling. The law in many states will generally aim to ensure a child's inclusion in the education system regardless of, for example, his or her state of health or disability. In England and Australia, for example, the authorities are not only placed under non-discrimination duties but are also under positive (albeit conditional) obligations, as Marcia Conroy and Jim Jackson explain in chapter 10. If the child's ill-health poses a very serious risk to other children, such as where there is a highly contagious disease such as measles or SARS, isolation may be necessary. Similarly, degrees of disability and the need for a highly specialised learning environment will vary between disabled children, so that it is not possible to include all in mainstream education. Inclusion is nonetheless a very important principle and yet, as Marcia Conroy and Jim Jackson's chapter illustrates, there remain significant barriers to, and differences internationally in the progress towards, equality of access to education for children with a disability, including those with behavioural problems.

Inclusion is also threatened by social and professional attitudes towards HIV-infected pupils. In chapter 8, Charles Russo highlights the over-emphasis on the perceived legal and health risks arising from the presence of infected pupils within schools in the United States. Christa Van Wyk shows in chapter 9 that the presence of HIV infection and AIDS, and the attendant infection risks, are facts of life in South Africa's schools. However, as she explains, despite the fact that '[c]hildren with HIV have the right to attend any public school and their needs should, as far as is reasonably practicable, be accommodated in the school,' a nursery school has refused to admit an HIV-infected child, lest she bite another pupil, and as yet unresolved litigation has ensued.

Given the breadth of the subject, it has been impossible to cover all aspects of children's education and health. We nevertheless hope that the book will raise awareness of some of the more problematic issues in the relationship between these two important spheres of responsibility. We are also hopeful that the book highlights the importance that needs to be paid to health in the context of education

in order to safeguard and promote the rights of children, developmental as well as protective.

All but one of the papers contained in this collection were originally presented at the annual conference of the European Association for Education Law and Policy (ELA) at the University of Manchester in November 2003, which explored the theme of Education, Health and the Law. All were updated for this collection and we are grateful to all the contributors, including Charlotte Walsh, whose paper was specially commissioned by the editors for this collection, for their hard work in preparing them. Given the controversial nature of some of the issues covered by the book we should add the caveat that the views expressed by individual authors do not necessarily coincide with those of the editors.

We also extend our gratitude to Professor Jan De Groof, President of ELA, and his assistant Gracienne Lauwers, for their support in the development of the conference and in giving us encouragement to bring this book to fruition.

Neville Harris and Paul Meredith
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