Legal battle over rights of disabled students in Australia

Frank Gaglioti
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A bitter and protracted legal battle between the parents of nine disabled students and the Liberal government in the Australian state of Victoria provides a revealing insight into the way cuts to social services have been accompanied by a wholesale assault on democratic and legal rights.

Late in 1996 the Kennett government issued a directive to special schools that within six months they had to shut down all courses for disabled students over the age of 18. Since then, more than 1,300 students have been affected.

The government's aim was to save $17 million from its education budget. In the process it created a nightmare for the students and families involved. Students were given the choice of attending sheltered workshops, staying at home or undertaking entirely inappropriate adult training, with none of the specialised services they required. Once 18, full responsibility for their daily care and education was effectively being thrust onto parents.

In 1997 the parents of nine students at Berendale Special School in Melbourne decided to challenge the government's decision.

Initially, they attempted to negotiate with the Department of Education, only to be met with an official brick wall. Their next step was to go to an Anti-Discrimination Tribunal on the basis that, since students attending mainstream schools could remain until age 21, the government's decision was discriminatory.

On the eve of the hearing the government moved pre-emptively against the parents, forcing the case into the Supreme Court. The parents found they had inadvertently stumbled into a legal minefield.

During the previous four years, the government had moved to undermine the legal right to challenge any of its education cuts.

In 1993, the Education Act was amended to read 'a decision ... of the minister to discontinue ... any State school is not liable to be challenged, appealed against, reviewed, quashed or called into question on any account in any court or tribunal or before any person acting judicially... or before the Ombudsman.' In other words, no-one could legally oppose a school closure.

Then in 1995, the Equal Opportunity Commission forced the government to re-open Northland Secondary College--one of the 55 schools closed at the end of 1992--in the northern suburbs of Melbourne. Northland had conducted specialised programs catering for Aboriginal students.

The Kennett government's response was to amend the Equal Opportunity Act in June 1995, with a 'Special Complaints' clause, allowing challenges to be fast-tracked straight to the Supreme Court. The obvious intent was again to thwart opposition, this time by forcing complainants into a forum where costs would be prohibitive.

A 'Special Complaint' involves issues 'the resolution of which may have significant social, economic or financial effects on the community or a section of the community' and 'a complaint the subject matter of which involves issues...the resolution of which may establish important precedents in the interpretation or application of this Act.'

The Berendale challenge was the first in which the government invoked the new 'Special Complaint' mechanism. But the Supreme Court found in favour of the parents, on the grounds that there had been legal discrimination against the Berendale students.

Following that decision, in November 1997, the government amended the Education Act again--this time to retrospectively legalise the axeing of the

18-plus program and to block any other similar legal challenges by disabled students.

At the same time, it appealed the Supreme Court decision. In April this year, the Appeals Court upheld much of the earlier decision. Nevertheless, the Kennett government remained adamant that Berendale would not become a test case. It refused to reinstate anything except the specific course attended by the nine students named in the action. The rights of the hundreds of other disabled students were summarily ignored.

Ian Woodward, the father of Sarah, one of the Berendale students, told the *World Socialist Web Site*:

'It was an absolute bombshell at the end of 1996 that Berendale was closed. We would not accept that we were being pushed to put Sarah in a sheltered workshop or day care with people in their sixties. What the government was doing was ruling off the page for an 18-year-old child. They were sending her to Adult Training, i.e. to baby sitting...

'The government took us to court, it wasn't the other way around. We started off just wanting to talk to them. We wrote to the Minister for Education, and were fobbed off...

'The government obviously tried to intimidate us by taking us to the Supreme Court, then appealing against us. (Minister of Education) Gude intimated that they would be seeking legal costs from us in the hope of frightening us off.

'A few days before the appeal, they insisted we nominate a litigation guardian for those students under age, with the obvious implication that if they won, they wanted somebody to be responsible for costs.

'If you listen to what they say, then they won. The Minister of Education said [the decision] is not going to affect anything. They have only been found guilty of discriminating against the nine students. So that is apparently it. They are ignoring the hundreds of others who were discriminated against, who were not named in the action. There are ex-Berendale kids who now sit at home all day watching TV. They don't do anything. They have no life at all.

'As for the consequences of the court case for Sarah, the government said she can stay at Berendale for two more years. But it is not the Transition Program like it was. The legislation now says they have to leave at 18. She is in a group of 17-year olds, and she is now 19--it is not her social group. Of the group she was with, most have gone. If she stays on next year, she will be with even younger students. She has no real association with them.'

See Also:

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[15 July 1998]

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[17 June 1998]