

The Education Rights of Forensic Patients

Introduction

Education is defined by social scientists as an aspect of socialisation that involves acquisition of knowledge and learning skills with the intention of shaping one's beliefs, values and identity. It is also exploring the balance between society and individualism and to prepare oneself to make use of opportunities in order to live, to love and to learn. This paper examines the refusal of Justice Health to permit some of their forensic patients access to educational development including donated computers. The case history of forensic patient Saeed Dezfouli exposes the problem.

Education is a pathway to responsibly develop an individual's inherent abilities as well as teach them real life skills in order to socialise with others. It is important because it creates chances for individual's to participate equally in society by improving abilities for employment, attaining qualifications, helping family, gaining recognition through innovations and through serving as a role model for others. Detainees, whether prisoners or patients look to education to reintegrate into the general community.

If prisoners are allowed rights (http://www.mhcc.org.au/manual/ch1.aspx#ch1_rps_nsrr), then generally the rights of forensic patients should be greater because while prisoners have offended, mental health forensic patients are incarcerated for health support and treatment in order to return them to their community and aren't in there for punishment.

Under the United Nations Declaration of rights of Disabled Persons, forensic patients have: 'The right to any necessary training, rehabilitation, education, training and other services to help develop their skills and capabilities to the maximum.' The Special Rapporteur on Education chose to present to the United Nations Human Rights Council a report in 2009, on the right to education for people in detention.

His aim was:

- To clarify the content of the right to education in places of detention
- To identify those with the principal responsibility for its implementation
- To highlight the most notable challenges faced in that implementation
- To put together examples of innovative approaches to date and lessons learnt
- To offer recommendations as to how implementation might be improved

The Special Rapporteur stresses that "Profound global, social, political and economic changes have had an impact on all penal systems" (Munoz, 2009, 4). He strongly affirms that "human rights are not relinquished on imprisonment" especially the right to education (Munoz, 2009, 5).

The Special Rapporteur insists, "Detention institutions should maintain well-funded and accessible libraries, stocked with an adequate and appropriate range of resources and technology available for all categories of detainees" (Munoz, 2009, 25).

Case Study of Forensic Patient Saeed Dezfouli

Saeed Dezfouli has been a patient inside Long Bay Forensic Hospital for eight years. Dezfouli has expressed the need for education, in order to help him and the other patients to develop and rehabilitate. Health officials have constantly said that patients will have “access to computer rooms, group training rooms, art, therapy and industrial training rooms for educational purposes” (Previous Minister for Health, 19/10/04). They have also said, “The Forensic Hospital will begin providing services towards the end of the year and, in line with all other NSW Health mental health facilities, will provide educational and therapeutic programs“ (Babineau, 2008).

A computer that was donated by the University of NSW Law School was intended for him - but was refused. Dezfouli has described that there is an area in the hospital that has computers and other recreational activities but he is refused access. There are no teachers and no courses to educate the patients despite early claims.

Right to Education

The Right and the benefit to humankind of education were recognised internationally under the Universal Declaration of Human Rights in 1948 Article 26. It states:

1. Everyone has the right to education...and that all kind of education shall be equally made available, accessible, acceptable and adaptable to all members of the human race regardless of their social, economic, cultural, religious, political, sexual and other backgrounds.
2. Article 26.2 of the Universal Declaration of Human Right decree maintains that education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups.

UNESCO adopted a declaration on the right to learn for all, including reading and writing, asking and analysing, imagining and creating, reading one’s own world and inventing one’s own history, accessing educational resources, developing individual and collective skills. This means that education can be reflected in peoples’ desires and needs, as people have different background and levels of education.

Mental health patients have all these rights which are expressed in a separate convention. In the United Nations convention on the Rights of Persons with Disabilities under Article 24 for Education, it says:

1. State Parties recognise the right of persons with disabilities to education. With a view to realising this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:

a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;

b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;

c) Enabling persons with disabilities to participate effectively in a free society.

“Attention should be given to persons from traditionally marginalised groups including women, minority indigenous groups, those of foreign origin and persons with physical, learning and psychosocial disabilities. Education programmes for such groups should pay close attention to accessibility and relevance to individual needs; the barriers to continued education upon release should also be addressed and taken care of properly” (Munoz, 2009, 26).

In NSW, Under Section 3 of the Mental Health Act 2007, an objective of this act is to provide obligation for the health department for the care and respect for civil rights in self-determination for patients.

Education benefits for patients

Education and training benefits not only the patients, by giving them similar opportunities that exist in the real world, but also more importantly, it can help the entire community by seeing that imprisoned citizens find the right pathways to responsible and productive participation in the life of the community.

The following skills and abilities are developed through education:

- Development of mental and physical skills: motor, thinking, communication, social, aesthetic;
- Knowledge of moral practices and ethical standards acceptable by society;
- Ability to recognise and evaluate different points of view;
- Giving and receiving recognition as human beings;
- Indoctrination into the culture;
- Capacity to live a fulfilling life;
- Ability to earn a living;
- Career education;
- Sense of well being
- Mental and physical health;
- Capacity to be a good citizen;
- Ability to think creatively;
- Cultural appreciation; art, music, and humanities;
- Understanding of human relations and motivations;
- Acquisition of values related to the physical environment;
- Clarification of personal values;
- Self-reflection: awareness of one’s abilities and goals; and
- Self-esteem.

The Special Rapporteur reinforces the role of education within places of incarceration:

“Education is not a panacea for the social, psychological and physical damage caused by detention. It has the potential, however, to offer previously unmet realistic opportunities and assistance, which contribute to meeting the rights and needs of the incarcerated and those of our entire community” (Munoz, 2009, 8).

Problems encountered

Lack of equipment to prisoners and patients is an obstacle for learning about the law and preparing themselves for defence. Forensic patients and inmates often ceased their studies because of lack of equipment.

Areas of concern are that:

- Access to education is either denied or severely limited by the attitude of the doctors and nurses at the institute;
- Restricted access to basic office equipment like photocopying, computers and printers hampers students participating in distance education;
- Restricted access to electronic resources like educational materials on CD and DVD disks effectively deny participation in education.

This also ensures that patients are unable to:

- Have access to educational and computer supports to properly respond to the criminal justice processes. Because of this restriction, detainees can't access and deal with evidentiary material provided by the police in electronic format;
- Learn about the law and its processes; and
- Prepare documents giving instructions to lawyers.

Recommendations by the UN Special Rapporteur on Education

The recommendations put forward by the Special Rapporteur encourages education and support as well as improving the prospects of rehabilitation for those who are in detention. The Rapporteur said:

90. a) “Education for people in detention should be guaranteed and entrenched in Constitutional and/or other legislative instruments” (Munoz, 2009, 24)

b) “The provision of education for persons in detention should be adequately resourced from public funds” (Munoz, 2009)

c) “Compliance with the standards set forth in international law and guidance pertaining to education in detention should be ensured” (Munoz, 2009, 25)

91. a) “The Rapporteur recommends that authorities in charge of public education:
- Make available to all detainees, whether sentenced or in remand, education programmes that would cover at least the curriculum of compulsory education in the primary and, if possible at the secondary level also;

b) “Together with the institutions of detention, arrange comprehensive education programmes aimed

92. Systematic and appropriate screening...upon entry to places of detention becomes the norm. Individual education plans with full participation of the detainee should result from this screening, and be monitored, evaluated and updated from entry to release (Munoz, 2009, 25)

93. States should identify the dispositional barriers to education and subsequently ensure adequate assistance and resources to meet their challenge (Munoz, 2009, 25)

94. Education programmes should be integrated with the public systems so as to allow for continuation of education upon release (Munoz, 2009, 25)

95. Detention institutions should maintain well-funded and accessible libraries, stocked with an adequate and appropriate range of resources and technology available for all categories of detainees (Munoz, 2009, 25)

Computer access for patients

- Education and personal development cannot be achieved without appropriate facilities such as computers. Because computers aren't widely available, patients and prisoners do not have easy access to the law or the necessary evidentiary materials for defending their cases.
- Computers ensure patients have proper access to educational resources so that they can build on their knowledge and in turn, use it for the benefit of the community as a whole.
- Computer access will enable forensic patients and prisoners to participate in the criminal justice processes with equity. Computer access will also assist patients and prisoners to have access to the evidentiary and other materials relied upon by the police in court cases without difficulties.

Conclusion

Learning through educational programmes for forensic patients are generally considered a tool of change because its value is judged by its impact on rehabilitation, reintegration and, more specifically, employment outcomes upon release. Education is, however, much more than a tool for change. It is a tool that gives forensic patients the chance to gain the strength to stand back up, reorganise his or her life and to climb the ladder back into society.

Upon his appointment, The Special Rapporteur decided to focus his attention on groups traditionally marginalised and vulnerable to discrimination in education. The Special Rapporteur has sought to establish the causes and circumstances surrounding

such discrimination and the challenges that must be faced in order to promote the realisation of their right to education.

And as shown from the suggestions and information that The Special Rapporteur and the topics above have discussed; if education possesses the possibility of getting forensic patients back on their feet and reintegrated back into society - then it is far more beneficial than to allow them to be locked away inside an institute. Education is a chance for forensic patients to become stronger individuals, a chance that shouldn't be taken away because forensic patients have the right to learn and the right to be a part of society.

To properly implement the Rapporteurs recommendations, the right to education and computer access may need to be specifically written into the mental health law.

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