

The rights of the child

and what this means for teachers

ROSEANNA BOURKE AND JOHN O'NEILL

KEY POINTS

- There are nine human rights charters adopted by the United Nations. One is the Convention on the Rights of the Child (UNCRC), which New Zealand ratified in 1993.
- UNCRC Articles 28 and 29 identify the child's right to education. Teachers, leaders, and boards of trustees need to be familiar with children's rights.
- Article 12 states that all children have the right to have a meaningful say in matters that affect them. To make this real in schooling, children need inviting spaces and opportunities to express their views and interests, and adult audiences prepared to listen to and act on their views, however challenging these may be.
- Article 30 provides that, in addition to all their rights as persons, tamariki Māori have rights as Indigenous children. These come from whakapapa, mātauranga Māori, tikanga Māori, and Te Tiriti o Waitangi.
- Article 4 places major responsibilities on governments, and government entities such as schools, to ensure implementation of children's rights.
- The UNCRC underpins the work of including children to enable them to realise their full potential in educational settings. The actions of teachers are vital to upholding children's rights at school.

Aotearoa New Zealand ratified the 1989 United Nations Convention on the Rights of the Child (UNCRC) in 1993, which means its principles and rights are obligatory, not optional. So, UNCRC has important implications for teachers, leaders, and boards of trustees in schools. UNCRC has 54 articles. A good starting point for teachers is the articles that directly impact on their work with their students. These include Articles 12, 13, 28, 29, and 30. The children's rights framework of "space, voice, audience and influence" developed by Professor Laura Lundy is universally recognised as a useful tool for teachers to use when considering how to practically apply UNCRC Article 12, which states that all children have the right to have their say and express their views on matters of interest to them. This includes their classroom relations with teachers, the curriculum, school policies, and rules. Engaging students in meaningful decision making encourages more democratic and autonomy supportive forms of teaching and learning.

Introduction

Teachers invariably want to do right by children in their classrooms. Increasingly, this means listening to children and acting on their views. Listening to "student voice" and incorporating children's views about education in classroom and school decision making is important if we want to encourage authentic forms of belonging, wellbeing, learning, and achievement that really matter to children (Bourke & O'Neill, 2022; Brasof, 2015). In Aotearoa, it is becoming more commonplace to acknowledge that families and whānau are also experts in the lives of their children, "valuing the linguistically and culturally diverse literacies children carry from their whānau, homes, and communities" (Jacobs et al., 2021, p. 265). Listening to children and acting on their views is both good pedagogical practice and affords children their basic right to be heard. An often-used phrase in research on childhood today is that "children are experts in their own lives", which must surely give considerable pause for thought to teachers, leaders, and trustees in schools where children by convention have a very limited say in determining the conditions of their learning. Yet, children typically have their own responses to the issues that enthuse or concern them, or the actions or relations that make their learning easy or difficult. We have both learnt important lessons from children in our work as teachers and know that readers will have had similar pivotal or "lightbulb" moments.

Roseanna: Years ago, when I was a beginning teacher, a young tamariki Māori in my class explained to me that, when he had been administered an intelligence test by an educational psychologist, he gave 'dumb answers' to the 'dumb questions' posed. This child knew, and even joked, that his responses were 'dumb' (in other words, he knew he hadn't correctly answered the questions). Unfortunately, the psychologist did not and months later proceeded to tell me that I was setting too high standards for the child given that his IQ test score was well below average (albeit, unknown to the psychologist, invalid). Even though the original referral to gain psychological support was not about the child's excellent academic work, or that the evidence from the child's own work showed he was a capable and confident learner, the child was given a test he neither valued nor found meaningful. The psychologist's formal report stated the child had 'below average intelligence' based on the resultant IQ test score. The child and the psychologist were from different worlds, generationally, culturally, and socioeconomically, and yet the child was not asked about his views, aspirations, or needs to make his life at school 'better'. My motivation to become an educational psychologist started in that moment with the realisation that we have to listen to what children say in order for any action that impacts on their lives to be both valid and uphold their rights.

John: I recall an occasion when, as a teacher, I was working with a group of pre-teen 'students with special educational needs' to create a visual display of the products of their artwork that depicted their learning from the project they had been working on for several weeks. The students chose to display the artwork at their eye level, that is, underneath the large display

boards that were installed at adult eye level on the corridor walls, and to position each piece at an irregular angle, and at an irregular interval from the next. To my eyes it looked an untidy mess. When I asked them why, one of them said ‘otherwise, nobody will stop to pay any attention to us or our work’. I realised then that most of what is designed in school spaces is for the benefit of adults, not children, and that if only we would ask children for their views and experiences, we would get a completely different perspective on the everyday world of schooling as children have to navigate it.

Understanding children’s views in order to uphold their rights

The United Nations Convention on the Rights of the Child (UNCRC) (1989) underpins all life choices for children up to the age of 18 years, including the right to have a name. The 54 articles of UNCRC create both clear intent and policy imperatives that all aspects of children’s lives have an impact on their right to live, learn, be themselves, and have the freedom to engage in a society that values them. Within educational contexts, although contemporary “student voice” initiatives increase the chances of authentic “partnership” approaches taking place between adults and children, such practices are often conceptualised and enacted at a superficial or tokenistic level (Lundy, 2018).

In his book *Necessary Conditions of Learning*, Ference Marton observes that “it is very difficult—and frequently impossible—to see something in a way in which we have seen it earlier if we now see it in a different way” (Marton, 2014, p. 55). In other words, when we come to appreciate children as agentic learners, by actively listening to their views, and thereby appreciate their learning “in a different way”, it is hard to go back and “unsee” them as intentional decision makers about their learning. By giving children time and space to speak, by us becoming their audience, and by allowing them to participate as equals with us in decisions that really matter to them, we expand the possibilities to *learn* new, reciprocal ways of teaching and learning alongside children and young people.

The United Nations Convention on the Rights of the Child (1989)

Since 1989, UNCRC has provided normative impetus to the gradual incorporation of children’s rights within the legal and public policy frameworks of nation states. More tangibly, it has helped to effect significant changes in the positioning of children within their education worlds and lives. This is attributable in part to UNCRC’s explicit rights-based framing, but also to the challenging

pedagogical prospect that it is “a breach of the UNCRC, for adults to encourage children to express their views if they do not give them due weight” (Lundy, 2018, p. 350).

The UNCRC was ratified by Aotearoa New Zealand in 1993. The rights of all children up to the age of 18 years are expressed through 54 articles that are founded on four key principles: (i) non-discrimination; (ii) working in the best interests of the child; (iii) the right to survival and development; and (iv) understanding and using the views of the child. Through ratification, the New Zealand Government has accepted the importance of both protecting children and encouraging their autonomy. Notably, in our context within Aotearoa, Article 30 provides that, in addition to all their rights as human beings, tamariki Māori have rights as Indigenous children (Waldon, 2010). These Indigenous rights come from whakapapa, tikanga Māori, and Te Tiriti o Waitangi. Article 2 of te Tiriti protects the taonga of tangata whenua. In te ao Māori, mokopuna, tamariki, and rangatahi are taonga.

All government agencies are required to monitor and report on progress towards upholding these rights and to be accountable for any violations or omissions. The Government is required to report to the United Nations periodically. The most recent periodic report was received by the UN on 15 October 2021 (United Nations Committee on the Rights of the Child, 2022). The report notes that “significant progress in implementing the articles” (p. 3) has occurred in Aotearoa New Zealand, but also that the Government acknowledges “a single strategy or programme of action cannot solve the challenges of child and youth wellbeing all at once” (United Nations Committee on the Rights of the Child, 2022, p. 7). The importance of young people’s “voice” and ideas was emphasised throughout the report, and a number of examples were provided. One example was given with regards proposed work programmes such as the implementation of “an anti-bullying strategies and work programme with a strong focus on student voice and agency” (United Nations Committee on the Rights of the Child, 2022, p. 7). This work was identified as being led by the Ministry of Education.

The four principles of UNCRC are integral to ethical, child-centred teaching and learning. Together, they position children as being granted equal value as persons while affording them necessary protection from harm. UNCRC increases legal obligations and policy expectations that children should have a meaningful, deliberative say in matters that affect them. This intentionally includes their education and lifeworld experiences, social services, living conditions, access to health programmes, and specialist support.

A capabilities approach to children's rights and student voice

When reviewing what we do in education settings with respect to “student voice” and “child rights”, there are two important questions based on practical criteria. First, has UNCRC been used explicitly by teachers and policy makers to decide whether the rights of the child are upheld with respect to curriculum and assessment matters? And secondly, have children's views on matters that affect them led directly to material changes in learning conditions and relations in classrooms and schools? Indeed, as Brasof (2015) puts it, “student voice is not just about improving a particular program within a school; it is about ensuring that our democracy survives and thrives” (p. 152).

Good pedagogical and relational practice aside, incorporating “student voice” ways of working is also about the simple professional curiosity of wanting to understand better how children experience their learning and social environments in class and at school. But “children's rights” go beyond acknowledgement of, and even understanding, their views and experiences. UNCRC Articles 12 and 13 foreground the need to both listen to *and* act on children's views. Article 12 states that children who are capable of forming their views have the right to express those views freely in any and all matters affecting them, and for those views to be given due weight in accordance with their age and maturity—of course “due weight” is precisely the point on which adults and children often diverge in their expectations and undertakings.

Another way of looking at “due weight” is implicit in the notion of children's capabilities (Nussbaum, 2011). Shifting attention from a child's observed learning to the child's emergent “capabilities” places the spotlight of pedagogical relations on the extent to which the child enjoys the freedoms and opportunities to pursue their interests in learning. A capabilities perspective encourages a holistic view of what is important for the child, and their family or whānau, and of the teaching practices and relations that are supportive of young people developing autonomy and connectedness in their learning. As demonstrated in this collection of articles (*Set: Research Information for Teachers*, 2022, (3)), young people spend their days navigating the institutional life of schooling while also navigating their own identity formation, physical maturation, menstrual cycles, health and wellbeing issues, cultural and recreational activity choices, peer group relations, interpersonal conflict, and the need to belong and contribute. Many Māori students struggle constantly to have their strengths, culture, and language recognised within a colonising, English-medium schooling system; so too Pacific and other minoritised students. Migrant and refugee children often have additional

language and communication challenges, and all students experience a system in which adults often make major curriculum and organisational decisions without children having any meaningful say.

Collaborative partnerships in teaching and learning position children as decision-framers and decision-takers, individually and collectively, but to make this happen young people need to have their voice(s) heard and have their views taken seriously. The concept of “capabilities” requires a shift from thinking about children in deficit terms as “not fully formed”, or “not yet mature” towards identifying young people's attributes, their “capacity and capability” for decision making. Recognising and valuing the many capabilities that children and young people bring from their everyday learning, social networks and play outside school to the schooling context is inherently enabling. It draws together children's capabilities from all facets of their life to enhance their self-concept as agentic learners in educational settings. These are also characteristics of what has been called “autonomy supportive teaching” (Reeve, 2016). On this view, teachers and school leaders understand that children are capable contributors to their own education. As such, they should be given opportunities to develop the knowledge, skills, and dispositions required to pursue their interests as learners, and to fulfil their responsibilities to others as members of learning communities. The capabilities approach extends the concept of abstract rights to their embodiment in practical freedoms and opportunities in social settings such as schooling. In an inclusive education environment, children must be afforded their rights, whether or not they are yet capable of exercising them. Including children as of right is therefore only a starting point, not the final destination.

Children's rights are not the same as student voice

As a minimum, those working in the education sector need to know that Article 12 exists, that it has legal force, and that it applies to all educational decision making. (Lundy, 2007, p. 930)

Laura Lundy has developed a framework that is easy for teachers to use when considering how to enact Article 12 in order to gain a young person's perspective on other aspects of their rights. Her framework enables teachers to know what to “do” with children's views once they are expressed. In her words, “voice is not enough” and there must be both audience and influence present to be able to say a child has been heard, and their rights upheld (Lundy, 2007). Lundy's framework comprises four key elements: space, voice, audience, and influence.

Space: Children must be given the opportunity to express a view.

Voice: Children must be facilitated to express their views.

Audience: The view must be listened to.

Influence: The view must be acted on, as appropriate.

In Ireland, the Lundy framework was recently expanded and promulgated as a Participation Framework by Hub na nóg, a national centre of excellence and co-ordination on giving children and young people a voice in decision making (www.hubnanog.ie).

The framework aims to help government departments, agencies, and non-government organisations to better implement Ireland's National Strategy on Children and Young People's Participation in Decision-Making. In education, the Participation Framework's Planning Checklist may serve as a useful tool to determine whether and the extent to which children are at the heart of decision making in day-to-day curriculum, learning, and assessment practices within the classroom and in broader policies and protocols that govern the schooling community (Figure 1).

How a teacher encourages or responds to a young person expressing a view or communicating their ideas, through whatever forum or medium they choose, increases, or decreases, the likelihood that children will gain the confidence and courage to speak out when they need help; and then whether they choose to speak out or stay silent the next time. The right to be heard is one of 54 unqualified child rights.

It is often in the unheralded micro-practices of teachers' daily practice where children feel listened to and come to believe they have a meaningful say that will be respected and acted upon. Unconsciously, perhaps, teachers who engage in these ways are upholding Article 12 of UNCRC and also the broader range of articles that relate to young people's wellbeing, health, education, and identity. Equally, however, teachers can often unconsciously deny children their rights because they have significant power to shape how children feel about themselves in the everyday interactions and practices that cumulatively "make or break" an adolescent identity as a learner and as a valued member of the class or the school. By listening to what young people say, secondary teachers may be in a better position to decipher some of what goes on in their own classrooms, and more keenly appreciate the material effects these interactions have on their students.

The most powerful first step will, of course, simply involve asking one's *own* students for *their* views on matters of interest to them in their learning.

Lundy Model

This model provides a pathway to help conceptualise Article 12 of the UNCRC. It focuses on four distinct, albeit interrelated, elements. The four elements have a rational chronological order.

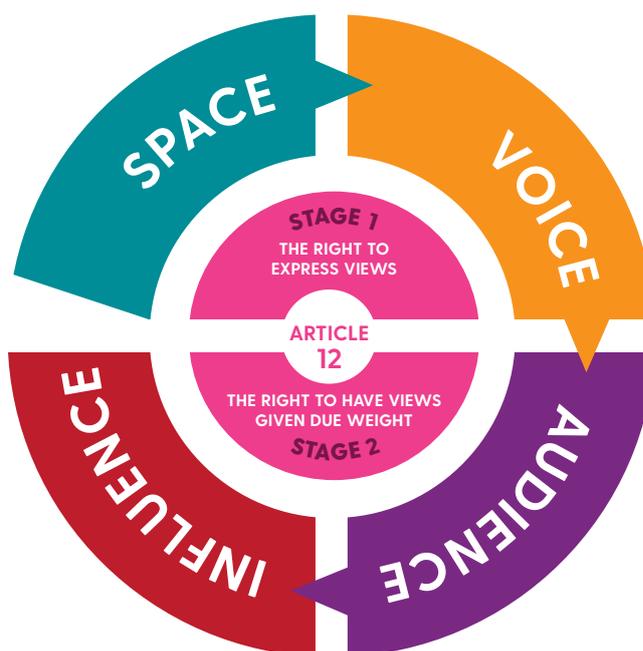


FIGURE 1. PLANNING CHECKLIST FOR INVOLVING CHILDREN AND YOUNG PEOPLE IN DECISION MAKING. REPRINTED WITH PERMISSION, HUB NA NÓG (2022).

Resources for teachers

- Rights Now! (Office of the Children's Commissioner) <https://www.occ.org.nz/publications/resources/rightsnow/> An introductory education resource for teachers and students in Years 7–10 to help develop a practical understanding and application of UNCRC and children's rights.
- Further information on the Framework for a rights-based approach to education https://www.youtube.com/watch?v=yVspg_mGMHE
- Children's Rights in Aotearoa New Zealand https://www.lawfoundation.org.nz/wp-content/uploads/2019/12/2018_45_31-Childrens-Rights-Symposium_Reflections_Online-Version_rcvd-17.12.2019.pdf

- My Rights. My Voice (Oranga Tamariki, Ministry for Children, New Zealand Government) This is a booklet to show a child's rights around care. <https://www.orangatamariki.govt.nz/children-in-our-care/information-for-children/child-statement-of-rights/>
- “Know Your Right” UNICEF has developed a pack of teaching materials to introduce key rights principles to students. There are student workbooks, teacher guidelines, and a poster. Not all the resources will be relevant to the Aotearoa New Zealand context. <https://www.unicef.org.uk/rights-respecting-schools/resources/teaching-resources/guidance-assemblies-lessons/know-your-rights-child-rights-education-core-materials/>

References

- Bourke, R., & O'Neill, J. (2022). Children's rights, student voice, informal learning, and school reform. *Oxford Research Encyclopaedia of Education*. <https://doi.org/10.1093/acrefore/9780190264093.013.1687>
- Brasof, M. (2015). *Student voice and school governance: Distributing leadership to youth and adults*. Routledge. <https://doi.org/10.4324/9781315724041>
- Hub na nŌg. (2022). *Young voices in decision making*. <https://hubnanog.ie/what-is-hub-na-nog/>
- Jacobs, M., Harvey, N., & White, A. (2021). Parents and whānau as experts in their worlds: Valuing family pedagogies in early childhood. *New Zealand Journal of Social Sciences Online*, 16(2), 265–282. <https://doi.org/10.1080/1177083X.2021.1918187>
- Lundy, L. (2007). ‘Voice is not enough’: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child. *British Educational Research Journal*, 33(6), 927–942. <https://doi.org/10.1080/01411920701657033>
- Lundy, L. (2018). In defence of tokenism? Implementing children's right to participate in collective decision-making. *Childhood*, 25(3) 340–354. <https://doi.org/10.1177/0907568218777292>
- Marton, F. (2014). *Necessary conditions of learning*. Routledge. <https://doi.org/10.4324/9781315816876>
- Nussbaum, M. (2011). *Creating capabilities: The human development approach*. Harvard University Press. <https://doi.org/10.4159/harvard.9780674061200>
- United Nations Convention on the Rights of the Child. (1989). <https://www.unicef.org/child-rights-convention>
- United Nations Committee on the Rights of the Child (2022). *Sixth periodic report submitted by New Zealand under article 44 of the Convention*. <https://digitallibrary.un.org/record/3988383>
- Reeve, J. (2016). Autonomy-supportive teaching: What it is, how to do it. In W. Liu, J. Wang, & R. Ryan (Eds.), *Building autonomous learners* (pp. 129–152). Springer. https://doi.org/10.1007/978-981-287-630-0_7
- Waldon, J. (2010). *Tamariki Māori: A Māori view of children's rights*. Working Paper. Action for Children and Youth Aotearoa.

Roseanna Bourke is a professor of learning and assessment at the Institute of Education, Massey University. She is a registered psychologist.

Email r.bourke@massey.ac.nz

John O'Neill is a professor of teacher education at the Institute of Education, Massey University.

Email j.g.oneill@massey.ac.nz