

Inclusive Education in Japan and Australia: A Comparative Legislative and Policy Analysis

「日本とオーストラリアにおけるインクルージョン教育—法律と政策の比較分析」

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〈Abstract〉

Over the past several years, the government of Japan has shifted its legislative and policy approach to disability in the area of education to a more social model that emphasizes rights and social justice and promotes greater inclusion. Of particular note is the adoption of the concept of reasonable accommodation, which can arguably be viewed as a proactive legal measure. The challenge going forward is to successfully move from laws and policy to more widespread practice. This paper reviews Japan's ongoing transition and through a comparison with Australia's longer history of inclusive education, identifies several areas, including stronger reasonable accommodation guidelines and enforcement, where Japan's legal and policy framework will likely need further modification to overcome countervailing socio-economic forces, entrenched attitudes and administrative norms.

〈要 旨〉

日本政府は過去数年にわたり、教育分野における障害者に対する法律や政策を、権利と社会的公正を重視し、インクルージョンを推進する、より大きな社会的モデルに転換してきた。特に注目すべきは、合理的配慮の理念を採用したことで、その理念はほぼ間違いなく法的な事前対策と見なすことは可能である。今後の課題は、法律や政策からより広範な実へとうまく移行させることである。本論では、変化しつつある日本の現状を概観し、インクルージョン教育において日本より長い歴史を持つオーストラリアと比較することで、より強力な合理的配慮のガイドラインとその施行をはじめ、いくつかの分野での課題を明らかにする。それによって、日本の法的政策的枠組みが、対立する社会経済的勢力、凝り固まった態度、官僚的な規範を克服するために、さらなる是正が必要であることが理解されるであろう。

〈Keywords〉

Australia; Disability; Inclusive Education; Japan; Legislation; Reasonable Accommodation; Rights; Social Justice

I. Introduction

Through the continuing struggle for recognition, social justice and rights, the social and legal approaches to disability have slowly shifted in many countries over the past several decadesⁱ and this has had an influence on policy and practice. Social exclusion and medicalized approaches that stigmatized and problematized physical and mental differences have lost favour to rights-based and social approaches, which advocate for the elimination of perceptible, cultural, legal, financial and environmental barriers to inclusion, dignified participation and self-fulfillment (Terzi, 2010; Oliver & Barnes, 2012).

Among other institutions, it is recognized that education plays a key role in individual and social identification and development and significantly impacts life opportunities. Inclusive education for all has now become a global initiative. Article 26 of the Universal Declaration of Human Rights entrenches this understanding by making access to education a basic right. Paragraph two states, “Education shall be directed to the full development of the human personality and to strengthening of respect for human rights and fundamental freedoms.” Furthermore, Article 1 of UNESCO’s, Convention against Discrimination in Education (1960), in stressing equal educational treatment, defines discrimination as those conditions which deprive “access to education of any type or at any level,” place a person or groups of persons in “education of inferior standards” and “which are in-compatible with the dignity of man”.ⁱⁱ Three other UN agreements go further, directly recognizing the right of inclusive education for persons with disabilities. The UNESCO’s Salamanca Statements and Framework for Action on Special Needs Education (1994), Article 23 of The UN Convention on the Rights of the Child (1990) and Article 24 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) affirm that no child should be discriminated against in terms of equal educational access and opportunity because of a disability. Article 24 of UNCRPD spells out that education should be provided “... within an inclusive education system at all levels...” (United Nations, 2006). Moreover, it elaborates for the first time in a legally binding international human rights convention the concept of reasonable accommodation.

Despite these UN conventions, the actual practice of inclusive education runs up against entrenched ideas, policies and practices and, particularly, practical concerns and conditions. Thus one of the key debates on how to educate students with disabilities focuses on whether the universal principle of full inclusion should supersede various practical limitations. Opponents argue that the contextual conditions of each society, educational institution, classroom, family and individual render any universal aim impractical and only better solution are feasible (Scruggs & Mastropieri, 1996; Reilly et al., 2002; Salisbury, 2006; Miles & Singal, 2009; Graham & Spandagou, 2011). At

first glance, the key “reasonable accommodation” statement in UNCRPD, could be viewed as an acknowledgement of practical barriers and burdens related to facilitating inclusive education. Yet the intent is more affirmative and reasonable accommodation, as concept and practice, has become a significant aspect of the struggle for inclusive education. It finds theoretical support in Rawls’ difference principle and Sen’s capabilities approach, both of which argue that societies must go beyond guaranteeing equality under the law and purposefully take equitable actions to address the various capacities and needs of members. The shift to a more social model of disability and the “reasonable accommodation” statement in UNCRPD clearly put the onus on the society to realize the principle of inclusive education by taking steps to remove the “attitudinal and environmental barriers” to “full and effective participation in society on an equal basis with others” faced by persons with disabilities (United Nations, 2006).

In finally ratifying UNCRPD seven years after first signing, Japan has made a legally binding national and international commitment to uphold the right to inclusive education for students with disabilities. As part of this obligation, based on the principle of reasonable accommodation, Japan now agrees to take positive steps not only to eliminate various forms of discrimination and exclusion and to identify and remove barriers and obstacles to full participation and equal educational opportunities but also to create enabling educational conditions. To look more at the background and present legislation and policy in Japan and possible future obstacles to inclusion, this paper compares the case of Japan with that of Australia and legislation within New South Wales (NSW) Australia. The case of Australia is instructive for several reasons. First, there is a dearth of comparative research between these two advanced industrial APEC members in this area. Second, both countries have moved from being more welfare to more “workfare” oriented states following a neoliberal agenda that has sought to reduce government social spending and role-back employment security benefits while ignoring rising income inequality (Okamoto, 2008; Soldiac & Chapman, 2010; Takegawa, 2011). This increases the need for educational attainment and accountability at a time of reduced budgets, which can affect educational policy and practice and attitudes about inclusive classrooms. Finally, Australia ratified UNCRPD in 2007, shortly after signing the convention, and is further along the road to full inclusion, though it still struggles to achieve more ideal outcomes. Anderson & Boyle point out that while Australia has sufficient legislation and policy, this may not be enough to guarantee good practice (2015). Though it is beyond the scope of this paper to examine and compare the detailed practices of inclusion and exclusion, we can by looking at the strengths and weaknesses in Australian’s key legislation and policy at least better assess Japan’s, and from Australia’s experience Japanese policy makers might learn where future changes may be required.

II. Japan's Road to Ratification

Japan's constitution and laws related to education and disability could lead us to conclude that inclusion should be a right for all students. In Japan's constitution, Article 26, the only one to mention education, states:

All people shall have the right to receive an equal education correspondent to their ability, as provided by law. All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free (Office of the Prime Minister).

Article 14 also states:

All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin (Office of the Prime Minister).

Under the section Equal Opportunity in Education of The Fundamental Law of Education, Article 4 protects against discrimination in education, offers equal opportunities to receive education, provides support to persons with disabilities and financial assistance for those who have difficulties receiving education for economic reasons (MEXT)

Yet these legal guarantees have not proved sufficient and Japan has been reluctant to take up the banner of inclusive education as a right and social justice issue, holding on instead to a principle of social cohesion and "harmony".ⁱⁱⁱ This in essence granted the state, local school boards and schools more regulatory and administrative flexibility to decide what is the best apparent outcome, not just for the student but for all stakeholders. Heyer, writing in 2000, critically labeled it a top-down, medical/welfare model, where disability and otherness are managed through segregation and behavior modification. Choosing this path, Japan delayed ratification of UNCRPD until 2014, seven years after signing, arguing time was needed to make legislative and policy adjustments.

Aiming towards a "convivial" society, the ratification of UNCRPD, and to address the growing number of students with LD, ADHD and High-Functioning Autism, in 2007 MEXT introduced a new policy for Special Needs Education. Through revision of the School Education Law, the new policy has brought several notable changes. "Special Education" was recast as "Special Needs Education", with an emphasis placed on providing support for the specific needs of each student. Separate schools for blind and deaf students and students with intellectual disabilities, physical disabilities and health impairment were consolidated and renamed Schools for Special Needs Education. These schools still focus on certain disabilities but are to accept students with multiple disabilities and also act as district resource centers for surrounding K-12 schools that

have special education classrooms and inclusive classes with resource room support. Curricular changes for SNE schools require they now have joint learning activities with regular schools and the broader community to advance normalization. School boards and regular schools must now explicitly develop SNE, and this gained further impetus with changes to the Basic Act For Persons with Disabilities (described below). To do this, prefectures and municipalities are to establish collaborative working committees, and public and private elementary and junior high schools are to establish SNE committees and assign a coordinator to oversee the program and liaison with parents, teachers, specialists and support staff. More funding is provided for university certification programmes and training regular teachers. At the curricular level, an Individual Support Plan (ISP) and an Individual Education Plan (IEP) for each student is “encouraged.” Also, the municipal boards of education must now by law consult with guardians when deciding on placement and continual consultation should take place. Lastly, children in regular classrooms with developmental disabilities such as Learning Disabilities (LD), Attention Deficit Hyperactivity Disorder (ADHD), Asperger’s syndrome and high-functioning Autism are now able to receive support in special education classrooms and resource rooms.

These changes have face significant criticism. Goto (2008) argues that even given changes to the Education Law pertaining to special needs education, with the aim towards normalization and ratification of UNCRPD, the approach appears to be one of surveillance of deviance for social order and control. Taking a more accommodating position, Shige (2013) argues that the more segregated model of SNE in Japan is suitable as a transition phase as it does not unduly burden the state or the various stakeholders in the provision of education. Nagano and Weinberg (2012) highlight the lack of legally established national standards, which allows for a wide interpretation of constitutional rights and attenuates recent policy shifts in Japan towards a more inclusive approach. Azuma (2010) also worries that the recent Special Needs Education (SNE) model does little to build inclusion and may even act as a smoke-screen for segregation, since even when students are placed in regular classes, often the specific learning program is taught outside the regular class. In addition, the neo-liberal attack on the Japanese welfare state (Sanuki, 2003; Nitta, 2008) and the demographic pressures of an aging population strain national and local budgets, which can end up placing administrative flexibility ahead of justice concerns (Nitta, 2008).

An examination of government data appears to support Azuma’s claim. While almost 80% of special needs students attend regular schools for compulsory education (Grades 1-9), just 24% actually join regular classes full or part-time, and this figure is only 1% at the Jr. high school level (Grades 7-9).^{iv} The Ministry of Education, Culture, Sports, Science and Technology (MEXT) highlights that the number of students included in regular classes has increased by 2.3 times over

the ten year period 2003-2012, yet there has been an overall increase in the number of special needs students, which now includes students with Learning Disabilities (LD) and Attention Deficit Hyperactivity Disorder (ADHD)). So, in fact, there has only been a 5% increase in relative terms. Furthermore, at the high school level, special need schools are the default options as acceptance to attend regular government or private schools is based on entrance exam results. This creates a structural barrier to inclusion. Finally, despite an overall decrease in the number of public schools, over the past ten years the number of segregated Special Support Schools and Special Support Classes has increased (MEXT, 2012).

In August of 2011, taking another step towards ratification of UNCRPD, the government revised the Basic Act For Persons with Disabilities (BAPD). With this act, Japan shifted its legislative intent to a more social model. Article 1 now stipulates that “All citizens shall be respected as individuals who equally enjoy fundamental human rights regardless of having or not having disabilities…” (Japan Press Weekly, 2011). Under the new section on the Prohibition of Discrimination, Article 4.1 states: “No one shall be allowed to discriminate against persons with disabilities or violate their rights and benefits on the basis of disability.”^v Furthermore, as an addition, Article 4.2 establishes the right to reasonable accommodation to remove barriers against equal participation in society. The law has several provisions related to education under Article 16. The revisions place greater emphasis by the national and local governments on educating students with and without disabilities together “insofar as possible”; on providing sufficient information and respecting the intentions of students and their guardians in their choice of schools and programmes “insofar as possible”; on promoting mutual understanding between all students by “implementing joint activities and learning”; and on promoting and improving educational environments with regard to teachers’ accreditation and professional development, teaching materials, school facilities, etc. (MEXT NISE Bulletin, 2012).

Going a step further, in June, 2013, the national government passed the Act for Eliminating Discrimination against Persons with Disabilities, and it will go into force on April 1, 2016. This act prohibits unfair discriminatory treatment and also adds a degree of commitment by the government to provide reasonable accommodation by making this a legal obligation for national and local governmental agencies and public organizations; however, for business sectors the obligation is only to make endeavors. This dual treatment could have negative ramifications for inclusive education as a great number of educational institutions are privately operated. In connection with this act, a Basic Policy on Promotion of Elimination of Discrimination on the Grounds of Disability was created. As part of the Basic Policy, Handling Guidelines and Handling Directions are to be developed in the future that indicate good cases of reasonable accommodation (Cabinet

Office, 2014). Shige (2013) argues that the more segregated model of SNE in Japan is suitable as a transition phase as it does not unduly burden the state or the various stakeholders in the provision of education.

It should be noted that in Japan, prefectures may establish their own ordinances related to anti-discrimination and normalization. The case of Chiba prefecture is exemplary. In 2006, it passed the Ordinance for the Development of Chiba Prefecture where People with and without Disabilities Live Together with Ease. It was the first in Japan to prohibit discrimination on the basis of disability (Asia-Pacific Human Rights Information Center, 2006).

As this review shows, for Japan, given the introduction of new legislation in 2013 and ratification of UNCRPD, together with its affirmative “reasonable accommodation” statement, the government is signaling that the “transition phase” Shige (2013) referred to is ending. The question going forward is can and will Japan now fully embrace its legal obligation and is the legislation and policy now in place sufficient to overcome broader structural obstacles and local practices and create much more inclusive educational environments. A comparison with the case of Australia can help us address this question.

III. Legislative & Policy Comparison

Since the 1990s, following from the Disability Discrimination Act 1992, Australia has set a high legislative goal of inclusive education for students with disabilities based more on a human rights and social justice approach to governance. By 2003, already 89% of students with disabilities were attending regular schools (Government of Australia Bulletin, 2006). Now it is over 90%, though a smaller percentage of students^{vi} actually participate in regular classes.^{vii} Also, Australia ratified UNCRPD in 2007, shortly after signing the convention. Yet, in practice, Australian institutions still fall short because of conflicting societal and educational goals, regional policy and funding disparities, institutional rigidity, a lack of teacher training, the increasing number of students with a greater range of disabilities, persisting discrimination and other challenges (Konza, 2008; Review of Funding for Schooling, 2011, Australian Education Union, 2015; The Conversation, 2015). Education outcomes for students with disabilities are also much lower.^{viii} Despite the ongoing issues, Dempsey (2003), argues that inclusion as a right for all provides a guiding principle on which laws and policies have been established at the national and state levels, and on which students with disabilities and their guardians or concerned organizations can make public and legal claims. As a result, as described below, Australia’s legislation has evolved to provide somewhat

clearer requirements and standards for education providers, even if these are still insufficient to guarantee good practice. We can compare this with Japan to consider points of convergence and divergence.

While legislation in both countries makes it clearly unlawful to discriminate on the basis of disabilities, there is a different emphasis. The Disability Discrimination Act 1992 (DDA) in the area of education makes it unlawful for any educational authority to discriminate in admissions, acceptance, expulsion or curricula based on a person's disability. New South Wales Anti-Discrimination Act 1977 also makes it unlawful to discriminate on the basis of disability and covers, in education, areas such as admissions, access and hardship. Japanese legislation nationally or at the prefectural level just has a blanket statement and does not spell out in the area of education exactly what kind of discrimination is unlawful. This can place an unfair and unjust onus on an individual or guarantor to prove discrimination and can deter someone facing discrimination from seeking redress.

Also, within the DDA and the BAPD there are provisions for inclusive education, though in Australia's legislation and that of NSW there is a clearer and stronger statement of entitlement. In the DDA, students who have disabilities are given the right to education and training "on the same basis" as other students, and the NSW Education Act 1990 entitles a child to be enrolled in a local government school. The constitution of Japan only guarantees students "an equal education correspondent to their ability", which could be interpreted as approving segregated schools (Nagano & Weinberg, 2011), and the Fundamental Law of Education Article 16 also only guarantees equal opportunities "according to a student's ability" and ensures persons with disabilities receive "adequate education" in accordance with their conditions. It does not directly prohibit providing different opportunities and services based on disability. While the BAPD requires all levels of government to promote more inclusive education, it provides an "insofar as possible" qualification. A Japan-wide citizens organization, (Shogaiji wo futsugakko e zenkoku renrakukai) pushing for integrative and inclusive education^{ix} since 1981 reacted strongly against this qualification and others that they claim essentially gutted the draft proposal of the advisory committee, which had incorporated the opinions of people with disabilities, professionals, government officials and legislators. The draft of the advisory committee had establish it as a right for all students to study in an integrative environment and a general rule that students learn in the same class with the option of joining special needs classes or special needs schools. MEXT, in explaining their decision, stated the time was not yet appropriate for inclusive education as a right because insufficient preparation would cause confusion among those involved in education, there are budget constraints and municipalities have voiced strong opposition to the draft (2011). Now that UNCRPD has

been ratified, after many years of legislative preparation, there may no longer be grounds to delay guaranteeing inclusion as both a right and a practice. However, if we consider that Australia's stronger legal statement of entitlement in the DDA is still insufficient to mandate changes that overcome structural obstacles and improve practice, we have to seriously question whether the wording in Japanese legislation allows for easy circumvention.

One criticism of Japan's disability legislation is that it does not define what is discrimination in general or in the area of education (Matsui, 2011; National Network of Japanese Lawyers for Protecting Rights of Persons with Disabilities, 2015). In Australia, Sections 5 and 6 of the DDA define discrimination as unlawful if it results in harmful or less favourable treatment whether it is direct or indirect. Including indirect discrimination in particular encourages education providers to consider unintentional barriers to inclusion and reduce or remove these. Again, a clearer definition in Japan's legislation would facilitate more inclusive practice.

Though specified, from the outset a point of contention in Sections 5 & 6 surrounded the interpretation of "reasonable adjustments" or what is referred to in other countries and in UN documents as reasonable accommodation. A decade after the DDA was introduced, several inquiries^x found that educational exclusion and segregation had persisted and had serious long-term impacts. Many complaints under the DDA related to issues of enrollment, exclusion from school activities, negative attitudes and bullying by other students, lack of suitably trained staff or special amenities and unsuitable or inflexible curricula (Australian Education Union, 2010). Part of the problem was the lack of clear standards regarding reasonable adjustments. In response to the issues raised in these inquiries and consultation with disability groups, specialists and education providers, the Disability Standards for Education (DSE) were established in 2005 to "clarify the obligations of education and training providers to ensure that students with disabilities are able to access and participate in education and training on the same basis as those without disability" (Australian Department of Education, Employment and Workplace Relations, 2005).

In Japan, the BAPD requires the "reasonable" removal of social barriers to participation to guarantee the equality rights of persons with disabilities. Yet unlike Australia, there are no standards to follow, such as those laid out in the DSE. The Act for Eliminating Discrimination against Persons with Disabilities provided a missed opportunity as the policy states only that Handling Guidelines are to be developed in the future. In the DSE, these are termed adjustments (measures or actions) that public and private educational providers are expected to take to allow for greater inclusion based on the standards. "Reasonable" adjustments are required in a "reasonable" time frame and the adjustment is considered reasonable "if it balances the interests of all parties affected." Even with these standards, this is still a grey area that has led to a great deal of debate

about their efficacy. The Disability Discrimination Legal Service Inc, a community organization, argued that the standards have been entirely unsuccessful. They propose that the broadly interpreted term “reasonable adjustments” be replaced with the stronger “optimal adjustments” (2011). Another criticism is that the DSE follows a deficit model, where use of the phrases “as far as possible” and “as far as practicable” implies inclusion is a burden to accommodate rather than a fundamental right to encourage (Whitburn, 2012). Furthermore, the unjustifiable hardship provision, which grants educational operators an exception even if the adjustment is warranted, has been described as a vague loophole (Randall, 2013). Despite these problems, the establishment of standards, which are reviewed every 5 years, provides an area of debate to bring further improvements. In June of 2012, a report on a 2010 review of the DSE suggested that they have heightened the awareness and debate about disability and to varying degrees have provided greater access and participation (Whitburn, 2012). Key concerns raised in the review process related to application of the standards, the clarity of terms, interpretation of the standards and adherence to requirements (ibid.). Considering the case of Australia, the government of Japan in consultation with concerned groups and organizations will need to establish clear and strong standards if inclusion is a serious priority. Given the experiences of countries such as Australia, that early on encoded “reasonable accommodation” in their legal documents and practice and have wrestled with social implications, we have to again question why, if the goal is greater inclusion, why guidelines have not yet been established and why for the private sector there is only an obligation to make endeavors to provide reasonable accommodation. One answer might be that following a policy neoliberal agenda, the wishes of private business owners have been foremost accommodated.

Another area of convergence and divergence is in school and classroom placements. The BAPD and the SNE policy have made it a legal requirement that municipal boards of education consult with guardians when deciding on placement and provide sufficient information and respect the intentions of students and their guardians “insofar as possible”. Also expert opinion should be sought if necessary and consultation should be an ongoing process as the child develops. Even with this shift to more consultation, the final decision making authority still lies with the municipal board of education. The original decision is made by a School Guidance Committee (made up of doctors, psychologists, education board officials and teachers) upon completion of a pre-school checkup (Nagano & Weinberg, 2012). The default position for moderate and especially more severe cases of disability is placement in SNE schools, often without the consent of students or their guardians (Matsui, 2011). To transfer to a regular school setting,^{xi} it is assessed whether a student can participate without minimal adjustments (Nagano & Weinberg, 2012), and if there is insufficient staff support, the parents may be expected to accompany the child to provide assistance

(Matsui, 2011; Japan National Assembly of Disabled Peoples' International, et al., 2015). The principal is granted the authority to decide on placement in special needs or regular classes within the school. Since there are no legally defined procedures for an independent review process, those who are not satisfied with the decision can only continue discussions with the educational authorities or turn to the courts (Nagano & Weinberg, 2012). The Japan Federation of Bar Association puts forth that:

...the right of choice should be provided to parents, as some parents of children with disabilities prefer to educate their children at Schools for Special Needs Education, while others prefer to educate their children at their local schools among other local children" (2012, pg 97).

Ratification of UNCRPD makes this right of choice more imperative. Going further to protect a child's individual rights, the National Network of Japanese Lawyers for Protecting Human Rights and Rights of Persons with Disabilities argues that "the government must ensure non-discriminatory education for students with disabilities with no regard to the will of their parents" (2015).

In Australia, the default position is an assumption of integrating students in regular schools, if not regular classrooms, and consultation between the students, family members, teachers, school authorities and specialists are intended to determine what is best for the students and what reasonable adjustments may be required to remove barriers that prohibit participation and equal educational opportunities. In NSW, for example, the process of placing a child in a support class or a special school occurs after request by the parents or guardians or recommendation by the school and after consultation between parents/guardians, the school principal and the school's learning support team. It also requires a student meeting Department of Education and Training Disability Criteria and a regional placement panel decision. There is also a right of appeal of a decision to a regional director (Department of Education and Training, 2008), and further appeals can be made to the Australian Human Rights Commission or Anti-Discrimination Board (Australian Centre for Disability Law, 2011). Even with this process in place, in practice there are many issues, including service availability, decision transparency, the extent of parent/guardian involvement in school or programme decisions, school transition difficulty and access to information, especially for students with complex needs (The Disability Discrimination Legal Service Inc, 2011; NSW Parliament Legislative Council, Standing Committee on Social Issues, 2012). Yet there is a legal basis to make a claim. With such a process lacking in Japan, the burden on students with disabilities and their families to challenge the authorities is greater and this is another barrier to inclusion that Japan's new policy has failed to address.

The recent reviews of the DDA and DSE and the Every School Every Student initiative of the

NSW state government are indications that the higher legislative goal of greater inclusion has been difficult to achieve in practice in Australia, especially with changing social conditions, such as the rise in the number of students with learning and developmental disabilities, growing economic inequality and counteracting political agendas. It is also not enough just to place students with disabilities in local schools, without a supporting environment, and expect desired outcomes. After the trials of the past, policy efforts in NSW now fit more with the Seven Principles of Inclusion (WA Department of Education and Training, 2004) approach and focus on more of a coordinated effort that involves the whole school and the broader community. Examples are the School Learning Support Program and Learning Support Team policy, which has clearly established responsibilities and delegations.

Japan is now trying to put in place some of the elements that can lead Special Needs Education towards a more integrative and even inclusive approach. Though it is still far from reach, there are signs of change. From 2007-2014, in Japanese schools as a whole, awareness about the conditions of special needs students has increased from 77.9 to 92.3% and the establishment of SNE committees with coordinators has risen from 75.2 to 86.8%. The use of Individual Support Plans (ISPs) has increased from 45.8% to 72.3% and Individual Education Plans from 26.8% to 61.2%.^{xiii} School visits by specialists have also risen from 58.7% to 75% and seminars about SNE from 44.9% to 75.3%.

Yet these numbers should be looked at with caution. Not only is the national legislation too weak to provide strong impetus, the directives of the SNE policy are too general, non-binding and ineffective (Azuma, 2010). For example, while in-school coordinating committees have been set up in most schools, only 42% meet more than four times per year and there is great variation between prefectures (Osaka 71%, Toyama 20%) and between public, national or private schools. Furthermore, the coordinator is assigned by the principal and in many instances she or he has no SNE training (Shige, 2013). Nagano and Weinberg note that prefectural level SNE Coordination Committees may meet only twice or three times a year. They note, it is “...not a fixed organization to provide continuous support to schools, related organizations, or the parents of children with disabilities” (2012, pp. 13).

As with in-school SNE committees, ISPs are not legally mandated. It is proposed that parents be involved in the process; however, the model form for ISPs on the MEXT website has a section that only includes the wishes of parents/guardians. In practice, the ISP is the responsibility of homeroom teachers, many of whom lack training and certification (Shige, 2013). In addition, there is no section for required adjustments. Sanagi (2007) argues that ISPs need to focus less on analyzing students' disabilities and providing specialized curriculums or resource room support and

more on changing environmental conditions that limit participation and learning outcomes. This is a call for strengthening the social model and taking positive steps for greater accommodation.

Much of the impetus for creating specific plans and programmes is delegated to municipal school boards, school SNE committees and especially class teachers. This places extra time and pedagogical pressures on teachers. A study of regular elementary school teachers found that while teachers are becoming more accepting of integration and inclusion conceptually, in practice they feel they still lack sufficient training and there is a need for better equipment and facilities and more staff with specialization (Ueno, & Nakamura, 2011). MEXT data shows that as of 2010, while 78% of universities offer courses for teacher certificates, only 10% offer certification for special needs schools, though the national government has increased funding in this area. In fact, even in SNE schools, just over 70% of teachers hold SNE certification (Numano, 2012).

Local delegation also leads to a great degree of disparity in services from one prefecture, one district or one school to the next. The case of Chiba prefecture is an example where local efforts are showing some promise. Chiba started its 10-year special needs education promotion plan from 2007. In 2012 they published a midway evaluation and noted that they are developing provisions for better pre-school consultations about schooling options, and through hundreds of open meetings, making inroads into the community to build awareness and communication bridges between parents and schools and between schools to share experiences and resources. In Chiba now public elementary and junior high schools have active SNE coordination committees in all schools and develop ISPs for 90% of students with disabilities. The report says there is still a long way to go (Chiba Prefecture, 2012). Considering the lack of a concerted national effort, local models may ultimately provide the basis for greater change. Developing something similar to an index for inclusion (Booth & Ainscow, 2002) or the Seven Principles of Inclusion reported in Western Australia's Pathways to the Future report (2004) could prove an effective reflective tool. On the other hand, Anderson & Boyle (2015) conclude that in Australia the federal government system, that delegates authority over educational policy to each state, has led to greatly varied outcomes in achieving inclusive education and that greater coordinated nation reform is necessary.

IV. Conclusion

In 2014, after spending many years laying the legislative and policy groundwork, Japan finally ratified the UN Convention on the Rights of People with Disabilities and from April of 2016 will have in place more proactive legislation for "Eliminating Discrimination against Persons with

Disabilities” in areas such as education and employment.

As described above, some legislative and policy changes have been made to meet the commitment to inclusive education. Though there is still considerable and justifiable concern among advocacy and rights groups and organizations that besides many challenging practical issues, vague and undefined terms and conditions, unspecified or non-binding obligations, a lack of enforceable standards and insufficient assessment measures indicate that the national government is not serious about changing the basic structure of the former segregation system. The small number of students with disabilities participating in regular classes, especially in middle and high school levels or in advanced education, and an increase in the number attending special needs schools gives weight to this concern.

A comparison with Australia, which faces it's own legislative and policy issues, reveals that without an effective legal framework in place and strong reasonable accommodation guidelines, the ideal of inclusive education runs up against attitudinal, environmental, political and socio-economic obstacles. Still, at least an official commitment to a social model of disability and the higher legally entrenched ideals of international human rights agreements and legislation lead to greater public debate and awareness of issues of educational equity, rights, and opportunities. Though still tenuous, these are now established in Japan and, importantly, can provide the basis to make legal challenges and to push for better laws and policy in the long struggle for recognition, belonging and greater social justice.

- i It should be noted there is still great variation among countries and regions in terms of progress on disability rights, social justice and inclusive practice. See: World Report on Disability, 2011.
- ii While Australia ratified this convention in 1966, Japan has yet to, though the Japan Teachers' Union has consistently called for ratification.
- iii “Harmony” or Wa is a key concept in Japanese cultural and history, but should be critiqued for the way its positive connotation has been used to cover over the workings of power and privilege in efforts by the state to coerce and socialize the population (Kidder & Hostetler, 1990; Broadbent, 1999).
- iv Figures adapted from Japan Ministry of Education, Culture, Sports, Science and Technology (MEXT) 2012 Special Needs Education Survey. (http://www.jasso.go.jp/tokubetsu_shien/event/documents/h25seminar12_data2_1.pdf)
- v This was added in the 2004 revision and was previously Article 3.3 under Basic Principles.
- vi For example, in 2009, in the state of New South Wales, 55% of students in regular schools government schools participated in regular classes (NSW government, 2010). This figure was 65.9% for Australia overall (ABS, 2012).
- vii There is an important debate as to whether the rise of students with disabilities in regular classes

can be attributed to inclusion efforts or whether it is just a function of a broadening classification and identification of students, especially with learning difficulties and behaviour disorders (Graham & Sweller, 2011). Some even argue segregation has increased over the past number of years as students in regular classes are moved into support classes (ibid.).

- viii ABS 2009, 'Children at School with Disability,' Profiles of Disability, Commonwealth of Australia: Canberra, viewed 17 August 2015. (<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4429.0main+feature100302009>).
- ix Here integration implies enrollment in regular schools and inclusion, participation in regular classes.
- x See: Senate Inquiry into the Education of Students with Disabilities 2002 and Productivity Commission Review of the Disability Discrimination Act 1992.
- xi In 2008, "exceptions" were made after original placement for only 0.9% of students with more severe disabilities to attend regular classrooms (Nagano & Weinberg, 2012).
- xii There is a large discrepancy between school level and type. With public elementary and junior high schools having higher rates than high schools and private schools. (See: MEXT http://www.mext.go.jp/component/a_menu/education/micro_detail/_icsFiles/afiedfile/2015/03/27/1356212_1.pdf)

References:

- Anderson, J. & Boyle, C. (2015). 'Inclusive education in Australia: rhetoric, reality and the road ahead', Support for Learning: Inclusive Education in International Contexts, Vol. 30, No.1. pp.4-22.
- Amartya Sen. (2009). The Idea of Justice. Cambridge, Mass.: Harvard University Press, 2009.
- Asian-Pacific Human Rights Information Center (2006). Chiba Became the First Prefecture in Japan that Prohibits Discrimination against People with Disabilities through the Ordinance. Accessed online on July 30, 2015 at: (<http://www.hurights.or.jp/archives/newsinbrief-en/section2/2006/10/chiba-became-the-first-prefecture-in-japan-that-prohibits-discrimination-against-people-with-disabil.html>)
- Australian Bureau of Statistics. (2012). Profiles of Disability, Australia, 2009: Children at School with Disability. Accessed online on August 2, 2015 at: (<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4429.0main+features100302009>)
- Australian Centre for Disability Law (2011). Using Disability Discrimination Law in New South Wales. Accessed online on June 13, 2015 at: (http://disabilitylaw.org.au/wp-content/uploads/2012/03/Using_DD_Law_NSW.pdf)
- Australian Education Union (2015). Submission to the Senate Inquiry into Current Levels of Access and Attainment for Students with Disability in the School System and the Impact on Students and Families Associated with Inadequate Levels of Support. Accessed online on September 15, 2015 at: (<http://www.aeufederal.org.au/application/files/3614/4158/9165/DisabilityAccess2015.pdf>)
- Azuma, T. (2010). 'Core Issues with Japanese Basic Law for Persons with Disability in Consideration of The UN Convention on the Rights of Persons with Disabilities', Kumamotogakuen University Social Research Bulletin Vol.15. No.1 pp.1-63.
- Broadbent, J. (1999). Environmental Politics in Japan: Networks of Power and Protest. Cambridge: Cambridge University Press.

- Chiba Prefecture, Department of Education (2012). Special Needs Education Mid-term Evaluation. Accessed online, May 25, 2015 at: (<http://www.pref.chiba.lg.jp/kyouiku/shien/tokubetsushien/documents/gaiyouban.pdf>)
- Dempsey, I. (2003). 'The Impact of the Disability Discrimination Act on School Students with a Disability in Australia', *Australia & New Zealand Journal of Law & Education* Vol.8, No.1, pp.37- 46.
- Disability Discrimination Legal Service Inc. (2011). Submission on the Disability Standards for Education 2005. Accessed online on August 2, 2015 at: ([http://www.communitylaw.org.au/ddls/cb_pages/files/submission%20on%20Disability%20Standards%20FINAL%20doc\(1\).pdf](http://www.communitylaw.org.au/ddls/cb_pages/files/submission%20on%20Disability%20Standards%20FINAL%20doc(1).pdf))
- Goto, Y. (2008). 'Cultural Commentary: Critical Understanding of the Special Support Education in Social Contexts', *Disability Studies Quarterly* Summer 2008, Vol.28, No.3. Accessed online on June 5, 2015 at: (<http://dsq-sds.org/article/view/117/117>)
- Government of Australia (2006). BULLETIN · Issue 42. Accessed online on August 2, 2015 at: (<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=6442453529>)
- Government of Australia, Australian Government Com Law, Disability Discrimination Act 1992. Accessed online at: (<http://www.comlaw.gov.au/Details/C2013C00022>)
- Government of Australia, Department of Education, Employment and Workplace Relations. (2012). Report on the Review of Disability Standards for Education 2005. Accessed online on August 15, 2015 at: (http://docs.education.gov.au/system/files/doc/other/report_on_the_review_of_disability_standards_for_education_2005.docx)
- Government of Australia, Department of Education, Employment and Workplace Relations. (2011). Review of Funding for Schooling: Final Report. Accessed online, August 15, 2015 at: (<https://docs.education.gov.au/system/files/doc/other/review-of-funding-for-schooling-final-report-dec-2011.pdf>)
- Government of Japan, Ministry of Education, Culture, Sports, Science and Technology. The Fundamental Law of Education. (<http://www.mext.go.jp/english/lawandplan/1303462.htm>)
- Government of Japan, Ministry of Education, Culture, Sports, Science and Technology (2012). 'Policy Trends of Special Needs Education in Japan', *NISE Bulletin*, Vol.11. Accessed online on July 28, 2015 at: (<http://www.nise.go.jp/cms/resources/content/6232/20120611-152632.pdf>)
- Government of Japan, Office of the Prime Minister of Japan, The Constitution of Japan. (http://www.kantei.go.jp/foreign/constitution_and_government_of_japan/constitution_e.html)
- Government of New South Wales, Department of Education and Training, (2008). Who's Going to Teach My Child? A Guide for Parents of Children with Special Learning Needs. Accessed online on August 13, 2015 at: (<http://www.scribd.com/doc/62003740/Who-s-Going-to-Teach-my-child>)
- Government of New South Wales, Parliament Legislative Council (2012). Transition Support for Students with Additional or Complex Needs and their Families. Accessed online on August 10, 2015 at: ([http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/84e7c8334c95d7a5ca2579b90015e32d/\\$FILE/120306%20Final%20report.pdf](http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/84e7c8334c95d7a5ca2579b90015e32d/$FILE/120306%20Final%20report.pdf))
- Government of Western Australia, Department of Education and Training (2004). Pathways to the Future: A Report of the Review of Educational Services for Students with Disabilities in Government Schools.
- Graham, L. , & Sweller, N. (2011). 'The Inclusion Lottery: Who's in and Who's out? Tracking Inclusion and Exclusion in New South Wales Government Schools', *International Journal of Inclusive Education*, Vol.15,

No.9, pp. 941-953.

- Graham, L. & Spandagou, I. (2011). 'From Vision to Reality: Views of Primary School Principals on Inclusive Education in New South Wales, Australia', *Disability & Society*, Vol. 26, No. 2, pp. 223-237.
- Heyer, K. (2000). 'From Special Needs to Equal Rights: Japanese Disability Law', *Asian-Pacific Law & Policy Journal*. Vol.7, No.1, pp.1-21.
- Japan National Assembly of Disabled Peoples' International (DPI-Japan), Japan Alliance for Inclusive Education, Inclusive Education Action Network in Japan, The Society of Public Education Planning. (2015). Submission to the Committee on the Rights of Persons with Disabilities: Day of General Discussion on the Right to Education Article 24 CRPD, 15 April 2015. Retrieved from: (<http://www.ohchr.org/Documents/HRBodies/CRPD/DGD/2015/JointSubmission.doc>)
- Japan Federation of Bar Associations. (2012). Submission to the Pre-Sessional Working Group of the Committee on Economic, Social and Cultural Rights. Accessed online on August 18, 2015 at: (http://www2.ohchr.org/english/bodies/cescr/docs/ngos/JFBA_Japan_CESCRWg49.pdf)
- Kidder, R. & Hostetler, A. (1990). 'Managing Ideologies: Harmony as Ideology in Amish and Japanese Societies', *Law & Society Review* Vol.24, No.4, pp.895-922.
- Matsui, R. (2011). Papers on the Harmonization of the CRPD with the Domestic Legislation: Paper 6 Japan. United Nations ESCAP. Accessed online on June 20, 2015 at: (http://www.unescapsdd.org/files/documents/PUB_CRPD-Paper-VI-Japan-20110121.pdf)
- Miles, S. & Singal, N. (2010). 'The Education for ALL and Inclusive Education Debate: Conflict, Contradiction or Opportunity?', *International Journal of Inclusive Education*, Vol.14, No.1, pp.1-15.
- National Network of Japanese Lawyers for Protecting Human Rights and Rights of Persons with Disabilities. (2015). CRD ? General Comment on Article 24: Written Statement. Retrieved from: (https://www.google.co.jp/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0ahUKEwik45rQo6DJAhVFHpQKHddIDQgQFggiMAE&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FHRBodies%2FCRPD%2FDGD%2F2015%2FNationalNetwokJapanese.doc&usg=AFQjCNGhtVYURzbWV4IiyBqiQ90_q5zNdg).
- Nitta, K.A. (2008). *The Politics of Structural Education Reform*. New York: Routledge.
- Numano, T. (2012). *Special Needs Education in Japan*. National Institute for Education Policy Research. Accessed online on July 13, 2015 at: (<http://www.nier.go.jp/English/educationjapan/pdf/201209SEN.pdf>)
- Okamoto, H. (2008). 'Formation, Development, and Transformation of the Welfare State Regime in Japan', *Journal of Tokyo Keizai University*, No.259, pp. 119-214.
- Oliver, M & Barnes, C. (2012). *The New Politics of Disablement*, 2nd Edition. New York, NY: Palgrave Macmillan.
- Randal, R. (2013). *Australia's DDA: Not the Sharpest Tool in the Shed*. Australia Broadcasting Corporation: Ramp Up. Accessed online on August 26, 2015 at: (<http://www.abc.net.au/rampup/articles/2013/02/28/3700346.htm>)
- Rawls, J. (1971). *A Theory of Justice*. Cambridge, Mass.: Harvard University Press.
- Reilly, L., Chapman, A., and O' Donoghue, T. (2002) 'Home Schooling of Children with Disabilities', *Queensland Journal of Educational Research*, Vol.18, No.1, pp. 38-61.
- Salisbury, C. (2006). 'Principals' Perspectives on Inclusive Elementary Schools', *Research & Practice for Persons with Severe Disabilities*, Vol.31, No.1, pp.70-82.

- Sanagi, T. (2007). 'Rethinking the Concept of "Special Educational Needs" —An Interactive model', Chiba University Journal of Education Research. Vol. 5, pp. 1-5.
- Sanuki, K. (2003). Neoliberalism and Education Reform. Tokyo: Shunposha.
- Scruggs, T., and Mastropieri, M. (1996). 'Teacher Perceptions of Mainstreaming/inclusion 1958-1995: A Research Synthesis', *Exceptional Children*, Vol. 63, pp. 59-74.
- Shige, M. (2013). *Special Needs Education*. Tokyo: Chukoronshinsha.
- Shogaiji wo futsugakko e zenkoku renrakukai (2011) Declaration of Objection Against the Proposed Revision to the Basic Law For Persons with Disabilities. Accessed online on July 28, 2015 at: (<http://zenkokuren.com/infomation/info-110302.html>)
- Slee, R. (2001). 'Driven to the Margins: Disabled Dtudents, Inclusive Schooling and the Politics of Possibility. *Cambridge Journal of Education*, Vol.31, No.3, pp.385-397.
- Soldatic, K. & Chapman, A. (2010). 'Surviving the Assault? The Australian Disability Movement and the Neoliberal Workfare State', *Social Movement Studies*, Vol.9, No.2, pp. 139-154.
- Takegawa, S. (2011). 'Workfare in Japan', Chapter 6 in Chan, C. & Kinglun N. (Eds). *Welfare Reform in East Asia: Towards Workfare?* New York: Routledge.
- Terzi, L. (2010). *Justice and Equality in Education: A Capability Perspective on Disability and Special Educational Needs*. London, UK: Continuum.
- Ueno, K. & Nakamura, K. (2011). 'A study of Awareness of "Inclusion Education" Among Regular-class Teachers in Elementary Schools', *Juntendo Graduate School of Health and Sports Science Research Journal*, Vol.3, No.2, pp.112-117.
- United Nations. (2006). *Convention on the Rights of Persons with Disability*. (<http://www.un.org/esa/socdev/enable/rights/convtexte.htm#convtext>)
- Whitburn, B. (2012). *Disability Standards for Education Ignores Inclusive Education*, ABC News The Drum Opinion. Accessed online on August 25, 2015 at: (<http://www.abc.net.au/unleashed/4183204.html>)
- WHO, (2011). *World Report on Disability*. Accessed online on Aug 20, 2015 at: (http://www.who.int/disabilities/world_report/2011/en/)