A Critical Analysis of Court Decision on Mainstream School Attendance of a Child with Medical Care Needs in Japan: A Long Way Towards Inclusive Education

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KEYWORDS

Inclusive education; medical care; reasonable accommodation; court decision; school placement

ABSTRACT

This paper begins by providing a history of Japanese law pertaining to special education and its change towards a more inclusive education with the ratification of United Nations Conventions of the Rights of People with Disabilities (UNCRPD). With the changes in laws, more children with constant medical care needs in Japan have the opportunity to attend mainstream schools. The recent court case, *K. K. v. Kanagawa prefecture and Kawasaki city*, ruled against a child with medical care needs to attend mainstream school and made the judgment that a special needs school (*tokubetsushien gakkō*) is the appropriate placement for the child based on the child's disability type and degree of disability rather than needs and regardless of the wishes of the child's parents. This paper explores the case judgement and discusses where Japanese special education laws fall short similar to that of the U.S. system based on Individuals with Disabilities Education Act (IDEA). We suggest the need to keep inclusion as the basic human rights aligned with the Article 24 of the UNCRPD rather than focusing on the continuum of education principle in IDEA, and operationalize the law into practice to make integration of children with disabilities, including children with constant medical care needs, into mainstream education schools.

Introduction

On board with general international movement towards inclusive education, Japan has expanded its opportunities for children who require constant medical care needs to attend mainstream schools whom in the past were typically taught in separate special schools. Children with medical care needs (CMCN) are those who require constant medical services beyond those required by children generally. Services and needs of these children vary by their conditions, but they may have ventilators and gastrostomy tube (G-tube) and require tracheostomy care and tube feeding. Some CMCN also use specialized equipment such as customized wheelchairs and stretchers (Yamamoto & Moriwaki, 2019).

In the recent years, with the advancement in neonatal care, Japan has seen a steady increase of CMCN. According to the Japanese Ministry of Health, Labor and Welfare (2020), 19,712 children (0-19 years old, 2018) are considered as children requiring medical care, which is almost twice the number of 9,987 reported in 2005. Further, a recent survey conducted by Ministry of Education, Culture, Sports, Science and Technology (MEXT) (MEXT, 2020a), the number of public elementary and junior high school students requiring medical care needs attending mainstream schools has increased from 838 students (311 regular classes, 527 special classes) in fiscal year [1] 2012 to 1,146 (966 regular classes and 180 special classes) in fiscal year 2019. Despite the increase in the number of CMCN, the number of enrollment of CMCN in mainstream schools remains relatively small given the overall number of school-aged CMCN.

The increase in CMCN in schools also comes with the general shift in Japanese laws with regard to people with disabilities in the past decade. Japan has been adopting

policies and laws aligned with the 2006 United Nations Conventions on the Rights of Persons with Disabilities (UNCRPD). In 2011, several provisions were made to the Basic Act for People with Disabilities including an amendment to Article 16, which states that children with disabilities must be provided with accommodations and receive a full education based on their age and capabilities together with children without disabilities. In 2013, the Act for Eliminating Discrimination against Persons with Disabilities, was enacted, which prohibited (1) discrimination based on disabilities, and (2) non-provision of reasonable accommodation - in other words, provision of reasonable accommodation became mandated. Additionally, in 2014, Japan ratified the UNCRPD. As such, Japan has aligned its definition of inclusive education to Article 24 of the UNCRPD, which includes the following statements:

> a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability; b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live (Article 24, UNCRPD)

However, as the policies on inclusive education progresses, there remains a gap between an ideal inclusive education on paper and the actual situation in schools. A recent court ruling of a school placement of a CMCN highlights the on-going challenge of school placement faced by family members attempting to enrol their CMCN in mainstream schools. In this paper, we first provide a brief background of special education system in Japan and analyze the case judgement of the recent case, *Kousuge v. Kanagawa prefecture and Kawasaki city*, 2020. Then, we provide the key points of the current case that sheds light on the policy language on school placement of children with disabilities in Japan and conclude with suggestions for change.

Placements of learning

Under the School Education Act of 1947, children with disabilities are educated in a continuum of "diverse places of learning" including special needs schools, special classes, pull-out/resource room programs, and general education classes. Special needs schools are separate schools for students with visual impairments, hearing impairments, intellectual disabilities, physical disabilities, and health impairments (including physical frailty), and are intended to provide them with the knowledge and skills necessary to overcome difficulties stemming from disability and to become independent (Article 72). Special classes are self-contained classes within the mainstream school and provide support for children with intellectual disabilities, physical disabilities, physical frailty, low vision, and hard of hearing (Article 82). In addition, special classes may serve children with speech and language impairments, autism or emotional disorders (updated in 2013). Pull-out/resource room programs, known as tsūkyū in Japanese, are a form in which the majority of instruction takes place in the general education class along with their non-disabled peers, but with provision of special instructional supports based on the students' disabilities in a separate resource room. From 2006, pull-out / resource room programs also extended assistance to students with learning disabilities, Attention Deficit / Hyperactivity Disorder in addition to disabilities mentioned above, except for those with intellectual disabilities.

The continuum of learning is based on the Ordinance for Enforcement of the School Education Act (Article 22-3) that stipulates which students should attend special needs schools based on the type and degree of disability rather than the specific individual student's needs. This policy is called the "schooling standards" and since its

introduction in 1962, it has been used as the basis for school placement decision in Japan (Tokunaga, 2017).

School placement system change

The enrollment statistics of students with disabilities at the compulsory education (6-12 years old) in Japan in May of 2018 shows that 73,054 (0.75%) of all students were enrolled in special needs schools, 256,671 (2.6%) were enrolled in special classes, and 122,587 (1.3%) were enrolled in the pull-out/resource room programs. This altogether is 4.6% of the total number of students attending compulsory education, and is a steady increase from the previous years (MEXT, 2020a). This increase can be attributed to a number of reasons, but changes in education law pertaining to school placement beginning 2002 have impacted the pattern (see Figure 1).

Adjustments to schooling standards

In 2002, the government drastically revised the "schooling standards" and eased the eligibility requirement for children with disabilities to be eligible to enroll into special needs schools. For example, for a child with physical disabilities, under the old standards, each body part (i.e., upper limb and lower limb) must have met a certain criterion to be eligible. However, with the change, the child's disabilities are viewed more holistically. Therefore, a child with physical disabilities is deemed eligible if she/he has difficulty walking or with other basic living skills such as writing with the use of prosthetics. Furthermore, the revision implemented a Certified School Attendance System (Article 5-1 of the Old Decree). This system allowed the City Board of Education to authorize the child into a mainstream school even if the child were advised to attend special needs school by obtaining the inputs from educational, medical, psychological and education placement experts.

Parental voice in school placement decisions

In 2007, “special education (*tokushu-kyōiku*)” was changed to “special needs education (*tokubetsusien-kyōiku*).” The focus of special education has shifted from an educational place based on disability category and degree of disability to a place of learning based on individual educational needs and supports (*shien*). With more focus on individual needs, during the same year, another significant change took place. The change required that parents’ inputs and opinions must be obtained along with experts’ opinions in making schooling decisions. In 2013, this requirement was expanded to apply to not only for initial schooling decision, but also for school transfers (Article 18-2).

Also, in 2013, the government abolished the "Certified School Attendance System,” which authorized children with disabilities to attend mainstream school as “special cases”. Instead, the new system first acknowledges *all* students, regardless of disability or no disability, as eligible to receive mainstream education, and then certify those who are eligible, to attend special needs schools. (“Certified Special needs school Student” Article 5-1). In other words, the standards, which was used to place children into special needs school now are used as standards for determining the degree of disability in which the child may be able to enroll into special needs school. Furthermore, the new regulation stipulates that the eligibility decision on whether or not a child is deemed eligible for a special needs school must be “made with sufficient time, and with regard to parents' opinion, their opinion must be respected to the extent possible" (September 1, 2013, Notification No. 655 issued by the Director of Elementary and Education Bureau of the MEXT).

Implementation of reasonable accommodations in schools

Along with the changes to law in school placement, changes in overall disability laws were taking place (see Figure 1). Basic Act for Persons with Disabilities enacted in 1993 sets out the basic concept of measures for persons with disabilities in Japan. The 2004 amendment expanded this law to include that discrimination based on disability as illegal, though there have been no specific definition or regulations for remedies for discrimination; thus, the law remained an ideal law without judicial norms. This was not in line with the principles of the UNCRPD, and further revisions were made in 2011. The 2011 amendment reaffirmed the prohibition of discrimination based on disability and for the first time, the language in the law explicitly stated that for the removal of social barriers, there must be a provision of reasonable accommodation for people with disabilities (Article 4). With regard to education, Article 16, Paragraph 1 of the 2011 amendment stipulates that "to the extent possible, children and students with disabilities shall be accommodated to receive education alongside with children and students without disabilities."

In 2013, the Act for Eliminating Discrimination against Persons with Disabilities was enacted covering a wide range of areas related to daily life and social life, such as education, public transportation, medical care, and employment, and consistently (1) prohibits unfair discriminatory treatment on the basis of disability, and (2) requires the provision of reasonable accommodation to remove social barriers (Article 7). Additionally, in 2015, MEXT has published guidelines for responding to the enforcement of the Act and pointed out the importance of process for forming consensus through dialogue with individuals with disabilities and their guardians with regard to the provision of reasonable accommodation.

Reasonable accommodations for CMCN

All the changes in laws on school placement and provision of reasonable accommodation also apply to CMCN's school placement and their accommodations in school. Conventionally, suctioning and tube feeding have been positioned as a "medical procedure", thus teachers were legally prohibited from performing such types of care without holding a medical or a nursing degree. However, with 2011 Amendments as described above, since 2012, teachers who have undergone a specific training are allowed to provide medical care at schools for CMCN. Furthermore, from fiscal year 2016, mainstream schools have been added to the 1/3 subsidy system for the employment of school nurses, which increased the number of nurses available in all schools. Nonetheless, of all the schools, only 730 school nurses have been placed in public elementary and junior high schools in fiscal year 2018, and six out of 47 prefectures in Japan did not have any school nurse placements (MEXT, 2020b). Also, MEXT (2015) survey has revealed that the public elementary and junior high schools continue to require parents as personal care attendants (1,897 cases). Moreover, of the 1,897 cases, 20% or 388 cases, parents have reported that they had administered medical care to their children at schools. In other words, the current school system has not fully adopted the new system to serve CMCN, and there arises a new debate about whether provision of medical care in mainstream schools should be considered as a reasonable accommodation under the Act for Eliminating Discrimination against Persons with Disabilities.

***K. K. v. Kanagawa Prefecture and Kawasaki City* (2020)**

Facts of the case

The changes in the Japanese education system through enactments and amendments to the laws as described above are in alignment with the UNCRPD and

inclusive education goals, yet there remains the problem in operationalizing the changes in the law. This trial marks the first notable and important ruling over a school placement and on provision of reasonable accommodation for CMCN (July11, 2018 lawsuit; March 18, 2020 court decision made).

The plaintiff, K. K., was born in 2011 and was a six year old boy at the time of the lawsuit. He was born with congenital myopathy that caused respiratory disability and also had limitations to both upper limb and lower limb trunk functions requiring constant medical care needs such as 24-hour breathing monitoring using a ventilator, nasogastric tube feeding, and suctioning. He was cared for in a neonatal intensive care unit from birth until 2012, and since being discharged, he lived at home with his parents in Kawasaki city where the parents were his primary care givers and provided necessary medical care. Since 2016, he attended a Kindergarten within the city two days a week, where no major accidents were reported while attending the Kindergarten. His primary care doctor provided a medical opinion that it would be possible for him to attend a special class within a mainstream school while accompanied by an attendant if he were free from hospitalization for more than a year.

According to the School Education Act, the City Board of Education sends a notice to all parents of children in the district who will be entering 1st grade their child's school enrollment information by a specified date. For children with disabilities who have been found eligible to enroll into a certified special needs school through the complex process outlined in Figure 2, the City informs the Prefecture of the eligibility and the Prefectural Board of Education in turn notifies the parents of children with disabilities their enrollment information by a specified date.

[Fig 1 near here]

On March 26, 2018, the Kawasaki City Board of Education judged the plaintiff to be a certified special needs school student, and the Kanagawa Prefectural Board of Education designated a special needs school (physical disabilities) as a school for the plaintiff to enroll. The plaintiff side filed a complaint with the Yokohama District Court to rescind the decision and asked their child to be designated to School A, a mainstream school who were familiar with the student and felt equipped to support his needs, or to School B, the student's district's mainstream school.

Issues and claims

The main issues concerning this case were with regard to (1) the appropriateness of the school placement and enrollment notice, and (2) the appropriateness of certification (or non-certification) of admission to mainstream elementary school. The claims with regard to these issues are summarized in Table 1.

Regarding the first issue, the defendants (City and the Prefectural Board of Education) argued that the decision to enroll the plaintiff into a special needs school was deemed appropriate based on (a) the plaintiff's disability condition; (b) the need for support based on the condition, and (c) the availability of the current structure and system in the community in which plaintiff lived. In response, the plaintiff 's side made the following claims: The notification to enroll into the special needs school was decided (1) outside of the typical decision making time-frame; (2) contrary to inclusive education as a human right limiting the opportunity for growth and development that happens by sharing the location and time with friends of the same age group; (3) by disregarding the parents' wish to enroll their child into a mainstream elementary school and not gathering and providing sufficient information; and, (4) illegal without considering the plaintiff's medical care needs nor consideration of provision of

reasonable accommodations for a safe school environment (e.g. installation of elevators).

The plaintiff's side argued that the school placement notice (March 26) was made past the decision making deadline (January 31), and was not carried out within the period specified by the School Education Act and that this was a procedural flaw. With regard to rights to education, the plaintiff side pointed out their child's right to inclusive education as a basic human right that should be recognized by the UNCRPD and the Basic Act for Persons with Disabilities. Thus, the placement to a separate school was contrary to the policies and laws. Moreover, they claimed that the plaintiff's parents' opinions were not considered in the decision making. The parents reported that when the meeting was held with the City Council about the school placement, the meeting the meeting was one-sided, where the parents were persuaded to consider the special needs school as the only option. Furthermore, the overall decision of whether the student is deemed as a certified special needs school student is bound by the opinions of the person in question and his guardians, thus, the guardians should have the priority in choice of school placement. However, they pointed out that the City Board of Education as they did not contact the plaintiff's primary care physician or his Kindergarten for their opinions about the plaintiff's abilities and needs nor did they ask them to submit written documentation before making school placement decisions.

Finally, the plaintiff's side claimed the illegal nature of non-consideration of reasonable accommodation. In particular, the plaintiff's side pointed out that the Act for Eliminating Discrimination Against Persons with Disabilities requires reasonable accommodations for CMCN, and there are several cases where children who use ventilators attend mainstream elementary schools in Japan, thus, the plaintiff's use of ventilators should not be considered as an undue hardship to the school.

The claim was also made against the Kanagawa Prefectural Board of Education, that the prefectural board did not promptly mediate nor provide an appropriate guidance and advice to the City Board of Education.

On the second issue with regard to certification (or non-certification) of admission to mainstream elementary school, the defendant argued that it was not illegal to designate a plaintiff as a certified special needs school student because the plaintiff's disability meets the “schooling standards”. Specifically the defendant pointed out that the plaintiff has difficulty breathing on his own, and utilizes a ventilator at all times, and with low muscle tone, requires a special buggy/stretcher pushed by a personal care attendant. Additionally, the defendant made a statement that since it is difficult for the plaintiff to communicate verbally, there is a need to individualize the support, to the extent possible, based on the provision of flexible curriculum, which cannot be done in the mainstream school. Finally, the defendant stated that the decision was based on the fact that children using ventilators even at the special needs schools have never been accepted with a "mainstream school student status", and have only been accepted as a "visiting student status" where teachers visit and provide instruction at home or hospital. They further stated that there is no track record of acceptance of a child with ventilators in elementary schools, and the school is not equipped, both structurally and staff-wise.

The City Board of Education acknowledged that the parents had hoped to enroll their child in the mainstream elementary school, but insisted that it would have been difficult to prevent other children from colliding into ventilators or the buggy/stretcher, and that it would be difficult to ensure safety, thus, they stated that the decision was made for the safety of the plaintiff.

In response, the plaintiff's side conceded that the plaintiff's disability met the eligibility as a special needs school student, but made the following points. The plaintiff

has attended the mainstream elementary school A once a week for the district's "mainstream interaction time" (a learning practice in which a special needs school student temporarily participates in a mainstream school learning activity) and while attending, there was no report of any accidents. The plaintiff's side claims that this attendance shows that the mainstream school A does not have a problem in welcoming the plaintiff. Thus, the plaintiff side claimed that the City Board of Education should have specified Elementary School A as the enrollment school for the plaintiff. And, if the district school should be designated, then the plaintiffs demanded that Elementary School B, which is the plaintiff's district school, should be selected although mainstream school B does not have an elevator installed and may be an unfit from the viewpoint of provision of reasonable accommodations.

Court judgment

After fact-accrediting the plaintiff's disability status, institutional school decision procedures, and the status of special needs schools, the court rejected all of the plaintiffs' claims and ordered them to bear the cost of the lawsuit. With regard to the first issue, it was found that the failure of the City Board of Education and the Prefectural Board of Education to comply with the notification deadline in a timely manner was not found to be a procedural flaw, but a delay due to an additional time needed to form an agreement for decision-making. Further, consideration was made with regard to the legality of the Prefectural Board of Education's approval of City Board of Education's decision on the placement of study for the plaintiff. The court pointed out that the City Board of Education's decision for the plaintiff to attend a special needs school by obtaining the expert's input and for the Prefectural Board of Education to approve such decision was not illegal. Further, the court pointed out that

inclusive education is not the same as an abolishment of special needs schools. In addition, the court recognized that the City Board of Education has the ultimate authority and responsibility in making the decision on school placement and ruled that they have the right to exercise such a decision. While the court acknowledged the point made by the plaintiffs on the importance of parents' desires and opinions in decision making, they pointed out that the law requires hearings from experts and thus, ordered that the plaintiffs' claims could not be adopted. In other words, it was explained that the designation of the school placement should be based on educational needs based on one's disability condition, and thus should not be based on subjective opinions on educational values and views, and should require an objective needs based on professional point of view.

According to the court ruling, the plaintiff has a severe disability and in order to meet the educational needs, a small class size with a highly specialized education at the special needs school is said to be appropriate. Further, it is said it is difficult for the plaintiff to learn in a special class in the mainstream elementary school because of the plaintiff's disability condition, and even though there are limited opportunity to interact with other children in special needs school, "mainstream interaction time" can be utilized. The court ruling also pointed out that in comparison to the special needs school, the mainstream school does not have a school nurse, and due to the potential risk of collisions amongst students, it is deemed that the placement in mainstream elementary school is not suitable in securing a safe environment.

The court acknowledged the fact that the City Educational Board did not request the medical documentation from plaintiff's primary physician or conduct hearing from the Kindergarten that he attended, but stated that the Enforcement Order (Article 18-2) also requires an expert's opinion and the law does not specify any specific procedures

for obtaining them. Thus, although the City Board of Education and the Prefectural Board of Education notified the plaintiff's learning placement prior to the primary physician submitting the plaintiff's medical documentation, the defendants were fully aware of the plaintiff's disability condition, thus, ruled that there was no flaw in the decision making process. Furthermore, defendant city is under the discretion of what is considered reasonable with the provision of medical care support as part of accommodation, hence, as there has not been a prior case of children with ventilator use being accepted to the mainstream school in the district, even if a child with a ventilator use is regarded as an exception, the decision would not be considered discriminatory under non-provision of reasonable accommodation.

The second claim regarding the certification of the plaintiff as a student in mainstream school student was also dismissed as the decision made by the defendant could not be said that it was deviant nor an abuse of discretionary power even considering the plaintiff's disability condition, the learning situation in the special needs school, the environment of the mainstream elementary school, and considering the condition of how other children who use ventilators are supported nationwide.

Discussion

This case highlights the reality of many institutional constraints in the realization of inclusive education for students requiring CMCN or more in general children with severe disabilities. The interpretation of the law is the role of the court, and therefore, its judgment is valid and absolute. On the other hand, it is imperative to improve the legislation and operations that accurately reflect the principles of the UNCRPD. Therefore, we will review this ruling from a viewpoint of international standards, and raise the issue often faced - the gap between policies (intent) and practice

(implementation). In particular, parallel comparison will be made to the United States' Individuals with Disabilities Education Improvement Act of 2004 (IDEA, P.L. 108-446) and its implications on parental rights/involvement and on student placement. Japanese special education's provision of a continuum of "diverse places of learning" has a commonality to the provision of "continuum of alternative placements" (20 U.S.C. 1412 (a) (5) (A)) under IDEA and because of this continuum concept, there rise the on-going problem of segregation especially for CMCN and other students with severe disabilities.

Implications on parental rights

Nagano and Weinberg (2012) point out that Japan's special education legislation has drawbacks on the protection of rights of children with disabilities and their parents in comparison to the laws in the United States. Under IDEA, parents are entitled to participate in a wide range of decision-making opportunities, including assessments and placements related to their child's education and have the right to provide input into the decision-making. Unlike in Japan, an individualized education program (IEP) must be written to clearly define educational goals and needs for each child in public schools who receives special education services. For CMCN, nursing services are also written into IEP (American Federation of Teachers, 2009). Parents have the right to be the members of the IEP team and be involved in determining their child's special education eligibility and educational placement. In addition, public agencies must take all necessary steps to ensure that parents understand the contents of the IEP team meeting. Furthermore, an IEP meeting allows the participation of persons with appropriate expertise regarding the student at the discretion of the parents (20U.S.C. 1401(14), 34 CFR § 300. 320-322). The U.S. Supreme Court states, "the IEP proceedings entitle parents to participate not only in the implementation of IDEA's procedures but also in

the formulation in the substantive formulation of their child's education program" (*Winkelman v. Parma City School District*, 2007).

Similarly, to IDEA, the Enforcement Order of the School Education Act, includes hearings from both experts and parents in making the decision on the child's school placement. However, there is no IEP teams or procedural safeguards for parents (20 *USC* Section 1412(d)) like the IDEA. While the court, in this trial, acknowledged the importance of the parents' opinion, they ultimately supported the placement decision made by the City Board of Education based on their own experts' inputs and views and not even the expert opinions of the plaintiff's primary physician nor his Kindergarten teachers. Even if the severity of the disability and educational potential were understood, the decision making did not fully reflect the valuable information and opinions from medical and educational viewpoints. Moreover, although Japanese government has pushed for consensus building in making decisions about reasonable accommodations, and the opportunity for discussion between the parents and the City Board of Education was secured, from the perspective of the parents, the meeting with the school was one-sided without any room for inputs, and did not lead to a constructive discussion.

What the parents of the plaintiff experienced and felt during their meetings with the City Board of Education is probably not an unique occurrence. Studies in the U.S. have found that parents are often dissatisfied, unheard and describe their IEP experiences as negative (Childre & Chambers, 2005; Slade, Esienhower, Carter, & Blacher, 2018). IDEA has more parental rights and procedural safeguards than the School Education Act, but it does not mean that all parents are able to use those safeguards and advocate for their children. A study reported in National Council on Disability (2018) found that not all parents have the "ability, resources, or stamina to

promote inclusive placements for their children" (National Council on Disability, 2018, p.25).

Implications on school placement

IDEA has a continuum of alternative placements to meet the educational need of children with disabilities. The premise behind it is the right to Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE) possible. The LRE emphasizes that children with disabilities should be educated to the maximum extent possible alongside peers without disabilities, and only when the students with disabilities are unable to make educational progress even if they are provided supplementary aids and services based on the nature and degree of disability, then special classes or separate schooling can be considered as an alternative educational placement aside from the regular educational environment (20 U.S.C. 1412(a)(5), 34 CFR 300.114). Additionally, IDEA requires schools to provide related services to students with a qualifying disability. Related services under IDEA includes school nurse services by a qualified school nurse (20 U.S.C. 1401(26), 34 CFR § 300.34(13)). A school's obligation to provide nursing services includes full-time, one-on-one nursing services, if necessary, for the child, and the services must also be provided during transportation to and from school (*Cedar Rapids Community School Dist. v. Garret F.*, 1999). In other words, the cost of services including personnel and materials is not the issue, but the importance is placed on ensuring FAPE for all qualified children with disabilities.

The current case ruled that for a student with severe disabilities, a placement in special needs school where highly specialized individual instruction within a small class size was deemed appropriate, and the lack of peer interaction could be compensated by actively participating in the "mainstream interaction time". The court stated that for the

plaintiff, a basic instruction to broaden communication and expression skills was important and that such instruction was difficult to provide in a special class within the mainstream elementary school. However, individualization efforts should not be set based on the educational environment, but should be tailored to the needs of the students. This seems contradictory when communication and expression skills are often learned in a natural classroom environment. Individualization should not be synonymous to simply providing education in special needs schools, but Mithout (2016) have found that children with severe disabilities in Japan tend to spend one-on-one time with adult in the special needs school and often in a context of "isolation."

Similar issue is also found in the U.S. even though LRE principle is in place, where children with severe disabilities tend to be placed in the most restrictive, separate environment. As Taylor (2004) posits as one of the pitfalls of LRE is that "the principle assumes that the least restrictive, most integrated settings are incapable of providing the intensive services needed by people with disabilities." U.S. Department of Education, National Center for Education Statistics (2019) shows that 18.1% of students 6 to 21 years old served under IDEA with multiple disabilities are in separate school.

In the trial, the court has raised that a once-a-week opportunity to interact with the mainstream school as the only effective way to promote interaction between children, and its limited frequency is also associated with the safety issue within the elementary schools. The court noted that there were no accidents at the elementary school because of the short duration of the interaction. Such a statement is a testament to the limitations of opportunity for children and children with disabilities to interact with one another. The social and educational outcomes and the safe environment that the court emphasized as important cannot be attained with only promoting the weekly mainstream interaction time. The court assessed that the current educational

environment in the mainstream elementary school was inadequate and unsafe, but it should modify the environment surrounding the student according to the student's individual needs. This manner of applying the existing framework to the student, rather than the other way around, is not in accordance with the intent of an inclusive education. The special education regulations in Japan advocate for the "social model" where the problem is within the society or the environment, but this court case decision is not based on a social model, but rather the "medical model" where the problem is within the individual.

Yamamoto and Moriwaki (2019) surveyed the mechanisms of Yokohama City, Kanagawa Prefecture, and Toyonaka City, Osaka Prefecture, which have been engaged in the education of children with medical care needs from early on. The result revealed that the background of the initiative was the introduction of a school support system based on the viewpoint of human rights education, not just disabilities. They point out the need for financial support at the national level to support these initiatives in the long term. Similarly, American Federations of Teachers in 2009 compiled a guide for caring for children with special healthcare needs in the school setting that provides considerations of all parties involved with tips and recommendations (American Federation of Teachers, 2009). It also recommends for appropriate funds for competitive systems and increase funding levels for IDEA appropriations to prepare teachers, administrators, and related service providers to provide appropriate services and to build capacity for inclusive education.

Conclusion

How inclusive education can be implemented is one of the international issues of the UNCRPD. Even with the IDEA in place in the United States, where parents are

guaranteed the legal rights of their children's education decisions separate special needs schools and special classes are exceptional measures, children with severe disabilities are in segregated settings. In Japan, although the opportunity for parents to participate in their children's schooling process has improved, it is not practiced or respected. Moreover, even though the notion of special education have changed to special needs education to focus on individual needs rather than disability category for school placement, there still needs a shift in mindset on what inclusive education mean and how to operationalize the definition in accordance with the principles of UNCRPD. As Japan has ratified the UNCRPD and has the opportunity to view inclusive education as a basic huma rights unlike the U.S. where inclusive education is not specifically stated within the IDEA, there is an opportunity to align the educational law better with the UNCRPD and consider how to operationalize the law given the Japanese context.

Shortly after the district court defeat, the plaintiff and his parents appealed to the Tokyo High Court using the three-instance system (March 23, 2020). In order to be able to attend a mainstream elementary school, they have moved from Kawasaki City to the adjacent Setagaya Ward in Tokyo. There are regional disparities within Japan towards adaptation of inclusive education. Since the current case, the state of inclusive education for CMCN has attracted attention, and the ruling will have a significant impact in the future school placement decisions. We must continue to keep an eye on what interpretation of the law will be used in the future trials, and whether the decisions made will meet the international standards.

Notes

1. Fiscal year in Japan begins on April 1 and ends on March 31. Japanese school year begins in April and ends in March.

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