
Fourth Universal Periodic Review of New Zealand's Human Rights Performance

Submission from the Inclusive Education Action Group

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About the Inclusive Education Action Group:

1. The Inclusive Education Action Group Incorporated (IEAG) was established as a registered charity in 2008 by a group of disabled people, parents, education professionals, academics, researchers, and disability advocates committed to children's rights. At the time, too many disabled children, young people and their parents and whanau were experiencing exclusion and discrimination in their local schools. In 2023, disabled children and young people continue to experience exclusion and discrimination. As an organisation we advocate at both an individual and systemic level. We provide advocacy support and information to disabled people and their families, educators, and others on promoting and enacting education rights. At a systemic level, we advocate for social change within school communities, the education system, and Aotearoa New Zealand society.
2. Schools play a vital role in promoting social cohesion and the development of inclusive communities. We believe that an inclusive education system is the foundation for building an inclusive Aotearoa New Zealand. Our vision for "the education system" is one where all disabled students have equitable access to and outcomes from education, where diversity is valued and where all students are contributing citizens. In our work we aim to change laws, policies, practices, and attitudes, so that every student is welcomed, has a sense of belonging and can access the support they need to participate and achieve to their full potential at their local school. Our work is underpinned by New Zealand and international research, New Zealand law and our international human rights obligations including under Te Tiriti o Waitangi, the United Nations Convention on the Rights of the Child (CRC) and United Nations Convention on the Rights of People with Disabilities (CRPD).

Introduction

3. IEAG welcomes the opportunity to provide this submission on New Zealand's 4th Universal Periodic Review (UPR).

Summary of Recommendations

- I. Amend the Human Rights Act 1993 to include an explicit recognition of the denial of reasonable accommodation as a form of discrimination and include a legislative definition of reasonable accommodation consistent with the meaning provided in Article 2 of the CRPD.
- II. Amend the Education and Training Act 2020 to include an enforceable right to inclusive education and reasonable accommodation,
- III. Develop a comprehensive deinstitutionalisation strategy, with specific timeframes and adequate budgets, to close all residential institutions, including group homes and residential specialist schools to provide community supports for persons with disabilities to live independently in the community.
- IV. Take measures to cease investment in residential specialist schools for children with disabilities and establish a deinstitutionalization process that ensures adequate support is provided for children with disabilities to return to their families and exercise their right to an inclusive education,
- V. Develop an inclusive education strategy that includes measures for the devolution of segregated education settings into a mainstream inclusive education system, to transition funding and resources from specialist education to inclusive education, to prioritise inclusive education in teacher training, to establish uniform inclusive education policies and guidelines, to develop an inclusive education curriculum, and to promote and raise community awareness,
- VI. Withdraw the proposal to change entry requirements for enrolment in residential specialist schools and redirect funding and resources into an inclusive education system; and
- VII. Develop specific culturally appropriate strategies to address the high proportion of Māori children with disabilities in residential specialist schools, including the provision of supports to remain with whanāu (extended family networks) in their local communities.

Implementation of recommendations from 3rd UPR

4. **The Government has not implemented recommendations on the right to inclusive education for all children.** IEAG is concerned about the investment of public funds in sustaining a dual education system of segregated and mainstream settings. Of concern is increasing rolls and levels of physical restraint in residential specialist schools. Enrolment in these residential institutions had declined over the past decade, from 182 in 2010 to 17 in 2021. However, changes to enrolment criteria has led to an increase in enrolments, with over twice as many

students being enrolled in 2023ⁱ as in 2021.

5. **The Government has not harmonised national legislation relating to disabled students' rights with international standards regarding reasonable accommodation and inclusive education.** Since the previous UPR cycle new education legislation has been enacted. Disappointedly, the Education and Training Act 2020 remains silent on these important human rights principles. The CRPD Committee's' 2014 recommendations to amend the Human Rights Act of 1993 to explicitly recognize the denial of reasonable accommodation as a form of discrimination has yet to be implemented.

Equality and non-discrimination

6. Disabled students continue to experience inequalities and discrimination in their access to and outcomes from education. Exclusion disrupts students' learning and impedes their capacity to be full and active participants in their community now and later in life. Recent data from the Household Labour Force Survey for the June 2023 quarter provides evidence the education system is failing to deliver equality of opportunities and outcomes for disabled students. 43.9% of disabled youth aged 15 to 24 years were not in employment, education and training compared with 9.7 percent of non-disabled youth.ⁱⁱ
7. On 28 September 2023 the Education Review Office released a report "*Thriving at School? Education for disabled learners in schools.*"ⁱⁱⁱ This found many disabled learners are still experiencing exclusion, being discouraged from enrolling in their local schools, asked to stay home due to resourcing issues, being stood down and are having to move schools.
8. The Ministry of Education's review of supports for students with the highest level of learning support needs, released on 17 November 2022^{iv}, found these students are still experiencing persistent barriers to being able to participate, progress and achieve in their education. The Government acknowledged that it has multiple sources of evidence confirming these persisting issues. An analysis undertaken by the Social Well-Being Agency^v noted for every seven students receiving high needs support there are about three with the same level of need who potentially have an unmet need. Māori students are overrepresented in this group. This has lifelong social, emotional, and educational impacts for these students.

Recommendation

The Human Rights Act of 1993 is amended to include an explicit recognition of the denial of reasonable accommodation as a form of discrimination and include a legislative definition of reasonable accommodation consistent with the meaning provided in Article 2 of the CRPD.

Right to education

9. Education is vital for disabled people being able to realise their other humans' rights, fully participate in the community and exercise full citizenship. However, disabled children and young people continue to experience significant barriers to equitable access to and outcomes from education and are over-represented in school disciplinary processes, particularly exclusions,

both formal and informal. Many disabled children have conditions placed on their enrolment and attendance at school.

10. New Zealand supported the UPR recommendation to review all education, legislative and policy settings to ensure that schools provide accessible inclusive education for all.^{vi} However, disabled children do not currently enjoy a substantive right to inclusive education as a key element of the legislative framework. New education legislation was consulted on and enacted in 2020.
11. The Ministry of Education's Regulatory Impact Summary of the proposed legislative changes acknowledged: *"We have for some years now received consistent feedback from parents, disability groups and other organisations that students are being asked not to attend fulltime because the school cannot support them...feedback to date suggests this happens frequently and has been a problem for many years. Denying students, the ability to attend school results in poor learning outcomes for these students."*
12. It was further noted; *"The UN recommended that New Zealand establish an enforceable right to education in its last review of the UNCRPD in 2015.... Stakeholders including the Disability Rights Commissioner, the Children's Commissioner, and IHC recommended that the legislation be amended to give an explicit commitment to New Zealand's international obligations, particularly those under UNCROC and UNCRPD."* The Ministry of Education acknowledged that the changes recommended were *"...not intended to make us fully compliant with our international obligations."*^{vii}

Recommendations

Amend the Education and Training Act 2020 to include an enforceable right to inclusive education and reasonable accommodation.

Disabled people

13. Inclusion is key to achieving disabled children and young people's fundamental right to education under article 24 of the CRPD.^{viii} New Zealand supported recommendations concerning the right of disabled children and young people to quality inclusive education and to increase the provision of reasonable accommodation.^{ix} However, New Zealand still has an ongoing need to build a fully inclusive education system for disabled children and young people.
14. Education is not inclusive where disabled students are segregated from their non-disabled peers, not able to attend school for the same number of hours as their non-disabled peers, or not able to participate in all aspects of school life. The CRPD Committee has made clear that education of disabled students should not be provided in separate environments in isolation from students without disabilities.^x Full realization of Article 24 is not compatible with sustaining two systems of education: mainstream and special/segregated education systems.^{xi} The Committee has also said that inclusive education is incompatible with institutionalisation of persons with disabilities.^{xii} Disabled students should be able to attend primary and secondary schools within the communities where they live and should not be sent away from home.^{xiii}

Sustaining a dual education system is inconsistent with Article 24 of the UNCRPD

15. Unfortunately, in 2023 the Government continues to sustain a dual education system that segregates some disabled children in special schools, including based on parental choice. While nationally only a small number of disabled children are currently segregated (relative to those enrolled in mainstream education settings) this varies widely across the country and numbers, especially in urban areas, are increasing. From 2871 in 2008 to 4195 in 2022^{xiv} Currently, over a third of students with the highest ongoing level of disability and learning support needs are now enrolled at specialist schools.^{xv} In some areas, such as within the Auckland region, over 80% are enrolled at a specialist school.^{xvi} The announcement that 24 additional satellite units are planned across the Auckland and Tai Tokerau regions over the next decade^{xvii} is most concerning and contrary to New Zealand's obligations under the CRPD.
16. The recent CRPD concluding observations confirm maintaining a dual system is inconsistent with Article 24. The Committee expressed concerns over; *"The increased enrolment of students with disabilities in separate learning environments, such as specialist schools, residential specialist schools and special education satellite units, despite legislative and policy commitments to inclusive education."*^{xviii} The Committee was also concerned about *"The continued investment of public resources in residential specialist schools for children with disabilities."*^{xix}

Denial of Reasonable Accommodation

17. Alongside a growing investment in segregated education settings, disabled students who attend their local school experience significant difficulties in obtaining the individualised supports and reasonable accommodations they require to learn, belong, and participate in school life. That disabled student experience discrimination, because of the lack of reasonable accommodation, in their access to and outcomes from education is the subject of a legal claim lodged by the IHC^{xx} fifteen years ago. The legal claim is yet to be heard by the NZ Human Rights Review Tribunal. New Zealand's human rights legislation has been entirely ineffective in enabling the voice of disabled children to be heard and their experiences within the education system to be considered.

The Government's approach to Residential Special Schools is placing New Zealand in breach of its human rights commitments to disabled people.

18. IEAG is concerned about the high investment of public resources in residential special schools, the progressive loosening of entry criteria aimed at increasing access to a wider group of disabled students. \$9 million was allocated in 2022 to provide residential services across three schools for 17 students. The Government announced \$8 million had been allocated for the rebuild of one of the three in 2019^{xxi}. The rebuild project is in the design phase. These are retrogressive steps inconsistent with New Zealand's obligation under Art 4(2) of the CRPD to progressively realise Art 24 of that Convention.
19. We have serious concerns about maintaining residential institutions which give rise to risk of abuse, including the disproportionate use of physical restraint, alongside the long-term impacts of social, familial, and cultural disconnection people experience when separated from their

families, peers, communities, and cultures. ^{xxii}

20. In 2022 IHC reported Ministry of Education figures showed, on average, students attending New Zealand's residential specialist schools in the past five years were more than 5,000 times more likely to be restrained by teachers and support staff compared to a mainstream school. ^{xxiii}
21. Between 1 August 2017 and 15 February 2022 two of the RSS were the highest users of physical restraint by schools in New Zealand. By way of example, 15 students were enrolled at one of the schools in 2018 and 2019. The school reported 395 incidents in 2018 and 324 in 2019. At the other school, 12 students were enrolled in 2018 and 13 in 2019. The school reported 108 incidents in 2018 and 244 in 2019. There were 113 restraints of nine-year-olds, 318 of ten-year-olds and 238 of eleven-year-olds between 1 August 2017 and 27 May 2022. Six children were restrained over 41 times during their stay at RSS. Data from term one 2023 shows that the issue of restraint remains an issue with repeated incidents of physical restraint of children aged 10 and 11 years 'old occurring on multiple occasions. As of 24 April 2023, there were 27 reported incidents of physical restraint, 13 of one or more children aged 10 years old. The school employs 8 teaching staff and 59 non-teaching staff for 17 students and received \$10million in Government grants in the year ended 31 December 2022. ^{xxiv}

UN Convention of the Rights of persons with disabilities Committee's Concluding observations on the combined second and third periodic reports of New Zealand

22. Making inclusive education a reality for all children was an area identified in the Committee's concluding remarks as needing urgent attention. ^{xxv} These Observations contain targeted recommendations on changes needed to give effect to Article 24. The recommendations leave no doubt, in our view, that continuing to invest in and expand segregated residential special schools is a breach of Article 24, as is other forms of residential institutional care.
23. The Government's plan ^{xxvi} for responding to the Committee's recommendations was released in August 2023. Concerningly, recommendations regarding residential special schools, including to "*withdraw the proposal to change entry requirements for enrolment in residential specialist schools and redirect funding and resources into an inclusive education system*", were noted, not accepted. The response acknowledged that aspects of the Government response are likely to be strongly contested by disability rights advocates and will continue to receive adverse comment from the IMM. Paragraph 41.2 notes:

*"The UN Committee has provided recent guidelines on deinstitutionalisation. They clearly indicate that schooling settings like residential specialist schools are seen as institutional given that they are only available to children based on impairing factors like behaviour. The Guidelines also indicate that institutional settings cannot be seen as an authentic choice for students and their families. The Ministry of Education has noted recommendations related to Residential Specialist Schools subject to further consideration of New Zealand based research and evidence and decisions by the Minister of Education. **Unlike other noting recommendations, there is a possibility that these could be changed after the Minister's consideration.**" (Emphasis added)*

Recommendations

We respectfully request further consideration be given to the CRPD Committee’s recommendations, including recommendations 8 (a), 40 (b) (d) and 48 (a) to (c).

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- ⁱ Response to written parliamentary question dated 10 May 2023.
- ⁱⁱ Labour market statistics (disability): June 2023 quarter Retrieved from <https://www.stats.govt.nz/information-releases/labour-market-statistics-disability-june-2023-quarter/>
- ⁱⁱⁱ See Education Review Office Te Tari Arotake Mātauranga (in partnership with the Human Rights Commission and the Office for Disability Issues) “Thriving at school? Education for disabled learners in schools” 28 September 2022, available at: <https://ero.govt.nz/our-research/thriving-at-school-education-for-disabled-learners-in-schools>
- ^{iv} Highest Needs Review: Report back to Cabinet 7 November 2022 <https://assets.education.govt.nz/public/Documents/our-work/information-releases/Issue-Specific-release/Highest-Needs-Review-Cover-Sheet-CAB-Pack-Annex.pdf>
- ^v <https://swa.govt.nz/news/new-news-page-4/>
- ^{vi} The Government supported recommendations 122.104 (Hungary) and 122.103 (State of Palestine).
- ^{vii} Impact Summary: Strengthening the Right to education by confirming the right to attendance see page 10 Retrieved from <https://assets.education.govt.nz/public/Documents/Ministry/Legislation/ETB/Strengthening-the-right-to-education-by-confirming-the-right-to-attendan....pdf>
- ^{viii} Committee on the Rights of Persons with Disabilities *General Comment No.4 (CRPD/C/GC/4)* (25 November 2016) at [2] and [10(a)]. The United Nations Convention on the Rights of the Child also stresses that, regarding children with disabilities, assistance must be provided to ensure that they have ‘effective access to ... education ... in a manner conducive to achieving the fullest possible social integration and individual development’ (article 23).
- ^{ix} The Government supported recommendations 122.158 to 122.160.
- ^x *Ibid* at [11].
- ^{xi} *Ibid* at [39]. See also A Byrnes “[Analysis of Article 24 of the Convention on the Rights of Persons with Disabilities and its Relation to Other International Instruments](#)” (September 2020), at pp.2 – 4 which states that article 24 “obliges states to transition to a system of fully inclusive education, involving in the medium-term to long-term the allocation of resources to general schools to support this transition and the eventual abolition of special schools or other forms of segregated education for children with disability”. This analysis further found that States’ obligations under article 24 are not inconsistent with article 13(3) of the ICESCR and article 26(3) of the UDHR, which do not guarantee parents the liberty to choose separate schooling based on their child’s disability.
- ^{xii} *Ibid* at [64].
- ^{xiii} CRPD, article 24(2)(b); CRPD/C/GC/4, 2 September 2016 at [26].
- ^{xiv} In 2008 the total roll number at special school was 2871. This has increased to 4195 in 2022. Retrieved from <https://www.educationcounts.govt.nz/statistics/school-rolls>
- ^{xv} According to a recent Ministry of Education stocktake of services 10,291, students (1.2% of the school population) with the highest ongoing disability and learning support needs were supported by the ongoing resourcing scheme as of May 2021. Retrieved from https://assets.education.govt.nz/public/Documents/our-work/information-releases/Advice-Seen-by-our-Ministers/September-2021/Cabinet-Paper-material_Redacted.pdf see Appendix Three. As of 1 July 2021 4023, students with the highest ongoing disability and learning and support needs were enrolled at a specialist school.
- ^{xvi} <https://assets.education.govt.nz/public/Documents/Ministry/Budgets/Budget2019/NEGP/AucklandTaiTokerauplans.pdf> See page 13 “Approximately 85% of ORS verified students are enrolled in special schools.” And page 37 “Approximately 82% of ORS verified students are enrolled at Rosehill Special School.”
- ^{xvii} <https://www.beehive.govt.nz/release/government-build-new-schools-and-classrooms-100000-students>
- ^{xviii} https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/NZL/CO/2-3&Lang=en&fbclid=IwAR3tk8UewYKYRT7ELHWGOwqC2zRE-N_NPu-hMAslu7LVNWSpyPmHfwZDGA at 47 (a)}
- ^{xix} Response to written parliamentary question dated 10 May 2023.
- ^{xx} IHC’s claim before the HRRT regarding equal access to education. See IHC “Human rights experts hear from parents” (20 July 2021) at <https://ihc.org.nz/strong-voices/human-rights-experts-hear-parents>
- ^{xxi} Response to written parliamentary question dated 10 May 2023.
- ^{xxii} *Ibid* at {39 (d)}
- ^{xxiii} <https://www.ihc.org.nz/news/disabled-students-5-000-times-more-likely-to-be-restrained-in-residential-specialist-schools>
- ^{xxiv} Information provided by the Ministry of Education on 28 November 2022 and 27 April 2023 in response to Official Information Requests.
- ^{xxv} CRPD/C/NZL/CO/2-3 26 September 2022
- ^{xxvi} See para 41.2 <https://www.whaikaha.govt.nz/assets/About-us/Cabinet-papers-and-information-releases/UNCRPD-cabinet-paper/Paper-United-Nations-Convention-on-the-Rights-of-Persons-with-Disabilities-Government-Response-and-Proposed-Mechanisms-to-Support-Implementation.pdf>