
List of issues prior to submission of the seventh periodic report of New Zealand on compliance with the International Covenant on Civil and Political Rights (ICCPR)

Submission from the Inclusive Education Action Group

7 January 2025

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Introduction

1. Thank you for the opportunity to draw further attention to the issues IEAG raised during the recent Universal Periodic Review of New Zealand's human rights record.
2. Our Submission on New Zealand's 4th UPR is attached as Appendix One.
3. IEAG was invited to participate in a pre-session held by the New Zealand Human Rights Commission in March 2024 the Fact Sheet prepared following the presession and was distributed to the approximately 30 embassies that were represented, is attached as Appendix Two.
4. In this submission, we focus on the New Zealand Government's performance of its human rights obligations and commitments under the International Covenant on Civil and Political Rights (ICCPR) as they relate to disabled children and young people.

Summary of Issues

5. We have identified the following issues which we consider to be relevant to the list of issues to be provided prior to the seventh periodic report of New Zealand.
 - 5.1. EQUALITY AND NON-DISCRIMINATION (Articles 2, 20 and 26)
 - 5.1.1. *Longstanding Inequalities within the education system*
 - 5.1.2. *Disabled children continue to be segregated in residential special schools*
 - 5.2. PROTECTION OF THE RIGHTS OF CHILDREN (Articles 7, 24 and 26)
 - 5.2.1. *Freedom from torture or to cruel, inhuman or degrading treatment or punishment*
 - 5.3. PROTECTION OF RIGHTS OF FAMILY (Articles 23, 24)
 - 5.3.1. *Lack of respite services.*
 - 5.4. RIGHT TO AN EFFECTIVE REMEDY (Articles 2(3) and 26)
 - 5.4.1. *Lengthy delays*
 - 5.4.2. *Disputes panels are yet to be established.*

About the Inclusive Education Action Group: Who we Are

6. The Inclusive Education Action Group (IEAG) advocates for change in the education system. We are a not-for-profit charitable organisation, established in 2008. Our membership includes disabled people, parents, education professionals, academics, researchers, and disability advocates committed to children's rights.
7. We provide support, information and advocacy to help promote and enact disabled children and young peoples' human rights. At a systemic level, we advocate for social change within school communities, the education system, and Aotearoa New Zealand society so that all children can access their human rights.

Our Submission

8. We have identified the following issues for consideration by the Committee when determining the list of issues prior to the seventh periodic report of New Zealand.

EQUALITY AND NON-DISCRIMINATION (Articles 2, 20 and 26)

(See Appendix One, paragraphs 6 to 18 and Appendix Two Section Two which provides further details of the evidence of the inequalities and discrimination experienced within the education system by disabled children.)

Longstanding Inequalities within the education system

9. Disabled children and young people continue to experience inequalities and discrimination in their access to and outcomes from education. This is particularly so for disabled children who are Māori, Pacific and from disadvantaged backgrounds. Exclusion disrupts students' learning and impedes their capacity to be full and active participants in their community now and later in life.
10. Recent data from the Household Labour Force Survey for the June 2024 quarter provides evidence the education system is failing to deliver equality of opportunities and outcomes for disabled students. Disabled young people aged 15 to 24 years were much less likely to be earning or learning than non-disabled young people. The NEET (Not in Employment, Education or Training) rate for disabled young people was 46.3 percent, more than four times the NEET rate for non-disabled young people (11.0 percent).¹
11. Since submitting our October 2023 submission on the 4th UPR, the New Zealand Coalition Government announced six education priorities for the education system in April 2024². These are aimed at lifting achievement and delivering a world-leading education system that sets Kiwi kids up for future success. These priorities include Stronger learning support: Targeting effective learning support interventions for students with additional needs.
12. IEAG welcomes and supports the Education Minister's ambitious work programme, the aim of which is to ultimately "*result an education system where all students are getting quality learning and skills to succeed no matter where they live, our teachers are supported with a detailed national curriculum parents are aware of their child's progress, and evidence-based supports and interventions are provided where they are needed.*"

Recommendation

¹ <https://www.whaikaha.govt.nz/news/news/labour-market-statistics-for-disabled-people-june-2024-quarter#scroll-to-7>

² <https://www.beehive.govt.nz/release/education-priorities-focused-lifting-achievement>

13. We recommend that the New Zealand Government is questioned on:

- 1. How the presence, participation and achievement of disabled students will be made visible and monitored to ensure that the Governments' education priorities address longstanding inequalities?**

Children continue to be segregated in residential institutions based on disability

14. Continued and increasing investment in residential specialist schools rather than investing in inclusive education is a serious equity issue denying disabled children their rights to inclusive education, equality and non-discrimination. Financial resources that could be directed at effective educational inclusion are being used to support an outdated model of how to care for young disabled New Zealanders.

15. New Zealand has developed an evidence based inclusive education program that works. Te Kahu Tōi/ Intensive Wrap-around Service (TKT/IWS) supported 448 children in their local communities across New Zealand in 2023. Evidence shows high levels of success from a multi layered support and care programme, which includes home, school and community intervention. The average annual cost of the programme per child is approximately NZ\$40,000. As of 31 July 2023, 40 children were enrolled across the 3 residential special schools. Funding from the government to run the 3 schools for the 2023 year was NZ\$14.96 million. The average annual cost per child to attend these schools was NZ\$374,000.

Recommendation

16. We recommend that the New Zealand Government is questioned on:

- 2. Why has eligibility for residential specialist schools been progressively widened since 2019, leading to roll increases at these schools when there is an established inclusive education program which keeps disabled children at home, at school in their communities?**

PROTECTION OF THE RIGHTS OF CHILDREN (Articles 7, 24 and 26)

Freedom from torture or to cruel, inhuman or degrading treatment or punishment

(See Appendix One, paragraphs 19 to 22 and Part 3 & 5 of Appendix Two for further information.)

17. The Royal Commission of Inquiry into Historical abuse in State Care has repeatedly heard that segregated residential school institutions have enabled violence and abuse against students, including disabled children.³

³ Royal Commission of Inquiry Abuse in Care *Tell me About You* <https://www.abuseincare.org.nz/our-progress/reports/tell-me-about-you/>

18. Information released under the Official Information Act 1982 shows that in 2021 the Ministry of Education itself advised Government Ministers that they were:
- “concerned about the high level of restraint of akonga reported by two of the RSS. Review of incidents reports from RSS shows that restraints are often used for behaviour management and not for reasons of safety. Use of restraint can be harmful especially for young people who have experienced trauma. It is a priority for the Ministry to resolve this issue and it should be considered alongside consideration of increasing enrolments.”*⁴
19. We know that segregated residential settings give rise to the risk of abuse, including the improper and disproportionate use of physical restraint. The Royal Commission of Inquiry repeatedly heard that segregated school institutions have enabled violence and abuse against disabled people. Key findings included that *“Abuse and neglect were pervasive in social welfare, Deaf, disability, and mental health residences and institutions.”*⁵
20. With regards to findings of fault for education settings the Inquiry found that: *“Relevant Ministers, Secretaries and Chief Executives of Education were at fault for: failing to provide education fit for different groups, including Blind, Deaf, and disabled children and young people”... “failing to keep children safe, during the school day and in overnight/boarding care”, and “failing to keep children in some schools and boarding facilities connected with whānau.”*⁶
21. IEAG has expressed serious concerns at the lack of monitoring and oversight of the safety and wellbeing of disabled children in these schools. There is recent evidence of repeated incidences of physical restraint of children as young as 10 years of age occurring, which appears to be for reasons of behaviour modification/management rather than for reasons of safety i.e. where there is a risk of imminent harm.⁷
22. The latest review of one of these schools by the Education Review Office, released on 21 June 2024⁸, noted significant concerns about the high numbers of reported incidents of physical assaults and property damage. Non-compliance issues for failing to maintain a safe safe physical and emotional environment in the hostel for students and staff were identified.

Recommendation

23. We recommend that the New Zealand Government is questioned on:

- 3. Why is physical restraint used in settings with low student ratios, by staff who supposedly have specialist knowledge, when the use of physical restraint for**

⁴ Ministry of Education: Report to Education Ministers Education Report: Enrolment at Residential Specialist Schools 14 October 2021 (METIS No. 1273491) Released under the Official Information Act 1982

⁵ <https://www.abuseincare.org.nz/reports/whanaketia/preliminaries/summary-of-key-findings>

⁶ Ibid see para Findings of fault 82 (C)

⁷ See Appendix One para 20 to 22 and Appendix Two Part 3. Concerns have been raised by the NZ Human Rights Commission in submissions to the UNCRPD Committee and during the UPR process.

⁸ <https://ero.govt.nz/institution/4157/westbridge-residential-school>

behaviour management, rather than for reasons of safety, is contrary to legislation and policy guidelines?

PROTECTION OF RIGHT OF FAMILY (Articles 23, 24)

(See Appendix One paragraphs 19 to 22 and Part 7 of Appendix Two for further information.)

Lack of respite services

24. There is a lack of community-based respite services for disabled children and their families.

25. An analysis of enrolment data for residential specialist schools (RSS) shows that due to the success of community-based supports provided under the Te Kāhu Tōi/Intensive Wraparound Service (TKT/IWS), most families of disabled children with high and complex needs that previously could attend RSS, are no longer choosing to send their children away from home. Most RSS enrolment applications now appear to be driven by a lack of community-based respite services for children with lesser support needs who are not eligible for TKT/IWS. Of the 29 applications received between October 2021 and July 2022, 21 (or 72%) referred to the need for respite or families needing a break.⁹

26. While the schools promise a positive return to home and community, there is no evidence that these positive outcomes have been achieved.¹⁰ A University of Auckland Report commissioned by the Ministry of Education indicates that the demand for RSS placement is driven by poor support for families¹¹.

Recommendation

27. We recommend that the New Zealand Government is questioned on:

4. The implementation of the 2022 recommendations of the CRPD Committee on New Zealand's combined second and third periodic report including.

- **take measures to cease investment in residential specialist schools and establish a deinstitutionalisation process that ensures adequate community and school supports for disabled children so they can return to their families and local schools and exercise their right to an inclusive education; and,**

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¹⁰ Jain et al (2021) *International Literature Review on Residential Specialist Schools for Learning and Behaviour* Prepared for the Ministry of Education, New Zealand, page 32. Available at https://www.educationcounts.govt.nz/_data/assets/pdf_file/0003/215895/ESS-International-literature-review-on-residential-specialist-schools-110722pm.pdf

¹¹ <https://www.educationcounts.govt.nz/publications/learning-support/residential-specialist-schools-pathway-evaluation-report>

- **to develop specific culturally appropriate strategies to address the high proportion of disabled Māori children in residential specialist schools, including the provision of supports to remain with whanau in their local communities.**

RIGHTS TO AN EFFECTIVE REMEDY (Articles 2(3) and 26)

(See Appendix One, paragraphs 19 to 22 and Part 5 of Appendix Two for further information.)

Lengthy delays in access to justice

28. There is currently no effective remedy or redress including when the rights of disabled children to equality and non-discrimination are breached. A discrimination in education case lodged with the Human Rights Commission in 2008 by IHC¹² on behalf of disabled children has yet to be resolved¹³. IHC's claim is that significant proportions of students attending New Zealand primary and secondary State schools and who have special educational needs and/or disabilities requiring accommodations to learn, are being discriminated against in their access to education by reason of their disabilities. IHC claims this is in breach of section 19 of the New Zealand Bill of Rights Act 1990¹⁴ (NZBORA). Legislation which affirms New Zealand's commitment to the International Covenant on Civil and Political Rights.¹⁵
29. A preliminary hearing was held before the Human Rights Review Tribunal in March 2015. In a decision released six years after this hearing, the Tribunal dismissed the Government's bid to strike-out key aspect of the claim.¹⁶ The Tribunal notes at para 30 of the decision "*The interpretation we favour is also supported by the duty of a State Party under Article 2(3) of the International Covenant on Civil and Political Rights, 1966 (ICCPR) to ensure "an effective remedy... As noted by Elias CJ in Attorney-General v Chapman [2011] NZSC 110, [2012] 1 NZLR 462 at [1] the principle that rights are vindicated through a remedy for breach is fundamental to the rule of law. A right without a remedy is "a vain thing to imagine".*"¹⁷ This discrimination litigation claim has not yet been heard.

Disputes panels to help resolve serious disputes are yet to be established.

¹² <https://www.nzherald.co.nz/nz/ihc-court-claim-government-breaching-disabled-childrens-right-to-education/HVNB65IDI3YZ4FGA24IYJH7ME/>

¹³ A timeline can be found here <https://campaigns.ihc.org.nz/timeline-of-events>

¹⁴ <https://www.legislation.govt.nz/act/public/1990/0109/latest/whole.html#DLM224798>

¹⁵ Ibid see NZBOR Section 3

¹⁶ <https://www.justice.govt.nz/assets/Documents/Decisions/2020-nzhrrt-47-ihc-new-zealand-v-attorney-general-strike-out-application.pdf>

¹⁷ <https://www.justice.govt.nz/assets/Documents/Decisions/2020-nzhrrt-47-ihc-new-zealand-v-attorney-general-strike-out-application.pdf>

30. In 2019 the Government committed to establishing dispute resolution panels¹⁸ (the panels) as part of its response to recommendations made by the Independent Taskforce’s review of Tomorrows Schools. The panels were intended to provide an accessible, low-cost, flexible, and timely avenue for students and their whānau to resolve serious disputes with schools. The Education and Training Act 2020¹⁹ (the Act) established the framework for these Panels. However, despite ongoing calls these panels have yet to be set up.
31. In 2022 the then Children’s Commissioner and Youthlaw (a free nationwide legal service for children and youth in New Zealand), reported that they were highly concerned the dispute resolution panels were still not in place, saying “*Schools make decisions every day which had a big effect on students' lives and a panel would ensure young people were treated fairly... The existing system effectively denied many children their right to an inclusive education.... If a student and their whānau disagree with a decision, their only option is to either go to the Ombudsman – which can only make non-binding recommendations, which schools can choose to ignore; or apply for a Judicial review which is expensive and time consuming.*”²⁰

Recommendation

32. We recommend that the New Zealand Government is questioned on:

- 5. Ensuring an effective remedy and redress for disabled children whose rights to equality and non-discrimination have been breached under the ICCPR.**
- 6. The timeframe for implementation of Disputes panels.**

¹⁸ <https://assets.education.govt.nz/public/Documents/our-work/information-releases/Advice-Seen-by-our-Ministers/November-2022/4.-1298695-BN-Update-on-Dispute-Resolution-Panels.pdf>

¹⁹ See subpart 9 Solving Serious Disputes sections 216 to 236 which can be found here <https://www.legislation.govt.nz/act/public/2020/0038/latest/LMS170676.html#LMS289494>

²⁰ <https://www.rnz.co.nz/news/national/477465/children-s-commissioner-demands-action-as-promised-school-disputes-panel-yet-to-be-set-up>

APPENDIX ONE: Submission List of Issues Prior to Reporting

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

Submission from the Inclusive Education Action Group

11 October 2023

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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

It is recommended that the New Zealand Government:

- 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 CRPDⁱ.
- II. Amend the Education and Training Act 2020 to include an enforceable right to inclusive education and reasonable accommodationⁱⁱ,
- 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 communityⁱⁱⁱ.
- 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^{iv},
- 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^v,
- VI. Withdraw the proposal to change entry requirements for enrolment in residential specialist schools and redirect funding and resources into an inclusive education system^{vi}; 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^{vii}.

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 2023^{viii} 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.^{ix}
7. On 28 September 2023 the Education Review Office released a report "*Thriving at School? Education for disabled learners in schools.*"^x 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^{xi}, 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^{xii} 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 2019 UPR recommendation to review all education, legislative and policy settings to ensure that schools provide accessible inclusive education for all.^{xiii} 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 that; *"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."*^{xiv}

Recommendations

The Education and Training Act 2020 is amended to include an enforceable right to inclusive education and reasonable accommodation as recommended by the CRPD Committee in 2015.

Disabled people

13. Inclusion is key to achieving disabled children and young people's fundamental right to education under article 24 of the CRPD.^{xv} New Zealand supported the 2019 UPR recommendations concerning the right of disabled children and young people to quality inclusive education and to increase the provision of reasonable accommodation.^{xvi} 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.^{xvii} Full realization of Article 24 is not compatible with sustaining two systems of education: mainstream and special/segregated education systems.^{xviii} The Committee has also said that inclusive education is incompatible with institutionalisation of persons with disabilities.^{xix} 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.^{xx}

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^{xxi} Currently, over a third of students with the highest ongoing level of disability and learning support needs are now enrolled at specialist schools.^{xxii} In some areas, such as within the Auckland region, over 80% are enrolled at a specialist school.^{xxiii} The announcement that 24 additional satellite units are planned across the Auckland and Tai Tokerau regions over the next decade^{xxiv} is most concerning and contrary to New Zealand's obligations under the CRPD.
16. New Zealand's dual system of special and mainstream education perpetuates outdated beliefs and attitudes which are inconsistent with human rights obligations and inclusive education principles^{xxv}.
17. 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."*^{xxvi} The Committee was also concerned about *"The continued investment of public resources in residential specialist schools for children with disabilities."*^{xxvii}

Denial of Reasonable Accommodation

18. 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^{xxviii} 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.

19. 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 22 students. The Government announced \$8 million had been allocated for the rebuild of one of the three schools in 2019^{xxix}. 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.

20. 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. ^{xxx}
21. 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. ^{xxxi}
22. Between 1 August 2017 and 15 February 2022 two of the residential specialist schools 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. ^{xxxii}

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

23. Making inclusive education a reality for all children was an area identified in the Committee’s September 2022 concluding remarks as needing urgent attention. ^{xxxiii} 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.
24. The Government’s plan ^{xxxiv} for responding to the Committee’s recommendations was released on 25 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 that the New Zealand Government gives further consideration to implementing the CRPD Committee’s recommendations, including recommendations 8 (a), 40 (b) (d) and 48 (a) to (c).

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- ⁱ Committee on the Rights of Persons with Disabilities Concluding observations on the combined second and third periodic reports of New Zealand CRPD/C/NZL/CO/2-3 26 September 2022 at para 8 (a)
- ⁱⁱ Committee on the Rights of Persons with Disabilities Concluding observations on the initial report of New Zealand CRPD/C/NZL/CO/1 31 October 2014 at para 50.
- ⁱⁱⁱ CRPD/C/NZL/CO/2-3 26 September 2022 at para 40 (b)
- ^{iv} Ibid at para 40 (d)
- ^v Ibid at para 48 (a)
- ^{vi} Ibid at para 48 (b)
- ^{vii} Ibid at para 40 (c)
- ^{viii} Response to written parliamentary question dated 10 May 2023.
- ^{ix} Labour market statistics (disability): June 2023 quarter Retrieved from <https://www.stats.govt.nz/information-releases/labour-market-statistics-disability-june-2023-quarter/>
- ^x 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>
- ^{xi} 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>
- ^{xii} <https://swa.govt.nz/news/new-news-page-4/>
- ^{xiii} The Government supported recommendations 122.104 (Hungary) and 122.103 (State of Palestine).
- ^{xiv} 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>
- ^{xv} 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).
- ^{xvi} The Government supported recommendations 122.158 to 122.160.
- ^{xvii} Ibid at [11].
- ^{xviii} 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.
- ^{xix} Ibid at [64].
- ^{xx} CRPD, article 24(2)(b); CRPD/C/GC/4, 2 September 2016 at [26].
- ^{xxi} 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>
- ^{xxii} 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.
- ^{xxiii} <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.”
- ^{xxiv} <https://www.beehive.govt.nz/release/government-build-new-schools-and-classrooms-100000-students>
- ^{xxv} CRPD/C/GC/4, 2 September 2016
- ^{xxvi} https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/NZL/CO/2-3&Lang=en&fbclid=IwAR3tk8UewYKYRT7ELHWGOOwqC2zRE-N_NPu-hMAslu7LVNWSpYpmHfwZDGA at 47 (a)
- ^{xxvii} Response to written parliamentary question dated 10 May 2023.
- ^{xxviii} 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>
- ^{xxix} Response to written parliamentary question dated 10 May 2023.

^{xxx} Ibid at {39 (d)}

^{xxxi} <https://www.ihc.org.nz/news/disabled-students-5-000-times-more-likely-to-be-restrained-in-residential-specialist-schools>

^{xxxii} Information provided by the Ministry of Education on 28 November 2022 and 27 April 2023 in response to Official Information Requests.

^{xxxiii} Committee on the Rights of Persons with disabilities; General Comment No.4 (2016) Article 24: Right to Inclusive Education CRPD/C/NZL/CO/2-3 26 September 2022

^{xxxiv} 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>

APPENDIX TWO: Submission List of Issues Prior to Reporting FACT SHEET

4th CYCLE UNIVERSAL PERIODIC REVIEW OF NEW ZEALAND

RIGHT TO EDUCATION

Right to inclusive education; right to reasonable accommodation; right to equality and non-discrimination; right to be free from exploitation, violence, and abuse; right to an effective remedy.

Summary of key recommendations from previous UPR cycle

The New Zealand Government supported recommendations to:

- Review all education, legislative and policy settings to ensure that schools provide accessible inclusive education for all, made by Hungary.
 - Harmonise its national legislation on the rights of persons with disabilities, especially in relation to inclusive education, with international standards, made by Peru.
 - Continue to work to fully harmonise national law with the provisions of the Convention on the Rights of Persons with Disabilities, made by Chile.
 - Grant children with disabilities the right to quality inclusive education and increase the provision of reasonable accommodation in primary and secondary education in line with international standards, made by Portugal.
 - Continue the development of inclusive education programmes for children with disabilities, made by France.
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Disabled children's right to inclusive education.

Key Issues

- 1. Sustaining a dual education system is inconsistent with Article 24 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD)**

Unfortunately, in 2024 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 4,448 in 2023ⁱ. Currently, over a third of students with the highest ongoing level of disability and learning support needs are now enrolled at specialist schools.ⁱⁱ In some areas, such as within the Auckland region, over 80% are enrolled at a specialist school. ⁱⁱⁱThe announcement in May 2019 that 24 additional satellite units are planned across the Auckland and Tai Tokerau regions over the next decade^{iv} is a regressive step and contrary to New Zealand’s progressive realisation obligations under the CRPD.

New Zealand’s dual system of ‘special’ and ‘regular’ or local education perpetuates outdated beliefs and attitudes based on low expectations for disabled children’s belonging and learning and ideas that disabled children need education that is ‘special’ and separate from their peers. These ideas are inconsistent with human rights obligations and inclusive education principles which emphasise the educational, social, and human rights benefits for disabled children when they receive high quality education in their local school alongside their peers, siblings, and friends.^v

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.”*^{vi} The Committee was also concerned about *“The continued investment of public resources in residential specialist schools for children with disabilities.”*^{vii}

2. Increasing evidence from Government Reviews has confirmed that disabled children continue to experience persistence barriers to their access to and outcomes from education.

Government reviews and reporting undertaken since 2019 confirm that inclusive education is far from a reality for many disabled children. Barriers remain over the provision of reasonable accommodation and access to the human and financial resources disabled children and their schools need for inclusive education. These reviews include;

I. Education Review Office Report “Thriving at School? Education for disabled learners in schools”^{viii}.”

On 28 September 2022, the Education Review Office in partnership with the Human Rights Commission and the Office of Disability Issues released a report on how well the education system is supporting disabled learners in schools. The report confirmed that many disabled learners are still experiencing exclusion, being discouraged from enrolling in their local schools, were asked to stay home due to resourcing issues, being stood down and are having to move schools. Recommendations were made to strengthen prioritisation and accountability, build school leaders’ and teachers’ capability, empower disabled learners and their families, and improve coordination and increase collaboration.

II. Ministry of Education: Review of supports for children with the highest levels of needs.

The Ministry of Education’s review of supports for students with the highest level of learning support needs, released on 17 November 2022^{ix}, reported that these students experienced persistent barriers to participation, progress, and achievement in their education. The Government acknowledged the multiple sources of evidence confirming these persisting barriers. An analysis undertaken by the Social Well-being Agency^x 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 over-

represented in this group. This has lifelong social, emotional, and educational impacts for these students.

III. *Not in employment, education, or training (NEET)*

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 lifelong active and contributing citizens. Recent data from the Household Labour Force Survey for the June 2023 quarter evidence the failure of the education system 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 or training compared with 9.7 percent of non-disabled youth.^{xi}

3. Increased Government and political acknowledgement

There has been Increased Government and political acknowledgement that education system failures and policy flaws impact unfairly on disabled students. The Government promised to extend learning support to thousands more disabled children through a substantial overhaul of the \$1.2 billion special education system in November 2022. At the time, the Education Minister was reported as saying.

"We're not talking about tinkering around the edges here, we're talking about a whole new way of doing things.... We know that this is one of the most broken areas in education and it is something that not only the sector has been crying out for change but also the families of young people who have been under-served."^{xii}

All political parties in the lead up to the 2023 general election agreed that the education system failed disabled students and required a rebuild.

4. Failure to harmonise domestic legislation with the CRPD and international standards.

The New Zealand 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 was consulted on and has been enacted. Disappointedly, the Education and Training Act 2020 remains silent on these important human rights principles.

The Ministry of Education's 21 August 2019 Regulatory Impact Summary noted that; *"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."* But then acknowledged that the changes recommended were *"...not intended to make us fully compliant with our international obligations."*^{xiii}

We believe this to have been a missed opportunity to harmonise domestic education laws with international standards and New Zealand's obligations under the CRPD.

5. Lack of an effective remedy or redress

There is currently no effective remedy or redress when disabled children's rights, including to inclusive education and reasonable accommodation are breached. A discrimination in education case lodged in 2008 by IHC on behalf of disabled children has yet to be heard by the Human Rights Review Tribunal.

- We are working with families and schools most days and the frustration and anguish about the outdated, non-responsive and inadequate funding is palpable.
- Too many disabled children, in emotional distress, face disciplinary processes because the support they need to be at school is not available.
- Principals are forced into making hard decisions about student attendance and families get to breaking point. This is a situation that has gone on for far too long.
- Classes are often large, and teachers struggle to find time to collaborate with children, families, teacher aides and specialist teachers, (if they are fortunate enough to have this support); or to plan effectively with every child in mind.
- Even when a specialist or an amount of learning support funding is available, administrative processes and layered sign off creates problems and delays at the chalk face.

Successive governments have attempted to solve these problems, but those attempts have not resulted in the system changes needed for better access to and outcomes from education for disabled school students.

Recommendations to the New Zealand Government

IEAG urges you to further recommend that the New Zealand Government make explicit in law and policy the rights of disabled students to an inclusive education by:

- **Harmonising its domestic law in line with the CRPD and international standards and;**
- **Provide an explicit enforceable right to inclusive education and to reasonable accommodation.**

New concern that has emerged since the last UPR Cycle

Increased enrolment in segregated residential specialist schools (RSS) for children with behaviour, social and/or learning needs and an overrepresentation of Māori children in RSS.

Key Issues

1. Progressive widening of enrolment criteria

Since the last cycle, the enrolment criteria for accessing the three remaining residential specialist schools (RSS) for children aged eight to fifteen years of age who have social, behaviour and/or learning needs that are highly complex and challenging^{xiv} have progressively widened and rolls are now increasing. These changes were made at the request of residential specialist schools themselves for more students with social, behaviour, and/or learning needs, because they were concerned about

what the dropping student numbers would have on their future. Students can remain in these schools, away from their families and local communities for up to two years.^{xv}

It is a concern that statistics also show Māori children as vastly overrepresented in these schools, with RSS responding only superficially to children's Māori culture. This finding has been reported by the Ministry of Education back in 1986.^{xvi} Disproportionate representation of Māori is a continuing concern.^{xvii}

The number of RSS has fallen from 5 in 1986 to 3 in 2012. In 2012 the Ministry of Education consulted on closing all RSS while extending an alternative community-based support programme, Te Kahu Tōi/ Intensive Wrap-around Service (explained below). The Minister of Education at the time determined to close 2 schools, leaving 2 remaining schools under a shared Board of Trustees. A subsequent Judicial Review resulted in one of the schools to be closed (Salisbury School) remaining open. In 2016 the then Minister of Education tried again, unsuccessfully, to close the school, the three schools remain open in 2024.^{xviii}

While the three schools have remained open, the number of students enrolled in them had been steadily falling, from 211 students in 2010, to 24 in 2022. It is therefore extremely concerning that rolls are now increasing with 40 students enrolled across the three schools as of 1 July 2023. These increases are inconsistent with the development of an inclusive education system.

2. There is an established alternative to the residential institutional placement of children with behaviour, social and/or learning needs

New Zealand has an inclusive education program, Te Kahu Tōi/ Intensive Wrap-around Service (TKT/IWS), designed to keep disabled and other children and young people who have complex learning and behaviour challenges in their families and communities. This is underfunded and not all children eligible for the program are accepted. TKT/IWS was originally funded from money released by the closure of a residential special school in 2009 after a lengthy history of difficulties including evidence of serious physical and sexual abuse of students. The then Education Minister reported;

“After the school closes, this funding will be ‘ringfenced’ to provide a new service for students aged 7-13 years old who have severe and challenging behaviour issues. Instead of a short-term placement in a residential school, the new service will provide intensive individualised support and therapy to students in their home and in their local school. Research has shown that providing wrap-around support to students in their home and local school is the best way to achieve sustainable change for young students with severe behaviour issues.”^{xix}

Te Kahu Tōi/ Intensive Wrap-around Service (TKT/IWS) supported 448 children in their local communities across New Zealand in 2023. Evidence shows high levels of success from a multi layered support programme, which includes home, school and community intervention. The average cost of the programme per child is \$40,000. In July 2023, forty children were enrolled at the 3 residential specialist schools aged between 10 and 14 years-of-age. Funding from the government to run the 3 schools in 2022 was in excess of \$12.5 million. The average annual cost per child to attend these schools is in excess of \$300,000. We note how alarming these figures are given the struggles documented in this fact sheet that we observe in local schools as families and teachers work hard in

an under-resourced system to be inclusive. As noted below this is an example of inequity that runs sharply against New Zealand's obligations to the UNCRPD.

New Zealand has three sensory schools. The Blind and Low Vision Education Network NZ (BLENNZ) provides a network of education services to blind, deafblind, and low vision children and young people throughout New Zealand from birth to 21 years of age^{xx}. Ko Taku Reo, Deaf Education New Zealand, operates two schools and an outreach service to support deaf and hard of hearing children and young people's learning from preschool to age 21^{xxi}. In 2023 there were 183 students enrolled in these schools. The schools provided outreach services supporting over 4500 students in their local schools and 34 students were in the schools residences.

However, a clear distinction needs to be made between these residential specialist schools and those described above. These residential specialist schools support children and young people and their families throughout their entire compulsory education. They offer residential placements, often for young adults who are transitioning to tertiary, the workplace or independent living. Short term residential immersion courses are offered to children and their families who attend together. These programmes provide opportunities for intensive programmes, mentoring and peer support.

Denial of reasonable accommodation

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. As noted above, disabled students experience discrimination in their access to and outcomes from education because of the lack of reasonable accommodation. This is the subject of a legal claim lodged by the IHC ^{xxii}fifteen years ago, 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.

Continued and increasing investment in residential specialist schools rather than investing in inclusive education is a serious equity issue in respect of the funding available to students at their local school. It also represents regressive education policies and practices that are contrary to our CRPD obligations. Much needed financial resources that could be directed towards inclusive education are being used to support an outdated model of education for young disabled New Zealanders.

3. There is new evidence that that residential specialist schools use physical restraint at higher levels than other schools.

The Royal Commission into historical abuse in State Care has repeatedly heard that segregated residential school institutions have enabled violence and abuse against students, including disabled people^{xxiii}.

Since the last cycle, there has been new evidence that these residential specialist schools use physical restraint at higher levels than other schools. In 2022, IHC reported the Ministry of Education's own 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 with a mainstream school.^{xxiv}

Between 1 August 2017 and 15 February 2022, two of the residential specialist schools 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 of restraint in 2018 and 324 incidents of restraint 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 a residential specialist school. 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 employed 8 teaching staff and 59 non-teaching staff for 17 students and received \$10 million in Government grants in the year ended 31 December 2022.^{xxv}

These figures are staggering. They are particularly troubling when parents believe they are sending their children to a safe place where teachers have ‘specialist’ knowledge needed to support their child’s learning and behaviour. The figures are a red flag raising questions not only about children’s safety but also about teachers’ knowledge and understanding of the context in their own school that may contribute to children’s behaviour in the first place.

The Ministry of Education itself advised Government Ministers that they were “*concerned about the high level of restraint of akonga reported by two of the RSS. Review of incidents reports from RSS shows that restraints are often used for behaviour management and not for reasons of safety. Use of restraint can be harmful especially for young people who have experienced trauma. It is a priority for the Ministry to resolve this issue and it should be considered alongside consideration of increasing enrolments*”^{xxvi}.

5. There is a lack of monitoring and oversight of the safety of children in residential specialist schools

There is a lack of monitoring and oversight of the safety and well-being of children and young people in the residential part of the schools. The National Care Standards for children in out-of-home care, introduced in 2019, do not apply. There is no Independent Children’s Monitor providing independent oversight and reporting annually on how well the needs of children and young people housed in these residential settings are being met.

The only legislation covering the boarding part of RSS is the Education (Hostels) Regulations 2005. Information released under the OIA shows that as part of the RSS license process in October 2021 the Hostel Licensing Authority raised concerns over the large volume of reports on the use of restraints. A condition of the renewal of licenses for two of the schools was that “*The Board to work with the leadership of...and with the Ministry to agree a plan to eliminate the use of physical restraint in the hostel, including an agreed plan for staff training and development.*” We note that in December 2021 the schools plan to eliminate the use of physical restraint was acknowledged and the intent to work closely with the Ministry of Education in this regard. No conditions were therefore placed on the schools’ licences.^{xxxvii}

The University of Auckland International Literature Review on residential specialist schools for learning and behaviour, referred to above, identified studies which described the heightened

potential for abuse and neglect in residential care and schooling settings. Studies raised concerns about oversight and monitoring of child welfare in residential settings given heightened concern about abuse.^{xxviii} The report notes that;

“These concerns raised in the international literature must be considered in relation to the current Royal Commission of Inquiry into Abuse in State and faith-based care in Aotearoa. The interim report issued in December 2020^{xxix} indicated that abuse occurred in RSS settings, is not just a historical issue, and that while clear national statistics of abuse of disabled people in care are not readily available, there is no reason to believe our conditions in Aotearoa are different than international conditions.^{xxx}”

6. No/poor evidence of positive Educational Outcomes as a result of RSS placements.

There is a poor evidence base for RSS as an educational approach. A literature review completed for the Ministry of Education in April 2022 notes that the evidence base to show that RSS intervention is necessary is thin.^{xxxi} Even where studies report favourable outcomes for young people, researchers question whether the intervention achieves efficacious outcomes that are sufficiently desirable when balanced with associated risks for children and the costs involved. The review concludes that.

“A persistent refrain in the literature about RSS and RSS-like programs is that there is a thin evidence base to show that this class of intervention is necessary, works, and specifically, which (if any) approaches work... it underscores a need to remain critical of benefits and risks, and associated programs and interventions reported in the literature.”^{xxxii}

Consistent emerging themes include, as noted earlier, the over-representation of Māori, inequitable access, distance from families and home communities, poor evidence base for practice in RSS, with some questioning the need or appropriateness of RSS provision. The schools have been restructured including closures and amalgamations over time. The most significant impact on RSS provision was the advent in 1998 of Behaviour Specialist Support Services supporting children and young people in their local schools. With more focused support in local schools, there has been a steady decline in children admitted to and enrolled in the three present day Residential Specialist Schools.^{xxxiii}

A previous review of literature commissioned by the Ministry of Education in 2012 on the effectiveness of residential school programmes concluded;

“...that after an extensive search for relevant New Zealand research there were no identified controlled evaluations of the effectiveness of residential school programmes. With regard to international evidence (mainly conducted in the US) ...no evidence exists. (Mitchell, 2012)”

7. A lack of community-based respite services for families

An analysis of enrolment data shows that due to the success of community-based supports provided under the Te Kāhu Tōi/Intensive Wraparound Service (TKT/IWS), most families of children with high and complex needs that previously could attend residential specialist schools (RSS), are no longer choosing to send their children away from home. Most RSS enrolment applications now appear to be driven by a lack of community-based respite services for children with lesser support needs who are not eligible for TKT/IWS. Of the 29 applications received between October 2021 and July 2022, 21 (or 72%) referred to the need for respite or families needing a break.^{xxxiv} Government had previously

considered and rejected loosening of the entry criteria to enable students with lower levels of need to enrol in RSS. A 6 December 2017 report noted;

“Any loosening of entry criteria will mean that students with lower levels of need, who currently live at home or in other individual care arrangements and attend their local schools, are moved into a residential education setting away from their home community and at a higher cost to the Crown. Transitions back into their home community can be difficult for these students... The disability sector would likely view any loosening of entry criteria as being at odds with Article 24 of the UN Convention on the Rights of Persons with Disabilities, the New Zealand Disability Strategy, and the New Zealand Autism Spectrum Disorder Guidelines.”^{xxxv}

While the schools promise a positive return to home and community, there is no evidence that these positive outcomes have been achieved. Why then do they continue to exist, and how is the excessive funding that supports them justified when the literature review^{xxxvi} indicates that demand is driven by poor support for families (a case of too little too late).

Questions to be put to the New Zealand Government.

IEAG urges you to put the following questions to the New Zealand Government:

- **Why has eligibility for residential specialist schools been progressively widened since 2019 leading to roll increases at these schools when there is an established inclusive education program which keeps disabled children at home, at school in their communities?**
 - **Why is physical restraint used in settings with low student ratios, by staff who supposedly have specialist knowledge, when the use of physical restraint for behaviour management, rather than for reasons of safety, is contrary to legislation and policy guidelines?**
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Recommendations to the New Zealand Government

IEAG urges you to recommend that the New Zealand Government;

- **Implements the 2022 recommendations of the CRPD Committee on New Zealand’s combined second and third periodic report including;**
 - **to withdraw the proposal to change entry requirements for enrolment in residential specialist schools,**
 - **take measures to cease investment in residential specialist schools and establish a deinstitutionalisation process that ensures adequate community and school supports for disabled children so they can return to their families and local schools and exercise their right to an inclusive education; and,**
 - **to develop specific culturally appropriate strategies to address the high proportion of disabled Maori children in residential specialist schools, including the provision of supports to remain with whanau in their local communities.**

ⁱ In 2008 the total roll number at special school was 2871. This has increased to 44448 in 2023. Retrieved from <https://www.educationcounts.govt.nz/statistics/school-rolls>

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- ii 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.
- iii <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.”
- iv <https://www.beehive.govt.nz/release/government-build-new-schools-and-classrooms-100000-students>
- v CRPD/C/GC/4, 2 September 2016
- vi https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/NZL/CO/2-3&Lang=en&fbclid=IwAR3tk8UewYKYRT7ELHWGOOwqC2zRE-N-NPu-hMAslu7LVNWSpYpmHfwZDGA at 47 (a))
- vii Response to written parliamentary question dated 10 May 2023.
- viii Education Review Office. “*Thriving at School? Education for Disabled Learners in Schools.*” 28 September 2022 <https://ero.govt.nz/our-research/thriving-at-school-education-for-disabled-learners-in-schools-summary>
- ix 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>
- x <https://swa.govt.nz/news/new-news-page-4/>
- xi Labour market statistics (disability): June 2023 quarter Retrieved from <https://www.stats.govt.nz/information-releases/labour-market-statistics-disability-june-2023-quarter/>
- xii RNZ “*Overhaul of the \$1.2billion special education system announced*” <https://www.rnz.co.nz/news/political/478933/overhaul-of-the-1-point-2-billion-special-education-system-announced>
- xiii 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>
- xiv <https://www.education.govt.nz/school/student-support/special-education/specialist-schools-for-students-with-high-needs/>
- xv Jain et al (2021) *International Literature Review on Residential Specialist Schools for Learning and Behaviour* Prepared for the Ministry of Education. Available at https://www.educationcounts.govt.nz/_data/assets/pdf_file/0003/215895/ESS-International-literature-review-on-residential-specialist-schools-110722pm.pdf
- xvi Jain et al (2021) *International Literature Review on Residential Specialist Schools for Learning and Behaviour* Prepared for the Ministry of Education. Available at https://www.educationcounts.govt.nz/_data/assets/pdf_file/0003/215895/ESS-International-literature-review-on-residential-specialist-schools-110722pm.pdf
- xvii Ibid page 12
- xviii Ibid
- xix Beehive “*Waimokoia School to Close*” 14 November 2009 <https://www.beehive.govt.nz/release/waimokoia-school-close>
- xx <https://www.blennz.school.nz/school-centres-and-services/services-and-programmes/>
- xxi <https://www.kotakureo.school.nz/about-us/what-we-do>
- xxii 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>
- xxiii Royal Commission of Inquiry Abuse in Care *Tell me About You* <https://www.abuseincare.org.nz/our-progress/reports/tell-me-about-you/>
- xxiv IHC “*Disabled students 5,000 + times more likely to be restrained in residential specialist schools.*” 13 September 2022 <https://www.ihc.org.nz/news/disabled-students-5-000-times-more-likely-to-be-restrained-in-residential-specialist-schools>
- xxv Information provided by the Ministry of Education on 28 November 2022 and 27 April 2023 in response to Official Information Requests.
- xxvi Ministry of Education: to Education Ministers Education Report: Enrolment at Residential Specialist Schools 14 October 2021 (METIS No. 1273491) Released under the Official Information Act 1982
- xxvii Information released under OIA on 7 November 2022 (OIA 1295228)
- xxviii Ibid page 36
- xxix <https://www.abuseincare.org.nz/assets/Uploads/Abuse-in-Care-Volume-%20One.pdf>
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