**Submission to the Ministry of Foreign Affairs and Trade on New Zealand’s 4th Universal Periodic Review – 5 May 2023**

1. Thank you for the opportunity to share our concerns regarding human rights in New Zealand. We respectfully request that the issue of disabled children and young people’s right to an inclusive education under Article 24 of the United Nations Convention on the Rights of People with Disabilities (CRPD), is included in New Zealand’s draft national report to the United Nations Human Rights Council being prepared for public consultation.
2. Key concerns

* Sustaining a dual education system in breach of Article 24 of the CRPD.
* Denial of Reasonable Accommodation.
* Lack of an enforceable right to inclusive education.
* The Government’s approach to Residential Special Schools is placing New Zealand in breach of its human rights commitments, this includes;
  + maintaining residential institutions which give rise to the risk of abuse, including the improper and disproportionate use of physical restraint[[1]](#footnote-1), and,
  + the high and increasing investment of public resources in residential special schools[[2]](#footnote-2) and the progressive loosening of entry criteria aimed at increasing access to a wider group of disabled students.

Key recommendations.

* implement the recommendations made by the Committee in the initial report of New Zealand in 2014[[3]](#footnote-3) to undertake further work to increase the provision of reasonable accommodation in primary and secondary education and establish the enforceable right to inclusive education,
* as a matter of priority, address the areas of concern identified by the Independent Monitoring Mechanism (IMM), and,
* implement the recommendations made by the CRPD Committee in the second and third report on New Zealand in 2022, including the closure of all residential institutions, including residential special schools.[[4]](#footnote-4)

**About the Inclusive Education Action Group:**

1. 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 level, providing support and information to families, educators, and others and at a systemic level, advocating for social change within school communities and the education system.
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).

**Right to Inclusive Education under Article 24 of the United Nations Convention on the Rights of People with Disabilities**

1. IEAG and others have advocated for decades for the right to inclusive education for disabled children and young people. Barriers to a quality inclusive education have been a long-standing problem for disabled students, their families, and schools. This is despite a number of reviews, policy shifts, and the introduction of a new Learning Support Action Plan and Learning Support Delivery Model.
2. We note that areas of concern identified by the Independent Monitoring Mechanism (IMM) in the 2016 ‘*Article 24 Inclusive Education Implementation Report’*[[5]](#footnote-5) have not been accepted or implemented. Similarly, the IMM 2014-2019 *Making Disability Rights Real* report which noted “education, housing and seclusion and restraint are the most pressing issues for disabled people that the Government must take urgent action on” have not resulted in action by government to fully address those pressing issues.[[6]](#footnote-6) There appears to be a breakdown in how the independent human rights processes are meant to work in New Zealand.
3. A report released last year by the Education Review Office, *Thriving at School? Education for Disabled Learners in Schools,* found that many disabled learners are still experiencing exclusion, being discouraged from enrolling in their local schools, asked to stay home due to resourcing issues, stood down and are having to move schools.[[7]](#footnote-7) The Ministry of Education’s review of supports for students with the highest level of learning support needs, released on 17 November 2022[[8]](#footnote-8), has acknowledged that these students are still experiencing persistent barriers to being able to participate, progress and achieve in their education journey. Findings of an analysis undertaken by the Social Well- Being Agency note that for every seven students who currently receive high needs support there are about three with the same level of need who potentially have an unmet need. The data shows that Māori students are overrepresented in this group. This has lifelong social, emotional, and educational impacts for these students.
4. We note that the combined second and third periodic review of New Zealand on its implementation of the CRPD took place last year. Making inclusive education a reality for all children was an area identified in the Committee’s concluding remarks as needing urgent attention. The Concluding 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 special schools, particularly residential specialist schools (RSS), is a breach of Article 24, as is other forms of residential institutional care[[9]](#footnote-9).

**Key concerns:**

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

1. In 2023 the New Zealand 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. The recent CRPD concluding observations make it clear that maintaining a dual system is inconsistent with Article 24[[10]](#footnote-10). 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.”[[11]](#footnote-11)*

**Denial of Reasonable Accommodation**

1. 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 students experience discrimination, because of the lack of reasonable accommodation provided, in their access to and outcomes from education at local primary and secondary school is the subject of a legal claim lodged by the IHC[[12]](#footnote-12) fourteen 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.

**Lack of an enforceable right to inclusive education**

1. Disabled children in New Zealand do not currently enjoy a substantive right to inclusive education as a key element of the legislative framework. Despite submissions from the Human Rights Commission, Children’s Commissioner, IHC, IEAG and other NGO’s and Disabled Peoples Organisation’s to establish an enforceable right to education, with rights to inclusive education and reasonable accommodation, the new Education and Training Act 2020 remains silent on these important human rights principles and provisions.

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

1. There are serious concerns for the safety and wellbeing of students within segregated residential special school settings, which give rise to the risk of abuse, including the disproportionate use of physical restraint.[[13]](#footnote-13)
2. IEAG is concerned about the level of investment in RSS[[14]](#footnote-14). Progressive changes to the enrolment criteria to increase access to RSS to a wider group of disabled children and young people, and the decision to rebuild Salisbury school, are retrogressive steps that appear to be inconsistent with New Zealand’s obligation under art 4(2) of the CRPD to progressively realise art 24 of that Convention. As the CRPD Committee stated in General Comment No. 4 (GC4), moving as expeditiously and effectively as possible towards the full realisation of Article 24 “*is not compatible with sustaining two education systems of education: mainstream and special/segregated systems*.”[[15]](#footnote-15)

**Segregated residential institutions give rise to the risk of abuse, including the improper and disproportionate use of physical restraint.**

1. As noted in the Supplementary Submission by the Human Rights Commission on New Zealand’s 2nd and 3rd and periodic review under the CRPD “*Residential settings 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 whānau, peers, communities, and cultures*.[[16]](#footnote-16)
2. The CRPD Committee’s recommendations include the immediate elimination of physical restraint and other forms of restrictive practice in places of detention. Disabled children and young people, particularly those with psychosocial and/or intellectual disabilities, who are being housed in segregated education settings, and subject to a special education agreement between the Secretary of Education and their parents, should not be afforded any less protection than disabled adults in places of detention.
3. Ministry of Education data released under the Official Information Act 1982 (OIA) on 27 April 2023 shows that in the 2022 school year there were 84 incidences of physical restraint of children at one of the residential special schools (an increase from 70 in the 2021 school year).
4. Concerningly the majority of children physically restrained were 10 and 11 years-of -age. (Children aged 10 years of age were restrained 26 times and 11-year-olds 30 times.)

**Concerns about the level of investment made in Residential Special Schools**

1. The CRPD Committee has endorsed concerns raised by the Human Rights Commission, IEAG and others within the disability community concerning the continued investment of public resources in RSS and has asked New Zealand as a matter of urgency to;

“*Take measures to cease investment in residential specialist schools for children with disabilities and establish a deinstitutionalisation process that ensures adequate support is provided for children with disabilities to return to their families and exercise their right to an inclusive education[[17]](#footnote-17).*

In 2019, the government also committed $8million to rebuild classrooms and residential accommodation at Salisbury School.[[18]](#footnote-18) See Salisbury School “[Board “Thrilled” about School Rebuild Plans](https://www.salisbury.school.nz/the-latest-updates/2yelp6xwomsgrmviw4x8xo59ll22gi)” (13 November 2019). Information released under OIA in November 2022 reported that the rebuild of Salisbury School is planned to commence in December 2023.

1. We concur with concerns raised by the Human Rights Commission that, “*Continuing to invest in residential institutional options entrenches the long-standing lack of innovation and creativity in supporting and resourcing local inclusive solutions. As a result, whānau experience little real choice and lack the genuine option of supporting their disabled children and young people in their communities and local schools. …The residential specialist schools are potentially masking gaps in respite care. The Commission is concerned that in the absence of appropriate comprehensive support for families, residential accommodation in specialist schools will be seen as the only viable option for them.* ***We consider a CRPD-consistent approach requires that disabled children and their whānau be afforded appropriate supports so that children can live and learn in their local communities***. [[19]](#footnote-19)“(emphasis added)
2. Education for All, a forum of key disability and education stakeholders including IEAG, raised concerns last year about what we believe is a serious equity issue. We noted in an Open letter that 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. Currently children and young people attending Residential Specialist Schools receive between ten and twenty times the highest average level of resourcing as a child or young person attending their local school.[[20]](#footnote-20)

**Recommendations to Government**

1. IEAG respectfully urges Government, that in line with the Committee’s General Comment No 4, it commits to:
2. develop a comprehensive and coordinated legislative and policy framework for inclusive education with a clear and adequate timeframe for progressive implementation and sanctions for violations.
3. recognise the need for reasonable accommodations to support inclusion, based on human rights standards rather than on the efficient use of resources, together with sanctions for failure to provide reasonable accommodation, and,
4. transfer resources from segregated to inclusive environments and develop a funding model that allocates resources, supports and incentives to schools so they can develop as inclusive education communities ensuring that disabled students belong and learn well.
5. implement the recommendations made by the Committee in the initial report of New Zealand in 2014 to undertake further work to increase the provision of reasonable accommodation in primary and secondary education and establish the enforceable right to inclusive education.
6. As a matter of priority, address the areas of concern identified by the Independent Monitoring Mechanism (IMM) in the 2016 ‘Article 24 Inclusive Education Implementation Report’ which we note have not been accepted or implemented. Similarly, the IMM 2014-2019 Making Disability Rights Real report which noted “education, housing and seclusion and restraint are the most pressing issues for disabled people that the Government must take urgent action on” have not resulted in action by government to

address those pressing issues. There appears to be a breakdown in how the independent human rights processes are meant to work in New Zealand.

1. Implement the recommendations made by the CRPD Committee in the second and third report on New Zealand in 2022, including recommendations 8 (a), 39 (b) and 48 (a) to (c).

* 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 Convention
* 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.
* 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,
* Withdraw the proposal to change entry requirements for enrolment in residential specialist schools and redirect funding and resources into an inclusive education system; and
* 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.”

Signiture

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1. See concerns raised in the Supplementary Submission by the Human Rights Commission on New Zealand’s 2nd and 3rd and periodic review under the CRPD 30 June 2022 [↑](#footnote-ref-1)
2. See CRPD Committee recommendation at (39 (b)) that NZ “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.” [↑](#footnote-ref-2)
3. CRPD/C/NZL/CO/1 dated 31 October 2014 at [https://tbinternet.ohchr.org/\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FNZL%2](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FNZL%252) CRPD/NZ/CO/2-3 dated 26 September 2022 at <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FNZL%2FCO%2F2-3&Lang=en> [↑](#footnote-ref-3)
4. <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FNZL%2FCO%2F2-3&Lang=en> [↑](#footnote-ref-4)
5. [*https://www.ombudsman.parliament.nz/sites/default/files/201903/imm\_interim\_implementation\_report\_final.pdf*](https://www.ombudsman.parliament.nz/sites/default/files/201903/imm_interim_implementation_report_final.pdf) [↑](#footnote-ref-5)
6. *https://www.ombudsman.parliament.nz/resources/making-disability-rights-real-2014-2019-0* [↑](#footnote-ref-6)
7. [*https://ero.govt.nz/our-research/thriving-at-school-education-for-disabled-learners-in-schools*](https://ero.govt.nz/our-research/thriving-at-school-education-for-disabled-learners-in-schools) [↑](#footnote-ref-7)
8. [*https://assets.education.govt.nz/public/Documents/our-work/information-releases/Issue-Specific-release/Highest-Needs-Review-Cover-Sheet-CAB-Pack-Annex.pdf*](https://assets.education.govt.nz/public/Documents/our-work/information-releases/Issue-Specific-release/Highest-Needs-Review-Cover-Sheet-CAB-Pack-Annex.pdf) [↑](#footnote-ref-8)
9. Ibid. at {39 (b)} [↑](#footnote-ref-9)
10. Ibid. at {31 (d)} and footnote 41. [↑](#footnote-ref-10)
11. Ibid. at {47 (a)} [↑](#footnote-ref-11)
12. 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>. [↑](#footnote-ref-12)
13. Supplementary Submission by the Human Rights Commission on New Zealand’s 2nd and 3rd and periodic review under the CRPD 30 June 2022 at {31 (d)} [↑](#footnote-ref-13)
14. It was reported in March 2022 that Halswell and Westbridge had a combined roll of 23 students but

    received funding for a ‘notional’ roll of 64, while Salisbury School was reported as having four students but receiving funding for 20. See Sam Sachdeva *Newsroom* “Expanding special schools ‘preys on vulnerable families’” (18 March 2022) at <https://www.newsroom.co.nz/expanding-special-schools-preys-on-vulnerable-families>. IEAG also says that the remaining three Residential Specialist Schools “have been funded for years on a notional roll of 84 students which has far exceeded actual rolls. The actual enrolments have averaged 32 or fewer over the last 6 years.” [↑](#footnote-ref-14)
15. CRPD *General Comment No.4 (2016) on Article 24 The Right to Inclusive Education*  [↑](#footnote-ref-15)
16. As noted by IHC in a report released last year, Ministry of Education data, released through Official Information Act 1982 requests, show that incidents of restraint occurred 35 times between August 2021 and February 2022 in one residential specialist school with a reported role of 8 students. This compares to 523 incidents of restraint across all mainstream schools over the same period, with over 800,000 students enrolled. Physical restraint is 5,732 times more likely to occur in a residential specialist school than in a regular school. See https://www.scoop.co.nz/stories/PO2209/S00083/disabled-students-5000-times-more-likely-to-be-restrained-in-residential-specialist-schools.htm

    The ongoing Royal Commission of Inquiry into Abuse in Care has also highlighted the risks to children of residential care. [↑](#footnote-ref-16)
17. Ibid. at {40 (d)} [↑](#footnote-ref-17)
18. See Salisbury School “[Board “Thrilled” about School Rebuild Plans](https://www.salisbury.school.nz/the-latest-updates/2yelp6xwomsgrmviw4x8xo59ll22gi)” (13 November 2019). [↑](#footnote-ref-18)
19. Ibid. at {31(b) & (c)} [↑](#footnote-ref-19)
20. Education for All “An open letter on the plans to expand enrolments in residential special schools” (28 April 2022) at <https://www.scoop.co.nz/stories/PO2204/S00136/an-open-letter-on-the-plans-to-expand-enrolments-in-residential-specialist-schools.htm> [↑](#footnote-ref-20)