

**First Phase of Engagement: Review of Interventions for Students with the Highest Level of Learning Support Needs**

Thank you for the opportunity to participate in the first phase of this Review.

**Introduction:** We will cover;

1. The overarching human rights framework and principles we suggest should be guiding this work,
2. Question One: Who should be included? We support an approach which values *all* students equally, acknowledges *all* students right to quality inclusive education and seeks to remove the barriers that impede disabled students access to quality inclusive education, and
3. Question Two: What are the non-negotiables that should be within scope of the review? We are sharing our knowledge, experience and concerns at a systems, schooling, student/whanau, teacher and policy level to help shape the scope and terms of reference.
4. Question Three: What else should be considered as the Scope and Terms of Reference are developed?

**Background**: who we are, our mahi/mission

IEAG was established in 2008 as a registered charity by a group of passionate people 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. 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 2020 quarter provides clear evidence that the education system is still failing to deliver equity and excellence outcomes for disabled students. 48.2% of disabled youth aged 15 to 24 years were not in employment, education and training compared with 10.6 percent of non-disabled youth.[[1]](#footnote-1)

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 for all. In our work we aim to change attitudes, policies and practices 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 obligations under International Human Rights Conventions.

1. **Overarching Human Rights Framework and underpinning principles**

Providing an education system that is inclusive and delivers equity and excellence for all is a fundamental human right enshrined in Article 24 of the United Nations Convention on the Rights of Persons with Disabilities[[2]](#footnote-2) (UNCRPD) and the Education and Training Act 2020. An inclusive education system requires an approach which recognises how society disables people and an obligation to remove barriers that serve to exclude and marginalise disabled people.

Under Article 24 of the UNCRPD, New Zealand is committed to ensuring an inclusive education system at all levels and lifelong learning.

An inclusive education system that meets this requirement must demonstrate:

a. equality of access to an inclusive, quality education

b. reasonable accommodation of the requirements of disabled students

c. the delivery of support within the general education system

d. support measures that are effective, individualised, provided in an environment that maximises academic and social development, and consistent with the goal of full inclusion.

The Committee on the Rights of Persons with Disabilities has described the following four principles (the four ‘A’s’) as central to an inclusive education framework:

a. Availability – This requires that “functioning educational institutions and programmes must be available in sufficient quantity”. This includes teaching staff and resources. In order to ensure that the quantity of services is sufficient to meet needs, accurate data gathering and monitoring is required.

b. Accessibility – This requires that the entire inclusive education system is accessible, including buildings and physical infrastructure; information and communication systems; transport systems and services; and support services and reasonable accommodation in all educational environments, including sport and recreational programmes and facilities. It also requires economic accessibility in the form of free primary education and (ideally) free secondary education.

c. Acceptability – This entails “an obligation to design and implement all education-related facilities, goods and services in a way that takes full account of and is respectful of the needs, expectations, cultures, views and languages of persons with disabilities”.

d. Adaptability – This requires an education environment that can be adapted to the diverse needs of students. To this end, the CRPD Committee encourages the application of the Universal Design for Learning (UDL) principles, which provide teachers with “a structure to create adaptable learning environments and develop instruction to meet the diverse needs of all learners”. The CRPD Committee also encourages a move away from standardised assessment and testing, towards recognition of individual progress towards broad goals, alternative routes for learning, flexible instruction, and multiple forms of student assessment.

Inclusive education is not just about systems, supports and services; it is also about teachers and school leaders. Teachers and school leaders with positive attitudes towards inclusion are more likely to adapt the way they work for the benefit of all students and are more likely to influence their colleagues in positive ways to support inclusion.

General Comment No. 4 on Article 24 (General Comment) was adopted in 2016 by the Committee of the CRPD. The purpose is to provide Governments with guidance on the scope of their obligations. Amongst other things General Comment paragraph 10 provides that;

*The right to inclusive education encompasses a transformation in culture, policy and practice in all formal and informal educational environments to accommodate the differing requirements and identities of individual students, together with a commitment to remove the barriers that impede that possibility….****It requires an in-depth transformation of education systems in legislation, policy, and the mechanisms for financing, administration, design, delivery and monitoring of education [emphasis added][[3]](#footnote-3)***

The need to distinguish between “exclusion”, “segregation”, “integration” and inclusion” is critical. Paragraph 11 provides important definitions;

*“Exclusion occurs when students are directly or indirectly prevented from or denied access to education in any form.”*

*“Segregation occurs when the education of students with disabilities is provided in separate environments designed or used to respond to a particular impairment or to various impairments, in isolation from students without disabilities.”*

*“Integration is the process of placing persons with disabilities in existing mainstream educational institutions with the understanding that they can adjust to the standardized requirements of such institutions.”*

*“Inclusion involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and the environment that best corresponds to their requirements and preferences.”*

Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation, curriculum and teaching and learning strategies, does not constitute inclusion. Furthermore, integration does not automatically guarantee the transition from segregation to inclusion.

The General Comment provides a blue print for implementing inclusive education, outlines the meaning of inclusive education and sets out the requirements that the Committee will apply in reviewing compliance by individual countries. We note that the list of issues that New Zealand will be examined on in its forthcoming second and third periodic review includes *“Establish an enforceable right to inclusive education” and “Ensure that the principles of inclusive education are built into all levels of the education system, from the legislation to the training of teachers, to on-the-job support and guidance, to work planning and budgeting for the school year by school boards, and to operationalise them.”[[4]](#footnote-4)*

We see the General Comment as an important tool to guide the Ministry’s work program of reforms of which this review is a key part. The General Comment offers a new way of understanding what is required and what needs to change so that all tamatili and rangatahi with learning support needs are able to access an inclusive education system.

1. **Question One. Who are the tamariki and rangatahi we are looking to better support or support differently?**

We support an approach which values *all* students equally, believes that *all* students have a right to quality inclusive education and seeks to remove the barriers that impede disabled students access to a quality inclusive education. Rather than attempting to better identify and fund individual students we suggest that the focus should be on ways of creating the conditions that will support and facilitate the learning of *all* students. To achieve this attitudinal and pedagogical change is required as well as better resourcing and supports for disabled students, their teachers and schools.

Where to draw the boundary between students with moderate, high and very high needs has been identified as a key policy dilemma by the Ministry of Education in its advice to Cabinet since at least the year 2000. We are concerned that asking for help to identify *“who are the tamariki and rangatahi we are looking to better support or support differently through this review*” means that some children will inevitably be left out. Just because a student “fails” too meet criteria developed over two decades ago does not mean they do not have high support needs. In 2001 an independent group of experts reviewed the Ongoing Resourcing Scheme (ORS) criteria and concluded that students who just missed out do require a high level of learning support.[[5]](#footnote-5) Shortcomings identified by the Ministry following the 2001 ORS review included; the need for a continuum of resourcing (rather than steps) to better match support to student’s needs, reducing fragmentation by encouraging a co-ordinated and co-operative approach, and the need to implement this in a way that supports and builds the capability of schools and teachers, including enabling classroom teachers to provide more individualised support.[[6]](#footnote-6) These issues remain unresolved in 2021.

1. **Question Two: What are the non-negotiable things that should be considered within the scope of the review?**

We note that the purpose of this review is to ensure that the right supports for tamariki and rangatahi are provided when they need it and for as long as they need it to achieve their full potential through positive education outcomes. We fully support the review and are sharing our collective knowledge, experience and concerns with you at a systems, schooling, student/whanau, teacher and policy level in order to help inform the Scope and Terms of Reference of the review.

* 1. **Education System Level**

Ensuring that *all* tamariki and rangatahi are able to achieve their full potential through positive education outcomes relies on an education system that is inclusive and so works for *all*. However, a number of major reviews have concluded that we do not currently have an education system that is able to support *all* of New Zealand’s tamariki and rangatahi to thrive. Groups that are not well served included Maori, Pacific, disabled students and those with learning support needs.

In 2018 the Tomorrow’s Schools Independent Taskforce which reviewed the Tomorrows Schools policy reported that;

“Our education system, as it currently stands, is not working as a system… *Supporting learners/akonga with additional learning needs and making sure they are included in education settings continues to be one of the most important and longstanding, issues facing our education system…We believe a system-approach which priorities the rights of the child will ensure that the aspirations of learners/akinga with additional learning needs, and their whanau, are better supported.”[[7]](#footnote-7)*

This echoes the findings of the 2016 review of the education system by the State Services Commission[[8]](#footnote-8) that found there was too much variation in learner achievement with long standing problems for particular groups of learners like Maori and Pasifika, and those with learning difficulties. This review found that this variation was caused by:

“*…too many systemic weaknesses in the way funding, information and people resources are developed and deployed to be confident that the good results are the consequence of good system performance, rather than individuals and organisations doing well despite the system.*” [[9]](#footnote-9)

The review also identified a significant group of learners whose educational needs fall outside the scope of regular learning support services and beyond what a well-supported teacher can do in the classroom.

As these reviews have identified, our current education system contains a number of deficiencies that create barriers to disabled students enjoying their right to an inclusive, good quality education and provides policy disincentives for schools. These systemic barriers include;

* our dual education system which perpetuates inequitable distribution of resources across school settings which distorts true choice,
* problems with initial and ongoing education for teachers,
* a policy and resourcing framework not based on prevalence data, or actual costs and which does not respond to individualised needs required for equitable access,
* poor monitoring of achievement and little visibility of disabled students within system wide indicators, and
* no independent review of decisions made about disabled students by the Ministry.
  1. **Schooling level**

It is clear from the definitions in the General Comment that education provided in segregated settings, whether in separate special schools or a satellite class of a specialist school, based in a mainstream school, is not inclusive education within the meaning of article 24. New Zealand has a specific and continuing obligation to progressively implement article 24 as expeditiously and effectively as possible. As stated in the General Comment “*This is not compatible with sustaining two systems of education: a mainstream education system and a special/segregated education system.”* [[10]](#footnote-10)

New Zealand continues to maintain a dual system. Currently over a third of students supported through ORS are now enrolled at specialist schools. This varies widely across the country. In some areas within the Auckland region, for example, over 80% of students funded through ORS are enrolled at a specialist school. We note from the Education Growth Plan for the Auckland Region that in half of the 20 areas covered by the plan over 50% of ORS funded students are enrolled at a specialist school and 60% of these have more than 70% of ORS funded students enrolled.

Special school rolls have been steadily increasing as a percentage of total school rolls from a low of 1,971 (0.27% of total students) in 1998 to a high of 3,786 (0.47% total students) in 2020.[[11]](#footnote-11) A disabled student is now nearly twice as likely to be enrolled in a special school in 2020 than in 1998 (as the proportion moved from 0.27% to 0.47%).Between 2018 and 2019 students receiving ORS in specialist schools increased by 5.1%, or 181 students to 3,525 students, compared to students receiving ORS in non-special schools which increased by 2.6%, or 160 students to 6,193 students. Of concern is the significant increase in the enrolment of new entrants receiving ORS. Between 2018 and 2019 new entrant students receiving ORS in special schools increased by a huge 10.4%, or 50 students to 480 students. New entrant students receiving ORS in non-special schools increased by 0.5% or just 4 students to 798 students.[[12]](#footnote-12)

As reported by the Tomorrow’s Schools Taskforce many students and families feel unwelcome to enrol at their local school and some schools prevent students enrolling despite their legal right to do so. Currently specialist schools and units are sometimes the only place where young disabled people can have their needs met. This is because this is where the resources tend to be concentrated. There are 37 specialist schools in New Zealand,11 in the Auckland region. This can create an incentive for resources to continue to be allocated to segregated learning settings instead of building capacity in inclusive education within the mainstream. Being made to feel unwelcome or lacking confidence that regular mainstream settings have the capabilities and resources to keep their child safe and meet their child’s learning and well-being needs can lead parents to enrol their child in specialist schools or units by default.

The announcement that 24 additional special education satellite units are planned across the Auckland and Tai Tokerau regions over the next decade[[13]](#footnote-13) is most concerning and clearly contrary to New Zealand’s obligations under the UNCRPD and the Ministry of Education’s own policy commitments to inclusion. Full participation and achievement for all learners within inclusive settings cannot be achieved through enrolment in specialist school settings as made clear in the General Comment’s guidance to State parties.This increase is seemingly justified on the basis that “*our future planning is responsive to the options that families/whanau are seeking for their children.” [[14]](#footnote-14)*

As noted previously, the General Comment provides guidance for testing education practices against the key characteristics of an inclusive education system. Too often, inferior delivery of education to disabled students is wrongly labelled “inclusion” and sold to their families/whanau and teachers as inclusive education. Ironically, when this results in perceived “failures” in educating disabled students in regular schools and classrooms, inclusive education is blamed when it is the very lack of inclusion that often results in such failures. We would suggest that as part of this review it will be important to identify precisely why families and whanau are choosing segregated education settings in ever increasing numbers.

* 1. **Student/whanau level**

The experiences of tamariki and rangatahi their families and whanau need to inform what is within scope: Families have shared that;

“The current system is *not working for every child and for those with the highest level of learning support needs ORS is insufficient. This is pushing more and more students into specialist schools and segregated environments because this is often the only option for a full-time education. As opposed to other options where the support provided covers only part of the school day. This is not the direction we want to be going in. If the end goal is a fully inclusive education system then we should not be making it easy for families to choose a specialist school setting just so their child can attend school fulltime and access specialist services on a regular basis.”*

*“Another key message is that ORS creates a toxic culture where parents are fighting amongst themselves. Because some parents have been lucky enough to obtain funding for their child and others have not this can lead to questions as to why my child was unsuccessful. Having to apply for any support and having to use such deficit language and present your child in a negative way on applications is disrespectful to the child and distressing for the family. This also raises questions about how much this influences educators and shapes their expectations of the children’s learning capabilities and how this impacts on their attitudes towards inclusion.”*

*“ORS funding does not fix the issue to inclusion and discrimination. It does not provide knowledgable, understanding and accepting staff. It does not provide a suitable learning environment for their complex health impairments. It does not provide adapted curriculum learning programmes. It does not provide essential regular therapy and...it does not provide our tamariki and whanau a voice, choice, transparency or accountability.*

*We have multiple ORS funded whanau and non-ORS funded whanau and who are forced to home-school or attend Te Kura because the mainstream school environment is emotionally, mentally, spiritually and physically unsafe. The Human Rights Act and Tiriti O Waitangi gives our tamariki the right to be valued, accepted and respected for who they are in the education system. It also states that their mana, wairua and haurua (wellbeing) must be protected. Our tamariki have the right to have their complex health needs (diagnosed or undiagnosed) met in a school setting. None of this is happening.*

*There needs to be an acknowledgement from MoE that the current school environment is emotionally, mentally, spiritually and physically unsafe for our tamariki with complex health conditions, neurodiversities, anxiety, communication impairments and sensory impairments.This means all children are unsafe.*

*The education system focus is on 'managing behaviour'. This is not a hauora (wellbeing) approach. Behaviour models are detrimental to the mana and wairua of our tamariki.We need a hauora (wellbeing) and strength based models - not behaviour. Learning programmes that are practical and purposeful eg. Building, cooking, gardening etcLearning programmes that are healing and regulating eg. Kapa haka, dancing, waiata, swinging, swimming etc. Programs that enhance mana and good for the wairua eg. Languages. The programmes to the student's strength eg. IT. Matauranga Maori (traditional Maori way of learning) and apprenticeship model needs to be implemented.*

*Academic (reading, writing, and maths) learning can be exhausting and taxing on the brain for students with neurodiversities. It can easily bring on meltdowns. The learning environment needs to be extended to outside the classroom. Forcing a student with complex health needs into a small classroom with noise, high expectations and demands is unsafe. A simple support plan, visuals, schedules, social stories, appropriate communication methods and adapted learning programmes should be mandatory for students with additional learning needs. The support plan will list the triggers in the environment, how the triggers affect the child, the modification, strategies and resources required.*

*Mana is the ability to be proud of who you are and where you come from. Manaakitanga is about upholding the mana of others - not your own. Manaakitanga is acknowledging that we not only come from whakapapa and whanau but we are also connected to each other. Manaakitanga means we have a birth responsibility to uphold the mana of each other. The whole school community need to demonstrate true Manaakitanga.”*

*“The education system needs to be redesigned for the most vulnerable and disadvantaged students. Focus on wellbeing (hauora) and strength based approaches and get rid of behaviour models. It's about looking from the inside out not the outside in.*

*Inclusion is not about the support packages (ORS) your child comes with. The support should already be implemented in all schools for all children. Redesign the environment.”*

* 1. **Educator level**

One of the key barriers impeding disabled students access to education identified in the General Comment is insufficient training education of all teaching staff resulting in a lack of technical knowledge and capacity to understand and implement the right to inclusive education.[[15]](#footnote-15) The quality of teaching is the major ‘in school’ influence on student successand this is especially so for disabled students. How we train and support out teachers in terms of both their initial and ongoing education is therefore vitally important and in our view needs to be within scope for this review.

Teacher education for inclusion in New Zealand supports new and experienced teachers to recognise and resist deficit theorising and normative ideas about children and young people that we know lead to students’ exclusion in education. They are encouraged instead to take a “rights not needs” approach that views students as rights holders, capable learners with cultures, strengths and interests that are assets to be valued and built upon. Teachers understand diﬃculties in children’s learning not as problems within the child that require fixing, but rather as opportunities for their own professional learning in collaboration with children, whanau and other professionals. This kind of thinking helps teachers to appreciate that barriers to students’ learning are located within the curriculum and other environmental factors at school that are within their own and other teachers’ power to change. To support teachers in their work, systems designed to support student learning need to be respectful of and responsive to these ideas. The ORS system works against this understanding of students as capable learners, it encourages schools to describe children in terms of their deficits, a position that both parents and teachers describe as dehumanising and stressful. The ORS funding system is now inconsistent with the Ministry’s own policies (e.g. the Learning Support Action Plan, and He Pikorua) which are more clearly based on student capability and inclusion.

A student’s rights to access a quality education in their local school can be further compromised when funding applications are unsuccessful, as the student is then at risk of being seen as “the problem”. In addition the time consuming application process leads us to question whether this is the best use of teachers’ and principals’ time. We would suggest that is not, and that the time would more profitably be spent supporting collaborative approaches within the school and approaches to professional learning and develop that enhance teacher capability and knowledge as well as children’s learning.

An alternative model for learning support would move away from unhelpful labels such as ‘high and very high needs’, to one that builds support for learning for all students in the school and at the local level where that support is needed. He Pikorua already provides the framework for collaboration amongst the student, their whanau, teachers, and other professionals (such as therapists and specialist teachers) aimed at supporting student belonging and learning. Models of inter-professional practice are also available and provide a sound foundation from which to explore effective ways for professionals to share knowledge and work together effectively. Trust needs to be placed in these teams (who know their school community) to work out what is needed to support individual children well, and the identified supports need to be readily available – either within the school or at the local regional level.

It is well known that students enrolled in their local school have poor access to therapies compared with their counterparts in segregated special schools. This is an inequitable and unfair anomaly in a system that purports to be inclusive. When parents feel the need to move their child to a segregated setting in order to receive the supports they should receive in their local school, children’s rights to an inclusive education under Article 24 of the UNCRPD are clearly breached. We suggest that it is time to stop the government’s ongoing commitment to the segregation and exclusion of disabled students (evident in the building of new special schools and units), and to redirect funds to local schools that are trying to provide an inclusive education (consistent with the Ministry’s own policies). This means ensuring that therapists and other professional supports are on the ground where they are needed, in local schools.

* 1. **Policy level**

IEAG is encouraged to see that a key objective of this work is to review the learning support framework to ensure it is delivering the best outcomes for ākonga and meeting our obligation to ensure groups such as disabled ākonga do not experience discrimination through being explicit about taking a rights-based, non-discrimination approach.

As noted in the General Comment barriers *that impedes access to inclusive education for disabled students include; “lack of disaggregated data and research (both necessary for accountability and programme development) which impedes the development of effective policies and interventions to promote inclusive and quality education,”* and *“Inappropriate and inadequate funding mechanisms to provide incentives and reasonable accommodations for the inclusion of disabled students, inter-ministerial coordination and, support and sustainability.”* [[16]](#footnote-16)

The current policy and resourcing framework (of which the Ongoing Resourcing Scheme is a key component) was developed and implemented over two decades ago. Known originally as Special Education 2000 (SE2000)) the policy aimed to achieve, over the following decade, a world class inclusive education system that would provide learning opportunities of equal quality to all students.[[17]](#footnote-17) However the policy was not based on prevalence or appropriately disaggregated data. There was insufficient research undertaken to determine the level, duration and cost of supports that students would require to access the curriculum.

* + 1. **Lack of prevalence and disaggregated data**

We note that when SE2000 was announced in 1996 the Ministry of Education estimated that 2% of the school population (approximately 1,400 students) would have the highest level of need and 4 to 6 % moderate level needs[[18]](#footnote-18). Criteria were developed to identify students with high and very high needs and a trail run undertaken in 1997. As a result of this trial 13,507 applications were received and 5,705, (0.84% of the 1997 student population) were assessed as meeting the criteria to be eligible for ongoing funding. Notably, of the 17,448 students who were receiving special education assistance at the time 40% (7,311) did not apply and were therefore not part of the trial. Transitional funding arrangements were made to ensure these students continued to be supported. Phase two[[19]](#footnote-19) of SE2000 introduced in 1998 included; an Ongoing Resourcing Scheme (ORS) for students with ongoing high and very high special education needs, a separate initiative for students with severe behaviour difficulties (SBI) , and a further separate initiative for students with significant speech-language difficulties (SLI).

Based on results from the trail the percentage of students eligible for ORS was set at up to 1% of the estimated 1998 total student population. ORS “…*was to manage the fiscal risk by capping the percentage of eligible students to 1% of the student population, and establishing an effective gatekeeping mechanism to ensure a high degree of national consistency”.* [[20]](#footnote-20) A further 2% of students with high special education needs (assumed to have a short rather than an ongoing need for support) were to be funded through the other two initiatives (SBI and SLI).

We are aware from information obtained under the Official Information Act that issues with the three high needs initiatives were identified early on. Changes to the ORS criteria were made in 1998 when it was realised that children on the autism spectrum had been left out of the trial. That this change was anticipated at the time to result in up to an additional 200 students being eligible for ORS, we would suggest, was a gross underestimate.

Best Practice Reviews of speech language therapy undertaken by the University of Canterbury in 1998, 2001 and 2006 for the Ministry of Education consistently reported that significant numbers of children are not accessing the specialist supports they need. Comments from a 1999 paper ‘Review of Best Practice Services in Speech Language Therapy- Key implications of the Review’ include: *“of utmost importance is the finding that current services are providing for less than 10% of the estimated number of children who require speech language therapy. Even if only children with the most profound disorders are to be provided for, estimated at 1% of the population or 7000 children, the current service system is grossly inadequate.”*

In 2000 Dr Cathy Wylie who undertook a review of SE2000 reported that; “*There is no doubt in the sector that a sizeable number or children with special needs are missing out on the support they need to participate…There are undoubtedly students who have continuing needs throughout their education who do not fit the OTRS (now ORS) categories.”[[21]](#footnote-21)*

An independent expert advisory group who reviewed the ORS Criteria and Benchmarks in 2001 on behalf of the Ministry of Education concluded that the “*ORRS criteria are set at a level that consistently identifies 1% of students with highest level…needs. However, we conclude that the criteria are set too high…In essence more than 1% of the school population have high or very high ongoing needs.”[[22]](#footnote-22)* The ORS criteria and benchmarks have not been subject to review since 2001.

We are aware that following the 2010 Review of Special Education an independent review of the ORS criteria and benchmarks was planned. However, this review was never undertaken because according to information released under the Official Information Act; “*The outcomes of the Review of Special Education required prioritisation of recommendations, based on what would make the greatest difference for children and young people. That ongoing prioritisation during July and October 2010 resulted in a decision not to undertake an independent review of the ORS criteria/benchmarks.” [[23]](#footnote-23)*

Following the 2001 review of ORS a Ministry report to Cabinet in 2003 acknowledged that;

*“ a fundamental redesign of special education resourcing policy was needed but that such a substantial policy change coming so soon after implementation would be confusing for schools and parents. “[[24]](#footnote-24)*

The report noted that ORS is determined by criteria that have consistently identified about 1% of the school population. “*Driving the demand for ORRS is the inadequacy of support provided, to students not eligible for ORS. The other initiatives are resourced on the assumption that the relevant students do not have ongoing which has not proven to be the case.” The report acknowledged that* in reality students do not fit neatly into the categories covered by the various initiatives.

Shortcomings identified by the Ministry included; the need for a continuum of resourcing (rather than steps) to better match support to student’s needs, reducing fragmentation by encouraging a co-ordinated and co-operative approach, and the need to implement this in a way that supports and builds the capability of schools and teachers, including enabling classroom teachers to provide more individualised support.[[25]](#footnote-25) These issues remain unresolved. Despite increasing numbers of the student population being identified with highly complex needs there has been no review of the ORS criteria or adjustments to the policy settings. In 2021 the same issues requiring a fundamental redesign of our resourcing policy in 2003 have yet to be addressed.

* + 1. **Insufficient research and costings of the supports required by students**

One of the issues ORS was intended to address was the concern that resources were inequitably distributed across school settings (i.e. between “special” and “regular”) and this distorted the choice of provision.[[26]](#footnote-26) ORS was intended to provide an equitable system of resourcing across different school settings and to ensure that students received similar levels of resourcing in different parts of the country. However, as Treasury noted in 1997;

*“An important unanswered question on the ORS relates to determining the appropriate level of funding (including teaching resources) required to assist children with ongoing high and very high needs. This includes whether assistance in special schools and attached units is being delivered efficiently and whether delivering a similar level of assistance in a regular school would be more or less expensive. This will be the focus of the data gathering and analysis exercise over the next twelve months. ”[[27]](#footnote-27)*

As Wylie’s 2000 review identified; “*Equitable resourcing for those verified in terms of dollars, does not translate into equitable amounts of actual support. Different settings and locations do have different costs. Inclusion in ordinary schools can often cost more than provision where a number of students with special education needs are in a single setting allowing economies of scale…” [[28]](#footnote-28)* She noted that”*The support each student gets is not a fixed sum, as some parents believe, but is related to the nature of students needs within the funder’s pool and their costs…the ORS fund holder model of allocating support based on the nature of students within the fund holders pool and their costs works best for special schools. The model does not work well for the 57% of ORS students in regular classrooms supported by the special education service which served a much larger number of schools over a wider area and cannot benefit from the same economies of scale and appear to have higher costs.”[[29]](#footnote-29)*

The inequitable distribution of resources across school settings remains a key barrier for disabled student’s access to quality inclusive education and provides policy disincentives to schools. We see this review as providing an important opportunity to address these longstanding issues.

1. **Question three: What else should be considered as the Scope and Terms of Reference are developed?**

“*Resourcing frameworks can support or work against policy objectives.”*

This was a key point made by the New Zealand Institute of Economic Research in their 2009 review of the Special Education Resourcing Framework[[30]](#footnote-30). Different funding models were found to have different incentives, for example funding based on needs promotes identification of need and possible over-identification of need. Funding based on outputs to promote results can lead to strategic behaviour to embellish results and thus funding. In other words, funding approaches can help or hinder policy objectives. The report found that depending on the incentives of various models, providers (schools) might actively or passively discourage students with special education needs that would cost the school more than it was resourced for, even if a per capital payment is calculated on the understanding that there will be unders and overs, or over provide and “gold-plate”, or under provide and cut corners or manipulate classifications.

The review identified known risks associated with various funding systems, risks they noted that need to be carefully managed from a schools and systems perspective. There is ample evidence to suggest that these risks are not well-managed within the New Zealand education system. For example, students with high support needs are discouraged from enrolment, and/or under-provided for by being sent home early. The report notes that key aspects of the SE2000 policy framework appear to work against important policy objectives including; *improved opportunities and outcomes for students with special education needs, the right to attend local schools and horizontal equity in resourcing.”*

The current resourcing policy continues to work against the Government’s objectives for our education system. The Government’s stated aim of SE2000 was “*to achieve, over the next decade, a world class inclusive education system that provided learning opportunities of equal quality to all students.*”[[31]](#footnote-31) World class inclusive public education remains a key government priority set out in object 5 of the Statement of National Education and Learning Priorities (NELP).[[32]](#footnote-32) The NELP’s direct government and education sector activities towards the actions that will make the biggest difference, and ensuring that the education system is strengthened to deliver successful outcomes for all learners/ākonga.

1. **Conclusion**

Ensuring that the education system is delivering the best outcomes for all learners/ākonga, and meeting our obligations to ensure groups such as disabled ākonga do not experience discrimination, we suggest, requires a whole systems approach. One that addresses the systemic and structural problems that create barriers impeding access to a quality inclusive education for all students. These are well-known and have been consistently identified and reported on for decades. To be effective this review needs to ensure the principles of inclusive education are built into all levels of the education system, from the legislation to the training of teachers, to their on-the-job support and guidance, to work planning and budgeting for the school year by school boards, and to operationalising them.

The inequitable distribution of resources across school settings remains a key barrier for disabled student’s access to quality inclusive education. Neither SE2000 or ORS addressed the concern that resources were inequitably distributed across school settings between “special” and “regular” settings and that this was distorting choice of provision. The same problems identified over two decades ago in Wylie’s Picking up the Pieces Review of SE2000 continue to create barriers to “world class inclusive public education” for disabled students, their families/whanau, their schools and teachers. We see this review as providing an important opportunity to address these longstanding issues. One we would suggest that needs to respond to the calls for transformation from disabled students and their families/whanau who are asking that;

*“The toxic culture created by ORS must be addressed.”*

*“The education system needs to be redesigned for our most vulnerable and disadvantaged students.”*

*Focus on wellbeing (hauora) and strength based approaches and get rid of behaviour models. It's about looking from the inside out not the outside in.*

*“Inclusion is not about the support packages (ORS) your child comes with. The support should already be implemented in all schools for all children. Redesign the environment.”*

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Covenor

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2. United Nations Convention on the Rights of Persons with Disabilities Retrieved from <https://www.ohchr.org/Documents/Publications/AdvocacyTool_en.pdf> (CRPD) [↑](#footnote-ref-2)
3. Committee on the Rights of Persons with Disabilities, General Comment No 4, Article 24: Right to inclusive education, (CRPD/C/GC/4, 2 September 2016) [↑](#footnote-ref-3)
4. United Nations (2018). List of Issues Prior to Submission of the Combined Second and Third Periodic Reports of New Zealand. Geneva: UN. UN/CRPD/C/NZL/QPR/2-3. [↑](#footnote-ref-4)
5. Morton et al (2001) Review of Ongoing and Reviewable Resourcing Schemes: The criteria their Application and the Verification Process [↑](#footnote-ref-5)
6. CAB Min (03) 17/5, SDC (03) 57 released under OIA [↑](#footnote-ref-6)
7. Tomorrow’s Schools Independent Taskforce. (2018).Our schooling futures: Stronger together.

   Wellington, NZ: Ministry of Education) [↑](#footnote-ref-7)
8. State Services Commission, A Blueprint for Education System Stewardship-September 2016 page 4 [↑](#footnote-ref-8)
9. ibid [↑](#footnote-ref-9)
10. (CRPD/C/GC/4, 2 September 2016) see para 11 [↑](#footnote-ref-10)
11. See https://www.educationcounts.govt.nz/statistics/school-rolls [↑](#footnote-ref-11)
12. Information provided by CCS Disability Action based on 2019 ORS figures [↑](#footnote-ref-12)
13. <https://www.beehive.govt.nz/release/government-build-new-schools-and-classrooms-100000-students> [↑](#footnote-ref-13)
14. [https://assets.education.govt.nz/public/Documents/Ministry/Budgets/Budget2019/NEGP/AucklandTaiToker auplans.pdf](https://assets.education.govt.nz/public/Documents/Ministry/Budgets/Budget2019/NEGP/AucklandTaiToker%20auplans.pdf) [↑](#footnote-ref-14)
15. (CRPD/C/GC/4, 2 September 2016) [↑](#footnote-ref-15)
16. (CRPD/C/GC/4, 2 September 2016) [↑](#footnote-ref-16)
17. CAB (97) M41/20 released under OIA [↑](#footnote-ref-17)
18. Special Education Booklet, (1996) Ministry of Education [↑](#footnote-ref-18)
19. Phase one implemented at the start of 1997 provided additional resourcing to supplement services for students with moderate special educational needs through the special education grant. . [↑](#footnote-ref-19)
20. CAB (97) M41/20 released under OIA [↑](#footnote-ref-20)
21. Wylie (2000) “Picking Up the Pieces Review of SE2000” [↑](#footnote-ref-21)
22. Morton et al (2001) Review of Ongoing and Reviewable Resourcing Schemes: The criteria their Application and the Verification Process [↑](#footnote-ref-22)
23. Information released under the Official Information Act 1982 by Hon Rodney Hide on13 September 2011 [↑](#footnote-ref-23)
24. CAB Min (03) 17/5, SDC (03) 57 released under OIA [↑](#footnote-ref-24)
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26. Report distributed to the Minister’s Advisory Panel on the Review of Special Education in 2010. [↑](#footnote-ref-26)
27. CAB (97) M41/20 released under OIA [↑](#footnote-ref-27)
28. Wylie “Picking up the Pieces Review of SE2000” page 32 [↑](#footnote-ref-28)
29. Ibid page7 [↑](#footnote-ref-29)
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32. The Statement of National Education and Learning Priorities (NELP) & Tertiary Education Strategy (TES) <https://www.education.govt.nz/assets/Documents/NELP-TES-documents/FULL-NELP-2020.pdf> [↑](#footnote-ref-32)