**IHC and Inclusive Education Action Group**

**Joint Submission**

**Combined Second and Third Periodic Report of New Zealand – United Nations Convention on the Rights of Persons with Disabilities**

**22 July 2022**



**Introduction**

1. IHC New Zealand (IHC) and the Inclusive Education Action Group (IEAG) thank the Committee on the Rights of Persons with Disabilities (Committee) for the opportunity to make a joint submission on the Combined Second and Third Periodic Report - United Nations Convention on the Rights of Persons with Disabilities (New Zealand Report).
2. IHC is the largest disability advocacy and service provider organisation in New Zealand and a leader in the disability sector. IHC advocates for the rights, inclusion and welfare of over 50,000 people in New Zealand with an intellectual disability. The organisation was established 70 years ago by parents of children with intellectual disabilities. It has over 2500 family and individual members and provides support and advocacy for people with an intellectual disability and their families. IHC’s vision for people with an intellectual disability is to live satisfying lives in the community. IHC has a long history of advocacy for education. It was an integral part of the lobby to create a legal right to education for disabled children which was implemented as section 8 of the Education Act 1989 ( now s.34 Education and Training Act 2020).
3. IEAG is a registered charity established in 2008 by a group of disabled people, family members of disabled people, educators and researchers committed to children’s rights. The Governing Committee comprises a majority of disabled people or family members of disabled people. We believe that an inclusive education system is the foundation for building an inclusive Aotearoa New Zealand for all. Inclusive schools play a vital role in promoting social cohesion and the development of inclusive communities. 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.
4. We note that the New Zealand Report has been prepared in response to 32 key issues identified by the Committee in its List of Issues prior to submission of the combined second and third periodic reports of New Zealand.[[1]](#footnote-1) However, this

supplementary submission responds to the Concluding Observations on the initial report of New Zealand[[2]](#footnote-2) and the recommendations made that further work be undertaken to increase the provision of reasonable accommodation in primary and secondary education and for the establishment of an enforceable right to education. In addition, this submission articulates the ongoing challenges in relation to New Zealand’s obligations to progressively realise Article 24 as outlined in obligations of state parties in General Comment No 4.[[3]](#footnote-3) (Paragraph 40). Also included in this submission are recommendations which the Committee may wish to consider adopting following its second and third periodic review of New Zealand - United Nations Convention on the Rights of Persons with Disabilities (CRPD).

**Key points**

**Sustaining a dual education system**

1. The New Zealand Government in 2022 continues to sustain a dual education system that segregates some disabled children in special schools, including based on parental choice**.**

1. A recent review of New Zealand’s self-managing school delivery model ‘Our schooling futures: stronger together’[[4]](#footnote-4) reported that parental choice to enrol their disabled child in a segregated setting was influenced by experiences of not feeling welcome at school and conditions placed on their child’s enrolment at the local school, and their perception that local schools lacked the resources and expertise to meet their child’s needs.
2. A 2022 survey of families and education professionals carried out by IHC identified 95-99% of the 600 respondents said that that funding for disabled students does not deliver what they need to access education at their local school.[[5]](#footnote-5) Despite the Ministry of Education’s stated intent for inclusive education, there is no coherent plan in place to address the problems currently being experienced by disabled students in accessing education or to ensure an enforceable right to education.
3. 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. [[6]](#footnote-6) Currently, over a third of students with the highest ongoing level of disability and learning support needs are now enrolled at specialist schools.[[7]](#footnote-7) In some areas, such as within the Auckland region, over 80% are enrolled at a specialist school. [[8]](#footnote-8) The announcement that 24 additional special education satellite units are planned across the Auckland and Tai Tokerau regions over the next decade[[9]](#footnote-9) is most concerning and we believe, is contrary to New Zealand’s obligations under the CRPD. This increase is claimed to be justified on the basis that “*our future planning is responsive to the options that families/whanau are seeking for their children.” [[10]](#footnote-10)*  The plans to increase the numbers of segregated educated settings, however, clearly are inconsistent with CRPD rights to stay in your community and sets disabled people up for worse employment or life outcomes than those disabled students in mainstream settings.
4. Also of serious concern is the Ministry of Education’s increased investment in residential specialist schools and the proposed changes currently being considered to the enrolment criteria and processes to facilitate access to residential specialist schools. Any change that has the effect of increasing enrolments in these segregated settings is, in our view, a retrograde step and inconsistent with the CRPD. Despite a reduction in residential specialist school rolls since 2012, significant funding continues to be allocated for residential specialist schools along with plans for expansion of their role and purpose. Information recently released under the Official Information Act (NZ) reveals that over $9 million was allocated in 2022 to provide residential services across three schools for 17 students.[[11]](#footnote-11) It is noted that these schools are funded for a combined notional roll of 84. The schools receive additional funding for staffing and operational costs based on the notional roll of 84 students.

**Denial of Reasonable Accommodation**

1. The Committee may be interested to note that 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. The current resourcing and policy framework appears to advantage students in segregated ‘specialist’ settings and disadvantage those attending their local mainstream schools despite the policy intent being to ensure equity across education settings. In addition the investments in segregated settings make no sense economically are not supported by the research evidence nor do they evidence a rights based approach. Furthermore an equity approach would consider investments in the greater numbers of disabled students in mainstream/local settings rather than to a relatively few students in segregated settings.
2. 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. An overwhelming majority of respondents to the IHC 2022 inclusive education survey lacked confidence that the latest review of interventions for students with highest level of support needs would solve the problems that impact disabled students at school. Many respondents said at best, the review would be a tweak to a broken system.
3. IHC’s legal action lodged in 2008 alleges 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. The legal claim is yet to be heard by the NZ Human Rights Review Tribunal and the disabled students, who were part of the original legal claim, have now left school. The lack of equitable access to education for disabled students is now compounded by the lack of redress and access to justice in respect of having the legal claim heard.
4. 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. For fourteen years there has been no remedy in the IHC case. As submitted to the Royal Commission into Abuse in Care[[12]](#footnote-12), that despite having the support of human rights legislation, IHC has had to deal with a government sector and its advisors that have acted throughout as though the proceedings were an intrusion on their rights to govern and develop policy as they saw fit. At best, these proceedings were resented by the defendants and their legal advisors. At worst, they were effectively obstructed. A whole generation of children with disabilities requiring accommodations to learn have moved through school since this claim was first made. A whole generation of children have not experienced equitable access to and outcomes from an inclusive education in this time. They will live with the deleterious consequences of this on all their human rights as citizens. Their families, and society at large, have missed out by not having these adults operating at their full potential.

 In addition, IHC and IEAG note the failure of independent monitors to get any traction on their reported priority areas of concern. The recommendations of the Independent Monitoring Mechanism (IMM) in the 2016 ‘Article 24 Inclusive Education Implementation Report’[[13]](#footnote-13) 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.[[14]](#footnote-14) There appears to be a breakdown in how the independent human rights processes are meant to work in New Zealand.

**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. A comprehensive and coordinated legislative and policy framework for inclusive education is required as well as a timeframe to ensure that mainstream schools are able to develop as inclusive schools, particularly for disabled children in their school community. Teachers and all other professionals and persons in contact with children need to understand the concept of inclusion, why it is important, and what it means for professional practice in education.
2. Despite submissions from the Human Rights Commission, Children’s Commissioner, IHC, IEAG and other NGO’s and DPO’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.

**Progressive Realisation**

1. There is a growing recognition across the education and disability sectors about the need to develop a framework for action (legislative and policy) consistent with the guidance provided and outlined within the General Comment No 4. The framework would need to reflect an understanding and commitment to implement the human rights model of disability.
2. It is recognised that the Ministry of Education and other education system leaders have ongoing programmes of work intended to enhance recognition of and response to a disabled students rights to an inclusive education. Existing work programmes could be included in the framework for progressive realisation along with the new legislative and policy actions required. This needs to be developed with tangata whenua[[15]](#footnote-15); disabled people and their representative organisations; families; and other key stakeholders.

**Recommendations:**

1. IHC and IEAG respectfully urges that the Committee, in line with the Committee’s General Comment No 4 , recommends to the New Zealand Government that it:
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;
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. In conclusion IHC and IEAG thank the Committee for this opportunity to make a joint submission on the Combined Second and Third Periodic Report - United Nations Convention on the Rights of Persons with Disabilities (New Zealand Report). We would welcome any clarifying questions from the Committee about the information included in our joint submission.



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1. Committee on the Rights of Persons with Disabilities, List of Issues prior to submission of the combined second and third periodic reports of New Zealand. CRPD/C/NZL/QPR/2-3. [↑](#footnote-ref-1)
2. Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of New Zealand. (CRPD/C/NZL/Co/1 [↑](#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. Tomorrow’s Schools Independent Taskforce. (2018).Our schooling futures: Stronger together.

 Wellington, NZ: Ministry of Education) <https://conversation.education.govt.nz/assets/TSR/Tomorrows-Schools-Review-Report-13Dec2018.PDF> [↑](#footnote-ref-4)
5. [220715 2022 IHC Inclusive Education Survey.pdf](https://ihc.org.nz/sites/default/files/documents/220715%202022%20IHC%20Inclusive%20Education%20Survey.pdf) [↑](#footnote-ref-5)
6. In 2008 the total roll number at special school was 2871. This has increased to 4023 in 2021. Retrieved from <https://www.educationcounts.govt.nz/statistics/school-rolls> [↑](#footnote-ref-6)
7. 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 at 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 at 1 July 2021 4023 students with the highest ongoing disability and learning and support needs were enrolled at a specialist school. [↑](#footnote-ref-7)
8. <https://assets.education.govt.nz/public/Documents/Ministry/Budgets/Budget2019/NEGP/AucklandTaiTokerauplans.pdf> See page 13 “*Approximately 85% of ORS verifed students are enrolled in special schools.”* And page 37 “*Approximately 82% of ORS verfied students are enrolled at Rosehill Special School.”* [↑](#footnote-ref-8)
9. <https://www.beehive.govt.nz/release/government-build-new-schools-and-classrooms-100000-students> [↑](#footnote-ref-9)
10. Ibid page 8 [↑](#footnote-ref-10)
11. Ibid see Appendix Three Current services stocktake. In 2020 399 students were supported through the Te Kahu Toi – Intensive Wraparound service (TKT/IWS) this service provides a comprehensive youth and family centred response at a cost of $17.5 million. Reallocating the $9million cost of providing residential services would fund, on average, another 205 students with highly complex learning, social and behavioural difficulties. TKT/IWS is a community based service which provides individualised support across home, education and community. The reduction in demand for residential specials schools enrolments is largely due to the success of this service which provides supports for students to stay at home and attend schools in their community. [↑](#footnote-ref-11)
12. <https://www.abuseincare.org.nz/our-progress/library/v/146/statement-of-ihc-trish-grant-for-state-redress-hearing> [↑](#footnote-ref-12)
13. <https://www.ombudsman.parliament.nz/sites/default/files/201903/imm_interim_implementation_report_final.pdf> [↑](#footnote-ref-13)
14. <https://www.ombudsman.parliament.nz/resources/making-disability-rights-real-2014-2019-0> [↑](#footnote-ref-14)
15. In New Zealand, tangata whenua is a Māori term that literally means "people of the land". [↑](#footnote-ref-15)