

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.ⁱⁱⁱ The 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}

1. 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}

2. 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 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.

3. 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 2029 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.

4. 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.**
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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 with high and complex learning and behaviour needs have progressively widened and rolls are now increasing. These changes were made at the request of residential specialist schools themselves for more students with behaviour, social and/or learning needs, because they were concerned about dropping student numbers. Students can remain in these schools, away from their families and local communities for up to two years.^{xiv}

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

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.^{xvi}

While the three schools have remained open, the number of students enrolled in them had been steadily falling, from 211 students in 2010, to 28 in 2020. It is therefore extremely concerning that rolls are now increasing with forty students enrolled across the three schools in 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.”^{xvii}

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 that operate as networks supporting children who are blind/ low vision. Deaf/blind or are deaf or hard of hearing in their local schools. In 2023 there were 183

students enrolled in the schools, and the schools supported over 4500 students in their local schools. There were 34 students in the residences. However a distinction needs to be made between these residential schools and those described above. These residential schools are for mainly older students attending short term intensive transition programs, often at the end of their compulsory schooling.

3. 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 ^{xviii} 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.

4. 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^{xix}.

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.^{xx}

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 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 \$10 million in Government grants in the year ended 31 December 2022.^{xxi} 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"*^{xxii}.

5. 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.^{xxiii} 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."^{xxiv}

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 RSS in the three present day Residential Specialist Schools.^{xxv}

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)"

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^{xxvi} 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>

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=IwAR3tk8UewYKYRT7ELHWGOwqC2zRE-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>

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- ^{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} 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
- ^{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} Ibid
- ^{xvii} Beehive “Waimokoia School to Close” 14 November 2009 <https://www.beehive.govt.nz/release/waimokoia-school-close>
- ^{xviii} 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>
- ^{xix} Royal Commission of Inquiry Abuse in Care *Tell me About You* <https://www.abuseincare.org.nz/our-progress/reports/tell-me-about-you/>
- ^{xx} 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>
- ^{xxi} Information provided by the Ministry of Education on 28 November 2022 and 27 April 2023 in response to Official Information Requests.
- ^{xxii} 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
- ^{xxiii} 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
- ^{xxiv} Jain et al (2021) *International Literature Review on Residential Specialist Schools for Learning and Behaviour* Prepared for the Ministry of Education. page 33-34 Available at https://www.educationcounts.govt.nz/_data/assets/pdf_file/0003/215895/ESS-International-literature-review-on-residential-specialist-schools-110722pm.pdf
- ^{xxv} Ibid page 3
- ^{xxvi} 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