

**Submission to Highest Needs Review Team**

April 2022

Thank you for the opportunity to contribute to the review of supports for children and young people with the highest level of learning support needs.

**Summary**

IEAG shares the views of other submitters who have expressed concern about the title and scope of the review. We agree that a review which focuses on only a subset of disabled learners will not bring about the necessary changes required to create a truly disability inclusive education system in Aotearoa.

Having said that, we acknowledge the children and young people who are in scope of the review are broadly defined and include those who are in settings that do not have equitable access to supports. We suggest the vast majority of disabled students who require learning support and reasonable accommodations to learn are currently in settings that do not provide equitable access to supports.

What is now the Ongoing Resourcing Scheme (ORS) has been seen as the “gold standard” in learning support for over twenty years by families and schools. It has long been recognised that the rigid and deficit based criteria have meant that many children on the margins, or who’s impairment needs are not covered by ORS, miss out on the support they require. This group does not enjoy equitable access to supports and are likely to have an unmet need for individualised supports. About 60% of ORS funded students are currently educated in regular classrooms in local community schools. As reported by Dr Cathy Wylie in 2000[[1]](#footnote-1). students educated in regular classrooms do not benefit from the same economies of scale as students educated in specialist school settings and therefore do not enjoy equitable access to supports. When compared with the handful of students attending residential specialist schools, students attending day specialist schools do not have access to the significant financial and human resources currently available to students at the three residential special schools.[[2]](#footnote-2)

The inequitable access to learning support and individualised specialist supports across school settings remains a key barrier for disabled student’s access to quality inclusive education. This provides policy disincentives for local community schools who do not feel they have the human and financial resources to do the best they can for all students. IEAG sees this review as providing an important opportunity to address these longstanding issues.

IEAG has engagement with the Highest Needs Review (HNR) Team. We were encouraged by the HNR Team’s enthusiasm, commitment and promise of transformative change. Disabled children and young people, their families, whanau, and the professionals in schools and community who support the education of disabled for children and young people have high hopes for this review. IEAG encourages the HNR team to be bold and transformative in their recommendations. Recommendations which we respectfully recommend should have a strong focus on the systemic changes needed to ensure the right of all children and young people to receive an education with the support they need to learn and succeed on an equal basis with others.

**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 2021 quarter provides clear evidence that the education system is still failing to deliver equity and excellence outcomes for disabled students. 38.7% of disabled youth aged 15 to 24 years were not in employment, education and training compared with 10.1 percent of non-disabled youth.[[3]](#footnote-3)

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.

**Acknowledgement of the work of the Education for All forum**

IEAG acknowledges the significant work of the Education for All forum in developing the following key points and recommendations. We endorse and fully support the following recommendations which we set out in full below;

***Enforceable Right to Disability Inclusive Education***

* *Disabled students in New Zealand do not currently have a legislative right to inclusive education and this review does not provide for this.*
* *New Zealand has obligations under the UNCRPD to provide and uphold the right to inclusive education.*
* *Reasonable accommodation and what this means needs to be defined in law and policy as well as in practice.*
* *Reasonable accommodation requires an individualised/flexible approach rather that “one size fits all”. For example, deaf children require an educational interpreter not a teacher aide.*
* *A child centered approach would reflect knowledge and investment in reasonable accommodation rather than the rationing system we have now.*
* *A child’s right to inclusive education requires well prepared schools which are able to accommodate the child’s individual requirements and provide accessible learning environments. A whole school and whole system approach is required.*
* *The current resourcing and policy framework which is based on the rationing of capped funding buckets is the antithesis of a child centered approach. The policy and resourcing framework needs to be transformed to respond to disabled children’s rights to reasonable accommodation and accessible learning environments.*

***Recommendation One:***

*In accordance with its obligations under Article 24 UNCRPD, the Government introduces an enforceable right to inclusive education and reasonable accommodation is introduced as a key element of the legislative and policy framework.*

***Recommendation Two:***

*The Education and Training Act 2020 is amended to include a substantive right to inclusive education and reasonable accommodation and a clear definition of inclusive education and reasonable accommodation.*

***Recommendation Three:***

*Review and replace the current policy and resourcing framework so that it responds to the accommodations, specialist support/services and accessible learning environments required by disabled students.*

***Replace deficit Language***

* *There is an urgent need for a genuine change in language so that any thinking or policy development does not immediately move into a deficit space.*
* *The title of the review itself is exclusionary and sets the wrong tone for the review. When we think of inclusive education we do not categorise children in that way i.e. highest need for learning support, we think of all children.*
* *This review should be focused on providing what is needed for every child to have what they require to access education and have good outcomes from their education.*
* *We need to move away from a deficit focus and how that views and values disabled people. We should be using the language of reasonable accommodation rather than supports which implies disabled people cannot live without being dependent on others. Words such as “special” and “need” should be replaced.*

***Recommendations Four:***

*That the Ministry of Education reviews and replaces deficit language in all communications including in respect of documentation relating to the Highest Needs Review.*

* ***Inclusive education promotes social cohesion***
* *Inclusive education is central to the development of inclusive communities, social cohesion and enhancing positive lifelong outcomes for all students including disabled students.*
* *The right of the child to be part of social cohesion which is only going to be built from an inclusive education.*
* *By educating all children together you build up trust, understanding, empathy, tolerance and therefore start to build a more socially cohesive society.*

***Recommendation Five:***

*That the Ministry of Education recognizes, values and promotes the role of a disability inclusive education system in promoting social cohesion*

***Independent Education Tribunal or Arbitration Mechanism***

* *There is currently no timely and effective mechanism for reviewing decisions made by Boards of Trustees, Schools or Ministry of Education and to provide redress when disabled students experience unlawful discrimination.*
* *Independent oversight and enforceability around the child rights to inclusive education, reasonable accommodation and accessible learning environments is required.*

***Recommendation Six***

*An independent education tribunal or arbitration mechanism is established to review decisions by Boards of Trustees/schools and Ministry of Education in respect of disabled students rights to inclusive education, reasonable accommodation and accessible learning environments*.

***Disabled leadership***

* *Disabled people act as role models for all children and young people and those who work with them. Disabled people need to be visible across the education sector in a variety of roles to illustrate that we, as disabled people, are part of Aotearoa’s rich and diverse social landscape.*
* *The experiences, voices, and leadership of disabled, families and their allies are fundamental to transforming education to quality inclusive education. Disabled people need to be visible in decision making positions to articulate the disability lens, as shared with disabled children, across service design, development, and delivery.*

***Recommendation Seven:***

*Disability leadership is to be welcomed and wanted.*

***Child’s Identity***

* *Disabled students are to see value in their own identity as a disabled person, able to connect with peers and others from their disability communities.*
* *Students are provided with opportunities to learn about disability history, culture and rights*

***Recommendation Eight:***

*All steps are taken to ensure the child has every opportunity to develop their own identity which sees their impairment as a positive part of their wellbeing.*

**Endorsement of IHC Submission**

IEAG endorses in full the IHC submission and fully supports the following actions be taken to ensure barriers for disabled ākonga are removed so that they can enjoy equitable access to, and outcomes from, a quality disability-inclusive education system. These actions are set out in full below;

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1. *Amend the Education and Training Act 2020 to provide for an enforceable right to disability-inclusive education. The Act needs to reference the United Nations Convention on the Rights of Persons with Disabilities and include definitions of inclusive education and reasonable accommodation.*
2. *Align the policy and resourcing framework with government’s Enabling Good Lives policy and underpinning principles so that human rights-based values, attitudes and approaches are embedded within all levels of the education system.*
3. *Initiate a work programme across the education system that addresses, and responds to, ableism at policy, project, programme and practice levels.*
4. *Establish a kaitiaki, or guardianship body, comprised of disabled people, wh ānau, tangata whenua and disability education advocacy groups to provide oversight of the systems transformation required for a disability-inclusive education system that protects disabled students from unlawful discrimination.*
5. *Require Boards of Trustees to report annually to the Ministry of Education on the inclusion of disabled students. The inclusion report should include data on the presence, participation and achievement of disabled students, accommodations required for equitable access to education and school life, workforce capacity to teach diverse students and school capacity and capability to provide a quality disability-inclusive education.*
6. *The Ministry of Education should collect accurate prevalence data on students requiring accommodations and specialist support services to inform education policies, resource frameworks, plans and programmes.*
7. *Ensure disabled students are subjects of aggregated and disaggregated data collection so that an up-to-date database is available to guide the resourcing and policy framework to be is regularly reviewed, monitored and adjusted.*
8. *Review the Ongoing Resourcing Scheme and its verification process, criteria and benchmarks.*
9. *Review all additional learning support funding sources for disabled students and schools to ensure consistency with disabled students’ rights to reasonable accommodation, accessible learning environments and a disability-inclusive education.*
10. *Ensure disabled students and schools have timely access to evidence-based specialist support services (communication, behaviour and other specialists) through addressing current workforce and supply issues and inter-professional relationship issues.*
11. *Ensure initial teacher education, and professional learning and development programmes, result in all teachers being confident and capable in teaching diverse learners*
12. *Require initial teacher education provision to include compulsory disability-inclusive education in the core programmes.*
13. *Amend the Standards for the Teaching Profession to require that registration and teacher performance review processes include provision of evidence of individual elaborations, particularly those that refer to disabled students.*
14. *Recognise, value, monitor and report on the progress and learning achievement of all disabled students, including those working long term within level one of the curriculum.*
15. *Make disabled students visible in all reporting, including system-wide indicators used to monitor and report on the performance of the education system, and appropriately disaggregate this information.*
16. *Education system stewards (Ministry of Education, Education Review Office and the Teaching Council) work together to identify, and jointly address, concerns relating to the enrolment, participation, learning and achievement of disabled students.*
17. *Amend the law so that school disciplinary policies and processes are prohibited for student disability-related behaviours.*
18. *Establish a quasi-judicial education tribunal or arbitration mechanism to review decisions made by Boards of Trustees and the Ministry of Education in respect of enrolment, reasonable accommodation, discipline (including restraint), discrimination and habilitation and rehabilitation services, and provide redress.*

**IEAG response to HNR survey questions**

**What is happening in your community that is working well?**

Submissions from the IHC and VIPS Equity in Education, which IEAG has read and support, provide examples of what is working well for families. We know that every day outstanding teaching and learning is happening in pockets throughout Aotearoa from early childhood, primary and secondary schooling.

However, as numerous reviews and reports have confirmed and the Hon Jan Tinetti, Associate Minister for Education, acknowledged at the Ohu Ako Hui on 1 March 2022;

*“****The system is broken”.***

As the Tomorrow’s Schools Independent Taskforce which reviewed the Tomorrows Schools policy reported in 2018;

“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.”[[4]](#footnote-4)*

This echoes the findings of the 2016 review of the education system by the State Services Commission[[5]](#footnote-5) 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.*” [[6]](#footnote-6)

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.[[7]](#footnote-7)

**What do we want to see happening?**

As numerous reports including the above mentioned 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.

It is encouraging to note that this review is seen as part of a step change to ensure that systemic change occurs from both ends of the tiered model of support.[[8]](#footnote-8) Rather than continuing to focus on the individual identification of students with varying levels of learning support needs, which only serves to individualise the systemic problems existing within our education system, IEAG wants to see structural solutions to address and rectify these long standing problems. IEAG joins with IHC in urging the HNR team to have a strong focus on the systemic changes needed as starting points for sustained action to stop the historic and current discrimination of disabled akonga. We have set out above in full the list of actions identified in the IHC submission we agree are required.

**How might barriers for learners with the highest support needs be removed?**

IEAG is pleased to note that the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) Article 24 and the Committee’s General Comment (General Comment) on the right to inclusive education and the Committee’s definition of inclusive education will guide the Ministry’s vision of an inclusive education.[[9]](#footnote-9)As noted in our previously submission 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 to remove barriers for learners so all disabled tamatili and rangatahi are able to access an inclusive education system.

Ensuring that barriers for learners with learning support needs, who require reasonable accommodation, 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.

**Access to supports**

Families and educators have shared;

*“A 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.”*

*“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.”*

Ensuring **all** children and young people have early access to supports that strengthen relationships and build independence and that these are driven by the support requirements of children in their education settings requires moving away from ORS. The current rigid, deficit based criteria and application process are the antithesis of a child centred approach.

**Responsiveness to support**

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.”*

*“ORS funding does not fix the issue to inclusion and discrimination. It does not provide knowledgeable, 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.*

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.

**Fluid boundaries**

A key barrier impeding disabled students access to inclusive education identified in the General Comment is inappropriate and inadequate funding mechanisms to provide incentives and reasonable accommodations for the inclusion of disabled students.[[10]](#footnote-10)

We note that review will consider the need for fluid boundaries between education settings to help encourage and strengthen positive working relationships where learners and schools can better access expertise held in specialist settings. We consider that more is needed to meet New Zealand’s obligations under Article 24 of the UNCRPD than the sharing of knowledge and expertise held in segregated settings. We note that paragraph 70 of the General Comment, which relates to implementation of the Article 24 at a national level, refers to the transfer of resources from segregated to inclusive environments and the development of a funding model that allocates resources and incentives for inclusive education.

New Zealand continues to maintain a dual system. 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.”* [[11]](#footnote-11)

One of the issues the ORS was intended to address was the concern that resources, and therefore access to supports, were inequitably distributed across school settings (i.e. between “special” and “regular”) and this distorted the choice of provision.[[12]](#footnote-12) ORS was intended to provide an equitable system of resourcing across different school settings and to ensure that students received similar levels of learning support and access to specialist supports in different parts of the country. However, the inequitable distribution of resources, such as access to learning support and individualised specialist supports, across school settings remains a key barrier for disabled student’s access to quality inclusive education. This provides policy disincentives to local schools who do not feel they have the human and financial resources to do the best they can for all students. We see this review as providing an important opportunity to address these longstanding issues.

**Support for adults across the system**

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.[[13]](#footnote-13) 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.

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.

**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. We see this review as providing an important opportunity to address these longstanding issues.

IEAG would like to thank the HNR team for their enthusiasm, commitment and promise of transformative change. We encourage you to be bold and transformative in your recommendations. Recommendations which we respectfully recommend should have a strong focus on the systemic changes needed to ensure the right of all children and young people to receive an education with the support they need to learn and succeed on an equal basis with others. Recommendations which we believe need to respond to the calls for transformative change 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.*

Heather Lear

Convenor

Inclusive Education Action Group

April 2022

1. Wylie (2000) “Picking Up the Pieces Review of SE2000” [↑](#footnote-ref-1)
2. In 2020 the total school roll across the 3 Residential Specialist Schools, (Salisbury, Halswell and Westbridge) was 28 students. The schools received total funding of $12.5million - an average of $446,000 per student annually. [↑](#footnote-ref-2)
3. Labour market statistics (disability): June 2021 quarter Retrieved from https://www.stats.govt.nz/information-releases/labour-market-statistics-disability-june-2021-quarter [↑](#footnote-ref-3)
4. Tomorrow’s Schools Independent Taskforce. (2018).Our schooling futures: Stronger together.

   Wellington, NZ: Ministry of Education) [↑](#footnote-ref-4)
5. State Services Commission, A Blueprint for Education System Stewardship-September 2016 page 4 [↑](#footnote-ref-5)
6. ibid [↑](#footnote-ref-6)
7. State Services Commission, A Blueprint for Education System Stewardship-September 2016 [↑](#footnote-ref-7)
8. Cabinet Paper Highest Needs Review: Scope and Terms of Reference 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 [↑](#footnote-ref-8)
9. ibid [↑](#footnote-ref-9)
10. CRPD/C/GC/4, 2 September 2016) see para 4 [↑](#footnote-ref-10)
11. (CRPD/C/GC/4, 2 September 2016) see para 11 [↑](#footnote-ref-11)
12. Report distributed to the Minister’s Advisory Panel on the Review of Special Education in 2010. [↑](#footnote-ref-12)
13. (CRPD/C/GC/4, 2 September 2016) [↑](#footnote-ref-13)