20 September 2013



Craig Mokhiber

Chief

Development and Economic and Social Issues Branch

Office of the United Nations High Commissioner for Human Rights

United Nations Office at Geneva

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Dear Mr Craig Mokhiber

**Human Rights Council resolution 22/3 – “The work and employment of persons with disabilities”, Office of the High Commissioner for Human Rights study on the right to education of persons with disabilities**

The New Zealand Human Rights Commission (the Commission) thanks the Office of the High Commissioner for Human Rights for this opportunity to contribute to its study on the right to education of disabled people.

The Commission is New Zealand’s National Human Rights Institution with responsibility for monitoring and reporting on New Zealand’s compliance with international human rights standards. The New Zealand Government has ratified the Convention on the Rights of Persons with Disabilities (CRPD) but not the Optional Protocol. The Government has designated the Commission as one of three independent organisations with responsibilities to monitor and report on the implementation of the CRPD, the others being the Ombudsman and the Disability Convention Coalition (a coalition of Disabled Peoples Organisations).

1. **Are you aware of any restrictions for persons with disabilities to attend to regular schools? Please detail whether they exist in laws or policy, or if they exist only as a result of social barriers.**

In law, disabled children in New Zealand have the same right to education in state schools as other children. Two pieces of legislation govern the right to education for disabled children: the Education Act 1989 and the Human Rights Act 1993 (HRA).

Section 8 of the Education Act states that “people who have special educational needs (whether because of a disability or otherwise) have the same rights to enrol and receive education at state schools as people who do not”. This includes attending school full time from five years old to the year they turn 19. The Act also provides that the Secretary of Education may direct a person’s special education by enrolment in a particular state school, class, clinic or service.

The HRA makes it ‘unlawful to refuse or fail to admit a person as a pupil or student; or to admit a person as a pupil or a student on less favourable terms and conditions than would otherwise be made available; or to deny or restrict access to any benefits or services provided by the establishment; or to exclude a person as a pupil or a student or subject him or her to any other detriment, by reason of disability’[[1]](#footnote-1)

Despite these legislative provisions, many disabled students and their families have difficulty accessing inclusive education. Barriers to the right to education for disabled children and young people have emerged consistently through the Commission’s work over a number of years, including through complaints and enquiries received by the Commission. Complaints lodged with the Commission have included problems surrounding enrollment in school, funding and accessing disability support, participating in wider school activities such as school camps and school trips and incidents of bullying and harassment. In 2008 and 2009 the Commission received two class action complaints by two separate disabled person’s organisations claiming systemic discrimination of disabled children in schools. Mediation of these two complaints was unsuccessful and both have applied to be heard before the Human Rights Review Tribunal. The Human Rights Review Tribunal is New Zealand’s specialist human rights tribunal. Appeals from the tribunal can go through the court system on points of law.

Disability organisations have gathered information on the barriers to education for disabled children. These include the child’s start at school being delayed, being denied access to their local school, problems accessing support services and children’s potential not being reached.

New Zealand's system of education means more education decisions are devolved to individual schools than in many comparable states. Barriers to inclusion are very dependent on the ethics and attitude of the school leadership, especially the principal.

1. **Does your country have or is currently developing a programme or plan to promote inclusion of children with disabilities in regular schools and discourage education in special schools or social institutions? If so, were persons with disabilities and their representative organisations, and other disability related organisations directly involved in the design and application of said programme or plan? Please briefly describe the programme (no more than 500 words).**

As a result of reviews by the Ministry of Education (MoE) and the Education Review Office (ERO) in 2009 and 2010, the government developed a vision called *Success for All – Every School, Every Child* that aims to achieve a fully inclusive education system. A work programme has been developed to implement this vision. Work programme activities include improving inclusive practices and improving special education systems and support to disabled students[[2]](#footnote-2). Disabled people and their organisations were able to take part in the public consultation process that lead to the development of *Success for All* and disabled people were on the Reference Group that advised the Minister of Education on the development of this policy.

ERO has the responsibility of auditing the performance of state schools against the policies and curriculum set by the Government. Surveys of inclusive practice in schools undertaken in 2010 and 2013 indicate a steady increase in inclusive practices in schools. A major survey is planned for 2014 to test whether the government is on track for achieving its target of all schools achieving some inclusive practices by that date.[[3]](#footnote-3)

1. **Is the Ministry of Education the only ministry in charge of education or other ministries (e.g: Health and Social Affairs) are involved when it comes to persons with disabilities? Please describe how other ministries get involved and specify if their involvement results on the denial of access to mainstream schools (no more than 250 words).**

MoE is the key government agency responsible for education of disabled children and young people. The Ministry of Health (MoH) has responsibility for providing screening and health services and the Ministry of Social Development (MSD) has responsibility for children under state care, early intervention and for providing transition services from school to tertiary education or employment.

Many students with high and complex needs receive education funded by the MoE, as well as support funded by the MoH and the MSD. These students are likely to be placed in residential special schools away from their family and community. All options of intensive local support for the child, school and family which is less costly than a residential option are not generally explored.

The Tertiary Education Commission is responsible for tertiary education, including removing barriers to tertiary education for disabled people.

1. **Does your country have effective mechanisms to successfully claim in case of rejection of students with disabilities form mainstream schools? If so, do those mechanisms guarantee for reasonable accommodation when services or support needed are not in place? Please provide information on good practice.**

If schools deny enrolment to a student on the basis of a disability or treat disabled students less favourably than other students, a complaint of unlawful discrimination can be made under the HRA. The HRA defines what discrimination means in relation to education, what exceptions apply and how reasonable accommodation is to be applied in relation to education.[[4]](#footnote-4)

As a result of the recent reviews of special education MoE has developed an improved complaints and disputes resolution system including adding a review process. These improvements aim to ensure that parents get a consistent response if complaints are made about a school. MoE takes an active role in facilitating a resolution between a parent and a school.

The Ombudsman can receive complaints where it is perceived that the school has not adequately administered government policy in relation to disabled students. The Office of the Children’s Commissioner can also receive complaints in relation to the Convention on the Rights of the Child and its statutory responsibility for overseeing the Government’s child protection services.

1. **Are you aware if your country is involved in international cooperation programmes related to the promotion and implementation of inclusive education systems? If so, is your organisation involved in any such programme?**

The Commission is not aware of New Zealand being involved in any international cooperation programmes related to the promotion and implementation of inclusive education systems.

1. **Is there any additional information you wish to provide?**

In order to fulfill the requirements of Article 33 of the CRPD the New Zealand Government has designated three organisations as the independent monitoring mechanism (IMM) to promote, protect, monitor and report on the implementation of the CRPD. The three organisations are the Human Rights Commission, the Ombudsman and the Disability Convention Coalition (a coalition of Disabled Peoples Organisations). The IMM has undertaken to produce an annual report to assist the Government in monitoring and improving the achievement of the human rights of disabled New Zealanders. The first annual report, published in December 2012, developed a baseline picture. It includes targets for inclusive education and recommendations to achieve those targets including establishing an enforceable legal right to inclusive education and implementing anti-bullying programmes.[[5]](#footnote-5)

Should you require any further information please contact Keith Marshall at [KeithM@hrc.co.nz](mailto:KeithM@hrc.co.nz)

Thank you for the opportunity to comment.

Yours sincerely

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Paul Gibson  
Disability Rights Commissioner  
Kaihautu Tika Hauatanga

1. Section 57 Human Rights Act [↑](#footnote-ref-1)
2. See <http://www.minedu.govt.nz/NZEducation/EducationPolicies/SpecialEducation/OurWorkProgramme/SuccessForAll.aspx>. Accessed 18 September 2013 [↑](#footnote-ref-2)
3. See <http://www.ero.govt.nz/National-Reports/Including-Students-with-High-Needs-Primary-Schools-July-2013> Accessed 18 September 2013 [↑](#footnote-ref-3)
4. Sections 58-60 Human Rights Act [↑](#footnote-ref-4)
5. See <http://www.hrc.co.nz/disabled-people/convention-on-the-rights-of-persons-with-disabilities/making-disability-rights-real> Accessed 18 September 2013 [↑](#footnote-ref-5)