

July 2024

**To Education and Workforce Select Committee**

Please find attached our submission on the Education and Training Amendment Bill 2024

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# Introducing Disabled Persons Assembly NZ

**We work on systemic change for the equity of disabled people**

Disabled Persons Assembly NZ (DPA) is a not-for-profit pan-impairment Disabled People’s Organisation run by and for disabled people.

**We recognise:**

* Māori as Tangata Whenua and [Te Tiriti o Waitangi](https://www.archives.govt.nz/discover-our-stories/the-treaty-of-waitangi) as the founding document of Aotearoa New Zealand;
* disabled people as experts on their own lives;
* the [Social Model of Disability](https://www.odi.govt.nz/guidance-and-resources/guidance-for-policy-makes/) as the guiding principle for interpreting disability and impairment;
* the [United Nations Convention on the Rights of Persons with Disabilities](https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html) as the basis for disabled people’s relationship with the State;
* the [New Zealand Disability Strategy](https://www.odi.govt.nz/nz-disability-strategy/) as Government agencies’ guide on disability issues; and
* the [Enabling Good Lives Principles](https://www.enablinggoodlives.co.nz/about-egl/egl-approach/principles/), [Whāia Te Ao Mārama: Māori Disability Action Plan](https://www.health.govt.nz/publication/whaia-te-ao-marama-2018-2022-maori-disability-action-plan), and [Faiva Ora: National Pasifika Disability Disability Plan](https://www.moh.govt.nz/notebook/nbbooks.nsf/0/5E544A3A23BEAECDCC2580FE007F7518/$file/faiva-ora-2016-2021-national-pasifika-disability-plan-feb17.pdf) as avenues to disabled people gaining greater choice and control over their lives and supports.

**We drive systemic change through:**

**Rangatiratanga / Leadership**: reflecting the collective voice of disabled people, locally, nationally and internationally.

**Pārongo me te tohutohu / Information and advice**: informing and advising on policies impacting on the lives of disabled people.

**Kōkiri / Advocacy**: supporting disabled people to have a voice, including a collective voice, in society.

**Aroturuki / Monitoring**: monitoring and giving feedback on existing laws, policies and practices about and relevant to disabled people.

## United Nations Convention on the Rights of Persons with Disabilities

DPA was influential in creating the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD),[[1]](#footnote-2) a foundational document for disabled people which New Zealand has signed and ratified, confirming that disabled people must have the same human rights as everyone else.

All state bodies in New Zealand, including local and regional government, have a responsibility to uphold the principles and articles of this convention.

The following UNCRPD article is particularly relevant to this submission:

* ***Article 24: Education***

*2. In realizing this right, States Parties shall ensure that:*

*a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;*

*b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;*

*c) Reasonable accommodation of the individual’s requirements is provided;*

*d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;*

*e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.*

## New Zealand Disability Strategy 2016-2026

Since ratifying the UNCRPD, the New Zealand Government has established a Disability Strategy[[2]](#footnote-3) to guide the work of government agencies on disability issues. The vision is that New Zealand be a non-disabling society, where disabled people have equal opportunity to achieve their goals and aspirations, and that all of New Zealand works together to make this happen. It identifies eight outcome areas contributing to achieving this vision.

The following outcome is particularly relevant to this submission:

* **Outcome 1 – Education**

*Our learning pathway supports us to develop friendships and social skills, as well as resilience, determination and confidence. It gives us a sense of belonging, builds our identity and language skills and prepares us for life beyond compulsory education.*

*All local schools and education services (including early childhood, primary secondary, tertiary, kohanga reo and kura kaupapa Māori) are welcoming and provide a great inclusive education for us. We have trained teachers and educators who support and believe in our progress and achievement, and value our contribution to the learning environment.*

*Education is provided in a way that supports our personal, academic and social development, both in and out of the formal schooling system. This includes making sure that those of us who use different languages (in particular New Zealand Sign Language), and other modes or means of communication, have ready access to them to achieve and progress. Information will be made available at the right time to those who support us, both when we are young or for those of us who need on-going support. This will help us succeed – whatever our individual education pathway may look like.*

*We are treated with respect and dignity by those around us in the education system, including our peers and those who teach and support us. The love and expertise of our families and whānau and their wish to see us succeed in education will be honoured without question. As we move on to tertiary and life-long learning, the transition periods are smooth, with the right information and supports available at the right time – particularly when our needs or situation changes.*

*What this means:*

* *Disabled people are consulted on and actively involved in the development and implementation of legislation and policies concerning education, including early childhood, primary, secondary and tertiary education.*
* *Access to mainstream education is inclusive (including policy, practice and pedagogy).*
* *Services that are specific to disabled people are high quality, available and accessible.*
* *Inclusive education is a core competency for all teachers and educators.*
* *Decision-making on issues regarding education of disabled people is informed by robust data and evidence.*[[3]](#footnote-4)

# The Submission

DPA welcomes the opportunity to engage with the Education and Workforce Select Committee on the Education and Training Amendment Bill 2024. We oppose the re-establishment of charter schools as it will contravene New Zealand’s obligations under the UN Convention on the Rights of Persons with Disabilities (UNCRPD) to provide opportunities for disabled children to be educated alongside their non-disabled peers in fully inclusive environments.

This legislation also contravenes Outcome 1 of the New Zealand Disability Strategy 2016-2026 on education which stipulates that all disabled children should be educated in fully inclusive settings along the lines articulated in the UNCRPD with any supports needed.

DPA has been disappointed in the recent decision to fund capital spending on the upgrading of three existing special needs schools [[4]](#footnote-5) while not providing any funding to support the overhaul of learning support for disabled students in Budget 2024.[[5]](#footnote-6)

New Zealand needs to move away from retaining segregated educational settings. New Zealand-based research undertaken by Jude MacArthur (2009) for IHC shows that disabled children perform better academically, socially and behaviourally when in inclusive education.[[6]](#footnote-7)

We also have concerns about other key parts of the Bill including changes to early childhood centre network set up requirements and increasing student attendance checks. **We recommend that the Bill be withdrawn.** We further outline our concerns below.

We want to start by acknowledging the submission made by the Inclusive Education Action Group (IEAG) in 2013 when that Government introduced legislation establishing the charter schools.[[7]](#footnote-8) IEAG’s 2013 submission informs the basis of our submission as DPA the points made then about the proposed design of the new system differs little from its 2013 iteration.

# Charter schools will not benefit disabled ākonga

DPA acknowledges the proposal to amend Section 34 of the Act to insert the words ‘or charter schools’ when it comes to the right of disabled students to be enrolled on the same basis as their non-disabled peers at charter schools. We also acknowledge that the bans on corporal punishment and seclusion will also apply to charter schools. This is important as seclusion was disproportionately used against disabled children, mainly with neurodiverse students and students with learning disabilities, when it was legal in all schools.

However, despite these carry over provisions providing some crucial human rights protections, there is extensive overseas and New Zealand-based research which highlights why charter schools will not benefit disabled ākonga.

Firstly, the reintroduction of charter schools poses a further threat to the practice of inclusive education as international research indicates that charter schools have tended to discriminate (either directly or indirectly)[[8]](#footnote-9) against disabled children through discriminatory pupil selection policies.[[9]](#footnote-10)

Often Charter schools select higher achieving students, leaving other students, including disabled students, to be catered for by often under-resourced state school systems. Studies from the United Kingdom and the United States have uncovered instances where disabled students have been prevented from enrolling due to charter schools citing additional costs, lack of qualified and experienced teaching staff and lowered academic scores as the reasons for doing so.

Secondly, the fact that charter schools will not be required to employ qualified teachers is concerning as New Zealand research by Carrington and MacArthur (2012) held that qualified and registered teachers are best placed to support and positively respond to the educational needs of diverse student groups, including disabled ākonga.[[10]](#footnote-11)

Thirdly, if charter schools do include disabled students, it is likely that learners with lower levels of impairment being accepted over students with more significant impairments. Disabled students are increasingly likely to be placed within special classes or segregated learning environments within charter schools as well, potentially impacting both their ability to achieve to their full potential and undermining socialisation with their non-disabled peers.

Fourthly, limiting the transparency and accountability requirements of charter schools, particularly with their only being subject to the Ombudsman Act 1975 if they are sponsored by a public institution, for example, a university, means that they will not have the same accountabilities that other publicly funded schools have through boards of trustees. There are concerns that this will reduce the ability of disabled ākonga, family/whānau and other members of the community to either hold these schools fully to account or complain about them.

Having transparent accountability mechanisms in place is important, especially when it comes to disabled students who are at greater risk of not being fully included in all school activities and of being exposed to physical, sexual or emotional violence/bullying in any school setting.

Fifthly, research from Dudley-Marning & Baker (2012)[[11]](#footnote-12) shows that academic outcomes for disabled students are poorer than for their non-disabled peers in charter schools as compared to regular schools in the United States. The researchers found that in charter schools in two of the states they surveyed, a third of disabled children were suspended from school at any one time.

# Repealing early childhood start-up registration requirements poses risks for disabled pre-schoolers

DPA opposes the scrapping of the requirement that the Minister of Education approve the setting up of all early childhood education centre networks.

Early childhood education centres main priority should be the education of children, not running a competitive business. While this move has been cited as a way of enabling competition and in theory driving down fees, there are inherent risks involved, especially when it comes to the wellbeing of disabled pre-schoolers.

DPA is concerned about the risks that these deregulatory moves would pose to the ability of all early childhood providers to make their learning environments and programmes fully accessible to disabled pre-schoolers.

Providers could decide, for example, to base themselves in cheaper, more inaccessible premises and provide substandard, inaccessible equipment.

They might also opt to employ educators who are not trained in inclusive educational practice and may wrongly cite the costs of supporting disabled learners as another factor in barring enrolments.

As with charter schools, early childhood centres in a more market-driven system than the one we have at present could also start cherry-picking student intakes in that disabled pre-schoolers will only be accepted if they have lower-level impairments, thereby excluding learners with more significant impairments, even though this would be technically illegal.

Consequently, a more market-driven system may also lead to the whānau/families of disabled pre-schoolers being charged more to have their child/tamariki in a good quality centre, placing extra stress and responsibility on whanau/families. This will all lead to the whānau/families of disabled pre-schoolers having fewer choices when it comes to enrolling their child/tamariki in early childhood education.

# Increasing school attendance checks

DPA is concerned about the requirement for attendance figures to be reported daily instead of at the end of each term from all state and charter schools as of Term 1, 2025.

Many disabled students experience barriers in terms of making daily and/or on time attendance at school and with the cuts to funding for individualised funding and carer support, the ability for exhausted whānau/families of disabled students to get their children to school on time in the mornings to make them eligible for being marked as present has become even more challenging.

In addition, many disabled ākonga need to attend frequent health or disability related appointments essential for their health and wellbeing or for rehabilitation, so are absent from school entirely due to the impacts of their impairment or health condition or not being able to make it to school on time due to mobility transport services or support running late.

For students experiencing mental distress/psychosocial disability or who are neurodiverse, there are times when students with these impairments may need to take time off or learn from home due to experiencing mental health issues or other events like being overstimulated and needing to take time out from class.

The retention of term-based attendance reporting is best as this provides the fairest assessment of student attendance over weeks as well as days. This means that the attendance of disabled students can be monitored in a way that is fair and non-discriminatory.

1. <https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-articles> [↑](#footnote-ref-2)
2. <https://www.odi.govt.nz/nz-disability-strategy> [↑](#footnote-ref-3)
3. <https://www.odi.govt.nz/nz-disability-strategy/education/> [↑](#footnote-ref-4)
4. <https://www.rnz.co.nz/news/political/519520/government-announces-90-million-for-specialist-school-repairs-builds> [↑](#footnote-ref-5)
5. <https://newsroom.co.nz/2024/06/05/no-funding-for-new-plan-to-overhaul-learning-support-system/> [↑](#footnote-ref-6)
6. MacArthur, J. (2009) Learning better together. Working towards inclusive education in New Zealand schools. <https://inclusive.tki.org.nz/assets/inclusive-education/resource-documents/learning-better-together.pdf> [↑](#footnote-ref-7)
7. <https://ieag.org.nz/assets/PDFs/IEAG-submission-on-Charter-Schools.pdf> [↑](#footnote-ref-8)
8. Dudley-Marling, C. & Baker, D. (2012) The effects of market-based school reforms on students with disabilities Disability Studies Quarterly. 32(2) 6-27. [↑](#footnote-ref-9)
9. Ravitch, D (2010). The death and the life of the great American school system: How testing and choice are undermining education. New York, Basic Books [↑](#footnote-ref-10)
10. Carrington, S. & MacArthur, J. (2012) Teaching in inclusive school communities. Australia: Wiley & Sons [↑](#footnote-ref-11)
11. Ibid, Dudley-Marling, C. & Baker, D. (2012). [↑](#footnote-ref-12)