13 June 2019

Please find attached DPA’s submission on the Right to Education Consultation.

Disabled Persons Assembly NZ Inc.

Contact:

Joanne Dacombe

National Executive Committee Member

027 810 1725

**Introducing Disabled Persons Assembly NZ**

The Disabled Persons Assembly NZ (DPA) is a pan-disability disabled person’s organisation that works to realise an equitable society, where all disabled people (of all impairment types and including women, Māori, Pasifika, young people) are able to direct their own lives. DPA works to improve social indicators for disabled people and for disabled people be recognised as valued members of society. DPA and its members work with the wider disability community, other DPOs, government agencies, service providers, international disability organisations, and the public by:

* telling our stories and identifying systemic barriers
* developing and advocating for solutions
* celebrating innovation and good practice

**The Right to Education**

**The right to education is currently limited to ensuring that students are enrolled in a school and that they are able to access education at no cost. It does not specifically include the student’s right to attend their local school nor for full time attendance.**

Disabled Persons Assembly believes the right of all students to access education, and disabled students in particular, needs to be explicitly included in legislation and for that legislation to be more freely accessible to disabled students and their families who often advocate for them.   
  
Disabled students experience unlawful discrimination at school and it often starts at the time of enrolment. Many disabled students are still not welcome at some schools, especially if they do not come with extra resourcing. 1,8

Disabled students need to have their right to attend their local school upheld, the same as any of their peers and or siblings, and for those rights to be made clear and accessible to families.   
  
These are actual quotes from families:   
  
“I don’t want your child at my school.”   
Quote by a Principal to a mother of a disabled boy with autism, learning difficulties (intellectual disability), and physical disabilities.   
  
“Have you thought about XX <satellite unit> for your child?”   
Quote by a Principal to a parent enrolling a child with Global Developmental Delay.  
  
“We can’t cater to your child’s needs. Try XX <special school>”   
Quote by a SENCO to a parent prior to enrolment. SENCO was not willing to make an ORS application which the next mainstream, but not nearest, local school did successfully.   
  
In the report compiled by the Tomorrow’s Schools Review Taskforce it states “some schools are more willing and able and meet the particular needs of a student than the school that happens to be the most close and convenient to that student’s home.”2  
This trend of ‘magnet’ schools is hugely concerning because it encourages the attitude that allows schools to refuse an enrolment. It is contrary to Section 8 of the Education Act 1989 which makes provision for ALL students, including those with disabilities, to enrol at their local school.  
  
Further the report on the review of Tomorrow’s Schools states:  
“Enrolment zones and costs of attending schools can be barriers to enrolment.

Some students face significant barriers to attending their preferred school. These include living outside a school’s enrolment zone, the costs of attendance, and transport costs.   
We heard more about these barriers from Māori and Pacific parents during our consultation. We also heard that some families can be put off from sending their child to a particular school due to high donation levels, uniform costs, and co-curricular costs such as school camps.

Students with learning or behavioural needs may face particular barriers to enrolment. Another barrier that faces many students with learning or behavioural needs in particular is the school principal. In our consultations we heard of too many students with additional learning or behavioural needs being steered away from their local school by being told that a different school was better equipped to meet their needs. In cases such as these, considerations of the cost to provide suitable schooling for such students overcame the principal’s legal and ethical responsibility.”3

School enrolment refusals by schools is well known in the Ministry of Education but due to schools autonomy under Tomorrow’s Schools regime seems to continue unchecked with no obvious consequences. This tends to convey the message to families that there is little point in pursuing a complaint around enrolment difficulties.  
  
Experience with the IHC legal claim against the Government/Ministry of Education would suggest the process of fighting discrimination around enrolment and attendance fought by disabled students and their families is fraught with huge time delays and is expensive – outside the reach of families most affected.   
  
Approaches to the Ministry have been met with such comments as this:  
“Do you really want your child at a school that won’t accept him/her?” We feel this is a cop out by the Ministry who should be offering support by way of resources and or funding for the parent and the school to facilitate acceptance and inclusion.   
  
It is well known that “students with disabilities experience exclusion, including:

“…being denied enrolment and/or full time attendance at school.”4“Mirroring YouthLaw’s internal experience, the specific concerns of accessibility raised by families included issues of enrolment and full-time attendance. Families described being told to keep their children at home in the absence of teacher aide or “support worker cover” or situations where their children were only permitted to attend school for part days. There were

also cases in which families were pressured to remove their children from schools and forced to accept certain conditions for enrolment.”5  
  
Disabled Person’s Assembly, in addition to endorsing clearer legislation outlining a student’s right to be enrolled full- time in their local school, recognises that there needs to be a mechanism around enforcement of that right.   
  
Article 24 (2) (b) of the United Nations Convention on the Rights of the Persons with Disabilities (UNCRPD) states “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.”6The NZ Disability Strategy2016-2026 Outcome 1 Education states “we get an excellent education and achieve our potential throughout our lives…all local schools and education services (including childhood, primary, secondary, tertiary, Kohanga Reo and Kura Kaupapa Maori) are welcoming and provide a great inclusive education for us.”7 This is not yet enshrined in practice for students with disabilities.   
  
By excluding disabled students at the point of enrolment New Zealand is, at best, inadvertently teaching other parents, teachers, and students, that exclusion and discrimination is acceptable as well as allowing New Zealand to break its obligations under the UNCRPD and its own NZ Disability Strategy.   
  
“Principals Federation president Whetu Cormick said there may be some schools that were not as open to children with disabilities as others.”8  
“The Ministry of Education could support this right by building knowledge, understanding and awareness of the rights of children and young people who are disabled or need additional learning support to enrol in and receive and education from their local school.”9  
  
Disabled Persons Assembly believes that the Ministry of Education has to do more than just build “knowledge, understanding and awareness.”9 The Ministry has to actually support schools in terms of resourcing and, where needed, funding for extra supports to meet education and learning needs of students and teachers. We emphasise that access to education on an equal and equitable basis with others also requires the provision of reasonable accommodation and support measures to promote learning, social development, and child and youth well-being. This is also in line with the NZ Disability Strategy. We should be asking “what is reasonable for a child to receive?” This is important because the Ministry of Education has adopted a “contributory” policy of resourcing rather than ensuring disabled students receive ALL that they require to access education on an equitable basis. Schools feel underfunding and often are unable to meet costs to enable a child to be fully funded for ALL the resources they need to access education and fully participate.  
  
Further, we believe there needs to be an active, accessible, and readily workable framework to redress issues where enrolment is discouraged, redirected or deliberately refused. This needs to include instances where continued enrolment is only granted on a part time basis – a frequent occurrence for those in the disability community. Flexibility of enrolment that allows families to choose part time enrolment is one thing but many families are forced into part time attendance without real choice.  
  
“Dr Schollmann said the ministry already had enforcement powers relating to some aspects of a person's right to education.”8 However this is in contrast to findings by Youthlaw who found “Inadequate enforcement mechanisms.

There is currently still no enforceable right to education in New Zealand. Complaints are not always dealt with appropriately by schools or the Ministry of Education. Our enforcement mechanisms are ineffective, difficult to access and do not have the power to direct schools or the Ministry of Education to take any action.”10  
  
The New Zealand Bill of Rights Act 1990 (NZ BORA) aims to affirm, protect and promote human rights and fundamental freedoms in New Zealand.11 In addition it provides the right to be free from disability discrimination on the grounds stated in the Human Rights Act 1993.

Section 21(1)(h) of the Human Rights Act makes discrimination based on disability, without lawful justification, unlawful.12  
The current regime whereby schools refuse enrolment (or attempt to circumvent it through part time attendance) breaches these Acts because it does not grant disabled students equal and equitable access to their local schools.

It is likely statistics on enrolments at Te Aho o Te Kura Pounamu (Te Kura) and specialist residential schools, such as Halswell, would show disabled students are being covertly encouraged or, even worse, actively pushed, to enrol there by their local school. It is often seen as a last resort by desperate parents who find mainstream schools have let their child down and who find their child does not qualify for attendance at a specialist school either.  
  
“The 2013 Statistics New Zealand Disability Survey found that around 24% of children with disabilities have an unmet need for help with their schoolwork in class, about 13% have an unmet need for special equipment to help with their learning and about 28% have an unmet need for adapted classroom materials. The survey also found that because of their disability – around

20% of children with a disability have had their schooling interrupted for a long period of time, 11% have had to change schools, 3% have had to live away from home to go to school, and 19% have difficulty attending school for the whole day.”13

Disabled Persons Assembly recommends that data be kept and maintained on the issue of enrolment refusal or part time enrolment as the Education Review Office Inclusion Education reported noted it was difficult to determine which schools may have breached the current law. 14

The right to be enrolled at the local school is one aspect however it must also be accompanied by the right to full participation, backed up by real learning opportunities. Inclusion is not just a seat in the classroom.  
  
Disabled Persons Assembly supports the idea of changes that facilitate disabled students being able to access the same rights as all other students and belong to the community of all children and young people. A sense of belonging to a community and being accepted is the best deterrent against bullying. Any suggestion of a code of practice or rights is likely to direct families and educators down a segregated pathway rather than an inclusive pathway. We do not support any Code that is not enforceable and not backed by appropriate legislation.  
  
That said however, we acknowledge the Code of Health and Disability Services Consumer’s Rights. The HDC specifies that teachers are bound by the HDC Code of Rights. The 1997 Commissioner's presentation "the-code-of-rights-and-special-education" available from the HDC is clear that the Act covers anyone providing a disability service - e.g. a teacher providing additional tuition because of a child's additional needs, or overseeing a Teacher’s Aide or reader/writer in their classroom.   
  
As well as the provider having to comply with the Code, under Section 72 of the Health and Disability Commissioner Act, the employing authority may also be liable for acts or omissions by its employees which breach the Code. This is something many families of disabled students may not be aware of - that this code can also apply in the context of education in addition to health.

This particular Code confers rights on people who receive health and disability services and places obligations on those who provide those services. Disabled Person’s Assembly would expect that all people who work with disabled children and students to have regard to the rights in the Code in their interactions with all disabled students.

Schools, and the Ministry of Education, may be regarded as providing disability services under the Code in relation to students with ‘special education’ needs, particularly where such students cannot fully participate in the classroom without support.  
  
Disability services are services which are “provided to people with disabilities for their care or support or to promote their independence” or “provided for purposes related or incidental to the care or support of people with disabilities or to the promotion of the independence of such people”. However, this Code only applies to people with disabilities who have a reduced ability to function independently and who require support for an indefinite period. Therefore, while not all students with special needs will fall within the scope of that definition, a teacher’s aide employed to assist an Autistic child with high support needs, who needs assistance to understand what is required of them, might well fit the definition of a disability services provider in the Code.15  
  
This opens up the possibility of such students and their families having recourse through the Health and Disability Commissioner. However, most families would be unaware of that option and Disabled Person’s Assembly believes this right also needs to be made much clearer for families of disabled students. In addition such action may, at the present time, not be timely for resolution of conflicts around enrolment.  
  
Likewise the Human Rights Commission can also receive complaints around discrimination of disabled students but the Commissioner would have to make a determination about whether rights have been breached and each complaint is on a case by case basis. There are long wait times for resolution.   
  
There is no set straightforward pathway to resolving these issues in a way that is timely, and accessible, independent and affordable for all families. The result is that too many students are missing out, and too many schools, and the Ministry, are not facing up to their obligations. We are aware of the Ministry of Education’s Conflict Resolution process but this does not yet appear to be rolled out nationwide.

**In Conclusion**

In conclusion, Disabled Person’s Assembly takes the position that what disabled students need is access to what all other children need and receive:   
  
1. An environment that is safe and supportive and an environment that creates a sense of belonging. The right to be enrolled and to fully participate is upheld and made clear to families and schools in an accessible manner. Disabled students need to have their right to enrol at their local school, the same as their siblings or peers, made clearer, explicit, and upheld.   
  
2. Teachers who know how to teach them so they achieve and are life-long learners. This means ensuring initial teacher education and ongoing professional development results in a teaching workforce and school leadership and management that can respond appropriately to all students in their class, including those who may require accommodations to be at school, to learn, and to thrive.  
  
3. A policy and resourcing framework that can respond to the actual numbers of students who require accommodations to attend and learn at school. This means real data is required and reasonable accommodations for individual disabled students are given as required for them to have equitable access to, through and from education including opportunities to fully participate in all facets of school life.

4. Timely and ongoing access to quality specialist supports (such as speech language, physio therapy, autism neurodiverse adjustments, and so on) when required for shorter or sustained periods of time. This access should be based on need and not random time frames that may not meet a student’s need.

5· Accurate prevalence data from schools ensuring that disabled students are visible in their reporting to the Ministry on attendance, participation, well-being, and achievement.

6. There needs to be accessible, independent, timely and affordable legal safeguarding mechanisms to ensure that disabled students are not subject to disciplinary processes for disability related behaviours. This is to uphold the rights of all children to receive equitable education and to provide a framework for redress of issues around enrolment and other education matters. New Zealand has signed up to these UN Conventions and has obligations to meet as a result. We would be concerned if the Government does not fully endorse or attempt to meet its obligations of the UN Conventions that it has signed up to in addition to the NZ Disability Strategy. Likewise recourse through the HDC and its Code of Rights, available in some instances, and the HRC should be made clear for families and endorsed by Government and its Ministry of Education.

References:  
  
1. Wills and Rosenbaum, 2013, “Parental Advocacy and the Safeguards necessary for Inclusive Education: New Zealand Lessons for Pacific- Asian Education, Pacific-Asian Education” Pgs 27-40.  
  
2. “Our Schooling Futures: Stronger Together” Whiria Ngā Kura Tūātinitini

Report by the Tomorrow’s Schools Independent Taskforce  
<https://conversation.education.govt.nz/assets/TSR/Tomorrows-Schools-Review-Report-Dec2018.PDF> (Pg 60)  
  
3 “Our Schooling Futures: Stronger Together” Whiria Ngā Kura Tūātinitini

Report by the Tomorrow’s Schools Independent Taskforce

<https://conversation.education.govt.nz/assets/TSR/Tomorrows-Schools-Review-Report-Dec2018.PDF> (Pg 71)   
  
4. <http://youthlaw.co.nz/wp-content/uploads/2017/06/Challenging-the-Barriers.pdf> Pg 24 (footnote states Pg 46 Alison Kearney, “Barriers to School Inclusion: An Investigation into the Exclusion of Disabled Students From

and Within New Zealand Schools,” (PhD Thesis, Massey University, 2009))  
  
5. <http://youthlaw.co.nz/wp-content/uploads/2017/06/Challenging-the-Barriers.pdf> Pg 25   
   
6 Article 24 (2) (b) United Nations Convention on the Rights of the Persons with Disabilities (UNCRPD)  
  
7 New Zealand Disability Strategy 2016-2026 Pg 24

8 <https://www.rnz.co.nz/news/political/389393/changes-to-education-act-to-protect-a-child-s-right-to-attend-school-proposed>

9 <https://conversation.education.govt.nz/assets/Uploads/Consultation-document-right-to-education-english-v2.pdf> (pg 2)  
  
10 <http://youthlaw.co.nz/wp-content/uploads/2017/06/Challenging-the-Barriers.pdf> (pg 6)

11 New Zealand Bill of Rights Act 1990 (NZ BORA)

12 Section 21(1)(h) of the Human Rights Act (HRA)  
  
13 <http://youthlaw.co.nz/wp-content/uploads/2017/06/Challenging-the-Barriers.pdf> (pg 4, source: Statistics New Zealand, Disability Survey 2013, customised report and licensed by Statistics NZ for re-use

under the Creative Commons Attribution 4.0 International licence)

14 Education Review Office Inclusive Practices for Students with Special Needs, 2015 Pg 10  
  
15 Code of Health and Disability Services Consumer’s Rights   
 <https://www.hdc.org.nz/your-rights/about-the-code/code-of-health-and-disability-services-consumers-rights/>   
 Health and Disability Commissioner Amendment Act 2003  
 <http://www.legislation.govt.nz/act/public/2003/0049/latest/whole.html>