14th Feb 2020

Please find below the Disabled Persons Assembly NZ submission on the Education and Training bill.

Disabled Persons Assembly NZ Inc.

Contact:

**Prudence Walker**

Chief Executive

**Phone** +64 4 801 9100

**Mobile** +64 21 546 006

**Email** policy@dpa.org.nz

**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

**Submission on the Education and Training Bill**

DPA would like to make the following comments on the Education and Training bill.

**A rights-based approach to education.**

DPA believes that disabled people have equal rights to those of all other people in Aotearoa, including the right to participate in all aspects of economic, social and political life. These rights must be given effect in accordance with the United Nations Convention on the Rights of Persons with Disabilities, the Human Rights Act, and other rights-based laws.

In relation to the Education and Training bill, we would like draw attention to article 24 in the United Nations Convention on the Rights of Persons with Disabilities[[1]](#footnote-2) (CRPD), to which New Zealand is a signatory.

In particular we would like to highlight clause 2 in article 24 which makes it clear that disabled students are not to be excluded from accessing the education system in the community where they live. We paste below the text of this clause (bold text our emphasis).

*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.*

**Right to free enrolment and free education at State schools (including entitlement to attend full-time) (section 32)**

DPA supports the amendment affirming the right of children to attend full-time during hours when the school is open. This right is of particular importance for disabled children and their families who may only be supported to attend school part-time, with major and serious impact on the wellbeing of the affected child and their families.

DPA believes that all children should be fully supported to attend full time and have their learning needs met within an inclusive education system as guaranteed under article 24 of the CRPD. We are, however, concerned that this section is not enforceable. We note that the Ministry Impact Statement[[2]](#footnote-3) acknowledges that the lack of enforceability means that this amendment fails to meet NZ’s obligations under the CRPD. We note that it points out that the UN recommended that NZ establish an enforceable right to education at its last review of the CRPD in 2015.

Given that successive governments have expressed strong support for meeting our international obligations under the CRPD, it is disappointing to see that the advice from the ministry did not recommend including enforceability as the preferred option.

We find it very concerning that, as IHC have recently pointed out, there are a high number of disabled children who are being unlawfully denied the right to enrol at their local school[[3]](#footnote-4), which indicates that it is not sufficient to have a right in legislation, it must also be enforceable.

We would like to see option 3 in the impact statement adopted so that this section includes the power to enforce the right of child to both to be enrolled at their local school and to be able to attend fulltime. Utilising this power can be a last resort measure, but it is essential that the ability to follow through with enforcement when voluntary approaches do not work is included.

The fact that the act can be amended at a later date (which is the case for any legislation) is a superficial rationale that does not justify its omission now given the importance to disabled children and their families of being able to exercise their right to attend and have that right upheld.

We would also like to make it clear that while we support parents and the school being able to negotiate mutually agreed reduction in hours of attendance during transition periods when this is clearly in the child’s best interests to do, it is vital that this is not allowed to become a means of coercion towards families. We note that protracted transition periods can have significant impact on the financial and emotional well-being of families.

**Special education enrolment (Section 36)**

DPA is particularly concerned that section 36, clause 1, includes the power to direct a parent to enrol their child at a particular state school or specialist school rather than their local school. No child should be forced to attend a specialist school against their wishes or denied entry to their local school on the basis of their disability.

Disabled students and their families have the same rights as other students and their families in terms of access to the general education system and to be supported to do so. We note article 24, 2 (a) and (b) of the CRPD makes it very clear that no disabled student should be excluded from the general education system in the community where they live on the basis of disability. This clause cuts right across that. We support the comments made by CCS Disability Action on this section in their submission on this bill

**Limits on use of physical force at registered schools (section 95)**

DPA opposes the proposed changes to the current physical restraint framework. We do not believe that these changes are necessary or that they address the core issues around the use of physical restraint in schools. We are very concerned that the proposed changes could increase the extent that physical force is used in schools and that this will result in increased harm (both emotional and physical) for some children, including disabled children.

In particular, we do not support the change from “physical restraint” to “physical force”, we do not support the change in framing from restrictive (“must not, unless…”) to permissive (“may use, only if….”) , and we do not support expanding the scope to allow it to be used to prevent emotional distress.

DPA is concerned that at present disabled children already experience higher levels of restraint than other children and that specialist schools use restraint at higher levels than other schools. We know from a recent report by the Children’s Commissioner[[4]](#footnote-5) that physical restraint measures can cause harm, including emotional harm, to children subjected to restraint, to children witnessing restraint being used on other children, as well as to the person doing the restraining.

The Ministry of Education Impact Summary[[5]](#footnote-6) also acknowledges that physical restraint is a high-risk action that can physically and emotionally harm the person restrained as well as others. Despite this, we know that use of physical restraint in schools is high. Given the existing risk of harm within the current framework, it is extremely concerning to see a signal to an even more permissive scope in the bill.

While the aim of creating a high trust model in schools sounds admirable in theory, it is important to realise that it is a model that has failed disabled children and their parents time and time again, as happened when the illegal use of seclusion rooms at many schools was uncovered.[[6]](#footnote-7) [[7]](#footnote-8)

Given these factors, DPA does not support legislative changes that could be interpreted as signalling a greater acceptance of the use of force in schools than currently happens.

The proposed change from “physical restraint” to “physical force” is of particular concern to DPA. The term “physical restraint” covers a narrow set of actions that can be taken to prevent a child from doing something or moving somewhere. The term “physical force” potentially covers a much broader set of actions than physical restraint.

Instead of expanding the scope of the physical restraint framework to a more permissive one, we recommend making a simple clarification to the definition of physical restraint to cover it being used to take the child to a safe place and ensuring that the guidelines themselves are well communicated to all staff, including non-teaching staff.

We understand that there has been a lack of clarity around the use of physical restraint in schools and confusion about what is appropriate physical contact. We believe that the solution to this problem does not require changing legislation, but instead in ensuring that the guidelines are clear and as stated above, well communicated. We note that teachers have also called for greater clarity and more training to be provided[[8]](#footnote-9). We believe that there is also a real need for ongoing training to be provided to all school staff in behaviour management and conflict resolution as well in disability awareness.

DPA is also concerned by the proposal to permit physical force to prevent harm to a person’s wellbeing, including emotional distress. Determining emotional distress is highly subjective and very variable. Allowing emotional distress to be used as a justification for the use of physical force potentially exposes children who struggle with emotional regulation, including autistic children, to significant risk of harm, as often the use of physical force in these situations only compounds their distress. DPA believes that only reason for physical restraint should be to prevent harm to a person’s physical safety.

**Disputes resolution processes**

DPA supports the underlying intent behind establishing disputes resolution processes in the bill. We know that, when they are resourced to work well, dispute resolution is usually cheaper, faster, less stressful and more likely to result in positive outcomes. However, we do have a number of concerns about the disputes resolutions process as proposed in this bill and would like to see these concerns addressed.

Firstly, we believe that is essential that the panels have a good understanding of the rights of children and the rights of persons with disabilities under the UNCRPD. Given the large number of disputes that involve disabled students, including autistic students, it is essential that panel members have a good understanding of neurodiversity and other impairments. Currently many schools are poorly equipped to understand the needs and rights of disabled children, who may get suspended or stood down or receive other punishments for behaviours relating to their disability.

Secondly, we would like to see it made absolutely clear that that legal rights cannot be "opted out of" by mediated agreement and that any dispute resolution system cannot undermine rights of the student. It is important that any existing provisions for legal redress in situations where rights are breached cannot be amended or changed with via the dispute resolution process. We also have some concerns about the disputes resolution process being used when legal requirements are clear such as the right to attend school full time. In these cases, we believe that the Ministry has a responsibility to step in to ensure the law is upheld and the rights of disabled children upheld.

Finally, if the dispute involves resources (including services) provided by the Ministry of Education, then it is simple common sense that the Ministry must also be a party to the disputes resolution process.

**In Conclusion**

The Education and Training bill has elements that are positive for disabled children, but we are disappointed that it does not do enough to uphold their right to access an inclusive education at their local school. The right to be enrolled and to attend school full time needs to be enforceable, and properly resourced. The ability to direct parents to enrol their child to attend a specialist school is discriminatory and needs to be removed from this bill. We are particularly concerned by the proposed changes to the physical restraint framework which signal greater acceptance of the use of force in a school setting and increases risk of harm to disabled children.

1. <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-24-education.html> [↑](#footnote-ref-2)
2. <https://education.govt.nz/assets/Documents/Ministry/Legislation/ETB/Strengthening-the-right-to-education-by-confirming-the-right-to-attendan....pdf> [↑](#footnote-ref-3)
3. <https://ihc.org.nz/survey-students-disabilities-face-discrimination-bullying> [↑](#footnote-ref-4)
4. <https://www.occ.org.nz/assets/Uploads/HardPlaceToBeHappy-FINAL.pdf> [↑](#footnote-ref-5)
5. <https://education.govt.nz/assets/Documents/Ministry/Legislation/ETB/Improving-the-workability-of-the-physical-restraint-legislative-framewor....pdf> [↑](#footnote-ref-6)
6. <https://www.rnz.co.nz/news/national/343993/school-ministry-criticised-over-use-of-seclusion-room> [↑](#footnote-ref-7)
7. <https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11732674> [↑](#footnote-ref-8)
8. <https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12073538> [↑](#footnote-ref-9)