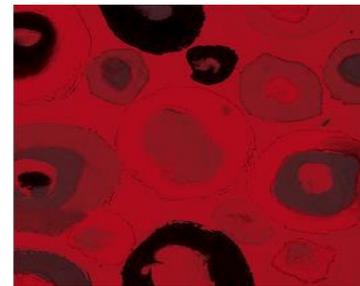


Submission from the Office of the Children's Commissioner: *Education and Training Bill*



INTRODUCTION

1. The Education and Training Bill (the Bill) is a culmination of two years of reviews, including advice from the Tomorrow's Schools Review Taskforce and Kōrero Mātauranga – a national consultation on the future of education in Aotearoa New Zealand in the 21st century. The Bill includes many new policies in education from early childhood through to tertiary education. It also brings across legislative drafting from the current Education Acts for these sectors and consolidates these into one Act that is more logical and ordered.
2. The Office of the Children's Commissioner (OCC) welcomes the opportunity to submit on the Bill. We present this submission from a child-centred viewpoint, focusing on new policy in the compulsory education sector, and one policy in the early childhood sector. We do not comment on the tertiary sector or on new policies relating to structure of agencies in the education system. Our focus is on children and young people up to age 18, the issues that directly impact on them, and how their rights – including the right to have their views heard – can be upheld.¹

The Children's Commissioner represents **1.1 million** people in Aotearoa New Zealand under the age of 18, who make up 23 per cent of the total population.

We advocate for their interests, ensure their rights are upheld, and help them have a say on issues that affect them.

For further information on this submission, please contact Erin Gough: e.gough@occ.org.nz

"The children should be well respected and listened to more often." (12 year old girl, Māori, Cook-island and Tongan, in response to the question: "What makes a good life?").

"Get a new principal who genuinely cares about us and focuses more on what we do well than everything we're doing wrong."
(Secondary school student, Pākehā, Education Matters to Me).

"Support and acceptance for those who are different and help for them who need it."

(16 year old female NZ European, rural school, in response to the question: "What makes a good life?").

¹ The quotes from children and young people included in this submission come from the "Education Matters to Me" and "What Makes a Good Life" reports. See: <https://www.occ.org.nz/publications/news/education-matters-to-me-six-detailed-reports-are-now-available/> and <https://www.occ.org.nz/publications/reports/what-makes-a-good-life/>.

SUMMARY

3. There are numerous proposals in the Bill that we support. As a whole, it aims to create a more inclusive and equitable education system, with positive provisions that support children's rights and child and youth wellbeing. We have highlighted the most important issues that we think need to be changed in the Bill first, before setting out the areas that we support, albeit with minor recommendations.
4. Firstly, while we recognise the value and importance of requiring every school board to give effect to the Treaty of Waitangi, the Bill would be significantly strengthened in its commitment to implementing the Treaty of Waitangi if it had a separate section for the legislation to be interpreted to 'give effect to te Tiriti' and a section similar to section 7AA of the Oranga Tamariki Act 1989.
5. Second, the Bill could better uphold international rights-based UN conventions by explicitly referring to the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities, as in the Oranga Tamairki Act 1989.
6. Third, we notice a missed opportunity to clarify and limit clause 76 of the Bill, which empowers principals to stand down or suspend students from school. Specifically, we are concerned about excluding students from school for continual disobedience as this can be interpreted widely and disproportionately affects disabled children and those living in poverty.
7. Fourth, we continue to have significant concerns about the proposed changes to the physical restraint framework.
8. Finally, we endorse and/or make recommendations in the following areas. All our recommendations are listed together at the end of this submission.
 - statement of national education and learning priorities;
 - the licencing requirements for early childhood education services including kōhanga reo;
 - police vetting of all adults who live in a home where home-based early childhood education and care is provided;
 - stating explicitly in legislation that all students have a right to attend school fulltime;
 - enabling hours of attendance to be varied as part of a transition plan when in the child's best interest;
 - establishing complaint and dispute resolution panels to hear serious disputes;
 - allowing teachers who do not meet recent teaching experience requirements to have their practicing certificates renewed if they agree to a refresh process;
 - changing the name of special schools to "specialist schools";
 - revising school board objectives to focus on the holistic needs of the child;
 - requiring school boards to consult on bylaws and drafting the strategic plan (with recommendations to include children in consultation on principal appointment criteria and cohort entry policies);
 - the Ministry taking over the development of, and consultation on, enrolment schemes.

GIVING EFFECT TO THE TREATY OF WAITANGI /TE TIRITI O WAITANGI

5. We endorse the requirement of school boards to give effect to The Treaty of Waitangi /Te Tiriti o Waitangi through a treaty-specific objective as it explicitly brings the responsibility to give effect to Te Tiriti o Waitangi to the school board. This will ensure schools, as individual Crown entities, are supporting other parts of the system that give effect to Te Tiriti o Waitangi, namely:
 - a. The national education and learning priorities, instilling in all children an appreciation of the importance of Te Tiriti
 - b. Education service agencies implementing equity measures for Māori in accordance with the joint statement by the Ministers for Māori Crown Relations: Te Arawhiti and Education.
6. Bearing in mind that achievement of equitable outcomes is a goal that requires greater resources than schools can bring to bear – for example, housing, welfare, equal employment opportunities – what the school board requirements look like in practice should be made clear to them through guidance from the Ministry of Education. This could include, for example, putting in place initiatives that mitigate the effects of poverty, providing more culturally responsive teaching, and developing relationships with mana whenua, as strategies towards achieving the objective of equitable outcomes for Māori.
7. We recommend that the Ministry provide guidance to schools about how to ensure their plans, policies and local curriculum reflect local tikanga Māori, mātauranga Māori, and Te Ao Māori, how to make instruction available in tikanga Māori and te reo Māori and how to work towards achieving equitable outcomes for Māori students. Rec 1
8. We note there are many ad-hoc provisions in the Bill that ensure the Act will give effect to Te Tiriti, and we endorse them. However, these could be strengthened simply by stating that the Act will be interpreted to give effect to Te Tiriti as is included in some other legislation². All new and revised State legislation should be so configured, to ensure a treaty-based partnership endures in Aotearoa New Zealand.
9. We recommend the Bill have a separate section with the words: “This Act shall be so interpreted and administered as to give effect to Te Tiriti o Waitangi (the Treaty of Waitangi)”. Rec 2
10. Section 7AA of the Oranga Tamariki Act 1989 was revolutionary in imposing obligations on the Chief Executive of Oranga Tamariki to give practical effect to Te Tiriti o Waitangi by, for example, imposing obligations to set and report on measures to reduce the inequities Māori experience in the care and protection system, prioritise the whakapapa of children in their care, and develop strategic partnerships with iwi and Māori organisations.
11. We recommend there be a provision similar to 7AA in the Bill imposing obligations on the Secretary of Education, to the extent they are empowered. This could include setting and reporting on measures to reduce the inequities Māori students experience within the education system and develop strategic partnerships with iwi and Māori organisations in order to improve outcomes for Māori students. Rec 3

² Section 9 of the State Owned Enterprises Act 1986 and Section 4 of the Conservation Act 1987 both refer to the Treaty e.g. “This Act shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi”. However the Education Act should uphold Te Tiriti per se, as use of the term ‘principles’ is currently problematic, being a court-construct developed subsequent to signing the Treaty.

UPHOLDING RELEVANT INTERNATIONAL CONVENTIONS ON CHILDREN'S RIGHTS

12. The OCC has a statutory role to uphold and promote the UN Convention on the Rights of the Child (Children's Convention). The four key principles of the Children's Convention appear to be supported by the Bill in ad-hoc ways, for example through including students in consultation by the board, and providing for access to education for all without discrimination.
13. However, as a whole, the Bill could be strengthened by explicitly referring to the Children's Convention and the UN Convention on the Rights of Persons with Disabilities (Disabilities Convention). For example, **we recommend any person who exercises power in implementing the Act be guided by principles that uphold the Children's Convention and the Disabilities Convention.** This would align the legislation with our international human rights obligations. A precedent can be found in the the Oranga Tamariki Act 1989 that both embeds the Children's Convention in the General Principles (Section 5 of that Act) and refers to children's rights throughout, including ensuring children's voices are heard (Article 12 of the Children's Convention).
14. We recognise the Bill will support the Sustainable Development Goal 4 by improving access to education and making it more equitable. This means placing the wellbeing and best interests of a child or young person at the centre of decision making (Article 3 of the Children's Convention).

Rec 4

"If kids had more of a say in the dumb changes they make around our school that are unnecessary and nobody likes them. Also that teachers would be nicer." (Primary school student, undisclosed ethnicity, Education Matters to Me).

"Just talk to us, don't see us as too hard." (Student in learning support unit, Samoan, Education Matters to Me).

"I love playing on the monkey bars, puzzles, reading, drawing circles, reading books, drawing, drawing houses; I love everything, I love it all; I am going to smile all my days and all my weeks." (Child in early childhood education, NZ European, Education Matters to Me).

LIMITING THE ABILITY OF SCHOOLS TO EXCLUDE STUDENTS

15. The sections of the Education Act 1989 that provide for schools to suspend, exclude or expel students (together known as school removals) have been carried over with no adjustment to the provision that states:

76 (1) The principal of a State school may stand down or suspend a student if satisfied on reasonable grounds that—

 - (a) the student’s gross misconduct or continual disobedience is a harmful or dangerous example to other students at the school; or
 - (b) because of the student’s behaviour, it is likely that the student, or other students at the school, would be seriously harmed if the student is not stood down or suspended.
16. In our view, this section is no longer fit for purpose. It is problematic that such an important decision is left to generally untrained³ parent volunteers on boards, with minimal oversight⁴ and multiple pressures from different sides. It is also too permissive and enables disparate decision-making between boards, leading to inconsistencies in stand-down and exclusion decisions as reported by Youth Law^{Error! Bookmark not defined.} and others.
17. Excluding a student for continual disobedience when it is a “dangerous example to other students” can be a breach of a child’s right to attend. It disproportionately affects children in poverty and those with disabilities. “Continual disobedience” can be interpreted in many ways, and what is considered a “dangerous example to other students” can also be interpreted widely such as breaching uniform policy such as bare feet. There needs to be a mechanism in this legislation that ensures teachers and schools work with students who cannot meet expectations imposed on them by schools due to lack of resources, or learning difficulties. Schools should work with students to help them to learn and progress - or help them and their whānau get the resources they need to attend school, rather than removing them from school.
18. Changing this provision would be a step towards reducing unnecessary school removals.
19. **We recommend the criteria in section 76 (1) for school removals be reviewed to be made tighter and more objective, as well as making it explicit that school removals are an absolute last resort.**

Rec 5

“I don’t get a chance to go to school. I always get suspended first week of term. I’m not sure why. There could be 100 of reasons why but I never got told. So been to 3 AEs. I want to go to school. Like hanging with my mates.” (Student in alternative education, Māori, Education Matters to Me).

³ There is limited training available through the New Zealand School Trustees Association, that is optional.

⁴ See: <https://drive.google.com/file/d/0BxhAUv9h7vtwZV9EZ2I2VUxneDQ/view>, page 17

UPDATING THE PHYSICAL RESTRAINT FRAMEWORK

20. We are concerned about the changes proposed to the physical restraint framework, including the change in framing from restrictive to permissive, change in language from “physical restraint” to “physical force” and the altering of the threshold for the use of force from when “safety” is at “serious and imminent risk” to when it is “reasonably believed necessary to prevent imminent harm” (defined broadly). In our view, together these changes are not child-centred. We understand the changes are not intended to increase the extent to which teachers can use force, but rather to clarify when staff can have appropriate physical contact with students. However, we consider the changes will, in practice, expand the use of force, while providing no further clarity to school staff.
21. We consider the current definitions and guidelines already allow teachers to use reasonable force where necessary, and make it clear what types of physical contact with students are permitted. The problem definition for changing the legislation is misguided. Clear communication is needed with school staff about what staff are allowed to do and what is unacceptable in a staff role. Therefore, rather than changing the language and thresholds in legislation, we consider that the focus should be on further communicating how the guidelines operate in practice, and on providing school staff with adequate training and professional development in behaviour management and de-escalation techniques. This should include information on what appropriate physical contact with students is allowed.
22. While a small change, we are concerned about the proposed shift in framing from restrictive (“must not, unless...”) to permissive (“may use, only if...”) as it signals that the use of physical force is expected in school settings. We consider that the current restrictive framing is a more appropriate signal that force should not be used except in very limited circumstances.
23. Further, we are concerned about the proposed language change from “physical restraint” to “physical force” because the term “physical restraint” holds within it the reason the action is being taken – to prevent a student from doing something or moving somewhere. The term “physical force” does not hold such an explanation; the type of force is not specified. While we note that it is proposed that a definition of physical force will have to be included in the rules within 6 months of the Bill being enacted, we consider that “physical restraint” is a clearer description as to what types of actions are permitted. School staff do not have the same kinds of training as the police around the use of force, as using force is not, nor should it be, generally part of their role.
24. Having said this, we recognise that there is some ambiguity within the current definition of physical restraint in terms of how long the restriction of movement is permitted to last. We therefore propose that the Bill reverts to the physical restraint terminology with the definition of physical restraint amended to make it clear that the action used to “prevent, restrict or subdue the movement of the student’s body or part of the student’s body” can also be exercised to “move the student to a place of safety, following the incident in which their safety is at serious and imminent risk”. OCC has not made this suggestion before this submission, but we suggest it as an option to solve some of the reasons that drove this change. This would address the need for staff to move a student away from a classroom, for example.
25. We are also concerned that, in combination with the permissive framing above, the definition of “harm” – meaning “harm to health, safety or well-being of the student or the person, including any significant emotional distress” is now too broad. The inclusion of harm to health and wellbeing is a significant broadening of scope from “serious and imminent risk to safety” in the current provision. In the Government’s Child and Youth Wellbeing Strategy, wellbeing is defined as including emotional, physical, cultural and spiritual contexts. This goes well beyond safety in the current definition and risks being open to wide interpretation. This definition may be more appropriate if used with a restrictive framework, providing the harm is significant. We note that emotional distress is not covered within the possible defences to assault in the Crimes Act.

26. We know that restraint can in itself cause harm to both the person being restrained and the person doing the restraining. Data collected on restraint incidents by the Ministry of Education shows that, between August 2018 and August 2019, people sustained injuries in 875 out of a total of 2,823 incidents (about 30%).⁵ This is a concerning high proportion and indicates the need for further staff training. We consider that there is a risk that this number would increase given the more permissive nature of the changes proposed.
27. We note that currently the reporting template staff are required to fill in following a restraint incident does not require them to specify who was injured during the incident, which means data on this is not collected. **We recommend the nature of the harm/injury and person harmed/injured be recorded and collected as this will allow the Ministry to tailor guidance and training accordingly.**
28. We are also concerned that these changes will put students with disabilities at further risk of harm, given the Ministry data shows that they are already at significantly higher risk of being restrained. Approximately 25 percent of restraint incidents between August 2018 and August 2019 occurred in special schools despite these making up only 1.5 percent of schools across the country.⁶ The data also indicates that restraint is used disproportionately against Māori students. Approximately 39 percent of restraint incidents over this period involved Māori students despite them only making up about 24 percent of the school population.⁷
29. These disparities speak to the need for a broader conversation around how to ensure all students have their behaviour understood and needs accommodated in an inclusive, child-centred way. We understand that the Human Rights Commission has raised similar concerns in its submission in regards to the impacts of restraint on disabled children and endorse its view that there is a need to address system-level issues. These include how to support staff to be inclusive and respond to specific disabilities, before loosening up the provisions governing the use of force in schools.
30. Children and young people in State custody have told us about the harm being restrained can cause in OCC's 2019 report, *A Hard Place to be Happy*, which recounted the experiences of children and young people living in care and protection residences. Children and young people told us being restrained is hard, and sometimes people are injured.⁸
31. While these restraint incidents happened within the context of Oranga Tamariki secure care and protection residences, under different regulations, and performed by workers trained in use of restraint rather than teachers, the below passage and quotes provide important insights about how children and young people feel about the harms of restraint.

We [OCC monitors] heard about carpet burns, sprained wrists and bruises. We also heard it can be frightening to see other people being restrained. Children and young people told us that, when staff are doing restraints, sometimes things go wrong and injuries can happen.

One young person told us they were happy staff aren't allowed to take people to the ground anymore and that there are new restraint techniques. Others said staff still need more training around restraints.

"I hate restraints ... they hurt me ... like, they grab the back of my shirt and ergghh! ... They hold me, and it hurts when they squeeze too hard." (Māori girl)

"I don't like restraints 'cause some people do it hard. And, like, they don't mean to, but when [staff member] did my restraint, he left a huge bruise on my arm ... He was swearing at me and he told me I couldn't talk." (Māori young woman)

⁵ See: <https://www.education.govt.nz/assets/Documents/1-OIA-releases/1204764-Physical-Restraints-Statistics.pdf> page 6

⁶ As above, at page 3

⁷ As above, at page 4.

⁸ See: <https://www.occ.org.nz/assets/Uploads/HardPlaceToBeHappy-FINAL.pdf>, page 24.

32. In summary, we recommend that, rather than making major changes to the language and thresholds in legislation, the definition of physical restraint is simply expanded to include moving a student to a place of safety. We do not otherwise support expanding the situations when restrictive force on students is allowed, due to increased risks of harm.
33. In line with a child-centred approach, we recommend that the focus should be on providing teachers and other school staff with further guidance about how the framework operates in practice and training in behaviour management and de-escalation techniques. The experiences of children and young people who have witnessed and/or experienced restraint should inform how teachers are trained and the standards to which teachers are held accountable.

Rec 7

Rec 8

[If you had control over your school and you could change anything, what would you change?] **“...Not disregarding any complaints about teachers that students might have, or just keep in mind that teachers can be bullies too.”** (Secondary school student survey respondent -15 year-old female, NZ European, Education Matters to Me).

“...I would also change some of the teachers as some are rude and have little respect for the students.” (Secondary school student survey respondent -17 year-old female, Asian, Latin American, Education Matters to Me).

COMMENTS ON OTHER SELECT ELEMENTS OF THE BILL, INCLUDING RECOMMENDATIONS

Statement of national education and learning priorities

34. We recommend the objectives of the national education and learning priorities reflect Article 29 of the Children’s Convention in its entirety - including Article 29(1)(e) “respect for the natural environment” under clause 5(4) (b) (iv). This would ensure the priorities are consistent with the Government’s commitment to fulfilling children’s rights in line with the Children’s Convention and would also acknowledge what children in Aotearoa New Zealand tell us is important to them.

Rec 9

Introducing additional licencing requirements for early childhood education services including kōhanga reo

35. We note that the Bill introduces additional licencing requirements that the Minister must take into account before approving early learning service licencing applications. This includes a requirement to take into account the needs of communities in the area, but not necessarily children’s needs. We recommend that “the needs of children” be added to the list in clause 17 (2)(a) to make it clear that their best interests must be explicitly considered during the licencing process.

Rec 10

Requiring police vetting of all adults who live in a home where home-based early childhood education and care is provided

36. We support the proposal to make explicit the requirement that all adults who live, or are present in, a home in which children (from another home) are receiving early childhood education must be police vetted. Police vetting helps to ensure children are kept safe and are protected by providing criminal history and other relevant information about people who may have unsupervised access to children.
37. From an administrative perspective, we recommend that police vets are made transferrable (to a new employer or place) for a defined period of time, so that people can use a vet previously obtained, rather than having to get a new one each time.

Rec 11

Stating explicitly that all students have a right to attend school fulltime

38. As stated in our previous submission on this issue, we support the proposal to have an explicit statement in the Act about the right for children to attend school during all hours that the school is open for instruction. This has positive implications for children with disabilities.
39. Stating the right to attend will not, by itself, address the existing barriers to attendance, but it will raise awareness of this right. It will hopefully provide parents with more confidence to hold conversations with schools to build an understanding of their children’s and all children’s right to education.
40. It is consistent with the knowledge that school attendance is fundamental to a student’s learning, including learning social, emotional, and academic skills. It will provide a signal for principals and boards about their responsibilities to all learners, including those who need ongoing accommodations to fully participate in education.
41. It will also be a signal to agencies such as the Ministries of Children, Health and Education that they need to adequately fund and support the safety, development, health and learning-support requirements of all children, so they are able to attend and fully participate in school.

42. As recommended above, explicit reference to the Children’s Convention and the Disabilities Convention will reinforce this provision.

Enabling hours of attendance to be varied as part of a transition plan when in the child’s best interests

43. We support the proposal to enable a student’s parents to request and agree with the principal and Secretary of Education to vary the hours a student is required to attend school where this is in the student’s best interests. This would enable a student to attend school part-time for up to six months while additional supports are put into place to enable their full-time attendance.
44. We support the requirements that plans are only able to be requested by parents, are unable to exceed six months, and are not able to be renewed or extended. We recognise that co-construction of a plan between parent(s) and the school staff is valuable, and the school staff should not coerce parents into a plan they don’t agree to. The plan would need regular reviews and adjustments to ensure it enables a student to be able to attend school full-time safely by the end of six months.
45. We also consider that the more stringent obligations this will place on schools to support students should also place corresponding obligations on the Ministry to provide support to schools to support students. To that end, **we call strongly for budget increases to learning support services generally, to support implementation of the current Learning Support Action Plan, towards a more inclusive education system.**

Rec 12

Establishing complaint and dispute resolution panels to hear serious school disputes

46. We strongly support the proposal to establish complaints and dispute resolution panels that can be accessed by students and their whānau when they have not been able to resolve disputes with their schools.
47. We note and support the proposal for the panels to include disputes relating to the suspensions and removals of students from school, as well as disputes relating to wider matters including enrolment and attendance, racism and discrimination, and physical and emotional safety. This will go a long way to helping students and their whānau realise their fundamental right to have decisions made by schools reviewed in an accessible and timely way.
48. It is important that panels retain a status of being independent and free, with local community input and using trained individuals. The panels must be provided at the cost of the Ministry of Education (i.e. centrally funded), rather than paid for by schools or communities, or parent fees.
49. We note that decisions of the panels are only binding if both schools and students and whānau agree. This risks there being no benefit to students in accessing the panels if schools do not do what the panel recommends. However, we are also aware that making decisions binding could create a process more like a tribunal, that decreases accessibility, creates a more adversarial system, and may lead to schools’ resistance to participate.
50. **We recommend that the panels be implemented in a child-centred way in consultation with communities experiencing the most exclusions – including Māori, Pacific and disabled children and young people and their whānau.** We would welcome the opportunity to provide advice to the Ministry about implementing this initiative and how consultation can best be done, building on the work we have done in preparation for a pilot programme of independent panels alongside the NZ School Trustees Association.

Rec 13

Allowing teachers who do not meet recent teaching experience requirements to have their practicing certificates renewed if they agree to a refresh process

51. This proposed change is positive in that it could support people who have left the teaching profession for a period of time to care for family or do other work to re-enter teaching. Students would benefit from their varied work or life experience. This may also support those working in alternative education, who have not met registration requirements, to have their expertise utilised in the mainstream system.
52. We support the idea of a refresh process, such as a return to teaching plan or pathway approved by the Teaching Council. **We recommend this be child-centred to ensure the wellbeing of students and quality teaching provision. For example, a test of base practice knowledge and experience, coupled with mentoring and supervision on the job.**
53. The quality of teachers is integral to children's education rights being upheld.

Rec 14

Changing the name of special schools to "specialist schools"

54. We support the re-naming of special schools to "specialist schools" to reflect the shift in focus from the school itself to the nature of the specialist services provided to students with significant learning support needs.
55. It is clear that this does not refer to special character schools, such as kura kaupapa Māori.
56. There are opportunities for specialist schools to play more of an outreach role to ensure their expertise is further utilised in mainstream settings, where more specialist support should be available to children and young people.

Revising school board objectives

57. We support the proposal to widen the objectives of school boards to focus on ensuring staff and students' physical and emotional safety, being inclusive and catering to learners with differing needs, and giving effect to Te Tiriti o Waitangi, alongside educational achievement. These appear to complement each other well, and reflect children's *'rights to education that develops them to their fullest potential'* under Article 29 of the Children's Convention.
58. The obligation to ensure the physical and emotional safety of students and staff should be considered in implementing the physical force provisions discussed in the first section above. If the proposed amendments to physical restraint are enacted, there is a risk of greater harm to students. We expect that risk to be mitigated by the greater obligation on school boards relating to safety, and hope they will ensure appropriate training and information is available to staff so that they know what their use of physical force, and its limits, should look like in practice.

Requiring school boards to consult on bylaws and the draft strategic plan

59. We strongly support the proposal that boards must consult their students, staff and community when making rules and when preparing the strategic plan every 3 years. This upholds children's rights to have their views considered under Article 12 of the Children's Convention.
60. Having said this, we consider the "where appropriate" qualification in relation to consulting students is unnecessary and it should be removed in both clauses. Students should always be consulted on matters that affect them, and there are always age- and capability-appropriate ways of doing so.
61. **We recommend the "where appropriate" phrase be removed in relation to students at clause 134 (3) (a) (iii) and removing the words "(to the extent that the board considers appropriate)" from clause 121 (2).**

Rec 15

62. Any situation that requires a school to consult families should also include students. The notion that a child cannot consent or make practical decisions inherently misunderstands the right of all children to have a say in matters that affect them – including schooling.
63. We note the Minister has asked the Children’s Commissioner to provide advice on the role that children and young people should have in school governance. This advice will be provided based on our consultation with children and young people, experiences of schools, and analysis of best practice. OCC has already foreshadowed the need for children’s voices and perspectives to inform all aspects of school governance and that the present arrangement of only one student on a secondary school board is quite inadequate.
64. There are other opportunities within the Bill where board consultation with students is desirable to increase child and youth voice in decision-making. These include:

Appointment criteria for principals

- a. The Minister will make criteria for appointments of principals, and has listed who will be consulted for this. As well as consulting relevant national bodies, **we recommend that children and young people should be consulted on the proposed new eligibility criteria for the appointment of a school principal. This would require ‘children’ to be added in clause 584 (2).**
- b. We note that some schools involve students in the appointment process of principals and defined senior staff, such as the student representative on the board being on the interview panel. Appointing a principal is such an important decision that we consider children and young people should have input to those appointments. We would encourage children and young people to be involved in all major appointments at their schools, and will be making more detailed recommendations relating to this in our report to the Minister. There should be an opportunity to embed our recommendations in legislation.

Rec 16

Adoption or revocation of cohort entry policy

- c. **As well as consulting parents, services and other early childhood services in a community regarding: adoption or revocation of cohort entry policies, we recommend the board should also consult children.** Children can add valuable insights about the impacts of a cohort entry policy on them, and decisions can be more easily made in their best interests if their perspectives are understood. This would require adding “(e) children” to clause 63 (1).

Rec 17

The Ministry of Education taking over the development of, and consultation on, enrolment schemes

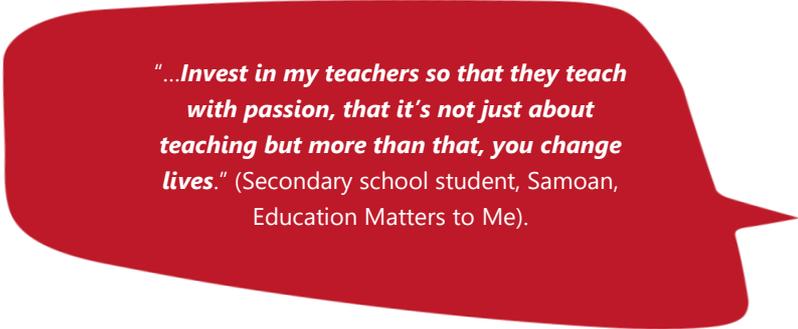
65. We support the proposal for the Ministry of Education to take over the development of, and consultation on, enrolment schemes and administer these regionally, based on the needs of the local community. We believe this will help improve equity across schools.
66. We agree with IHC that a more regional approach to enrolment, along with resourcing and services, should help to ensure that every student gets what they need to participate at their local school and reduce the number of “magnet schools” in relation to disabled students.⁹
67. Administering enrolment schemes regionally should also help to reduce socioeconomic divisions within communities, or prevent individual schools from operating socio-economically-exclusive enrolment schemes that disadvantage other schools and children. This policy is likely to positively impact disabled children and those living in poverty.

⁹ See: <https://ihc.org.nz/top-marks-tomorrows-schools-review>.

RECOMMENDATIONS

68. To conclude, the OCC welcomes the opportunity to submit on the Bill and suggest how the legislation can further uphold children's rights to be safe, heard, and included.
69. We endorse many of the changes that aim for more equitable outcomes and upholding children's rights, that will also progress Aotearoa New Zealand's obligations under the international Sustainable Development Goal 4 on Education.
70. Our recommendations for changes to the Bill are summarised below:
 - Rec 1. We recommend that the Ministry provide guidance to schools about how to ensure their plans, policies and local curriculum reflect local tikanga Māori, mātauranga Māori, and Te Ao Māori, make instruction available in tikanga Māori and te reo Māori and achieve equitable outcomes for Māori students as outlined in clause 122(1)(d).
 - Rec 2. We recommend the Bill have a section stating: "This Act shall so be interpreted and administered as to give effect to Te Tiriti o Waitangi (the Treaty of Waitangi)".
 - Rec 3. We recommend there be a provision similar to 7AA of the Oranga Tamairiki Act 1989 in the Bill imposing obligations on the Secretary of Education, to the extent they are empowered. This could include setting and reporting on measures to reduce the inequities Māori students experience within the education system and develop strategic partnerships with iwi and Māori organisations in order to improve outcomes for Māori students.
 - Rec 4. We recommend any person who exercises power in implementing the Act be guided by principles that uphold the Children's Convention and the Disabilities Convention. These conventions should be explicitly named in the new Act, as they are in the Oranga Tamariki Act 1989.
 - Rec 5. We recommend the criteria in section 76 (1) for school removals be reviewed to be made tighter and more objective, as well as making it explicit that school removals are an absolute last resort.
 - Rec 6. We recommend information relating to the nature of harm/injury and the person harmed/injured be collected when reporting on the use of physical restraint to allow the Ministry to know who is most at risk of injury and tailor guidance and training accordingly.
 - Rec 7. Rather than making substantive changes to the physical restraint framework through changing the language and thresholds in legislation, we recommend the definition of physical restraint be expanded to include moving a student to a place of safety, but otherwise remain unchanged.
 - Rec 8. We recommend that the focus should be on providing teachers and other school staff with further guidance about how the physical restraint framework operates in practice, and training in behaviour management and de-escalation techniques.
 - Rec 9. We recommend the objectives of the national education and learning priorities reflect Article 29 of the Children's Convention in its entirety - including Article 29(1)(e) "respect for the natural environment" under clause 5(4)(b)(iv).
 - Rec 10. We recommend that "the needs of children" be added to the list in clause 17(2)(a) to make it clear that their best interests must be explicitly considered during the licencing process for early childhood education services.
 - Rec 11. We recommend that police vets be made transferrable (to a new employer or service location) for a defined period of time, so that people can use a vet previously obtained, rather than having to get a new one each time they move.
 - Rec 12. We call strongly for budget increases to learning support services generally, to support the implementation of the current Learning Support Action Plan and create a more inclusive education system as a whole.
 - Rec 13. We recommend that the dispute resolution panels be implemented in a child-centred way in consultation with affected communities and student groups – including Māori, Pacific and disabled children and young people, and their whānau.

- Rec 14. We recommend teacher re-registration through a refresh process be child-centred to ensure the wellbeing of students and quality teaching provision. For example, a test of base practice knowledge and experience, coupled with mentoring and supervision on the job.
- Rec 15. We recommend the “where appropriate” phrase be removed in relation to students being consulted by boards at clause 134(3)(a)(iii) and removing the words “(to the extent that the board considers appropriate)” from clause 121(2).
- Rec 16. We recommend that children and young people be consulted on the proposed new eligibility criteria for appointment of a school principal. This would require ‘children’ to be added in clause 584(2).
- Rec 17. As well as consulting parents, services and other early childhood services in a community regarding adoption or revocation of cohort entry policies, we recommend the board also consult children. This would require adding “(e) children” to clause 63(1).



“...Invest in my teachers so that they teach with passion, that it’s not just about teaching but more than that, you change lives.” (Secondary school student, Samoan, Education Matters to Me).