



Access to Education for All at School

SUBMISSION FROM THE OFFICE OF THE CHILDREN'S COMMISSIONER FOR THE PROPOSED EDUCATION ACT AMENDMENT ABOUT THE RIGHT TO ATTEND SCHOOL

13 JUNE 2019



MANAAKITIA A TĀTOU TAMARIKI

**Children's
Commissioner**

Access to Education for All at School

New Zealand has a good education system that works for most children and young people. However, about one in five have additional learning needs and the opportunity to attend school full-time and participate is not guaranteed for all of them. Making the 'right to attend school' an explicit provision in the Education Act 1989 would be a positive signal to people about children's rights to an inclusive education.

EVERY CHILD HAS THE RIGHT TO EDUCATION

Education is a fundamental human right.

When the New Zealand Government ratified the United Nations Convention on the Rights of the Child¹ (the Children's Convention) in 1993 it agreed to promote, protect, respect and fulfil the rights of all children, including the right to education. Articles 28 and 29 of the Children's Convention include the rights of every child to free, quality education that is respectful and develops the child's personality, talents and abilities to their fullest potential.

The Education Act 1989 implements parts of the Convention by *requiring* all children in New Zealand to be enrolled in compulsory education from ages 6 to 16, and entitles children to enrol from the age of 5 until 1 January after the year they turn 19. Furthermore, this education is provided for free, in theory at least, and policy settings are intended for education to be as inclusive as possible, i.e. provided without discrimination (Article 2 of the Children's Convention).

Including an amendment to ensure children have the *right to attend* school will also contribute to New Zealand's progress in achieving United Nations Sustainable Development Goal 4² to "ensure inclusive and equitable quality education and promote lifelong learning opportunities for all."

¹ <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

² <https://sustainabledevelopment.un.org/sdg4>

WHY IS THIS AMENDMENT PROPOSED?

Despite the commitment to the Children's Convention and the legal provisions of the Education Act 1989, there are many complaints³ reported about children not being able to attend their local school full time.

About one in five children are affected by impairments from different ways of learning, thinking and behaving. Different schools have different responses to the varying learning support needs of students. Consequently, many children are unable to attend school full time. For example:

- > students' families are encouraged to enrol in schools other than their local one because the child's perceived impairments are thought to be better supported and resourced at another school
- > schools have difficulty accepting children's disruptive behaviours, which stem from neurodiversity, disability, trauma, neglect, parental mental health etc
- > children arrive at school facing behavioural expectations they do not know how to meet, and in some cases schools end up excluding them, or allowing only part-time attendance with a parent or teacher aide

³ These are reported to the Office of the Children's Commissioner's Child Rights Advice Line and a number of parent support groups, like [VIPs Equity in Education](#).



The Office of the Children's Commissioner provides quality, independent advice to stakeholders and reports on matters relating to the rights and wellbeing of the 1.1 million people in New Zealand who are children.

For more information, contact Strategy Rights and Advice:

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- > children and families find themselves facing a 'kiwi suspension' or exclusion i.e. they are encouraged to take their child out of school voluntarily (before they are officially excluded and have that on their 'record')
- > learning supports required for them to participate in education are not made available due to lack of funding.

Unfortunately in many cases children are not viewed as people who have the potential to contribute and participate in an ever-changing diverse society, but rather seen as a cost due to additional needs.

"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?")

WE SUPPORT THE AMENDMENT TO STATE A RIGHT TO ATTEND SCHOOL

We agree that having an *explicit* statement in the Education Act 1989 about the right for children to attend school is worthwhile. It will not, by itself, address the barriers to access described above, 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 and the children's right to education.

It will provide a signal for principals and boards about their responsibilities to all learners, including those who have challenges that need additional learning supports.

It will also signal agencies such the Ministries of Children, Health and Education that they need to adequately support the safety, development, health and learning support needs of children so they are able to attend and participate in school and develop to their full potential.

We note that no specific wording has been indicated for the proposed amendment. In order to progressively implement the Children's Convention and the inherent right to an education, we recommend that the proposed wording for the Education Act explicitly refer to the Children's Convention. For example, the Oranga Tamariki Act 1989

(Section 5) and the Children's Act 2018 include reference to the Convention. A clear description of the elements of the right to education should specifically reflect Articles 28 and 29 of the Children's Convention, as well as the General Principles.

Rec 1. Ensure that changes to legislation explicitly refer to the principles and provisions of the UN Convention on the Rights of the Child, specifically Articles 28 and 29 and the General Principles (Articles, 2, 3, 6 and 12).

IN ADDITION TO LEGISLATIVE CHANGE, WE NEED TO ADDRESS EXISTING BARRIERS TO ATTENDANCE

The proposed amendment may enhance people's knowledge of, and ability to advocate for, a child's right to attend school. However, it may not by itself address the existing barriers children face in being able to attend school.

Schools must ensure the safety of students and employees by operating a health and safety policy⁴⁴ so students are kept safe from each other's behaviour, such as violent outbursts or bullying, and so teachers can manage their own health and wellbeing.

Students may legally be stood-down or suspended (or 'removed' from school) for reasons stated in Section 14 of the Education Act, namely:

Principal may stand-down or suspend students

(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, will be seriously harmed if the student is not stood-down or suspended.

The legislation states a high bar for removals, of both likelihood and seriousness of harm, or dangerousness of influence on other students. We are aware that in practice, schools interpret the legislation differently. For example, at

⁴⁴ [Health and Safety at Work Act \(2015\) in running a school](#)

some schools students are regularly removed for continual disobedience (e.g. disrupting the classroom) that does not pose a dangerous example to other students nor is *likely* to cause *serious* harm⁵. We are aware of pressure on principals to remove such students from classes.

Other examples of barriers to full-time attendance include⁶:

- > attendance allowed only when in-class support of a Teacher Aide is available, who is responsible for monitoring the child's stimulation, sensory needs or pain, and behaviour triggers to keep others safe. The Teacher Aide hours are often limited by funding.
- > part-time attendance for new entrants with gradually increasing lengths of time at school until the child is familiar with being away from its parent, and becomes used to school. This can take months until the child attends full time. In some cases, the child is only allowed to attend alongside the parent or caregiver for part of the school week.
- > child not allowed to attend school until their specific disability is diagnosed so the school can develop the correct individual education learning plan (ELP) for them.
- > child enrolls in Te Kura correspondence school and home-schooled because parents become exasperated with the continual barriers schools put up to their child attending a mainstream school.

All the above barriers may continue after the proposed Education Act amendment, but it is hoped that parents and others will be more confident to challenge a school to include a child.

"I would integrate the special needs students more than they are" (14 year old boy, NZ European, in response to question: "What would you change about school?")

⁵ Reported to our Child Rights and Advice Line.

⁶ [Challenging the Barriers: Ensuring Access to Education for Children with Special Education Needs](#), YouthLaw 2016; and reported to Office of Children's Commissioner

Teachers are key to the solution of being inclusive

Teachers have a significant role in enabling all children to participate in class and attend school every day, all day.

Children have told us that the quality of the relationship they have with their teacher is the most important factor in the success of their schooling. A key insight from our '*Education Matters to Me*' series was "Understand me in my whole world."⁷ Teachers - their training, professional development, and attitudes to children - are key to the solution of having inclusive schools in Aotearoa New Zealand.

Teachers should be supported to have the professional skills to differentiate⁸ classroom teaching to suit all learners in a class. Much of this knowledge should be available via teacher training, mentoring or supervision, and professional development.

To understand the needs of specific children, teachers should be enabled to work alongside children's professionals such as health, mental health, social workers, speech language therapists, occupational therapists, physiotherapists, psychologists and psychiatrists. Teachers should seek and consider the advice of these professionals as to how best to manage children's learning and behavioural needs to be fully inclusive of diverse learners. This will build teachers' skills, but will also take more effort and require more time for planning differentiation of lessons and liaising with learning support professionals.

Also, teachers' dedicated time out of the classroom should be preserved so they have time to prepare their lessons - accounting for all students' needs. It may be necessary to add flexibility for some teachers' non-contact time, if they have significant numbers of students with additional needs that require more meetings or complex, differentiated, lesson plans to be prepared on a regular basis.

We encourage the Education Review Office and Ministry of Education to monitor the

⁷ [Education matters to me: Key Insights](#), OCC January 2018

⁸ [Differentiation](#) is a process of developing lessons that can be taught in different ways according to the learning needs of students. E.g. for children with dyslexia: using more visuals or an OpenDyslexic font; for students with poor memory processing using a checklist or instructions clearly laid out in detail, with frequent progress monitoring during class.

provision of differentiated teaching and learning, especially for children with additional learning needs, to be confident the needs of all students are being met.

Finally, the Teacher Registration organisation, the Teaching Council (formerly Education Council) could have more power to enforce the teacher's Code of Professional Responsibility and Standards for the Teaching Profession in relation to how teachers treat children and support all children to participate as learners.

Rec 2. Implement the full suite of actions in the Learning Support Action Plan to ensure teachers are skilled to work with diverse learners. (The plan includes teacher professional development and monitoring standards.)

Schools need more support to remove the barriers

School boards need to be supported to understand the multifaceted contributors to student behaviour and systemic barriers to every child being able, and welcome, to attend their local school, and ensuring their individual needs are met as is their right⁹.

All school boards have discretion over how their operational grants, including Special Education Grants are utilised. They can choose to create the conditions for schools to be more, or less, inclusive to a certain extent.

Where students at the school are likely to be seriously harmed because of the behaviour of one child, the school must put in place a plan for that child. The plan may require one-on-one supervision, and teacher aides are often needed to help implement learning plans. However, each regional budget has to be allocated to the highest priority cases across a region, so teacher aides are usually not fully funded by resourcing schemes for all the children who need them. Also, there can be disagreement about whether a child's behaviour warrants one-on-one support, or the appropriate extent (number of hours a week) of support. Limitations in learning support resources appear to be the key reason why schools curb children's right to attend.

⁹ Macarthur and Rutherford, 2016, *Success for All? Re-envisioning New Zealand Schools and Classrooms as Places Where 'Rights' Replace 'Special'*

Rec 3. Increase funding for learning supports and ensure resourcing is accessed by children who need it.

Establish a right of review, appeal or complaints process

Decisions to remove children from school are made by individual school boards. Such decisions do not always take account of the whole child and can be very detrimental to them. Schools may resort to removals as the only mitigation for a *likely* risk of *serious* harm.

When a school board takes the decision to remove a student, currently there is no right of review or appeal, except through a High Court or the ombudsman, neither of which is both an affordable and timely solution for the student at the time.

We believe that students and their families should have some right of appeal or review for exclusion decisions. A review provision would result in more high quality, valid decisions, made only after the school has done all in its power to keep a child at school.

Rec 4. Support the right for a child or family to have a review of a board's decision to remove a child e.g. through an appeals process.

"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?")

SUMMARY

This submission supports the proposal to strengthen wording around a child's right to attend school. We think the legislation should reflect the Children's Convention, especially in relation to elements of a right to education – that is in the best interests of the child, provided without discrimination, that develops all children to their full potential.

We also note the reasons why that right is not currently being assured to all children, and make additional recommendations.

Changes in educational practice, school policy, and government funding are needed to create an education system that values children with diverse needs and provides an education system that works for all.