

Home Education Foundation

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UNITED STATES OF AMERICA

Dear Sir,

Effect of the UN *Convention on the Rights of Persons with Disabilities* on parents' rights in New Zealand

Following your request for information on the implementation of the United Nations *Convention on the Rights of Persons with Disabilities (the CRPD) in New Zealand*, we advise that the New Zealand Government ratified the Convention in September 2008.

The CRPD requires signatory states to take action, according to the Human Rights Commission of New Zealand, "to remove barriers and make sure disabled people have access to their rights." Article 7 of the CRPD requires signatory states to "ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms." It goes on to say, "In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration."

Article 7 of the CRPD makes no recognition of the right of parents to determine the best interests of their children. Rather, it assumes that the states signatory to the CRPD have the right to decide what the best interests of the child are, without reference to the child's parents. In all cases in which parents disagree with the government as to their disabled child's best interests, the CRPD imposes a duty on that government to override the parents' decisions.

Article 24 of the CRPD states that signatory states "shall ensure an inclusive education system at all levels." This assumes that education in general and the education of disabled students in particular is the responsibility of government. Just as Article 7 assumes that the government defines what is in the best interests of the disabled child, so Article 24 assumes that the a government-regulated education is in the best interests of the disabled child.

This has resulted in breaches of parents' rights in New Zealand.

Implementation of the CRPD in New Zealand

In March 2011, New Zealand submitted its first report on the implementation of this Convention to the UN. Paragraph 247 of the report states, "The 'best interests of the child' principle is broadly reflected across decision-making procedures concerning children, including family law, care and protection and elsewhere." Paragraph 154 shows a probable policy approach to interpretation of the "best interests" principle: "New Zealand child policy sees family as the best environment for all children, including disabled children." However, Paragraph 252 makes it clear that the wishes of a disabled child as interpreted by the state take precedence over a parent's wishes: "Social attitudes are a challenge. In some cultural and other groups, parents often make decisions without consulting their children. This can mean that the views of children, particularly disabled children, are not always heard within their immediate or extended family. Current and planned awareness-raising programmes are seeking to address such attitudes."

In addition, despite paying lip service to the family as the best environment for all children, the report shows a clear bias in favour of removing those children from the family during the majority of their waking hours for schooling. Paragraph 160 of the report states some of the goals of special education in New Zealand: "Special education resources are used in the most effective and efficient way possible, taking into account parental choice and the needs of the student." In practice, however, the CRPD holds governments responsible for national education. Thus a parental choice to take responsibility for the education of their own children, removing them from the oversight and care of the government school

system, is not usually welcomed by the New Zealand Ministry of Education.

Effect on the rights of parents in New Zealand

In a 2009 report, *Disabled Children's Right to Education*, the Human Rights Commission of New Zealand acknowledged that disabled children face severe difficulties within the state school system, saying that "education standards vary considerably for disabled students and the school environment is not always a safe one for them." Many parents of disabled children decide to teach them at home in a more personal, secure, and productive environment. But despite the advantages to receiving an education at home with their family, parents of disabled children are finding it particularly difficult to obtain exemptions to home educate disabled children.

This discrimination against parents of disabled children is entrenched in the *Education Act 1989*. Section 21(1) of the Act provides that the Ministry of Education may exempt a child from compulsory school attendance on application of a parent, on condition that the child "will be taught at least as regularly and well as in a special class or clinic or by a special service."

While parents are barred from home educating their disabled children if the Ministry thinks they cannot teach as well as special needs teachers, state schools are allowed to enrol disabled children in "mainstream" classes under teachers with no special training. The New Zealand government remains sure that it can give disabled children a better education in a chaotic classroom than the parents of those children can in a loving, secure environment with one-on-one tuition.

Meanwhile, if the Ministry of Education decides that a special education is in the best interests of a disabled child, it can force (or "direct") parents to send their children to a special school under section 9 of the Act. The provisions for special education under the *Education Act 1989 (NZ)* are thus coercive, unfair, and perfectly in line with the CRPD's assumption that a government is a better judge of a child's best interests than a parent.

Case studies

The Home Education Foundation has worked with hundreds of parents around New Zealand whose children are suffering in the state schools. In the following case studies from 2012, three parents of disabled children sought permission to educate those children at home:

Case 1: A mother in the North Island with a daughter and two disabled boys applied for an exemption to home educate all three of them. The daughter, with no special needs, was exempted, but even after giving more information to the Ministry of Education the mother was denied an exemption for her two disabled boys. She filled out new exemption applications and after some lobbying from the local home educators' support group, she was granted exemptions for both the boys and is now home educating all three children.

Case 2: A family in the South Island had no trouble getting an exemption for their son, Davy, with Downs Syndrome. They report nothing but support from Special Education.

Case 3: A single mother in the North Island had difficulty getting an exemption to home educate her two disabled children, ages 7 and 8. All appeared to be going well with the application until the children's school principal got involved. When this principal discovered that a mother intended to remove two disabled children from the school, he wrote to the Ministry of Education, protesting that this mother had no hope of giving her children all the special educational benefits they would be receiving at the school. In reality, one of the children had been seated at the back of the class and just required to colour in all day—such were the "benefits" of education at a state school. Meanwhile the burden of proof was on the mother to prove that she could give her children the extra special needs education the school was failing to provide. She unsuccessfully lobbied members of Parliament, including the Associate Minister of Education, a member of a libertarian party. Finally, the local home educators' support group threatened to contact the media and the exemptions were granted.

As these case studies demonstrate, parents of disabled children in New Zealand are at the mercy of bureaucrats who believe they know what's best for the children. Although some parents, like those in Case 2, have been able to gain exemptions easily, the fact remains that the governmental authorities believe the decision rests with them, not with the parents. While the Home Education Foundation has been able to help these parents to obtain exemptions, these are only the successes. Given these cases, we believe that there are many unsuccessful applications that have not been brought to our attention. We fear many would-be home educators are being forced to continue sending their disabled children to schools that fail or neglect to provide the quality of education available at home.

The case studies further demonstrate the practical difficulties of special education funding. According to the mother in Case 3, the school principal got involved because losing two special needs children would affect the amount of funding received by the school—funding which was supposed to be spent on the children, but in reality was being put toward other things while the children were neglected. Providing funding for special education is an incentive to warm seats, not an incentive to educate the children sitting in those seats.

It is our experience that the educational legislation in New Zealand, which is fully consistent with the United Nations *Convention on the Rights of Disabled Persons*, has resulted in parents finding it increasingly difficult to educate their disabled children in those children's best interests—as defined by the parents. Unfortunately, instead of benefiting these disabled children by making it easier for their parents to teach them, the CRDP makes it impossible for New Zealand to improve the current situation.

Yours faithfully,

The Home Education Foundation of New Zealand
per:

A handwritten signature in cursive script, appearing to read "Suzannah Rowntree".

Suzannah Rowntree, LL.B