

New Zealand Advancing Inclusive Education in New Zealand: The IHC Experience

FOREWORD

David Towell writes:

The history of families organising for mutual aid and to support their children goes back a long way. IHC in New Zealand was founded in 1949. New Zealand is of course a rich country with a strong Welfare State. Like similar associations in other Western countries, it has grown as a major provider of services from state funding while also sustaining its role in supporting families and engaging in policy advocacy.

It's efforts to advance inclusive education started early in this history but, even so, this is still work in progress. Like our first case study from Peru, IHC's effort have been multi-faceted. Here Trish Grant, IHC's distinguished lead on advocacy, tells more of this story. She describes the multiple barriers to progress even in a very rich country. In sum, children with intellectual disabilities are subject to unlawful discrimination. Accordingly, because the legal and institutional framework in New Zealand allows this, IHC is now pursuing a lengthy strategy based on strategic litigation in relation to human rights principles. The story continues!



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Advancing Inclusive Education in New Zealand

The IHC Experience

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New Zealand is a geographically isolated country with unique flora and fauna and a vibrant culture. We have a founding document, the Treaty of Waitangi that promises to protect Māori (the indigenous people of Aotearoa, New Zealand) culture and to enable Māori to continue to live in New Zealand as Māori. At the same time, the Treaty gave the Crown the right to govern New Zealand and to represent the interests of all New Zealanders. The current population is 4.8 million. Although our culture is diverse, we struggle to embrace diversity and achieve social cohesion.

From the outside, New Zealand (NZ) looks like a leader in inclusive education, but the reality for disabled children and their families is a different

story. The journey towards equitable access to education for all is far from over.

I have been IHC's Director of Advocacy for over 17 years. (The initials IHC come from our association's original name, the Society for Intellectually Handicapped Children.)

My early career in teaching, social work and counselling led me to an advocacy leadership role within the Children's Commissioner's office which I held for nearly a decade. My knowledge and passion for children's rights prepared me well for my position at IHC.

IHC's advocacy can involve from lobbying government Ministers, working to change law and government policy alone and with others, to taking our government to court for not protecting disabled students from unlawful discrimination.

IHC's 70-year commitment to inclusive education

In 1949, a group of parents founded the family membership association IHC. These brave parents defied the advice of the 'experts' who told them their children 'didn't belong' with them. They knew that the best thing for their children was community inclusion: to grow up with their families and attend their local school alongside their siblings, neighbours and peers. They knew disabled children needed to be included from the beginning, not excluded in an institution as was the professional wisdom of the time.

IHC currently has 2,098 members and 34 active associations around New Zealand. The support for IHC's education advocacy programme extends to individuals and families who are connected to, but not members of IHC.

IHC is now NZ's largest provider of government funded support services with about 3,500 people with intellectual disability receiving a range of support in their community for people with intellectual disabilities and their families while advocating for the rights, inclusion, interests and wellbeing of over 50,000 people with intellectual disability in New Zealand

The IHC founding family belief was simple: our children belong in their own families; they should have access to everything all children have in community. Families could see that inclusion would bring life-long advantages for



their disabled children and the wider community. They knew that inclusion is good for society; we all benefit when we can understand and respond to difference as part of the human experience. Families today continue to support this philosophy and look to IHC for support and advocacy, for connection to other families and connection to reliable information. IHC has become a trusted leader of human rights campaigns and an organisation that collaborates and organises around breaches of the human rights of disabled people.

Without using the term, IHC's founders instinctively understood that access to inclusive education was a critical foundation right for long term inclusion as a valued and contributing citizen.

Beginning to make progress

IHC's core beliefs and philosophy may be simple, but the journey to successful inclusion is complex and we still have a way to go.

We have been lobbying for change for over 70 years now and have remained unequivocal in our message: access to education for disabled children is a human right and that a quality education system is an inclusive education system.

It wasn't until 1989, after years of IHC's efforts to mobilise and rally around inclusion, that Section 8 of the Education Act gave disabled children the legislative right to enrol at local state schools on the same basis as non-disabled children. Today, the majority of disabled students attend their local school in NZ but their access to education is problematic and very different from their non-disabled peers. Disabled children are not getting what they need in order to learn and participate. They do not have equitable access to or outcomes from education and IHC maintains the effect of that treatment on disabled students is unlawful discrimination.

Despite our persistent efforts with the Ministry of Education, we have only had partial success in improvements for disabled students attending their local school. Problems with initial teacher education and ongoing professional development means that teachers and school leaders lack capacity and capability to teach diverse learners. The resourcing and funding framework is flawed and does not respond to available prevalence data or international norms, so schools do not have adequate human or financial resources to welcome and teach all students including those with disabilities. Disciplinary processes are inappropriately used for disability-related behaviours and there are long waiting lists for specialist assessment, advice or support for students and schools. In 2021 many families are still fighting to have their children fully included at school.

The problems in equitable access to education in New Zealand are compounded due to the devolved model of education service delivery with unclear accountabilities and monitoring arrangements between families, schools and education system stewards.

Managing tensions

As a family association, IHC initially provided some early childhood education services but withdrew when government provision of early childhood services became more widely available.



IHC has not delivered any education services for decades and this has meant that our advocacy for inclusive education is unfettered by concerns about 'biting the hand that feeds'.

While IHC prioritises respectful relationships with the Ministry of Education and other education sector stewards, we do not hesitate to challenge government action and priorities. Tensions develop from time to time, but we see this as inevitable and potentially constructive.

As a non-government organisation (NGO), we take seriously our role to hold government to account in the progressive realisation of the human rights of people with intellectual disability.

We are constantly looking for points of commonality with government and other education sector stakeholders and expect that tensions will develop due to competing interests and pressures. For example, teacher unions and

Principals groups in advocating for their members' interests will raise issues in the media about the "untenable pressures" put on schools by disabled students.

IHC challenges those views and tensions do develop at times: however we prioritise direct solution-focused dialogue with key sector stakeholders. We encourage sector groups to focus on the capacity and policy problems as opposed to promoting the view that positions disabled students as the "problem".



There is no question that responding to student diversity can expose system inadequacies but the solutions posed by some sector groups have the potential to take us further away from building an inclusive system that works for students and schools. Recently our position and approach with those groups has been supported by the Children's Commissioner and the Human Rights Commission.

Promoting a well-resourced and supported inclusive system is vital to IHC which is why we commissioned the research "Learning Better Together" (IHC, 2009) by Dr Jude McArthur.

We continue to profile evidence-based positions and arguments in our discussions with government, sector groups and families.

As an organization we support inclusive education in local schools, but we understand that for some families, the 'choice' of a resource-rich special school,

where they don't have to fight for their child's right to a quality education, is attractive. However, we know from the research that children in segregated special schools are at an increased risk of abuse and long-term isolation from community. We also socialise research findings that confirm the improved learning and social outcomes when children learn together. We work with organisations such as the Special Schools Association to change government responses so as to build capacity in mainstream settings for real family "choice".

IHC's message is clear: An inclusive education is a quality education for all students and inclusive education has long term benefits for all students and for New Zealand society.

Our strategies

We have always had a multi-layered strategy to achieve inclusive education for disabled students.

This strategy includes:

- development and dissemination of research and other information on inclusive education,
- providing families with practical support, advocacy and advice
- engaging with government on all legislative and policy change
- working in collaboration with other NGOs
- initiating across-sector discussion forums and focused initiatives
- maintaining a media profile as an expert on inclusive education
- legal action.

Although we are a small NGO, we have a big voice; we attempt to amplify family and student voices and look for and create opportunities for government to hear directly from students and families.



For example, IHC's submissions to government on legislative and policy reform are informed by family and student voices and we consult and survey with families on a regular basis.

Changing the education system is a huge task and we know it will take time and multiple approaches. IHC, as a well-respected family membership organisation has the tenacity and resources to maintain a long-term campaign, taking decisive action on behalf of our families so that they don't have to.

One of the key messages we receive is that parents are worn out from the daily grind of fighting for their child's basic human rights. That is why we continue to lobby and use the real-life stories from our families to influence government action and priorities.

We use our commissioned research and knowledge of NZ law and human rights obligations to develop quality information for parents to use when advocating for their child at school. We want all parents of disabled children to be empowered with information and support and to know that their child is entitled to a quality inclusive education. Many families tell IHC that they feel they are not being listened to by the education system and that they have to "beg" for what their child needs to be at school and to thrive. We support self-advocacy

and remind parents that their child's right to education is enshrined in both domestic and international law.

IHC uses every opportunity to speak up on behalf of its members to get government's attention and to influence public opinion: through media, select committee processes, engaging with reform processes, writing briefing papers for incoming governments, and developing constructive relationships with government officials. We are constantly working to influence political understanding of inclusive education and ensure disabled students' experiences of discrimination are profiled.

We have shared what we know about the rights of disabled children and young people to an inclusive education at a number of national and international conferences. We work in collaboration with other NGOs in the education and disability sectors in what has become an active and engaged social change movement.

A new direction in our journey

In 2008, IHC increased our commitment to advance inclusive education in NZ. Tired of the "that's good enough" attitude from the government and hearing from families that disabled children continued to be disadvantaged and discriminated against at school, we decided to lodge a complaint under Part 1 A of the Human Rights Act 1993.

We saw this as a step change - by using this mechanism, IHC was signaling that the problems within the education system had become a serious human rights issue.

It was helpful for IHC that in 2008 New Zealand ratified the United Nations Convention on the Rights of Persons with Disabilities and there was much discussion across civil society and government about obligations in respect of Article 24, the right to education.



We believe IHC's legal action has the potential to fundamentally change the way NZ understands and provides for quality inclusive education. The legal action has created an opportunity to consider disabled students' access to education within a human rights context and what is needed for removal of the persistent and longstanding systemic and structural barriers.

The strategic litigation approach we hope will result in improved understanding of human rights principles and the ways in which they can be embedded in law and policy so that the experience of inclusive education is assured.

Current systems and structural problems result in disabled students being in classes with teachers who lack capacity, knowledge and support for inclusive values and teaching practice, classroom spaces that contribute to sensory overload, not having timely access to specialist assistance and support and policy disincentives for schools who welcome students with diverse learning and support needs. We know that all children are capable, with the right support and accommodations, of learning and participating at their local school.

We also want better training for teachers in their initial teacher training and in general, a better understanding of what is meant by inclusive education. We want everyone to understand that any barrier to accessing the curriculum or simply being at school is discrimination. We want disabled students to participate in all aspects of

school life and for teachers to understand that limiting attendance or enrolment, excluding students from school trips or extra-curricula activities, is a form of discrimination.

What happens next

IHC's Human Rights legal action is now 13 years old! Our case had to go through the Human Rights Commission and government lawyers wanted to "strike out" the IHC case. We had a hearing in the Human Rights Review Tribunal in 2015 but didn't get a response until 5 years later. IHC's case can now go forward to a hearing where the substantive issues of discrimination can be considered by human rights experts.

At the beginning of 2021, the Director of the Office of Human Rights Proceedings, Michael Timmons, agreed to provide IHC with legal representation, which was fantastic news. He believes that the way in which disabled children experience discrimination in their access to education is a serious matter and of public interest.

Now we are gathering evidence from families of disabled students about their experiences at school to use in our case.

Alongside the litigation, we are engaged in 'without prejudice' discussion with education systems stewards focused on developing shared understanding that sustained action is required to change systems and structures in education to remove the current inequities experienced by disabled students. Should those discussions be successful, IHC will move to withdraw the litigation but have a deed of settlement lodged within the Human Rights Review Tribunal in case government commitment to the agreed actions lessen

IHC will continue to be the loud voice for disabled students and families, advocating for and raising awareness of the human right to an inclusive education.

