



Education Report: Improving access to Residential Specialist Schools

To:	Hon Chris Hipkins, Minister of Education Hon Jan Tinetti, Associate Minister of Education		
Date:	19 November 2021	Priority:	Medium
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Drafter:	Helen Hunter	DDI:	(04) 439 5489
Key contact and number:	David Wales	DDI:	(04) 463 7669
Messaging seen by Communications team:	N/A	Round robin:	Yes

Purpose of report

This paper responds to your request for advice on how to make the RSS pathway more ākonga centred.

Summary

1. The New Zealand education system aspires to be an inclusive education system. All children have had equal rights to enrol and receive education at State schools since the introduction of the Education Act 1989 and the *Special Education 2000* policy.
2. Over the last 35 years, there have been a number of reviews and reports related to Residential Schools in New Zealand. Themes that emerged from these reviews indicated an historical over-representation of Māori, inequitable access, distance from families and home communities, poor evidence base for practice, and questions of the need or appropriateness of RSS provision.
3. On the other hand, research shows that many young people and their families describe positive experiences with RSS, often situating this as the first or only positive experience with schooling and social services.
4. This suggests that, in the current education system, RSS may be the right option for some children and young people with learning support needs who would benefit from a period of intensive support outside of their usual environment.
5. While the Review of Interventions for Students with the Highest Level of Learning Support Needs is underway, there is an opportunity to improve the RSS pathway and build on the goals of the Learning Support Delivery Model (LSDM).

6. We need to ensure ākonga can access a RSS placement when it is needed to uphold the wellbeing of ākonga and their whānau. We also want to ensure ākonga should access a RSS placement only when needed and only for as long as needed.
7. The criteria currently used for direct access enrolment decisions were introduced at a time when there was no nationwide consistent process to ensure that those students with the highest need were able to access the RSS and that the funds used to provide this very high level of support were being appropriately targeted. As often happens, over time, the criteria have been interpreted as strict rules, rather than guidelines, that do not always lead to decisions best for the child.
8. We want decisions to focus on serving the best interests of children and young people. We will achieve this by creating a new overarching principle that there should be clear benefits for the child and their whānau that outweigh risks, and that any risks are able to be well managed.
9. Decisions about enrolment are made too far from the child and may be lacking important information about the child's context and needs. We want to move decisions closer to the child. This will mean discontinuing enrolment groups. Instead, RSS principals, local learning support staff, whānau and ākonga will connect directly to work together and make a decision.
10. Increasing individual responsiveness of the RSS application process could also increase the chances that some ākonga may stay at an RSS unnecessarily or for longer than needed. The current safeguards embedded in the pathway will be retained and strengthened where necessary. This will likely include building the capability of local learning support staff.
11. We will need to redesign the direct access pathway in collaboration with sector stakeholders. If you agree, we will begin the detailed design work, including engaging with RSS, regional staff, other learning support providers and the Disability Rights Commissioner before Christmas. We would then undertake public consultation in Term 1 of 2022. Implementation of the re-designed pathway will start from Term 2 of 2022.
12. We will work with your offices to plan an announcement of the rationale for and intent of the changes and upcoming consultation. 9(2)(ba)(i)

Recommended Actions

The Ministry of Education recommends you both:

- a. **agree** to move decision-making about RSS enrolments closer to the child or young person in line with the Learning Support Delivery Model (LSDM), which would include discontinuing the existing RSS enrolment groups;

Agree / Disagree

Agree / Disagree

- b. **agree** to a new overarching principle that the RSS's, whanau, and MoE specialist staff involved decision making, agree there are clear benefits to the child that outweigh the risks and that any risks can be well managed;

Agree / Disagree

Agree / Disagree

- c. **agree** that the Ministry will consult with sector stakeholders on how best to go about making these changes to the RSS only pathway in Term 1, 2022;

Agree / Disagree

Agree / Disagree

- d. **note** that the Ministry will implement changes to the RSS only pathway from Term 2 2022; and

Noted

Noted

- e. **note** the Ministry will develop a communications plan for the changes, including a Ministerial announcement before the end of 2022.

Noted

Noted

Proactive Release Recommendation

- f. **agree** that this briefing is not published until the announcement on changes to the RSS direct pathway is made.

Agree / Disagree

Agree / Disagree

TTT

Sean Teddy
Deputy Secretary
Te Pae Aronui

19/11/2021

Hon Chris Hipkins
Minister of Education

___/___/___

Jan Tinetti

Hon Jan Tinetti
Associate Minister of Education

21/11/___2021

Background

1. The New Zealand education system aspires to be an inclusive education system. All children have had equal rights to enrol and receive education at State schools since the introduction of the Education Act 1989 and the *Special Education 2000* policy. Less than 1% of learners with disabilities and other learning support needs are enrolled in specialist schools.
2. There is not yet agreement on what an inclusive education system looks like. The Learning Support Action Plan articulates the Government's vision for inclusive education and talks about a "system where every child feels a sense of belonging, is present, makes progress, where their wellbeing is safeguarded and promoted, where learning is a lifelong journey, and where children and young people with learning support needs get the right support at the right time." We also know that, when it comes to education, one size does not fit all, and that this means we may need to look outside of a traditional classroom environment.
3. On the other hand, the plain-language version of the United Nations Convention on the Rights of Persons with Disabilities defines inclusion as "where students of all abilities learn together in the same classroom environment. This means students with and without disabilities. It involves creating an education system where everyone can learn together and have their individual needs met."
4. A recent international literature review on Residential Specialist Schools sets out that over the last 35 years, there have been a number of reviews and reports related to Residential Schools in New Zealand. Themes that emerged from these reviews indicated an historical over-representation of Māori, inequitable access, distance from families and home communities, poor evidence base for practice, and questions of the need or appropriateness of RSS provision.¹
5. The literature review highlights perceived risks about disconnection from family and community, inadequate educational provision, quality of care, stigmatization, and cumulative long-term risks of being in care, including mental health consequences.
6. It also highlights that many young people and their families describe positive experiences with RSS, often situating this as the first or only positive experience with schooling and social services. These positive outcomes are connected to the positive relationships, small class sizes and "24-hour curriculum." There is disagreement about whether it is feasible for local schools to provide these supports.
7. This suggests that RSS may be the right option for some children and young people with learning support needs who would benefit from a period of intensive support outside of their usual environment. RSSs have a valuable role in the continuum of available inclusive support services.
8. Stays in an RSS are expected to be temporary with a focus on working to reintegrate the child or young person back into the community. An RSS placement can act as a 'circuit-breaker' for the child by placing them in an environment where they can receive holistic support tailored for their needs, including learning valuable life skills. It can allow intensive interventions to be given during periods when the family and whānau are not well-placed to do so in the home.

¹ Morton, M.; Jain, N. R.; and Webber, M. (April, 2021) *International Literature Review on Residential Specialist Schools for Learning and Behaviour*. Prepared for the Ministry of Education.

Recent changes have been made to RSS enrolment process

9. Prior to changes made to the criteria and enrolment process in 2011, the Ministry identified that there was no nationwide consistent process to ensure that those students with the highest need were able to access the RSS and some students who did not meet the high level of need were gaining access to the RSSs. In response to this, the Ministry introduced a new joint admissions committee for the three schools, where they together with a Ministry representative, decided on who should be enrolled at the school. Enrolment changed from optional placement where each individual school chose who should be enrolled at their school, to students being placed at the school based on the student's identified needs.
10. Enrolments in RSSs have dropped significantly since Te Kahu Tōi: Intensive Wraparound Service (Te Kahu Tōi), which began in 2011 and has a focus on providing supports across the home, community and local schools. The RSSs are now part of the continuum of supports for students with the highest and most complex needs, and students who access Te Kahu Tōi are provided the option of accessing the RSS. However, concerns persist within the disability sector that placing a child in a RSS may disconnect them from family and community and may ultimately lead to long-term institutional care.
11. Given the lower levels of enrolment the Ministry of Education (the Ministry) is encouraging RSSs to consider changes to their system role to better realise their potential. Other shifts may be needed to ensure RSSs are better integrated into local schooling rather than being a 'last resort' option. These questions will be addressed as part of the High Needs Review, due to report back in October 2022.

Changes to RSS enrolment processes are needed now so all ākonga who are best supported by an RSS can access it

12. While the Review of Interventions for Students with the Highest Level of Learning Support Needs (Highest Needs Review) is underway, the Ministry can make improvements to the criteria and process for ākonga to enter a RSS through the direct pathway. Some family and whānau have had difficulty gaining access to a RSS for their ākonga. For several years, Te Kahu Tōi was the only pathway to entering an RSS. In 2018 a 'direct access' pathway to RSSs was created to make access easier.
13. There is an opportunity to make improvements to the RSS pathway while also building on the goals of the Learning Support Delivery Model (LSDM). The LSDM provides the infrastructure and leads ways of working with schools and kura to meet the learning support needs of ākonga. Any changes to the RSS direct pathway should ensure that:
 - a. decisions about RSS enrolments are made locally, and family and whānau are at the centre of decision-making;
 - b. the decision about a possible placement in a RSS is made in the context of the child's needs and takes into account environmental factors; and
 - c. an RSS placement is a planned move, which is part of a broader support plan around the child.

14. The RSS direct pathway should allow ākonga to:
- a. **access the right support at the right time** - children and young people with learning support needs and their families should have access to a broad range of support options that meet their needs
 - b. **access the RSS only when needed, and only for as long as needed** – a RSS placement should be time-limited and for the purpose of preventing a child's disengagement with education.
15. The decision-making framework for RSS enrolment should centre on considerations about the best interests of the child and be informed by the Enabling Good Lives principles. As part of the process, decision-makers should:
- a. identify the benefits and risks of spending time in the RSS for the child;
 - b. communicate with the RSS so they understand the child's needs;
 - c. support the RSS to plan for and minimise any risks relating to enrolment in the RSS;
 - d. consider the child's views on being separated from their family, whānau and community to prevent unintentional harm; and
 - e. considers other support options available in the community alongside the RSS placement.
16. The process also needs to:
- a. begin planning for reintegrating the child back into their local community early;
 - b. seek input from specialists, such as an educational psychologist where it is needed to inform the analysis of benefits and risks; and
 - c. prioritise children and young people with the highest level of needs first.

Options to improve the RSS enrolment process

17. Options to improve access to RSS fall into two categories: the application assessment process; and changes to application criteria or guidance.
18. In the RSS direct pathway, the process of deciding whether a placement is in the best interests of the child happens outside of Te Kahu Tōi and relies heavily on local learning support providers. In the current process there are several key steps:
- a. **Referral** - Local educators, RTLBs and learning support specialists can refer a child or young person for a RSS placement. The Ministry advises that educators and learning support providers should first meet with the child or young person and their parents and whānau to consider whether RSS is the right option for the child and to ensure that family and whānau are aware of other local community-based alternatives. The application includes a risk assessment and written consent of

parents or guardians.

- b. **Enrolment group decision** – a RSS enrolment group (made up of the RSS principal, a local RTLB cluster manager and a Ministry representative) considers the application against the four criteria. If the majority support the application, they send a letter to notify the referrer.
- c. **Specialist Education Agreement** –the Secretary of Education (or their delegate) enters a Specialist Education Agreement (SEA) with the parents or guardians.
- d. **Planning for reintegration** – enrolments in a RSS are expected to be temporary and for a specific purpose. Strong planning for transition in and out of the RSS is needed to make this a reality.

Improving the RSS application assessment process

- 19. The current process creates too much separation between the people closest to the child and those who decide what is in the child's best interests. The voice and expertise of family may not be sufficiently visible or given enough weight at the point of decision-making. Decision-making may also lack transparency for those closest to the child.
- 20. The Secretary for Education currently delegates authority for SEAs² to the National Director Learning Support. The Director may be asked to make a final decision on an application when an enrolment group cannot agree. They can also overturn an enrolment group's decision if they consider it is in the best interests of the child. Having the SEA delegation sit nationally means complex decisions sometimes have to be made with limited information on local circumstances.
- 21. We want to move decisions closer to the child to improve information about the child's context and needs, and consider these holistically. This will mean discontinuing enrolment groups. Instead, RSS principals, local learning support staff, whānau and ākonga will connect directly to work together and make a decision. This is likely to be best achieved by using the Learning Support Delivery Model. However, we believe National oversight of RSS enrolment decisions should be maintained.

Shifting to a principle-based approach

- 22. The criteria currently (see Annex 1) used for direct access enrolment decisions were introduced at a time when there was no nationwide consistent process to ensure that those students with the highest need were able to access the RSS and that the funds used to provide this very high level of support were being appropriately targeted. As often happens, over time, the criteria have been interpreted as strict rules, rather than guidelines, that do not always lead to decisions best for the child.
- 23. Current Ministry guidance to referrers and enrolment groups is that all four access criteria must be met for an enrolment to be supported. This steers the parties towards a narrow assessment of whether the child's needs are consistent with the thresholds in Criteria 2 and 4. As a result, ākonga who would best be supported by an RSS may be unable to gain access or their learning support providers may not consider a RSS as an option.
- 24. We will need to redesign the direct access pathway in collaboration with sector stakeholders. If you agree, we will begin the detailed design work, including engaging with RSS, regional staff, other learning support providers and the Disability Rights

² This step of the process is required under section 37 of the Education and Training Act and does provide an important safeguard for enrolment decisions.

Commissioner before Christmas. This redesign work will consider what changes, if any, should be made to the criteria or the way that they are applied to achieve our intention.

Our recommendations for changing the application process

25. The Ministry considered whether making individual changes to the criteria or to the process for RSS application would be sufficient. However, we have previously made these kinds of isolated changes with little impact. We believe the best way to achieve our goals for RSS access is to completely redesign the direct access pathway for RSSs.
26. Increasing flexibility and individual responsiveness requires decisions to take a more holistic and longer-term view of a child's needs. Making decisions closer to the child requires shifting the authority to make RSS enrolment decisions.

Implementation issues arising from these options

27. We expect the changes to the criteria and process for the RSS only pathway would result in more flexible decision-making with holistic assessments about how best to serve the interests of the child. Making decisions closer to the child, in line with the LSDM, would allow for a simpler process, stronger voice of whanau and RSS, and more relevant information being taken into consideration.
28. However, the increased flexibility could increase the risk that ākonga are taken out of their family and community unnecessarily or remain in RSS longer than needed. Moving decisions closer to the child is likely to lead to less consistency in access decisions and, if enrolment increased, could undermine prioritisation for those with the highest needs. This will increase the importance of the Ministry's current national oversight function.
29. Successfully implementing changes to the RSS enrolment process will require us to build the understanding and capabilities of Te Mahau staff to protect the best interests of ākonga who may receive an RSS intervention, including those who would be unlikely to gain access under current settings.
30. This will help us to address anecdotal issues such as: a lack of understanding of RSS and alternative forms of support; what to consider when identifying benefits and risks for a risk assessment, including when to access specialists; and ways to minimise potential risks.
31. We would also need to support the RSSs to build their capabilities in areas that they are currently limited in, for example, 9(2)(ba)(i)
[REDACTED]
32. Other existing safeguards that would be retained and strengthened include obtaining consent of parents or guardians and the child and the national function to coordinate and oversee RSS enrolment decisions.

Next steps for consultation and implementation

33. The proposed changes to the application process for enrolment in RSSs can be made within the delegations of the Secretary of Education under the Education and Training Act. We also anticipate that they could be implemented as part of business as usual without reprioritised or additional funding.

34. If you agree, we will consult with sector stakeholders about the best ways to change the RSS only pathway to ensure greater flexibility, a more holistic assessment of need and decisions made closer to the child. Our next steps would be to begin the detailed design work and develop consultation materials and to seek your approval to undertake stakeholder consultation in Term 1 2022. We will also inform the Disability Rights Commissioner of the direction of this work and provide an opportunity for early input.
35. The consultation would occur primarily online although meetings would be held with key stakeholders including: the RSSs, key peak bodies from schooling including the New Zealand Principals Federation (NZPF), Special Education Principals Association New Zealand (SEPANZ), the Disabled Person's Organisation (DPO) Coalition and other disabled people's organisations, parent groups including VIPS, the Children's Commissioner and the Disability Rights Commissioner.
36. The Ministry will work with your offices to develop a communications plan for a public announcement of the changes to the RSS pathway before the end of the calendar year. We will also explore whether you would take a direct role in the consultation process and if so, the degree and nature of your involvement.
37. The new process and criteria would be introduced for Term 2 2022.

Timeline for consultation and implementation	
Revised enrolment process agreed by Ministers	Late November 2021
Conversations with RSS, regional staff and other learning support providers to inform initial service design. Information provided to the Disability Commissioner on the direction of this work.	December 2021
Draft service outline developed	December 2021
Intention to consult on changes announced	December 2021
Engagement with stakeholders including disability organisations, key peak bodies and parent groups on proposed changes	January -mid February 2022
Service design refined and signed off, including revised criteria and principles to guide s37 decision	End February 2022
Work with regional staff and other learning support providers in regions to confirm and implement local process, identify and address any required practice change	February- March 2022
Section 37 delegations and documentation updated	March 2022
Web information including parent site, relevant forms etc revised	February- March 2022
Bulletin article to inform sector, communication to key parent groups	March 2022
New process starts	Term 2, 2022

Risks

38. 9(2)(ba)(i)

39. The increased flexibility achieved by implementing the proposed changes would likely raise enrolments at RSSs. The three RSSs have a total notional roll of 84 learners. However, due to the development of a funding model for the RSS based on actual costs and recent employment settlements, the existing funding for RSSs would only cover around half this number of enrolments in practice. Given current enrolment numbers sit at approximately 14 learners, funding would be able to cover a doubling of enrolments or more.

Annexes

Annex 1: The existing criteria for the RSS direct pathway

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The direct access criteria for placements in a RSS are:

1. The young person is aged 8 to 15 years old (Year 3–10).
2. The young person has behaviour, social and/or learning needs that are highly complex and challenging (and may have associated intellectual difficulty) and requires support at school.
3. Local learning support services have been considered or tried. However, RSS intervention is believed to be the best way of meeting the child/young person's needs.
4. The young person does not need an intervention in the home or community (the child/young person does not need intensive services such as Te Kahu Tōi - Intensive Wraparound Service, Oranga Tamariki or High and Complex Needs).