

2015 Review of the Disability Standards for Education 2005

Submission

Children with Disability Australia

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INTRODUCTION

Education is highly valued in Australia. There is a strong national commitment to affording children their right to an education through ratifying relevant United Nations Human Rights Conventions; a range of state and federal legislation; various policy frameworks and the prominence of education on the national political agenda. However, for students with disability, accessing and participating in education remains one of the most significant challenges encountered in childhood.

Children with Disability Australia (CDA) is constantly informed of poor education experiences of students with disability. Typically students with disability experience discrimination, insufficient resourcing and inadequately trained staff. CDA is receiving an increased number of reports of restraint and seclusion which should be seen and treated as violence and abuse. Further, a systemic culture of low expectations is deeply embedded in the present education system and is significantly restricting the potential and educational outcomes of students with disability.

These experiences are common for students with disability despite the decade long existence of the *Disability Standards for Education*. CDA is of the view that the current education system is unable and at times unwilling to adequately meet the needs of students with disability.

CDA welcomes the opportunity to contribute to the 2015 Review of the *Disability Standards for Education 2005* (the Standards).

2015 CONSULTATION PROCESS

CDA believes that the consultation process undertaken for this review was problematic and potentially discriminatory. Firstly, the short time frame provided for submissions has left insufficient time for thorough consultation with stakeholders. There were extremely limited opportunities for students with disability and families to participate. The main mechanism for public feedback was through online options, either forums or providing a submission. For many, this was problematic due to accessibility constraints and limitations on internet availability.

Furthermore, some of the language contained low expectations about people with disability. In particular, the question: 'How aware do you think people in the education community are of the barriers faced by people with disability who want to access education?' This implies that there are people with disability who *do not want* to access education. Although taken as unintentional, it is the view of CDA that this language reflects systemic ableist attitudes.

Finally, the face to face consultations appeared to be mostly limited to invited attendees. It is understood that only a few public forums were held so opportunities for students and families to participate in roundtables was limited. CDA was invited to advertise consultation roundtables to its members when there was a small number (less than five) of residual vacancies in a couple of instances.

The above factors coupled with the limited consultation period has denied many the opportunity to meaningfully participate and contribute to this review.

CHILDREN WITH DISABILITY AUSTRALIA

CDA is the national representative persons' organisation for children and young people with disability, aged 0-25 years. The organisation is primarily funded through the Department of Social Services (DSS) and is a not for profit organisation. Additional project funding is also currently received by the Australian Government Department of Education. CDA has a national membership of 5000 with the majority being families.

CDA provides a link between the direct experiences of children and young people with disability and their families to federal government and other key stakeholders. This link is essential for the creation of a true appreciation of the experiences of and challenges for children and young people with disability and their families.

CDA's vision is that children and young people with disability living in Australia are afforded every opportunity to thrive, achieve their potential and that their rights and interests as individuals, members of a family and their community are met.

CDA's purpose is to advocate systemically at the national level for the rights and interests of all children and young people with disability living in Australia and it undertakes the following to achieve its purpose:

- **Listen and respond** to the voices and experiences of children and young people with disability.
- **Advocate** for children and young people with disability for equal opportunities, participation and inclusion in the Australian community.
- **Educate** national public policy-makers and the broader community about the experiences of children and young people with disability.
- **Inform** children and young people with disability, their families and care givers about their citizenship rights and entitlements.
- **Celebrate** the successes and achievements of children and young people with disability.

LEGISLATIVE & POLICY FRAMEWORK

An extremely comprehensive legislative and policy framework supports Australia's strong commitment to the rights and entitlements of children and young people with disability to education.

Australia is a signatory to the United Nations *Convention on the Rights of Persons with Disabilities* 2006 (CRPD) and the *Convention on the Rights of the Child* 1989 (CRC). These Conventions contain clear standards and obligations regarding the rights of children and people with disability to enjoy equal access to education.¹ For example:

Articles 28 and 29 of the CRC make specific reference to every child's right to education, including:

- *Compulsory and free primary school education;*
- *Encouragement of the development of different forms of secondary education, including general and vocational education, making them available and accessible to every child, and taking of appropriate measures such as the introduction of free education and offering financial assistance in the case of need;*
- *Accessible higher education to all on the basis of capacity by every appropriate means;*
- *Accessible and available educational and vocational information and guidance to all children; and*
- *Development of the child's personality, talents and mental and physical abilities to their fullest potential.²*

¹ Office of the High Commissioner for Human Rights 1989, *Convention on the Rights of the Child*, United Nations, viewed 4 June 2015, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>; Office of the High Commissioner for Human Rights 2006, *Convention on the Rights of Persons with Disabilities*, United Nations, viewed 4 June 2015, <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>.

² Office of the High Commissioner for Human Rights 1989, *Convention on the Rights of the Child*.

In relation to education and people with disability, Article 24 of the CRPD specifically states:

State Parties recognize the rights of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, State Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:

- 1. The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental rights and human diversity;*
- 2. The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential; and*
- 3. Enabling persons with disabilities to participate effectively in a free society.³*

These Conventions clearly articulate the Australian Government's commitment and responsibility to protect, respect and promote the rights of all children and young people with disability to receive a quality, free and inclusive education. This includes the opportunities, expectations and belief to achieve the fullest possible individual development.

The *Disability Discrimination Act 1992* (DDA) is the primary domestic means promoting the rights and entitlements of people with disability and eliminating discrimination. Further state and territory legislation exists with similar objectives. The DDA is the overarching legislation for the *Disability Standards for Education 2005* (DSE or the Standards). The DDA makes it unlawful to contravene the Standards, and compliance with the Standards is taken to be compliance with the DDA.

In 2011 the Council of Australian Governments (COAG) endorsed Australia's first *National Disability Strategy*. The Strategy sets a 10 year reform plan for 2010-2020 for all Australian governments to address the barriers faced by Australians with disability. It aims to ensure that mainstream services and programs including healthcare, housing, transport and education are accessible and address the needs of people with disability. The Strategy has an important role to play in ensuring that the principles of the CRPD are integral to the policies and programs which affect people with disability in Australia. 'Learning and skills' is one outcome area of the Strategy which focuses on improving educational programs and outcomes for children and young people with disability.

The right to quality education for students with disability is thus comprehensively articulated within legislation and policy and is an area where there is significant commitment.

RESPONSES TO THE TERMS OF REFERENCE

DIRECT EXPERIENCE OF STUDENTS WITH DISABILITY

CDA is inundated with students and families sharing inadequate and sometimes appalling education experiences. On a daily basis we hear of experiences of discrimination and blatant dismissal of the educational rights and entitlements of students with disability.

The following are examples of typical experiences of students with disability and families reported to CDA:

We clearly don't have the same access to education as other students or my child would have learnt something last year.

³ Office of the High Commissioner for Human Rights 2006, *Convention on the Rights of Persons with Disabilities*.

In the end, we realised our son was not wanted at school. I home schooled him for three years waiting for school to put supports in place. It was one failed negotiation after another...we moved to the USA to get an education for our son. He is (now) doing great.

(My son) developed anxiety. The GP advised that he would need to be medicated to fit into the school system so we withdrew him.

All (the school) could see was a disability, they could not see the child first.

(My son) doesn't see himself as a valued learner and wants out.

His current school only allowed me to send him 2.5 days per week this term. That is all the support time they had available.

(My son) has anxiety due to (the) school locking him in a sensory room for lengthy periods of time.

I removed my child from the school system ...It was a complete waste of time and nothing more than a babysitting service.

1a) Consider whether the Standards: have assisted people with disability to access and participate in education and training opportunities on the same basis as those without disability. This will include a review of participation, inclusion and educational support provided to students of all backgrounds, including students in regional, rural and remote areas, students of culturally and linguistically diverse backgrounds, and Indigenous students

It is the view of CDA that the Standards have been of limited assistance in enabling students with disability to access and participate in education on the same basis as students without disability. This opinion is largely informed by the overwhelming number and breadth of poor education experiences and outcomes of students with disability reported to CDA. Other causal factors, including the systemic culture of low expectations, lack of professional expertise and training and inadequate resourcing must be responded to in order to enable this present educational crisis to be addressed.

ENROLMENT

Discrimination continues to be a common experience reported to CDA in relation to enrolment despite the specific focus of the Standards to eliminate it.

Many students with disability are blatantly refused enrolment. CDA recently conducted a national survey on the educational experience of students with disability, with 1025 respondents.⁴ One in four participants reported that their child with disability had the experience of being refused school enrolment and 17% of respondents stated that their child was attending school on a part time basis.

Families are frequently informed that their child cannot attend a school because a school cannot meet the student's needs. Alternatively, families may be afforded the opportunity to enrol but are made to feel that their child will be such an inordinate burden or that attendance will unavoidably involve compromised education opportunities. In some instances, students with disability are only 'allowed' to attend school on a part time basis. Inadequate resourcing is regularly cited for this discrimination.

The following experiences reflect these situations:

⁴ Children with Disability Australia 2015a, *Education Survey*, Children with Disability Australia, Melbourne.

My son was rejected last year from more than 40 schools including all of the schools in our local area. In the end we had to get the Department to compel a school to take him. Meanwhile he missed an entire term because he had nowhere to go. He was in grade one. Six years old. This is absolutely ridiculous.

I tried to enrol (my son in) several local primary schools which they were happy to do until I mentioned he had a disability. Then they told me they didn't have the resources. We didn't fit anywhere.

The school appeared keen to accept my son's enrolment until I informed them that my son was vision impaired. The school then advised me that the school was not suitable due to stairs. I informed the school that I was aware that all classrooms were at ground level with the exception of senior year level classrooms to which the school had an elevator for (disability) access to those classrooms. The school continued to state that their school was not suitable.

Students with disability therefore continue to experience significant discrimination in school enrolment. This discrimination, of both an indirect and direct nature, explicitly contravenes sections 4.1, 4.2 and 4.3 of the Standards. These sections articulate the obligations of education providers regarding the enrolment of students with disability on the same basis as prospective students without disability.

PARTICIPATION

Sections 5.1, 5.2 and 5.3 of the Standards state that steps must be taken to ensure that students with disability can participate in the courses and programs delivered by the education provider without discrimination. Incidents of exclusion, low expectations and failure to accommodate individual learning needs are common to the experiences of students with disability.

Alan's teacher was unwilling to look at simple measures of inclusion, such as providing him with a timetable. She also was rigid about her teaching practice and made it clear that she would not make adjustments for Alan. The principal and disability coordinator supported the teacher completely and were extremely difficult to approach, even with an advocate. The principal was instrumental in generating a climate that was not inclusive. She informed (me) 'children like him' will never have his needs met by her school and that I should send Alan to a special school...The Department of Education also supported the school staff and gave me no avenue to help with supplying any type of support for Alan... We live in a regional area and have only one public school.

As identified in section 3 of the Standards, participation of students with disability in educational programs and activities is often enabled through reasonable adjustments. Examples include visual or communication aides or curriculum modification to support a student's participation and completion of an activity on the same basis as other students.

However, from the countless experiences shared with CDA it is clear that often reasonable adjustments are often not being made or the adjustments provided are inappropriate. Experiences shared with CDA include:

We had to leave (the) previous school as (we were) constantly told 'we don't do that for any other child' when asking for adjustments to be made.

Several schools, while not formally refusing enrolment, said things like ‘the music and library are on the second floor. It would be a shame for your child to miss out on those things’ with no offer or refusal to consider reasonable adjustments. The adjustments would have amounted to such minor things as extra time for transit or adult assistance.

Participation in education of students with disability is therefore still extremely compromised. Furthermore, education providers often make subjective judgements regarding the education and learning needs of students with disability that are not based on relevant expert advice or assessment or evidence based practice.

INCLUSION

All children have the right to an inclusive education.⁵ Despite Australia’s commitment to this right, as demonstrated through the ratification of the CRC and the CRPD and Australian Government policy such as the National Disability Strategy, students with disability are often segregated and excluded when accessing education.

Inclusive education “requires recognising the right of every child (without exception) to be included and adapting the environment and teaching approaches in order to ensure the valued participation of all children.”⁶ It entails full participation and full membership of all students and families within a school community and ensures students with disability are valued as contributors and learners.

CDA frequently encounters instances where inclusive education is not well understood. Too often a student’s physical presence in an education setting is mistakenly perceived to indicate the student’s participation and inclusion. An additional misconception is that inclusion involves a student adapting to a school environment, rather than ensuring education meets the individual needs of each student.⁷

All forms of segregation and exclusion infer that someone is inferior.⁸ In an education context, macro-exclusion refers to a child being segregated into a special school or a special class or unit within a mainstream school.⁹ The presence of students within a mainstream education setting but without being included is referred to as micro-exclusion.¹⁰ This can include a refusal of the school to make accommodations to ensure the student can participate, exclusion from classwork and extracurricular activities, partial enrolment or attitudes that devalue disability among school staff.¹¹ In each of these cases, students with disability are not provided with equal access to participate in education.

It is CDA’s experience that it is rare for students with disability to be provided with a truly inclusive education experience. Around 24% of students with disability attend special classes within mainstream schools and 9.9% attend special schools.¹² The 65.9% of students in mainstream classes¹³ also experience considerable barriers to inclusion. CDA frequently hears of students with

⁵ Office of the High Commissioner for Human Rights 1989, *Convention on the Rights of the Child*; Office of the High Commissioner for Human Rights 2006, *Convention on the Rights of Persons with Disability*.

⁶ Cologon 2013, *Inclusion in Education: Towards Equality for Students with Disability*, Children with Disability Australia, Melbourne, p.3.

⁷ Ibid., p.13.

⁸ Ibid., p.14.

⁹ Ibid., p.14.

¹⁰ Ibid., p.14.

¹¹ Ibid., p.15.

¹² Australian Bureau of Statistics 2012, *Children with Disability at School, Profiles of Disability 2009*, Commonwealth of Australia, Canberra, viewed 11 August 2014,

<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4429.0main+features100302009>.

¹³ Ibid.

disability being withdrawn from class. Another common situation is separating students with disability from the rest of the class to work individually with a support worker on an independent curriculum.

The denial of inclusive education is reported on an ongoing basis to CDA. Examples include:

(My son) has been excluded from some class activities and given menial tasks to do to keep him busy whilst the rest of the class learn.

My child is excluded from any activities that involve reading as she has dyslexia and access to the printed word is NOT provided on any basis that could be described as even approaching an equal opportunity.

Existing research and evidence overwhelmingly supports inclusive education over and above models of macro and micro exclusion.¹⁴ There is a significant evidence base that establishes the “positive outcomes of inclusive education for social, academic, cognitive and physical development in children who do and do not experience disability.”¹⁵ Social benefits of inclusive education include exposing children with and without disability to higher levels of interaction, thereby providing more opportunities to “establish and maintain friendships.”¹⁶ A correlation between inclusive education and improved academic outcomes for all students has also been found in research. For students without disability, inclusive education enables:

- “Increased learning opportunities and experiences;
- Overall education is more sensitive to differing student needs;
- Growth in interpersonal skills;
- Greater acceptance and understanding of human diversity;
- Greater flexibility and adaptability.”¹⁷

Further information about the benefits of inclusive education is available in CDA’s issues papers *Inclusion in Education: towards equality for students with disability* and *Belonging and Connection of School Students with Disability*.¹⁸

CDA notes that the Standards contain no reference or mention of inclusion or inclusive education. Given that inclusive education is a right of all children and the substantial evidence base which supports inclusive education as best practice, this is a significant omission. The Standards therefore provide limited assistance for students with disability to access ‘inclusion’ on an equal basis to students without disability, as noted in the terms of reference for this review.

It is therefore recommended that the Standards be amended to explicitly include the right to an inclusive education. Given the considerable misunderstanding and misappropriation of the term inclusive education, it is necessary that a clear definition of inclusion is articulated, recognising that every child has the “right to be a valued member of society and to be provided with equal opportunities to actively participate in and contribute to all areas of learning.”¹⁹

¹⁴ Cologon 2013, *Inclusion in Education: Towards Equality for Students with Disability*, p.23.

¹⁵ Ibid.

¹⁶ Ibid., p.24.

¹⁷ Ibid., p.24.

¹⁸ Available at: <http://www.cda.org.au/cda-issue-papers>.

¹⁹ Cologon 2013, *Inclusion in Education: Towards Equality for Students with Disability*, p.20

MULTIPLE DISADVANTAGE

CDA recognises that there can be specific and additional considerations for students with diverse backgrounds. This includes students with disability of Aboriginal and Torres Strait Islander, non-English speaking, culturally and linguistically diverse backgrounds and students with disability in regional, remote and rural locations.

It is of note that the recent Review of School Funding (the Gonski Review) acknowledged the multiple disadvantage that students may face and this is being recognised through the development of separate and cumulative needs-based funding loadings.

It is the experience of CDA that the Standards do little to acknowledge and address the additional needs of students with disability with diverse backgrounds. There is no specific referral to students with disability with diverse backgrounds within the Standards.

It is the view of CDA that the Standards should reflect the specific and varied language and cultural needs experienced by many students with disability.

CDA also believes that specific consideration should be given to the needs of Lesbian, Gay, Bisexual, Transgender, Queer, Intersex and Asexual (LGBTIQA) students with disability when accessing and participating in the education system.

Furthermore, the Convention on the Rights of Persons with Disabilities expressly states the need to incorporate a gender perspective in all efforts to promote the human rights of people with disability. Therefore the rights of girls and women with disability must be addressed when interpreting and implementing the provisions in the Convention relating to education. There is thus a specific obligation on the Australian Government to promote inclusive education for girls and women with disability in order to mitigate the clear disadvantage this population experiences in education.

It is essential that consideration of these issues is reflected in policy and practice.

1b) Consider whether the Standards: have assisted to raise awareness and eliminate discrimination (including harassment and victimisation) of people with disability in education and training

Since the last review of the Standards, the cross-jurisdictional establishment of the online training initiative through the University of Canberra appears to have increased awareness and understanding of discrimination and the Standards themselves. However, it is still the norm that students with disability experience discrimination throughout their education. For some it is intermittent and for too many it is constant. Despite the objective of the Standards being to eliminate discrimination the direct experience of students with disability reveals that discrimination continues to be rife within the current education system. Furthermore, bullying and harassment is a common experience for many students with disability.

EXCLUSION

Exclusion of students with disability from education and school activities is a frequent occurrence. Exclusion can occur at a classroom level with many educational programs and routines not being inclusive of students with disability and the individual learning needs of specific students. The provision of necessary accommodations and essential support to enable students with disability to participate on an equal basis with other students is often not provided. For example, there are instances when the curriculum is not modified, interpreters are not available or students are not

permitted to use communication devices. In other situations students may only be 'permitted' to participate in parts of the education program. This directly contradicts the 'reasonable adjustments' provision of section 3 of the Standards, as discussed previously in this submission.

Direct experiences of exclusion include:

I was asked to keep my child at home three mornings a week so his teacher could provide class with uninterrupted learning.

My son was made to do his one on one work in a storeroom cupboard, no windows, shelves stocked high with supplies...how depressing!

Our daughter is in year seven and no longer attends classes with her peers. She has English, Maths and Science within a unit with two other children.

Exclusion from other school activities is also common. In CDA's recent national survey, 39% of participants revealed that their children with disability had been excluded from school activities.²⁰ These include sports, camps, excursions and extracurricular activities. Participation in aspects of the school program can be conditional on a family member attending to provide assistance to their child with disability.

Experiences include:

My son has never been allowed on excursions, let alone camps. I was told that nobody was willing to take responsibility for him.

The school has excluded my child from areas of the schoolyard because they have said they are unable to provide adequate supervision. He has been excluded from the gym program because modifications were not made.

My child has lunchtime support three days a week. The other days he is required to attend the quiet room. At recess he is restricted to certain areas in the playground.

We were told by the previous mainstream school we enrolled our son in that he would only be able to attend a few hours a day and would not be able to play on playground equipment and that they wouldn't be able to provide extra care.

I have in the past been asked to keep my child home on an open day. They didn't want him to embarrass the school.

Furthermore the following experience, provided by the Youth Disability Advocacy Service, reflects the breadth of exclusion with which some students contend:

Bianca is 16 years of age and attends her local government school. Bianca uses a wheelchair and communicates through an iPad. For the past two school years, Bianca has not been supported to spend time in the schoolyard during recess or lunch times and she does not have any friends at school. Denied access to school excursions is routine. Furthermore, the school will not support Bianca to undertake work experience. The school has suggested that instead Bianca observe her support worker taking photos of other students at work experience. The school have recommended that Bianca be removed to attend a special

²⁰ Children with Disability Australia 2015a, *Education Survey*

school. The school believe that Bianca should only be prepared for a future in a disability day program.

BULLYING & HARASSMENT

CDA frequently hears of experiences of bullying and harassment of students with disability.

Examples include:

My son left school in year nine because he could no longer stand the bullying he received from other students, and in at least one case by a teacher and an education assistant. I tried three different schools for him and even moved from country to metro, giving up my job and our home to do so.

The bullies weren't only the children but parents as well. Some teachers even turned a blind eye to it. I pulled him out of school for months on end, then we did two days at school and the rest he spent at home. The bullying did not stop and the more I complained the more they tried to shut me down. To sum it up bullying nearly cost my son's life.

After two years of bullying (my daughter) has completely disengaged. We have now got her going for one double lesson a day after six weeks of no attendance.

My son was horrendously bullied, isolated, humiliated, tormented, and left to his own devices. My son was self-harming and pushed to the brink of suicide because of the school system.

Ongoing, unchecked and unreported bullying and harassment by older students resulted in a head injury. After I lodged a complaint the school decided they were ill equipped to ensure my son's safety and support his education.

Regardless of age, educational setting, gender or type of disability, students with disability experience school bullying more than peers without disability. The Victorian Equal Opportunity and Human Rights Commission 2012 report *Held Back: The experiences of students with disabilities in Victorian schools* identifies that six out of ten students with disability had been bullied, a rate significantly higher than the one in four students for the general student population. Section 8 of the Standards pertains to harassment and victimisation of students with disability and associates of people with disability. However it is clear that this section is not in itself effectively responding to the bullying and harassment experienced by students with disability.

1c) Consider whether the Standards: are understood and used by education and training providers to provide a quality education which meets students' needs

OBLIGATIONS UNDER THE STANDARDS

It is the view of CDA that many education providers are unaware of or misunderstand their obligations under the Standards. As previously discussed, students with disability are constantly denied reasonable adjustments and opportunities to participate. The lack of definition of critical terms, such as 'reasonable adjustment' or 'unjustifiable hardship', in the Standards greatly contributes to the broad meaning applied to what actually occurs to ensure a student can access and participate in education on the same basis as their peers without disability.

Consultation is included as a core requirement throughout parts 4 to 8 of the Standards; these parts specify how education can be made accessible for students with disability. Consultation must involve the individual student and/or an associate of the student, such as the student's family. There is

however huge variance in interpreting what this means in practice. This was raised by CDA in our response to the 2010 Review of the Standards.

The experience and knowledge of students and families is critical to informing educational programs for students with disability. This can include assessments of educational needs, individual education plans, learning styles and general information regarding a child's needs. However students and families frequently report to CDA that they are not consulted. Examples of this include:

I had incredible trouble even being able to meet with the school. It has been a battle to even get them to read the information and reports the professionals provided.

I was basically informed what the school wanted my son to achieve despite my disapproval. My opinion was dismissed.

I find out things from other kids more than the teachers. They tell you what you want to hear but don't follow through.

CDA is also concerned by the lack of consultation with families regarding the Nationally Consistent Collection of Data (NCCD). The NCCD is a national cross-government initiative to collect annual data to identify the number of school students with disability and the individual adjustments being provided to students at present.

CDA's recent national survey results indicate that 76% of respondents had not heard of the NCCD.²¹ In addition 84% of respondents revealed that their child had not been included in the data collection to date.²² For the proportion of students who have been included in the NCCD to date, 89% of respondents had not been consulted by the school regarding what information was provided about their child and their support needs.²³ This reported response is not reflective of the reports from education authorities regarding what proportion of students have been incorporated in the data collection initiative. CDA believes this illustrates significant issues of concern around consultation and families and the paucity of present methods.

Again, despite consultation being a clear obligation under the Standards, the direct experience of students with disability reveal it is often variable or in some instances non-existent. This is another area where there is a chasm of difference between what is articulated in the Standards and what is a common experience for students.

INADEQUATE RESOURCES & FUNDING

A lack of adequate funding and resources is a significant barrier to students with disability accessing their right to education on an equal basis with students without disability and has been routinely recognised as a critical area requiring urgent reform.

In 2010, the Review of Funding for Schooling (also known as the Gonski Review) commenced with the aim to develop "a funding system which is transparent, fair, financially sustainable and effective in promoting excellent educational outcomes for all Australian students."²⁴ This was one of the most significant national education reviews in recent years. The Review identified students with disability as chronically under resourced in the education system and recommended additional funding to be

²¹ Children with Disability Australia 2015a, *Education Survey*

²² Ibid.

²³ Ibid.

²⁴ D Gonski et al. 2011, *Review of funding for schooling: Final report*, Commonwealth of Australia, Canberra, p.xiii.

provided to students with disability in the form of a loading. An interim loading has been in place since 2014 and work regarding the design of the loading is continuing.

Both families and education providers agree that existing levels of funding and resources do not adequately meet the needs of students with disability. Furthermore, inadequate educational support continues to be the experience of many students with disability.

Appropriate support is essential to ensure that students with disability are able to access and participate in education on the same basis as other students. This is a clear obligation under the Standards, as previously discussed in this submission. In CDA's national survey however 68% of respondents stated that their child with disability is not receiving appropriate levels of support because of inadequate resourcing.²⁵

1d) Consider whether the Standards: are understood and used by students with disability of all backgrounds and their families to advocate for their rights.

It is the experience of CDA that awareness of the Standards amongst students, families and education providers has improved since the 2010 Review. Despite this there continues to be minimal knowledge of the Standards among the majority of families who contact CDA. Almost 40% of respondents to CDA's survey on the Standards had no knowledge of the Standards while only a further 39% of respondents had made use of them.²⁶

As a formal advocacy tool the Standards can be useful for families to advocate and demonstrate that their child has a legal right to education. CDA however is aware of instances where greater awareness of the Standards has resulted in education providers being focused on concerns of potential legal action at the expense of attempting to address the concerns raised by families of students with disability.

The experience of families when using the Standards in legal proceedings regarding discrimination in education illustrates the limitations of the Standards. We note and endorse the experiences shared by Julie Phillips – disability advocate - in her submission to this review that the Standards have not been an effective tool for litigation. This is illustrated by the extensive number of cases in Victorian courts that have made use of the Standards. For example, rulings have resulted in a broad interpretation of the consultation that is a requirement of the Standards. In practice this means that schools are not required to take account of the knowledge and experience of students and families regarding individual learning needs.

More generally, significant misgivings have been shared with CDA regarding the Standards' usefulness and efficacy in ensuring the educational rights of students with disability. In a survey regarding the Standards completed by CDA, families identified a lack of accountability for education providers as a key concern.²⁷ With little oversight for their implementation, families feel that they have little recourse to ensure that education providers adhere to their obligations. Experiences of schools and education authorities disregarding these obligations without consequence or accountability are common.

Similarly, at present there is no timely or effective complaints resolution process. A typical pathway followed by families escalates from the school, to the education authority, to the state or territory

²⁵ Children with Disability Australia 2015a, *Education Survey*

²⁶ Children with Disability Australia 2015b, *Survey on the Disability Standards for Education*, Children with Disability Australia, Melbourne.

²⁷ Ibid.

government representative and/or human rights or equal opportunity institution and then to the Commonwealth equivalent. Repeatedly this process occurs with no acceptable outcome being achieved for the child concerned and ongoing missed education opportunities. Furthermore, undertaking costly and lengthy legal proceedings is understandably not an option for many families. And as discussed above, has had minimal effectiveness as a course of action to date. As a result it is not uncommon for students with disability to miss years of education and immeasurable opportunities while the complaint is being processed.

The following comments shared with CDA reflect these experiences:

At the moment options of the Human Rights Commission or civil court are both daunting when you have a child that you are caring for and who may not be properly cared for in the school setting.

I know the law. The schools know the law. The department knows the law. I can't enforce it...I can't afford to sue the Government.

Greater consideration of measures to improve the transparency and accountability of education providers is therefore required to address the significant concerns shared with CDA regarding the effective and accountable use and implementation of the Standards.

2) Identify any recommendations that could improve the effectiveness of the Standards

- a. The Standards be amended to include reference to the United Nations Convention on the Rights of Persons with Disabilities and Convention on the Rights of the Child.
- b. The establishment of a national inquiry into education of students with disability to address the urgent and critical need for reform.
- c. Amendment of the Standards to ensure greater adherence to obligations and the educational rights of students with disability. Consideration should be given to the *Individuals with Disabilities in Education Act (IDEA)*, the primary relevant legislation in the United States.
- d. Definition of 'consult' is included in the Standards as well as direction as to when it should occur.
- e. Clarification of 'reasonable adjustment' and 'participation' is included in the Standards.
- f. Pre and post qualification training on all elements of inclusive education. This includes the principles of inclusion, adjustments and modifications, effective collaborative practice with allied health professionals and consultation and engagement with students and families.
- g. The Standards be amended to articulate the right of students with disability to inclusive education.
- h. The Standards include a requirement that all students with disability have an individual education plan which cannot be enacted without the signed consent of the student or their representative.

- i. Consideration of the issues regarding the diverse and additional needs of students with disability with diverse identity should be specifically included in the Standards and accordingly recognised in policy and practice.
- j. Provision of a copy of the Standards to students (if age appropriate) and families.

3) Examine progress with the implementation of the Government's response to the 2010 Review of the Standards

CDA recognises that the Government's response to key recommendations of the 2010 Review has seen some actions which are believed to progress the educational rights of students with disability. The education system is however still failing to adequately meet the needs of students with disability and there is an urgent and critical need for reform.

PROGRESS

A key theme in the 2010 Review was the need for greater awareness of the Standards and the educational rights and entitlements of students with disability. CDA recognises that awareness raising and training initiatives regarding discrimination experienced by students with disability and the Standards have been a significant focus of the Government response to the last review. This includes the considerable cross-jurisdiction initiative and consultation to develop online training, resources and information for students, families and education providers.

CDA is aware that in response to the last review and the recommendation for the development of good practice guides for the education sector, the Government sought the compilation of an "evidence-bank" of material relating to the rights of students with disability and the Standards.²⁸ The Department of Education subsequently developed a 'stocktake' document as an initial step towards an evidence bank of available resources regarding the Standards.²⁹

It appears however from this document that limited or no evaluation of many of these programs and materials has taken place and that there is little cross-sector analysis. CDA recognises that the preliminary nature of this stocktake is acknowledged and awaits the considerable work still required.

LACK OF PROGRESS

Definition & Clarification of Key Terms

The 2010 Review identified the need for greater clarification of key terms. As outlined earlier in this submission, CDA believes that there continues to be inadequate understanding or misunderstanding of key terms, in particular 'consult', 'reasonable adjustment' and 'participation'. The direct experience of students with disability reflects that these core requirements of the Standards are not being effectively addressed. It is the view of CDA that clear definitions and clarification of these key terms are required to enable education providers to meet their obligations within the Standards.

Individual Education Plans

An issue that is commonly reported to CDA by families relates to the development and implementation of students' Individual Education Plans (IEPs). IEPs were a key recommendation of the 2010 Review to address the access, participation, discrimination and inclusion concerns that arose from the review.

²⁸ Department of Education and Training 2015, *Government response to the Review of the Disability Standards for Education 2005*, Commonwealth of Australia, Canberra, p.7.

²⁹ Department of Education 2014, *Stocktake of jurisdictional activities and resources June 2014*, Commonwealth of Australia, Canberra.

IEPs “are documents and processes intended to support the development and implementation of inclusive practices that consider the individual child and setting.”³⁰ Currently there is considerable variability between the states and territories regarding the requirements for IEPs.

Often, families must be proactive to ensure an IEP is developed. This is a very common experience reported to CDA. The following quotes from families illustrate this issue:

I have begged the school...to please provide an (IEP but I) always (get) excuses.

We tried hard to get formal IEP but (had) no luck...It's been a massive compromise.

It took us 15 months of fighting with the school to get support for her and we had to hire a company to advocate before they would do anything to support her.

In (my child's) previous independent school they had to be dragged kicking and screaming to get an IEP.

Further, when schools do develop plans, families frequently report highly limited opportunities for input and poor processes. For example, 30% of respondents to CDA's recent national survey reported they were provided with no opportunities to have input into their child's IEPs.³¹ Many that were able to provide input had highly limited opportunities or felt they were not listened to:

I've received the plan and then been given the chance to give feedback, rather than being included in its development...I find this pretty frustrating and disempowering!

I participated in meetings... (however the) IEP has not been updated in the past year...even though I have placed this request in writing several times and been promised it.

The IEP document was basic and completed before meeting and reflected nothing about what was discussed at the meeting I attended.

Finally, even when IEPs are developed, families often report to CDA that they are not implemented and goals and expectations are set unacceptably low. CDA is aware of many instances in which schools appear to take the position that IEPs are a privilege, rather than an essential component required for “supporting a child's education inclusion.”³²

The development of IEPs based on effective consultation and adequate response to the individual educational needs of students with disability continues to be a core requirement yet to be covered by the Standards.

CONCLUSION

As identified throughout this submission, the direct experience of education for many students with disability is overwhelmingly and shamefully inadequate. CDA recognises the value of a legal framework to address the discrimination in education that students with disability face on a daily

³⁰ K Cologon et al. 2014, 'The A-Z of IFSPs, IEPs and SSPs!: Positive planning for inclusion' K Cologon (ed), *Inclusive education in the early years: Right from the start*, Oxford University Press, South Melbourne, p.211.

³¹ Children with Disability Australia 2015a, *Education Survey*.

³² Cologon et al. 2014, *The A-Z of IFSPs, IEPs and SSPs!: Positive planning for inclusion*, p.211.

basis. Furthermore, CDA acknowledges that the Standards provide a useful tool for advocacy, despite requiring further clarification and definition of key terms.

However, the legal framework of the Standards cannot in isolation ensure that the educational rights of students with disability are recognised nor address the considerable discrimination that students contend with daily. Broader education reform is essential. This includes reform to address: the present inadequate funding and resourcing of the education system; the need for pre-qualification and professional development of educators; the need for improved access to appropriate expertise and allied health professionals; the increasing incidents of restraint and seclusion experienced by students with disability; the systemic culture of low expectations; the need for effective student-parent-school engagement; and the necessity for school leadership and mentoring regarding inclusive education practices.

CDA believes there is an urgent need for a national inquiry into the education of students with disability to examine the present experiences of students, the reform undertaken to date and the future reform required.

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This submission is endorsed by the following organisations:

Australian Council of State School Organisations



People with Disability Australia



Women With Disabilities Australia (WWDA)



Youth Disability Advocacy Service



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