

SUBMISSION

2020 REVIEW OF THE DISABILITY STANDARDS FOR EDUCATION 2005

Action for People with Disability Incorporated.

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Key Question for Review

Whether and to what extent, the Standards are making a positive difference towards students with disability being able to access education and training opportunities on the same basis as students without disability.

Introduction

Action for People with Disability Inc (*Action*) is an independent advocacy organisation providing advocacy and support to people with disability and support for their families in the Northern region of Sydney. Part of the scope of *Action's* advocacy includes supporting students with disability who are working towards and then undertaking their Higher School Certificate examinations in New South Wales. *Action* stated in a 2017 submission, "that the heads of schools and the staff have demonstrated a lack of knowledge of human rights conventions and Federal and State discrimination legislation". (*Action*, 2017,p1) Since 2017, a lack of knowledge and lack of implementation of adjustments for both classroom activities and assessments have continued, they are still poorly understood, inconsistently applied and at times, ignored.

Scope of Brief

The Disability Standards for Education 2005 refer to enrolment, participation, curriculum development, Student Support Service and elimination of harassment and victimisation. The standards are reviewed every 5 years so this brief will cover *Action's* experiences from 2015 to 2020. As most of the people with disability *Action* advocates for engage our services after enrolment, *Action's* brief will focus on the participation/curriculum development, accreditation and delivery for students with disability in a mainstream setting in 3 major educational systems public, Catholic, and Independent.

It should be noted that many of the issues that are raised in this brief have been mentioned as areas of concern when discussing other elements of the Disability Standards.

Terms of Reference

In 2016 – 2017 NSW conducted a Parliament Inquiry into Education for Students with Disability and many submissions were made, and interviews granted. Many of these submissions and interviews referenced the Standards and commented on its effectiveness in aiding students with disabilities to gain equity of access to curriculum and other training opportunities.

Although concentrating only on the NSW system, the issues raised in this inquiry are the same issues and barriers that still occur today.

Government Report NSW Legislative Council Inquiry into Students with a Disability or Special needs in NSW (NSW Legislative Council, Portfolio Committee No. 3 – Education, 2017)

- Submission to the NSW Legislative Council Inquiry into Students with a Disability or Special needs in NSW Schools Prepared by Executive Officer, Christine Agius, Action for People with Disability (*Action*, 2017)
- Submission to the NSW Legislative Council Inquiry into students with a Disability or Special needs in NSW schools prepared by Carol Barnes (Submission 152)
- Australian Bureau of Statistics Disability Aging and Carers Summary of Findings 2019
- New South Wales Educational Standards 2019
- Interviews and Case Studies of students with disability provided with advocacy by *Action* 2015-2020

Issues Participating in Curriculum development, accreditation, and delivery

Since 2017, there has been an increasing awareness of the Federal or State Disability Discrimination legislation with online training available to Principals and Executives. Despite this training, many schools and teachers are still exhibiting a lack of knowledge in the implementation of adjustments for students with disability in classroom learning and for timed assessments.

This knowledge gap can be based on several areas of concern: -

Lack of Knowledge about the Law and its Implication

- Some schools appear to lack a clear understanding that the provisions of the Standards are enforceable, that the adjustments are law, not mere policy and hence cannot be ignored. “That would be a nice adjustment if we had the time,” one teacher commented in an individual planning meeting.
- Many educators do not “understand the difference between disability as redefined in departmental policy for the purpose of public funding and disability as defined in legislation” (Barnes, 2017, p11) Some schools and teachers may believe the legislation only refers to students with a disability that receive funding.
- Some schools do not appear to understand their obligations for students with disability so the student can access and participate in their education on the same basis as students without a disability. For example, some schools do not understand that if a child required a textbook in electronic format the publisher must legally give the school access to this type of format for this child. Often schools will state that this provision is not allowed by the publishers.
- Some New South Wales schools seem to feel that school classroom adjustments can only be based on the guidelines from NESAs. Some schools have admitted that they fear that by not following NESAs rules there would be consequences for their schools. “This ignores the importance of longstanding precedent for disability adjustments and overlooks the fact that individual schools have their own obligation under the standards. The government websites are in fact policy not law and can be challenged and routinely overridden” (Barnes, 2017, p28)

- A child being academically bright does not preclude them from having a disability. Some education providers believe that disability adjustments are allowed only for students with a low IQ. (Barnes, 2017, p18)
- Some schools believe that adjustments to test and exams are not important till Year 10, 11 and 12 unable to foresee that they are preventing the student to participate in exams equally to their peers. It creates an uneven playing field for the student and underachievement according to their ability (Barnes, 2017 p20). As recently as August 2020 a teacher stated to a mother, with an advocate from *Action* present that “its only Year 7 no need to stress”.
- “Some educators don’t understand that disability adjustments in test and exams are legally required, that equity is not cheating or giving an advantage to a child.” (Barnes, 2017, p14) Equity does not entail treating all children the same, but rather treating each child according to what that child needs. Disability adjustments aid the learning process, but it does not equalise the process. (Barnes, 2017, p14)
- Many parents are uninformed of their children’s rights with respect to disability provisions for classroom activities and many schools do not actively initiate this conversation. Often, the parents become aware of the Standards and the Law outside the school realm and express surprised that their children have these rights.
- Many schools and parents are unaware that an independent advocate can be engaged to represent the student’s interests.

Schools Resistance to Change to make equitable and reasonable adjustments to the Curriculum/Difference between Standards and Policy

- Some classroom adjustments require technological innovation, and the school and teachers are not trained in the process. Hence, the adjustments are often considered too hard to implement due to lack of training of the teachers. The skill level of the teacher becomes the barrier for the reasonable adjustment rather than the adjustment itself. Some teachers refuse training even when offered stating that it is “not their job” for extra work for one child. The lack of technology expertise in classroom learning was evident in COVID-19 period where schools were ill prepared to use technology equipment, adapt plans to this technology and have communication strategies for children with additional needs.
- Some classroom adjustments do need capital support but too many times the “lack of funding” reason is used an excuse for not implementing reasonable changes. Even when funding is allocated to a school for a child with a “funded” disability this is still often given as an excuse.
- Despite being legislatively required to consult with parents many parents inform me that schools never arrange meetings, when meetings are arranged parents take notes and are the ones responsible for following up action. Many parents have informed me that the atmosphere in these meetings is tense and adversarial, and they are made to feel as if they are wasting school time. When parents engage an independent advocate sometimes schools refuse advocates to attend the meetings or will not share correspondence citing confidentiality reasons, even though the advocate has a signed waiver from the student and parent.
- There is a lack of accountability when adjustments are not made. The only avenue for parents seems to be the year coordinator or the disability support teacher, then to the regional director – all paid by the same organisation with no independent assessment. By the time parents seek other legal avenues the relationship with the school has broken down.

It takes a bold parent to take the school to the Australian Disability Commission, where often the outcomes in favour of the parent and child but by that stage the school is so hostile it is an unworkable situation.

Schools Overt Discrimination

- Some schools dismiss a report from a professional containing a diagnosis of a child's disability and medical conditions with a list of recommendations for disability and adjustments and interventions. They either overrule the professional's recommendations or come up with unsubstantiated reasons as to why the recommended disability adjustments cannot be implemented (Barnes, 2017, p28) One teacher stated "I just don't believe the child is this anxious or has ADD I don't care what the paper says".
- It is apparent that some staff of schools find it extremely difficult to support the aspirations of students with disability and accept the need to make allowances. Sometimes their personal views and beliefs preclude them from appropriately supporting students to reach their potential and realise their ambitions of tertiary education. (*Action*, 2017, p2). One student was told he would never finish high school. Once the required adjustments took place, he matriculated and was accepted into several universities.
- Some parents have reported that schools will make the recommended adjustments if the parents pay for the technology or extra support – in clear breach of the Disability Act. However, parents either ignorant of the law or frustrated by their lack of school's cooperation, agree to this demand.

NESA Policy – Barrier to the Standards

Action reports that NESA's policy and rules are itself an institutional barrier for students gaining equity in Naplan and the HSC. They write on their website "Disability provisions in the HSC are practical arrangements designed to help students who couldn't otherwise make a fair attempt to show what they know in an exam room."

(<https://www.educationstandards.nsw.edu.au/wps/portal/nesa/11-12/hsc/disability-provisions>)

The Standards say nothing about making a fair attempt but rather to specifically give students with disability reasonable adjustments to gain equity of access, the same as students without disability. The disability adjustments are not meant to be a mere band aid attempt to do the exam. *Action's* view is this statement reflects an underlying belief of NESA that adjustments for students for disability are only made as a "last resort" attempt to do the exam. Adjustments are not seen as a good faith attempt at equity but rather as a conciliatory attempt to give someone a chance to complete an exam.

Our reasoning is reinforced by the following evidence:

- NESA states that the reasonable adjustment is based on diagnosis and functional analysis. NESA states that they consider professional diagnosis and statements. From our experience, many of the professional reports submitted by schools are ignored or disregarded. They often ignore multiple treating professionals that have made the same recommendations for disability, even when these reports have gone into specific details about the level of functional impairment. For example, a child with a vision impairment who was examined by a Vision Australian ophthalmologist using a Gold Standard Assessment was told there was "no evidence" that the font size recommended would be reasonable adjustment. A different font size was given, because it the professional had not proven that the different font size was an issue for the student.

- NESAs process is not explained. The qualifications of the people reviewing the application, how many people review it and the guidelines are all kept secret. There is no transparency in the system process. If the process is ethical and professional, why is it so secret? Parents and children are excluded from the process and often are not allowed to see what and how it has been submitted.
- The guidelines do not capture the specific issues of the disability in certain situations. For example, one child was applying for a reader for the long 3 hour exams in the HSC. In normal non-stressful situations, the student has a good reading age, well above the guidelines for a reader. However, in exams situation, the complex issues of depression, auditory learning, and high level of anxiety in long test conditions results in the student not being able to read very well at all, below the guidelines. The professional assessed her functional capacity in these situations, but they were ignored because the student passed a short reading test used as a guideline.
- Some schools and staff are reluctant to pursue NESAs for specific allowances required for year 12 students as the process is too difficult to undertake and require quite a bit of time and manpower. Families often report repeated requests being dismissed until they are too exhausted to continue advocating.
- The child must prove they are unable to use one kind of adjustment before they can be allowed to have a different kind. For example, a student needs to show they cannot use a scribe before given the opportunity to have to use a computer. Using a scribe is a very complex task, it requires a person to be highly verbal, read cursive handwriting and process quickly. Often students with disability support needs have none of those skills. Despite professional assessments stating that is not feasible for a particular student to use a scribe, the student must show they cannot, again by performing other tests for NESAs. Failure must be repeated – hardly good educational practice

Solutions to these Barriers

Action recognises that there have been some solutions put into place to help students with disabilities access the curriculum through the Standards. However, these small changes have not overcome the extreme barriers that face students with disabilities gain equal access to the curriculum in mainstream setting.

Research/ Review and Implement Best Practice Internationally and Locally

Australia and all states should be connected the global education community and as such should be investigating best practice internationally and on a local level

Action recommends the following: -

1. Review of Disability Law Standards Best Practice Internationally and locally and make recommendations
2. Develop a National Accreditation Program for all schools on inclusive education, that reviews National Standards for all students in all states and to recommend best practice guidelines to assist schools
3. Principal, Curriculum Development Teacher and Disability Support Teacher accountable for adjustments part of their portfolio and assessment criteria

Refinement of National Consistent Collection of Data

Whilst the NCCD has been in operation since 2014 it could be refined to capture more data and hence help with future development, for example student voice and satisfaction, attendance, funding provided and spent. *Action* recommends the following: -

1. Review disability data collection Best Practice internationally and locally and make recommendations

Once international and local research completed, and national data is compiled the following recommended strategies can be implemented: -

Review of Funding Models for Schools

Action recommends: -

1. With reviews of best practice internationally and locally additional funding must be given to all schools for the agreed solutions
2. All schools funded to employ a dedicated Curriculum Development Manager and Disability Manager

National Education and Training

Since 2017 there has been significant effort by the NSW Education department to give online learning to Principals and Executive teachers. *Action* requests an extensive training schedule which would include the following: -

- **National Training for Schools**
 1. Mandated comprehensive training on the Educational Standards and its implications to Government, schools and parents.
 2. All parents receive the Disability Educational Law and Standards yearly.
 3. School Learning and Support Teams are adequately trained, resourced, staffed, and remunerated to provide support to students, teachers and their schools.
 4. Education to ensure that Individual Education Plans are developed and implemented along best practice models.
- **University Training for Educators**
 1. Mandated training on all National educational standards in any teaching course from preschool to adults.
 2. Mandated work experience for each education/teaching students in mainstream classes with disabilities and specialised classes with students with disabilities.
 3. Fund postgraduate qualifications in inclusive education.
- **National Consistent Communication for Every School Package**
 1. At every enrolment, every student receives the following documentation:
 - The Disability Standards 2005 in plain English.
 - How to advocate for their rights including obtaining an independent advocate.
 - Complaints process within the school outlined.
 - Complaints process outside of school outlined.
 - All websites contain consistent information that reflects the law not policy and procedures of departments.

Establishment of an Independent Body

Whilst we recognise the work of the NSW Ombudsman and Australian Disability Commission *Action* recommends: -

1. An independent body be developed to assist families and vulnerable students to manage the breaches of human rights, education standards and discrimination laws they may face on a regular and ongoing basis. To expect families to pursue these through the formal DET (NSW Department of Education) complaint processes and further damage often fraught relationships is unreasonable. The establishment of an independent body may see many of these issues resolved and enhanced with long term benefits for many students. (Government Report, NSW Legislative Council, 2017, p38)

SUMMARY AND CONCLUSION

There can be no doubt that The Standards are a necessary law for education purposes and for the most part prevents overt discrimination. However, the interpretation of legal phrases such as “the same as” or “unjustifiable hardship” is creating areas where the law can be either misunderstood, resisted, or blatantly misinterpreted.

The Australian Bureau of Statistics in 2019 state the following:

<https://www.abs.gov.au/statistics/health/disability/disability-ageing-and-carers-australia-summary-findings/latest-release>,

There have been some increases in education attainment for people with disability. In 2018, among all people with disability aged 15 years and over (living in households):

- one-third (33.4%) had completed year 12 or equivalent, up from 31.4% in 2015
- one in six (16.1%) had a bachelor’s degree or above, up from 14.9% in 2015
- 9.2% had an advanced diploma or diploma, up from 8.2% in 2015.”

However, these minimal improvements underlie a troubling statistic -

- labour force participation for those aged 15-64 years has remained stable since 2015 at 53.4%, in contrast to an increase in the participation rate for people without disability (84.1%)

Whilst there has been minimum increase in educational standards this has not translated into labour force participation. There are many factors that underlie employment figures, however there is no doubt that the limitations of the implementation of the Standards is a factor in this concerning lack of progress.

There is an urgent need for further progress for the students with disability and for Australian society both in terms of social equity, employment opportunities and economic growth.

Web References

<https://www.abs.gov.au/ausstats/abs@.nsf/0/C258C88A7AA5A87ECA2568A9001393E8?Opendocument>

<https://www.educationstandards.nsw.edu.au/wps/portal/nesa/11-12/hsc/disability-provisions>

Article References

- Government Report NSW Legislative Council Inquiry into Students with a Disability or Special needs in NSW (NSW Legislative Council, Portfolio Committee No. 3 – Education, 2017)
- Interviews and Case Studies of *ACTION* Clients from 2015 to 2020
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