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Dannie Edmonds
Assistant Secretary, Disability Strategy Taskforce
Australian Government Department of Education, Skills and Employment
DisabilityStrategy@dese.gov.au

Dear Ms Edmonds,

RE: Submission 2020 Review of the Disability Standards for Education 2005

Advocacy Law Alliance Inc. (**ALA**) welcomes the opportunity to provide a submission to the Department of Education, Skills and Employment on the 2020 Review of the Disability Standards for Education 2005 (**Standards**). Thank you for allowing us to submit later than the due date.

ALA's mission is to provide high quality social/legal advocacy and support to people in need across NSW, with a commitment to servicing regional and remote communities. Our focus is to empower clients to navigate the legal and social systems and achieve fair outcomes in the pursuit of their goals.

ALA is made up of two programs which have day to day experience that is relevant to this review. Disability Advocacy NSW (**DANSW**) provides individual advocacy to people with a disability over much of rural and regional NSW, with local advocates in Newcastle, Parramatta, Blue Mountains, Bathurst, Dubbo, Broken Hill, Tamworth, Armidale, Coffs Harbour, Port Macquarie and Taree. The Mid North Coast Community Legal Centre (**MNCCLC**) provides free legal advice, advocacy, and education to improve access to justice for disadvantaged communities, with offices co-located with DANSW in Port Macquarie and Coffs Harbour. The majority of MNCCLC clients have a disability.

As outlined by the discussion paper, the Standards seek to ensure that students with a disability can access and participate in education on the same basis as students without a disability. The Standards set out the rights of students with a disability, the legal obligations of education providers, and examples of what can be done to meet the requirements of each part of the Standards.

Overall, in the 15 years since the Standards were developed, it is our view that the Standards have contributed towards students with disability having increased access

to education and training opportunities. However, many of the concerns raised in the 2015 review of the Standards remain¹ relevant including:

- lack of awareness of the Standards amongst people with a disability and their families;
- the lack of clarity around the meaning and implementation of “reasonable adjustment” obligations, “unjustifiable hardship”, and “on the same basis”;
- reliance on a complaints-based enforcement mechanism; and
- large numbers of examples of school-based practices that breach the Standards, which illustrate the need for change in how the Standards are implemented.

DANSW receives regular requests for support from people with a disability and their families due to difficult interactions and unfair treatment within NSW education system. Most referrals received by DANSW involve students who have in some way been excluded from fully participating in their school education, resulting in significantly reduced learning outcomes.

Students with a disability experience being turned away from mainstream schools, or do not receive appropriate adjustments and supports once enrolled. Students are often suspended or expelled for behaviours associated with their disability or subjected to ‘partial attendance’ limitations. These children are also frequently targeted by bullying and suspended for retaliating when it becomes unbearable. While schools often seemingly meet their legal requirement to consult families, the reality in practice is this consultation is not genuine consultation and more about informing students and their carers about decisions that have already been made.

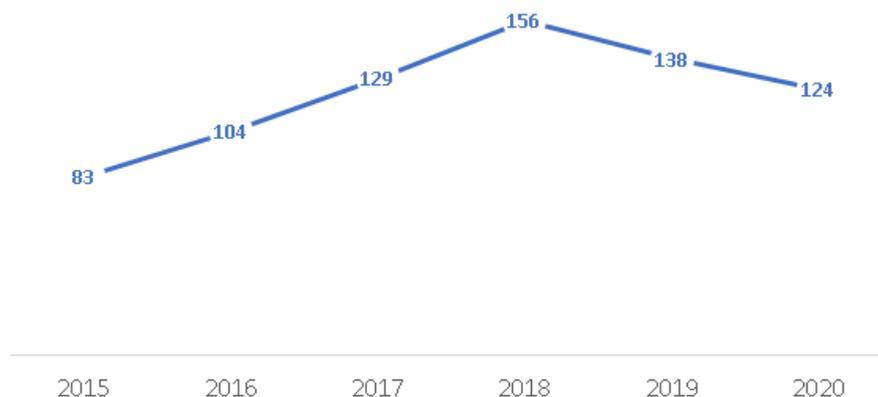


Figure 1. DANSW total education advocacy matters by financial year.

Australian Government. Department of Education Skills and Employment (2015). Final Report of the 2015 Review of the Disability Standards for Education 2005.¹

In most cases that DANSW sees, the issues could be resolved by providing adequate, appropriate, and timely support for the student at school. Underpinning this is the need for schools to increase their disability awareness and knowledge of the needs of students with disabilities, as well as the need for greater flexibility on the part of the NSW Department of Education in meeting those needs.

There is overwhelming evidence that inclusive education leads to better academic and social outcomes for both students with and without a disability.²

Unfortunately, segregated education remains a practice that has continued mostly for historical reasons and which continues to be suggested to families and educators as an appropriate option, despite having virtually no evidence basis.

In most cases that DANSW sees, the issues could be resolved by providing adequate, appropriate, and timely support for the student at school.

For our clients, the process of participating in education is often reported as being frustrating, stressful, and difficult to navigate. Through our advocacy, DANSW has witnessed many difficulties to accessing mainstream education including:

- Providers having different requirements, funding etc., resulting in inconsistencies in how the standards are applied (limited quality assurance).
- Lack of appropriate supports (teachers aids/support workers in class).
- Concerns about safety or health issues.
- Exclusion from school activities including camps, drama or sport or an expectation that a parent should be involved for the student to be allowed to attend. This is particularly an issue when a student requires medication.
- Families being told that their child can only attend school on certain days or times.
- Families being asked to pay additional school fees to cover teachers aids or other forms of assistance to allow participation.
- Lack of meaningful collaboration and consultation on Individual Education Plans.
- Students and families being subjected to disciplinary processes to manage behaviour (and often as an initial response).
- Students being told that the Department of Education does not fund educational aids for students who are eligible for NDIS. There is often also the suggestion that the NDIS should pay for education assessments, aids, or equipment.

² https://alana.org.br/wp-content/uploads/2016/12/A_Summary_of_the_evidence_on_inclusive_education.pdf

Our engagement and interactions with clients demonstrate that students with disabilities continue to be disadvantaged in both their access and participation in education activities.

Enrolment

DANSW clients often express that the enrolment process for students with a disability is frustrating and confusing. While the Standards are meant to ensure that enrolment does not mean undue difficulty on a student or their nominee, in practice the inconsistencies with how the Standards are applied create significant discrepancies in enrolment processes. Consistently, the requirement for students to provide evidence in order to receive reasonable adjustments limits timely access to education and support.

The following case study highlights how the enrolment processes for tertiary providers do not align with the standards, specifically 3.4, in making reasonable adjustments for the student- at the students' discretion.

Grace approached DANSW regarding an education dispute with a tertiary Provider of choice. Grace had applied to enroll with the Provider, correctly disclosing her disability. The Provider also verified that the Student was a recipient of the Disability Support Pension. While Grace's enrolment was accepted, she was declined the right to meet with student support services until she provided a letter from her doctor detailing what adjustments she required. Grace was unable to meet with the provider to discuss reasonable adjustments and was unable to collect supporting evidence for several weeks, causing the student to disengage and defer her studies.

The requirements for students to provide significant detail about their disability as a precondition of their enrolment is not consistent and aligned with the Standards. The variability of these processes makes it difficult for students to have timely access to education. While there has been a focus from the 2015 Review on the enrolment processes between stages, tertiary transitions remain difficult for students to navigate.

Enrolment accessibility and discrimination is an issue DANSW regularly encounters through advocacy. Frequently, we assist families and students who have experienced indirect discrimination due to providers having the ultimate decision-making power when enrolling students. The following case study highlights that these barriers to enrolment continue to effect students accessing a provider of their choice.

In early 2020 DANSW was contacted by James, an 11-year-old boy with autism. He was looking forward to entering Year 7 and his mother had attempted to enroll him at a High School where she believed his high needs would be met within the special needs class. While the school was not the closest, his mother had been advised that no other school in the local area would be able to accommodate his needs. During the enrolment interview James' behaviour escalated and the School's attitude changed. Following the interview, the School advised they were 'full' and would need to take the Student's request for admission to their next meeting. The request was delayed to the following meeting and eventually denied.

- 1. DANSW recommends increased clarity and consistency regarding the enrolment process, including the responsibilities of both student and Higher Education Provider in verifying a Student's Disability and appropriate reasonable adjustments where funding is not available to obtain formal assessment.**

Communication and Consultation

Families often experience difficulties raising issues with schools due to power dynamics between staff and parents. This problem is compounded because for some children, the range of schools they can go to is restricted by their special needs.

DANSW was contacted to assist Molly return to full-time study. Molly has autism and significant behaviour issues. On her first day at a new school, Molly's mother was contacted after a few hours to pick her up. The school were shocked at Molly's behaviours and did not have the supports prepared to meet her needs. The school decided to reduce Molly's attendance to twice a week for 2.5 hours per day, without consultation with Molly or her mother. When the school found out that Molly's mother had contacted a disability advocate, they changed Molly's timetable to 5 days per week for 2.5 hours per day, again without consultation. Ruth was asked to sign a part-time timetable without input. DANSW wrote to the Principal of the school and requested a Plan of Action to return Molly to full-time education. There was no response to the request. DANSW wrote to the Learning and Wellbeing Coordinator within the School Services Directorate requesting an Action Plan to return Molly to fulltime education. Despite some promising conversations requesting that the school engage in open communication with Molly's mother regarding her schooling, all correspondence subsequently ceased.

There is an unmet need for advocacy around mediation and discussions between schools and parents. Some of the general issues raised by clients include:

- The allocation of hours to regional consulting teachers providing aid to children with special needs is insufficient.

- Individualised Education Plans (IEP) are not consistently put in place or understood by the Teachers tasked with implementing them.
- If a child requires special adjustments for their education, parents need to be consulted, which is frequently not the case.
- There is a need for increased professional development of school staff in relation to disabilities to enable them to meet the needs of students.
- There is a need raised by parents of children with disability for a better advocacy service in the education system.

DANSW has received many requests for assistance where a student with disability has fallen into a cycle of absence from school. These ongoing absences are not only damaging for the student academically but can also damage relationships between them and other students and strip the student of their sense of wellbeing and connection. While schools must understandably have disciplinary policies in place, there needs to be an improved understanding of certain restrictive interventions that must not be used as a way of managing behavioral issues.

DANSW was contacted to assist Thomas, a 10-year-old boy with ASD. Thomas has significant behavioral issues which have resulted in him being suspended many times. When DANSW came on board, there was little communication between the school and Thomas' mother. Thomas' Behaviour Management Plan was not being followed by the school and there had been no input from Thomas or his mother about his IEP. Thomas was also being continually suspended, rather than alternative strategies being investigated. DANSW assisted in negotiating with the school, NDIS and the Department of Education to formulate a strategy to address the issues and meet Thomas' learning needs. Thomas has now returned to school and with new strategies in place is doing well.

Through our interactions with educators, the need for behavioural training is consistently highlighted as a need in order to manage behaviours of concern in the absence of restrictive practices. While behaviour plans are meant to address difficult behaviours in the school environment, these plans are not being consistently adhered to by all Providers. The result is that the student's behaviour problems can often escalate, resulting in suspension or expulsion- where students are often unable to access a Provider at all.

Compliance and Complaints

The Standard's reliance on a complaints mechanism to drive compliance is ineffective and could be improved with a more proactive mechanism. The current mechanism, including negotiation and arbitration processes, can be inaccessible, time consuming and hard for students and their carers to manage. On the other

hand, there is no requirement for educators to demonstrate compliance with the Standards. As a result, the Standards are not reaching their full potential as a catalyst to create positive systemic change to the education system. Instead, they are merely used as a tool to when appropriate adjustments are not made, and only by families with the ability and skills to do so.

As noted in the 2015 review, awareness of the Standards in the community is low, and families who are aware of the Standards are unsure about how to use them to advocate for their child. Parents have reported fearing backlash or reprisal from schools if they use the Standards to advocate for their child. Some families are not comfortable having to advocate strongly for their child, leading to the withdrawal of their child from the school or accepting a lack of adjustments for their child's needs.

Many DANSW clients report situations in which they struggled to get an adequate response from schools about incidents in which a student with disability had suffered an injury and policy was used to shield the school from responsibility to investigate.

A single negative encounter in making a complaint to a school can lead to a breakdown of trust between the student with disability, their peers, and the school community. There are also often concerns that confidentiality of the information about the complaint may not be managed sensitively in the complaint-handling processes by the school.

2. DANSW recommends establishment of a team within the NSW Department of Education to locally resolve complaints from students with disability on behalf of schools and build the capacity of schools.

This team should have the responsibility of coming to the schools to meet with the parties involved, to triage and action complaints received. Not all principals, their deputies or teachers have the capacity or capability to deal with these sensitive issues in an appropriate fashion. Over time this team would build the capacity of schools to effectively respond and investigate complaints themselves.

Awareness of the Standards

We acknowledge the fact that a package of accredited and NESA registered e-learning lessons on the *Disability Discrimination Act 1992 (DDA)*, with a focus on the *Disability Standards for Education 2005 (the Standards)*, has been developed to provide professional learning for teachers. These lessons are a compulsory element of professional learning for principals, DELs and school executive staff as part of changes implemented under the department's Disability Strategy in 2020. While this is an important shift to better awareness and implementation of the Standards in schools, we believe that this professional development should be compulsory for teachers and aides who are responsible for delivering the training directly to the Student.

This is important to overcome a culture of low expectations. Teachers should also be able to draw on specialist support and advice from multi-disciplinary teams. Schools should have access to specialist advice services in particular demand areas.

DANSW believes that leadership in schools is the key to success for inclusion. Schools must take a multi-layered approach to the creation of inclusive environments, focusing concurrently on whole-school, social and curriculum strategies. To achieve this, the Standards must be integrated into all levels of the education system.

3. DANSW recommends that more work be done to integrate the Standards across all education sectors and promote greater awareness of the Standards in general.

For example, improved plain language information on the standards should be provided to all students and parents/carers on enrollment with any education provider. This information should be available in multiple community languages and in an accessible format. Clear information about the complaints process should be included in the plain language statement.

Final Comments

DANSW acknowledge the Standards are a critical framework in improving access and participation outcomes for clients with a disability in the education sector. Over the last decade, we have assisted several individuals and families to advocate for the inclusion and equity of all students. Consistently, there remains a need to educate the community about the Standards and provide quality-assurance measures to students to ensure that they are upheld. As a community, we must continue to work towards the aims of the Standards to create an education system that is responsive to the diversity, challenges and strengths of people with physical and psychosocial disabilities.

Summary of Recommendations

1. Increased clarity and consistency regarding the enrolment process, including the responsibilities of both student and Higher Education Provider in verifying a student's disability and appropriate reasonable adjustments where funding is not available to obtain formal assessment.
2. Establishment of a team within the NSW Department of Education to locally resolve complaints from students with disability on behalf of schools and build the capacity of schools.

3. More work be done to integrate the Standards across all education sectors and promote greater awareness of the Standards in general.

Finally, I would like to acknowledge our staff who took time from the busy schedules advocating for individuals with disability to prepare this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mark Grierson', written in a cursive style.

Mark Grierson

Chief Executive Officer