

SUBMISSION IN RESPONSE TO THE 2020 REVIEW OF THE DISABILITY STANDARDS FOR EDUCATION

The Australian Centre for Disability Law (“ACDL”) welcomes the opportunity to contribute to the 2020 Review of the Disability Standards for Education (“the Standards”). ACDL is a specialist community legal centre in NSW, our vision being one of a society in which people with disability live with dignity, and in which their human rights and fundamental freedoms are recognised, respected, protected and fulfilled.

The ACDL provides free legal advice, information, referrals and representation to people with disability in relation to discrimination and other areas of civil law across NSW. Our legal services are directed to vulnerable and disadvantaged clients who often experience disadvantage in other areas of their lives. ACDL also promotes human rights for people with disability through community legal education and policy and law reform work. Advice and representation to students and their families in relation to disability discrimination in education represents around 35% of our total casework.

All names have been changed to de-identify our clients in case studies in this submission, and we provide our submission as advocates and legal advisors for students with disability and their families.

Awareness of the Standards

In our experience, the majority of students and their families are not familiar with the Standards. They are not given information about them when they first seek to enrol in an educational institution, and when they encounter difficulties, unless they manage to find legal assistance or an advocate who is aware of the Standards, then they are not aware of what schools, teachers, principals and other educators should be doing to effectively consult, adjust and include students with disability in education. We find that this lack of information puts them at a disadvantage when seeking to advocate for better assistance from teachers and schools.

We note that although the Standards are a federal instrument that apply to all educational institutions across the country, there is currently no requirement for them to be provided by any educational institution to any prospective student or family. We submit that the Standards (or a summarised version of them) should be provided to all prospective students and families by all educational institutions across the country, similar to the way in which the National Employment Standards are required to be provided to all new employees at the commencement of their employment. This would increase the focus on ensuring that all parties (students, families and educators) are equally aware of their rights and obligations.

Recommendation: That the Standards be amended to include an obligation that a version of the Standards be provided to all prospective students and families in all educational institutions.

How could the Standards be improved?

When parents and students are aware of the Standards, then the Standards can provide additional support for their own advocacy. However, the method of enforcing compliance with the Standards still comes down to the individual, and the onus is put on the person with the least power (the student) to understand their rights and advocate for them, rather than the Standards being seen as an important tool for both sides, the student and the educator, to use collaboratively together to ensure the best outcome for the student with disability.

Many barriers still exist for students with disability wanting to access and participate in education and training. The greatest barrier that we see is the lack of consistency in the application of the Standards and the concept of ‘reasonable adjustment’ to the education setting. The experience of so many students and families is specific to the education, training and interest level of the individual teacher and school staff, and if it does not reflect what the Standards should provide, then it is up to the individual to make a complaint about it. The Standards are reactive rather than proactive, and require the individual to act to enforce them.

Greater emphasis on monitoring compliance

We propose that one way of addressing this imbalance would be to introduce a method of auditing schools and educational institutions in relation to their level of compliance with the Standards. This could be done in a similar way to the National Quality Framework for Early Education, where services are assessed and rated by the federal regulatory authority against a number of areas, and given a rating for each area and an overall rating. These ratings are then searchable in a general public register, so that prospective families and students can assess the quality of their early childhood service. We suggest that the Australian Human Rights Commission (“the Commission”), as a federal body, could act as the regulatory authority in relation to the Standards. The Commission could develop a method of conducting regular assessments and audits on all educational authorities (public, private and religious) in relation to compliance with the Standards, and the results could then be published on the Commission website.

We believe this process would increase the effectiveness of the Standards, as educational institutions would be more motivated to comply with the Standards in a proactive way, rather than only responding to complaints if they are made. This system would also allow families to have more information about how the school they are considering rates against

other schools in relation to disability support and inclusion, which would allow families to make a more informed choice.

Recommendation: That the Australian Human Rights Commission introduce a method of auditing and assessing the compliance of educational institutions with the Standards that is made available to the public.

Increased information about resolved complaints

In relation to the enforcement of the Standards, the majority of complaints that are made to the Australian Human Rights Commission are resolved at a conciliation stage, with their details kept confidential. While the Commission does publish summaries of some cases in each area, it does not publish details of all the cases that resolved, therefore when a student or family is considering making a complaint, there is limited guidance on what outcomes they could seek and what has been successful in a conciliation. We submit that better guidance on how the Standards are applied and/or breached in practice could occur if all the education complaints made to the Commission were de-identified and published as case studies. Families and students could use this information about what sort of outcomes can be achieved to better advocate for themselves within the educational environment for these changes before getting to the complaint stage.

Recommendation: That the Commission publish all outcomes of complaints made in relation to the Standards as de-identified case studies.

Increased guidance and examples of appropriate compliance with the Standards

The Standards set out measures and obligations, but provide very little practical guidance on how these are to work in practice, which means that students, families and educators alike do not have a clear and consistent framework to use when seeking to collaborate on appropriate methods of adjustments in education.

While we appreciate the drafting of ‘exemplars’ in response to the 2015 review of the Standards, we note that those ‘exemplars’ are very densely written, confusingly designed and very hard to understand or use in a practical sense, with large amounts of background information that is not particularly relevant. We submit that it would be helpful if these were re-written into clearer, simpler language, and re-designed in a more readable way to provide additional guidance to students and families on the process of asking for and receiving adjustments.

Recommendation: that the ‘exemplars’ developed in response to the 2015 review be re-drafted to be simpler, clearer and more accessible.

Increased specific guidance documents

An issue with the Standards is the lack of specific guidance on what constitutes a 'reasonable adjustment' in a variety of educational settings. Without more specific national guidance, our experience is that educational institutions have all the power to determine what is or is not reasonable when an adjustment is requested, with limited oversight as to whether a refusal is on reasonable grounds, and if a student cannot meet their requirements, then they are the ones that are required to either put up with it, make a formal complaint or leave the school environment. Many of our clients are in remote or regional areas with limited options for schooling, and are therefore required to either home school or accept a lesser standard of education due to the failure to make appropriate adjustments. It is important for parents, caregivers and medical professionals involved with the student to have input into developing individual education plans and behavioural management plans, to ensure that there is consistency in knowledge, information and expectations at home and at school, particularly for students with intellectual or psychosocial disabilities, for whom structure and routine can be highly beneficial in helping them to learn. We find that many parents are very frustrated that they have provided detailed information and specialist reports with recommendations on how to deal with their children which are not implemented and often ignored. Often these strategies are not difficult to implement and simply involve a specific way of interacting with children.

The Standards do not mention individual education plans, behavioural management plans or other specific details of standard documents or consultation processes that are used frequently in relation to implementing appropriate adjustments for students with disability. While the websites of the federal Department of Education, Skills and Employment, and the Nationally Consistent Collection of Data provide some information and examples in this area, more could be done to bring these resources together in an easily accessible way, and create and proactively distribute more specific examples and resources for parents as part of the consultation process under the Standards.

Recommendation: That increased guidance documents be developed and proactively provided to parents in relation to the Standards, with more specific case studies and examples.

Enrolment – the initial process

Our experience is that the enrolment process for students with disability is rarely smooth, even when the parent and the school are working together to achieve a good outcome. However, we have noticed a reluctance by Catholic schools to accept students with psychosocial or intellectual disabilities from an initial enrolment perspective, as well as attempts to funnel such students into specialised segregated schools, rather than allow them into mainstream Catholic educational facilities. We assisted in a case where although four of the family's children had attended the same Catholic primary school, the fifth child was denied entry due to their disabilities, which caused great distress for a family that was highly involved in their local school and religious community.

In the experience of many of our clients, the enrolment process is accessible, but then ‘gatekeeping’ or other exclusionary measures prevent them from being fully enrolled or accepted in the school or educational institution of their choice.

Case study – refusal of enrolment

Tobias had attended a Catholic primary school until Year 6, and applied for Catholic high schools in the area. He has mild autism and global developmental delay. However, the local Catholic education office refused to allow him to enrol in the school of his choice, stating that he would not cope with the curriculum and they could not modify it to accommodate him. He then applied for a second Catholic school, however despite multiple follow-ups by his parents, the office did not respond to his application, which meant he was unable to formally appeal the refusal to the relevant diocese as no formal refusal was made. He was offered a position in a Catholic ‘special school’ which his own doctor noted was for students with far more severe disabilities and lower intellectual capacity. His father wrote to the Director of Catholic education, who said they were sorry, but they thought Tobias would do better in a public school. This had a serious impact on Tobias’ self-esteem, as he felt he was “too stupid” for Catholic school.

Enrolment and gatekeeping

Gatekeeping is something that we see frequently in our practice, as this appears to be a common way of educational institutions dealing with their own limitations, by refusing enrolment outright, limiting enrolment to a part-time structure, or putting conditions on enrolment, such as refusing to allow attendance at school or events without an aide or parent in attendance. We have seen many examples of students only being allowed partial enrolment or partial attendance at schools, with no clear progression for proceeding to fulltime enrolment. While it may be seen as a reasonable introduction to an educational institution to start a child with specific needs in a part-time enrolment, this should only ever be a temporary solution to focus on managing particular behaviours or until appropriate assistance can be secured, and a clear program for transitioning to a full-time enrolment should be developed in consultation with the parents. In the experience of many of our clients, the ‘consultation’ about how they are to be enrolled full-time and ensure equal participation does not occur, and instead they are forced to accept what the school is willing to offer or look elsewhere, often for years at a time.

Recommendation: that the Standards include additional sections on the process of enrolment and attendance itself, to place additional obligations on schools to consult about the appropriate way of enrolling students and progressing from part-time to full-time enrolment.

Case study – partial enrolment/attendance

Ricky had been attending school for a few weeks with supports for his autism, ODD and ADHD, when the school created a behavioural management plan and determined that his

absconding from class was too disruptive, therefore he was placed on partial attendance. However, there was little logic to how this partial attendance was organised, with the principal emailing his mother each week with a different plan for what hours he could attend each day, making it very difficult for her to plan her working week and also for Ricky to get into a consistent routine which would assist with his behaviour. There was no consultation with Ricky's mother about how best to organise this attendance and what process would be put in place to transition him back to full time attendance.

Case study – refusal to enrol in early childhood due to diagnosis

3 year old Milen had been diagnosed with autism. His mother sought to enrol him in a childcare centre, and was told they had days available. However, when she mentioned his diagnosis, they said they had “already met their quota of children with disabilities”. She informed them he didn't need a carer or extra support, he was toilet trained and had been to daycare before, however they still refused to enrol him. Later in the year, the childcare centre offered him a place again through her husband, and when they again mentioned his diagnosis, the childcare centre withdrew the offer, as they said it “wouldn't be fair on the other children and teachers to take on more kids with disabilities.” This highlights a lack of disability awareness and an assumption that a diagnosis requires intervention despite parental information being provided about the individual child, and a lack of appropriate consultation about meaningful participation.

Case study – refusal of enrolment at tertiary level

Jess was passionate about pursuing a vocational course at her local college. Jess has cerebral palsy, epilepsy and a mild intellectual disability. At the age of 23, Jess had already completed a course and was interested in further developing her passion and skills. Jess organised a meeting with the course facilitator to discuss what adjustments could be made to assist her to enrol in and complete the course as she uses a wheelchair, only has use of one hand and communicates through a talking device. The facilitator was concerned about Jess' ability to complete the course to industry standard due to her disabilities, despite Jess making it clear that her interest in undertaking the course was to participate, not to seek employment in the industry.

When Jess attended the pre-enrolment day she was required to complete a quiz. Her support person was sent out of the room and the teacher's aide present did not provide assistance, including to enlarge the text on the screen so that Jess could read the quiz. Jess was also embarrassed by the teachers' loud remarks about her epilepsy when her support person expressed concern for being made to leave the room. Depressed, angry and upset after this experience, Jess did not attend her physiotherapist appointments and required treatment by a psychologist. ACDL assisted Jess to get an outcome at the Australian Human Rights Commission that included an apology, some compensation and a commitment to updating their policies.

This case highlights a lack of accessible information and support provided within the enrolment process, so demonstrates a clear breach of the Standards by not ensuring that Jess could participate on the same basis in the enrolment process. Jess' experience in discussions with the college prior to the enrolment day, however, also highlights a broader issue of interpretation of what reasonable adjustments can be made to also ensure that the course maintains its integrity. The kind of gatekeeping that occurs in these circumstances fails to recognise the importance of consultation with the prospective student about their motivations for completing the course, as there can be a range of ways of participating in the learning and socialising of a particular course without necessarily achieving the full 'industry' standard. We suggest that the Standards could provide clearer guidance for tertiary institutions about how to ensure equal participation while still maintaining the integrity of the course overall.

Recommendation: that the Standards contain greater guidance for tertiary institutions on how to balance reasonable adjustments with the integrity of the course itself.

Participation and adjustments

In our experience, when children with disability are in early childhood or primary settings, they are more likely to be undiagnosed in relation to their behavioural or psychosocial disability than in secondary or tertiary settings.

If they do have a diagnosis, there may be issues in getting the support that they need, either through a lack of funding, a lack of interest or a combination of both. We have also seen an increase in young children being suspended and/or expelled from pre-school or kindergarten, which sets them up for disadvantage throughout their schooling. Our clients report that often consultation about how their child can best participate in an early childhood or primary setting is limited to what they can or cannot do, rather than viewing the curriculum as a whole and seeing how it can be adjusted to be more inclusive.

Throughout secondary education, we see an increase in segregation and misuse of disciplinary processes, leading to exclusion, suspension and expulsion. Appropriate use of adjustments, supports, and adherence to the Standards assists greatly in ensuring that students have access to a safe and productive learning environment. The Standards do not currently provide any direction on the use of disciplinary procedures and the potential to modify or adjust these to increase equal participation by students with disability.

Recommendation: that the Standards include a specific section on exclusion, suspension and expulsion, and guidance on how to modify policies to be more accessible and inclusive to students with disability.

We provide a number of case studies below which illustrate the problems discussed above.

Case study – removal of adjustments due to staffing change

Alvin and Colin are brothers, aged 10 and 11, who both have autism, ODD and ADHD. Their mother said that under a previous principal, they were doing well, referred to as 'star students', and were given adjustments that were very supportive including a teacher's aide, safe spaces with sensory activities, and extra learning supports such as visual aids. The boys could also ask for breaks during class if they were feeling overwhelmed, and if one of the boys had an outburst, he would be allowed to remain in the classroom to use the computers with his teacher's aide and even his brother. This strategy was effective at calming them down so the boys' mother didn't have to collect them from school. They also used to have a meeting each term with the principal, the teachers and the aide and learning support teacher and parents. A new principal immediately withdrew all adjustments, changed the teaching arrangements so that they had 2 different teachers each day, removed all breaks from class and stopped all meetings with the parents. The new principal also singled out the students for differential treatment, including locking them in a classroom alone when they had an outburst, so that they became distressed to the point of screaming, and refusing to pass on important information to school medical staff about changes to the students' medication

Case study – lack of behavioural management plan leading to multiple suspensions

Amir is a 13 year old boy with autism. He was in a mainstream class at a public school, with an aide for some classes. He was suspended for 3 days for kneeling another student in the back. His parents sought additional aide time, but the school did not respond, instead they suggested that he be moved to a multi-category class at a school 45 minutes away. An incident occurred where Amir 'mooned' students to get a laughing reaction, and he was suspended for 4 weeks, with a further partial enrolment for 2 weeks. This made him depressed and express suicidal thoughts. There was no behavioural management plan in place, despite repeated requests from his parents for the school to develop one, and no consideration to adjusting the application of the discipline policy to accommodate him. He was also told that he would need to be medicated if he was to return to class.

Case study – adequacy of adjustments – Auslan interpretation

Otis is a 6 year old child with cochlear implants and other physical disabilities. His mother sought an appropriate Auslan interpreter to be provided at his local school to enable him to learn effectively. However, the school repeatedly hired support officers with low levels of signing capability, and did not ensure they were positioned correctly in the classroom or at assemblies, thereby limiting his ability to be taught bilingually. When she complained, the school suggested that he would do better at a school for deaf children, or at a school with a class for deaf children, rather than continue in mainstream education.

Case study – lack of access to curriculum

Patty is an autistic girl in Year 9 at a mainstream school with a specialised disability unit, which she attends. However, she is given minimal access to mainstream classes, as all students in the disability unit are only allowed to access the lowest grade level of all classes.

Her father advocated for her inclusion in a higher level of mainstream maths, and she excelled. He had concerns that the gifted and talented aspects of his children were not being appropriately encouraged or supported, as the school was presuming incorrectly that they needed to be in lower level classes due to their disabilities.

Case study – exclusion, lack of support, partial attendance

Ariel is a 10 year old student with Autism, ADHD, Tourette’s Syndrome, specific learning difficulties and a language disorder. Ariel is considered to be a high risk student both behaviourally and emotionally and needs sustainable support within the school environment. Part of Ariel’s disability is her inability to cope in loud spaces, large open areas and large crowds. This includes spaces like the playground at lunch and recess, assemblies and sports carnivals. During term 1 and 2 she was allowed to remain in the classroom under the supervision of a support worker however in term 3 the school decided that she must now go into the playground on Thursdays and Fridays at lunch. This decision to force Ariel out of her comfort zone and into the playground was made without any professional guidance from Ariel’s allied health team and without consultation with Ariel’s parents. Ariel had a huge emotional and volatile breakdown due to the announcement that she would now have to spend every lunchtime in the playground without any support.

During this period the school also decided that Ariel’s support worker was ‘inadequate’ and had ‘grown too attached’. This is despite Ariel flourishing under her supervision and Ariel’s parents believing that she was an excellent fit for Ariel’s needs. As a result of these changes Ariel’s anxiety and Tourette’s was exacerbated causing meltdowns, behavioural issues and self-harming. The school’s solution to this was to allow Ariel to only come to school for 1 hour a day.

Case Study – Attendance restrictions

Blake is an 11 year old boy with autism, ADHD and anxiety, He attends a specialist disability school however he is only allowed to attend school for 15 minutes a day. During those 15 minutes Blake must say good morning or hello politely or smile. He must give “normal” answers to questions and he must walk “normally” which means not to flap his hands, and not to skip, hop, jump or run. His mother must stand at the school gate during this time in the line of sight. Blake’s mother has been told that he must be able to do this for four days in a row before the school will consider increasing the time Blake can attend. His mother believes that the school is setting Blake up to fail as the actions the school wants to prohibit are manifestations of Blake’s disability.

Case study - expulsion

Omar is a 13 year old student in Year 7 at a public school. He has autism, Attention Deficit Hyperactivity Disorder (ADHD), Oppositional Defiance Disorder (ODD) and anxiety, and has a behavioural management plan in place. Due to his disabilities, he often acts out in a silly or joking manner, including swearing, and he often lashes out physically when distressed,

which is why his behavioural management plan focuses on ways to calm him down. The school follows a strict discipline policy for anything that is seen as misbehaviour: any student who swears or engages in any physical altercation of any level is automatically suspended for 2 days, and progressively longer suspensions occur for each new breach of behaviour.

Omar experienced increasingly long suspensions throughout Year 7 for minor incidents of physical altercations and swearing, firstly for 2 days, then 4 days, then 5 days, culminating in a 20 day suspension for appearing to threaten a teacher. The teacher and other students interpreted this incident as clowning around rather than a genuine threat and the situation was quickly defused. The incident was not even mentioned by his teacher to his parents until the suspension occurred some days later. His mother repeatedly requested that the discipline and suspension policy be amended to take into account Omar's tendency to act out inappropriately, and for the school to institute alternative forms of discipline in accordance with his behavioural management plan, such as detention or similar. The School did not do so, and after the last long suspension, Omar was again found to be misbehaving and was threatened with expulsion.

Summary of recommendations

Recommendation: That the Standards be amended to include an obligation that a version of the Standards be provided to all prospective students and families in all educational institutions.

Recommendation: That the Australian Human Rights Commission introduce a method of auditing and assessing the compliance of educational institutions with the Standards that is made available to the public.

Recommendation: That the Commission publish all outcomes of complaints made in relation to the Standards as de-identified case studies.

Recommendation: that the 'exemplars' developed in response to the 2015 review be re-drafted to be simpler, clearer and more accessible.

Recommendation: That increased guidance documents be developed and proactively provided to parents in relation to the Standards, with more specific case studies and examples.

Recommendation: that the Standards include additional sections on the process of enrolment and attendance itself, to place additional obligations on schools to consult about the appropriate way of enrolling students and progressing from part-time to full-time enrolment.

Recommendation: that the Standards contain greater guidance for tertiary institutions on how to balance reasonable adjustments with the integrity of the course itself.

Recommendation: that the Standards include a specific section on exclusion, suspension and expulsion, and guidance on how to modify policies to be more accessible and inclusive to students with disability.

We thank you for the opportunity to contribute to this review of the Disability Standards for Education.



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