

Disability Standards for Education Review Team

Disability Strategy Taskforce

GPO Box 9880

Canberra City ACT 2601

Dear Sir/Madam

## **2020 Review - Disability Standards for Education 2005**

This letter represents our submission to the 2020 Review of the Disability Standards for Education 2005. Thank you for the opportunity to collect feedback from the community on this matter.

Your Discussion Paper poses many questions for different stakeholder cohorts to consider and reply. This submission addresses some but not all of those subjects.

### *1. What has been your experience when accessing education?*

During our initial engagement with an educator provider in Western Australia, the provider advised us that our son had needs that required an education assistant full-time five days per week. We agreed with that assessment based on his disability.

It was the provider's opinion that despite the need, he would likely only receive funding for an education assistant for three days leaving a support gap of two days.

Therefore, the options stated to us by the provider were for:

- Our son to attend school three days per week.
- Our family to pay the education assistant's salary of \$22,000 for the likely two unfunded days.
- Our son to attend for five days but for limited hours (daily early pick up).
- Our son to undertake non-curriculum activities at school (e.g., attend therapy) to fill the gap.

None of these options were satisfactory, nor consistent with a child's legal right to public education.

Our son has a complex disability. When supported in school, he has thrived.

It was the provider's experience and understanding that no student receives full-time funding for an education assistant.

We therefore lobbied the Schools of Special Education Needs (SSEND), the Minister for Education, and the Disability Services and support section of the Department for a resolution. These groups identified what had been communicated to us was inconsistent with education policy and the law.

SSEND and the Department engaged with the school to ensure it understood its obligations and the application process to obtain funding. The school responded positively to the assistance of the Department, of which we were grateful.

Following our extensive advocacy to seek an outcome whereby our son could attend a public school five days a week (i.e., on the same basis of a student without disability), we received confirmation from the provider that funding had been granted for full-time education assistance.

It should not have been necessary for us as parents to facilitate these interventions, navigate the system to lobby educational and support bodies, and advocate so strongly at school to drive this outcome.

During the process, it was apparent the school believed a certain level of funding was the maximum achievable funding, and there was no awareness other funding existed and how to apply for it.

Limited public information also existed for the school and us to understand what funding arrangements exist and how funding allocation decisions are made.

These findings are not specific to our school; our experience is similar to many others in the special needs community.

These points highlight confusion in schools as to the process and available funding to support children with special needs. This results in incorrect information being relayed to parents, causing distress about the educational options available for their children. Ultimately, the current process can result in children with special needs being denied a fulltime public education due to a lack of approved supports. This is an unsatisfactory outcome for students with special needs and inconsistent with educational legal requirements.

This suggests a systemic issue exists with the process by which schools apply for funding from the Department to support children with special needs, and schools' awareness of the process, which ultimately negatively impacts families and children.

## *2. Appropriate support during education*

Children with disability often require supports within schools to access the curriculum, engage with peers and staff, and to ensure their own and others' safety.

Schools are required to make reasonable adjustments to facilitate a child's access to those supports under the Standards.

Section 7.3c of the Standards set out one form of support called specialised services, which "include services in health, personal care and therapy, and services provided by speech therapists, occupational therapists and physiotherapists".

Parents and carers of children generally fund specialised services either directly or via NDIS participant funding from the NDIS.

Providers of specialised services typically visit the school to support the child in the class, and provide guidance to Educational Assistants and Teachers on the various techniques being used to support the child.

Support delivered in the school is critical as:

- allows the child access and participation to the educational activities for which they are enrolled;
- without support, the child may struggle to access the curriculum;

- the child often spends up to seven hours a day in school and therefore it is often the only time such specialised services can be delivered to the child;
- it can help to avoid challenging and/or injurious behaviours of some children.

Evidence exists of schools that deny children with disability access to specialist services. This evidence pre-dates the COVID-19 pandemic and related restrictions on third party access to schools.

Parents/carers describe their despair that their child's school will not allow specialist service providers access to support the child in an educational setting.

Some schools request such services be procured at home. This results in the child being removed from class to access those services, and therefore, the child is unable to access and participation in education on the same legal basis as students without disability.

There may be a duty of care breach where schools prevent access to specialised services designed to minimise a child's aggressive behaviour to themselves or others.

Exacerbating this issue is the limited guidance from the WA Departments of Education or Communities on a child's right to receive access to such services within school.

Support for the school's right to prevent access is often cited as the principal's authority under the *School Education Act 1999* (WA).

The lack of clear policy and guidance contributes to inconsistent approaches between schools.

Where schools do not facilitate access to specialised services for children, it is unclear how those decisions are legal under the *Disability Discrimination Act 1992*.

Little to no adjustment is required within a school to support a child's access to a speech therapist for example.

### 3. *Support during transition periods within an education provider*

In Western Australia, a Disability Allocation is provided to public schools from the Department of Education to support students with disability and additional needs.

The Allocation consists of an Educational Adjustment Allocation and an Individual Disability Allocation – the latter is designed to support students with eligible disability based on application, approval and review.

Individual Disability Allocation has eight categories of eligibility and each category has its own criteria.

A school must apply for support for a student with disability via one or more of these categories.

Guidance materials state that 'eligibility requires verification...to ensure the diagnosis complies with the Department's criteria and standards', and that 'periodical review is required'.

To meet these requirements, families have to procure evidence to prove their child has a disability. Such evidence can come at significant:

- cost to a family (e.g., a physical disability diagnosis requires evidence in a required format from a paediatrician, neurologist or other medical expert);
- resource burden for a family/school (e.g., a school psychology assessment to support an intellectual disability diagnosis can take 9-months);
- anxiety for a family (e.g., an intellectual disability diagnosis requires an IQ test showing diminished intellectual capacity of the child);
- distraction to the child from accessing the curriculum (as they have to attend appointments so the family can collect the data to support the application);
- stress and grief for a family who is required to collect and submit information in the 'perverse' hope that it shows their child has significant impairment to meet an eligibility criteria under the Allocation.

This process creates an ineffective and unnecessary evidentiary burden on vulnerable families. This appears to be most prevalent in mainstream schools.

In most cases, families have already had to 'prove' their child has a disability to the following State and Commonwealth bodies:

- WA Department of Communities;
- Cmth National Disability Insurance Agency; and
- Cmth Medicare.

Applications to these bodies for various supports require evidence of the disability.

It has long been accepted practice that vulnerable people and their families should not be repeatedly asked to prove their impairment to receive support. For example: a person with a disability who was eligible for the State disability services was accepted by the NDIA without a re-assessment being required.

Aside from the fact that the evidence is held by the same Government that requests it again, it should not be up to families to prove the existence and severity of certain symptoms when such information on many diagnoses is well known.

For example, the NDIA recognises this under s24 of the NDIS Act that there are a range of 'conditions which are likely to meet the disability requirements'. List A of that Act goes on to list a range of conditions, including almost 30 genetic conditions.

The WA-Department of Education only recognises four conditions for automatic eligibility under the Allocation, require no assessment and that have guaranteed support until the end of schooling.

In contrast, people with any other condition must prove their disability and its severity, and then apply, and re-apply until the end of schooling.

This process is discriminatory and as a consequence, acts to deny children with disability receiving a mainstream education with supports.

That, it inflicts a significant and ongoing financial and emotional burden on families who live in fear their child with disability (especially those that are permanent and significant) will not meet the eligibility criteria this year, or the next, or the one after, underpins the need to reform the process.

This would be further exacerbated in the event that an assessment concluded a lower need for support. If that occurred but the child still had a need for support, the school should still be required to support the child.

At least two self-evident solutions would address these issues (if the whole process was not reformed):

- a) Expand the number of conditions for automatic eligibility under the Allocation (at the very least to match those set out in the NDIA Act); and
- b) Rely on information that has been prepared and submitted to support other disability eligibility processes.

Section 4.2 of the Standards sets out that “(1) The education provider must take reasonable steps to ensure that the prospective student is able to seek admission to, or apply for enrolment in, the institution on the same basis as a prospective student without a disability, and without experiencing discrimination.”

The practice described above does not meet that expectation.

Improvement to this area of the Standards should be made to reflect the intent of Section 4.2 (1), that is, that enrolment or re-enrolment practices should not require families to re-prove the disability of the child and incur a cost in doing so. Such practices should be designed to be efficient for students with a disability on the same basis as students without a disability.

#### *4. How can the Standards be improved?*

The Standards can be made more prominent by clarifying State Government and education provider responsibility to comply with them as they are subordinate legislation. There is not a clear understanding that compliance with the standards is required under the law.

The Standards are not given prominence to families during the enrolment process or at any time during the education journey of the student. Knowledge of, and therefore access to, the standards is therefore left to proactive and inquisitive families that search for guidance material to support their own advocacy efforts with education providers on specific issues.

This is not a desired outcome.

Training of education provider leadership teams in the Standards should be done. Audits should be done of select education providers' compliance with the Standards, and the results of the audit should be shared with other providers so that learning opportunities can be addressed more widely.

The Standards should apply across all educational settings including day-care, kindergarten and into tertiary and equivalent environments.

If you have any further questions on the above information, please do not hesitate to contact us.

Sincerely

Kane and Sarah Blackman

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**24 September 2020**