

22 September 2020

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Dear Disability Standards for Education Review Team

My colleagues, Dr Renee Punch, Dr Mark Gauntlett, and Ms Ruth Talbot-Stokes, and I recently completed a scoping review<sup>i</sup> to determine the extent to which the Disability Standards for Education 2005 (Cth) (the Standards) was achieving the elimination of discrimination against students with disability in primary and secondary schooling. We determined that there are five fundamental reasons why this subordinate legislation is not fulfilling its intended purpose.

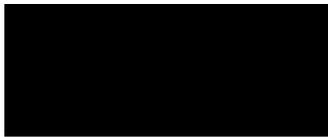
1. **Inclusion/exclusion:** Reported failures in the inclusion of students with disability and the continuing existence of discrimination in the form of exclusionary practices.
2. **Jurisdictions and definitions:** Inconsistent levels of access and outcomes for students result from Australia's eight educational jurisdictions differently interpreting the federal legislation, developing policy and identifying and providing supports to students with disability. Difficulties arise from the discrepancy between the broad definition of disability in the Disability Discrimination Act 1992 (Cth) and the Standards and the narrower, more medically based definitions used by education departments in the states and territories.
3. **The complaints-driven system:** Enforcement of compliance with the legislation depends on the willingness and ability of often vulnerable individual complainants to pursue a claim of discrimination or breach of the Standards. Few cases proceed to court, and conciliation outcomes are confidential.
4. **Legislation clarity:** The legislative framework aimed at eliminating discrimination against students with disabilities is complex, and it is difficult for both schools and students and their families to understand and navigate. The legislation lacks clarity in its key terms, and it is difficult for all parties to interpret how the Standards are best applied in practice.
5. **Reasonable adjustment:** The matter of reasonable adjustment in general, and reasonable adjustments in assessment in particular, is especially problematic, and there is a lack of systematic guidelines to assist schools to determine reasonable adjustments. The exception of unjustifiable hardship that can be claimed by education providers is contentious, and the interaction between the concepts of reasonable adjustment and unjustifiable hardship is unclear and difficult to establish. Although the Standards require schools to consult with a student about reasonable adjustments, it is in the end left to the school to determine what measures should be taken, what constitutes a reasonable adjustment, whether the implementation of reasonable adjustments would involve an unjustifiable hardship, and whether the school's legal obligations have been met.

In response to these five barriers to achieving non-discrimination in primary and secondary education in Australia, my colleagues and I proposed these six government-level recommendations.

1. That the Standards are amended so that the requirement to make reasonable adjustments is a genuinely unambiguous, positive obligation.
2. That the Standards are amended to shift away from the complaints-based system of enforcement.
3. That an independent statutory agency be established to monitor legislative compliance, so the burden of enforcement is lifted from aggrieved students and their associates, and schools are relieved of the need to second-guess their decisions about adjustments and their implementation.
4. That disability definitions are standardised among the federal legislation and the education departments of states and territories.
5. That the Commonwealth formally investigate the merits of inclusive education legislation so that children are educated in regular, age-appropriate classes to the maximum extent possible.
6. That governments ensure ongoing school-based funding is allocated to provide financial and human resources for the proper provision to students with disability.

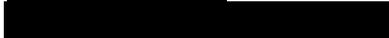
Thank you for the opportunity to comment on the 2020 Disability Standards for Education Review.

Sincerely yours



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<sup>i</sup> Duncan J., Punch, R., Gauntlett M., & Talbot-Stokes R., (2020). Missing the mark or scoring a goal? Achieving non-discrimination for students with disability in primary and secondary education in Australia: A scoping review' *Australian Journal of Education*, 64(1):54-72.  
doi:[10.1177/0004944119896816](https://doi.org/10.1177/0004944119896816)