



## Submission to the Australian Government Department of Education, Skills and Employment

### 2020 Review of the Disability Standards for Education

Cecile Sullivan Elder  
Executive Officer, Family Advocacy  
[cecile@family-advocacy.com](mailto:cecile@family-advocacy.com)

Leanne Varga  
Systemic Advocate  
[leanne@family-advocacy.com](mailto:leanne@family-advocacy.com)

Family Advocacy  
(02) 9869 0866  
Suite 704, 88-90 George Street,  
Hornsby, NSW 2077, Australia

**September 2020**

#### **Acknowledgement:**

Family Advocacy would like to acknowledge the traditional custodians of the lands on which this report has been written, reviewed and produced, whose cultures and customs have nurtured and continue to nurture this land since the Dreamtime. We pay our respects to their Elders past, present and future. This is, was and always will be Aboriginal land.

## Introduction

Family Advocacy is a state and federally funded disability advocacy organisation that works across New South Wales (NSW) and was founded 29 years ago by families to advance and protect the rights and interests of people with developmental disability<sup>1</sup> (“disability”) so that meaningful lives can be enjoyed by experiencing the same opportunities and living conditions as the majority of Australians. This includes Australian First Nations people and culturally and linguistically diverse people with disability.

We provide support in the following ways:

- Statewide Advocacy advice and advocacy information for individuals;
- Advocacy development for family members of a person with disability - Advocacy is often undertaken by families and can be required over the lifetime of their family member; and
- Systemic Advocacy - informing government regarding legislation, policy, funding, monitoring, and practice in areas that impact on the needs of people with disability

Education has always been an issue of vital importance to Family Advocacy and we have worked with families and the NSW Department of Education and many other stakeholders with a view to enabling all students to be welcomed and educated in the regular class of their local neighbourhood school with the right supports. Over the last five years, our education related calls have doubled.

We welcome the opportunity to make this submission on the 2020 Review of the ***Disability Standards for Education 2005*** (the Standards) and are happy to provide further information or clarification of any matters raised upon request. Our recommendations are premised upon 29 years of experience working with families who share the lived experience of the person with disability in their life, as well as input from a recent survey with 32 family responses.

We note that in ordinary circumstances, this is a relatively low response but we note it is no way indicative of the interest our families have in improving the education setting but more to do with the impacts of the COVID-19 pandemic placing families under extra pressures, and the amount of reviews and consultations occurring with the Disability Royal Commission, the National Disability Strategy and many parent consultation requests. For confidentiality reasons, any stories or quotes we have shared here have been deidentified.

We also note your word limit of 3000 words and apologise for having exceeded it, but we hope you understand given that we represent hundreds of families and their experiences over the last five years. We request a greater word limit be granted especially given the time and deep consideration given in the writing of this submission, and that those aimed to benefit by our recommendations will be students with disability.

---

<sup>1</sup> Developmental disability is a disability that occurs in the developmental period of a person’s life (in the period from conception to adulthood) and includes but is not limited to: autism, intellectual disability, cerebral palsy, spina bifida, and any combination of physical, intellectual or sensory disability.

## Summary of recommendations

The current barriers that prevent students with disability achieving equitable outcomes include gatekeeping the enrolment, partial enrolments, low expectations, lack of inclusive curricula, lack of individual education plans, lack of ongoing reasonable adjustments leading to a rise in suspensions, lack of reasonable assessments, use of restrictive practices, and poor transitions.

To overcome these barriers and strengthen the rights of students with disability under the Standards, we make the following recommendations:

1. Align the Standards with the National Disability Strategy as a way of implementing the right to an Inclusive Education under the United Nations *Convention on the Rights of People with Disabilities*(CRPD)
2. Substitute the term 'on the same basis' for 'substantive equality'
3. Amend 'reasonable adjustment' to 'reasonable accommodation' in accordance with the meaning in the Convention on the Rights of People with Disabilities
4. Acknowledge intersectionality
5. Provide clear language in Easy Read formats
6. Strengthen the protocols around parent/carer consultation
7. Recognise the right of the child to override parent choice
8. Mandatory data collection
9. Require independent advocacy
10. Mandatory training of the Standards to education and training providers and all of their staff
11. Improve awareness and understanding of the Standards to school and broader community
12. Increase accountability through independent and transparent complaints policy and procedures
13. Eliminate discrimination by monitoring compliance
14. Foster an inclusive culture to improve effectiveness of the Standards.

## 1. Are the rights, obligations and measures of compliance set out in the Standards (and its Guidance Notes) clear and appropriate?

The Standards have had some level of success with education providers in promoting the principle that people with disability have the same rights as the rest of the community, however, there is much room for improvement. Broadly, the Standards have been the subject of concern for a long time, and this has been raised by the United Nations *Convention on the Rights of People with Disabilities* (CRPD) Committee in its Concluding Observations from its CRPD review of Australia in 2013 and again more recently in 2019. Disappointingly, we are making very similar recommendations for improvements to our 2015 and 2010 submissions. The protections we recommend below must be accompanied with a legal framework that fully aligns with the CRPD that drives systemic and cultural change, and includes robust processes for their monitoring, enforcement and implementation to ensure a fully inclusive education system. We note the 2016 Australian Senate Report<sup>2</sup> called for the adoption of a national strategy to improve delivery of education for students with disabilities.

### Align the Standards with the National Disability Strategy as a way of implementing the Right to an Inclusive Education under the UN Convention on the Rights of People with Disability (UNCRPD)

The review of the Standards must take account and align with the UNCRPD, particularly noting General Comment No.4 (GC4) (2016) under Article 24 (The Right to an Inclusive Education), and the UN Convention on the Rights of the Child (CRC) to explicitly recognise that **children with disability have a fundamental human right to an inclusive education.**

The purpose of the GC4 which came into effect in 2016, a year after the 2015 review of the Standards, is to provide the Australian government with guidance on the scope of their obligation to provide quality inclusive education for people with disability, provides clarity for the meaning of inclusion (which has been misinterpreted by our States and Territories as special schools and support units in mainstream schools believe they are inclusive) and what is not inclusion (exclusion, segregation, integration)<sup>3</sup>, and in doing so made it clear that the segregation of students with disabilities is a form of discrimination against them.

The language in the Standards could be stronger and more directive to require a more consistent level of compliance, specifically using the terms “inclusive education” and “inclusion” as defined in the GC4 and the CRPD.

Consistent with GC4, the Standards ought to include legal protections with strong ‘non-rejection’ provisions in relation to enrolment and attendance; an entitlement to “reasonable accommodations and supports”; and recognition of disability-based segregation in education as an unlawful discriminatory practice.

---

<sup>2</sup> Senate Education and Employment References Committee, *Access to real learning: the impact of policy, funding and culture on students with disability*, January 2016.

<sup>3</sup> – General Comment No.4, paragraph 10 provides that “*Segregation occurs when the education of students with disabilities is provided in separate environments designed or used to respond to a particular or various impairments, in isolation from students without disabilities*”;  
– Paragraph 12 of General Comment No.4 speaks of “*ending segregation within educational settings by ensuring inclusive classroom teaching in accessible learning environments with appropriate supports*” and calls for inclusive education to be “*monitored and evaluated on a regular basis to ensure that segregation or integration is not happening either formally or informally*”.  
– Paragraph 13 of General Comment No.4 states that “*the right to non-discrimination includes the right not to be segregated and to be provided with reasonable accommodation*”;  
– General Comment No.6 states at paragraph 64 that “*segregated models of education, which exclude students with disabilities from mainstream and inclusive education on the basis of disability, contravene articles 5(2) and 24(1)(a)*”;  
– Paragraph 39 of General Comment No.4 makes it clear that the full realization of Article 24 “*is not compatible with sustaining two systems of education: mainstream and special/segregated education systems*” and consistently with this, paragraph 68 calls for “*a transfer of resources from segregated to inclusive environments*”.

This also includes providing a positive framework at a systemic level, being brought into line with the broader understandings of a whole of system reform. Currently, the Standards are focused on addressing individual breaches of unlawful discrimination, with the onus placed upon the aggrieved person, who in this case, is the most vulnerable person (a power imbalance) and has led only to limited piecemeal changes, rather than whole of system transformation that is required. There is no mechanism to coordinate and understand where individual changes have occurred that, if known and changed broadly within the system, would improve matters for all.

The vast majority of stakeholders are not aware of the Standards. Many have a generalised sense of their 'right' to education under the Disability Discrimination Act (DDA), but are not aware of the guidance intended through the Standards.

A significant proportion of students and families continue to feel fortunate just to be enrolled in a school. Their confidence, for example, to seek to enforce the school's responsibility to adjust the curriculum, ensure the teacher uses strategies likely to engage the student, provide accessible transport for a school excursion and ensure that the school camp is held in an accessible venue, is balanced against their fear that they will be labelled a "trouble maker" or that their child will be victimised by staff who feel forced to implement a strategy they disagree with, not see as necessary, or perceive as "too much work".

Family Advocacy believes that the UNCRPD provides a framework to strengthen the rights under the Standards by including the term 'substantive equality' and in reframing the issue of 'reasonable adjustments'.

### Substantive equality

The Standards use the term 'on the same basis as' as the yardstick by which to judge a behaviour or practice as discriminatory. This can lead to confusion that education providers should treat students with and without disability in exactly the same way. A "one size fits all" approach and a dependency on the teacher aide model characterises many systems.

The Standards would be clarified and strengthened if adjustments and special measures were judged by the extent to which they achieved 'substantive equality', ie the adjustments and special measures must enable the student to achieve equality of opportunity. This clarifies the spirit of the DDA indicating that discrimination is not mitigated by treating all students the same way.

### Replace reasonable adjustment with reasonable accommodation

The 'right' of a student to the adjustment that they think best fits their situation is tempered by the obligation of the provider to take into account 'the effect of the proposed adjustment on anyone else affected, including the education provider, staff and other students (3.4 (2)(d)); and the exception of unjustifiable hardship.

The Standards that provide for "reasonable adjustments" and "unjustifiable hardship" do not reflect the equivalent concepts of "reasonable accommodations" and "disproportionate or undue burden" under Articles 2, 5 and 24 of the CRPD, as explained GC No.4 and GC No.6, and we believe they should. The "reasonableness of an accommodation is a reference to its relevance, appropriateness and effectiveness for the person with a disability" and depends on whether the accommodation achieves the purpose for which it is being made and is tailored to meet the requirements of the person with disability. "It should not be misunderstood as an exception clause; the concept of reasonableness should not act as a distinct qualifier or modifier to the duty. It is not a means by which the costs of the accommodation or the availability of resources can be assessed - this occurs at a later stage, when the disproportionate or undue burden assessment is taken".<sup>4</sup>

---

<sup>4</sup> CRPD/C/GC6, at [25(a)]

Another suggestion is the Standards would be strengthened if the determination of a reasonable adjustment focused on the student (removing the interests of others). The interests of others are already taken into account under the unjustifiable hardship provisions. It would also be helpful to provide clear guidance to parents and training to schools about what are considered reasonable adjustments for students with disabilities, and set timeframes for the implementation of reasonable adjustments in schools, requiring a written response providing sufficient detail outlining the reason why an adjustment causes unjustifiable hardship as opposed to just “hardship” per se, and what measures the school has put in place to explore all the options and funding available.

### Acknowledging intersectionality

It is important to acknowledge the compounding disadvantage that occurs for those with disability that are part of other marginalised groups such as being of Aboriginal and Torres Strait Islander backgrounds, CALD backgrounds, LGBTQIA, and those living in out of home care, youth justice, as well as rural and remote communities. The Standards should provide particular consideration to and recognise these additional barriers, particularly in terms of determining whether an adjustment is reasonable.

### Providing clear language in Easy Read formats

Most people with disability and their families as well as education providers do not understand many ambiguous terms in the Standards which can be misinterpreted from their original intention.

The current format and language of the Standards inhibit most people from accessing them. The Guidance notes provide an important aid, but the development of an Easy Read and Plain English version of the Standards would make them more accessible to ordinary citizens as well as students with disability.

### Strengthen the protocols around parent/carers consultation

*The Principal has never once picked up the phone to talk about some very big problems and he doesn't respond to emails or attend meetings he has been directly requested to attend. The Deputy Principal pulled the old "maybe she should go elsewhere" when supports were requested and sabotaged his own attempts at making accommodations by getting annoyed when they were used.*

Parent

We recognise that the advocacy undertaken by families with or on behalf of their family member with disability can be the greatest safeguard in their family member's lives. In NSW, the Learning Support Team process provides families of students with moderate to high support needs in the regular class with a framework for consultation and an opportunity to contribute to planning around their son or daughter. In welcoming schools, this continues as a process of ongoing partnership. In many schools however, the process is tokenistic and support implemented has little resemblance to that discussed. Often, parents are not aware of whether adjustments are actually put in place.

We suggest more strengthening around the meaning of the term “consult” and the protocols around “consultation”, to whom it applies to, when and how often it occurs. Parents with children who have disabilities also have particular needs. They need more time with their child's teachers, especially at school, to help with the education of their children, to involve the student, to share their experience and knowledge about their child's learning style and needs. It is important for schools to have that extra time to develop individual education plans for the student and to take account of the individual needs that different students have.

## Right of the child to override parent choice

In aligning with the CRPD, it is also worth noting that the right of the child overrides the right of the parent in accordance with the CRC. In any other area, our government would put what is in the “best interests of the child” based on the evidence. For example, in custodial matters within family law, in passing legislation to enforce the wearing of seatbelts and with immunisations. Yet when it comes to schools, the overwhelming evidence that inclusive education provides better outcomes academically and socially is ignored, and parents are given “choice” over what is best for their child rather than what is in the best interests of the child in terms of the life pathways that follow - a life of inclusion following the same rites of passage we all experience such as regular school, a job, friendships, living independently versus the segregated path of special school, day program, unemployment or an Australian Disability Enterprise, and living in a group home with people you did not choose to live with.

From our experience, parents are often not making an informed choice but rather a concession to select the ‘least worst’ option on offer<sup>5</sup>. They are funnelled into support units or special schools or they face the battle of an unwelcoming school or a teacher that won’t or does not know how to make reasonable adjustments.

We recommend the Standards direct our governments at State, Territory and National level to pass legislation to ensure inclusive education is a requirement in Australia. We also recommend the gradual reduction of and eventual closure of special schools and support units. We believe this can be accomplished by grandfathering existing segregated settings whilst working through the essential elements of transforming our current educational settings and redirecting current resources.

## Require mandatory data collection

There is a poor collection of data regarding enrolment rejections, educational attainment/completion, suspension/expulsion rates, and the use of restrictive practices. We suggest the Standards explicitly require each education provider to collect data and report on all students with disabilities who have sought enrolment in a school or support class and obtained that enrolment. We also suggest that each State/Territory implement a system for gathering data about the school setting for students with a disability with tracking that monitors who attend special schools, support units in mainstream schools and regular classes in mainstream schools. For transparency, all of this data should be publicly available and easy to access.

## Independent advocacy

We strongly recommend that independent advocacy be provided for any child with disability (and their parent/carer) to assist them in navigating all aspects of the education system, including the enrolment and complaints processes. This involves funding and resourcing individual advocacy. As was stated by the Disability and Ageing Commissioner, “The need for advocacy will continue to be an important part of the lives of people with disability to ensure the continued promotion, protection and security of their rights, and enable their genuine participation in the community.”<sup>6</sup> The most vulnerable in our society need to have someone in their corner to help to navigate the many complex systems and services.

---

<sup>5</sup> Mann, Glenys, Cuskelly, Monica, & Moni, Karen (2018) *An investigation of parents' decisions to transfer children from regular to special schools*. *Journal Of Policy And Practice In Intellectual Disabilities*, 15(3), pp. 183-192.

<sup>6</sup> Dr Robert Fitzgerald, *Review into Disability Advocacy in NSW: A report by the NSW ageing and Disability Commissioner*, 19 December, 2019.

## 2. Do students, families and carers, educators, education providers and policy makers know about, understand, apply and comply with the rights, obligations and measures of compliance in the Standards?

### Improve awareness and understanding of the Standards

While the Standards may have raised awareness at the school level, the opportunity for students with disability to experience physical, social and curricular inclusion in their local school is variable. The success of inclusion is too often dependent on the skill and commitment of school leadership and personnel. There is a lack of systemic capacity to meet the educational and social needs of all students that goes beyond lack of funding. Barriers that prevent students with disability achieving equitable outcomes include gatekeeping the enrolment, partial enrolments, low expectations, lack of inclusive curricula, lack of individual education plans, lack of ongoing reasonable adjustments leading to a rise in suspensions, lack of reasonable assessments, use of restrictive practices, and poor transitions, discussed briefly below:

#### *Gatekeeping the enrolment*

Students and their parents are still being turned away at the enrolment stage, which we refer to as gatekeeping. This includes the intentional and unintentional funneling and placement of children into support units or special schools.

*We were fortunate for enrolling in our local government primary school with a Principal who didn't gatekeep but welcomed all children and sought to support them, and later in a high school who had an underpinning philosophy of welcoming all. The high school sadly was not our local government high school, which was our first choice. The local public high school has a support unit on their premises and categorically (and illegally) stated they would not support any child with a disability in the mainstream classroom as all learning support was only provided in the support unit. As we believe our daughter receives a better education and has a better long term outcome from mainstream education (that belief strongly supported by educational research), we had no option but to look elsewhere and my daughter has thrived in the independent high school mainstream setting, needing adjustments but fairly minimal additional staffing support.*

Parent

This is quantified in recent survey research by Children and Young People with Disability Australia<sup>7</sup>, which found that one in four students with a disability has been denied enrolment. While in the 1990s, parents who wanted their child to be educated in the regular class of the local school were simply refused enrolment, today most families do not experience such direct discrimination. However, discrimination continues in a much more subtle way. Education providers may not inform families of children with high support needs that they have a choice to be enrolled in the regular class and that there are special measures to provide appropriate support. Research suggests this is often about Principal and teacher attitudes (see Cologon 2019). See **Appendix 1 - Gatekeeping** for direct stories and quotations of what families have been told by Principals and teachers.

We recommend that a review of enrolment practices take place, as this is often where families face initial barriers, and strength be brought to the enforcement of the Standards.

<sup>7</sup> Children and Young People with Disabilities Australia, *Time for change: The state of play for inclusion of students with disability*, Results from the 2019 CYDA National Education Survey, October 2019

### *Partial enrolments*

In our experience, families have to fight just to get their child with disability into their local school. Once a child is finally admitted to school, the barriers do not end there. Many families report being overjoyed at finally gaining a successful enrolment in a mainstream class only to find that it is not for a full day but part of a day, sometimes as little as one hour per day (and without even having a full day's trial). Commonly, this is not negotiable. If a child's part-time trial is successful and they are allowed to attend full time, it is not uncommon for the family to be told to drop late and pick up early, or collect early sometimes within only one hour after school has commenced. We are concerned that partial enrolment of a student with disability may continue for years. We see this as outright discrimination on the basis of disability. See **Appendix 2 - Partial enrolments** which highlight some examples provided from parents.

### *Low expectations of students with disability to learn and succeed*

Many students lack access to and support for inclusion in the full range of experiences available to students without disability including participation in the cultural, social and sporting life of their school. In NSW, it is not uncommon for students with disabilities to be funnelled into Life Skills Pathways, which is limiting in terms of achieving the Record of School Achievement (ROSA) or HSC, and hence the student's future prospects for tertiary study. See **Appendix 3 - Low expectations** for direct quotations from families' experiences.

### *Lack of Inclusive curricula*

Many education systems lack curriculum frameworks that address the learning needs of all students. We need the development of a national inclusive curriculum framework. We acknowledge the Nationally Consistent Collections of Data (NCCD) is a step towards this but more is needed. Although we are not teachers, we receive feedback from families that teachers have an inflexible curriculum to address different learning needs. Teachers are rarely taught how to make adjustments for individual student's needs and the curriculum itself does not provide sufficient flexibility or the time and space for teachers to identify and understand individual learning needs and to tailor their teaching accordingly. They have not been taught the concept of how to apply the Universal Design for Learning (UDL), as distinct from differentiation, to the curriculum. To clarify, UDL is a proactive approach to designing learning experiences to be accessible for all students while differentiation is a reactive evaluation of the needs of individual students where adjustments are retrofitted into the learning environment. UDL addresses macro, upfront planning while differentiation is the micro-planning that occurs once teachers know the needs of the students in their class.<sup>8</sup>

Also and as we understand, NSW uses Australian Curriculum, Assessment and Reporting Authority (ACARA) as a guide but also has a separate curriculum, namely Life Skills Curriculum Pathway, under the NSW Education Standards Authority (NESA) which has been explained previously as problematic. Upon questioning a teacher in another state who is practicing inclusive education and solely uses the ACARA curriculum, her opinion was that the NESA curriculum is too prescriptive and that ACARA provides more opportunities to learn about a topic with more flexibility. It would be far better for all students, and more consistent, if ACARA was applied across the country.

Further, the Record of School Achievement (ROSA), which is provided to students who leave school before completing the Higher School Certificate (HSC), has problems with credentiality and misalignment with Life skills curriculum. For a full discussion on NSW's inflexible curriculum and suggested changes for a curriculum that meets every student's needs, see the 2020 final report of the New South Wales Curriculum Review.<sup>29</sup>

---

<sup>8</sup> Leanne Longfellow, 'Universal Design for Learning (UDL) and Differentiation', *Inclusive Education Planning*, post, 3 June 2019. <<https://inclusiveeducationplanning.com.au/uncategorized/universal-design-for-learning-udl-and-differentiation/>>

### **Lack of Individual Education Plans**

*There was a meeting prior and a learning plan was to be implemented. Nothing discussed at this meeting was done and no IEP ever written. It continued like this for 3.5 years.*

Parent

The Standards ought to require each education provider to ensure Individual Education Plans are developed and implemented as a mandatory requirement for all students with disabilities, and that these be supported with adequate funding and resources.

### **Lack of ongoing reasonable adjustments leading to suspensions**

Many students are being suspended as a result of lack of appropriate support. Following suspension they return to an environment in which no further adjustments have been made. Difficulties remain attributed to the individual and are often labelled “challenging behaviour” when the problem remains the learning environment.<sup>9</sup>

In many schools, once an adjustment has been made, there is a reluctance to review and amend it where it is not achieving the desired outcome.

Suspension provides a telling example of the failure of schools to make adjustments on an ongoing basis. Many families who contact Family Advocacy indicate that the adjustments and special measures in place are not in fact responsive to student need and so are not effective in supporting student participation. They require further refinement to enable the student to participate in the classroom. Suspension occurs when the student who is not yet well supported, communicates his/her frustration in unacceptable ways.

The student’s inclusion is more effective and suspension more likely to be avoided if adjustments and special measures are reviewed on an ongoing basis, leading to a better fit with the student’s need in the classroom.

On occasion, students are suspended for responding when they have been subject to victimisation. For example, other students may tease and “pick” on a student with disability. The response from the student with disability is likely to be more visible and less sophisticated than other students and hence more likely to be seen by a teacher. In these situations, the student who was the subject of victimisation is punished through suspension.

### **Lack of reasonable assessments**

One part of the Standards is concerned with adjustments to assessments. This in our view is the poorest understood and the poorest part complied with, even though it is a requirement under 6.2. This clearly states that adjustments should be made not only to curriculum delivery but also to assessments. Section 6.3 (a) clearly states in relation to measures for compliance: the curriculum, teaching materials, and the assessment and certification requirements for the course or program are appropriate to the needs of the student and accessible to him or her.

Assessments are very minimally, if at all, adjusted, even if the curriculum and teaching materials are adjusted. This part of the Standards is not being highlighted or enforced. The Note on 3.4 (3) does state a provider may continue to ensure the integrity of its courses, around the conferring of an award, but this does not negate the adjusting of assessments so students with a disability can demonstrate learning. By having curriculum

<sup>9</sup> <https://parentsforadhdadvocacy.com.au/adhd-in-australian-schools-critical-gaps-report-released/>

adjustments made and then no adjustments allowed in assessment tasks, the student is set up to not only be unable to demonstrate individual learning growth, but also to perpetually "fail". This needs to be addressed by systemic education of providers to understand their responsibility under the Standards to provide adjustments for assessments - this is required by the Standards and is not an optional extra. Continued focus on standardised testing and performance based outcomes for schools without recognition and promotion of the importance of diversity and the need to meet the learning needs of all students, will only exacerbate the problem.

### *Use of restrictive practices in schools*

At times this is unauthorised and applied without a behaviour plan in place. Family Advocacy take the position that such practices are cruel, inhumane and violate the human rights of the student. These practices indicate a lack of support to the student and failure of duty of care. In line with other Government Departments such as the National Disability Insurance Agency (NDIA), there should be a proactive and policy driven approach to the elimination of restrictive practices.

### *Poor Transitions*

Transitions into school, between primary and secondary schools and out of schools are poorly planned or well planned and poorly executed so that:

- Many students commence later than their peers;
- School staff have not received necessary information for planning and preparation;
- Knowledge of evidence based practice to support quality education for particular students is lost;
- Parents are frustrated by a lack of transparency and consistency;
- Life options are limited beyond school.

In terms of the effectiveness of transitions, our survey found it as 4% Extremely effective, 12% Very effective, 27% Somewhat effective, 35% Not so effective and 23% Not at all effective. On balance, the area of transition needs improvement.

*Parents understand their child better than anyone... Each child should be given a transition plan, drawn up by parents, counsellor and key participants including wherever possible the child themselves.*

Parent

*This process is entirely up to the schools (both) and their capability and interest to do an effective transition. The primary school was very keen to assist with transition, but the head of learning support at the high school was completely disorganised and not motivated; therefore any semblance of effective transition did not happen. We did a number of things ourselves through access to the school on the weekend and also through older students we knew, but transition was largely left to us to undertake.*

Parent

## Implementation of the Standards

In response to parents' concerns, Family Advocacy may refer them to the Disability Standards in Education, in particular the Fact Sheets developed out of the 2010 review process and the parent guide on the NCCD website. Additionally, in our workshops preparing parents for the process of enrolling in school and the advocacy this will require, we refer to the standards and thus raise awareness of their existence (we can provide more information in relation to this workshop). However, we suggest that independent awareness of the Standards is still low, although parents might have a general sense of their child's right to an education. When asked about knowing the Standards about a third of our survey respondents were very familiar, a third were somewhat familiar and third were not familiar. When asked if the Standards helped them to understand their child's rights to take part in education, 17% said a great deal, 30% A lot, 23% A moderate amount, however, 27% said knowing about the standards did not help at all. We believe the families we are connected with know about the Standards but the broader community do not.

*My child had had one very poor learning plan. When I first contacted the education dept the person I spoke to kept suggesting she go in "the unit" when I quoted the standards for education and the need for reasonable adjustments for children to access mainstream education THEN I got action and help. It should not need to happen in that way.*

Parent

## Mandatory requirement for education and training providers to know the Standards

While some positives have come from wider awareness of the Standards, successful inclusion is still too dependent on the variable commitment of the Principal and school staff. A gap remains between the experiences of families and the intent of the Standards. The issues here are:

- **Teacher education, skills and training in curriculum adjustment;** teacher training is variable in its capacity to equip teachers for the mixed ability classes in which they will teach. Further professional development is limited.
- **Innovation in teaching learners with different needs;** many students lack timely support for full school participation. There is a lack of innovation and creativity in meeting student needs. A "one size fits all" approach and a dependency on the teacher aide model characterises many systems;
- **An educational culture;** many schools lack the resources to make the necessary adjustments to teaching, learning and assessment for students with a disability. Even when teachers support change, education systems ignore their expertise and continue with outdated approaches
- **Quality teaching;** which involves:
  - Changes in requirements for the accreditation of teacher education programs to ensure graduates have the requisite competence for teaching mixed ability classes
  - The availability of specialist support in all schools to assist teachers to adjust teaching, learning and assessment processes
  - Provision of ongoing professional development for teachers
  - The implementation of competency standards in relation to teaching mixed ability classes
  - Mandatory training for all education providers which includes Principals, teachers, and all professional staff with a focus on practical application, by making it part of the accreditation process.

These issues can only be addressed with adequate paid release time for lesson planning and curriculum adjustment, and compulsory professional development in both accommodating different learners, and the benefits of a school culture which values diversity and welcomes all learners. Some of the improvements that we would recommend are:

- more time for classroom teachers to be able to collaborate with family about the student's strengths/areas for improvement in order to put together a useful individualised education plan (IEP). Family members are the natural authority of their child, and research shows that the best success at inclusion occurs when parents are properly consulted<sup>10</sup>
- more time for teachers to be innovative in providing personalised teaching such as through co-teaching, peer-learning, and a more effective use of teachers aides
- more teacher aides in classrooms being used not in the way they have traditionally been used as 'velcroed' to the student with disability whereby they become an informal teaching resource (research shows this has the effect of separating students from their classroom, their teacher and their peers)<sup>11</sup>. Teachers aids are not there to replace the teacher, but rather to add value to what teachers do by helping to develop the student's independent learning skills to manage their own learning
- better professional development for classroom teachers and teacher aides; and
- better equipment for students.

We do not think there is any doubt that the intention for implementing the Standards was to see future education and training of Australians with disabilities improve, but it is a cost that needs to be shared by the Commonwealth, the states and the non-government authorities.

Family Advocacy notes the excellent work by the Commonwealth Department of Education, Skills and Employment (DESE) in producing an online education tool for educators about the Standards. While this tool apparently had high take up by schools, it was not mandatory for teachers. Ensuring all teachers have training on the Standards would be one step toward the Standards being more fully utilised by educators to provide a quality education which meets students' needs; however, perhaps more importantly, education on the benefits of inclusion of all learners in mainstream education would provide a fertile culture for the Standards to be received.

### **Greater accountability - The need for an independent and transparent complaints policy and procedures**

Family Advocacy sometimes refers parents to the Disability Standards in Education, in particular the Fact Sheets developed out of the 2010 review process. We also mention the Standards in our material. However, many parents remain unaware of the Standards and complaints mechanisms. Family Advocacy makes recommendations below regarding better ways for the Department of Education to communicate the Standards to families.

While the Standards are of benefit to students with disability and their families, many families would hesitate to approach their school with a rights focus. Relationships with educators are an important part of any child's life, and while many parents may take this for granted, families of people with disability are often conscious of the vulnerability of their child. They will therefore be aware of the even greater importance of a positive relationship with teachers. If a negative relationship develops, parents will often simply attempt to find a more inclusive school. For this reason, amongst others, Family Advocacy would always suggest a problem-solving, relationship-building approach to school issues. However, this means there is an even greater imperative for policy makers to ensure teachers and schools have the education, culture, and resources to practice inclusion, and that implementation of the Standards is the subject of compliance monitoring.

---

<sup>10</sup> <https://www.family-advocacy.com/our-resources/the-natural-authority-of-families/>

<sup>11</sup> <https://evidenceforlearning.org.au/guidance-reports/making-best-use-of-teaching-assistants/>

*Yes, I complained and I was told I was ungrateful.*

Parent

*There is no independence to complaint systems. Parents of students with disability and students with disability are very vulnerable to the consequences of lodging complaints. Therefore they tolerate harassment and victimisation that many others would not. The system is geared to the education staffer being presumed in the right, especially as the process is initially undertaken by the school itself. It could be vastly improved by an independent complaints process.*

Parent

The problem lies in the complaints process not being independent. 43% of survey respondents reported being dissatisfied and 27% were very dissatisfied with the complaints process, with only 17% stating they were satisfied. The standards need to:

- Ensure accessible online content in plain English or Easy Read advice is provided to parents about the right to complain
- Ensure there is an independent complaints/review process for a school's refusal to enrol a child with a disability or to make reasonable adjustments
- Ensure no Principal investigates a complaint against themselves
- Ensure each Department of Education has clear policy and procedures for responding to allegations of misconduct or reportable conduct to set clear guidelines and expectations for the benefit of external complaints. It is very important to ensure the school community understands how to make complaints of this nature and how the complaints will be investigated
- Maintain the rights to due process.

Additionally, while a complaints mechanism is usually the last resort for families, Family Advocacy suggest making further use of the role of the NSW Ombudsman to help track and provide a fuller picture of breaches of the Standards. This would provide a less formal option for family complaints than the Human Rights Commission. Most parents are currently unaware of the Ombudsman's role in addressing complaints regarding schools.

In this regard, Family Advocacy recommends:

- further use of the role of the NSW Ombudsman to help track and provide a fuller picture of breaches of the Standards in NSW, and that the Ombudsman be resourced to do so
- that the Department of Education improve mechanisms to monitor compliance and that the Australian Human Rights Commission (AHRC) be empowered to intervene in cases of breach.

### **Eliminating discrimination by monitoring compliance**

Whilst the Standards have played a key role in the policy shift in NSW that has enabled students with disability to be enrolled in their local neighbourhood school, some education providers have become more sophisticated and use unwelcoming messages to discourage enrolment.

One of the difficulties of the Standards under the DDA is that there is no mechanism to monitor compliance. The only way in which a student and/or his/her family can take action for a breach of the Standards is to make a

complaint under the DDA. This is an emotionally and financially costly exercise with very detrimental impacts on the student.

We need an independent assessment of the extent to which an education institution was free from or was taking steps to eliminate discrimination.

Another mechanism to strengthen the onus on schools to provide an education free from discrimination is to give the AHRC the authority to take action where there are breaches of Standards without a student or parent having to take the action or allow an organisation to take action on their behalf.

We need to create a more proactive model of compliance monitoring to allow for a more consistent implementation of the Standards. At the moment, resolution of formal complaints are confidential and this limits the systemic improvements that may occur with precedent setting and media exposure.

Family Advocacy therefore recommends:

- that the Standards are improved as a tool for the elimination of discrimination, harassment or victimisation by improving mechanisms that monitor compliance; enabling AHRC to intervene where there is a breach of the Standards
- greater accountability regarding the decision making of education providers exercising unfettered discretion and a review of the current complaint mechanisms and practices which call into question issues of procedural fairness, take unreasonable lengths of time and often fail to resolve issues
- the implementation of Recommendation 10 from the 2015 review of the Standards recommending the exploration of a nationally consistent monitoring and accreditation model to strengthen proactive compliance with the Standards.

### **3. In the 15 years since the Standards were developed, have the Standards contributed towards students with disability being able to access education and training opportunities on the same basis as students without disabilities?**

The Standards remain an important regulatory tool as part of a wider policy landscape seeking to ensure students with disability are able to access and participate in education on the same basis as others and set down the obligations of education providers. One parent reported “the Standards not only give me the correct terminology around what I am advocating for, but also the legal backing that what I am advocating for is my daughter’s legal right. Knowing what is in the Standards is a powerful advocacy tool which I have referred to when needed.”

Whilst they provide a good framework for understanding rights and obligations, their effectiveness is still variable in practice. Education issues constitute over half of our inquiries from parents, and based on what we hear, parents continue to struggle to have their children with disability included on the same basis as those without disability.

In recognition of this trend, the NSW Minister wrote the following in response to a recent Parliamentary Inquiry into the education of students with disability: “The Government recognises that more can be done to support students with a disability, and that an inclusive education approach is not currently experienced by all students.”<sup>12</sup>

*The Standards are in major need of review and failing our students. They are not taken seriously, schools are aware of their obligations but choose to break them by constant gatekeeping on enrolment and curriculum, and bully parents who hold them accountable to these standards. To me it is just paperwork with no power in it because the standards are being ignored and schools continue to diminish their responsibility to the student and not take the Standards as seriously as they should. Need greater compliance and enforcement.*

Parent

*Standards are merely a fairytale. Inequality is still alive and it's a daily struggle for parents to fight for their kids' rights.*

Parent

## Trend towards segregation

Overall, the legal framework established by the DDA which includes the Standards has not delivered effective systemic improvement for students with disabilities. If anything, it seems to have enabled the opposite, with disability-based segregation in Australia increasing over the last decade.

## Segregation in schools

With gatekeeping still prevalent, we observe an increase in enrolments in segregated settings and homeschooling. In Australia, there are more students with disability attending special schools over mainstream schools (10.3% in 2003 to 14.1% in 2015).<sup>13</sup> In 2018, among school children aged 5-14 years with disability, 95.8% or 285,500 attended school but nearly one third attended special classes or special schools (31.3% or 89,000).<sup>14</sup> For all the rhetoric about SSPs and support units providing a “special” education, the statistics do not prove this to be the case. People with disability are more likely to leave school at younger ages and to have a lower level of educational attainment. People aged 15-64 for whom onset of disability occurred before age 15 years are more likely to have left school before age 16 than those without disability (19% compared to 11%). Students with disability are half as likely to complete Year 12 than their non-disabled peers. 32% people aged 20 and over with disability, and 25% with severe or profound disability have completed Year 12 or equivalent, compared with 62% of those without disability.<sup>15</sup>

In NSW enrolments for SSPs have increased from 5194 students in 2010 to 6657 in 2020, according to DOE data. Data for 2019 shows support unit enrolments are high with 8,338 primary students and 11,312 secondary

<sup>12</sup> The Hon. Rob Stokes, Minister for Education, *NSW Government response to the report of the Legislative Council Portfolio Committee No.3 - Education - Education of students with a disability or special needs in New South Wales*, 21/03/18

<sup>13</sup> Australian Institute of Health and Welfare, *People with disability in Australia*, Report, 3 September 2019. <https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/education-and-skills>

<sup>14</sup> <https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/education-and-skills>

<sup>15</sup> Australian Institute of Health and Welfare, *People with disability in Australia*, Report, 3 September 2019. <https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/education-and-skills>

students. This indicates that educators are still encouraging parents to take the special school approach. As one parent associated with Family Advocacy has noted, the presence of support units puts pressure on parents to further isolate their already vulnerable child.

### *Early Childhood*

We are aware there is separate discussion paper on this topic but wanted to note the Standards are vital within early childhood settings as well and the need for effective implementation at this crucial foundation stage. Parents often rely on the childhood educator or practitioner to advise schooling options and necessary supports and adjustments which can start the funneling towards life segregation. The awareness of the standards at this stage is possibly at its lowest level as many would not see that the standards apply until compulsory schooling commences.

### *Homeschooling is on the rise<sup>16</sup>*

There are reports of many families resorting to home schooling after multiple suspensions in primary school. Statistics reported in a 2019 NSW Education Standards Authority (NESA) report, show the numbers in home-schooling have risen dramatically (60.5 per cent) from 3679 in 2015 to 5906 in 2019<sup>17</sup>. Of all the reasons given to home school, a quarter (25.37%) of families were home-schooling due to their child's "special learning needs", which is 1,498 students in 201,923. That is, almost 1,500 students with special learning needs are being home-schooled not by choice but more than likely due to the failure of the system to support them. This has an impact on a family's income capacity, as well as an impact on a child's academic and social learnings. It is the position of Family Advocacy that the decision of the families of children with disability to home-school their child is a concerning and increasing trend.

### *Tertiary education*

We also could be doing better in our universities and TAFE institutes. Access to education and the level of education attained can affect participation in other key life areas, including employment and ability to achieve economic independence. People with disability are half as likely to have a bachelor degree or higher (15%) compared to those without a disability (31%).<sup>18</sup>

In terms of transitioning to university, if a student with disability does achieve a Year 12 level of completion, the stories we hear from parents that have adult children with disability are that they receive no support or advice on how to apply for, or prepare for university post school. Students with disability may attend open days within school arranged time frames with the rest of the cohort or attend on weekends with parents. Students with disability are not provided with the same supports or reasonable adjustments to attend and participate in university open days/transition planning that they would receive to participate in school.

In addition, we have received feedback from families that enrolling in adult learning environments has its own barriers. Even completing the application forms can prove too challenging for students with disability, let alone being able to navigate Course selection. Hard data on this is difficult to come by as our understanding is that the NSW Department of Education does not collect data disaggregated by post school outcomes for students with disability. Lack of data on students with disabilities is an issue that needs to be addressed.

---

<sup>16</sup> Rebecca English, 'Homeschooling is on the rise in Australia. Who is doing it and why?', *The Conversation*, post, 15 April 2019.

<sup>17</sup> Home Schooling Data reports relating to 2019, NSW Education Standards Authority, June 2020 p 4, 13  
<<https://educationstandards.nsw.edu.au/wps/wcm/connect/426e1f11-5752-4c1c-bdcc-68b880c0e0b3/Home+Schooling+Data+relating+to+2018+for+publication+on+NESA+website.pdf?MOD=AJPERES&CVID=>>

<sup>18</sup> <https://www.aihw.gov.au/reports/dis/73-1/people-with-disability-in-australia/education-and-skills/educational-attainment>

On the other hand, we have some data from a 2016 comprehensive review of research which indicated the benefits of inclusion for students with disabilities extend beyond academic results to social connection benefits, increased post-secondary education placement and improved employment (11.2% more likely to have competitive employment) and independence outcomes (10% more likely to live independently).<sup>19</sup>

Therefore, the Standards are important not only in our schools but also at TAFE and university level so that young people and the mature aged are able to go on to get further qualifications and the skills they need to get a good job. Those students at TAFE and in universities not only need their teachers and support staff (administration, learning support officer, counsellor) to have the skills to educate and support people with disabilities but also particularly need access to equipment and curriculum materials so that they can succeed in their studies.

We draw attention to and reiterate the need for Recommendation 13 from the 2015 review of the Standards: “That the Australian Government work with State and Territory governments to improve the consistency of funded supports for people with disabilities in different post-compulsory educational settings to ensure equitable access across settings.”

### Foster an inclusive culture to improve effectiveness of the Standards

While the Standards have had some level of success, the current culture is one that does not welcome all learners and celebrate diversity. More can and should be done to increase awareness of inclusion among both teachers and parents of students with and without disability. It is only through the broader cultural understanding and acceptance of the value of diversity to the whole of society that the Standards are able to be implemented in the way they were intended.

Family Advocacy has produced two videos about school inclusion: ‘[Jacob’s Story](#)’<sup>20</sup> (18 minutes) and [Al’s Story](#)<sup>21</sup> (15 minutes), which illustrate inclusion in a public high school and give positive views from different members of the school community, peers, and the school Principal and teachers.

The common theme to a positive inclusive experience has been the “will” of the school to give it a go (mindset of a welcoming culture), see inclusion as a journey (a process not a target), and the willingness to collaborate with the family (positive partnerships). We recommend you watch and encourage the use of these videos more broadly to Department of Education staff, Ministers for Education and their staff.

While the ‘Report on the Review of the Disability Standards for Education 2005’ recommended that parents be handed information about user and provider rights in all enrolment kits, in our experience many parents are still not getting access to this information.

Family Advocacy recommends the following to enhance the educational opportunities of students with disabilities and the inclusive culture of schools:

- that the Standards be enhanced to create greater awareness and recognition of the rights of students by developing pamphlets and other communication strategies for families of students with and without disability explaining the DDA and the benefits of an inclusive society and an inclusive education community
- that information about the Disability Standards be included in all enrolment kits across Australia, and on the enrolment pages of the DOE website

---

<sup>19</sup> Todd Grindal, Thomas Hehir, Brian Freeman, Renee Lamoreau, Yolanda Borquaye and Samantha Burke, ‘A Summary of the Research Evidence on Inclusive Education’, (2016), *Alana Institute*, Report, 2016.

<sup>20</sup> Family Advocacy: *Inclusive High School Education - Jacob’s Story* <https://www.youtube.com/watch?v=YuLu8Dmv7OQ>

<sup>21</sup> Family Advocacy: *Al’s Story*, (Video, 23 October 2019), <<https://www.youtube.com/watch?v=lkbsmv22wCg>>

- that complaints mechanisms, including internal and external, be included in all enrolment kits across Australia
- that the Department of Education engage in a targeted advertising campaign to alert parents of children with disability to the fact that their child has a right to be included on the same basis as other children, including in the regular classroom
- that as well as mandatory training on the Standards to school staff, this training should also be made available to other people that enter the lives of a child with disability such as the General Practitioners, Paediatricians, allied health professionals, obstetrician, early childhood professionals, tertiary leaders, NDIS participants, other parents, and the broader community
- training resources should be updated to show positive stories of substantive inclusion in regular classroom settings so education leaders and teachers can see the positive impact of an inclusive education
- that the Standards website should also be updated to include positive stories of substantive inclusion in regular classroom settings
- additional case studies should indicate good practice of curricular and social participation for students with intellectual and sensory needs in general education environments
- building more awareness of the rights and benefits of an inclusive society including an inclusive school community
- implementing strategies to build inclusive school communities.

Family Advocacy strongly recommend the implementation of Recommendation 2 from the 2015 Review of the Standards: “That the Australian Government work with State and Territory governments to ensure that an accessible summaries of rights, obligations and complaints processes is provided to **all** prospective students as part of enrolment processes in every education settings; published on every education institution’s website; and is prominently displayed in education facilities.” Another suggestion is that the Standards are emailed and/or sent in hard copy to all participants in the NDIS.

## Impacts of COVID-19

*My children struggled, one more so than the other. The work was not adjusted to suit her learning needs and this made it very difficult for her so she gave up and refused to do it. She was unable to engage in the online platform.*

Parent

Whilst each person with disability had their own individual experience, some benefited from remote learning but the effect of COVID-19 appeared to widen the gaps that already existed for children with disability. We heard many stories from children with disabilities being left behind. See **Appendix 4 – COVID-19 school case studies from parents of children with disabilities**, which includes 10 short case studies to illustrate this.

## Appendix 1 - Gatekeeping

At a 2016 Family Advocacy event, we asked parents to list the explanations they had been given by Principals and other school staff as to why their child could not access the regular class or did not belong at the school. Set out below are the answers we received:

<p><i>But this is what we have always done</i></p> <p><i>Teachers aren't therapists</i></p> <p><i>Special schools are best practice and this is reality</i></p> <p><i>We do reverse integration</i></p> <p><i>You have your head in the clouds</i></p> <p><i>You do realise your child has a disability</i></p> <p><i>Our school is heavily unionised</i></p> <p><u><i>When they grow out of disability they can come</i></u></p> <p><i>You haven't accepted your child's disability</i></p> <p><i>We already have a child with disability</i></p> <p><i>We have done all we can for your child</i></p> <p><i>We only take children with high functioning disability</i></p> <p><i>You don't always get what you want in life</i></p> <p><i>Your child is not disabled enough for individual funding</i></p> <p><i>There is such a big academic gap so it won't work</i></p> <p><i>They are not a good fit</i></p> <p><i>This will be too exhausting</i></p> <p><i>We don't have enough resources</i></p> <p><i>We don't know how to teach children in mainstream</i></p> <p><i>Our teachers aren't babysitters</i></p> <p><i>Our teachers aren't nurses</i></p> <p><i>We have no specific disability knowledge</i></p> <p><i>Your child is a risk to others</i></p> <p><i>In high school the gap gets wider</i></p> <p><i>Your child excludes himself/herself</i></p> <p><i>Not in our area</i></p>	<p><i>We are already dipping into the general budget</i></p> <p><i>Kids are cruel so they are better off somewhere else</i></p> <p><i>Their self-esteem will be affected</i></p> <p><i>We have no resources</i></p> <p><u><i>We don't have the skills</i></u></p> <p><i>We can't afford the modifications</i></p> <p><i>Your child won't get funding</i></p> <p><i>Our school is heritage listed so it's not a good idea</i></p> <p><i>When she is toilet trained</i></p> <p><u><i>My teachers don't have to teach your child</i></u></p> <p><i>You got lucky in primary school</i></p> <p><i>The gap gets wider so why put them through it?</i></p> <p><i>They will take teacher's attention away from the students Will you be paying for this?</i></p> <p><i>You don't realise how tired this will make the teachers</i></p> <p><i>We are not experts</i></p> <p><i>They won't identify with their peers</i></p> <p><u><i>You will get backlash from other parents</i></u></p> <p><i>We don't teach them</i></p> <p><i>He doesn't meet school requirements</i></p> <p><i>She can't come here because we can't lift her</i></p> <p><i>We can't solve all the world's problems</i></p> <p><i>Your child is not a good fit</i></p> <p><u><i>There are special places for your child</i></u></p> <p><i>You are ruining your child's future</i></p> <p><i>You are not doing the best for your child Your child doesn't belong with adolescents</i></p> <p><i>We will get a teacher's assistant to teach them</i></p> <p><i>There is best practise and there is reality</i></p> <p><i>It will be an unjustifiable hardship</i></p>
--	---

In Term 1 of 2020, Family Advocacy asked on our Facebook page if families could share their gatekeeping experiences and the reasons given by the principal/school staff. The post reached an audience of 1,763 and we received the following comments. We suspect we would have received more responses but it was also at the same time the Covid-19 pandemic was heating up and we believe that many families were more focused on keeping their families safe. Regardless, it is our view that the comments received (as set out below) reveal gatekeeping is continuing for parents:

*'Your son doesn't have the skills and behaviours required for Kindy'*

*'Your son will only get an hour a week support'*

*'After meeting your son, unfortunately we don't have any spots available'*

*'Your son is not achieving the goal of improving social skills in mainstream, so he should go to a support unit'*

**Melinda**

*We have experienced gatekeeping with both our children. Our son has a diagnosis of Sensory Processing Disorder and our daughter is dyslexic. We tried to enrol our son in a Catholic primary school. Our son has a diagnosis of Sensory Processing Disorder and we advised the school. When they met with us they told us that they would only accept our application if we agreed to enrol in their program for Autistic students (he is not Autistic and had been assessed by a Clinical psychologist). They suggested that we would need to seek a second diagnosis or not be accepted at all.*

*We were looking for a high school for our daughter with an assessment of dyslexia. We were told by one of our chosen high schools that "it isn't really the place for children with dyslexia as we can't offer any support or remediation".*

**Vicky**

*I have a 5yo son with ASD. He is a gifted child and during the meeting and cognitive assessment stage of enrolment for kindergarten last year, he scored higher than any student they had ever seen. He was polite and happy meeting everyone. I took this as a good sign. Two weeks later I was asked to come to see the principal where I was told that because of his diagnosis the school did not have the capacity to meet his needs, and they feel he wouldn't learn well so they "regretfully" cannot accept his enrolment. I was very nicely asked to look at finding a special needs or autism school for him instead. I did put him in an aspect school where he is doing amazingly, but the fact they ignored his amazing mind and wonderful personality because of his diagnosis clearly shows they were discriminating against him.*

**Kathleen**

*'What makes you think your daughter is suitable to come here? You know she would only get about two days' worth of support across the week.'*

*'There is an autistic boy here in kindergarten and his parents pay for his support so you could do that but he will probably go to a special school at the end of this year.'*

*'We would have to make a lot of changes. We can help you fill out the forms for schools with the expertise and she can get the support she needs there.'*

*'I would encourage you to think about a multi cat classroom because then you have the best of both worlds.'*

**Ashlee**

In our experience working with families, significant compromises to their vision of inclusion occur as they start their educational journey. In an attempt to counteract this, Family Advocacy has been running, for many years, state-wide advocacy information sessions and workshops for families specific to the rights, standards and policy consideration in relations to supporting their child to have an inclusive education. Many families are startled by the information they receive as it is often contrary as to what they have been informed by the school. It is essential at these events that families are upskilled in how to advocate effectively at the school level as unfortunately, this is seen as a necessity in interacting with schools.

The following stories, written by some of our families, show the importance of having a strong vision in order to survive the education system:

*My child was rejected by 13 schools on the Central Coast. Due to no public schools accepting my child, I had to send him along to a special school 50 minutes' drive away, so four trips a day with his younger sibling. Not only was this travel wearing us down, this became a problem when his younger sibling had to start Kindergarten at our local school with the same start/finish times.*

*Aside from the fact that I was refused transport by the NSW government, I really wanted both my children to go to the same school together as I had learned that all the statistics show inclusive education is beneficial for kids with disability, and in fact, all students. I also wanted my children to be educated in the same school and with neighbourhood friends.*

*I found a school where the principal was prepared to enrol my child in the support unit with the idea to transition him to mainstream. I was contacted by a person from the Department of Education who told me the decision is not up to the principal and that we needed to undergo further IQ assessments, which we did and the results stating my child's disability was moderate/mild. The lady from the Department of Education met my son for a few minutes in the waiting room before the IQ test, called me later stating he was severe, needed a lot of support and is best suited to an IO (moderate intellectual disability) class or she can force a particular special school setting, which I won't name, to take him. I have since heard from schools "off the record" saying the suggested school has a reputation for moving kids with disability away from other schools all the time. She advised me that all places in mainstream classes were full and told me she had 30 years of experience with kids with a disability and he needed to be with his own kind.*

*After a lot of stress, advocacy and persistence, we finally have found a school that would accept both my kids and I have one drop off and pick up time. The school has been welcoming, accepting, made adjustments to the curriculum, included my child so he feels like one of the kids and is in the regular class and not a support unit. There is no change to my funding situation, just the attitude from the principal and teachers, whom I am so grateful for.*

**Gillian**

*My five-year-old was rejected by 12 schools, 7 [non-government] and 5 Public Schools. We applied north, south, east and west of where we lived. Eventually, we found a school willing to give our son a "fair go" but it meant we had to move away from our family base and our chosen parish. At the time of this search for a school that accepted my child he wasn't even in kindergarten. This was a rude awakening to our family that our much loved son would be rejected in this way.*

*The schools kept wanting to get him IQ tested. But we disagree with this completely because our son is a human being, he is not someone you apply a number to and stick him in a box, because you can't summarise a person based on a particular number. No number can measure that he is so caring, loves to learn, adores play, is a beautiful brother to his siblings. These tests medicalise people but he needs to be educated with his peers within his local school, where his siblings attend. In this way, it's the safest place for him. What he learns socially is just as important as academics.*

**James**

*For simplicity let's call him Bill, aged 10. Bill's other Grandmother has recently died and his Mother is sad. Bill is concerned about his mother so is not sleeping well. In class, he should be doing a spelling test assessment however he can't focus so the special needs assistant says, "Come on Bill, you can do better." Bill crumples up the paper and storms out of the classroom. No one checks on Bill. So Bill leaves the school and walks 1.6 km home. A policeman sees him and returns him to the school. The school now somewhat on the back foot and retaliatory, sees Bill as a flight risk and he is now sent to a disciplinary unit in a neighbouring suburb for two weeks.*

*The class teacher delayed putting in the behavioural form and the term of exclusion went over two weeks by one day. Bill attended the unit for what he thought was 2 weeks with a particular end date but it ended up being a day longer due to the teacher's delay. He became very angry and distressed. He felt he had completed his punishment. The staff member at the unit who had been threatened by Bill but not harmed said to me, "This is the second time he has got angry with me if he does it again we will have to take further action." I never found out what the further action was. Are we going to throw him in gaol for running home to his Mum? I just wanted to wrap my arms around him and take this poor boy home.*

*In total he lost three weeks of schooling because the school refused to shut the gates during school hours (we got them closed after a letter to the local MP).*

*Bill is now 12 and going to High School for the first time. The Primary School psychologist deemed Bill to be a difficult child (which he is) and he should be in the Autism class in High School. The Psychologist did not like Bill nor does she like many of those she should be nurturing as she doesn't realise visitors to the school can hear her staffroom chatter, "That child will never be any good". So despite the ASPECT (Autism Spectrum Australia - an autism-specific service provider) report indicating that Bill was high functioning and quite intelligent she recommended him for a life skill Autism class.*

*Bill had several orientation days at the High School. He was happy to go with his Year 6 class and refused to attend any that introduced him to the Autism class. He wanted to be in the mainstream and was looking forward to it. Unfortunately, he was placed in the Autism class. He was and still is miserable, depressed and a flight risk. Instead of being able to behave and communicate his ability to be in the mainstream his anger consumes him and he runs away. When his father brought him back to the school the Head of the Special Needs said to a sobbing child, "Stop being a sook." She has surmised him to be a discipline problem and he needs, "To be brought into line."*

*Bring Your Own Device iPads that are a school requirement are denied to the Autism class because they, "like them too much." Which may be the case however if the mainstream are allowed these as an educational tool then we are denying them equality of access to technology and information.*

**Grandmother of Bill**

## Appendix 2 – Partial enrolment

Many families whose children with disability are partially enrolled in school have informed us that their child was experiencing full attendance at a preschool or previous school settings and is quite able to manage a full day without incident.

*When my son moved from a special school to a mainstream school, he was put on a trial from 9am-3pm without a teacher's aide and all went well. Despite this, the school said he needed to be on a partial enrolment from 9-12.30pm for five weeks. We wanted to question the purpose of partial enrolment and why five weeks? There was no reason for this. But there is such a power imbalance between us as parents of a child with disability and the principal, we dared not ask. We were so happy our son was being given a chance.*

*In this time, our son absolutely loved being in a mainstream school in a regular class. His horizons expanded enormously. He quickly identified and wanted to participate in the debate team, a talent show, computers and netball. He was given a Teacher's Aide for 1 hour per day for Maths support as his avoidant behaviour can be disruptive. There were no incidents over the five weeks. We expected full time attendance would follow. On the last day of the partial attendance plan, the school told us it would rezone the plan for another five weeks from 9am-2pm. They simply said we would like him for full attendance next year but we will see how we go. This cut off the last session of the day, which was netball or computers, the subjects he was really interested in. So it didn't make sense to us when the school told us the reason for not giving him the full time enrolment was because our son had told them he was not sure he wanted to be there the whole day. Again, as parents we do not feel we have the power to argue with the principal and have to accept what we are given. It was clear our son is happy to go to school, he has a sense of belonging. He specifically asked for the teacher aide to be out of the way in maths and he should sit with the boys. He has his eyes on the future, can't wait for school camp and has set a goal to be the school library prefect. We can see how now he feels like a citizen, like he belongs, he is recognised. This did not happen when he was at the special school.*

**Meg**

*After 6 half hour trial sessions at a school we were told: "Your son is too high needs for our school (local primary school closest to my home), he needs a specialist school and 2:1".*

*Country area. No specialist school. My son has been in partial enrolment at the school he attends for two years now.*

**Ellen**

*We had a terrible experience with our son when we approached our local school.*

*We met with the school Counsellor and a learning support coordinator. I thought I was just meeting the latter, but the School Counsellor was there and drove the meeting. The first thing she did was ask for any reports. I provided a Disability Specialist Unit report stating Global Development Delay. She asked me about ten times if I was sure mainstream was the best option. I kept saying yes, we were. I asked how we could support his transition to school. She thought he would be better placed in a support unit. I said no. She said she could take me on a tour of one, so I could see how it would benefit my boy. I said no, we want him at our local school. Then she was telling me how there is a big school population and Jimmy would struggle. He would get knocked over. 'The walkway is like grand central station.' There were stairs. He would be pushed down and hurt. There were big*

*distances between classrooms, and he would fall behind and fatigue. And academically he would fall behind, and lose his confidence, 'he would be a shell of the child he used to be' and by the time we realised he should be in a unit, it would be too late and there wouldn't be any places!!! She was horrific but we stood our ground.*

*We persevered. She hadn't met my son. I thought once she met him and saw him doing well in a mainstream preschool that she would back down. I thought she would realise my son was more than the DSU report! We arranged a time for the two to come to the preschool and watch Jimmy. They talked to the staff at the preschool. Staff later asked me if he would be better placed in a support unit. I was furious that the Counsellor had influenced his preschool teachers to do her bidding. Later she conceded that Jimmy could attend the school if we really wanted him to, but that he would need to start on a few hours a day, and that he would start a week or two later, after his class mates had settled in. It meant that he wouldn't be there for lunch or recess so he would miss opportunities to make friends. She couldn't tell me how long that would go on for...I argued that he had been doing full days at preschool and the reduced hours wouldn't be necessary. She wouldn't back down. It was partial enrolment or nothing. I know we could have sent him.*

*We knew they had to take him, even though they acted as if they needed to approve his attendance. But we weren't prepared to risk him attending somewhere that he was expected to fail, and that had such low expectations of him. We started at a different school but transferred to our local school in term 3 of kindergarten. It was a totally different experience as the gatekeeper had left, and the teacher we met with was very inclusive and supportive of our attendance. Jimmy is doing really well. I am angry that, because of the Counsellor, we didn't start at our local school to begin with. I can't believe the experience we had, to be honest. I understand the Counsellor was reprimanded for her actions. But I also know that she is at another school and my friend battled with her all of last year to keep her boy in mainstream and out of the support unit. People like this should be retired!*

**Jo**

## Appendix 3 – Low expectations

The following stories (written by families and provided to Family Advocacy) are just a few examples of what we consistently hear about low expectations of students with disabilities.

*It became obvious my preschool child had a good day whilst he was in an inclusive learning space in a regular day-care (where he was treated like a child first before a label)*

*but not in the Early Intervention Centre (EIC), which was therapy based. I wanted him to be in a regular class at his local school but was pressured by the school that he would be better off in the support unit.*

*In term 1 of Kindergarten in a support unit (SU), he received an award for being the most inclusive child in the school playground where all children, including from the mainstream, played together. In term 2, they decided to restrict all the SU kids to a sandpit with a locked pool fence euphemistically named “the sensory garden”. This is a form of social and environmental restrictive practice. He could not read or write by the end of the year. He regressed socially and academically. He displayed similar behaviour to when he attended the EIC. His speech went backwards, he would only grunt like when he was 3 years old.*

*He refused to enter the classroom. He could not read or write.*

*During this period, I started to learn about my child’s rights and the legal obligation of the school. I decided to move him to a regular class in a mainstream school. By the end of Year 2, he could read and write at peer level and when he is sick, his friends run up and tell him they missed him.*

*The difference? The attitude of the Principal and teacher treating him like one of the kids and providing support where needed. See him as a person first and label after that. Staff have a collaborative working relationship with me with the focus on what is best for the child.*

**Krystal**

*She can’t start school, you need to go and write a letter to the education department”. This was the [non-government] system, who also withdrew all hearing support teachers.... At the bottom of meeting agenda, alternative education options is always there. Definitely comments towards low expectations. ‘You just need to get it into your head your child is going to struggle her whole schooling life’. That was from Itinerant AP hearing (Itinerant support teachers (hearing) are supposed to assist and support schools through the learning and support team). Well, statistically you know you can’t ignore them. School kept insisting on IQ assessment for pure purpose to enrol elsewhere. After the test, they said “We were shocked her nonverbal IQ came back so high. She is intelligent.*

**Leilla**

*We were given no option but the support unit, and told he would have better support for his learning. Every day I picked him up he was sat in front of Wiggles videos.*

**Janice**

*I wanted mainstream but was forced into special school setting. How will his speech improve when he is in a class with children who don't speak?*

**Matilda**

*Originally, I selected a special school because I was told he would be given more attention and better learning (six children ratio to a teacher and a teacher's aide). At the end of the year, his books came home with pages of empty worksheets, Now he is in mainstream and having to play catch up but is making progress in literacy and numeracy.*

**Bronwyn**

*The way the NSW school curriculum is currently, means nothing to my daughter in Year 8, who has an intellectual disability. Sadly, too often she has very few goals expected for her at school other than for her to be compliant. This is problematic when I sense she is often inadequately supported or completely disengaged.*

**John**

*Regarding adjustments and supports - these are lacking at the best of times, so let alone now in the COVID-19 crisis. Some teachers are good but most have less capacity or regard for including my daughter. However, a positive thing that happened for us was a conversation with our school Deputy Principal when I was at my wits end about how to make the online work accessible and the pressure I was feeling with so much work that required better access. She told me that it was the teacher's responsibilities to make the adjustments. (I have always known this but it is not our lived reality). At least by her saying it I felt there was some validating leadership in the school who had the intention of supporting teachers and encouraging this expectation. Whether it will happen in a time where teachers are stretched to the limit and stressed by everything that is happening, is yet to be seen. After years of expecting and hoping for this, my daughter is in Year 10, I am losing hope.*

**Tina**

## Appendix 4 – COVID-19 school case studies from parents of children with disabilities

As you will see, there is a disconnect with what is being proposed by the Department and what is happening on the ground. Families are not feeling confident and are confused with the messaging as to whether or not it will be safe for their child, particularly if they are at high risk, to go back to school. It would be really helpful if the Minister could make an announcement directed at families of children with disability and Principals to provide clear guidance about safety, what measures are being put in place in relation to PPE for not just teachers, but teachers aids. Also, it will be important to come up with a strategy at a broader state and regional level of what to do with children who will remain at home and cannot come in to school. Families are asking "Can measures be put in place where online learning with support continues when school goes back face to face?"

### *Case study 1 – Lack of support*

S currently has three kids - one in Year 6, one in Year 12 and M in Year 9. All are doing their school from home. M usually has SLSO support in the classroom.

*"If NSW Ed is going to do a half-half job of closing schools then students who have significant support needs (e.g. full-time SLSO) should be allowed / encouraged to attend. Either that or their in-school funding should be used to pay support workers (or SLSO's) to come to their homes to continue their education."*

### *Case study 2 – Poor communication*

A student in Year 12 with Autism will not access the online learning or even register his attendance. He will not take any instructions from his mother. The school are threatening to mark him down as an unjustified absentee. His mother has received no support or contact from the school to solve this issue, despite numerous attempts to contact the school via phone and email. The student has a receptive language deficit and therefore, without an educator supporting him directly, mum will find it very hard to try and explain what processes he needs to follow in the work the school provides online. The subject of English is of great concern, as he failed to complete an assessment prior to the Easter break and an email was received from the head teacher of English stating that he will now receive a non attendance letter. Mum tried to both call and email the teacher for clarification and support, and received no answer.

### *Case study 3 – No reasonable adjustments*

One parent reported that the Year 7 work is coming home or online without any adjustments. This parent is not working, comes from an English speaking background, is educated and tech savvy and knows how to make adjustments. She is having to make every adjustment and is feeling very stressed. She also has another child who is remote learning. We can only imagine the extra work and stress for parents who don't have these advantages, such as from CALD or lower socioeconomic backgrounds.

### *Case study 4 - Vital social connection not provided even though the capacity is there*

One parent is very concerned. The last few weeks of Term 1, whilst remote schooling, there was no video contact with the teacher and the kids. L specifically requested if they could go on Google classroom to give her son some social connection plus learning. The school wrote an email saying the only connection they will have will be via email. L says this issue is due to the Principal's inflexibility.

She was initially sending A to school but no one was there except teachers. He was getting lonely plus he did not have his usual SLSO. All learning moved online with no supports whether at school or at home. The school suggested he take home work from the support unit. A refused.

At the moment, the entire onus is on the parents to teach him. They have made adjustments and connected the topic to practical things in the house, eg. recycling, they showed him the rainwater tanks, where the grey water goes. He was engaged in his learning but both parents work full time and this is not sustainable for a term. This should be the teachers' role.

#### **Case study 5**

Single mum of four children (some with Aboriginal backgrounds), all with additional needs at the same primary school. Lack of communication, coordination or direct support from the school. All children given different formats for learning, some video, some simply PDFs, which has made it extremely difficult for the mum. One morning a 50 page PDF was sent through to be worked on that morning for one child - in primary school. There was no time for the mum to read this so she could prepare and support her child whilst also supporting the other three children.

There needs to be better intelligence/information coming from the regional offices to have consistency. This mum should have been flagged as needing extra support. Even when things go back to normal, not all kids will be able to go back. This needs to be addressed.

#### **Case study 6**

"The number of Zoom meetings has been an issue for us too - really fatiguing and leading to extra homework. I've started giving feedback to ask which meetings are essential (still a work in progress)."

#### **Case study 7**

"There is a real 'dancing' going for parents with schools as they try to ask for extra accommodations yet keep positive relationship happening."

Parents should not be put into this position in the first place. The extra accommodations should have been thought through in advance or at least a conversation should have been instigated by the school not the onus being placed on the parent.

#### **Case study 8**

"What is a reasonable time expectation for a school to create a modified curriculum program for a child? My daughter has moved to a new mainstream school, (Year 2) and they have been great, have embraced my daughter and have supports in place, but no real clarity around expectations, or a directed and focused plan."

Clearly, a policy needs to be put in place to properly guide teachers on what to do in this situation.

#### **Case study 9**

A has language disorder and is currently not able to write. Teacher has requested he has to provide written work to indicate lesson outcomes. The teacher will not consider other ways to show learning outcomes. Mum has tried to talk with the teacher and she is very pleasant but will not make these adjustments. Teacher is new this year and does not seem to be getting any better guidance from the school leadership.

#### **Case study 10 – Low expectations**

One child in Year 6 was given the reading at Year 1 level which is well below his reading ability.