

A photograph of two young boys hugging. The boy on the left has reddish hair and is looking towards the right. The boy on the right has brown hair and is smiling broadly, showing his teeth. They are both wearing light-colored, textured sweaters. The background is a soft-focus green and white, suggesting an outdoor setting. A large orange diagonal shape is overlaid on the top left of the image.

**RESPONSE TO THE REVIEW OF  
THE DISABILITY STANDARDS  
FOR EDUCATION 2020**

## **About Advocacy for Inclusion**

Advocacy for Inclusion acknowledges the Ngunnawal people as the traditional owners of the Australian land on which we work.

Advocacy for Inclusion provides national systemic advocacy and independent individual, self and advocacy for people with disabilities in the Australian Capital Territory. We are a Disabled Peoples Organisation which means most of our board, members and staff are people with disabilities. We represent all people with disabilities and recognise diversity.

We act with and on behalf of individuals to act on their own behalf, to obtain a fair and just outcome.

Advocacy for Inclusion works within a human rights framework and acknowledges the United Nations Convention on the Rights of Persons with Disabilities and is signed onto the ACT Human Rights Act 2004.

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## Introduction

The terminology of 'inclusion' or 'inclusive practices' are often used as a buzzword by education providers. It is misused or misinterpreted by the education sector that in turn is confusing and misleading for students and families. However, subtle exclusion does exist, and the Disability Standards for Education 2005 ('the Standards') encourage it by its own ambiguity.

This submission will emphasise the ambiguous nature of the commitment to inclusion, particularly given the statement that there is "no obligation to make a reasonable adjustment". The Standards provide a misleading and vague misunderstanding that school leadership are exempt from making reasonable adjustments under a Commonwealth model if it poses as an unjustified hardship on staff and other students. The Standards, under the DDA, has unconsciously created a loophole for schools to exclude students with disability.

In the ACT, students with disability, and their parents, have consistently experienced discrimination,<sup>1</sup> <sup>2</sup> lack of supports, poorly supported or trained teachers, a lack of expertise an entrenched systemic culture of low expectations displayed towards children and families<sup>3 4</sup> that are deemed to be difficult to teach. In this case, the Standards are not making a positive difference towards students with disabilities being able to access education and training opportunities on the same basis as students without disability.

It is problematic that the Review acknowledges there are strong views on inclusive education and funding but have specifically noted in the Discussion Paper that 'some' of these issues are outside the scope of this Review.<sup>5</sup> We respectfully disagree and will address concerns in this submission.

It is also concerning that issues identified in the 2010 and 2015 Reviews have not been addressed and potentially will remain unresolved until 2025. This lack of resolution of identified issues effectively weakens the Standards. This submission will address strong views on <sup>6</sup>

Inclusive education is paramount,<sup>7</sup> and funding support for students go hand-in-hand. Segregation of students with disabilities has increased across Australia including the ACT, with higher

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<sup>1</sup> 20% of students with disability attending an educational institution experience discrimination, of which 25% identify a teacher or lecturer as the source of that discrimination. See: Australian Institute of Health and Welfare (2017) Disability in Australia: changes over time in inclusion and participation in education. AIHW, Canberra

<sup>2</sup> Students with disability report that their disability is the main reason they do not attend school. See: Australian Institute of Health and Welfare (2017) Disability in Australia: changes over time in inclusion and participation in education. AIHW, Canberra.

<sup>3</sup> Children with Disability Australia (CDA) (2013) Inclusion in education: Towards equality for students with disability, Written by Dr Kathy Cologon for CDA.

<sup>4</sup> Australian Institute of Health and Welfare (2017) Disability in Australia: changes over time in inclusion and participation in education. AIHW, Canberra.

<sup>5</sup> Standards Discussion Paper, p.4

<sup>6</sup> Ibid

<sup>7</sup> See Szumski, G., Smogorzewska, J., and Karwowski, M. (2017) Academic achievement of students without special educational needs in inclusive classrooms: A meta-analysis, *Educational Research Review*, Vol.21. - The analysis showed that an inclusive approach to education benefits academic and social learning for students with disabilities and for students without disability.

attendance in special schools<sup>8</sup> and away from mainstream schools and growing number of support units. This increase is supported by a funding incentive, whereby a child with disability receives higher funding if they attend a special school rather than a mainstream school.<sup>9</sup>

To ensure the Standards are making a positive difference towards students with disability being able to access education and training opportunities on the same basis as students without disability, the Standards need to match Australia's obligation and commitment to the UN Convention on the Rights of Persons with Disabilities (CPRD).

### **Australia's Obligation to the CRPD**

The Discussion Paper asks specifically for recommendations where the Standards can be strengthened – this is a clear recommendation where the Standards can best be improved prior to the 2025 Review. The blunt answer is the Standards need be strengthened by adhering to UN CRPD specifically under Article 24, the Right to Education.

The Standards cannot be strengthened without strengthening the Australian education structure along with it. The Committee on the Rights of Persons with Disabilities provided feedback to the Australian Government in 2019 through their concluding observations of Australia's progress and commitment to upholding the CRPD. Under Article 24, the Committee expressed concern of the lack of implementation to many of the recommendations made in the 2015 Standards Review, including lack of age-appropriate settings for students with disabilities and insufficient funding for inclusive education in mainstream schools.<sup>10</sup>

The Committee on Economic, Social and Cultural Rights expressed concern about the increase in segregated education in May 2017 and recommended that Australia implement measures to ensure children with disability have access to inclusive education.<sup>11</sup> This has not been met.

In line with the CPRD Committee's general comment No. 4 made in 2016 on the right to inclusive education and targets 4.5 and 4.a of the Sustainable Development Goals, the Committee reiterated the previous recommendation<sup>12</sup> for the Australian Government to:

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<sup>8</sup> Schools that only enrol students with special needs. Australian Institute of Health and Welfare (2017) *Disability in Australia: changes over time in inclusion and participation in education*. AIHW, Canberra.

<sup>9</sup> Students with disability at a mainstream school attract a students with disability loading of 186 per cent of the base per student amount; those at a special school attract a students with disability loading of 223 per cent. See: Senate Standing Committees on Education and Employment (15 January 2016) *Chapter 5: How to better support students with disabilities in schools* in 'Access to real learning: the impact of policy, funding and culture on students with disability'.

<sup>10</sup> Committee on the Rights of Persons with Disabilities (2019) *Concluding observations on the combined second and third reports of Australia* (CRPD/C/AUS/2-3), 45(a)(b), p.11

<sup>11</sup> Committee on Economic, Social and Cultural Rights, *Concluding observations on the fifth periodic report of Australia*, UN Doc E/C.12/AUS/CO/5, paras 55-56.

<sup>12</sup> CRPD/C/AUS/CO/1 (2016) para. 46

(a) *Conduct a robust review, in consultation with organizations of persons with disabilities, of the Disability Standards for Education (2005), implement the recommendations in the new standards and develop a national Action Plan for Inclusive Education;*

(b) *Address the increasing rate of segregation, seclusion and isolation, lack of age appropriate settings for students with disabilities, in particular Aboriginal and Torres Strait Islanders, at all levels and redirect adequate resources to a nationwide inclusive education system for all students;*

(c) *Expand the collection of data on the numbers of students with disabilities, who do not qualify for an adjustment, are unable to enrol in local mainstream schools, educational attainment and completion, suspension and expulsion rates and the use of restrictive practices and bullying.*

There remains no legislative or policy framework that is focuses on inclusive education, including the Standards that fully comply with Article 24 and the CRPD General Comment 4.<sup>13</sup> Australia is seeking to reject its human rights obligations by seeking a clarification from the Committee “that States Parties may offer education through specialist classes or schools consistently with article 24”.<sup>14</sup>

### **Interpreting the Message: ‘We are an inclusive school, but not *that* inclusive’**

The second question of the discussion paper asks if ‘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?’ The latter knows more than the former. It is expected that educators and education providers know, understand, apply, and comply with the Standards but it is not practiced on the ground.

Students, families and carers often do not know about the Standards and their rights unless they dig deep enough to seek information or are supported to do so through advocacy and peer support. Unless education providers include and inform parents of the Standards when they seek to make a complaint or question decisions made on behalf of them or their child, they are in the dark.

Schools in the ACT do discriminate against families who actively seek for a school that would welcome their child and actively place adjustments to enable their child's learning development and participation in the classroom and external activities. Students with a disability are not only not

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<sup>13</sup> CRPD/G/GC/4

<sup>14</sup> Australia government response to LOIPR, para 275 (b).

receiving an equitable education but are also subject to ignorance and prejudice under subtle and direct discrimination that is the contrary to the DDA.

Education providers, teaching staff and policymakers given the right resourcing and targeted and ongoing professional learning, will build the capability to differentiate the delivery of the Australian curriculum. A whole school-approach supports all students accessing support when and as required. No teacher walks into a classroom expecting to find a diverse range of students with identical learning needs and learning expectations. Teacher expertise is concerned with delivering a differentiated approach to meet the needs to qualify for true inclusive practice.

*A student was ignored or forgotten by the mainstream teacher with a learning support teacher responsible for them.*

*A student spent time moving between mainstream classes to the special education unit and back again. Whilst this is an ideal inclusion model for student who require a learning support unit, this child was excluded from mainstream class activities. The physical attendance of the child was considered a tick-box form of 'inclusive practice'.*

All students have the right to learn the general class curriculum and received modifications to support access as appropriate. Inclusive education is not segregation of students into 'special' or 'learning support units' within mainstream schools, nor is it the physical placement of students with disability in mainstream classrooms without support or adaptations in place, these inappropriate strategies mean the students are effectively unable to meaningfully engage or access the learning or social environments and therefore are excluded from participating or belonging. This also extends to excursions or school camps where students are actively invited to participate rather than being a burden and a break for teaching staff if excluded.

Even for those who are present in the mainstream classroom, students with disability are routinely being denied opportunities to fully participate in the curriculum and school life, with students being excluded from participation in camps, sports, excursions, events, and school activities. Parents have indicated experiences where the school leadership exclude or 'forget' to include support unit kids in activities, or they are always separated from the mainstream kids by default.

*A student could not attend the class swimming lesson although he could swim. Parent was asked to keep him home on sports day.*

*A student was excluded from school camp. The excuse provided to the parent was that there were no resources to support him, despite the parent requesting to attend.*

We are aware of cases where teachers feel overwhelmed trying to teach students with disability when they have not been given skills, training, or resources they need. On the flipside, students with disability, and their parents, are often faced with a lack of understanding, specialist training, and assistance and no empathy from school staff and educational departments. As a result, the relationship between the schools and their families can often be adversarial.

*A student had a learning support teacher for half a day, for three days a week and parent were requested to collect him as the school deemed there was not enough support for him.*

### **Power Imbalance between School Leadership and Families**

The Standards need to be improved to tighten discrimination that currently allow education providers to cherry pick on 'inclusion' or 'inclusive practices' that suit them. The relationships between school leadership, teachers and parents is a high-power imbalance with a common theme where parents want to be involved in the decision-making process, be supported to make complaints, and understand their choices.

There is no authentic choice provided for the parent when the school provides an upper hand by excluding a student for convenience. Children and families from low socioeconomic backgrounds can be at a greater disadvantage. They face additional challenges when advocating for their children as they may not necessarily have the financial resources to continuously resolve the significant barriers, they face in educating their child.

The parents that have sought advocacy from AFI have advocated tirelessly for their children to receive an equitable education. This consumed time, energy, and that is physical, emotional, and psychological in resources. At times, the situation for the child becomes so dire that the parents decide to change schools or home school their children, which in turn often adds a new layer of financial stress to their concerns. Families have indicated they do not feel like they belong at their chosen schools or are welcomed.

Parents have chosen to enrol their student in a mainstream school because they want them to be included in all of the classes alongside their peers, but then they find out that, in fact, their son or daughter is removed or excluded from the regular classroom in small groups with other students with disability. The reasons vary: behavioural or challenging behaviour, lack of support or

adjustments or the inability of the teacher to teach that student at the same standard and flexibility as her other students.

There remains an inflexibility in many school cultures, this inflexibility is often shown in a lack of insight into what drives and is communicated through student behaviour. As a result, there is a punitive approach rather than an insightful positive approach to supporting students with disability. There is a revolving door of students being suspended due to behaviour issues, coming back to school, getting suspended again, and in many parents' views, a belief that this is a deliberate attempt to drive them from the school under the guise that they cannot be accommodated.

### **Funding Balance for Learning Support and Adjustments**

The Standards may deem funding models to be outside the scope of the Review, but we assure you that they are linked to the Standards. They are relevant where the Standards need to be tightened for State and Territory Education Directorate/Departments to remove onus of 'non-obligation' to resource adjustments.

Education providers and school leadership do determine what technological and/or additional aids are available to all students. Funding models differ from State and Territories and in the ACT, schools are allocated a funding pool to assist in responding to unique, emerging, and complex situations in schools, improved school capacity or additional focused teaching support.<sup>15</sup> In the ACT, the adjustments can be provided from this funding at the disposal of the principal and the schools resources. Under the ambiguity of the 'no obligation' of the Standards to provide adjustments, this is the perfect subtle discrimination.

However, the funding bucket is utilised, learning support should not be extended to a learning support teacher or 'aid' to babysit and take a challenging students off the teacher's hands and away from the classroom. The best schools that have utilised their learning support staff have been the schools that spread their resources evenly and promoted inclusion by including the student with disability with their peers who may have a range of different requirements that also require learning support that is not disability-specific.

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<sup>15</sup> The ACT Legislative Assembly Inquiry into Youth Mental Health tabled report has recommended that the "ACT Government amend eligibility for Learning Support Units so that meeting ACT Student Disability Criteria be considered suitable to enter or access the services of a school's Learning Support Unit." See ACT Legislative Youth Mental Health in the ACT, Standing Committee on Education, Employment and Youth Affairs, Recommendation 7, p. 15



## Case Study – Mary's Story

Mary had a very challenging first half of the year in 2020, battling the ACT Education Directorate to provide an appropriate setting for her daughter. After two terms, which included; a suspension in week five of kindy, her daughter harming other staff and students constant absconding from the grounds including incidents of traffic having to be stopped for safety, and three support staff quitting **the school**, **all** citing the difficulty in supporting her daughter as the reason for leaving.

Finally, in the last week of term 2 this year, the school put a rule in place that LSAs were not able to support her, only a teacher or exec teacher. The Directorate only then made an exception to their learning support unit (LSU) eligibility criteria and placed their daughter in an autism specific unit (LSUA) even though she does not have an autism diagnosis. The criteria for a place in an ACT LSU or LSUA, is an intellectual disability or autism diagnosis, even though she very clearly met all points of the 'ACT Education Directorate Criteria for a Student with a Disability'.

Action was taken with consistent pressure made by the family and the school eventually reevaluating the setting she was placed in when it was seen she was unable to tolerate the environment, and their daughters behaviours' escalating so dramatically and uncontrollably because she was in total distress. A full-time 1:1 LSA support role was made available in the early weeks of kindergarten to accommodate Mary's daughter.

Mary's case study provides an example where the LSA's that were employed were not equipped to support her daughter in that environment, they were trying to make a square peg fit into a round hole. For Mary's daughter, access to a learning support unit was vital yet she was being effectively blocked by the ACT Education Directorate. Her disability was not 'eligible' for LSU access.

The ACT Education Directorate in this case example took so long to provide adequate support. The School Operations manager responded to Mary's request for assistance by saying "we receive thousands of request for moves from parents", which was both unhelpful and irrelevant. The ACT Education Directorate was intent of following their 'due process' in observing and charting Mary's daughter rather than listening to her carers and school or looking at the reports they provided from specialists noting what their daughter required as an adjustment.

Mary's case study is not unusual. Behavioural challenges students have can often be brushed away as problems due to changed placements, acting out, etc, rather than understanding that the

behaviours are symptoms of their disability and the environment they were in not being suitable for their needs. Children in care have an additional layer of trauma, which is often compounded by physical or mental health challenges, and it is an action that does not adhere to the Standards as they are currently written when the ACT Education Directorate seems unable to understand their unique needs.

Learning support teachers, if spread across the student population, can improve learning outcomes for all students, including those with disability when implemented in mainstream classrooms. Principals require the autonomy to make such decisions to best suit the context of the student population currently enrolled at their school.

Introduction of a simplistic and flexible resource model moving to an as-needs basis throughout the year as a method of resource allocation to schools to support students with disability is needed from a State and Territory level, guided by the Commonwealth. This also needs to be coupled with an increase in the recognised and scope of the EAP categories and NCCD as a method of resource allocation for schools under the Standards.

There needs to be an introduction of annual mandatory training for teaching staff, including learning support teachers, in the Standards. To further support the growth of teaching, it is recommended that additional time is allocated for education providers to prepare for the instructional and the access adjustments and modification for students with disability and to provide the personalised learning required to fulfil those diverse capabilities of each student.

Under the Standards, it is necessary to include targeted training for specific disabilities, and including the universal design for learning the UDL framework and training in trauma-informed practices to support education providers with developing improved capability to differentiate the teaching and learning, and also the effective behaviour management and support for all students.

## **Conclusion**

The Discussion Paper implied that that issues of inclusive education and funding towards students with disabilities is outside the scope of the Review. It is not. To address the fundamental issues faced by students with disabilities and their families and carers, the Standard needs to reflect and address the issues raised that are currently weak under the DDA.

The key question for this Review was whether, and to what extent, the Standards are making a positive difference towards students with disability being able to access education and training opportunities on the same basis as students without disability. The blunt answer is that the

Standards need to be strengthened to not devalue a student with disability or lower the expectation of what a student with disability can achieve in an inclusive, mainstream education setting.

It is imperative to be included into the Standards and reflected in Commonwealth as well as State and Territory education policy as a moral imperative and core business of schools who model 'inclusion' or 'inclusive practices'. Unless school culture and education policy practice inclusion to the utmost level, it will remain a buzzword and the Standards will become outdated.

This review of the Standards needs to revisit and continue to remain committed to the full implementation 20 of the 17 recommendations from the Disability Review. There needs to be accountability measures and quality assurance processes. They need to be explicit to ensure implementation of the recommendations remain authentic and remain sustainable.